

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
IN CONNECTION WITH MALIBU BAY SUBDIVISION
IN ROMEOVILLE, ILLINOIS**

THIS DECLARATION made this 1st day of April, 1998, by **MARQUETTE NATIONAL BANK**, not personally but as Trustee under Trust Agreement dated February 1 1998, and knows as Trust 14368, (hereinafter referred to as “Declarant”).

WITNESSETH

WHEREAS, Declarant is the owner of record of the property legally described in **Exhibit A**, which is attached hereto and incorporated herein, which property is commonly known as the **MALIBU BAY SUBDIVISION** (hereinafter, the “Subdivision”);

WHEREAS, Declarant, by a duly executed letter of direction signed by the beneficiaries of Trust No. 14368 aforesaid, has been directed to execute this Declaration;

WHEREAS, this Declaration sets forth covenants, conditions, restrictions, controls and limitations on the uses to which any lot in the Subdivision may be put; and

WHEREAS, the purpose of this Declaration is to keep and maintain the Subdivision as desirable, attractive, uniform and suitable in architectural design and use, to prevent haphazard and inharmonious improvements thereto, to guard against the erection thereon of buildings built of improper or unsuitable materials, and to provide for the highest level and quality of improvements thereto, as more fully set below.

NOW, THEREFORE, Declarant hereby declares as follows:

ARTICLE I
GENERAL RESTRICTIONS

LAND USE AND BUILDING TYPE: No lot or building site may be improved, used or occupied for other than private residence purposes and all lots are hereby restricted to single-family residential use only.

One main dwelling only designed by a licensed architect and designed for occupancy by one family only may be erected on any lot.

ARCHITECTURAL CONTROLS: No building, fence, wall or other structural shall be commenced, erected or maintained, nor shall any addition to or change or alteration therein be made, except interior alterations, until the construction plans and specifications, showing the nature, kind, shape, height and materials, color scheme, location on lot and approximate cost of such building or other structure, and the grading plan and landscape plan of the lot to be built upon shall have been submitted to and approved in writing by the Architectural Review Committee. The Architectural Review Committee shall have the right to refuse to approve any such construction plans or specifications, grading plan or landscape plan, which are not suitable or desirable, in the opinion of the Committee, for aesthetic or other reasons; and in so passing upon such construction plans and specifications, grading plan, or landscape plan, the Committee shall have the right to take into consideration the suitability of the proposed building or other structure on the outlook from adjacent or neighboring properties. It is understood and agreed that the purpose of architectural controls is to secure an attractive harmonious residential development having continuing appeal. The quality of architectural design will be considered in relation to this principal. Such approval shall not be arbitrarily, capriciously or unreasonably withheld.

3. **ARCHITECTURAL REVIEW COMMITTEE:** The Architectural Review Committee shall consist of the Developer and their appointees or successors, or nominees of same, as well as certain independent architects to be appointed by same. Said Committee may, at its discretion, provide and formulate its own rules and provide for its own succession.

All plans, specifications and supporting and related material for which the approval of the Architectural Review Committee is required, shall be delivered to the Architectural Review Committee. The Architectural Review Committee shall approve or disapprove the submitted material as soon as practicable, but the Architectural Review Committee's written approval or disapproval shall in any event be given within 30 days after all the necessary material has been delivered to the Architectural Review Committee. If the Architectural Review Committee disapproved any submitted material, or if the Architectural Review Committee requires a modification of any kind, it shall, within said 30-day period, inform the Owner by whom the material was submitted, of the reasons for the Architectural Review Committee's disapproval or the Architectural Review Committee's requirement that changes be made, but notwithstanding the obligation of the Architectural Review Committee to state the reason for disapproval or for the required modifications, the decision of the Architectural Review Committee, reasonably made, shall be conclusive and binding on all parties. If the Architectural Review Committee does not approve, or disapprove, or require a modification, within the aforesaid 30-day period, then at the expiration of said period, the material submitted to the Architectural Review Committee shall be deemed to have been fully approved, and the Owner who has submitted the material deemed to have been approved by lapse of time, shall have the right to proceed as if the Architectural Review Committee's written approval has been procured. All residential construction must be undertaken and completed only by qualified builders so that the quality of workmanship on said buildings so constructed conforms to professional standards.

4. **DWELLING: QUALITY, SIZE AND MINIMUM CONSTRUCTION**

STANDARDS: It is the intention and purpose of these Covenants to assure that all dwellings shall be of a quality of design, workmanship and materials approved by the Architectural Review Committee. All dwellings on said real estate shall be constructed in accordance with the stricter of the applicable ordinances of the Village of Romeoville in effect on the date hereof or in effect from time to time hereafter and the Will County Building Ordinance, until annexation of the property, and then in accord only with the Ordinances of the Village of Romeoville. However, the Architectural Review Committee may apply additional and/or more restrictive standards at its discretion.

The total living area of the dwelling, exclusive of attached garages, open terraces, basements, and breezeways, shall be:

A minimum of 1,200 square feet for a two bedroom residence on any lot.

A minimum of 1,375 square feet for a three bedroom residence on any lot.

A minimum of 1,600 square feet for a four bedroom residence on any lot.

A minimum of 1,800 square feet for a five bedroom residence on any lot.

5. **EXTERIOR BUILDING MATERIALS AND ROOF SPECIFICATIONS:** All

residences except two story structures must be constructed of brick veneer on the first floor front elevation or dry vit exteriors.

6. **FISHING – CATCH & RELEASE**

The East & West ponds of Malibu Bay Homeowners Association shall be deemed “Catch & Release”. Homeowners and their families and guests may utilize these ponds for the enjoyment of fishing but shall release any fish caught back to the pond. Should a fish swallow a hook too deep to be removed without harming the fish, the hook will be cut from the fishing line in such a way that the fish will not be harmed in any way. Anyone caught taking a fish from the pond shall be subject to a \$50.00 per fish fine, payable to Malibu Bay Homeowners Association. Should a Homeowner

encounter someone taking a fish from the pond or a person(s) not a member of the Malibu Bay Homeowners Association fishing in the pond who refuses to release fish or stop fishing they are instructed to telephone the Police Department. Under no circumstances should a Homeowner try to remove another person(s) or seek aggressive action toward another person(s). Malibu Bay Homeowners Association shall not be held liable for any altercation(s) resulting in any damage to a Person(s) or property.

7. **RENTAL PROPERTIES**

Renting is allowed in Malibu Bay subdivision provided the Owner of Deed adheres to the following:

1. The home has been inspected by the Village of Romeoville.
2. An approved inspection report has been submitted to the Association's board of Directors.
3. The name(s) of the Owner of Deed and tenants are given to the Association Board of Directors
4. A plan to maintain the landscaping is submitted to the Association Board of Directors.
5. A mailing address, telephone number and if possible, an e-mail address of the Owner of Deed is to be submitted.

The Owner of Deed will be responsible for the annual assessment payment, compliance with the Covenants, Conditions and Restrictions and Bylaws of the Malibu Bay Homeowners Association as well as adherence of all Village Ordinances.

The Owner of Deed will also be responsible for informing tenants of the CCR's and Bylaws of the Malibu Bay Homeowners Association.

The Association will have the authority to charge a \$25.00 fee for failure to comply with this Covenant, Condition and Restriction. Failure to pay the fine or reluctance to comply may result in legal action by the Association against the Owner of Deed. All monies collected shall be deposited into the bank account of Malibu Bay Homeowners Association.

ARTICLE II **BUILDING AND USE RESTRICTIONS**

1. **MINIMUM GARAGE REQUIREMENTS:** Each residence must have an attached garage which will house a minimum of two standard sized automobiles and shall be used only by the owners, occupants or their guests and shall not be used for rental purposes.

2. **FOUNDATION, EXCAVATION AND SITE GRADING:** The owner of any Lot in the Development on which any excavation or site grading activity is planned shall be solely responsible for ensuring that such excavation and/or grading activity takes place according to the Master Grading Plan submitted by the Developer to and approved by the Village of Romeoville. The heights, ground elevation or grade of the top of each and every foundation, basement, crawl space or base walls for buildings constructed in the Subdivision shall be set and established by the Architectural Committee and no building shall be constructed unless the top of the foundation, basement, crawl space or base wall shall be in accordance therewith. Neither the Declarant nor the Developer can be held responsible for any failure of an individual owner to adhere to such Master Grading Plan. It is strongly recommended that, prior to commencement of construction on any Lot, the owner of said Lot accord due caution and regard to the siting of the proposed dwelling unit, its attached garage and the driveway, and the elevation of the top of foundation of said dwelling unit, in connection with and as the siting of said structures may affect the grading of said Lot.

3. **FENCES, SHEDS, POOLS AND EXTERIOR ANTENNAS:** Construction of fences is permitted consistent with the regulations of the Village of Romeoville, Illinois and after procurement of a permit from the Village, if necessary. Any fence constructed on any lot may not extend beyond or in front of the front wall of the building situated thereon. No chain link or cyclone fences will be allowed on any property located in Malibu Bay subdivision. Swimming pool enclosures shall be governed by local ordinances. Split rail and/or evergreen hedging is recommended for those who would desire fencing. Wooden privacy fences over five (5) feet in height are not allowed. The architectural committee has the right to review and approve any new material that may enter into the marketplace. Wrought iron privacy fences will be permitted to enclose patios and/or in-ground pools.

No detached garages or temporary accessory buildings of any kind shall be constructed upon any lot in the Subdivision. Detailed buildings for the purpose of housing landscape and in-ground pool equipment are permitted, but must have the approval of the Architectural Review Committee and meet all requirements according to the Codes of the Village of Romeoville.

Outside television and radio antennas, satellite dishes greater than 18 inches in diameter, which shall be placed behind the roof ridge line, or other apparatus used to receive or transmit communication signals are prohibited.

4. **BUILDING HEIGHT:** No dwelling shall be erected, altered or placed which is more than two and one-half stories or 30 feet in height, whichever is lesser. The height shall be measured to the mean height of the roof between ridge and eave.

5. **LOCATION ON LOT; SET-BACK REQUIREMENTS:** All structures including ANY PORTION of the attached garage shall be set back from the front lot line a minimum of 25 feet, and 30-foot set-backs where shown on the Subdivision Plat.

6. **DRIVEWAYS:** Access driveways and other paved areas for vehicular use on a lot shall have a base of compacted gravel, crushed stone or other approved base material, and shall have a wearing surface of asphaltic, concrete, brick pavers or other equivalent thereof.

7. **PARKWAY TREES AND SOD:** Each home site shall have at least two trees of a hardwood variety (minimum 3 inch in diameter, measured one foot above ground level) planted in the

parkway, with five parkway trees on corner lots, planted by the homeowner as part of its landscaping obligations.

A minimum of two parkway trees are required on all lots. Parkway trees are required to be planted by the homeowner every 40 feet.

Suggested trees would be, but are not limited to, Green Ash, Locust, London Plane, Linden, Sugar Maple, Pin Oak or similar broadleaf trees contiguous to the area. Owner shall comply with Romeoville Village ordinances regarding tree planting.

Trees, shrubbery and other vegetation shall not be situated so as to obstruct the field of vision at vehicular intersections.

Front and side yards must be landscaped and grassed with sod. Rear yards may be seeded.

8. **WEED CUTTING AND LOT CLEAN UP:** Each lot shall at all times be kept in a clean and sightly condition. No trash, litter, junk, boxes, containers, bottles or cans can be permitted to collect or remain exposed on any lot except as is necessary during the period of constructing. The owner of each lot shall be responsible for the cutting or removal of weeds each year on such lot so as to conform with the requirements, ordinances and regulations of the Village of Romeoville.

9. **NO TRUCKS, CAMPERS, ETC. TO BE KEPT ON ANY LOT OR ON ANY STREET:** No trucks, truck mounted campers, commercial vehicles, recreational vehicles, trailers, house trailers, snowmobiles, buses, boats, boat trailers, campers, junk automobiles, dilapidated or disabled vehicles of any kind shall be maintained, stored or parked on any dedicated street in the Subdivision or maintained, stored or parked on any portion or part of the lots in the Subdivision unless housed or garaged completely in a structure or other method of storage which complies with this Declaration or which has been approved by the Architectural Review Committee or Homeowner's Association.

10. **PARKING OF VEHICLES:** Pickup trucks and cargo vans are permitted provided they are kept in a sightly manner. Except as provided in the preceding sentence, no type of commercial vehicle shall be parked outside any garage on any lot in the Subdivision; provided, however, those commercial vehicles may be so parked when same are engaged in delivery or service to any residence

located in the Subdivision. Further, no aircraft, recreation vehicle, commercial vehicle, boat or snowmobile shall be stored, either temporarily or permanently, outside any garage or otherwise in the open on any lot in the Subdivision. Provided, however, such vehicles may be parked in a method approved by the Developer, or the Association upon turnover by the Developer to the Association, in an area on the lot not encroaching into the front yard setback and as authorized by Ordinance.

11. **JUNK MACHINERY AND MATERIALS:** No implements, machinery, lumber or building materials shall be permitted to remain exposed upon any lot so they are visible from the streets or any neighboring lot, except as necessary during the period of construction of a building thereon. No part of the Subdivision shall be used for storage of junk or for wrecking yards.

12. **PLANT DISEASES OR NOXIOUS INSECTS:** No plants or seeds, or other things or conditions, harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a lot.

13. **HOME OCCUPATIONS, NUISANCES AND LIVESTOCK:** No noxious or offensive activity shall be carried on, in or upon any premises, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

No burning of refuse shall be permitted outside the dwelling and no homeowner shall accumulate on his home site any litter, refuse or other unsightly materials. Garbage will be contained in refuse receptacles and protected from view.

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except household pets, provided that they are not kept, bred or maintained for any commercial purposes, and provided they do not make any objectionable noises and do not otherwise create a nuisance or inconvenience to any of the residents of the Subdivision. Any pets which cause objectionable noise or otherwise constitute a nuisance or inconvenience shall forthwith be removed from the premises by the person having custody of the same.

14. **COMMENCEMENT OF CONSTRUCTION AND COMPLETION OF LANDSCAPING:** All purchasers of any Lot in Malibu Bay Subdivision from the Declarant or other person shall commence construction thereon within twenty-four months from the date of the closing of

said purchase of such lot from Developer, in the event the Developer does not build the residence on such lot. Once commenced, such construction shall be completed within twelve (12) months from the date of commencement. Site landscaping (including, but not limited to, the parkway adjoining the street at the front or side of each Lot which shall be sodded and planted with the required parkway trees) must be completed within six (6) months of the completion of the structure built thereon. No structure shall be deemed completed until installation of approved landscaping and hard surface driveway.

15. **CLEAN AND ORDERLY CONSTRUCTION SITE:** All purchasers of a Lot or Lots in Malibu Bay are required to maintain a clean and orderly construction site. Upon commencement of the construction of any structure on any lot the following standards must be met:

- A. A minimum depth of 5 inches of crushed stone must be spread in that area from the concrete curb to the front of the garage. Said stoned area must be a minimum of twelve feet wide. This crushed stone must be in place prior to the start of any carpentry work.
- B. The lot area must be kept free of miscellaneous debris. All construction debris is to be placed in low owner's on-site dumpster.

16. **TEMPORARY STRUCTURE:** No trailer, mobile home, recreational vehicle, tent, shack or other structure, except as otherwise permitted herein, and no temporary building or structure of any kind shall be used for a residence, either temporary or permanent. Temporary structures used during the construction of a structure shall be on the same lot as the structure and such temporary structures shall be removed upon completion of construction. Nothing contained herein shall prevent Declarant or builder designated by Declarant from maintaining construction and/or sales trailers as permitted by the Village of Romeoville.

ARTICLE III
VARIATIONS AND DEPARTURES

Declarant hereby reserves the absolute unqualified right to enter into agreements with the owner or owners of any lot or lots, without the consent of the owner or owners of other lot or lots, to depart from or vary any and all of the covenants set forth above, provided there are practical difficulties or particular hardships or other good and sufficient reasons evidenced by the owner making the request, and any such departure or variation, which shall be manifested by an agreement in writing, shall not constitute a waiver of any such covenant as to the other lots in the Subdivision, provided that any such departure or variation shall not result in harm or diminution in value of the Subdivision as a whole.

ARTICLE IV
MODEL HOMES

The Developer and only builders as designated by Developer shall be allowed to construct residences of its choosing in the Subdivision. These residences shall be used as “model homes” to advertise the construction product of the aforementioned entities, with appropriate signage as approved by Village of Romeoville. Plans for all model homes shall be subject to the approval of the Architectural Review Committee.

1. **ADVERTISING AND SIGNAGE:** Until the sale of all lots by the Developer, no advertising, sign or billboard, including “For Sale” or “For Rent” advertising signs, shall be erected or maintained on any lot; except (a) a sign, not exceeding 15 square feet in area, may be erected during the construction of the house, displaying the name of the Developer, Malibu Builders, Inc., and only Builders as designated by Developer, in writing, which sign shall be removed immediately after completion of the house, and (b) one temporary sales and identification sign, not exceeding 15 square feet in area, may be constructed on each lot. The Developer, the designed Builders and their successors and assigns, shall be allowed to erect and maintain “For Sale” signs on any Lot in the development until said Lot, and any dwelling thereon, is sold to any person other than the Developer or the designated Builder. Nothing in this paragraph shall be construed to restrict the erection of any signs by Developer designed to advertise generally the name of the Development, or to call attention to model

homes.

ARTICLE V
MALIBU BAY COMMUNITY ASSOCIATION

1. **CREATION AND PURPOSES:** There shall be formed an Illinois not-for-profit corporation to be known as the **MALIBU BAY COMMUNITY ASSOCIATION**, an Illinois not-for-profit corporation, to be organized by the Developer, whose purposes shall be to cooperate with Builder, its successors or assigns, to insure high standards of maintenance and operation of the entrance signage, the landscape island at the entry to the Subdivision, and the landscape berming and buffers along 135th Street.

2. **MEMBERSHIP:** Every person or entity who is the record owner of a fee or an undivided fee interest in the Lots of MALIBU BAY SUBDIVISION, upon the vesting of such interest and without any further act, shall be a member of the Association subject to the obligations provided herein, in the Articles of Incorporation and the duly enacted By-Laws of the Board of Directors. The presence at membership meeting of any one or several Members of the Lots of MALIBU BAY SUBDIVISION shall be sufficient for the purposes of determining the presence of a quorum and the voting on any matter properly before the meeting, except as otherwise provided for herein. The foregoing is not intended to include persons or entities who hold an interest merely for the performance of a security obligation. Membership shall be appurtenant to and may not be separated from Ownership of any of the Lots of MALIBU BAY SUBDIVISION. Ownership of such Lot shall be the sole qualification for membership, and membership shall cease upon termination of such ownership.

3. **VOTING RIGHTS:** Owners of the Lots of MALIBU BAY SUBDIVISION, as defined in ARTICLE II of this Declaration, shall be entitled to one vote for each Lot in which they hold the interest required for membership under Section 2 of ARTICLE VII. When the ownership of any one Lot is held by more than one person or entity, all such persons or entities shall be members and the vote for such Lot shall be exercised among them, but in no case shall there be allowed more than one

vote for any one Lot.

4. **POWERS OF THE BOARD OF DIRECTORS OF THE ASSOCIATION:** Upon sale of the last Lot in the Association, the last of which to occur, the Board of Directors of the Association shall have the following powers and obligations:

To maintain, repair and reconstruct the entrance signage.

To maintain the landscape islands and common areas not otherwise deeded to or maintained by the Village of Romeoville, Illinois.

To maintain all areas designated as buffer and berm areas adjacent to 135th Street.

To maintain all detention areas in the Malibu Bay Subdivision, and all outlots contained therein, in cooperation with the Board of the Malibu Bay Townhome Association, which shall bear equal cost for such maintenance.

5. **MAINTENANCE ASSESSMENTS:**

a) **Covenant for Maintenance Assessments:** The Declarant, with respect to the Lots of MALIBU BAY SUBDIVISION, by acceptance of a Deed therefore, whether or not it shall be so expressed in any such Deed or conveyance, is deemed to covenant and agree to pay to the Association (1) regular assessments or charges, and (2) special assessments for capital improvements and unforeseen expenses. All such assessments are to be established and collected as hereinafter provided in this Declaration, together with the Articles of Incorporation and By-Laws of the Association.

b) **Purpose and Use of Assessments:** All assessments levied by the Board shall be for the purpose of insuring the high standards of maintenance, repair and replacement of the entrance signage, common areas and Landscape Conservation Areas as delineated on the Plat of Subdivision for MALIBU BAY SUBDIVISION. Such purposes and uses of assessments shall include (but are not limited to) the costs of the Association of all insurance, repair, replacement and maintenance and other charges by this Declaration of Covenants, Conditions and Restrictions, or that the Board of Directors of the Association shall determine to be necessary or desirable to meet the primary purpose of the Association.

6. **ASSESSMENT PROCEDURE; REGULAR ASSESSMENTS:**

a) Until January 1, 2000, the regular assessments shall not exceed \$100.00 per year per Lot. From and after January 1, 2000, the regular assessments shall be determined by the affirmative vote of two-thirds (2/3) of the Board of Directors of the Association, as provided in this Declaration and the By-Laws of the Association, but the annual rate of assessments may not be increased without the affirmative vote of two-thirds of the entire membership except for the following:

5% per year when approved by the affirmative vote of a majority of the voting Members of the Association; or

10% per year when approved by the affirmative vote of two-thirds of the voting Members, present at a meeting thereof called and held in accordance with the By-Laws of the Association.

b) On or before December 1st of each year commencing December 1, 1996, and pursuant to the By-Laws of the Association, the Board of Directors shall hold a meeting or meetings:

To estimate all expenses provided for in Section 2 of this ARTICLE VII;

To fix the amount assessed against the individual Lots for the forthcoming year; and

To establish the date or dates on which such assessments or installments thereof shall be due the Association and in lieu thereof the amounts of the prior year's annual assessment shall be the fixed amount. Should the Board of Directors fail to establish a payment date, all regular assessments shall be due in twelve (12) equal installments on the first day of each month of the year for which they are assessed. The annual assessment on Lots added through annexation shall commence on the first day of the month following annexation of such property.

c) The Board of Directors shall prepare an itemized list of all estimated expenses and shall give written notice of assessment to each Owner subject thereto.

7. **ASSESSMENT PROCEDURE; SPECIAL ASSESSMENTS:**

a) Special assessments may be levied by the Association to defray the expense, in whole or in part, of any capital improvement or unforeseen expenses. Such capital improvements shall include the construction, reconstruction or unexpected repair or replacement of the entrance signage and subdivision landscaping. Unforeseen expenses shall be deemed to be those expenses not provided for in paragraph 2 of Section 5 of ARTICLE VII.

b) Whenever the Board of Directors shall determine there exists a need for levying a special assessment as herein provided, the Board of Directors shall adopt a resolution setting forth the need, amount, period of payment and due date or dates for the proposed special assessment. All special assessments must be approved by a two-thirds (2/3) vote of the voting Members of the Association. Such vote shall be taken at a meeting called by the Board of Directors for that purpose.

8. **ALLOCATION OF ASSESSMENTS:** Both annual and special assessments must be fixed at a uniform rate for all Lots except as may be otherwise provided in this Declaration. Lots designated as detention areas shall not be subject to assessment. Any assessment and any installment thereof provided for herein, shall commence on the Lot on the due date for such assessment in the month following the conveyance, transfer or lease of such Lot by the Declarant. The initial assessment shall be adjusted according to the number of months remaining in any calendar year. The Developer shall not be obligated to pay assessments on any lot owned in fee or beneficially by the Developer, prior to the completion of construction thereon.

9. **NON-PAYMENT OF ASSESSMENTS:** Any assessments, regular or special, which are not paid on the due date, shall be delinquent. Such delinquency shall be a constituting lien and an equitable charge running with the land touching and concerning said Lot so assessed, held by the then Owner or Owners, his heirs, devisees, personal representatives, assigns, successors and grantees.

Should title to any Lot be held by more than one Owner, all Owners shall be jointly and severally liable. The lien shall attach to all rents due from parties in possession on any Lot on which a delinquent assessment exists, provided that it shall be subordinate to an assignment of rents held by a mortgagee when delivered in connection with a first mortgage loan to purchase any Lot.

Should any assessment remain unpaid 30 days after it has become delinquent, such assessment shall bear interest from the date of delinquency at the maximum rate of interest per annum permitted by the usury laws of the State of Illinois.

The Association may recover any delinquent assessments by bringing an action at law or in equity against the then Owner personally obligated to pay the same or foreclose the lien against the Lot. Such recovery shall include interest, costs and reasonable attorneys' fees incurred in connection with any such action.

The enforcement of liens or charges shall be limited to a period of five (5) years.

The venue for all actions at law provided for in this ARTICLE VII shall be in Will County, Illinois. The persons in possession of any Lot shall be authorized to accept summons on behalf of the Owner or Owners of such Lot.

No Owner may waive or otherwise escape liability for the assessments provided for herein by the non-use of the Lot.

10. **SUBORDINATION OF LIEN:** The lien of the assessments provided for herein shall be subordinate to the lien of the first mortgage or first trust deed placed upon the Lot for the purpose of purchasing same. Such automatic subordination shall apply only to the assessments which arise subsequent to the lien of the first mortgage or first trust deed. The sale or transfer of any Lot pursuant to a decree of foreclosure under such first mortgage or first trust deed, or any proceeding or conveyance

in lieu thereof, shall not extinguish the lien of such assessments which have become due and payable prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability for any assessments or installments thereafter becoming due.

11. **EXPENDITURES LIMITED TO ASSESSMENT FOR CURRENT YEAR:** The Association shall not expend more money within any one year than the total amount of the estimate and subsequent assessment levied for that particular year, plus any surplus which it may have on hand from previous assessments, nor shall said Association enter into any contract binding the assessment of any future year, except for contracts for utilities, and no such contract shall be valid or enforceable against the Association.

12. **INDEMNITY OF DIRECTORS:** The Directors and Officers of the Association shall not be liable to the Owners for any mistake of judgment or any acts or omissions made in good faith as such Directors or Officers. The Owners shall indemnify and hold harmless each of such Directors or Officers against all contractual liability arising out of contracts made by such Directors or Officers on behalf of the Owners or the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of this Declaration.

13. **LIABILITY INSURANCE:** The Board shall also have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death of persons and property damage in such limits as it shall deem desirable, and Workmen's Compensation Insurance and other liability insurance as it may deem desirable, insuring each Owner, the Association, its Officers, members of the Board, the Declarant, and their respective employees and agents, from liability in connection with the subdivision improvements and signage, and insuring the Officers of the Association and members of the Board from liability for good faith actions beyond the scope of their respective authorities. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties. The premiums for such insurance shall be common expenses.

ARTICLE VI
OBLIGATIONS TO MAINTAIN ENTRANCEWAYS AND RIGHTS OF THE VILLAGE

The entranceways shall be constructed adjacent to and signage shall be located upon the entryway island, by Builder, in accordance with a plan approved by the Village of Romeoville, a municipal corporation in Will County (the “Village”). The entranceways shall be maintained by Builder until such time as the Association is established and thereafter by the Association in good condition and in substantial conformance with the initial plan approved by the Village. In the event Builder or the Association fails to maintain the entranceways as hereinabove required, the Village shall have the right, but not the duty, to enter upon any lot in the subdivision adjacent to any subdivision improvement, detention pond or entranceway, as the case may be, and perform such maintenance. The Village’s maintenance rights may be exercised 30 days after written notice is mailed to the Builder or the Association of the failure to perform the maintenance work; provided, however, in the event the failure to perform the maintenance work constitutes an emergency substantially threatening injury to persons or property, the Village shall be required only to give such notice as is practical under the circumstances before the exercise of its rights under this Article. The Village shall be reimbursed by the Builder or the Association for the Village’s cost in performing maintenance work within 30 days of mailing of a bill for such work. In the event the Builder or the Association fails to pay such bill within the time required, the Village may place and enforce a lien, pro-rata, against each lot, which lien and right of recovery shall include the Village’s attorneys’ fees, expenses and costs of investigation, settlement and litigation. Failure of the Village to exercise or enforce its right in any particular circumstances shall not be deemed a waiver of its rights. Notwithstanding any other provision of this Declaration, the rights granted to the Village under this Section shall not be modified in any manner without the written approval of the Village. The obligations of Builder under this Article shall become the Association’s obligation upon establishment of the Association.

ARTICLE VII
AMENDMENTS

1. **AMENDMENTS:** This Declaration may be amended by the Developer or Declarant until such time as Declarant has conveyed all lots in the Subdivision owned by them to other purchasers. Thereafter, this Declaration may be amended by vote of the majority of the owners of the 187 single family residential lots in the Subdivision. No amendment shall be effective unless and until a copy of the same signed by the Declarant or, where appropriate, by majority of the owners of lots in the Subdivision, is filed of record in the office of the Recorder of Deeds of Will County, Illinois. This agreement shall further govern the future disposition and ownership of lots in the Subdivision as to all owners hereof agreeing to be bonded by the terms of this agreement, their successors and assigns.

2. **GENERAL PROVISIONS:**

a) The covenants, conditions and restrictions contained herein, and all amendments thereto, shall run with the land and be binding upon Declarant and upon all persons claiming by, under and through Declarant until the date which is 25 years from the date of execution of this Declaration;

b) Upon the date referenced in Article VII, subparagraph 2(A) above, this Declaration and all amendments thereto, shall be automatically extended for successive ten (10) year periods;

c) In the event that the owner of any lot in the Subdivision shall violate or attempt to violate any of the covenants, conditions and restrictions, controls and limitations contained herein, any owner of any other lot in the Subdivision shall have the right to institute and carry through any proceeding at law or in equity in order to prevent, restrain, enjoin or remove any such violation or attempted violation, or to recover attorney fees, expenses and damages based on such violation or attempted violation;

d) In the event that a court of competent jurisdiction finds any section, part, provision, term or phrase of this Declaration invalid, said invalidity shall not affect the validity or invalidity of the remainder hereof;

e) This Declaration shall be effective upon the filing of record of same in the office of the Recorder of Deeds of Will County, Illinois.

d) Declarant hereby reserves the right to enter into agreements with the grantee of any lot or lots (without the consent of grantees or other lots or adjoining or adjacent property) to deviate from any or all of the Covenants set forth in the General Restrictions provided there are practical difficulties or particular hardships evidenced by the grantee, and any such deviation (which shall be manifested by an agreement in writing) shall not constitute a waiver of any such covenant as to the remaining real property in Malibu Bay Subdivision.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be signed and sealed on the day and year first above written.

THE MARQUETTE NATIONAL BANK,
not personally, but as Trustee under Trust
Agreement dated February 1, 1998 and known
as Trust No. 14368:

By: _____

Its: _____

This document is executed by MARQUETTE NATIONAL BANK, not personally but as Trustee under Trust No. 14368 as aforesaid, in the exercise of power and authority conferred upon and vested in said Trustee as such, and it is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right but solely in the exercise of the power conferred upon it as such Trustee, and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against MARQUETTE NATIONAL BANK, on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____ personally know to me to be the _____ of **MARQUETTE NATIONAL BANK**, an Illinois corporation, and _____ personally known to me to be the _____ of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledge that as such _____ and _____, they signed and delivered the said Instrument as officers of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ date of _____, 1998.

Notary Public

CONSENT OF MORTGAGEE

Marquette National Bank, holder of a Mortgage on the Property dated February 20, 1998 and recorded on _____ as Document Number R98-19278, hereby consents to the execution and recording of the within Declaration of Condominium Ownership and agrees that said Mortgage is subject thereto.

IN WITNESS WHEREOF, the said **Marquette National Bank** has caused this instrument to be signed by its duly authorized officers on its behalf; all done at _____, Illinois, on this _____ day of _____, 199__.

MARQUETTE NATIONAL BANK:

By: _____
Its: _____

ATTEST

By: _____
Its: _____

STATE OF ILLINOIS)
COUNTY OF COOK) SS

I, _____, a Notary Public in and for said County and State, do hereby certify that _____ and _____, respectively, of Marquette National Bank, as such _____ and _____, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of said Marquette National Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this _____ day of _____, 19__.

Notary Public

My Commission Expires: _____

SCHEDULE OF EXHIBITS

EXHIBIT A

LEGAL DESCRIPTION

Lots 1-189 inclusive, in Malibu Bay Subdivision being a subdivision in the West ½ of the Northeast ¼ of Section 5, Township 36 North, Range 10 East of the Third Principal Meridian, in Will County, Illinois.

PERMANENT PARCEL NO. 04-05-200-001-0000

Document Prepared by:
David B. Sosin
SOSIN AND LAWLER, LTD.
11800 South 75th Avenue, Suite 300
Palos Heights, Illinois 60463
(708) 448-8141

RENTAL PROPERTIES

Renting is allowed in Malibu Bay subdivision provided the Owner of Deed adheres to the following:

1. The home has been inspected by the Village of Romeoville.
2. An approved inspection report has been submitted to the Association's Board of Directors.
3. The name(s) of the Owner of Deed and tenants are given to the Association Board of Directors
4. A plan to maintain the landscaping is submitted to the Association Board of Directors.
5. A mailing address, telephone number and if possible, an e-mail address of the Owner of Deed is to be submitted.

The Owner of Deed will be responsible for the annual assessment payment, compliance with the Covenants, Conditions and Restrictions and Bylaws of the Malibu Bay Homeowners Association as well as adherence to all Village Ordinances.

The Owner of Deed will also be responsible for informing tenants of the CCR's and Bylaws of the Malibu Bay Homeowners Association.

The Association will have the authority to charge a \$250.00 fee plus \$75.00/month for failure to comply with this Covenant, Condition and Restriction. Failure to pay the fine or reluctance to comply may result in legal action by the Association against the Owner of Deed. All monies collected shall be deposited into the bank account of Malibu Bay Homeowners Association.

Document prepared by
and when recorded return to:

Keough & Moody, P.C.
114 East Van Buren Avenue
Naperville, IL 60540
Phone: (630) 369-2700

R2020062361
KAREN A. STUKEL
WILL COUNTY RECORDER
RECORDED ON
07/31/2020 10:05:01 AM
REC FEE: 63.00
IL RENTAL HSNG: 9.00
PAGES: 108
JMR

**SECOND AMENDMENT TO THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS IN
CONNECTION WITH MALIBU BAY SUBDIVISION IN
ROMEOVILLE, ILLINOIS**

THIS SECOND AMENDMENT by the Malibu Bay Community Association (the
“Association”), is duly adopted by a majority vote of the Owners of the Association.

RECITALS

- A. WHEREAS, The Declaration of Covenants, Conditions and Restrictions in Connection With Malibu Bay Subdivision in Romeoville, Illinois was recorded in Will County, Illinois on August 14, 1998, as Document No. R98-094393 and re-recorded to correct a scrivener’s error on November 4, 1998 as Document No. R98-131315 (the “Declaration”); and
- B. WHEREAS, On November 2, 2009, the Association recorded the Amendment to the Declaration as Document No. R2009130111; and
- C. WHEREAS, The Association desires to further amend the Declaration pursuant to and in accordance with Article VII of the Declaration; and
- D. WHEREAS, Article VII of the Declaration provides that the provisions of the Declaration may be amended by vote of a majority of the owners; and
- E. WHEREAS, the Second Amendment shall be effective upon Recordation of such

instrument in the office of the Recorder of Deeds of Will County, Illinois; and

- F. WHEREAS, this Second Amendment has been approved by the Owners having a majority of the total votes; and
- G. WHEREAS, an affidavit by the Secretary of the Association is attached hereto, certifying that the necessary votes were obtained for approval of this Second Amendment to the Declaration.

NOW THEREFORE, the Association does hereby amend the Declaration as previously amended as follows:

- 1. Upon the execution of this Second Amendment, Article II, Section 3 shall be deleted in its entirety and replaced with the following paragraph:
- 2. **Amendment**

ARTICLE II

BUILDING AND USE RESTRICTIONS

3. FENCES, SHEDS, POOLS AND EXTERIOR ANTENNES

Construction of fences is permitted consistent with the Regulations of the Village of Romeoville, Illinois and after procurement of a permit from the Village. Any fence constructed on any lot may not extend beyond or in front of the front wall of the building situated thereon. No chain link or cyclone fences will be allowed on any property located in Malibu Bay Subdivision. Swimming pool enclosures shall be governed by local ordinances. Split rail and/or evergreen hedging are recommended for those who would desire fencing. Privacy fences over six (6) feet in height are not allowed. The architectural committee has the right to review and approve any new material that may enter into the marketplace. Wrought iron privacy fences will be permitted only to enclose patios and/or in-ground pools.

No detached garages or temporary access buildings of any kind shall be constructed upon any lot in the subdivision. Detailed buildings for the purpose of housing landscape and in-ground pool equipment are permitted, but must have the approval of the Architectural Committee and meet all requirements according to the Codes of the Village of Romeoville, Illinois.

other apparatus used to receive or transmit communication signals are prohibited.

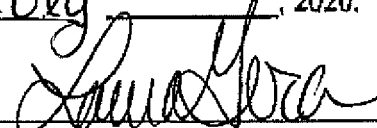
The effective date of this Second Amendment shall be deemed to be the date of recording with the Office of the Recorder of Deeds of Will County, Illinois.

Except to the extent expressly set forth herein, the remaining provisions of the Declaration shall remain in full force and effect.

Dated: 7/28, 2020.

We, the undersigned, as Members of the Board of Directors of the Malibu Bay Community Association established pursuant to the aforesaid Declaration, by our signatures below do hereby acknowledge and execute the foregoing Second Amendment to the Declaration of Covenants, Conditions and Restrictions in Connection With Malibu Bay Subdivision in Romeoville, Illinois.

EXECUTED this 28th day of July, 2020.



LAURA GORA, PRESIDENT



LEA WHITNEY, SECRETARY



ELIZABETH GRON, BOARD MEMBER

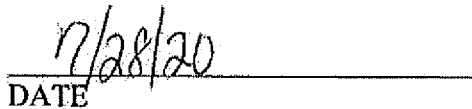
CERTIFICATION

The undersigned, Lea Whitney, upon oath, states the following:

- (1) I, Lea Whitney, am over twenty-one (21) years of age and have personal knowledge of all matters contained in this Certification.
- (2) I am currently the duly elected Secretary of the Malibu Bay Community Association.
- (3) I hereby certify that the necessary approvals have been obtained by the Malibu Bay Community Association to properly approve and adopt this Second Amendment to the Declaration of Covenants, Conditions and Restrictions in Connection With Malibu Bay Subdivision in Romeoville, Illinois

Under penalties as provided by law pursuant to 1-109 of the Code of Civil Procedure, the undersigned certified that the statements set forth in this instrument are true and correct, except to matters therein stated to be on information and belief and to such matters the undersigned certified as aforesaid that she verily believes the same to be true.


LEA WHITNEY, SECRETARY


DATE

CERTIFICATION

We the undersigned, as Board Members of the Malibu Bay Community Association, do hereby authenticate the Ballots attached hereto and further certify that these pages represent the required majority percentage of Owner approval to adopt the Second Amendment to the Declaration of Covenants, Conditions and Restrictions in Connection with Malibu Bay Subdivision in Romeoville, Illinois.

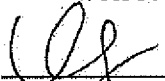
EXECUTED this 28th day of July, 2020.



LAURA GORA, PRESIDENT



LEA WHITNEY, SECRETARY



ELIZABETH GRON, BOARD MEMBER