

Actual

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
SOUTHWINDS SUBDIVISION PLAT 5

This Declaration of Covenants, Conditions and Restrictions for SOUTHWINDS SUBDIVISION is made this 10th day of August, 1992, by FIRST OF AMERICA TRUST COMPANY, f/k/a THE ILLINOIS NATIONAL BANK OF SPRINGFIELD, Trustee of Trust Number 894-6319-002 by virtue of a Trust Agreement dated February 28, 1989, of Springfield, Illinois, hereinafter referred to as "Declarant".

WITNESS:

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

SOUTHWINDS SUBDIVISION PLAT 5

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 Southwinds 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.

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ARTICLE I

DEFINITIONS

(a) "Association" shall mean and refer to Southwinds Homeowner's 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. A storm water retention or storage pond is not a common area even though the Association may own the easement therefor and may be obligated to maintain same.

(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 92033068.

(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 this Declaration.

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

(j) "Easement" shall mean and refer to the easements shown on the plats of Southwinds Subdivision; the Grand of Easement and Agreement from Gordon J. Fifer and Mary C. Fifer, Kenneth E. Newton

and Neta M. Newton, and Nicholas L. Miller and Mary J. Miller, to The Illinois National Bank of Springfield, Trustee of Trust No. 894-6319-002, dated September 8, 1989, and filed in the Office of the Recorder of Deeds, Sangamon County, Illinois, on September 28, 1989, and such other easements as may be granted to or by Developer and/or 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 Southwinds Subdivision Plat 5 recorded as Document Number 9203306B in the Sangamon County, Illinois records, and incorporated herein by reference together with the Easements and the real estate conveyed by Walter G. Luedke to The Illinois National Bank of Springfield, as Trustee of Trust No. 894-6319-002 by deed filed with the Office of the Recorder of Deeds of Sangamon County, Illinois, on 6-24-92, as Document Number 92025825.

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 90804478 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 125 Lots have been transferred 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 and with the terms of the Easement Agreement between Gordon J. Fifer and Mary C. Fifer, Kenneth E. Newton and Neta M. Newton, and Nicholas Miller and Mary J. Miller, Grantors, and The Illinois National Bank of Springfield, Trustee of

Trust No. 894-6319-002, Grantee, and the Developer dated September 8, 1989, and filed in the Office of the Recorder of Deeds, Sangamon County, Illinois, on September 28, 1989.

(i) To operate, keep and maintain the surface of the real estate described in the conveyance from Walter G. Luedks to The Illinois National Bank of Springfield, Trustee of Trust No. 894-6319-002, filed in the Office of the Recorder of Deeds, Sangamon County, Illinois, on September 27, 1989, as Document Number H024275.

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 the 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, 1997; 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 assessment, 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 Common 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, and entering membership fee of One Hundred (\$100.00) 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%) per cent of the total Association membership votes including those votes 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 than 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, and the retention pond, including the necessary equipment 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 an Owner, his family, lessees, guests or 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%) per cent 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 the 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 in 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 on any Lot for such purpose shall not be deemed a trespass.

Section 3. Maintenance of Real Estate. The Association shall maintain the surface of the real estate described in the conveyance from Walter G. Luedke to The Illinois National Bank of Springfield, Trustee of Trust No. 894-6319-002, filed in the Office of the Recorder of Deeds, Sangamon County, Illinois, on September 27, 1989, as Document Number H024275.

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-story open porches and garages, shall not be less than 2500 square feet for one-story dwellings, nor less than 1800 square feet for a two-story dwelling, nor less than 2000 square feet for a bi-level dwelling and not less than 2000 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 on 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 Southwinds 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 her 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 which shall necessarily accumulate from the last 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 purposes 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 Dollars (\$1,000.00) inclusive of sod.

The Architectural Control Committee is composed of Robert G. Neal, Lawrence C. Auby and Thomas Bartolomucci, of Springfield, Illinois. 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 wise 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 the Lot Owner of the Lot where such alteration occurs.

Section 21. During clearing of a 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 or 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 Common Areas, improvements situated thereon and other real or 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, agents and Gordon J. Fifer and Mary C. Fifer, Kenneth E. Newton and Neta M. Newton, and Nicholas Miller and Mary J. Miller 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, and Gordon J. Fifer and Mary C. Fifer, Kenneth E. Newton and Neta M. Newton and Nicholas Miller and Mary J. Miller 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 willful misconduct in the performance of his duties.

IN WITNESS WHEREOF, the undersigned Declarant and Owner has executed this Declaration this 10th day of AUGUST, 1992.

FIRST OF AMERICA TRUST COMPANY,
Trustee of Trust Number
894-6319-002 by virtue of a
Trust Agreement dated February
28, 1989, and not individually,

ATTEST:

BY


Trust Officer

BY


Trust Officer

SUBJECT TO EXCULPATORY CLAUSE ATTACHED

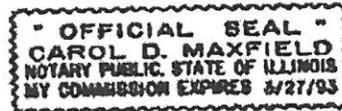
STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

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 OF AMERICA TRUST COMPANY, 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 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 that said officers did also then and there acknowledge that said officer as custodian of the corporate seal of said corporation, did affix the said corporate seal of said corporation to said instrument as said officer's own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal at Springfield, Illinois, this 10th day of AUGUST, 1992.

Carol D. Maxfield
Notary Public

My commission expires: 3/27/93



THIS INSTRUMENT is executed by the undersigned Trustee, not personally but solely as Trustee under the terms of that certain agreement dated the 28th day of February, A.D. 1989, creating Trust No. 894-6319-002; 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 of America Trust company, 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 of America Trust Company, 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 of America Trust Company 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.

FIRST OF AMERICA TRUST COMPANY
as Trustee aforesaid and not
personally

ATTEST:

BY

Elizabeth A. Kennedy
Trust Officer
RTN: R.G. NEAL

BY

Patrick J. Phalen
Trust Officer

R. G. Neal
2644 So 5th St.
Spartanburg, FL 32703

NOTICE OF AMENDMENT TO COVENANTS AND RESTRICTIONS
SOUTHWINDS SUBDIVISION, PLATS I, II, III, IV, V & VI

11-7-94
94-4396

The Southwinds Subdivision Homeowners Association does hereby notify all concerned parties that the covenants and restrictions for Southwinds Subdivision, Plats I, II, III, IV, V and VI, are hereby amended to add Section 16A to Article VIII which shall read as follows:

Section 16A: Prior to the construction of any real property improvement including, but not limited to, building additions, decks, fences, pools or outdoor storage sheds, the resident shall submit to the Architectural Control Committee prior to the start of construction, a detailed written plan including, as necessary, drawings and/or sketches of the proposed improvement.

The Architectural Control Committee will review the submitted information and within seven days of receipt of said information, notify the homeowner in writing of:

- a) The approval of the proposed improvement.
- b) A request for additional information.
- c) A statement that the proposed improvement is unacceptable as submitted, with a specific explanation thereof.

Any improvement made to a lot without complying with this section of the covenants may cause the Architectural Control Committee to require the lot owner to modify or remove such improvement at the cost of the lot owner, and that any costs incurred by the Southwinds Homeowners Association in enforcing such section including, but not limited to, attorney, recording and filing fees shall be recoverable from the aforementioned lot owner.

This amendment to the covenants and restrictions was made pursuant to Article VIII, Section 14 of said covenants and restrictions of Southwinds Subdivision, Plats I, II, III, IV, V and VI, and shall be effective as of the date of recording of this notice.

Dated this 3 day of November, 1994.


Bruce Thompson, President

000321

ATTEST:

David Holland
David Holland, Secretary

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

The undersigned, a Notary Public for the County and State aforesaid, hereby certifies that BRUCE THOMPSON, the President, and DAVID HOLLAND, the Secretary, of SOUTHWINDS HOMEOWNERS ASSOCIATION, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of November, 1994.

Elizabeth J. Foss
Notary Public



RFB
15

SANGAMON COUNTY
ILLINOIS

94-43960

94 NOV -7 AM 11:17

Prepared by and Return to:

James D. Kelly
Presney, Kelly & Presney
726 South Second Street
Springfield, Illinois 62704
(217) 525-0016

Mary Ann Sammel
RECORDER

000322

Actual

NOTICE OF AMENDMENT TO COVENANTS AND RESTRICTIONS
SOUTHWINDS SUBDIVISION, PLATS I, II, III, IV, V & VI

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Dated this 3 day of November, 1994.



Bruce Thompson, President

000321

ATTEST:

David Holland

David Holland, Secretary

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

The undersigned, a Notary Public for the County and State aforesaid, hereby certifies that BRUCE THOMPSON, the President, and DAVID HOLLAND, the Secretary, of SOUTHWINDS HOMEOWNERS ASSOCIATION, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of November, 1994.

Elizabeth J. Foss
Notary Public



R/B
15

SANGAMON COUNTY
ILLINOIS

94-43960

94 NOV -7 AM 11:17

Prepared by and Return to:

James D. Kelly
Presney, Kelly & Presney
726 South Second Street
Springfield, Illinois 62704
(217) 525-0016

Mary Ann Lamm
RECORDER

~~XXXXXXXX~~

000322

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
SOUTHWINDS SUBDIVISION PLAT I

This Declaration of Covenants, Conditions and Restrictions for SOUTHWINDS SUBDIVISION is made this 28th day of September, 1989, by ILLINOIS NATIONAL BANK OF SPRINGFIELD, Trustee of Trust Number 894-6319-002 by virtue of a Trust Agreement dated February 28, 1989, of Springfield, Illinois, hereinafter referred to as "Declarant".

WITNESS:

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

SOUTHWINDS SUBDIVISION PLAT I

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 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 this 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 Southwinds Homeowners Association for the purpose of exercising the function 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 Southwinds Homeowners Association, Inc., an Illinois not-for-profit corporation, its successors and assigns.

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

002782

(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. A storm water retention or storage pond is not a common area even though the Association may own the easement therefore and may be obligated to maintain same.

(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 HO24386.

(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 this Declaration.

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

(j) "Easements" shall mean the easements shown on the plats of Southwinds Subdivision; the Grant of Easement and Agreement from Gordon J. Fifer and Mary C. Fifer, Kenneth E. Newton and Nata M. Newton, and Nicholas L. Miller and Mary J. Miller, to the Illinois National Bank of Springfield, Trustee of Trust No. 894-6319-002, dated September 8, 1989, and filed in the Office of the Recorder of Deeds, Sangamon County, Illinois, on September 28, 1989, and such other easements as may be granted to or by Developer and/or 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 Southwinds Subdivision Plat I recorded

as Document Number HO24336 in the Sangamon County, Illinois records, and incorporated herein by reference together with the Easements and the real estate conveyed by Walter G. Luedke to the Illinois National Bank of Springfield, as Trustee of Trust No. 894-6319-002 by deed filed with the Office of the Recorder of Deeds of Sangamon County, Illinois, on September 27, 1989, as Document Number HO24275.

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 HO24336 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 or 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 Area 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 Area 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 125 Lots have been transferred 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 and with the terms of the Easement Agreement between Gordon J. Fifer and Mary C. Fifer, Kenneth E. Newton and Meta M. Newton, and Nicholas Miller and Mary J. Miller, Grantors, and The Illinois National Bank of Springfield, Trustee of Trust Number 894-6319-002, Grantee and the Developer dated September 8, 1989, and filed in the Office of the Recorder of Deeds, Sangamon County, Illinois, on September 28, 1989.

(i) To operate, keep and maintain the surface of the real estate described in the conveyance from Walter G. Luedke to the Illinois National Bank of Springfield, Trustee of Trust No. 894-6319-002, filed in the Office of the Recorder of Deeds, Sangamon County, Illinois, on September 27, 1989, as Document Number H024275.

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 the 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 or 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 or 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 an 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, Article III, 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, 1997; 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 therefor, whether or not it shall be so expressed in such 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 was levied 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 assessment, 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 thereof 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 Common 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, and entering membership fee of One Hundred (\$100.00) 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%) per cent of the total Association membership votes including those votes 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

Dollars (\$25.00) 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 cost 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, and the strata fund, including the necessary equipment 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 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 repair of the Common Areas is caused or occurs by or through the wilful or negligent act or omission of an Owner, his family, lessor, guests or 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 75% 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 the 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 expense.

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 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 no 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 in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments hereafter becoming due, nor from the lien of any such subsequent assessment.

Section 12. Estoppel Certificate. 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, (b) furnish and provide 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 assessments granting the Association the rights to such facilities and ponds.

Section 2. Easements. 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 on any Lot for such purpose shall not be deemed a trespass.

Section 3. Maintenance of Real Estate The Association shall maintain the surface of the real estate described in the conveyance from Walter G. Luedke to the Illinois National Bank of Springfield, Trustee of Trust No. 894-5319-002, filed in the Office of the Recorder of Deeds, Sangamon County, Illinois, on September 27, 1989, as Document Number H024275.

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-story open porches and garages, shall not be less than 1500 square feet for one-story dwellings, nor less than 1800 square feet for a two-story dwelling, nor less than 2000 square feet for a bi-level dwelling and not less than 2000 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 on 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.

Interior lot lines as used herein mean the lot lines having no street frontage shown on the recorded plat of subdivision, except when a single tract in said subdivision consists of more than one lot contiguous to all or part of another Lot with the exception of all of such tract in common, then the exterior lines of such tract that has no street frontage shall be considered to be the interior lot lines for all such tract.

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

All vacant Lots shall be kept free of weeds and shall not be permitted to fall into an unsightly condition.

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 Southwinds 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 there from 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 her 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 which shall necessarily accumulate from the last 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 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 West 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 purposes 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 materials, 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 \$1,000.00 inclusive of sod.

The Architectural Control Committee is composed of Robert G. Neal, Lawrence C. Auby, and Thomas Bartolomeucci, of Springfield, Illinois. 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 30 days after building plans, specifications and plot plan 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 satisfied.

Section 18. These covenants shall be binding upon all parties and all persons coming 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. Invalidity of these covenants by judgment or court order shall in no wise 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 of such Lot, without the express consent of the Architectural Control Committee.

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 Common Areas, improvements situated thereon and other real or 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, including the Association, its directors, officers, committee members, employees, agents and Gordon J. Fifer and Mary C. Fifer, Kenneth E. Newton and Nicholas Miller and Mary J. Miller 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, and Gordon J. Fifer and Mary C. Fifer, Kenneth E. Newton and Nicholas Miller and Mary J. Miller 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, officer or committee member shall be adjudged in any such action or proceeding to be liable for willful misconduct in the performance of his duties.

IN WITNESS WHEREOF, the undersigned Declarant and Owner has executed this Declaration this 24th day of September, 1989.

ILLINOIS NATIONAL BANK OF SPRINGFIELD,
Trustee of Trust Number 894-6319-002 by
virtue of a Trust Agreement dated February
28, 1989, and not individually.

By: Kenneth E. Newton
Trust Officer

ATTEST:

By: Thomas M. Keen
Trust Officer

SUBJECT TO EXCULPATORY CLAUSE ATTACHED

THIS INSTRUMENT is executed by the undersigned Trustee, not personally but solely as Trustee under the terms of that certain agreement dated the 28th day of February, A.D. 19 89, creating Trust No. 8946319002; 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 Illinois National Bank of Springfield, 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 Illinois National Bank of Springfield, 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 Illinois National Bank of Springfield 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.

ILLINOIS NATIONAL BANK
OF SPRINGFIELD
as Trustee aforesaid and not
personally,

By *W. A. Smith*
TRUST OFFICER

ATTEST:

BY *Theresa M. Keane*
TRUST OFFICER

PREPARED & RETURN: ROOT, COHEN
P.O. Box 2117
SPRINGFIELD, ILL. 62705

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