

16

276

SANGAMON COUNTY  
ILLINOIS

98-33815

98 JUN 30 PM 4: 34

*Mary Ann Sammel*  
RECORDER

DECLARATION

OF

EASEMENTS, COVENANTS AND RESTRICTIONS

2561-2563 Chapel Hill Drive  
Springfield, Illinois

THIS DECLARATION, made and entered into by THOMAS A. GIACOMINI and ROSEMARIE GIACOMINI (for convenience sometimes referred to as the "Declarant"),

WITNESSETH:

WHEREAS, the Declarant is the holder of the legal title to the following described real estate:

Part of Lot 1 of Chapel Hill Subdivision. (See specific legal description below.)

Situated in Sangamon County, Illinois.

Commonly known as 2561-2563 Chapel Hill Drive, Springfield, Illinois, hereinafter sometimes referred to as the "real estate";

WHEREAS, certain portions of said real estate, as hereinafter more particularly described, are intended as dwelling sites, said portions so intended being hereinafter sometimes referred to as "Townhouse Parcels", upon which two (2) so-called "Townhouses" have been erected, each such Townhouse being a single family private residence erected upon a separate Townhouse Parcel. Said Townhouses are constructed in one group, with such group constituting a more or less continuous structure with party wall straddling the boundaries between the Townhouse Parcels, all as depicted on the Plats attached hereto and made a part hereof and identified as Exhibits "A" and "B" hereof;

001018



thereof, and all persons acquiring any interest therein now or hereafter, shall at all times enjoy the benefits of and shall hold their said individual parcels subject to the rights, easements, burdens, uses and privileges hereinafter set forth;

NOW, THEREFORE, said Declarant does hereby declare that the following rights, easements, covenants, burdens, uses and privileges shall and do exist at all times hereafter among the several owners, purchasers or mortgagees of the said parcels of the real estate in this instrument described in the manner and to the extent herein set forth, and that the declarations contained herein shall be binding upon and inure to the benefit of each and every such parcel in this instrument described.

## ARTICLE I

### PREAMBLES AND EXHIBITS

#### SECTION 1.1

The preambles of this Declaration of Easements, Covenants and Restrictions and any and all Exhibits attached hereto are all hereby expressly incorporated herein by this reference and hereby made a part hereof.

## ARTICLE II

### MAINTENANCE, ALTERATIONS AND ADDITIONS

#### SECTION 2.1

The exterior masonry of the improvements upon the real estate shall be cleaned and tuckpointed at least once in every ten (10) years, unless both Owners deem it unnecessary. The cost thereof shall be determined for each Townhouse Parcel, and each Owner shall pay for costs associated with his own Townhouse Parcel.

#### SECTION 2.2

The exterior soffit and siding of the improvements upon the real estate shall be maintained by each Owner in the present color scheme, or in such color scheme as shall be unanimously approved by the Owners of all other Townhouse Parcels. If unanimous agreement is not reached with respect to any proposed change in color scheme, then the prevailing color scheme shall again be used and maintained. The cost of maintenance, repair or replacement shall be determined for each Townhouse Parcel, and each Owner shall pay the costs associated with his own Townhouse Parcel.

SECTION 2.3

No Owner shall make any exterior architectural changes or additions to any of the Townhouse structures erected upon the Townhouse Parcels herein described and designated, or identical structures erected in replacement thereof, and no exterior structures, entrances, roof, barricades, fences or additions, or additional buildings of any kind shall be built upon any portion of said real estate without the prior unanimous approval of the Owners of all other Townhouse Parcels.

SECTION 2.4

If any Owner fails to maintain, rebuild or restore the Townhouse Parcel owned by him as herein provided, then the other Owners may, after sixty (60) days' written notice to such defaulting Owner, have such work done, and the amount paid therefor shall be charged against such defaulting Owner, and the Owner may bring proceedings against such defaulting Owner to collect same by suit at law or in equity, and there shall be added to amount due, the costs of such suit together with interest and reasonable attorney's fees, to be fixed by court order.

SECTION 2.5

The Owner of each Townhouse Parcel shall be responsible for the maintenance, repair and replacement of that portion of the common roof and gutter system as is located or installed upon or attached to the Townhouse on his respective Townhouse Parcel.

SECTION 2.6

Except as herein to the contrary specifically provided, the Owner of each Townhouse Parcel shall furnish and be responsible for, at his own expense, all decorating, maintenance, repairs and replacements within and upon his own Townhouse Parcel.

SECTION 2.7

The cost of repairs to or replacement of the common sidewalk, including front and rear concrete steps situated upon the premises or any portion of such common sidewalk and steps, shall be borne equally by the Owners sharing such common sidewalk or steps.

SECTION 2.8

The Owner of each Townhouse Parcel shall at all times be responsible for the repair, maintenance or reconstruction of the private portions of the sewer and water systems upon or leading from his Townhouse Parcel to the point of connection of same with the common sewer and water systems. Each Owner shall be

responsible for one-half of the costs of maintenance, repair and upkeep for any common sewer and water system serving the premises.

#### SECTION 2.9

The Owner or occupant of each Townhouse Parcel shall maintain the lawn and landscaping, if any, on his premises in a reasonable condition.

### ARTICLE III

#### PARTY WALLS

##### SECTION 3.1

All dividing walls which straddle the boundary line between Townhouse Parcels shall at all times be considered party walls, the cost of maintenance, repair or replacement of which shall be borne equally by the Owners of the Townhouse Parcels served thereby.

##### SECTION 3.2

In the event that any party wall or portion thereof now or at any time hereafter, because of shifting, settling, original construction or otherwise, actually encroaches upon any portion of the Townhouse Parcel of another Owner, there shall be deemed to be an easement therefor in favor of the Townhouse Parcel whose party wall so encroaches, but only to the extent and for so long as such encroachment shall exist.

##### SECTION 3.3

Except as herein expressly provided to the contrary herein, the easements or cross-easements hereby created shall not terminate in the event that any party wall or portion thereof has been destroyed or materially damaged by fire or other cause but shall remain in full force and effect. License is hereby granted to Owners of Townhouse Parcels for reasonable access onto adjoining Townhouse Parcels for the purpose of rebuilding destroyed or materially damaged party walls. Any Owner of a Townhouse Parcel served by such materially damaged or destroyed party wall who shall have rebuilt same shall be entitled to receive from the Owner of the other adjacent Townhouse Parcel also served by such party wall, an amount equal to one-half (1/2) of the cost of rebuilding same, including the costs of foundations and supports necessarily installed.

##### SECTION 3.4

Whenever any party wall or portion thereof shall be repaired, replaced or rebuilt, it shall be erected as nearly plumb as possible on the same line (provided such line is located exactly

on the dividing line of the Townhouse Parcel it separates), and shall be of the same size and the same or similar materials and of like quality as the present party wall, and it shall conform in all respects to the laws and ordinances regulating the construction of buildings in force at that time.

#### ARTICLE IV

##### USE AND OCCUPANCY

###### SECTION 4.1

The Owner of each Townhouse Parcel shall be responsible for the removal of snow, ice and other debris or matter from that portion of the common sidewalk on his Townhouse Parcel, and there shall be no continual parking or storage of baby carriages, bicycles, wagons, toys, travel trailers, campers, boats, abandoned vehicles or other like objects on such sidewalks and/or the driveways. The Owner of each Townhouse Parcel shall be responsible for the removal of snow, ice and other debris or matter from his Townhouse Parcel.

###### SECTION 4.2

Each Townhouse Parcel shall be used for residential and no other purpose. No industry, business, trade, occupation or profession of any kind, whether commercial, religious, educational or otherwise, whether designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any Townhouse Parcel. An Owner or other lawful occupant may, however, use a portion of his Townhouse Parcel for an office or studio, provided that the activities therein shall not interfere with the quiet enjoyment or comfort by any other Owner or lawful occupant, and, specifically, will not result in the employment of parties working on such premises nor the frequent use of such premises by customers, students or clients of such Owner or lawful occupant; and provided further, that in no event shall any portion of any Townhouse Parcel be used as a restaurant, boarding house, or school, as a music, dance or voice studio, or as a judo, karate, physical training or exercise hall.

###### SECTION 4.3

No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in or upon any Townhouse Parcel, except that dogs, cats or other common household pets may be kept in Townhouse Parcels; provided, however, that such pets are not kept, bred or maintained for any commercial purpose. Care shall be taken that pets do not violate the rights of other Owners or lawful occupants of Townhouse Parcels to the safe, quiet and peaceful enjoyment of their respective premises, nor be allowed to use any easement granted herein for purposes other than those

stated herein. Failure to comply with the terms of this Section 4.3 will constitute a nuisance within the meaning of this Declaration.

#### SECTION 4.4

No unlawful or immoral practice, no noxious or offensive activity, nor any act nor any practice that will injure the reputation of the Townhouses upon the real estate or which will unreasonably disturb the Owners or lawful occupants of adjoining Townhouse Parcels shall be permitted or committed, either wilfully or negligently, upon any Townhouse Parcel.

#### SECTION 4.5

No Owner or occupant shall keep or permit to be kept in any Townhouse Parcel, any inflammable fluids (except fuel in the tanks of parked vehicles) or explosives, nor do any act or keep any substance in or upon any Townhouse Parcel which will increase the rate of fire insurance on any Townhouse or contents thereof applicable for residential use, nor that will result in the cancellation of fire insurance on any Townhouse or the contents thereof.

#### SECTION 4.6

No Owner shall cause or permit any clothes, laundry, sheets, blankets or other article or object to be hung or displayed on the outside windows or placed on the outside walls of any Townhouse, and no sign, awning, canopy or shutter, nor any mast, antenna or other structure for transmitting or receiving messages or programs by radio or television shall be erected, permitted, or maintained upon any Townhouse or any other portion of any Townhouse Parcel without the prior approval of the other Owners, and at all times in compliance with any and all applicable statues, codes and ordinances.

#### SECTION 4.7

The Owners and lawful occupants shall keep their respective Townhouse Parcels free and clear of rubbish, debris and other unsightly, injurious or unhealthy materials; provided, however, that the same shall be deposited in closed containers.

#### SECTION 4.8

Nothing shall be done in or upon any Townhouse Parcel, or to any party wall, which will impair the structural integrity of any Townhouse Parcel upon the real estate, or which would structurally change any Townhouse Parcel, except as otherwise provided herein.

SECTION 4.9

Any and all other facilities of any kind presently existing or hereafter lawfully installed or designed for the common use shall be perpetually used and maintained in common by the Owners and lawful occupants of each Townhouse Parcel.

SECTION 4.10

The right is expressly reserved by the Declarant, its agents and beneficiaries, to place "For Sale" or "For Rent" signs on any Townhouse Parcel to aid him in selling or renting Townhouse Parcels owned by it, and the right is hereby given to any mortgagee who may become the Owner of a Townhouse Parcel, to place such signs upon any Townhouse Parcel owned by such mortgagee. Nothing in this Declaration contained shall be construed to prevent the Declarant, his agents and beneficiaries, during the period in which sales of Townhouse Parcels are in progress, from conducting business and promotional activities in any of the unoccupied or unsold Townhouse Parcels in order to effect sales or rentals thereof, provided that such activities do not unreasonably interfere with the quiet enjoyment of the Owner or lawful occupant of any Townhouse Parcel.

**ARTICLE V****EASEMENTS**SECTION 5.1

All easements in this Declaration described are easements appurtenant, running with the land, and they shall at all times inure to the benefit of and be binding upon the Declarant, all its grantees and their respective heirs, successors, assigns and legal or personal representatives, perpetually in full force and effect.

SECTION 5.2

Each grantee of the Declarant and each and every heir, successor, assign and legal or personal representative of each such grantee, and each purchaser of a Townhouse Parcel under articles of agreement for a deed, real estate sales contract or otherwise, accepts the same, subject to all restrictions, conditions, covenants, easements, and charges, and the jurisdiction, rights and powers set forth herein.

SECTION 5.3

No new utility easements are granted by this Declaration in addition to those which have already been provided by the Plat of Subdivision for Chapel Hill Subdivision. Each Owner shall grant such other easements as he shall deem necessary for the furnishing of utilities or services to his individual Townhouse Parcel. He



shall have no right to grant utility easements with respect to any other Townhouse Parcel covered by this Declaration.

## ARTICLE VI

### LEASING

#### SECTION 6.1

In the event that a Townhouse Parcel is leased by an Owner thereof to a third person or family other than the Owner thereof or his family, on a month-to-month, yearly or other basis, or that the improvements upon such Townhouse Parcel are lawfully occupied under some arrangement allowing the use and benefit of such premises by a person or family other than the Owner thereof or his family, it is understood that the rights of such other person or family are subject to the following provisions:

(a) No more than one (1) family shall be permitted to occupy the improvements upon each Townhouse Parcel;

(b) Each and every person so occupying such premises, or enjoying the use and benefit thereof, shall be subject to the terms and provisions of this Declaration;

(c) The Owner of such leased or otherwise so occupied Townhouse Parcel shall at all times also be responsible, jointly and severally, with his tenants, lessees or other occupants, for any failure or default of any tenant, lessee or other occupant to observe or comply with the terms and provisions of this Declaration; and

(d) No such tenant, lessee or occupant, nor their guests or invitees, shall have the right to direct enforcement of any terms or provisions of this Declaration, such power of enforcement being at all times reserved to and lodged solely in the Owner of such Townhouse Parcel.

## ARTICLE VII

### INSURANCE

#### SECTION 7.1

The Owner of each Townhouse Parcel shall obtain insurance for the property against loss or damage by fire or other hazards for the full insurable replacement costs of the improvements located thereon and shall obtain comprehensive public liability insurance in such limits as the Owner shall deem appropriate or desirable.

The Owner of each Townhouse Parcel shall be responsible for insurance, if any, on the contents of the improvements located thereon in such limits and to such extent as the Owner shall deem appropriate and necessary.

## ARTICLE VIII

### GENERAL PROVISIONS

#### SECTION 8.1

If any Owner or occupant of any Townhouse Parcel fails for any reason to maintain or rebuild the premises owned or occupied by him as herein required, the Owner or Owners of any other Townhouse Parcel or Parcels, or any mortgagee, may, after sixty (60) days' written notice to such defaulting Owner or occupant, have such work done as may be reasonably necessary to cure any such default, and the amount paid therefor shall be a charge against the defaulting Owner of the premises on which such work was done, and also against any defaulting occupant claiming through or under such Owner, jointly and severally, and said amount together with court costs and reasonable attorney's fees, to be fixed by court order, may be recovered from the defaulting Owner or occupant, or both, jointly and severally, by suit at law or in equity; provided, however, that any language contained in this Declaration to the contrary notwithstanding, the same shall not be deemed a lien against any part of the real estate nor against any Townhouse Parcel until such time as a notice of lien is recorded in the office of the Recorder of Deeds, Sangamon County, Illinois, nor shall the lien of any mortgagee or trustee be affected thereby until such lien is duly recorded in the office of said Recorder of Deeds.

#### SECTION 8.2

In the event of the violation or breach of any covenant, restriction or provision contained in this Declaration by the Owner or occupant of any Townhouse Parcel, the other Owners, or any of them, or any mortgagee shall also have the right:

(a) In the event of an emergency consisting of an immediate threat to health and safety of the Owner, Owners or the general public, to enter upon the Townhouse Parcel, or within the improvements thereon, on or in which, or as to which such violation or breach exists and to summarily abate, remove or remedy, at the expense of the Owner and occupants of such premises, jointly and severally, any structure, thing or condition which may exist or be maintained thereon contrary to the intent and meaning of the provisions of this Declaration, and neither the other Owner or Owners, its successors and assigns, nor any mortgagee so acting shall thereby be deemed guilty in any manner of trespass; or

(b) To enjoin, abate, or remedy by appropriate legal proceedings, at law or in equity, the continuance of any such violation or breach, and to recover from such defaulting Owner and occupant, if any, jointly and severally, all court costs attendant thereto and reasonable attorneys' fees therefor, to be fixed by court order.

(c) If the Owners of both Townhouse Parcels shall agree, any deadlock or dispute arising out of the ownership of the Townhouse Parcels or the covenants, terms and conditions of this Declaration may be resolved by arbitration in the following manner:

The Parcel Owner desiring arbitration shall nominate one arbitrator and shall give notice to the other Parcel Owner of such nomination. The other Parcel Owner, if he desires to submit the deadlock or dispute to arbitration, shall within five (5) days time nominate an arbitrator and give to the other Parcel Owner notice of such nomination within five (5) days. The two arbitrators chosen by the Parcel Owners shall then choose a third arbitrator or, in the event they cannot agree upon the third arbitrator, the third arbitrator shall be chosen by the presiding Judge of the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois. Upon appointment of the third arbitrator, arbitration proceedings shall be conducted in accord with the Uniform Arbitration Act (Ill. Rev. Stat. 1989 Edition, Chapter 10 Sec. 101 through 123 as amended from time to time).

SECTION 8.3

No restriction, covenant, condition or provision hereof or imposed hereby shall be considered abrogated or waived by reason of the forbearance, failure or continued failure of the other Owners, its successors or assigns, or any mortgagee to enforce the same, irrespective of the number of violations or breaches which might occur.

SECTION 8.4

The remedies contained herein shall be cumulative, and the exercise or non-exercise of any one shall not preclude the exercise of any other appropriate remedy provided herein.

SECTION 8.5

The invalidity, in whole or in part, of any restriction, covenant, condition or provision herein contained or hereby imposed or established shall not impair or affect in any manner the

validity, enforceability or effect of the remaining portions of this Declaration.

SECTION 8.6

Before the sale of any Townhouse Parcel, the Declarant or his successors or assigns, shall have the right to change, alter, modify or rescind, in whole or in part, this Declaration or any restrictions, covenants, easements or provisions herein contained.

SECTION 8.7

The rights, privileges and powers herein reserved to or retained by the Declarant shall not be assignable without the written consent of the Owners, which consent shall not be unreasonably withheld.

SECTION 8.8

All costs or maintenance charges not specifically allocated by this Declaration shall be the joint and several responsibility of the Owner and occupants of the Townhouse Parcel or Parcels affected or benefited thereby.

SECTION 8.9

The headings preceding each Article of this Declaration are for convenience only and shall not be deemed in any way to limit or affect the construction or application of this Declaration or any part hereof.

SECTION 8.10

Except where the context clearly indicates the contrary, the male pronoun shall include the female and the neuter, and vice versa, and the singular tense, the plural and vice versa.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hand and seal this 30 day of June, 1978.

  
THOMAS A. GIACOMINI

  
ROSEMARIE GIACOMINI

STATE OF ILLINOIS )  
 )  
COUNTY OF SANGAMON ) SS.

I, Kathryn S. Lamar, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that **THOMAS A. GIACOMINI**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 30 day of June, 1998.

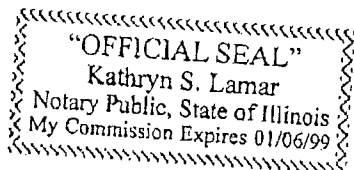


Kathryn S. Lamar  
Notary Public

STATE OF ILLINOIS )  
 )  
COUNTY OF SANGAMON ) SS.

I, Kathryn S. Lamar, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that **ROSEMARIE GIACOMINI**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 30 day of June, 1998.



Kathryn S. Lamar  
Notary Public

FOR: TOM GIACOMINI  
501 MILLBANK LANE  
SPRINGFIELD, IL 62702

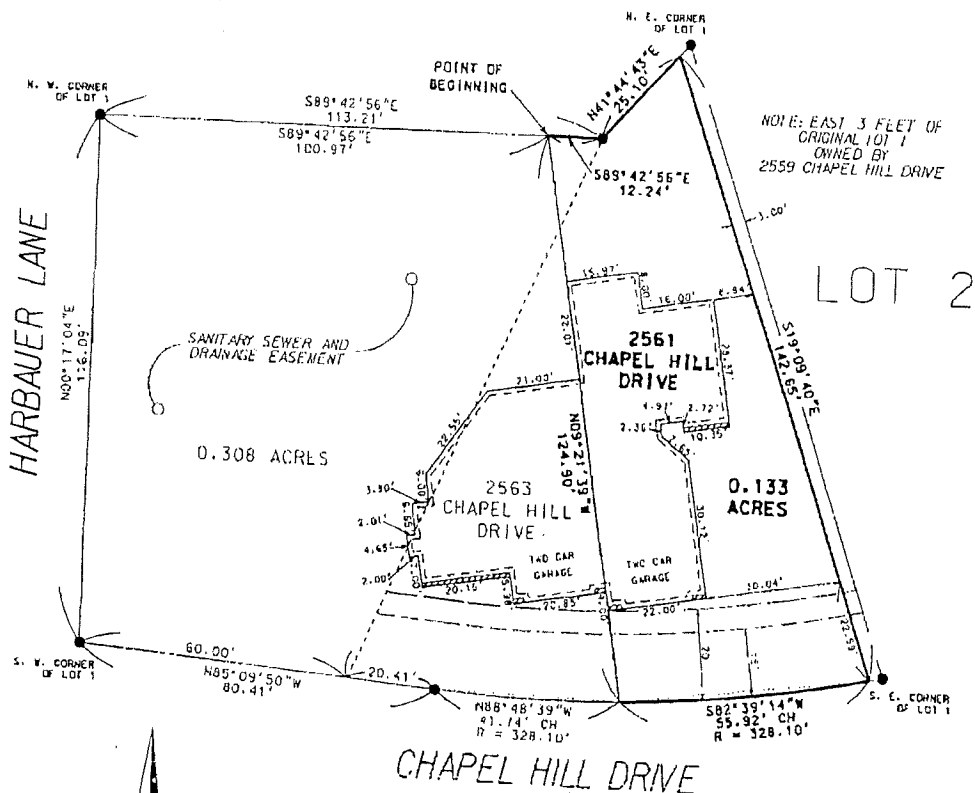
Exhibit "A"



FROM: ALBERS ENGINEERING, INC.  
P.O. BOX 7376  
SPRINGFIELD, IL 62791  
(217) 793-2244

# PLAT OF SURVEY

Part of Lot 1 of Chapel Hill Subdivision in Springfield, Illinois, described as follows: From the Northwest corner of said Lot 1, S.89°-42'-56"E., on the North Line of said Lot 1, 100.97 feet to the point of beginning; thence continuing S.89°-42'-56"E., on said North Line of Lot 1, 12.24 feet; thence N.41°-44'-43"E., 25.10 feet; thence S.19°-09'-40"E., parallel to and 3.00 feet West of the Easterly Line of said Lot 1, 142.65 feet to a point on the Southerly Line of said Lot 1, said point being on a curve concave to the North having a radius of 328.10 feet; thence Southwesterly on said curve a chord bearing of S.82°-39'-14"W., a chord distance of 55.92 feet; thence N.09°-21'-39"W., 124.90 feet to the point of beginning, containing 0.133 acres, more or less.

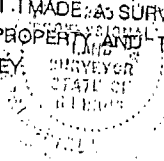


SCALE: 1" = 30'

## LEGEND

- DENOTES REINF. ROD MONUMENT FOUND
- - - DENOTES 15' UTILITY EASEMENT LINE
- - - DENOTES 20' BUILDING SET BACK LINE
- - - DENOTES SANITARY SEWER AND DRAINAGE EASEMENT LINE

I DO HEREBY CERTIFY THAT I MADE A SURVEY IN THE MONTH OF MARCH, 1998 OF THE ABOVE DESCRIBED PROPERTY AND THE FOREGOING PLAT CORRECTLY REPRESENTS THE RESULTS OF SAID SURVEY.



*Clayton L. Woodward*  
CLAYTON L. WOODWARD NO. 3203  
ALBERS ENGINEERING, INC.

JOB NO. 9010

001031

FOR: TOM GIACOMINI  
501 MILLBANK LANE  
SPRINGFIELD, IL 62702

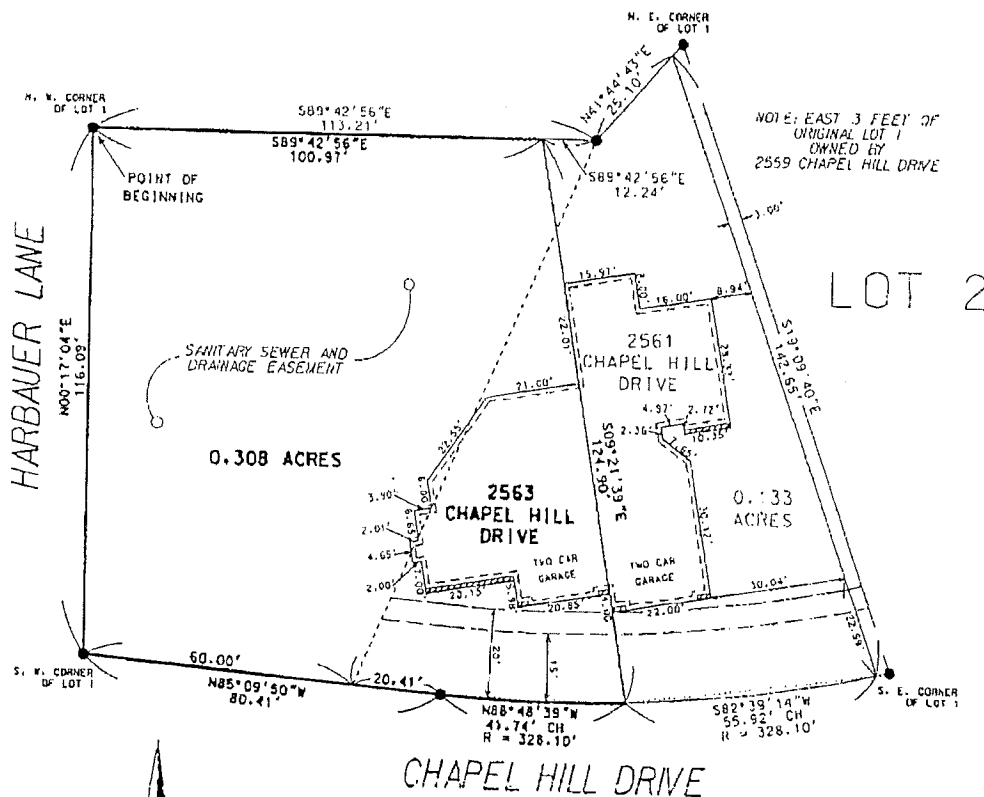
Exhibit "B"



FROM: ALBERS ENGINEERING, INC.  
P.O. BOX 7376  
SPRINGFIELD, IL 62791  
(217) 793-2244

# PLAT OF SURVEY

Part of Lot 1 of Chapel Hill Subdivision in Springfield, Illinois, described as follows: Beginning at the Northwest Corner of said Lot 1, S.89°-42'-56"E., on the North Line of said Lot 1, 100.97 feet; thence S.09°-21'-39"E., 124.90 feet to a point on the Southerly Line of said Lot 1 said point being on a curve concave to the North having a radius of 328.10 feet; thence Westerly, on said curve and said Southerly Lot Line, a chord bearing of N.88°-48'-39"W., a chord distance of 41.74 feet to the end of said curve; thence N.85°-09'-50"W., on said Southerly Lot Line, 80.41 feet to the Southwest Corner of said Lot 1; thence N.00°-17'-04"E., on the Westerly Line of said Lot 1, 116.09 feet to the point of beginning, containing 0.308 acres, more or less.



HARBAUER LANE

LOT 2



SCALE: 1" = 30'

CHAPEL HILL DRIVE

### LEGEND

- DENOTES REINF. ROD MONUMENT FOUND
- - - DENOTES 15' UTILITY EASEMENT LINE
- - - DENOTES 20' BUILDING SET BACK LINE
- - - DENOTES SANITARY SEWER AND DRAINAGE EASEMENT LINE

I DO HEREBY CERTIFY THAT I MADE A SURVEY IN THE MONTH OF MARCH, 1998 OF THE ABOVE DESCRIBED PROPERTY AND THE FOREGOING PLAT CORRECTLY REPRESENTS THE RESULTS OF SAID SURVEY.

CLAYTON L. WOODWARD  
SURVEYOR  
STATE OF ILLINOIS  
ALBERS ENGINEERING, INC. NO. 3203

JOB No. 9810

001032

Document Prepared by:

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

After Recording, Return to:

Tom Giacomini  
3033 Newport Dr.  
Spfld Ill 62702



001033