

Ordinance No. 92-48

**AN ORDINANCE APPROVING AN ANNEXATION AGREEMENT
WITH FRANKLYN C. NELCH, JR., ROBERT G. NEAL,
AND RAYMOND ROLAND**

BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE
VILLAGE OF CHATHAM, SANGAMON COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: That certain annexation agreement by and
among the Village of Chatham, Franklyn C. Nelch, Jr., Robert G.
Neal and Raymond Roland, in the form attached hereto as Exhibit
A, is hereby approved.

SECTION 2: The President is authorized and directed to
execute said agreement on behalf of the Village, and the proper
officers of the Village are authorized and directed to carry out
said agreement by its terms.

SECTION 3: This Ordinance is effective immediately.

PASSED this 30 day of NOVEMBER, 1992.


CARL OBLINGER, VILLAGE PRESIDENT
ACTING

ATTEST:


Village Clerk

AYES: 5
NAYS: 0
PASSED: 11-30-92
APPROVED: 11-30-92
ABSENT: 0

ORDINANCE CERTIFICATE

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

I, the undersigned, do hereby certify that I am the duly qualified and acting Village Clerk of the Village of Chatham, Sangamon County, Illinois.

I do further certify that the ordinance attached hereto is a full, true, and exact copy of Ordinance No. 92-48, adopted by the President and Board of Trustees of said Village on the 30 day of NOVEMBER, 1992, said Ordinance being entitled:

AN ORDINANCE APPROVING AN ANNEXATION AGREEMENT WITH FRANKLYN C. NELCH, JR., ROBERT G. NEAL AND RAYMOND ROLAND

I do further certify that prior to the making of this certificate, the said Ordinance was spread at length upon the permanent records of said Village, where it now appears and remains.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Village this 30 day of NOVEMBER, 1992.



Village Clerk

ANNEXATION AGREEMENT

THIS AGREEMENT, by and between FRANKLYN C. NELCH, JR., (hereinafter "Nelch") and ROBERT G. NEAL and RAYMOND ROLAND (hereinafter "Neal/Roland") and the VILLAGE OF CHATHAM, an Illinois municipal corporation (hereinafter "Chatham"), all of Sangamon County, Illinois, WITNESSETH:

WHEREAS, Nelch is the owner of a tract of real estate containing 10.51 acres, more or less, legally described as follows:

Part of the East one half of the Northeast Quarter of Section 17, Township 14 North, Range 5 West of the Third Principal Meridian, Sangamon County, Illinois, described as follows:

Beginning at the Northeast corner of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 17; thence South on the East line of said Section 17, 724.29 feet; thence West 234.93 feet; thence North 58.00 feet; thence West on the Quarter Quarter Section line 431.84 feet; thence North 666.29 feet; thence East 666.77 feet to the point of beginning, containing 10.51 acres, more or less.

(hereinafter "Nelch real estate"); and

WHEREAS, Janice Logan, Nelch and others have heretofore petitioned the Circuit Court of Sangamon County for a court supervised annexation of the Nelch Real Estate (and other real estate totalling 260 acres) to the Village of Chatham (the "Logan Petition"); and

WHEREAS, the Rural Electric Convenience Cooperative Company, Inc., and certain landowners objected to the Logan Petition, and on May 13, 1992 an Order was entered in the Circuit Court of Sangamon County in Docket No. 91-MR-268 denying the Logan Petition; and

WHEREAS, the aforesaid judgment order has been appealed to the Illinois Appellate Court for the Fourth District where said matter is now pending; and

WHEREAS, the Nelch real estate is clearly contiguous to Chatham and if the appeal is unsuccessful, or if the Village declines to annex the entire 260 acres, Nelch has agreed nonetheless to file then, his own separate petition for annexation to Chatham; and

WHEREAS, Neal/Roland have heretofore entered into a joint venture agreement to acquire, own, develop, subdivide and sell the Nelch real estate and other real estate adjacent thereto, hereafter referred to as the Mellinger real estate; and

WHEREAS, Neal/Roland intend to use the Nelch real estate for development of a subdivision for single-family residences; and

WHEREAS, Neal/Roland have entered into a contract with Nelch to purchase the Nelch real estate, performance of which is conditioned upon the property being previously annexed to and rezoned by Chatham to a classification to permit its use for a subdivision of single-family residences with the right to lay out and sell lots of 12,000 square feet, and with a variance of set back requirement for corner lots on the plat attached hereto as Exhibit A from 30 feet to 20 feet; and

WHEREAS, performance by Neal/Roland under said contract is further conditioned upon the acquisition by Neal/Roland of all necessary public utilities to service the contemplated subdivision; and

WHEREAS, Neal/Roland have purchased in the name of the First National Bank of Springfield, Springfield, Illinois, as Trustee under Trust Agreement dated October 15, 1992 and known as Trust No. 6871, certain real estate adjacent to the Nelch real estate known as the Mellinger real estate which consists of 68.77 acres, more or less; and is legally described as follows:

The Northwest Quarter of the Northeast Quarter;

The West Half of the Northeast Quarter of the Northeast Quarter;

The Northeast Quarter of the Northeast Quarter of the Northeast Quarter, except the North 80 feet thereof,

All in Section 17, Township 14 North, Range 5 West of the Third principal Meridian in Sangamon County, Illinois, containing a total of 68.77 acres, more or less.

WHEREAS, the Mellinger real estate has heretofore been annexed to Chatham and the same conditions upon which performance under the Nelch real estate contract has been predicated, have heretofore been granted by Chatham, with the result that the adjacent Mellinger real estate is presently zoned in the R-1 zoning classification to permit a subdivision of single family residences with lots of 12,000 (or more) square feet and with a waiver of set back requirements for corner lots from 30 feet to 20 feet as depicted on Exhibit A hereto; and

WHEREAS, Neal/Roland have submitted to the Planning Commission of the Village of Chatham, a preliminary plat, Exhibit A hereto, of subdivision of the Mellinger and Nelch real estate to be known as Hurstbourne Subdivision; and

WHEREAS, the Sangamon County Highway Department has expressed concerns about increased traffic on the Walnut Street "S" curve in the vicinity of the Nelch real estate as a result of its development, and has asked the Village of Chatham and Neal/Roland to participate in a contemplated project to realign the "S" curve; and

WHEREAS, Chatham encourages annexation and development of the real estate in the R-1 classification, and expresses its intent to accept the annexation of the Nelch real estate and to classify such real

estate in the R-1 classification when annexed, subject to compliance with the presently existing ordinances of Chatham and Division 15.1 of Article 11 of the Illinois Municipal Code, Ill.Rev.Stat., Ch. 24, Section 11-15.1 et seq.;

WHEREAS, the requisite public hearings have already been held with respect to the rezoning and preliminary subdivision plat requested herein and the appropriate bodies of the Village have recommended approval of the requested rezoning and subdivision; and

WHEREAS, the proposed subdivision covenants for Hurstbourne Subdivision are attached hereto as Exhibit B.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein, it is agreed as follows:

1. Annexation Based on Logan Petition. When appropriate for action, the Logan petition shall be recommended and approved by the appropriate administrative and legislative bodies of Chatham; and an annexation ordinance annexing the Nelch Real Estate and the remaining territory at issue in the Logan Petition shall, in the discretion of the Village, be enacted by the President and Board of Trustees of Chatham within 30 days of entry by the Court of an order compelling the Village to consider the Logan Petition.

2. Annexation Based on Separate Petition. If the Logan appeal is lost, or if the Village declines to annex the 260 acres at issue in the Logan Petition, and if Nelch is therefore required to file his separate petition for annexation, then if said petition for annexation complies with the ordinances of Chatham and the Illinois Municipal Code, then the annexation petition as filed shall be recommended and approved by

the appropriate administrative and legislative bodies of Chatham; and an annexation ordinance in such form as shall be approved by Neal/Roland, shall be enacted by the President and Board of Trustees of Chatham within 14 days thereafter.

3. Annexation Conditioned Upon Grant of Zoning. Such annexation shall be expressly conditioned and contingent upon the simultaneous classification of the Nelch real estate as R-1 under the zoning ordinance of Chatham, with a waiver of the 30 feet corner set back requirement to 20 feet as depicted on Exhibit A hereto. Any ordinance annexing the real estate or any part thereof without simultaneous initial zoning classification of R-1 and said set back waiver shall be void unless this Agreement shall have been amended as hereafter provided.

4. Preliminary Plat and Subdivision Covenants. Neal/Roland have filed a preliminary plat of subdivision for Hurstbourne Subdivision. The preliminary plat and subdivision covenants have been approved by Chatham, in accordance with law.

5. Zoning Relief Without Hearing. All hearings required by law with respect to zoning of the Nelch and Mellinger properties have already been conducted. Upon the enactment of an ordinance annexing the real estate then, without additional action required of Neal/Roland or of Chatham, the Village shall pass an ordinance classifying the real estate in the R-1 classification under the ordinances of Chatham, without any further hearing before any administrative or legislative body whatsoever.

6. Approval of Final Plats. Neal/Roland may submit one or more (up to eight) final plats for portions of the Mellinger and Nelch real estate. Plat I shall be approved by ordinance within 45 days of its submission and any subsequent final plat shall be approved by ordinance within 70 days of its submission, provided such plats comply with applicable law, with the Preliminary Plat and with the ordinances of Chatham; and provided further, that Chatham shall have no obligation to approve a final plat in the event that there are three final plats as to which the sureties for construction of public improvements have not been discharged. Neal/Roland shall have three years from the date hereof to file its final plats; thereafter Neal/Roland may apply for further extensions in accordance with Section IX of the 1989 Subdivision Ordinance of Chatham.

7. Building Permits. Upon final plat approval for any plat, Neal/Roland or their successors may apply for building permits for lots within such plat. If such applications for building permits comply with the ordinances of Chatham, then the permits shall issue. Upon the issuance of building permits in respect of any subdivided lot, no further authority or permit shall be required or necessary from Chatham to commence and complete upon such lot, construction of improvements permitted in the R-1 zoning district under ordinances of Chatham.

8. Future Ordinance Amendments. No amendment to the Municipal Code or ordinances of Chatham after the execution of this Annexation Agreement shall change or alter this Agreement in any respect. The 1989 Subdivision Ordinance and the 1982 Zoning Ordinance (both as

previously amended) shall govern all subdivision plats proposed or adopted and all zoning issues pursuant to this Agreement.

9. Waivers by Chatham. Chatham hereby waives all provisions of its ordinances expressly or impliedly inconsistent with this Agreement or the preliminary plat, including but not limited to provisions relating to initial pre-urban zoning upon annexation. Chatham also waives or alters its ordinances to the extent inconsistent with the following agreements:

- (a) It will permit a letter of credit in a form satisfactory to its corporate authorities in lieu of a surety or cash bond as set forth in its Subdivision Ordinance;
- (b) Where a 20 foot corner lot setback is depicted on the preliminary plat, Chatham waives its 30 foot setback requirement.

10. Waiver by Neal/Roland. Neal/Roland hereby waive any provision in the Comprehensive Plan requiring public money to fund the initial construction of secondary collector streets.

11. Electric Utilities. Chatham hereby agrees to provide electric power within the Nelch and Mellinger real estate and will bring, at its cost, an electric service line of a capacity capable of serving all of said real estate as a residential subdivision to a point within 10 feet of the first platted portion of the Nelch and Mellinger real estate, the precise location of which will be agreed on by the engineers for Chatham and Neal/Roland. Chatham's obligations pursuant to this paragraph are subject to changes in the Electric Supplier Act or changes in federal law regarding the rights of the Rural Electric Administration. Construction of electric utility improvements within the Nelch and Mellinger Real

Estate shall be subject in all respects to the Chatham Electric Department Ordinance, No. 91-30, and the Regulations attached thereto as Exhibit A regarding reimbursement of expenses.

12. Water Utilities. Chatham agrees to supply water to the Nelch and Mellinger real estate and to bring, at its cost, a water service line of a capacity capable of serving all of said real estate as a residential subdivision to a point within 10 feet of the first platted portion of the real estate, the precise location of which will be agreed on by engineers for Chatham and Neal/Roland.

13. Contribution for Curve Improvements. Neal/Roland agree to pay to Chatham the total amount of \$20,000, which amount shall be the complete and final share of Neal/Roland toward Chatham's agreed share, if any, of the cost of realigning the Walnut Street "S" curve. Said amount shall be payable after sale of 60 lots within Hurstbourne Subdivision, or June 1, 1995, whichever event shall first occur. At the of option of Neal/Roland, Neal/Roland may pay said amount in a lump sum, in which case Chatham shall keep said amount in a segregated account; or Neal/Roland may provide a letter of credit in a form satisfactory to Chatham to secure payment by Neal/Roland, upon demand by Chatham, of said amount. If Chatham shall ultimately elect not to participate in the cost of said highway improvement, or if the highway improvement shall not be made, the obligation of Neal/Roland hereunder shall be fully excused and the \$20,000 returned to Neal/Roland or the letter of credit extinguished, as appropriate. If Chatham shall participate

in said cost, but in an amount less than \$20,000, the financial obligation of Neal/Roland shall be limited to the actual monetary participation of Chatham and any sums paid by Neal/Roland in excess of Chatham's monetary participation shall be returned to Neal/Roland. Notwithstanding the foregoing, Chatham's right to draw on the \$20,000 fund or on the letter of credit shall not exist until Chatham shall have actually made its monetary contribution; provided lastly, that if Chatham has not made a monetary contribution on January 1, 1997, all obligations to pay any amount whatsoever under this paragraph shall be void, and any money paid by Neal/Roland shall be refunded to them.

14. Chatham Warranties. Chatham warrants that it will enact such ordinances, execute such documents, and issue such permits and certificates as shall be required by this Agreement and any ordinance adopting it.

14. Notices. All notices and other communication required under this Agreement shall be in writing and delivered either personally or by depositing the same, postage prepaid, in the United States mail addressed to the party hereto to whom the same is directed at the following addresses:

To Nelch: Franklyn C. Nelch, Jr.
12 Sunset Lane
Springfield, Illinois 62704

To Neal/Roland: Robert G. Neal
2644 South Fifth
Springfield, Illinois 62703

and

Raymond Roland
Box 2448
Springfield, Illinois 62705

To Chatham

c/o Mr. Del McCord
117 East Mulberry
Chatham, Illinois 62629

With Copies To:

Mr. John M. Myers
Long, Morris, Myers & Rabin
1300 South Eighth Street
Springfield, Illinois 62703

and

Mr. Robert C. Walbaum
Barrister Building
1231 South Eighth Street
Springfield, Illinois 62703

16. Agreement Binding. This Agreement is binding upon the parties hereto, their respective heirs, executors, personal representatives, administrators, successors, and assigns. It shall be effective for twenty years from date of execution, and shall be a covenant running with the land.

17. Time of the Essence. Time shall be of the essence of this Agreement.

18. Amendment of Agreement. This Agreement shall not be altered, modified or amended in any way without the prior written agreement of Nelch and Neal/Roland and their successors and assigns, and the agreement of Chatham, by ordinance duly enacted authorizing such action.

Exhibit B

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HURSTBOURNE SUBDIVISION PLAT 1

This Declaration of Covenants, Conditions and Restrictions for HURSTBOURNE SUBDIVISION is made this _____ day of November, 1992, by THE FIRST NATIONAL BANK OF SPRINGFIELD, Springfield, Illinois, Trustee of Trust No. 6871 dated October 15, 1992, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of the following described real property located in the Village of Chatham, Sangamon County, Illinois;

HURSTBOURNE SUBDIVISION PLAT 1

and desires to create thereon a subdivision with permanent common areas for the benefit of said subdivision; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said Subdivision and for the maintenance of common areas and to this end, desires to subject to the real property herein described to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and the subsequent owners thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated under the laws of the State of Illinois, as a not-for-profit corporation, the Hurstbourne Homeowners Association for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, Declarant hereby declares that the real property described herein is and shall be held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

(a) "Association" shall mean and refer to Hurstbourne Homeowners Association, an Illinois not-for-profit corporation, its successors and assigns.

(b) "Properties" shall mean and refer to the real property described in Article II.

(c) "Common Areas" shall mean and refer to all real and personal property, facilities and improvements now or hereafter owned by the Association for the common use and enjoyment of the Owners.

(d) "Lot" shall mean and refer to a portion of the property intended for independent ownership and use as may be set out in this Declaration and as shall be shown on the Plat of Subdivision recorded as Document Number _____.

(e) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless and until such person acquired title pursuant to foreclosure or any proceeding or conveyance in lieu of foreclosure.

(f) "Member" shall mean and refer to every Owner who therefore is a member of the Association.

(g) "Developer" shall mean and refer to the Declarant and its assigns if such assigns should acquire a portion of the land described in Article II from the Declarant for the purposes of resale to an Owner or for the purpose of constructing improvements thereon for resale to an Owner.

(h) "Area of Common Responsibility" shall mean and refer to the Common Areas together with those areas, if any, upon a Lot the maintenance, repair or replacement of which is made the responsibility of the Association by the Declaration.

(i) "Board" shall mean and refer to the Board of Directors of the Association.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

Section 1. Property Subject to Declaration. The real property which is and shall be held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to this Declaration is located in the Village of Chatham, Sangamon County, Illinois, and is more particularly described in the Plat of Subdivision of Hurstbourne Subdivision Plat 1 recorded as Document Number _____ in the Sangamon County, Illinois records and incorporated herein.

Section 2. The Common Areas. The Common Areas to be owned by the Association at the time of conveyance of the first Lot are as shown on the Plat recorded as Document Number _____ in the Sangamon County, Illinois records.

ARTICLE III

ADMINISTRATION AND OPERATION OF THE ASSOCIATION

Section 1. Board of Directors. The directors named in the Association's Articles of Incorporation constitute the Association's first Board which shall hold office and which shall hold and exercise all of the rights, duties, powers and functions of the Board set forth in this Declaration, and the By-Laws, until the first election of Directors by the Members of the Association at the first annual membership meeting.

The Board shall have all powers for the conduct of the affairs of the Association which are enabled by law or the founding documents which are not specifically reserved to Members of the Developer by said documents. The Board shall exercise its powers in accordance with the governing documents. Without limiting the generality thereof the Board shall have the power and obligation to perform the following duties:

(a) Real and Personal Property. To acquire, own, hold, improve, maintain, manage, lease, insure, pledge, convey, transfer or dedicate real or personal property for the benefit of the Members in connection with the affairs of the Association, except the acquisition, mortgaging or disposal of Common Areas and/or improvements shall be subject to the provisions of Article II and Article IV, respectively.

(b) Rule Making. To establish, modify and enforce rules and regulations for the use of the Properties as provided herein, and to review, modify and approve architectural standards as recommended by the Architectural Control Committee.

(c) Assessments. To fix, levy and collect assessments as provided in Article V.

(d) Easements. To grant and convey easements to the Common Areas as may become necessary and as provided in Article VIII.

(e) Employment of Agents. To employ, enter into, contract with, delegate authority to and supervise such persons or entities as may be appropriate to manage, conduct and perform the business obligations and duties of the Association.

(f) Enforcement of Governing Documents. To perform acts, as may be reasonably necessary or appropriate, including bringing suit, causing a lien to be foreclosed or suspending membership rights, and to enforce or effectuate any of the provisions of the governing documents.

(g) Membership Meetings. To call the first annual meeting of the Members of the Association, within 90 days after 185 Lots have been transfer to Class "A" Members, written notice of which first annual membership meeting shall be sent to the Members at least ten (10) days in advance of such meeting. Notwithstanding anything to the contrary in this Declaration provided, until the date of said first annual membership meeting no Class "A" Member shall have any voting rights, and the right of each such Class "A" Member to vote on any matter is hereby denied until such meeting. Each annual meeting of the Members of the Association following such initial annual membership meeting shall be held at the time and place specified in the By-Laws of the Association.

(h) To operate, keep and maintain any and all retention ponds in good condition, order and repair in accordance with all applicable laws and regulations.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot subject to the following:

(a) The right of the Association to charge reasonable admission and other fees for the use of any facility now or hereafter situated or constructed upon the Common Areas and to impose reasonable limits on the number of guests who may use the facilities.

(b) The right of the Association to suspend any voting rights and right to use the Common Areas and facilities by any Owner for any period during which any assessment of the Association against

said Owner's Lot remains unpaid, and for any infraction by an Owner of the Association's published rules and regulations for the duration of the infractions, and for an additional period thereafter not to exceed sixty (60) days.

(c) The right of the Declarant with regard to the Properties which may be owned for the purpose of development, to grant easements in and to the Common Areas contained within the Properties to any public agency, authority or utility for such purposes as benefit the Properties or parties thereof and Owners of Lots contained therein.

(d) The rights of the Association by a majority vote of all of the Members of the Board to borrow money for the purpose of improving the Common Areas, or any portion thereof, for acquiring additional Common Areas, or for constructing, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage covering all or any portion of the Common Areas provided, however, that the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, of any Owner or the holder of any mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Properties.

(e) The right of the Association to dedicate or transfer all or any portion of the Common Areas to any public body, agency authority or utility for such purpose and subject to such conditions as may be agreed by the Members of the Association. No such dedication or transfer shall be effective unless such dedication or transfer has been approved (i) by at least 66-2/3 per cent of the votes which the Class "A" Members present or represented by proxy are entitled to cast at a meeting duly called for such purpose, and (ii) by the Class "B" Members of the Association, so long as such membership shall exist.

(f) The right of the Association with regard to the Properties which it may own to grant easements to Declarant, any public agency, authority or utility for such purposes as benefit the Properties or portions thereof and Owners of Lots contained therein.

ARTICLE V

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every person or entity who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. The foregoing is not intended to include persons

who hold an interest merely as security for the performance of any obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more persons, shall have more than one membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided herein. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one vote be cast nor office held for each Lot.

Section 2. Voting. The Association shall have two classes of membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" Members shall be all Owners with the exception of the Declarant, any successor of Declarant who takes title for the purpose of development and sale and anyone holding one or more lots for the purpose of development or sale. Class "A" Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 1 hereof. When more than one person holds such interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise in writing the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one person seeks to exercise it. If a Lot is owned by a corporation, partnership or trust, such entity shall designate in writing the person authorized to vote in behalf of such entity.

(b) Class "B". The Class "B" Member shall be the Developer. The Class "B" Member shall be entitled to four votes for each Lot in which it holds the interest required for membership by Section 1 hereof, provided that the Class "B" membership shall cease on the happening of either of the following events, whichever occurs earlier:

- (1) When all Lots are sold; or
- (2) December 31, 2003; or
- (3) At such time as the Developer voluntarily relinquishes its Class "B" membership rights.

ARTICLE VI

COVENANT FOR MEMBERSHIP FEE AND ASSESSMENTS

Section 1. Purpose of Assessments. The assessments levied by the Association are for the purpose of promoting the recreation, health, enjoyment, welfare and safety of the residents and for protecting, advancing and promoting the environment of the Properties for the common benefit and enjoyment of the Owners and occupants of residences, improvement and maintenance of the Common Areas, retention pond and related equipment, and other common facilities and areas of common responsibility including but not limited to repair, replacement and additions thereto, and for the cost of labor, equipment and materials, management and supervision thereof, all as may be authorized from time to time by the Board of Directors.

Section 2. Creation of Lien and Personal Obligations of Assessments. Each Owner of any Lot by acceptance of a deed or other conveyance, shall be deemed to covenant and agree to pay and shall pay the Association such fees, assessments and charges as are herein provided and authorized:

(a) An entering membership fee, (b) annual assessments, (c) special assessments and/or individual assessments against any particular Lot as shall be established and collected by the Association pursuant to the terms of this Declaration, including but not limited to such reasonable fines as may be imposed herein. All such assessments together with interest thereon, late charges and costs of collection thereof, including reasonable attorneys' fees, (i) shall be a charge and a continuing lien upon the Lot against which any such assessment is made, subject to foreclosure, and the Association shall have the right to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property, and the Association shall have the conclusive power and authority to file in the Office of the Recorder of Deeds of Sangamon County, Illinois a lien or liens against such Lot; and (ii) shall also be the joint and several personal obligation of each person who was an Owner of said Lot at the time when any such assessment made against said Lot fell due.

No Owner shall be entitled to a refund of any portion of the entering membership fee, or any annual or special assessment, or installment of a special installment, paid by him, even though said Owner's membership in the Association terminates prior to expiration of the period covered by any such assessment or installment theretofore paid by him. No Owner may avoid or escape liability for the entering membership fee, or any annual or special assessment or individual assessment imposed or levied pursuant to this Article VI by abandonment of his Lot, or by attempted waiver

of non-user of the benefits of membership in the Association, or of the Commons Areas and facilities.

Section 3. Entering Membership Fee. Each person or entity who holds an ownership interest in a Lot by acceptance of a deed therefor from Declarant, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant, consent and agree and does hereby consent and agree to pay and shall pay the Association within ten (10) days after first becoming a Member of the Association, an entering membership fee of One Hundred (\$100) Dollars per Lot to be used by the Association for the same purposes for which annual and special assessments may be levied, provided, however, that no person or entity shall be required to pay the entering membership fee per Lot more than once.

Section 4. Annual Assessment. It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated costs of operating the Association during the coming year which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the proposed budget and the assessments to be levied against each Unit for the following year to be delivered to the last known residence address of each Member at least thirty (30) days prior to the meeting. The budget and the assessment shall become effective unless disapproved at the annual meeting by a vote of at least fifty-one (51%) percent of the Class "B" Member or Members. Notwithstanding the foregoing, however, in the event the Members disapprove the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year. The initial annual assessment shall be Twenty-five (\$25.00) Dollars per Lot, and the amount of such assessment shall continue until changed as herein provided.

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any calendar year a special assessment for the purpose of defraying in whole or in part the costs of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, provided, that any such assessment shall have the assent of two-thirds (2/3) of the votes of the total membership including Class "B" Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days in advance of the meeting setting forth the purpose of the meeting. The Board of Directors may make such special assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted.

Section 6. Individual Assessment. In the event that the need for maintenance or repairs of the Common Area is caused or occurs by or through the wilful or negligent act or omission of any Owner, his family, lessees, guests of invitees, or in the event that an Owner of any Lot shall fail or refuse to maintain such Lot or repair or replace the improvements situated thereon in a manner satisfactory to the Board, or the Architectural Control Committee, then the Association, after approval by a vote of seventy-five (75%) percent of all members of the Board, shall give such written notice of the Association's intent to provide the required maintenance, repair or replacement, at such Owner's sole cost and expense. The Owner shall have fifteen (15) days within which to complete said maintenance, repair or replacement. If such Owner fails or refuses to discharge properly his obligations as outlined above, the Association shall have the right, through its duly authorized agents or employees to enter at reasonable hours of any day, upon said Lot to perform such work. The Association may levy an individual assessment upon any Lot, except as provided in Section 7 of this Article, to cover the cost and expense incurred by the Association in fulfilling the provisions of this Section.

Section 7. Exemption from Assessment. The following property subject to this Declaration shall be exempt from all assessments, charges and liens created herein:

(a) All properties to the extent of any easement or other interest therein dedicated and accepted by any public authority and devoted to public use.

(b) All Common Areas as defined in Article I hereof.

(c) Any vacant land or Lots owned by a Class "B" Member unless a Lot is occupied as a residence. Any such land or Lots owned by a Class "B" Member shall be maintained by such Class "B" Member at such Member's sole cost and expenses.

Section 8. Assessments Due Dates. The annual assessment installments for each Lot shall commence on the first day of the month following the transfer of ownership of the Lot from Declarant to the Owner, and shall become due and payable on the first day of each month thereafter. The method of payment and due dates for special assessments shall be as established by the Association in accordance with Section 5 of this Article VI. The method of payment and due dates for individual assessments shall be as determined by the Board in accordance with Section 6 of this Article VI. The Association shall prepare a roster of Lots and assessments applicable thereto, which shall be open to inspection by any Member upon reasonable notice to the Board.

Section 9. Computation. Annual and special assessments shall be charged equally against each Lot.

Section 10. Effect of Nonpayment of Assessments, Remedies of the Association. Any assessments which are not paid when due shall be delinquent. Any assessment or assessment installment delinquent for a period of more than ten (10) days may incur a late charge in an amount as the Board may determine from time to time. The Association shall cause a notice of delinquency to be given to any Member who has not paid within the ten (10) days following the due date. If the assessment or assessment installment is not paid within thirty (30) days, the Association may declare the entire balance of such assessment for the remainder of such annual period due and payable in full, and a lien as herein provided for shall attach to and be a continuing lien upon the Lot against which such assessment shall have been made, and in addition the lien shall include the late charge, interest on the principal amount due at the maximum allowable rate from the date first due and payable, all costs of collection, reasonable attorneys' fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts or to foreclose its lien. Each Owner, by acceptance of a deed or other conveyance to a Unit, vests in the Association or its agents the right and power to bring all actions against such Owner or Owners personally for the collection of such charges as a debt, and/or to foreclose the aforesaid lien in the same manner as other liens for the mortgage of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Unit at any foreclosure sale or to acquire, hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein, including, by way of illustration but not limitation, abandonment of the Unit.

Section 11. Subordination of Lien. The lien provided for in this Declaration shall be subordinate to the lien of any first mortgage theretofore of record upon the Lot subject to assessment, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 12. Estoppel Certificates. The Association shall, upon request of a Member, at any reasonable time, furnish an estoppel certificate signed by an officer or other authorized agent of the Association, setting forth the amount of unpaid assessments and/or other charges, if any, against said Member's Lot, up to a given date or time of conveyance, also certifying as to whether or not there are violations of the governing documents on the Lot as

of the date of preparation of the certificate. Said certificate shall be delivered to the place of closing, and all outstanding assessments and other charges, if any, and a reasonable charge, as determined by the Board to cover the cost of providing such certificate, shall be deducted from the Seller's account at the closing and transmitted directly to the Association.

ARTICLE VII

MAINTENANCE BY AND SERVICES OF THE ASSOCIATION

Section 1. Maintenance, Repairs and Services by the Association. The Association, subject to the provisions of this Declaration and the By-Laws of the Association, shall maintain and keep in good repair the Area of Common Responsibility, which responsibility shall be deemed to include by example and not by limitation: (a) maintenance, repair and replacement of all Common Areas and facilities including park areas, landscaping, utility lines, pipes, wires and conduits, not dedicated to any public authority, if any; and (b) furnishing and providing the necessary maintenance and repair service for the utility systems, and for any drainage collection facility or storage pond serving the Properties and the improvements situated thereon. With respect to such drainage collection facility or storage pond, the Association shall have the duties specified in the easements granting the Association the rights to such facilities and ponds.

Section 2. Easement. The Association is hereby granted an easement of use and right-of-way on, over, in, under and through all Lots in order to comply with the terms of this Article VII, and entry of any Lot for such purpose shall not be deemed a trespass.

ARTICLE VIII

RESTRICTIVE COVENANTS

Section 1. No Lot shall be used except for single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot or Lots or part or parts thereof exceeding two and one-half stories in height.

Section 2. The total floor area of the main structure, exclusive of basement, one-store open porches and garages, shall not be less than 1600 square feet for one-store dwellings, nor less than 2000 square feet for a two-story dwelling, nor less than 2200 square feet for a bi-level dwelling and not less than 2200 square feet for a tri-level dwelling.

Section 3. No building shall be located on any Lot nearer to the front lot line or side line than the minimum set back line as shown the recorded plat of subdivision.

Section 4. No building, exclusive of eaves and steps, shall be located on any Lot nearer to the front lot line or side line than the minimum building line, shown on the recorded plat of subdivision and nearer than 10 feet to any interior lot line.

Section 5. No trailer, basement, tent, shack, garage, barn or other outbuilding placed on any Lot shall, at any time, but used as a residence, temporarily or permanently.

Section 6. All driveways located upon a Lot shall be constructed exclusively of concrete.

Section 7. No spirituous, vinous or malt liquor shall be sold, or kept for sale, on any Lot.

Section 8. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except dogs, cats or other generally recognized household pets may be kept; provided they are not kept, bred or maintained for any commercial purposes. Any such domestic pet shall not be permitted to cause or create a nuisance, disturbance or unreasonable amount of noise which may affect any resident or other person on the Properties. Any such pet must be kept within the confines of the Owner's Lot or must be on a leash held by a person when allowed upon the Common Areas. Notwithstanding any other provision to the contrary, the Architectural Control Committee shall have the absolute power to adopt rules and regulations from time to time pertaining to the keeping of any and all pets upon the Properties, including, but not limited to the right to remove or cause to be removed from the Properties (including the inside of a residential building) any such pet or pets when the Architectural Control Committee determines such action to be in the best interest, well-being and enjoyment of any or all of the residents of Hurstbourne Subdivision.

Section 9. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood, disturb the peace and quiet thereof, or annoy any occupant of the neighboring property. No Lot Owner shall cause increased water runoff on neighboring property not specifically authorized by such neighboring Lot Owner.

Section 10. No Lot, or any part thereof, shall be used, either temporarily or permanently, to sell, store or accumulate used cars, parts therefrom or junk of any kind or character whatever. No Owner, tenant, guest or other person shall park, store or keep upon any Lot or Common Area any commercial vehicle, boat or other watercraft, motor home, trailer, camper or other transportation devices of any kind; provided, however, that an Owner or tenant may park his or privately owned automobile in such Owner or tenant's garage. No Owner, tenant or other person shall

repair or restore any vehicle of any kind upon any Lot or Common Areas, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. Notwithstanding any provision heretofore stated in these covenants and restrictions, the Architectural Control Committee shall have the power and authority from time to time to adopt additional rules regarding the parking and storage of vehicles.

Section 11. Rubbish, trash, garbage or other waste shall be kept in sanitary containers, and shall not be stored, kept, deposited or left on any Lot or any other part of the Properties, except such garbage and rubbish collection. All such sanitary containers shall be of the type and size designated by the Architectural Control Committee and shall not be permitted to remain in public view except on days of collection. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 12. No sign of any kind shall be maintained or displayed on any Lot except one sign of not more than one square foot in area, identifying the occupants of the dwelling, one sign of not more than five (5) square feet in area advertising the property for sale or rent, and signs used by contractors during the construction of any improvement thereon.

Section 13. The Architectural Control Committee shall have the right and power to prescribe and enforce uniform mail receptacles throughout the subdivision.

Section 14. From time to time the Architectural Control Committee shall adopt additional rules and amend existing rules, including but not limited to rules to regulate potential problems relating to the use of the Properties and the well-being of the residents, tenants, guests and invitees. Such additional rules may only be adopted or amended by a two-thirds vote of the Architectural Control Committee, following a hearing for which due notice has been provided to all residents. All such additional rules and any subsequent amendment thereto shall be placed in the Book of Resolutions and furnished in writing to all residents prior to the effective date of such rules and shall be binding on all residents, except where expressly provided otherwise in such rules.

Section 15. An Easement over that portion of any Lot designated as "Easement" shown on the recorded plat of subdivision is hereby reserved for drainage and the use of public utility companies and others to install, lay, construct, renew, operate and maintain pipes, conduits, cables, poles and wires, either overhead or underground, for the purpose of providing any property in said section with gas, electric, telephone, water, sewer or other utility services. Overhead cables, poles and wires for public utilities shall be permitted only on such portion of any Lot designated for public utilities, but all electric and telephone

service lines therefrom for any improvements in said subdivision shall be installed and maintained underground. Drainage in such portion so designated as "Easement" shall not be blocked or impaired, and any Owner of any Lot or part thereof in said subdivision shall have the privilege of removing any obstruction blocking or impeding such drainage.

Section 16. No building shall be erected, placed or altered until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and material, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevation. No fence or wall shall be erected, placed or altered on any Lot nearer to any street line than the minimum building set back line unless similarly approved.

Section 17. There shall be installed, planted and maintained upon each Lot by each Lot Owner landscaping as may be approved by the Architectural Control Committee and which shall be in an amount of no less than One Thousand (\$1,000.00) Dollars inclusive of sod within fifteen (15) months after taking ownership of Lot.

The Architectural Control Committee is composed of Robert G. Neal, Martin D. Roland and John Raynolds. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. None of the members of the Committee nor their designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The Committee's approval or disapproval shall be in writing.

In the event that the members of said Committee or their representative or successors fail to approve or disapprove such design and location within thirty (30) days after building plans, specifications and plot plans have been submitted to them, or, in any event, if no suit to enjoin the erection of such building or the making of such alterations have been commenced prior to completion thereof, such approval will not be required and this covenant will be deemed to be fully met.

Section 18. These covenants shall be binding upon all parties and all persons claiming through or under them for a period of twenty-five (25) years from the date these covenants are filed for record, after which time such covenants shall automatically be extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then adult Owners of record of said plat in said subdivision has been filed for record agreeing to change such covenants in whole or in part.

Section 19. Invalidation of these covenants by judgment or court order shall in no way affect the other provisions, which shall remain in full force and effect.

Section 20. No Owner of any Lot shall change or permit to be changed the contours and the gradeline of any Lot. The gradeline and contour of any Lot shall conform with that of surrounding property. No swale within the Easement of any Lot shall be altered or wholly or partially filled so as to interfere with or prohibit the free flow of surface water; however, if such swale shall be altered, it shall be restored at the expense of such Lot Owner of the Lot where such alteration occurs.

Section 21. During clearing of Lot and construction of improvements thereon, until all exposed dirt from excavation has been removed from the Lot or brought to an approved final grade surrounding the dwelling unit and until the Lot is permanently landscaped with vegetation or landscaping material, the Lot owner shall prevent the erosion and washing of soil from the Lot.

Soils, mud, waste material, construction debris and landscape waste carried from any Lot onto other Lots or Common Areas such as Easements, rights of way and roadways, by erosive forces or, in any manner during construction, shall be cleaned up daily or as necessary, at the expense of the Lot Owner.

Section 22. Any fencing constructed on any Lot shall conform to ordinances of the Village of Chatham; however, no fencing shall be permitted in front yards. All fences must be erected at least six (6") inches inside property of lot lines.

Section 23. All construction of a dwelling shall be diligently pursued to completion within a one (1) year period from the time of commencement. No building shall be occupied for living purposes which is not complete in detail as to the exterior.

Section 24. Prior to activating any sump pump on any Lot the sump pump shall be connected to the existing storm or drainage pipe in the swale located within the Easement area of each Lot at the expense of the Lot Owner.

ARTICLE IX

INSURANCE AND INDEMNIFICATION

Section 1. Common Area Insurance. The Board shall have the authority to and shall obtain insurance for the Common Areas and all improvements situated thereon, and for any other real or personal property of the Association, against loss or damage by fire and such other hazards as the Board may deem desirable to insure against, for the full insurable replacement cost of said personal property of the Association. The Board shall also have

the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and health of persons, and property damage, in such limits as the Board shall deem desirable, and workmen's compensation insurance and such other liability insurance as it may deem desirable, insuring the Association, its directors, officers, committee members, employees and agents from liability in connection with the Common Areas, improvements located thereon and other real and personal property of the Association, and insuring the fee owners of any land underlying any drainage, retention or storage pond owned or used by the Association, and insuring the directors, officers and committee members of the Association, from liability for good faith acts or omissions beyond the scope of their respective authorities. Such insurance coverage shall include cross liability claims of one (1) or more insured parties against other insured parties. Premiums for all such insurance shall be common expenses of the Association.

Section 2. Indemnification. The directors, officers and committee members of the Association shall not be liable to any Owner or any Member, or any person claiming by or through any such Owner or Member, for any act or omission to act in the performance of their duties, and the Association shall have the power to indemnify all such directors, officers and committee members from all claims, demands, actions and proceedings, and any expense, in connection therewith, except if such Director, officers or committee member shall be adjudged in any such action or proceeding to be liable for wilful misconduct in the performance of his duties.

IN WITNESS WHEREOF, the undersigned Declarant and Owner has executed this Declaration this _____ day of November, 1992.

THE FIRST NATIONAL BANK OF SPRINGFIELD,
of Springfield, Illinois, Trustee of
Trust No. 6871 dated October, 15, 1992,

By _____
Trust Officer

ATTEST:

By _____
Trust Officer

SUBJECT TO EXCULPATORY CLAUSE ATTACHED

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT THE ABOVE NAMED OFFICERS OF THE FIRST NATIONAL BANK OF SPRINGFIELD, are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such officers, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth; 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 their 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 _____ day of November, 1992.

Notary Public

My Commission Expires: _____

THIS INSTRUMENT is executed by the undersigned Trustee, not personally but solely as Trustee under the terms of that certain agreement dated the 15th day of October, 1992, creating Trust No. 6871; and it is expressly understood and agreed by the parties hereto, anything herein to the contrary notwithstanding, that each and all of the covenants, undertakings, representations and agreements herein made are made and intended, not as personal covenants, undertakings, representations and agreements of the Trustee, individually, or for the purpose of binding it personally, but this instrument is executed and delivered by The First National Bank of Springfield, Springfield, Illinois, as Trustee, solely in the exercise of the powers conferred upon it as such Trustee under said agreement and no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforced against The First National Bank of Springfield, Springfield, Illinois, on account hereof, or on account of any covenant, undertaking, representation, warranty or agreement herein contained, either expressed or implied, all such personal liability, if any, being hereby expressly waived and released by the parties hereto or holder hereof, and by all persons claiming by or through or under said parties or holder hereof.

IN WITNESS WHEREOF, said First National Bank of Springfield, Springfield, Illinois, has caused its name to be signed to these presents by a Vice President or one of its Assistant Trust Officers and attested by its Trust Officer the day and year first above written.

THE FIRST NATIONAL BANK OF SPRINGFIELD,
of Springfield, Illinois, Trustee of
Trust No. 6871 dated October, 15, 1992,

By _____
Trust Officer

ATTEST:

By _____
Trust Officer