CONSERVATION MANAGEMENT PLAN FOR BLANDING'S TURTLES AT LAKE POINTE COMMERCIAL CENTER LAKE IN THE HILLS, ILLINOIS

Prepared for:

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CBBEL Project No. 94-173

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Introduction and Background

This Conservation Management Plan was developed as part of an application for an Incidental Takings Permit for Blanding's Turtles with Illinois Department of Natural Resources (IDNR). The plan is necessary due to the proposed commercial retail development of a 30-acre site (Lake Point Commercial Center) located at the northeast intersection of Huntley-Algonquin Road and Lakewood Road in Lake in the Hills, McHenry County, Illinois (see location map located at the end of the Management Plan). Geographically, the site is located in Township 43 North, Range 7 East of the Third Principle Meridian, in the eastern quarter of the north half of Section 26.

The property is owned by PAR Development, Inc. and is located directly adjacent to the Exner Marsh Illinois Nature Preserve located within the Exner Marsh Conservation Area. Of the 30 acre parcel, 10 acres will be donated to McHenry County Conservation District (MCCD) for management and preservation. The area being donated is also included as part of an Illinois Nature Area Inventory (INAI) site.

We have received guidance from two experts on protecting the Blanding's turtle's habitat: Dr. Justin Congdon, Ph.D., a research scientist at the Savannah River Ecology Laboratory in South Carolina (affiliated with the University of Georgia) and Michael Pappas, a reptile consultant from Minnesota. Dr. Congdon and Mr. Pappas visited the site and prepared a report (Appendix A) discussing their findings and suggestions. They have reviewed and authored extensive research documentation in the field of Blanding's turtles. We have reviewed their report and implemented their suggestions to minimize impact to the turtle's habitat.

PAR Development, Inc. also owns Boulder Ridge Golf Course, which is located east of Exner Marsh. Although this parcel received IDNR endangered and threatened species sign-off, we have implemented some of Congdon and Pappas' recommendations in this area as a good faith gesture.

Biological Data- Taken from Correspondence from Keith Shank at IDNR, November 26, 2001

> Exner Marsh supports the largest known McHenry County population of this species; over 70 individual turtles have been tagged by the McHenry County Conservation District in this location. However, fewer than 40 are sexually mature individuals which may be capable of reproduction. Exner Marsh is one of the primary research sites for this species in Illinois.
>
> While the species is primarily aquatic, it will travel farther afield in upland areas to nest than any other North American aquatic turtle. Upland areas suitable for nesting are an essential element of habitat for this species. On-going tracking studies at Exner Marsh have

demonstrated that some females have traveled up to one-quarter mile from the marsh, a radius which easily includes the parcel in question.

Eggs are laid in gravelly/sandy soil from June through September; [Congdon & Pappas (2002) state that other material suggests mid-May through mid-July] nesting periods may be earlier or later depending on the prevailing weather for the year and the amount of successful basking by females. South-facing open areas are preferred. Eggs take up to 60 days to incubate, so hatchlings may be present from late July to as late as November [Congdon & Pappas (2002) state that hatchlings would emerge by early October]. Hatchling gender is determined by egg temperature at a specific stage of development; warmer temperatures produce females, slightly cooler temperatures produce males.

Blanding's Turtles are the longest-lived North American Turtle, with documented ages over 65 years; females do not reach reproductive maturity until 16-20 years of age and do not necessarily lay a clutch every year. Being a long-lived species, clutches are relatively small, seldom exceeding a dozen eggs. Reduction of nesting habitat, nest predation, and the untimely loss of breeding-age females to road-kill and reptile collectors are major threats to this species. At present, the Exner Marsh population appears to be gender-balanced, but older females may not be reproductive [Congdon & Pappas (2002) state that the previous statement has no supporting evidence]. Thus there are likely significantly fewer than 20 reproductive females at Exner Marsh. Females are at greater risk because they are exposed during the nesting process.

Blanding's Turtles are omnivorous [Congdon & Pappas (2002) stated that Blanding's turtles are primarily carnivorous], but, like Snapping Turtles, appear to prefer feeding on fish, amphibians, and insect larvae. Hence, a healthy ecosystem with a complete food web is important to them.

Blanding's Turtles appear able to persist successfully in agricultural areas. The conversion of agricultural areas to urban environments--with heavy vehicular traffic, frequent exposure to humans, and many barriers to overland movement, not to mention degradation of water quality and the aquatic environment--is detrimental to them.

See Appendix A: Congdon & Pappas. 2002. Review of the Status of Exner Marsh Blanding's Turtles: Potential Impact of Lake Pointe Development for more biological information.

Potential Impacts

This project consists of the construction of a commercial retail development. Our client has taken significant measures to prevent the taking of turtles during and after construction and does not anticipate a negative impact on the local population. However, because of the determined long travel distances of this species, the development may still result in a negative indirect impact on individuals. Potential takings of the Blanding's Turtle may occur during and after construction by construction machinery, vehicles, human contact and physical barriers.

Anticipated adverse impacts on the Blanding's Turtles as expressed by IDNR include:

- Conversion of open upland area to a commercial development and wetland/stormwater treatment areas resulting in the loss of nesting and foraging habitat.
- Conversion of areas within the INAI site.
- Degraded water quality from automotive pollutants and road salt.
- Addition of windblown trash throughout the Nature Preserve/Conservation Area
- Intrusive security lighting altering the food chain.
- Barriers to overland movement.

Measures Taken to Minimize Impacts

Our client has coordinated with and integrated significant measures suggested by IDNR, MCCD, Illinois Nature Preserves Commission and the U.S. Army Corps of Engineers (COE) to minimize development impacts to the ecological well being of the area. Our client has also gone beyond minimization of impacts to mitigate for any incidental impacts. Despite measures taken, we estimate that up to 2 turtles per year may be taken as a result of the development.

The project site consists of 30 acres, of which 10 acres will remain in open space. These 10 acres consist of an existing pond and wetland and two stormwater detention wetlands, which will be constructed. Therefore, the turtles will be allowed continued use of this area. Our client has also agreed to create artificial nesting grounds on the upland open areas within these 10 acres.

The following measures will be implemented to minimize effects of the development on the turtles, as well as other wildlife:

- UPLAND HABITAT AREAS: Concern has been expressed regarding the loss of upland habitat (nesting and foraging areas) for the threatened Blanding's turtles. This species prefers habitats consisting of wetlands and upland

areas. However, the existing upland use consists of active farmland, which provides limited habitat (See Congdon & Pappas, 2002).

Additionally, the existing substrate consists of silt loam and silty clay loam soils. It has been documented that Blanding's Turtles prefer sand and gravel substrates for nesting; therefore it is not likely that these upland areas are used for nesting. (See Observation/ Recommendation #3, Congdon & Pappas, 2002). However, to help mitigate the effects of the development, our client will enhance the remaining upland areas by creating artificial nesting grounds as well as providing upland and wetland habitats for foraging.

Nesting: Lot 12 has been removed and detention Basin B has been shifted west to provide a wider upland buffer between the basin and the adjacent nature preserve. IT has been agreed upon that two artificial nesting grounds will be created. The exact locations will be determined by IDNR.

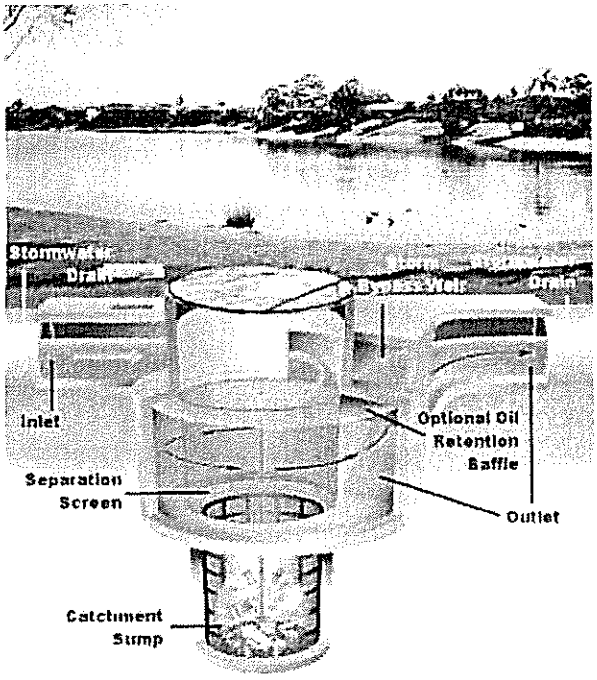
Habitat and Foraging: The area between the existing wetland and existing pond will be preserved as upland instead of providing wetland mitigation in that area, as previously proposed. This area will be managed to promote turtle use by the removal of trees and establishment of native grasses. Congdon & Pappas (2002) did not designate this area as a potential nesting creation area, therefore artificial nesting grounds are not proposed for this area.

- STORMWATER MANAGEMENT AND WATER QUALITY: Concern was expressed over maintaining water quality and providing proper stormwater treatment for the runoff draining to the Nature Preserve. While a commercial development proposes challenges to properly treat stormwater, our client is providing advanced treatment measures explained in the following paragraphs.

  All stormwater runoff will be collected in storm drains and directed through one of two Continuous Deflective Separator (CDS) systems before draining into detention Basin A or B. Lots 1-5 will drain into detention Basin A, and lots 6-11 will drain into detention Basin B. The bottom and side slopes of detention Basins A and B will be planted with native wetland vegetation with a dominance of salt tolerant plants. Detention Basin A will discharge through a vegetated swale into an existing pond (located south of detention Basin B) for further treatment before discharging into Exner Marsh. McHenry County Conservation District (MCCD) has requested that detention Basin B discharge, as indicated on the Engineering Plan, into the existing pond for further filtration before discharging into Exner Marsh. Additionally, the inlet of detention Basin B has been moved to allow a higher residence time for stormwater treatment.

One specific concern regarded using detention Basin A for wetland mitigation and stormwater filtration. To prevent commingling of stormwater and the wetland mitigation area, the use of underground detention was suggested, which is cost prohibitive, and in our opinion, unnecessary. Instead, our client has agreed to install 2 CDS systems (see graphic below), which will provide primary treatment for stormwater runoff before reaching Basin A or Basin B.

These separators remove trash, debris, sediment and oil. CDS researchers have found that the separators remove 80% of total suspended solids in typical runoff. Efficiency during high flow rates decreases to 70% and adsorbent material is added to the separator to collect oil and grease compounds. These materials remain in suspension attracting oil particles throughout the water column. CDS Technologies has found that the adsorbent materials capture between 80-90% of the oil and grease released by developments. These systems also remain efficient at velocities from 3 to 300 cubic feet per second. We believe that the above referenced designs provide a feasible alternative and solution.



Graphic taken from Http://www.cdstech.com

Originally, as a condition of the US Army Corps of Engineers (COE) Permit, vegetated swales were to be incorporated into the parking lots. However, the CDS systems are being proposed in-lieu of the vegetated swales. In our opinion, the CDS systems will be a more effective method of maintaining water quality, and are significantly easier to maintain.

- FENCING: Installation of fences is proposed to discourage the entrance of turtles into the commercial area and to act as a debris barrier. Silt fencing will be installed along the perimeter of the construction area to prevent sediment from leaving the site, during construction, and to help prevent turtles from entering the construction area.

  A chain link fence will be installed next to the curb along the eastern property boundary to prevent wind-blown debris from entering the marsh. At the request of the Endangered and Threatened Species program, openings have been added to the fence to allow turtles to exit the commercial development, although this is contrary to the advice of Congdon and Pappas. (See Observation/ Recommendation #2, Congdon & Pappas, 2002).

- LIGHTING: Concern was expressed over the external building lights attracting insects from the Nature Preserve and thereby disrupting the food chain. The external perimeter lights of lots 3-5 will consist of shoebox lights on the buildings and will have amber lenses to detract insects. The shoebox style lights will shine downward to the ground and not into the Nature Preserve. Our client will meet or exceed the preference of not more than one horizontal foot-candle at the nature area boundary.

- BARRIERS TO OVERLAND TURTLE MOVEMENT: While the development will create a barrier to turtle movement, we have created buffers to the development and barriers to detract the turtles from further danger of commercialization. Our client has buffered the development from the natural areas to the east and north by preserving and creating wetland and upland habitat areas along the northeastern and eastern property boundaries. The southeastern property boundary will be buffered by the berm that is located east of the property boundary. The northwestern property boundary will be buffered by constructing a berm and planting it with evergreens. Algonquin Road and Lakewood Road create the site boundaries on the south and west, which prohibits the creation of natural buffers. These buffers will discourage turtle entrance into the commercial area, as well as buffer the turtle habitat from the commercial activity.

  A suggestion has been made regarding providing open light culverts along the entrances to the development to allow turtles to travel through them. We feel that providing open light culverts will encourage the turtles to travel farther from safety. A review of recent aerial photography indicates that the majority of the area south and west of the site is developed. We believe that promoting the turtles to move further from the marsh towards development puts them in significantly more danger and mortality risk (Also see Recommendation #1, page 5, Congdon & Pappas, 2002).

- EDUCATION: By providing education to the customers and employees of the commercial development and golf course, we hope to raise awareness of the presence of Blanding's turtles in the area. We propose to post signs around the perimeter and within the commercial development, as well as around the perimeter of Boulder Ridge Golf Course and at Tee #1. The details of the signs will be determined, and will be in Spanish and English.

In our opinion, the measures discussed above minimize and mitigate impacts to the Blanding's Turtles to the extent practical.

Monitoring Measures

In coordination with the five year Wetland Mitigation Maintenance and Monitoring Requirements for the U.S. Army Corps of Engineers permit, we will monitor the effectiveness of the measures implemented to minimize turtle takings. CBBEL staff will search for the presence of turtles around the entire 30 acre parcel and the Boulder Ridge Golf Course, twice annually, during the growing season. The areas to be inspected include along the fence line located between the commercial development and the constructed detention basins and existing wetland and pond, within the created nesting grounds, within the detention and mitigation areas, in the commercial area (parking lots, etc.) along the right-of-way of Huntley-Algonquin Road and Lakewood Road and throughout the golf course. If a turtle has been tagged, the tag information will be recorded and reported to McHenry County Conservation District.

The results of our findings will be summarized in the annual report produced for the mitigation requirements.

Revising Minimization Measures

If it is determined that the measures taken to minimize turtle takings are not effective, modifications will be implemented. Adaptive management measures will be developed and implemented as necessary.

Funding Verification

Prior to the site development, PAR Development, Inc. will provide the necessary funding for the implementation of the taking minimization measures. After the site has been developed, a non-profit Commercial Association will be responsible for funding the monitoring and any necessary adaptive management measures. (Please see the attached "Declaration of Easements and Protective Covenants, Conditions and Restrictions," Appendix B).

No Take Alternatives

There are no practicable no take alternatives. The only no take alternative would be to cease all use of the site. Since that is not practicable, we believe that the proposed offers the least damaging alternative. If a residential subdivision was proposed on the site instead of a commercial development, takings could result. If an industrial development were proposed instead of a commercial development, impacts to the turtles would result due to similar concerns. Because the parcel is located adjacent to Exner Marsh, the only alternative, which will not result in any takes, is not developing the site and cessation of farming.

Likelihood of Survival

Appendix A: Congdon & Pappas. 2002. Review of the Status of Exner Marsh Blanding's Turtles: Potential Impact of Lake Pointe Development discusses the issues of Exner Marsh and the resident Blanding Turtle population. The following summarizes some of the main supporting factors that the proposed taking will not reduce the likelihood of the survival of the turtle habitat within Illinois:

- The current population is most likely overestimated and over half of the estimated population consists of headstarted individuals.
- Wildlife corridors from Exner Marsh have already been destroyed.
- Most upland areas surrounding Exner Marsh have already been developed.
- No current areas within Exner Marsh provide high quality nesting opportunities.

Please see the report for specific details on the current status of the turtles and the challenges facing them. The proposed taking will not reduce the likelihood of survival of the turtle by impacting habitat essential to the species existence. The proposed development impacts current agricultural land, which is not preferred by Blanding's turtles for habitat or nesting. The existing non-agricultural area, consisting of wetlands and upland habitat, will be fenced off from the development to allow turtles the continued use of the area. While the development may have an impact on individual turtles, it may help the likelihood of survival of the turtle population within the biotic community by preventing access to major roads and providing more nesting grounds.

/CND
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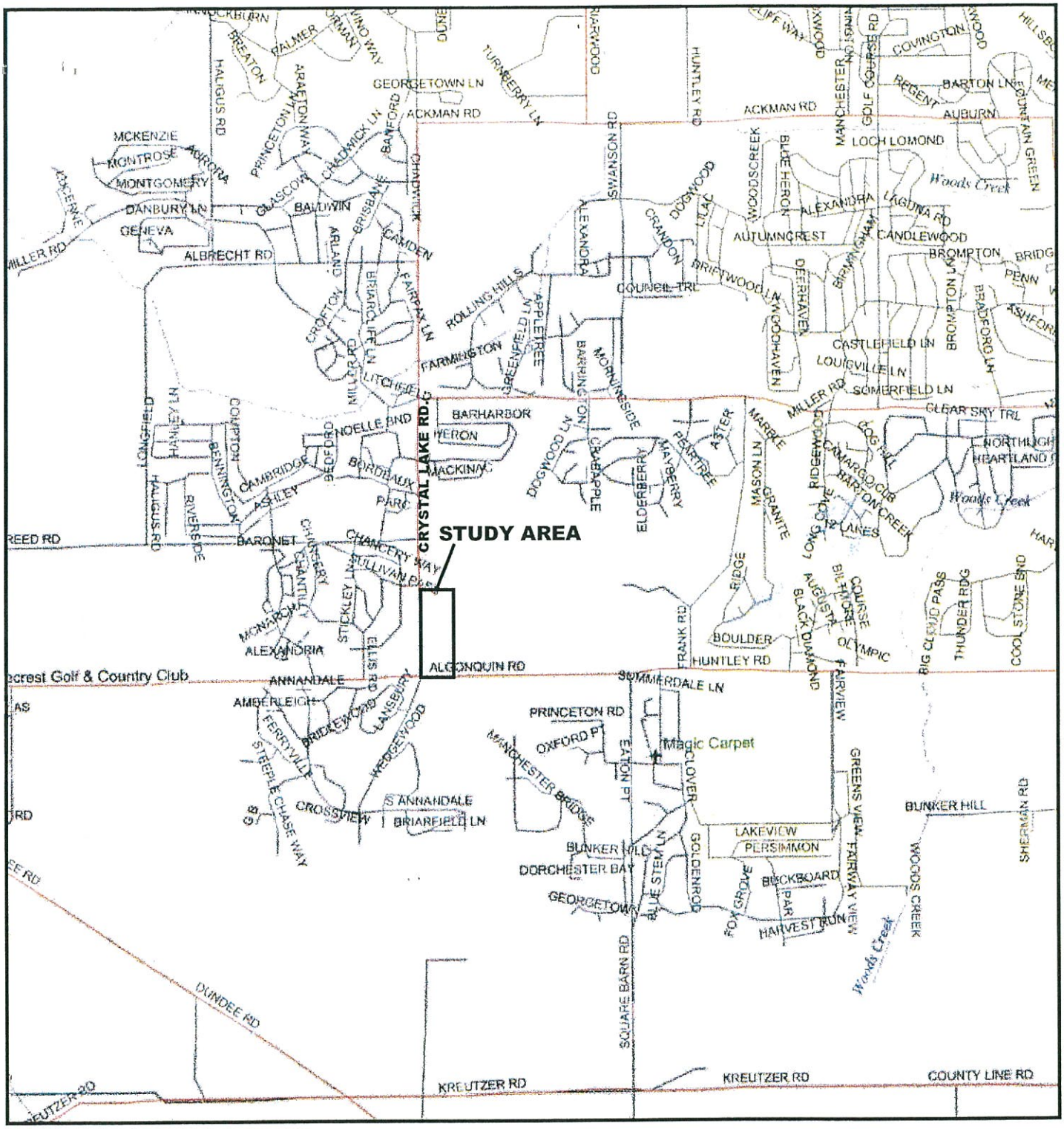

"NOT TO SCALE"

DSGN.	CND	CHKD.	JMA

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CLIENT: PAR DEVELOPMENT

JOB#: 94-173

N

TITLE: LOCATION MAP

DATE: 5/23/0

APPENDIX B

C. **Building** - shall mean and include, but not be limited to, the main portion of a structure built for permanent use and all projections or extensions thereof, including but not limited to garages, outside platforms and docks, storage tanks, carports, enclosed malls and porches.

D. **Building Site** - shall mean a tract of real property as determined by the legal description in a conveyance of lease from the Declarant and depicted as Lots 1 **(one) through** 13 **(thirteen),** both inclusive, on the Subdivision Plat. If fee simple title to two (2) or more adjacent Building Sites, as defined hereinabove, is acquired by the same Owner, such commonly-owned Building Site may, at the option of said Owner, be combined and treated as a single Building Site for the purposes of this Declaration.

E. **Code** - shall mean the zoning and subdivision ordinance and building code of the Village of Lake in the Hills and/or Lake in the Hills Sanitary District and any other law or ordinance applicable to land use in the Property, as now in effect or hereafter amended.

F. **Committee** - shall mean and refer to the Design Review Committee to be established pursuant to **Article XIII** of this Declaration, its successors and assigns.

G. **Common Areas** - Those areas owned by the Association and shown on the Subdivision Plat as Lot 13 identified on the Plan as "Wetland/Mitigation and Stormwater Management" (or herein **"SWM"**), as well as any access easement granted to the Sanitary District as a means of providing ingress and egress to the Lift Station within Lot 1, as well as all piping located in utility easements granted to the Sanitary District or as identified in the Subdivision Plat as "Easement per Public Utilities". The Common Areas also includes those areas so designated in the Conservation Management Plan applicable to the Property, including any approved amendments thereto, a copy of which shall be kept on file with the Village.

H. **Declaration** - shall mean this Declaration of Easements and Protective Covenants, Conditions and Restrictions, together with all of the provisions contained herein.

I. **Detention Facilities** - Those portions of parcels proximate and adjacent to the Property designated on the Subdivision Plat to be utilized for the collection and detention of stormwater runoff, together with all pipes, equipment, facilities and appurtenances used or useful in connection therewith.

J. **Improvements** - shall mean and include Buildings, Signs, driveways, parking, loading and/or storage areas, fences, sidewalks, other walk and/or bicycle ways, paved areas, curbs, gutters, antennae, tanks, towers, fixed machinery, transformer, walls, screens and barriers, retaining walls, bridges, drainage structures, stairs, decks, landscaping, water hydrants, poles, grading changes, loading areas and all other structures or improvements of every type and kind, name and nature and all additions, alterations and changes thereto except where herein such specific improvements are individually referred to.

K. **Landscaping** - shall mean Lawn and/or vegetative ground cover combined with shrubbery, trees, flowers, vines, earth forms, irrigation systems and similar materials. Plantings may be complemented with earth berms, terraces, walls, fences and masonry or other architectural materials, all combined with other Improvements on the Building Site to present a harmonious and attractive whole.

L. **Lawn** - a space or ground covered with grass, kept neatly mowed and maintained.

M. Member - A member of the Association as provided in **Article XII.B.**

N. Occupant - shall mean an entity, whether it be an individual, corporation, joint venture, partnership or association, which has purchased, leased, rented or has otherwise legally acquired the right to occupy and use any Building or Building Site, whether or not such right is exercised.

O. Owner - shall mean an entity, whether it be a corporation, joint venture, partnership or association, which is record owner of any fee simple estate, or which has an equity of redemption of a beneficial interest under a land trust in real property.

P. Sanitary District - the Lake in the Hills Sanitary District.

Q. Sign - shall mean and include every advertising message, real estate sign, announcement, declaration, demonstration display, illustration, insignia, surface or space erected or maintained, which can be viewed by any observer from the exterior of any Building, for identification, advertisement or promotion of the interest of any person, entity, Building, product or service. The definition of Sign shall also include the sign structure, supports, lighting system and any attachments, ornaments or other features used to draw the attention of observers. This definition does not include any flag, badge, or ensign of any government or governmental agency erected for and used to identify said government or governmental agency.

R. Street - shall mean any public or private street or highway, whether presently constructed, dedicated by plat map or contemplated in the future, under a street plan approved by any public authority.

S. Village - The Village of Lake in the Hills, Illinois.

T. Wastewater Treatment Facilities - That part of the Property located on Lot 1 upon which a "**Lift Station**" has been constructed, together with all pipes, facilities, equipment and appurtenances used or useful in connection therewith.

ARTICLE IV
LAND USE

Subject to the provisions of the Code the only uses allowed within the Property shall be those which are currently a permitted use under the Village's B-3/Business District Zoning Classification but subject to such special or conditional uses under such B-3/Business District as may be approved by Declarant and, as applicable, the Village.

ARTICLE V
USE OF PROPERTY OF DECLARANT

Notwithstanding any provision to the contrary in this Declaration, Declarant shall have the right to enter onto and use each and every portion of the Property owned by Declarant for any and all purposes related to Declarant's development or marketing of the Property, including, without limitation, the right to place temporary structures, store equipment or other materials, or take whatever additional action Declarant deems necessary or desirable on each and every portion of the Property owned by Declarant. Further, notwithstanding the intent of this Declaration that Building sites be used for business and commercial purposes, allowable under the Village's B-3/Business District, Declarant shall have the right to construct, own, operate, lease and convey each and every portion of the Property owned by Declarant for support or accessory facilities consistent with the purposes of this Declaration and the Code.

ARTICLE VI
RESTRICTIONS AND REQUIREMENTS ON IMPROVEMENTS

The following restrictions and requirements are imposed on the Property subject to any further requirements contained in the Code:

A. **Temporary Structures** - No temporary Buildings or other temporary structures shall be permitted on any Building Site; provided, however, trailers, temporary Buildings and the like shall be permitted for construction purposes during the construction period of a permanent Building. Such structures shall be placed as inconspicuously as practicable, shall cause no inconvenience to Owners or Occupants or other Building sites, and shall be removed not later than thirty (30) days after the date of substantial completion for beneficial occupancy of the Building(s) in connection with which the temporary structure was used. The location and type of temporary structures shall be approved by the Committee.

B. **Required Setbacks** - Building shall be setback the following distances:

1. All interior building setback lines shall be a minimum of **fifty feet (50')** as measured from the Driveway. Setback requirements are delineated on the Subdivision Plat.

2. Surface parking areas may be located in the front yard of a Building Site.

3. Subject to the approval of the Committee, underground improvements such as parking garages, or vaults may be placed within the setback areas.

C. **Off-Street Parking and Loading Areas**

1. Off-Street parking and loading shall be provided on each Building Site in at least the amount required by the Code. For specific users, the Committee may require additional off-street parking or loading areas.

2. All driveways and areas for parking, maneuvering, loading and unloading shall be paved with asphalt, concrete or similar materials and in accordance with the Code.

3. No parking shall be permitted on any Street or drive or any place other than parking areas located on the Building site. Each Owner or Occupant shall be responsible for compliance by its employees.

4. Off-street loading areas shall be designed to include space for ingress, egress and maneuvering. (All loading docks must be screened so as not be visible from adjacent streets, residential properties or other Building Sites.)

D. **Service Facilities and Storage Areas** - All waste materials and refuse shall be stored and maintained in closed containers which are shielded from view by permanent structures and screening or landscaping compatible with the Building's design. All waste and refuse shall be frequently and regularly removed from the Building Site. Fuel and other storage tanks shall not be installed underground or above ground except as authorized in writing by Declarant and shall be screened from public view. Such Improvements shall be integrated into the Building and site plans and designed so as not to attract attention and shall be inconspicuously located. No materials, supplies or equipment shall be stored in any area on a Building Site except inside a closed Building.

E. **Exterior Materials, Colors** - Architecturally and aesthetically suitable building materials shall be applied to or used on all sides of a Building and shall be harmonious and compatible with colors of the surroundings and other adjacent Buildings. Materials shall be approved by Declarant or the Committee.

F. **Height** - No Improvement shall be erected or altered to exceed a height of **one (1) story** or **twenty five feet (25')** in height, except as otherwise allowed under the Zoning Ordinance of the Village in effect as of the date of recordation of this Declaration.

G. **Site Coverage** - No more than **50%** of the area of the Building Site may be occupied by Buildings, except as otherwise allowed under the Zoning Ordinance of the Village in effect as of the date of recordation of this Declaration or as approved by the Declarant.

H. **Utilities - Mechanical Equipment - Roof Projections**

1. All utility lines including electrical and telephone shall be underground. Padmounted transformers, switchgear and similar equipment which must be installed above ground line shall be screened with suitable fencing or Landscaping consistent with safety and other regulations of the utility companies.

2. All mechanical equipment shall be located or screened so as not to be visible from the street view of the general public, from residential properties, or from the view of other Building Sites. Penthouses and mechanical equipment screening walls shall be of design and materials compatible with those of the Building. Antennae shall be visually masked to the extent practicable and consistent with electromagnetic considerations.

I. **Pollutants** - No trades, services or activities shall be conducted on the Property, nor shall anything else be done thereon which may be or become an annoyance or nuisance to the Owners or Occupants of adjacent properties by reason of unsightliness or excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid wastes, smoke, debris or noise. No use of the Property shall be permitted which will result or may potentially result in the discharge of toxic or hazardous or radioactive substances on, in or under the Property or into any sewer system or storm drain serving the Property.

J. **Exterior Lighting** - All exterior and security lighting shall have underground service and shall be designed, erected, altered and maintained in accordance with plans and specifications approved in writing by the Committee to the end that lighting shall be compatible and harmonious throughout the Property and directed away from adjacent residential Streets and properties. Lots 3-5, as depicted in the current Subdivision Plat, must have shoebox lights on the rear of the buildings with amber lenses as designated in the Conservation Management Plan. In addition, all exterior lighting at the nature area boundary will not consist of more than one horizontal foot-candle.

K. **Freestanding Decorative or Screen Walls**

1. No free standing decorating or screen wall shall exceed eight (8) feet in height above the grade where constructed.
2. Any wall shall be constructed of materials similar to or compatible with those materials used in the Building.
3. Decorative walls and retaining walls which are an important and integral part of an overall landscape plan will be allowed if approved by the Committee.

4. No freestanding decorative or screen walls, or similar structure shall be erected or installed on any Building Site without the prior written approval of the Committee.

L. Signs

1. Identification Signs - Identification Signs shall be permitted in any front, side or rear yard of a Building Site which abuts or is adjacent to a Street, provided such Signs shall be set back a minimum of **twenty (20) feet** from any right-of-way-line. Only one (1) identification Sign per Building Site shall be permitted for each street or highway frontage. Identification Signs shall be subject to the following requirements:

a. Illumination. Identification Signs may be illuminated only by light cast upon such Signs from a concealed light source.

b. Size. All identification signs may be detached (not mounted on a Building) or attached and not exceed the surface area allowed by the Village Code.

2. Other Signs - The following Signs shall be all allowed anywhere within a Building Site so long as they are not illuminated, do not exceed four (4) square feet in sign face area and do not exceed ten (10) feet in height:

a. Signs to regulate traffic.
b. Signs required to be posted by law.
c. Warning signs and no trespassing signs.
d. Signs giving information concerning the location and/or use of accessory off-street parking facilities or loading and unloading facilities.
e. Signs established by governmental agencies.
f. Signs regarding the Blanding's Turtles.

The number of the above designated Signs shall be limited to the reasonable amount necessary to serve the functions for which such Signs are designed.

M. Easement Areas - Within the easement areas reserved or dedicated on the Subdivision Plat or provided for in this Declaration, no improvement or planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation, operation or maintenance of the utilities, Detention Facilities, Wastewater Treatment Facilities, Streets or other purpose for which the easement was intended.

ARTICLE VII
LANDSCAPING

Each Owner or Occupant within the Property shall be responsible for the construction, installation or maintenance of functional and aesthetically suitable landscaping on its Building site (except for Detention Facilities, which shall be maintained by the Association as provided in Article XVIII). Such Landscaping shall be subject to such as may be required by the Committee.

A. Time of Installation - Approved Landscaping shall be installed on a Building Site within three (3) months of the issuance of a Certificate of Occupancy for a Building weather permitting. Upon a showing of hardship or cause by the Owner, the Committee may, in writing, extend the three (3) month time period.

ARTICLE VIII
MAINTENANCE

Each Owner and Occupant shall be responsible for keeping its Building Site or Sites (whether or not improved), Buildings, and other Improvements, including Lawn and Landscaping, maintained in a safe, clean, neat and orderly condition and shall prevent rubbish, dunnage, and the like from accumulating on its Building Site. Unimproved Building Sites shall be kept mowed and free of weeds.

ARTICLE IX
APPROVAL OF PLANS

A. **Procedure and Controls** - No construction or exterior alterations of any Buildings or other Improvements, including signs, may be commenced on any Building Site within the Property without written approval by the Committee of the plans for such construction or alteration.

1. Development approval shall be forthcoming from the Declarant or the Committee only after a review of preliminary and final plans, drawings and supporting information relating to the proposed development submitted to the Committee by the Owner of a Building Site.

2. Applications to the Committee shall be addressed to such address as to the Committee may designate by written notice to Owners, which address may be changed by written notice to Owners.

3. The Committee shall within thirty (30) days after the receipt of plans, drawings and supporting information approve or disapprove the proposal in writing. In the case of a disapproval, the Committee may cite changes or conditions which, if accepted by the applicant, would lead to approval.

4. A failure by the Committee to approve or disapprove the application within this thirty (30) day time period shall constitute approval of the plans.

5. The Declarant, the Association, the Committee and their employees or agents shall not be liable to any Owner or occupant or to anyone submitting plans for approval or to any other party by reason of a mistake in judgement, negligence, or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve or disapprove any such plans.

6. Upon receipt of plan approval, the Owner or Occupant shall diligently proceed with the approved alteration or development. If the work on the approved construction is not commenced within one (1) year from the date of the approval, then the approval shall

   automatically expire. Upon the showing of hardship or cause by Owner, the Committee may, in writing, extend the one (1) year time period.

7. Approval of plans by the Committee may be secured prior to the acquisition of a Building site pursuant to the terms of a sale contract.

8. The issuance of a building permit or a license which may be in contravention of this Declaration shall not prevent Declarant or the Committee from enforcing these provisions.

B. **Preliminary Submittal Requirements** - The following information shall be submitted in two copies to the Committee in connection with its consideration of any development plans:

1. Preliminary floor plans and elevations of any proposed Building with notations on the types of materials to be used, the mechanical system, the electrical system, the structural type and exterior colors and materials.

2. A preliminary site plan of the entire property being developed drawn to scale, showing at least the following detail:

   a. The location of existing and proposed Buildings with the location of entries noted;
   b. The location and dimensions of all driveways, parking area, loading areas, maneuvering areas for vehicles and pedestrian walkways;
   c. The location, type and screening of any trash disposal facilities;
   d. Landscaping or planting showing plant material by type (trees, shrubs, ground cover, evergreen, deciduous), screen walls or fences, retaining walls, landscape screens and other site development and landscaping features;
   e. The location and size of utilities and utility easements;
   f. Location and size of all Signs and an elevation drawing of the Signs.

3. A preliminary grading plan.

4. The location and type of any accessory appurtenances.

5. An estimate of the gross floor area for the completed development by type of use.

6. An estimate of the maximum number of employees contemplated for the proposed development.

7. A description of the proposed operation in sufficient detail to permit judgment by the Committee of the extent of any noise, odor, glare, vibration, smoke, dust, gases, hazard, pollution, contamination, radiation, liquid wastes or hazardous or toxic substances that may be generated or released.

8. A description of the proposed uses in sufficient detail to permit judgment as to whether they are permitted uses under the Code and this Declaration.

9. A calculation of Building site coverage.

10. Any other information which may be reasonably required by the Committee in order to ensure compliance with the requirements contained in this Declaration.

C. **Final Submittal** - After the approval of the Preliminary Submittal, a final submittal shall be made, incorporating any requirements made by the Committee during its review of the Preliminary Submittal, and including the following:

1. Floor plans and elevations of proposed Buildings and outline specifications in sufficient detail to designate materials, external colors and mechanical, electrical and structural systems.

2. A final site plan of the entire property being developed, drawn to scale, showing at least the following detail:

a. The location of existing and proposed buildings with the location of entries noted;
b. The location and dimensions of all driveways, parking areas, loading areas, maneuvering areas for vehicles and pedestrian walkways;
c. The location and type of any outdoor trash disposal facilities;
d. Landscaping or planting showing plant material by general type, screen walls or fences retaining walls, landscape screens and other site development features;
e. The location and size of utilities and utility easements;
f. Location and size of all Signs and an elevation drawing of the Signs;
g. The location and type of any accessory appurtenances such as scales, gas pumps, dumpsters, etc.

3. A final grading and layout plan.

4. The gross floor area for the completed development by the type of use (office, research, storage, etc.).

5. A calculation of site coverage.

6. An estimate of the maximum number of employees contemplated for the proposed development.

7. A description of the proposed operation discussing the extent of any noise, odor, glare, vibration, smoke, dust, gases, hazard, pollution, contamination, radiation, liquid wastes or hazardous or toxic substances that may be generated or released.

8. A description of the proposed uses of the Building site and any accessory uses and a comment on their suitability under the provisions of this Declaration and the Code.

9. Any other information which may be reasonably required by the Committee in order to ensure compliance with the requirements contained in this Declaration.

D. Variances - The Committee may grant variances to the provisions of this Declaration due to extraordinary or exceptional situations. No variance granted by the Committee shall be deemed to be a variance from the Code or any other applicable law of the Village or any other governmental agency with jurisdiction.

ARTICLE X
ENFORCEMENT

A. **Abatement and Suit** - Declarant, the Committee and the Association are each hereby granted the right to enter upon any part of the Property at any reasonable time or times to inspect the same for purposes of determining compliance with Committee approved plans and this Declaration. In the event of any violation or breach of any of the aforesaid, and in the further event that all such violations and breaches are not cured within ten (10) days after written demand made upon the Owner or Occupant by Declarant, the Committee or the Association, as the case may be, Declarant and the Association jointly and separately have the right to enter upon the portion of the Property upon which, or as to which, such violation or breach exists, and summarily to abate and remove, or to correct, repair or maintain (including, without limitation, the installation of Landscaping in accordance with the approved Landscape plan if the Owner or Occupant fails to install such Landscaping within the time period provided in Article VII.B), at the expense of the Owner and occupant thereof, any Improvement, thing or condition that may be or exist thereon contrary to the

intent and meaning of this Declaration as interpreted by Declarant, the Committee or the Association, and Declarant, the Committee, and the Association shall not, by reason thereof, be deemed guilty in any manner or trespass for such entry, abatement, removal, correction, repair, or maintenance or incur any liability on account thereof. Declarant, the Association and every Owner (or Occupant, but only with the respective Owner's consent) are further separately empowered to seek by legal proceedings, either in law or in equity, appropriate remedies to abate or otherwise prevent a continuing breach of any provision of this Declaration. The amounts of all expenses incurred by Declarant, the Committee and the Association pursuant to the provisions of this Article X.A. which are not paid by the Owner immediately on demand shall constitute a lien against the subject Building site, shall bear interest until paid at the highest lawful rate in the State of Illinois, and may be foreclosed by appropriate legal proceeding.

B. **Attorney's Fees and Liens**. If in connection with any enforcement of this Declaration with respect to any Building site, it shall be reasonably necessary to secure the services of attorneys for representation of the Declarant or its agents, then the reasonable fees of such attorneys, and all other costs of any contemplated or actual legal or equitable proceeding in connection with any such enforcement shall be payable by the Owner of such Building Site. If such fees and other costs or any part thereof are not paid within ten (10) days after written demand therefore, the amount unpaid shall bear interest from the date thereof until paid at the highest lawful rate in the State of Illinois. If any such fees or costs are not paid on the due date thereof, the amount thereof together with interest thereon as aforesaid shall be and become a lien against such Site and may be foreclosed by appropriate legal proceedings. In any legal or equitable proceedings for the interpretation or enforcement of or to restrain the violation of this Declaration or any provision hereof, the losing party or parties shall pay the reasonable attorneys' fees of the prevailing party or parties in such amount as may be fixed by the court in such proceedings.

C. **Subordination of Liens**. Any lien created pursuant to the provisions of this Declaration shall be subordinate to the lien of any mortgage for value and in good faith now or hereafter placed upon all or any portion of a Building Site which runs to a commercial or savings bank, savings and loan association, trust company, credit union, pension fund, insurance company, or other institutional lender, or to Declarant as a purchase money mortgagee, provided, however, that a sale or transfer of any property pursuant to a decree of foreclosure or any proceedings in lieu of foreclosure, shall not relieve such property from liability for any assessments or other monetary obligation under this Declaration which thereafter become due or from the lien thereof.

D. **Deemed to Constitute a Nuisance**. The result of every action or omission whereby any provision set forth in this Declaration is violated in whole or in part, is hereby declared to be and shall constitute a nuisance, and every remedy allowed by law or equity against an Owner or Occupant shall be applicable against every such nuisance and may be exercised by Declarant, the Association, the Committee, any Owner (or Occupant who has been given such right by the Owner of such Building Site), or any of them.

E. **Remedies Cumulative**. All remedies provided herein or available at law or in equity shall be cumulative and not exclusive.

F. **Failure to Enforce**. The failure of Declarant, the Association, or the Committee, or any other person entitled to enforce this Declaration, to enforce any provision herein contained shall in no event be deemed to be a waiver of the right to do so nor of the right to enforce any other provision. Declarant, the Association, and the Committee shall exercise their own judgment to insure compliance with the provisions of this Declaration, and none of them, nor their employees or agents,

shall be liable to any Owner, Occupant or any other party by reason of a mistake in judgment, negligence, or enforcement or nonenforcement of this Declaration

G. **Damages Inadequate**. Damages for breach of this Declaration are hereby declared not to be adequate compensation and such breach and/or the continuance thereof may be enjoined or abated by appropriate proceedings by any person entitled to enforce this Declaration as provided in this Article X.

ARTICLE XI
OWNER AND OCCUPANT ACCEPTANCE

Each Owner and Occupant, by the acceptance of a deed of conveyance, lease, sublease, license or right to enter on or occupy any of the Property, and every other person at any time having or acquiring any right, title, interest, lien, or estate in, on or to any of the Property, accepts the same subject to all of the provisions of this Declaration and the jurisdictions, rights, and powers of the Declarant, the Committee and the Association created, granted or reserved herein, and all easements, rights, benefits and privileges of every character hereby granted or created and thereby covenants and agrees for themselves, their successors, heirs, personal representatives and assigns to be bound by this Declaration. All obligations hereby imposed are covenants running with the land and shall bind every Owner and Occupant of every part and parcel of the Property and any interest therein, and every such other person and inure to the benefit of every Owner and Occupant and such other persons and as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, lease, sublease, license or other agreement granting any right of entry or occupancy, or in any other instrument or document by which any such right, title, interest, lien, or estate is created or acquired. This Declaration and all of the covenants, agreements and provisions contained herein are made for the direct, mutual and reciprocal benefit of each and every part and parcel of the Park Property and shall create mutual, equitable servitudes upon each portion of the Property in favor of every other portion of the Property.

ARTICLE XII
CREATION OF ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

A. **Formation of Association** - Upon Declarant's conveyance of a Building Site, the Owners shall cause to be incorporated a not-for-profit corporation under the laws of the State of Illinois to be called **"The Lake Pointe Center Owners' Association"** (the **"Association"**). The Association shall be governed in accordance with articles and bylaws to be prescribed by Declarant. Prior to such conveyance and the formation of the Association, Declarant shall exercise all of the powers and have all of the obligations and responsibilities accorded to the Association by this Declaration. Upon formation of the Association, Declarant shall transfer to the Association ownership of the Common Areas and reserved easements as shown on the Site Plan and Subdivision Plat and/or referred to in this Declaration as easements to be held by the Association.

B. **Membership**. Each of the following shall be a Member of the Association: (1) the Declarant and (2) each Owner of a Building Site. Owners of portions of the Property that do not constitute Building Sites shall not be Members of the Association. Membership and the right to vote shall be appurtenant to and may not be separated from the ownership of any Building Site. With respect to Owners of Building Sites, ownership of a Building site shall be the sole qualification for membership. Persons or entities who hold an interest in any land in the Park Property merely as security for the performance of an obligation shall not be entitled to vote or to membership in the Association.

C. Transfer. The membership held by a member shall not be transferred, pledged or alienated in any way, except a Member that is a Building Site Owner, upon the transfer of ownership of the Building Site, and the only to the transferee thereof. Any attempt to make a prohibited transfer of membership is void. Upon transfer of the ownership of a Building Site, membership in the Association held by the Owner of such Building Site shall be automatically transferred to the transferee. Such transfer shall not, however, relieve the former Owner of its obligations for any assessments which were levied or became due while such former Owner was an Owner of this Declaration.

D. Voting Rights. the Association shall have two classes of voting membership:

1. Class A Members shall be all those Owners entitled to membership as defined in Section XII.B above, except Class B Members. Class A Members shall be entitled to one vote for each square foot of the Building Site (as identified as the **"Parcel Size"** of the Lots in the Plan attached hereto) for which they hold the interest required for membership. When more than one person holds such interest in any Building Site, all such persons shall be members, and the votes for such Building site shall be exercised as they among themselves determine. Any votes cast with respect to any such Building Site in violation of this provision shall be null and void.

2. Class B Members shall be those Owners who are the Declarant or a trust of which the Declarant (or the Declarant's beneficial owner) is beneficiary or an affiliate of Declarant (the term **"affiliate"** (or **"affiliates"** as the case may be) as used herein means any individual, fiduciary or corporation which directly or indirectly controls, or is controlled by, or is under common control with, Declarant). Each Class B Member shall be entitled to four (4) votes for each square foot of the Building Site in which it holds the interest required for membership by Section XII.B above.

E. Board of Managers

1. General. At the initial meeting of the Association, and at each annual meeting thereafter, a Board of Managers (hereafter **"Board"**) consisting of three Owners shall be elected by the vote of the Members having a majority of the total votes each to serve a term of one year and until their successors are elected and qualified.

2. Officers. The Board shall elect from among its members a President who shall preside over both its meetings and those of the Members, and who shall be the chief executive officer of the Board and the Association. The Board may elect such other officers as it deems necessary for the proper performance of its functions.

3. Vacancies. Vacancies in the Board caused by any reason shall b filled by vote of the Members at a regular or special meeting called for that purpose.

4. Removal. At any annual or special meeting of the Association duly called, any one or more members of the Board originally elected by the Members may be removed with or without cause by the affirmative vote of the members having a majority of the total votes and a successor may then and there be elected to fill the vacancy thus created. Any such member whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting.

5. Action by the Board. Except as otherwise expressly provided in this Declaration or in the Bylaws of the Association, the Board shall act by the majority vote of its members at meetings called from time to time as a majority of the Board may determine. A majority of the Board shall

constitute a quorum. No meeting shall be held without at least 72 hours written notice to each member of the Board except that any meeting may be held without notice upon the written consent of all the Board members setting forth specifically the business to be conducted. Any action authorized herein to be taken by the Board at a meeting pursuant to notice may be taken by informal action consisting of a written resolution signed by all of the members of the Board and setting forth the action taken or authorized and waiving notice of a meeting and agreeing to the use of the informal procedure hereby authorized.

6. **Powers and Duties of the Board**. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by this Declaration or the Association's Bylaws directed to be exercised by the Owners.

ARTICLE XIII
DUTIES AND POWERS OF THE ASSOCIATION

A. **General**. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association, acting through the Board shall:

1. Maintain or cause to be maintained in a neat, safe, sanitary and orderly condition, and in good order and repair, the Common Areas, the Detention Facilities, Wastewater Treatment Facilities, Wetlands, Streets, all landscaped areas within the rights-of-way of Streets, lighting facilities in Streets and any other portions of the Property the Association is required or elects in its sole discretion to maintain (collectively "**Areas of Common Responsibility**");

2. Establish a Design Review Committee ("**Committee**") composed of three (3) Owners, which shall act on behalf of the Association in the interpretation and enforcement of this Declaration. The Committee, once appointed, shall adopt reasonable rules, regulations and guidelines, fix a time and a place of its regular meetings, appoint a Chairman and a Secretary and keep minutes of the meetings which shall be open for inspection by an Owner upon request to the Committee. Until there are two Owners in addition to the Declarant, the Committee shall consist of one or more persons designated by the Declarant.

3. Enforce the provisions of this Declaration by appropriate means, including without limitation, the expenditure of funds of the Association, the employment of legal counsel and the commencement of actions;

4. Maintain and enforce all provisions of the Conservation Management Plan regarding Blanding's Turtles, including nesting and foraging habitats, fencing vegetated buffers, lighting and monitoring for turtle movement and fatalities. If an environmental/wildlife consultant employed by the Association, governmental agency or their consultant determines that measures taken to minimize impacts to Blanding's turtles are not sufficient, the Association is responsible for implementing proposed modifications, including expenditure of funds.

5. Maintain such policy or policies of insurance as the Board deems necessary or desirable in furthering the purposes and protecting the interests of the Association and its Members;

6. Establish and maintain a working capital and contingency fund in an amount to be determined by the Association;

Association. The Association may accelerate the unpaid balance of any assessment upon default in the payment of any installment thereon.

E. Certificate of Payment. Upon request, the Association shall furnish to any member liable for assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence in favor of third parties of payment of any assessment therein stated to have been paid.

F. Effect of Non-payment of Assessment.

1. If any assessment is not paid on the date when due, then such delinquent assessment, together with interest thereon and/or late charges as shall be imposed by the Association at its discretion and the cost of collection thereof, as herein provided, shall be secured by a continuing lien on the Building Site and improvements located thereon with respect to the ownership of which the assessment accrued, which shall bind such Building Site and improvements in the hands of the then Owner, its heirs, successors, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them but no such assumption shall relieve any Owner personally obligated hereby for delinquent assessments from such Owner's personal liability therefor.

2. If the assessment or installment thereon is not paid within thirty (30) days after the due date, such assessment or installment shall bear interest form the date due at the maximum Legal Rate or at such lesser rate as may be determined by the Association and uniformly applied, and the Association may bring an action at law for collection against the Owner personally obligated to pay the same and/or to foreclose the aforesaid lien, and there shall be added to the amount of such assessment the aforesaid interest, late charges, if any, costs of collection and court costs, and reasonable attorneys' fees, including court costs and attorneys' fees upon appeal, and the said costs of collection shall be recoverable whether or not suit be brought.

3. If the Association shall file a claim of lien against any Building Site, a lien fee in an amount set by the Association may be charged by the Association. Such lien fee shall be added to the unpaid assessment and same shall be cured by the lien hereby created.

G. Adjustment or Abatement of Assessments to Reflect Varying Levels of Services. The Board is authorized to enter into agreements with or to grant concessions to any member or group of members, whereby said second party may perform as to the affected property any one or more of the functions, duties or prerogatives of the Association and to receive in exchange therefor a reduction or moratorium on any assessments or any other obligation to the Association which otherwise would be payable by said second party and same shall not be considered as discrimination among the Owners. Furthermore, in determining assessments payable by the Owners, the Association may in its discretion allocate among the Owners affected or benefitted the varying cost components of the budget to reflect varying levels of services to different Owners. Nothing contained herein shall relieve the Association of any obligation herein imposed upon it except to the extent that such obligation is so performed by another.

The Declarant hereby reserves, for itself and its successors and assigns, including the Association, a perpetual easement for the right of ingress and egress over said utility easements for the purpose of installing, constructing, reconstructing, maintaining, repairing, operating and inspecting and sewer, gas, water, drainage, electric, irrigation and other easements. Upon formation of the Association, Declarant shall transfer said easement to the Association.

C. **Easements for Declarant**

Declarant hereby reserves to itself, during the period in which Declarant is constructing improvements on the Property and/or marketing all or any portion of the Property, Declarant shall have and is hereby granted an easement for the right of ingress and egress, the right to install any improvements over, across and through the Common Areas, and the right to store such equipment and materials as it deems necessary for the purpose of construction and marketing during said period.

D. **Easements for Village**

Declarant hereby grants to the Village Police Department, the right of access and use over and upon any private roadways within the Property for the purpose of partial as well as the exercise of its general police powers for health and life safety purposes.

E. **Easements Running with the Land**

All easements herein described are easements appurtenant, running with the land; they shall at all times inure to the benefit of and be binding on the undersigned, all of its grantees and their respective heirs, successors, personal representatives and assigns, perpetually in full force and effect.

F. **Easements. Noninterference**

No Owner shall interfere with any easement as set forth in this Article.

ARTICLE XVIII
MISCELLANEOUS PROVISIONS

A. **Assignment of Rights**. Any and all of the rights, powers, privileges and reservations of Declarant herein contained may be assigned to any party (hereafter **"Successor Declarant"**) either in toto or pro tanto as to any portion of the Property specifically described and identified in any assignment of such rights, powers, privileges, and reservations. Any such assignment shall be conclusively evidenced by a written assignment and acceptance thereof duly executed and acknowledged by Declarant and Successor Declarant and recorded with the McHenry County Recorder. Such Successor Declarant shall, to the extent of such assignment, have the same rights and powers as are give to and assumed by Declarant herein.

B. **Headings**. The headings of the Articles and Sections hereof are for convenience only and are not intended to be a part of this Declaration nor in any way to define, limit or described the scope or intent of the particular provisions to which they refer.

C. **Singular and Plural**. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine or feminine or neuter as is reasonable in the context.

D. **Interpretation**. The provisions of this Declaration shall be construed pursuant to the laws of the State of Illinois and shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and use of the Property.

E. **Time**. Time is of the essence of this Declaration.

F. **Conflicts**. Zoning ordinances, building codes and regulations, and any other governmental restrictions and requirements shall be observed. In the event of any conflict between this Declaration and any such governmental codes, regulations, restrictions and requirements, the more restrictive standards shall apply. The Property is subject to the zoning and subdivision ordinance and building code of the Village. Notwithstanding any provision of the Declaration, the Declarant and every Owner and Occupant shall, at all times, comply with such ordinances and code. Any approval of Declarant or the Committee required in this Declaration does not in any way relieve Owners and Occupants from obtaining approvals required by any governmental body having jurisdiction.

G. **Notice to be Give by Owners**. Any Owner if a Building Site who shall transfer to another entity, whether such entity be an individual, corporation, joint venture, partnership or association, any title, interest in or right of occupancy to such Building Site or portions thereof, shall give actual notice of the requirements of this Declaration to such entity.

H. **Severability**. Invalidation of any one or more of the provisions of this Declaration by judgment or court order shall in no way affect any of the remaining provisions, which shall remain in full force and effect.

EXHIBIT A

LEGAL DESCRIPTION