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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAR 22 2004

IN THE MATTER OF:

STATE OF ILLINOIS
Pollution Control Board

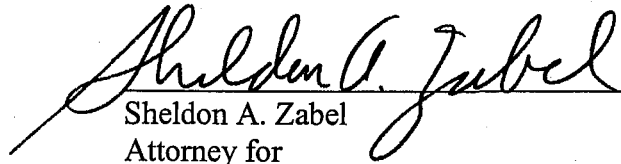
PROPOSED SITE SPECIFIC REGULATION)
APPLICABLE TO AMEREN ENERGY) R04-11
GENERATING COMPANY, ELGIN, ILLINOIS,)
AMENDING 35 ILL. ADM. CODE 901)

NOTICE OF FILING

TO: See attached list

PLEASE TAKE NOTICE that today I have filed with the Illinois Pollution Control Board the Motion for Leave to File Response and Response to Public Comment by Petitioner, Ameren Energy Generating Company, and a Motion to Supplement Record in this Proceeding, Notice of Filing, and Certificate of Service on behalf of Petitioner, a copy of which is attached and hereby served upon you.

Respectfully submitted,


Sheldon A. Zabel
Attorney for
Ameren Energy Generating Company

Date: March 19, 2004

Schiff Hardin LLP
6600 Sears Tower
Chicago, Illinois 60606
312-258-5519

SERVICE LIST

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Clerk of the Pollution Control Board
James R. Thompson Center
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Suite 11-500
Chicago, Illinois 60601

Mr. John Knittle, Esq.
Hearing Officer
Illinois Pollution Control Board
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Springfield, Illinois 62794

Office of Legal Services
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

Mr. Scott Phillips, Esq.
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
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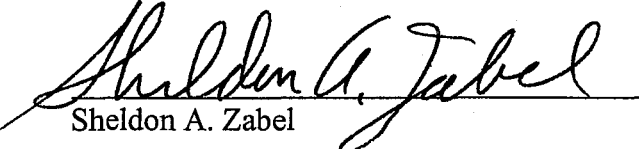
Realen Homes
Attn.: Al Erickson
1628 Colonial Parkway
Inverness, Illinois 60047

Mr. Joel Sternstein
Assistant Attorney General
Environmental Bureau
188 West Randolph St., 20th Floor
Chicago, Illinois 60601

Village of Bartlett
Attn.: Bryan Mraz, Attorney
228 South Main Street
Bartlett, Illinois 60103

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the documents described in the attached Notice of Filing upon the Clerk of the Pollution Control Board and Hearing Officer John Knittle by Federal Express and those on the Service List by depositing them in regular U.S. mail on March 19, 2004.


Sheldon A. Zabel

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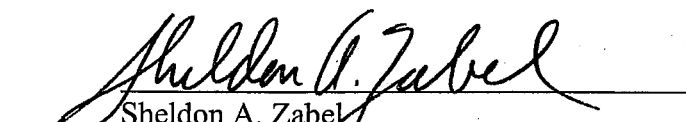
PETITIONER'S MOTION FOR LEAVE TO FILE

Petitioner, Ameren Energy Generating Company, by and through its attorneys, Schiff Hardin L.L.P., hereby moves the Illinois Pollution Control Board to grant Petitioner leave to file a response to the Public Comment filed by Attorney General Office ("AGO") on March 10, 2004 in this rulemaking. In support hereof, Petitioner states:

1. The Public Comment filed by the AGO raises issues and questions answers provided by Petitioner at the public hearing held on January 22, 2004. The comments often take Petitioner's answers and information out of context, which results in misleading conclusions.
2. Petitioner seeks to clarify the record to insure that the Board is presented a full and complete discussion of the issues raised by the AGO.
3. Petitioner's response addresses the principal issues raised and misleading conclusions reached by the AGO in an effort to keep all the information provided in context with the entire proceeding.
4. No party will be prejudiced should the Board grant Petitioner's response since it addresses issues raised by the AGO, and the only new information provided is that omitted by the AGO concerning the facility cited by its witness for the purpose of recommending noise abatement measures.
5. Petitioner is obligated to bear the burden of proof in this matter, and should be afforded the opportunity to respond to the AGO's objections. No law governing this rulemaking would precludes the Board from granting this relief.

For these reason, Petitioner respectfully request that the Board accept Petitioner's Response to the Attorney General Office's Public Comment at this time.

Respectfully submitted,


Sheldon A. Zabel
Marili McFawn

Attorneys for Petitioner

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PETITIONER'S RESPONSE TO
ATTORNEY GENERAL OFFICE'S PUBLIC COMMENT

Petitioner, Ameren Energy Generating Company, has reviewed and considered the public comment filed on March 10, 2004 by the Attorney General's Office ("AGO"), and authored by Howard Chinn. (Hereinafter referenced as "AGO Public Comment".) Generally, Mr. Chinn's comment simply tracks the transcript of the January 22, 2004 public hearing, and he comments only upon statements made at the hearing. The full context of the statements or answers he selected to comment upon is not provided. Also, he does not take into account any of the prefiled testimony and other documents that compose the entire record in this proceeding. Therefore, his comment is deficient and misleading.

Rather than respond to this fragmented approach in kind, Petitioner has identified two recurring themes in Mr. Chinn's testimony at hearing and in his comments. Generally, Mr. Chinn challenges whether Petitioner is entitled to the relief requested by questioning the priority of the ECC's location and the adequacy of its noise abatement measures, and believes that a barrier wall or berm is the solution. Petitioner believes responding to these issues will be more coherent and informative to the Board.

I. The Location of the Elgin Energy Center and the Adequacy of its Noise Abatement Equipment

In 2000, Petitioner chose the location of the Elgin Energy Center ("EEC") for a multitude of reasons, e.g., close proximity to natural gas lines and electrical transmission equipment. Tr. 114. The factor most critical to this noise rulemaking proceeding is that this Facility is located in an industrial park, that is within a larger, primarily industrial

area. All of its contiguous neighbors were and are industrial. This, of course, meant that the Board's noise limitations were not applicable where the receptors were Class C land uses. The industrial nature of the area has been documented by testimony and exhibits, including photographs. See Exhibit 22.

Prior to construction, Petitioner employed Power Acoustics, Inc., an acoustical engineer specializing in noise control at power plants, to conduct a noise study to fully address the extent noise abatement measures were necessary. Using sound power information provided by its equipment manufacturer, Mr. Parzych examined and determined the amount of noise abatement measures necessary to achieve compliance with state noise limitations. That study included possible noise impacts upon the then existing residential areas. It did not include the Realen Property because at that time, the Solid Waste Agency of Northern Cook County ("SWANCC") owned that property, and for years it was designated for industrial use as a solid-waste balefill operation. PAI's study was used to design the Facility to achieve compliance with the Board's noise regulations at both the industrial land use and residential land use areas.

At hearing, Mr. Smith testified that Petitioner would not have built the EEC at this location if the property across Gifford Road was Class A land. Tr. 112-113. This testimony was offered in response to a prefiled question from the Board about whether the Facility could have been designed to comply with the Board's noise limits if the SWANCC property had been Class A land. Mr. Chinn comments that Mr. Smith did not answer the Board's question. AGO Public Comment at 19. However, that comment ignores the fact that the Class A land noise emission limitations were not relevant at that place and time, and therefore, that type of information was not developed. Thus, any other response by Mr. Smith would have been speculation.

As testified at hearing, Petitioner worked with the equipment manufacturer to design and construct equipment, including noise abatement equipment, which would achieve compliance with Class A limitations where applicable. The manufacturer did not provide actual sound measurement data. Tr. 134. Instead, the manufacturer provided sound power levels that were used to determine the type and amount of noise abatement equipment. See Tr. 134. Using this information, Petitioner purchased the extensive noise abatement equipment especially designed for and now present at the EEC at an estimated

cost of \$11 Million. The subsequent noise study performed by PAI in 2003 proved that this equipment met Petitioner's goal: compliance with the Board's noise emission limitations for Class A lands at the then known residential receptors.

Mr. David Parzych, as a leading expert in the field of peaker power plant noise acoustics, testified that the noise abatement equipment installed at the ECC is the most extensive amount of noise abatement equipment he has ever seen during the course of his work at peaker power plants. He even compared the EEC's equipment to that of another manufacturer, and found it to be significantly greater than the industry standard. Tr. 98-103. Furthermore, for the technical reasons explained by Mr. Smith and Mr. Parzych in prefiled testimony and at hearing, additional noise abatement equipment cannot be installed at the EEC due to space limitations, or because it would not sufficiently reduce noise to a level necessary to achieve compliance at the Realen Property. Based upon this, Petitioner has demonstrated that the noise abatement equipment at the Facility was then and still is state-of-the art as defined in this field, as well as how defined by Mr. Chinn. See Paragraph 2 of AGO Public Comment. Although additional existing technology is not available to sufficiently reduce noise to compliance levels, Petitioner examined several experimental approaches. Due to their experimental nature, the likelihood of these measures being successful is doubtful, and only a wide range cost estimate can be provided. More fixed cost estimates are not possible until such approaches are proven technically feasible.

II. Technical Feasibility or Economic Reasonableness of Berm or Wall to Further Reduce Noise

Primarily, Mr. Chinn promotes the construction of a berm or wall to further reduce the level of noise at the Realen Property. He raised the issue of the "Hillside facility" at hearing, and throughout his comment. See paragraphs 10, 16, 23 and 29(f). He claims that Petitioner did not examine the technical feasibility of this type of noise abatement. However, Petitioner's expert did describe the difficulties in constructing such a berm. Tr. 165-167. Mr. Parzych testified that if constructed, such a berm at the EEC would have to be at least 50 feet tall to possibly reduce noise, and the berm and its base would have to be a "huge" mound of dirt. Testimony was also provided that construction

of a barrier would not reduce noise adequately noise at all octave levels, especially at the lower octave bands. Tr. 135. Contrary to Mr. Chinn's claim, the economic feasibility of this approach was provided. Constructing a barrier wall is estimated at \$3.6 Million. Tr. 35. The technological feasibility and economic reasonableness of this approach must be considered together, especially since this approach will not achieve full compliance at the Realen Property.

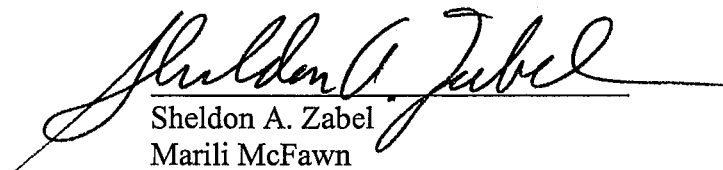
In his public comment, Mr. Chinn complains that it does not appear that Petitioner has investigated the noise reduction system at the "Hillside landfill facility". When Mr. Chinn testified about the Hillside facility at hearing, he did not even know its name or the type of power generation equipment. He simply testified that when he visited it he had to wear earplugs when inside the building because it was so loud, and that he could barely hear it outside. Tr. 86-87. Post hearing, the AGO did provide the limited information about the Hillside facility about whom to contact for more information. However, no information was provided about the size of its power generation equipment, the presence or absence of noise abatement equipment, or the general size of the Hillside facility. It appears that based upon his one time visit, he recommends that Petitioner put walls around the Facility.

Petitioner contacted the Hillside facility and learned that it is in no way comparable to the EEC. It has three small turbines that combined are capable of generating 16.5 MW, and each is the size of a Chevrolet Suburban vehicle. The walls surrounding these turbines are approximately 12 to 15 feet tall. Whether this enables the Hillside facility to comply with applicable noise limitations is not known. Petitioner did learn that the Hillside facility is located in an industrial area: it abuts Interstate 290 where it meets Mannheim Road, commonly known as the "Hillside Strangler", and is surrounded by 75 acres of landfill. Although Mr. Chinn had personally visited the Hillside Facility before he testified at hearing, he did not share these pertinent facts with the Board or the Petitioner when questioned at hearing and at no time since. The suggestion that this facility is in any way an example of a facility comparable to the EEC, seriously calls into question the credibility of this witness.

III. Conclusion

As the record in this rulemaking demonstrates, Petitioner has provided the Board with all relevant facts known about the noise abatement equipment and efforts undertaken since 2000 to achieve and maintain compliance with the applicable Board noise regulations. Petitioner installed the best available equipment for controlling noise at the EEC at the time of construction, and did achieve compliance. In 2003, the anticipated designated use of the land directly across Gifford Road changed. Petitioner has responded to that anticipated change in an expedited and expedient manner. Petitioner has demonstrated that compliance with Class A land use noise limits is not possible at the Realen Property on a reasonable technological or economical basis. At the same time, Petitioner has worked with Realen Homes LLP and with the local municipalities. All agree that the relief requested should be granted. All three have a definite interest that the future residents of the Realen Property being afforded protection under law. At all times, Petitioner has kept in the forefront the importance that future residential homeowners be fully apprised of the EEC's operations. The record in this matter is complete and supports the Board granting the relief requested. Therefore, Petitioner again urges the Board to adopt the regulatory noise limits as proposed.

Respectfully submitted,



Sheldon A. Zabel
Marili McFawn

Attorneys for Petitioner

Schiff Hardin L.L.P.
6600 Sears Tower
Chicago, Illinois 60606
312-258-5519

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AMENDING 35 ILL. ADM. CODE 901)

MOTION TO SUPPLEMENT RECORD

Petitioner, Ameren Energy Generating Company, by and through its attorneys, Schiff Hardin L.L.P., hereby moves the Illinois Pollution Control Board to accept into the record the following two documents for the purpose of a complete and clear record in this proceeding. The documents are:

- (1) the Agreed Order entered by the Circuit Court in *Ameren Energy Development Company, et al v. Village of Bartlett*, 03 CH 11307; and
- (2) the "Noise Easement and Restrictive Covenant Agreement" between Ameren Energy Development Company and Realen Homes L.P. (Hereinafter referenced as "Easement").

These documents are necessary to fully apprise the Board about the Complaint attached to the public comment filed in this matter by the Attorney General's Office ("AGO") on March 10, 2004, and the easement referenced at paragraph 27 of Howard Chinn's public comment. See AGO public comment, pages 12-13.

In support of this Motion, Petitioner states:

1. Petitioner provided the AGO a copy of the Easement when we learned that the AGO had obtained and was reviewing a copy of the Complaint which was subsequently attached to Mr. Chinn's public comment.
2. Petitioner provided the AGO a copy of the Easement and an explanation that the case had been settled and the Easement filed with the Recorder of Deeds.

3. Petitioner has not heretofore raised the issue of the lawsuit or the settlement in this rulemaking. We are doing so today to remove any questions the Board may have due to Mr. Chinn's comment about a court proceeding that is independent of this rulemaking.

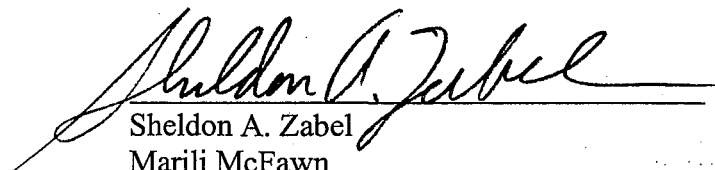
4. Petitioner is not requesting that the Board allow the Easement to be filed as support for the relief we seek in this site-specific rulemaking, as suggested by Mr. Chinn at paragraph 27. However, Petitioner does disagree with Mr. Chinn's characterization of the our Petition and information provided in support thereof.

5. Petitioner requests that this motion be granted so that the Board is fully apprise of the information shared with the AGO, and the subject matter of paragraph 27 of Mr. Chinn's public comment.

6. There will be no prejudice suffered should the Board grant this motion. The AGO had both documents before it filed Mr. Chinn's public comment, Mr. Chinn's comment raised the issue, and both documents are a matter of public record.

Wherefore, Petitioner respectfully requests that the Board grant this motion to clarify the record and accept for filing: (1) a copy of the Agreed Order in *Ameren Energy Development Company, et al v. Village of Bartlett*, 03 CH 11307; and (2) "Noise Easement and Restrictive Covenant Agreement" between Ameren Energy Development Company and Realen Homes L.P.

Respectfully submitted,



Sheldon A. Zabel
Marili McFawn
One of the Attorneys for
Ameren Energy Generating Company

Dated: March 19, 2004

Schiff Hardin LLP
6600 Sears Tower
Chicago, Illinois 60606
312-258-5519

CH2\1096972.1

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION**

AMEREN ENERGY DEVELOPMENT
COMPANY, an Illinois Corporation, AMEREN
ENERGY GENERATING COMPANY, an
Illinois Corporation, and UNITED STATES
CAN COMPANY, a Delaware Corporation,

Plaintiffs,

v.

The VILLAGE OF BARTLETT, an Illinois
Municipal Corporation, CATHERINE J.
MELCHERT, Village President, MICHAEL
AIRDO, T.L. ARENDS, SHERRY BORMANN,
THOMAS A. FLOYD, JOHN KAVOURIS, and
DENNIS M. NOLAN, Village Trustees,
REALEN HOMES L.P., a Pennsylvania
Limited Partnership, and the CITY OF ELGIN,
an Illinois Municipal Corporation,

Defendants.

Gen. No. 03 CH 11307

AGREED ORDER

This cause coming on to be heard before this Court as to the status of settlement discussions among the parties named in the First Amended Complaint filed by Ameren Energy Development Company and Ameren Energy Generating Company (collectively "Ameren") for Declaratory Judgment and Other Relief, due notice having been given and the Court being fully advised in the premises,

The Court hereby finds as follows:

1. The parties have stipulated and agreed that Defendant City of Elgin, an Illinois municipal corporation, is not a necessary party to this proceeding or this settlement.
2. The following parties, namely, Plaintiff Ameren and Defendants the Village of Bartlett, Catherine J. Melchert (Village President), Michael

Airdo, T. L. Arends, Sherry Bormann, Thomas A. Floyd, John Kavouris, and Dennis M. Nolan (Village Trustees), and Realen Homes L.P., have advised the Court that the matters and controversy between them have been satisfactorily settled, adjusted, and compromised in accordance with the terms and conditions of a written settlement agreement entered into by said parties.

3. This Order does not affect or relate in any manner to the matters alleged in the First Amended Complaint filed by United States Can Company.

BASED UPON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECLARED that Ameren's First Amended Complaint for Declaratory Judgment and Other Relief is dismissed with prejudice.

Dated: _____

ENTERED

MAR - 3 2004

JUDGE
DOROTHY KIRIE KINNAIRD - 276

Judge



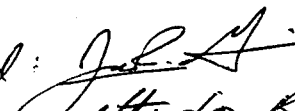
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Elgin, IL 60123
847-742-8800
Attorney No. 91508
Attorneys for Plaintiffs Ameren Energy
Development Company and Ameren Energy
Generating Company

CH21 1090583.1

Approved on behalf of
Plaintiffs by Ruth E. Krugly

-2-

Approved: 
Approved: Bryan E. McHenry
Attorney for Defendants Village
of Bartlett, McHenry, Airdo, Arends,
Bormann, Floyd, Kavouris and
Nolan

NOISE EASEMENT AND RESTRICTIVE COVENANT AGREEMENT

THIS NOISE EASEMENT AND RESTRICTIVE COVENANT AGREEMENT ("Agreement") is made and entered into this 3rd day of March, 2004 (the "Effective Date"), by and between Realen Homes L.P., a Pennsylvania limited partnership ("Grantor") and Ameren Energy Development Company, an Illinois Corporation ("Grantee").

RECITALS:

The following recitals of fact are a material part of this Easement Agreement.

A. Grantor is the owner of that certain parcel of land in Cook County, Illinois, legally described on Exhibit A attached hereto and made a part hereof (the "Burdened Property").

B. Grantee is the owner of that certain parcel of land in Cook County, Illinois, legally described on Exhibit B attached hereto and made a part hereof ("Grantee's Property"). Grantee's Property includes certain electric generation and other industrial facilities that transmit noise and light, described more specifically on Exhibit C attached hereto and made a part hereof (the "Grantee Facilities").

C. Grantor intends to develop the Burdened Property as a residential subdivision or subdivisions in accordance with Ordinances No. 2003-63 of the Village of Bartlett, Illinois (including all site plans and other attachments thereto, the "Zoning Ordinance"), which include the construction of approximately 210 single-family homes and 119 townhome units. A copy of the Zoning Ordinance is attached hereto as Exhibit D and made a part hereof.

D. Grantor has inspected the Grantee Facilities and reviewed certain written reports relating to sound.

E. Grantor desires to grant, and Grantee desires to accept, upon and subject to the terms and conditions herein provided, a nonexclusive easement under, through, across and above the Burdened Property, and Grantor and Grantee agree to restrict the use of the Burdened Property, and to enter into certain other related agreements, all to the extent provided below.

NOW, THEREFORE, in consideration of the foregoing, Grantee's agreement not to oppose, or pursue any claim challenging, Grantor's intended development of the Burdened Property as provided in Recital C above, the payment by Grantee to Grantor of the sum of Ten and No/100 Dollars (\$10.00), the following mutual covenants and agreements, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. **Recitals Incorporated by Reference.** The provisions of the aforesaid recital paragraphs are, by this reference, herein incorporated.

2. **Grant of Easement.** Grantor grants, gives and conveys to Grantee, a non-exclusive perpetual easement appurtenant to Grantee's Property, under, through, across and above the Burdened Property, for the purpose of transmitting from Grantee's Property noise and light, pursuant to the operation of Grantee's Facilities, provided that such noise from Grantee's Facilities as audible on the Burdened Property shall not exceed the levels shown on Exhibit E hereto, and such light from Grantee's Facilities as visible on the Burdened Property shall not exceed the levels generated in accordance with the lighting plans and specifications attached hereto as Exhibit F.

3. **Restrictive Covenant.** Grantor shall not develop or use any part of the Property to a density of residential dwelling units greater than permitted by the special use permit described in Section Three of the Zoning Ordinance, as existing as of the Effective Date, without the written consent of Grantee.

4. **Grantor's Covenant as to Disclosure.** In connection with any original sale by Realen Homes L.P. or its affiliate or any successor homebuilder or developer (collectively "Homebuilder") for residential development or use of any Lot comprising part of the Property ("Residential Lot"), the Homebuilder shall: (a) in any deed transferring fee simple interest in any Residential Lot expressly provide that the Property is subject to this Agreement; (b) in any contract of sale of any Residential Lot disclose the terms of this Agreement by providing a copy thereof and obtain a receipt for and acknowledgement of such disclosure from the purchaser of the Residential Lot, and (c) within thirty (30) days of the closing of any transfer of title to any Residential Lot provide to Grantee copies of said acknowledgments and transfer deed.

5. **Release and Waiver.**

(a) Grantor releases Grantee, its affiliated entities, officers, directors, partners, employees, agents, mortgagees, licensees, contractors, guests and invitees and their respective successors and assigns (collectively the "Released Parties") from, and waives any claims against Released Parties for, any and all liability, loss, claims, demands, liens, damages, penalty, fines, interest, costs, expenses, or injunctive or equitable relief, including, without limitation, reasonable attorneys' fees and litigation costs incurred by Released Parties in connection therewith, for damage or destruction of property, or diminution of real or personal property value, or loss of rental value, use or enjoyment of real or personal property, or other damages for negligence, that may arise at any time out of or relating directly or indirectly to: (i) noise or light at or less than the levels shown on Exhibits E and F hereto from the operation of Grantee's Facilities; (ii) the violation or alleged violation by Grantee or Grantee's Property of any laws,

including, without limitation, federal, state or local common law, including nuisance, trespass, negligence, or Environmental Laws (as defined below), statute, ordinance, regulation, directive, order, consent order or decree, or other legal requirement of governmental agencies or authorities or any judicial or administrative interpretation of any of the foregoing (collectively "Laws"), resulting from noise and light levels from the operation of Grantee's Facilities at or less than the levels shown on Exhibits E and F hereto. The foregoing release and waiver shall include, without limitation, any action or proceeding originally commenced or brought against Released Parties by any party, including governmental entities and/or third parties. "Environmental Laws" shall mean any Laws pertaining to noise or light which are, or hereafter come into effect. The waiver and release under this Section 5 shall survive Termination of this Agreement.

(b) The foregoing release and waiver shall further specifically include such matters described in clauses (i) and (ii) of Section 5(a) arising after the Effective Date, limited, however, to matters arising out of the operation of Grantee's Facilities within the scope of and related to the Easement specifically provided in Section 2 above (collectively "Future Released Matters"). Grantor further covenants not to sue Grantee for the Future Released Matters.

6. **Indemnity.** Grantor shall indemnify, defend with counsel of Released Parties' choice, and hold harmless Released Parties from and against any and all liability, loss, claims, demands, liens, damages, penalty, fines, interest, costs, expenses, or injunctive or equitable relief, including, without limitation, reasonable attorneys' fees and litigation costs, incurred by or brought against Released Parties in connection with any matters included within the waiver, release and covenant not to sue provided in Section 5 above, that are asserted in writing by any original purchaser of a Lot directly from a Homebuilder. The obligations of Grantor under this Section 6 shall survive termination of this Agreement or any sale of, or foreclosure upon the Burdened Property, for a period of the lesser of (a) the date of closing of the last sale of a Lot by a Homebuilder to an original purchaser, or (b) five (5) years from the Effective Date. Notwithstanding anything to the contrary contained herein, this indemnity shall not be enforceable against Wells Fargo Bank, N.A., or any successor or assign of such lender or of any other lender holding a mortgage on the Burdened Property or any of its successors and assigns.

7. **Burdens and Benefits Shall Run with the Land.** This Agreement and all of the limitations, covenants, burdens, obligation, conditions, easements, releases, waivers and restrictions provided herein shall attach to and run with the Burdened Property and be automatically binding upon the successors and assigns of Grantor. All of the respective rights and benefits provided herein shall attach to and run with the Burdened Property and Grantee's Property, as applicable. This Agreement and all the limitations, covenants, burdens, obligation, conditions, easements, releases, waivers and restrictions provided herein shall be enforceable as equitable servitudes in favor of Grantee's Property and the owners thereof against the Burdened Property and the owners thereof. The terms "Grantor" and "Grantee" as used herein shall be deemed to include any and all successors, grantees and assigns of such parties and their respective successors, grantees and assigns, whether as to the Burdened Property and Grantee's Property as wholes or subdivided parcels.

8. **Warranty of Title.** Grantor warrants that it has marketable and indefeasible fee simple title to the Burdened Property.

9. **Integration.** Each party acknowledges that such party has not been induced in the making, execution and delivery of this Agreement by any representations, statements, warranties or agreements of the other. This Easement Agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

10. **Notices.** All notices and other communications given pursuant to this Easement Agreement shall be in writing and shall be deemed properly served if delivered on the first day following delivery to an overnight courier service or on the third day after deposit in the U.S. mail as registered or certified mail, return receipt requested, postage prepaid as follows:

If to Grantor:	Realen Homes, L.P. c/o Mr. Randy Harris Vice President and Division Manager 1628 Colonial Parkway Inverness, Illinois 60067
If to Grantee:	Ameren Energy Development Company 300 Sur Woods Drive Effingham, IL 62401 Attn: Richard C. Smith, P.E., Manager, Generation Development Fax: 217.342.7988
With a copy to:	Ameren Services Company 1901 Chouteau Avenue P.O. Box 66149 St. Louis, MO 63166 Attn: Legal Department Fax: (314) 554-4014

Addressees and addresses may be changed by the parties by notice given in accordance with the provisions hereof.

11. **Remedies.** In the event of any violation or breach hereof by Grantor, Grantee shall have every right and remedy at law or in equity, including, without limitation, specific performance and injunctive relief.

12. **No Merger.** No acquisition of fee simple title by Grantee of any portion of the Burdened Property is intended or shall be deemed to constitute a merger or termination of the easement, restrictive covenant, or other rights or benefits of Grantee hereunder as to that portion of the Burdened Property not so acquired.

13. **Severability.** If any provision of this Agreement shall be unenforceable or invalid, the same shall not affect the remaining provisions of this Agreement and to this end the provisions of this Agreement are intended to be and shall be severable.

14. **Jury Trial Waiver; Venue.** Grantor and Grantee voluntarily, intentionally, unconditionally and irrevocably waive any right each may have to trial by jury in any action, proceeding or counterclaim (whether arising in tort or contract) brought by either against the other on any matter arising out of or in any way connected with this Agreement or any other document executed and delivered by either party in connection herewith (including any action to rescind or cancel this Agreement was fraudulently induced or is otherwise void or voidable). In any such action, proceeding or counterclaim, venue shall be Cook County, Illinois Circuit Court.

15. **Representations of the Grantor.** Grantor hereby represents and warrants that it has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing have been duly and validly authorized and approved by all necessary proceedings, findings and actions. This Agreement constitutes the legal, valid and binding obligation of the Grantor, enforceable in accordance with its terms.

16. **Representations of Grantee.** Grantee hereby represents and warrants that it has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing have been duly and validly authorized and approved by all necessary proceedings, findings and actions. This Agreement constitutes the legal, valid and binding obligation of the Grantee, enforceable in accordance with its terms. Grantee hereby represents and warrants that current noise and light levels at the Grantee Facilities do not exceed the levels shown on Exhibits E and F hereto, respectively.

17. **Disclaimer.** Nothing herein, including, without limitation, the description of Grantee's Facilities, the definition of the easement rights in Section 2 or the restrictive covenant in Section 3 hereof, is intended or shall be deemed to grant or convey to Grantor or Grantor's Property any property right in Grantee's Property or to impose any encumbrance, burden or limitation on the operation of Grantee's Facilities.

18. **Acknowledgment by Grantor.** Grantor acknowledges specifically that the release, waiver covenant not to sue provided in this Agreement have been freely negotiated between commercial parties, that there is no special or fiduciary relationship between Grantor and Grantee, and that such release, waiver and covenant not to sue Matters do not violate the public policy of the State of Illinois.

19. **Choice of Law.** This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by the internal laws of the State of Illinois for all purposes and intents.

20. **Signature.** This Agreement may be executed by telefax and in multiple counterparts, each of which shall constitute one and the same instrument.

21. **Term of Restrictive Covenants.** The restrictive covenants set forth in Section 3 hereof shall remain in force for the greater of: (a) 50 years from the Effective Date; or (b) the maximum period as may be permitted under the laws of the State of Illinois.

22. **Waiver of Default.** No waiver of any default shall be implied from any omission to take any action in respect of such default if such default continues or is repeated. No express written waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more written waivers of any default in the performance of any term, provision or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Agreement. The consent or approval by Grantor or Grantee to or of any act or request by Grantor or Grantee requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar acts or requests.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the day and year first above written.

GRANTOR:

Realen Homes L.P., a Pennsylvania limited partnership

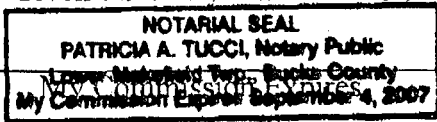
By: Realen General Partner, LLC, Its General Partner

By: *Vincent G. DeLuca*
 Name Printed: VINCENT G. DELUCA
 Title: PRESIDENT

STATE OF Pennsylvania)
) SS.
 COUNTY OF Lucas)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that VINCENT G. DELUCA, personally known to me to be the PRESIDENT of said partnership, which is the grantor, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such PRESIDENT he/she signed and delivered the said instrument as PRESIDENT of said partnership, pursuant to authority given by the partnership agreement as his/her free and voluntary act, and as the free and voluntary act and deed of said partnership, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 24th day of FEBRUARY, 2004, 2003.



Patricia A. Tucci
 Notary Public

Future Taxes to Grantee's Address ()
 OR to:

Return this document to:

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the day and year first above written.

GRANTEE:

Ameren Energy Development Company, an Illinois corporation

By: [Signature]
Name Printed: R. Alan Kelley
Title: Vice President

STATE OF MISSOURI)
 CITY) SS.
COUNTY OF ST. LOUIS)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that R. ALAN KELLEY, personally known to me to be the VICE PRESIDENT of Ameren Energy Development Company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such VICE PRESIDENT he/she signed and delivered the said instrument as VICE PRESIDENT 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 as his/her free and voluntary act, and as the free and voluntary act and deed of said Corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 27th day of February, 2004.

9-23-2006
My Commission Expires

[Signature]
CAROL A. HEAD
Notary Public - Notary Seal
STATE OF MISSOURI
St. Charles County
My Commission Expires: Sept. 23, 2006

Future Taxes to Grantee's Address
(_____)
OR to:

Return this document to:

CONSENT AND SUBORDINATION OF MORTGAGEE

Wells Fargo Bank, N.A., a national banking association ("Lender"), being the Beneficiary under that certain Mortgage from Realen Homes L.P. ("Grantor") recorded on March 20, 2003 as Document No. 0030385112 in the records of the Cook County, Illinois Recorder of Deeds' Office, as amended by instrument recorded on August 8, 2003, as Document No. 0322045146 (hereinafter as amended at any time, the "Mortgage"), does hereby consent to the recordation of the foregoing Easement and Restrictive Covenant Agreement ("Agreement") and Lender does hereby subordinate to the lien of the Mortgage to the provisions of the Agreement. The execution of this Consent and Subordination of Mortgagee by Lender shall not be deemed or construed to have the effect of creating between Lender and Grantor the relationship of partnership or of joint venture nor shall anything contained hereunder be deemed to impose upon Lender any of the liabilities, duties or obligations of Grantor under the Agreement. In addition, nothing herein shall be construed as a consent by Lender to any amendments to the foregoing Agreement or shall constitute any change to the terms of the Mortgage or related documents. Lender executes this Consent and Subordination of Mortgagee solely for the purposes set forth herein.

LENDER:

Wells Fargo Bank, N.A., a national banking
association

By: Amy L Baker
Name Printed: Amy L. Baker
Title: AVP

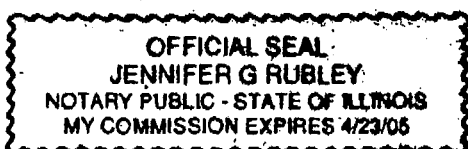
STATE OF Illinois)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that Amy Baker, personally known to me to be the Asst. Vice President of the Wells Fargo, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Asst. V.P. he/she signed and delivered the said instrument as Asst. V.P. of said national banking association, and caused the corporate seal of said banking association to be affixed thereto, pursuant to authority, given by the Board of Directors of said banking association as his/her free and voluntary act, and as the free and voluntary act and deed of said banking association, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 28 day of February, 2007.

4-23-05
My Commission Expires

Jennifer G. Rubley
Notary Public



Prepared by and after
recording mail to:

Mary M. Machon
Armstrong Teasdale LLP One
Metropolitan Square, Suite 2600
St. Louis, MO 63102

EXHIBIT A

Legal Description of Grantor's Burdened Property

That part of the North Half of Section 31 and of the South 1500.00 feet of Section 30, Township 41 North, Range 9 East of the Third Principal Meridian, lying Easterly of that parcel described in the Warranty Deed recorded as Document Number 0020026246, begin described as follows:

Beginning at the intersection of the Westerly line of Gifford Road and the North line of the South 1500.00 feet of said Section 30; thence South 01 degrees 52 minutes 29 seconds West along said Westerly line of Gifford Road a distance of 1501.38 feet to a bend in said Westerly line; thence South 01 degrees 57 minutes 29 seconds West along said Westerly line a distance of 2608.30 feet to the Northwesterly line of the right of way dedicated per Document Number 96402812; thence South 45 degrees 16 minutes 11 seconds West along said Northwesterly line 29.11 feet to the Northerly line of West Bartlett Road; thence South 88 degrees 34 minutes 45 seconds West along said Northerly line 1316.79 feet to the Easterly line of said parcel described in Document Number 0020026246; thence North 00 degrees 30 minutes 04 seconds West along said Easterly line 1872.84 feet; thence North 44 degrees 04 minutes 55 seconds East along said Easterly line 26.39 feet; thence North 15 degrees 04 minutes 18 seconds East along said Easterly line 368.93 feet; thence North 17 degrees 55 minutes 13 seconds East along said Easterly line 321.47 feet; thence North 54 degrees 26 minutes 30 seconds East along said Easterly line 148.35 feet; thence North 09 degrees 19 minutes 12 seconds West along said Easterly line 136.93 feet; thence South 77 degrees 48 minutes 43 seconds West along said Easterly line 27.27 feet; thence North 01 degrees 59 minutes 07 seconds East along said Easterly line 1370.57 feet to the North line of the South 1500.00 feet of said Section 30; thence North 88 degrees 56 minutes 58 seconds East along said North line 1159.34 feet to the place of beginning; all in Cook County, Illinois.

Permanent index numbers: Part PIN 06-30-400-008, Part PIN 06-31-200-002

Property Address: Vacant land at the northwest corner of Gifford Road and West Bartlett Road, Cook County, Illinois.

EXHIBIT B

Legal Description of Grantee's Property

That part of the East Half of the Northeast Quarter of Section 31, and the West Half of the Northwest Quarter of Section 32, Township 41 North, Range 9 East of the Third Principal Meridian described as follows: Commencing at an existing iron stake at the center line of Gifford and Spaulding Road; thence North 89 degrees 58 minutes 09 seconds East, along the center line of said Spaulding Road as monumented, a distance of 33.00 feet to the easterly right of way line of said Gifford Road, said right of way line being 33.00 feet easterly, as measured perpendicular and parallel to said center line of Gifford Road; thence South 00 degrees 13 minutes 56 seconds West along said easterly right of way line, a distance of 710.00 feet for the point of beginning; thence North 89 degrees 58 minutes 09 seconds East, parallel with said center line of Spaulding Road, a distance of 1262.38 feet to the easterly line of said East Half of the Northeast Quarter of Section 31; thence continuing North 89 degrees 58 minutes 09 seconds East, along said line parallel with the center line of Spaulding Road, a distance of 365.73 feet; thence South 00 degrees 17 minutes 07 seconds West, a distance of 893.59 feet to the North line of Elgin-Victor Industrial Park, being a subdivision of part of said Sections 31 and 32; thence North 89 degrees 41 minutes 49 seconds West, along said North line, a distance of 1627.93 feet to the aforesaid easterly right of way line of Gifford Road; thence North 00 degrees 22 minutes 49 seconds East, along said easterly right of way line, a distance of 256.75 feet to an angle point in said easterly right of way line; thence North 00 degrees 13 minutes 56 seconds East, along said easterly right of way line, a distance of 627.36 feet to the point of beginning, EXCEPTING THEREFROM, THE EASTERN 277 FEET OF SUCH PROPERTY, as situated in the City of Elgin, Cook County, Illinois, and containing 27.54 acres more or less.

EXHIBIT C

Description of Grantee's Facilities

1. Combustion turbine-generator units currently with capacity of 540 Megawatts of output (the "CTG Units"), supplied by natural gas or any other source or fuel for the generation of electrical power.
2. Equipment related to operation of the CTG Units, without limitation, generator step-up transformer from 13.8 kv to 138 kv to tie into the ComEd substation; diesel fuel generators; generator leads; switch yard and equipment necessary for its operation; turbines; transformers; generators; detention pond; auxiliary power transformer for station services; natural gas pressure regulation and metering station; demineralized water storage tank; demineralizer trailer; water pump houses; "raw" water storage tank; natural gas in-line heater; oil-water separator; and computerized process control system.
3. Service buildings to provide office space, parts storage, maintenance shop space, electrical equipment rooms, and personnel facilities.

ORDINANCE 2003 - 63

**AN ORDINANCE APPROVING THE REZONING,
A SPECIAL USE FOR A PLANNED UNIT DEVELOPMENT, PRELIMINARY
SUBDIVISION/PUD PLAN AND SITE PLAN APPROVAL FOR HERONS LANDING**

WHEREAS, Realen Homes Inc. is the legal owner (the "Owner") of a parcel of real estate being approximately 121.6 acres in size which is not within the corporate limits of the Village of Bartlett, but is contiguous to the corporate limits of the Village, legally described on **Exhibit A** the ("Subject Property"); and

WHEREAS, Realen Homes Inc. has submitted a Petition to the Village for the Property to: (i) annex the 121.6 acre Property and to rezone it from ER-1, the zoning district to which it is automatically zoned upon annexation, to the Planned Development District; (ii) grant a special use permit for a Planned Unit Development for multi-family and single family housing on the Subject Property to be developed in accordance with the Preliminary Plat and Preliminary PUD Plan (hereinafter defined); (iii) approval of a Preliminary Plat of Subdivision for Heron's Landing (hereinafter defined) (collectively, the "Owner's Petition"); and

WHEREAS, The Owner/Developer has agreed to donate a portion of the Subject Property containing approximately 6.13 acres to the Bartlett Park District and to construct a 16 space parking lot and install playground equipment for the recreational needs and uses of the future residents of the Subject Property and the public, as depicted on the Preliminary Plat; and

WHEREAS, on February 13, 2003 and April 10, 2003, the Bartlett Plan Commission conducted public hearings on the Owner's Petition (Case #02-36), and on both occasions failed to recommend approval to the corporate authorities; and

WHEREAS, on June 3, 2003, the corporate authorities held a public hearing on the Annexation Agreement; and

WHEREAS, the Village and the Owner have entered into a binding Annexation Agreement approved by the Village on June 3, 2003, which is incorporated herein by reference and is hereinafter referred to as the "Annexation Agreement", which agreement governs the annexation, zoning and development of the Property in the Village and the performance of certain undertakings that are contingent upon said annexation of the Property, pursuant to: (i) the provisions of Division 11.15.1 of the Illinois Municipal Code of 1961, as amended (65 ILCS 5/11-15.1-1 et seq.); (ii) the Village's authorities under Division 13 of the Illinois Municipal Code (65 ILCS 5/11-13-1 et seq.); and (iii) the Village's authority as a home rule unit of local government; and



WHEREAS, the corporate authorities have determined that it is in the public interest to approve the rezoning from ER-1 to the PD Planned Development District, grant a special use permit for a Planned Unit Development to be developed in accordance with the Preliminary Plat and Preliminary PUD Plan (hereinafter defined), approve of the Preliminary Plat and the Preliminary Site Plan subject to the conditions hereinafter set forth;

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, as follows:

SECTION ONE: Notwithstanding the failure of the Plan Commission to recommend approval or favorable findings, that the corporate authorities hereby make the following findings of fact, based on the record and in consideration of the conditions set forth herein and in the Annexation Agreement, pertaining to the rezoning to the Planned Development District and the granting of a special use permit for the Planned Unit Development:

1. That the Village Comprehensive Plan shows the Property as open space because it has not been updated to reflect the end of SWANCC's pursuit of the balefill on the adjoining property to the west that is now owned by the IDNR. Consequently, the Comprehensive Plan is not instructive as to the best use of the Property and will need to be amended in the future, but the proposed use of the Property as a single family and multi-family Planned Unit Development is a good transitional use of the Property providing a buffer between the mining uses to the north, industrial uses in Elgin to the east and the single family homes to the southeast and southwest.

2. That the uses within the Planned Development as arranged and depicted on the Preliminary Plat and Preliminary Site Plan will be compatible with each other use within the Planned Unit Development.

3. That the Planned Development will be compatible with development permitted under the Bartlett Zoning Ordinance on substantially all land in the vicinity of the Property based on the substantial proposed landscape berm along the east property line and the proposed orientation of the single family homes and townhomes along Gifford Road, the berming and screening proposed on the adjoining property to the north, and the open space on the west and single family home developments to the south.

4. The Planned Unit Development is designed, located and proposed to be operated and maintained so that the public health, safety and welfare will not be endangered or detrimentally affected, and in conjunction with the Developer's obligations under the Annexation Agreement, will increase the safety of the Village's existing residents and the future residents that will reside on the Subject Property.

5. The Planned Unit Development will not substantially lessen or impede the suitability of adjacent uses and development permitted and special uses on the adjacent property, or is injurious to, the use and enjoyment of, or substantially diminish or impair the value of, or be incompatible with, other property in the immediate vicinity.

6. The Planned Unit Development shall include impact donations in accordance with the Village's Developer Donation Ordinance as amended from time to time and in effect at the time of application for building permits, and the donation of land in excess of the requirements of said Donation Ordinance.

7. The Planned Unit Development will provide adequate utilities, drainage and other necessary facilities, adequate parking and ingress and egress and be so designed as to minimize traffic congestion and hazards in the public streets.

8. The Planned Unit Development will provide adequate parking and ingress and egress and be so designed as to minimize traffic congestion and hazards in the public streets.

9. The Planned Unit Development shall have adequate site area, which area may be greater than the minimum in the district in which the proposed site is located, and other buffering features including berm and landscape screening to protect uses within the development and on surrounding properties.

10. The Owner has provided assurance that, if approved, the development will be completed according to schedule and adequately maintained.

11. That the proposed Planned Unit Development is desirable to provide a mix of uses which are in the interest of public convenience and will contribute to the general welfare of the community.

12. The Planned Unit Development will not under the circumstances of the particular case be detrimental to the health, safety, morals or general welfare of persons residing or working in the vicinity or be injurious to property value or improvement of other properties in the vicinity.

13. The special use permit for the Planned Unit Development shall conform to the regulations and conditions specified in the Bartlett Zoning Ordinance therefor, and with the conditions set forth in this Agreement.

14. Single family and multi-family uses are permitted uses in the PD Planned Development District, but a Planned Unit Development is a special use in the PD Planned Development District.

SECTION TWO: That the Property is hereby rezoned from ER-1 Estate Residence District to the PD Planned Development District, subject to the conditions set forth in Sections Six and Seven of this Ordinance.

SECTION THREE: A special use permit for a Planned Unit Development to be developed on the Property in substantial conformance with the following plans: Preliminary Subdivision Plat for Herons Landing prepared by JEN Land Design, Inc. dated October 18, 2002, last revised May 14, 2003, appended hereto as **Exhibit B** (the "Preliminary Plat"); Preliminary PUD Site Plan for Herons Landing prepared by JEN Land Design, Inc. dated October 23, 2002, last revised May 14, 2003, appended hereto as **Exhibit C** (the "Preliminary Site Plan"); Preliminary Landscape Plan prepared by JEN Land Design, Inc.; Sheets 1 and 2, dated October 18, 2002, last revised March 10, 2003, and Foundation Landscape Plan, Sheets 3 and 4, prepared by JEN Land Design, Inc. dated October 18, 2002, last revised December 19, 2002, appended hereto as **Exhibit D** (the Preliminary Landscape Plan"); Architectural drawings for the Herons Landing Townhomes prepared by Bloom and Fiorino, Building 1-sheets C1-C3, and Building 2-Sheets C1-C3, all dated May 16, 2003 appended hereto as **Exhibit E** (the "Townhome Architectural Plans"); Landscape Screening Sections and Typical Cross Section, Sheets 1-3, prepared by Mackie Consultants LLC dated December 23, 2002, appended hereto as **Exhibit F** (the "East Berm Plan"); and North Property Line Berm Section prepared by Mackie Consultants LLC dated February 12, 2003, appended hereto as **Exhibit G** (the "North Berm Section Plan") (said plans, Exhibits B, C, D, E, F and G, are collectively sometimes hereinafter referred to as the "Preliminary Plat and the Preliminary PUD Plan") for; (i) 210 single family homes with minimum lot sizes of 10,800 square feet and an average lot size of 12,054 square feet, and (ii) for 119 townhome units in 32 buildings with a minimum unit size of 1,611 square feet with the following modifications from the Bartlett Subdivision and PUD Ordinance and/or Zoning Ordinance to allow (1) a sixty (60) foot right of way, (2) a twenty-five (25) foot front yard, and (3) minimum building separation of thirty (30) feet from side to side and fifty (50) feet from rear to rear as depicted on the Preliminary Plat and/or the Preliminary Site Plan (collectively, the "Modifications") is hereby granted; subject to the conditions set forth in Sections Six and Seven of this Ordinance.

SECTION FOUR: The corporate authorities do hereby make the following findings of fact pertaining to the Preliminary Site Plan:

1. The proposed townhome buildings, off-street parking, access, lighting, landscaping and drainage with respect to the townhomes are compatible with adjacent land uses.
2. The proposed arrangement of buildings, off-street parking, access, lighting, landscaping, and drainage is compatible with adjacent land uses.
3. The vehicular and pedestrian ingress and egress to and from the site and circulation within the site provides for safe, efficient and convenient movement of people and traffic, not only within the site but on adjacent roadways as well.

4. The Site Plan provides for the safe movement of pedestrians within the site.

5. There is a sufficient mixture of grass, trees and shrubs within the interior and perimeter (including public right-of-way) of the site so that the proposed development will be in harmony with adjacent land uses and will provide a pleasing appearance to the public. Any part of the site plan area not used for buildings, structures, parking or access ways will be landscaped with a mixture of grass, trees and shrubs.

6. The landscape improvements proposed are in accordance with the "Landscape Requirements" set forth in Chapter 10-11A of the Zoning Ordinance.

7. All outdoor storage areas shown are to be screened in accordance with the standards set forth in the Bartlett Zoning Ordinance.

SECTION FIVE: That the Preliminary Site Plan prepared by JEN Land Design, Inc. dated 10/23/02, and last revised 5/14/03, attached hereto as **Exhibit C**, which shall include the Townhome Architectural Plans and the Landscape Plans, is hereby approved, subject to the conditions set forth in Sections Six and Seven of this Ordinance.

SECTION SIX: The Preliminary Plat of Subdivision for the Heron's Landing Subdivision (the "Subdivision") prepared by JEN Land Design, Inc. dated 10/18/02, last revised 5/14/03 (the "Preliminary Plat"), attached hereto as **Exhibit B** and expressly made part of this Ordinance, and the Preliminary PUD Plan attached hereto as Exhibits C, D, E, F and G, are hereby approved, subject to the following conditions which must be satisfied before execution by the Village of a final plat of subdivision for the Property:

1. **Public Improvement Security.** The original signed copies of letters of credit, in a form approved by the Village Attorney and in amounts approved by the Village Engineer (the "Letters of Credit"), and issued by a federally insured financial institution which meets the requirements of the Bartlett Subdivision Ordinance, or a performance and labor and material payment bond issued by a surety approved by the Illinois Department of Insurance and/or authorized by said agency to do business in Illinois (the "Performance and Payment Bond") to ensure that the public improvements for the subdivision known as the Heron's Landing Subdivision will be completed and paid for in full on or before June 3, 2005.

2. **Easements.** Recording of easements approved by the Village Attorney and the Village Engineer for all drainage swales, detention and retention facilities and public utilities with appropriate access thereto, cross access and ingress and egress.

3. **Annexation Fee, Land and Cash Donations.**

A. Village Fees and Donations.

The Owner agrees to pay the Village the sum of \$2,000,000, as an Annexation Fee (the "Village Annexation Fee") as set forth below in full and final satisfaction of any and all Village lump sum payment contribution requirements, except for the park donations set forth in Section 13B below. There will be no other allocations, assessments or participation of costs for existing or future offsite or onsite infrastructure features, except those set forth in Paragraph 6 of this Annexation Agreement.

The Owner shall pay the Village Annexation Fee to the Village as follows:

\$1,000,000: Upon the date of the recordation of the Final Plat for Phase 1 at the office of the Cook County Recorder.

\$1,000,000: Upon the date of the recordation of the Final Plat for Phase 2 at the office of the Cook County Recorder.

B. Park District Donations.

Notwithstanding the foregoing contribution provisions, the Owner agrees to make the following cash and land contribution and improvements in full satisfaction of the park contributions provided under the Village Ordinances, including the Bartlett Donation Ordinance for Park District contributions. The Owner shall make a land donation of the 6.13 acre park site area depicted on the Preliminary Plat as Lot 222 (the "Park Site") to the Bartlett Park District and shall make improvements thereto, including, but not limited to, the 16 space on site parking lot as shown on the Preliminary Plat and shall pay the Park District the sum of \$65,000, which it shall use toward the cost to design, purchase and construct a playground on the Park Site. The Owner shall complete the improvements listed in a certain Park District letter dated April 24, 2003, which is incorporated herein by reference, and shall provide the Park District with a graded, seeded Park Site with a maintainable stand of grass established with at least 95% coverage and comply with all title, survey, environmental and other provisions relating to the conveyance of park land set forth in the Bartlett Subdivision and PUD Ordinance on or before the issuance of the two hundredth (200th) building permit in the Development. Owner shall be allowed to utilize the parking lot and a reasonable space around it as the location of a temporary construction office and storage upon filing the appropriate applications, bonds, plans and fees, however said construction office and storage shall be removed from said parking lot no later than the date the 200th building permit in the Development has been issued, unless otherwise agreed by the Park District in its sole discretion. In addition to land contribution of the Park Site, the Owner shall make a cash donation to the Park District in the amount of \$176,128 payable in a lump sum upon recordation of the Final Plat for Phase 1, and \$176,128 in a lump sum upon

recording of the Final Plat for Phase 2. Owner shall also pay at the time the last townhome building permit is issued, the additional amount due, if any, adjusted to reflect the amount that should have been paid using the actual mix of two (2) bedroom and three (3) bedroom townhome units to be built calculated using the Cash Equivalents for Donation Table appended to and incorporated in the Village's Land and Cash Donations Ordinance, 2001-142 (the "Adjustment Payment"). The Park District contributions set forth herein have been agreed to between the Park District and the Owner and shall be in full satisfaction of any and all obligations for such contributions to the Park District under the Bartlett Donation Ordinance, and any amendment thereto.

C. Village Fees and Donations.

The Owner agrees to pay the customary donations for police, fire, library, school, and Village services that are due and payable at the time a building permit is issued and as provided in the Village's Land and Cash Donations Ordinance, No. 2001-142, as amended from time to time. These donations may be adjusted periodically to reflect increases or decreases of the costs of providing these services; provided said donation fees are fees of general applicability or shall be collected by the Village on a uniform basis from substantially all present and future developers of residential property within the Village, and further provided the changes in any such amended Donation Ordinance will not become effective or applicable as to the Owner for a period of three months following the date the Village provides written notice to the Owner of such amendment. Owner shall in addition pay the sum of \$140 per lot to the Village as a contribution to the Village's Municipal Building Fund.

4. Road Improvements. Road improvements shall be made in accordance with the provisions in the Bartlett Subdivision Ordinance.

5. Protection of Public Improvements. Prior to the recording of the Final Plat of Subdivision for Realen Homes Heron's Landing Subdivision, the Developer and/or the Purchaser shall have deposited with the Village guarantees that it will complete, pay for, and maintain the Public Improvements for a period of 15 to 22 months after acceptance of the Public Improvements by the Corporate Authorities, including, but not limited to, site grading and restoration, underground improvements, all roadway improvements, street lighting, sidewalks, parkway restoration, trees and driveway approaches and all storm water facilities constructed in strict accordance with the final engineering plans approved by the Village Engineer for the Subdivision, and in accordance with the Bartlett Subdivision Ordinance (the "Public Improvements") for each phase of the Development. Upon completion of the public improvements in each phase, and their acceptance by the Village Board, the Developer shall transfer title thereto to the Village by warranty Bill of Sale in the form prescribed in the Subdivision Ordinance and shall deposit a maintenance "security" in accordance with the Subdivision Ordinance. The Developer shall execute and deliver to the Village a Public Improvement Completion Agreement (the "Agreement") in a form approved by the Village Attorney agreeing to construct and fully pay for all of the public improvements in strict accordance with the approved final engineering plans for the Subdivision which

agreement shall provide among other things in the event any public improvements, including, without limitation, streets, curbs, gutters, sidewalks, street lights, sanitary sewers, storm sewers, water mains, hydrants, manhole covers or required landscaping are damaged as a result of the on-site or off-site construction activities of the Developer, its contractors and their sub-contractors, all such damage shall be promptly repaired, or caused to be repaired, to the Village's satisfaction by the Developer without cost to the Village.

6. Engineering Approval. The Village Engineer's approval of the final engineering plans for the Subdivision including traffic analysis and impact, detention and stormwater management requirements, lift station design and construction, final grades, drainage, street design and cost estimates.

7. Dedication to Cook County of seventeen (17) feet of property along the eastern boundary for future widening of Gifford Road, and seventeen (17) feet along the southern boundary for the future widening of West Bartlett Road.

8. Road Access. Approval by the Cook County Highway Department (the "Highway Department") of the proposed curb cuts at the proposed locations on both West Bartlett Road and Gifford Road, and the Owner's agreement to construct such turn lanes, acceleration lanes, deceleration lanes and traffic control devices and measures recommended by the Highway Department.

9. Creation of a single-family home homeowners association and/or a master homeowners association and a separate townhome association

10. Declaration of Homeowner's Covenants. Approval of a master declaration of covenants, conditions and restrictions ("CCR's") for the development, and separate CCR's for the townhome development, relating to maintenance of the common areas, landscaping, berms, detention, retention areas and protection of the IDNR property to the west of the Property

11. Statement of Awareness. The Village Attorney's approval of the form of "Statement of Awareness" substantially in the form appended hereto as Exhibit I to be signed by each prospective buyer in the development prior to or at the time of entering a purchase contract for a home or townhome in the Development which discloses the existing and proposed future industrial development and mining operations on surrounding properties.

12. Buffer/Landscape Agreement. Submittal of an agreement with the owners and developer of the property to the north evidencing its agreement to construct a twenty-five (25) foot high by approximately one hundred eighty (180) foot wide berm on its property, and to install and maintain landscaping thereon itself or allow the Owner to do so as approved by the Bartlett Community Development Department.

13. Owner's agreement to install a ten (10) foot wide bike path along the west side of Gifford Road and through the Development to connect to the Park Site.

14. The Owner shall have timely filed all consents and documents necessary for the Village to establish a special service area covering the Property to pay for the future repair and maintenance of all stormwater management areas, pipes, conduit, structures and appurtenances in accordance with the Bartlett Subdivision and PUD Ordinance.

15. Special Service Area. The creation of a Special Service Area to provide the Village with a source of revenue for the extraordinary maintenance, repair or replacement expenses in connection with storm water detention/retention facilities that serve the Property and for ordinary open space maintenance expenses should the homeowners association owning the land on which such facilities are located fail to perform such ordinary open space maintenance in accordance with the Village standards shall be made prior to the recording of the final plat of subdivision. The Owner shall have timely filed all consents and documents necessary for the Village to establish a special service area covering the Property to pay for the future repair and maintenance of all stormwater management areas, pipes, conduit, structures and appurtenances in accordance with the Bartlett Subdivision and PUD Ordinance.

16. Landscape Plan. Approval of the final landscape plans by the Community Development Department, including, but not limited to, the landscaping of the forty (40) foot wide by three (3) to four (4) foot high berm with eight (8) foot high evergreen trees and other trees and bushes along the east property line to screen it from the industrial uses to the east of the Property.

17. Groundwater Study Recapture. Payment of any recapture amounts due to Bluff City Materials, or of the Owner's estimated proportionate share as determine by the Village and/or the IDNR if a recapture ordinance has not yet been recorded, of the cost of the ground water modeling study requested by the Illinois Department of Natural Resources and its related or affiliated state offices (the "IDNR") to assure not only Bluff City Materials but also developments lying in the same water shed as the Bluff City Fen will not adversely affect said Fen not to exceed \$25,000.

18. Compliance with Subdivision Ordinance. Compliance with the Bartlett Subdivision Ordinance, as amended.

19. Compliance with Annexation Agreement. Compliance with or satisfaction of all of the terms and conditions of the Annexation Agreement between the Owner and the Village.

SECTION SEVEN: The violation of any of the above conditions, or any of the conditions hereinafter set forth in this Section Seven, shall be cause for the revocation of the special use permit and Site Plan approval herein granted:

1. All existing and new utilities and communication facilities, including telephone, electric and cable television which serve the Subdivision shall be installed underground. The Developer shall promptly notify all utility and communication companies of the need for such underground installation and services prior to the construction or any improvements for the Subdivision and shall provide the Village with a copy of such notice.

2. Sidewalks. Five (5) foot sidewalks shall be provided on the both sides of the street throughout the development as required in the Bartlett Subdivision Ordinance. Sidewalks shall be installed in accordance with the Bartlett Subdivision Ordinance.

3. Bike Path. A 10-foot wide bike path shall be installed along the west side of Gifford Road and through the Subdivision to connect to the Park Site.

4. Parkway Trees. Parkway trees shall be provided on both sides of the street spaced at intervals of 40-60 feet as required in the Bartlett Subdivision Ordinance.

5. Construction Traffic. All construction traffic shall enter and exit the site from Gifford Road.

SECTION EIGHT: SEVERABILITY. The various provisions of this Ordinance are to be considered as severable, and if any part or portion of this Ordinance shall be held invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance.

SECTION NINE: REPEAL OF PRIOR ORDINANCES. All prior Ordinances and Resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

SECTION TEN: EFFECTIVE DATE. This Ordinance shall be in full force and effect upon passage and approval.

ROLL CALL VOTE:

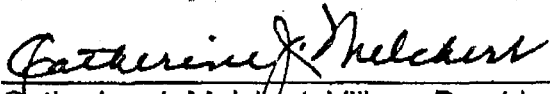
AYES: Trustee Airdo, Arends, Bormann, Floyd, Nolan

NAYS: Trustee Kavouris

ABSENT: None

PASSED: June 3, 2003

APPROVED: June 3, 2003


Catherine J. Melchert, Village President

ATTEST:

Linda Gallien, Village Clerk

CERTIFICATION

I, the undersigned, do hereby certify that I am the Village Clerk of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, and that the foregoing is a true, complete and exact copy of Ordinance 2003-63, enacted on June 3, 2003 and approved on June 3, 2003, as the same appears from the official records of the Village of Bartlett.

Linda Gallien, Village Clerk

EXHIBIT E

Noise Emission Limitations

Octave Band Center Frequency (Hertz)	31.5	63	125	250	500	1000	2000	4000	8000
Allowable Noise Levels on Burdened Property (dB)	80	74	69	64	58	58	58	50	40

