

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
FAIRWAY OAKS SUBDIVISION

This Declaration of Covenants, Conditions and Restrictions for Fairway Oaks Subdivision is made this 2nd day of July, 1984, by the Springfield Marine Bank, as Trustee under Trust Agreement dated October 1, 19 77, and known as Trust Number 53-0932-2, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the Owner of the real property described in Article II 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 community and for the maintenance of said common areas and to this end, desires to subject the real property described in Article II 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;

WHEREAS, Declarant has incorporated under the laws of the State of Illinois, as a not-for-profit corporation, the Fairway Oaks Homeowners Association, Inc., for the purpose of exercising the function aforesaid;

NOW, THEREFORE, Declarant hereby declares that the real property described in Article II of this Declaration 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

(a) "Association" shall mean and refer to Fairway Oaks 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.

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

(d) "Lot" shall mean and refer to a portion of the property intended for independent ownership and use as may be set out in this declaration and as shall be shown on the Plat of Subdivision recorded as Document Number 963289.

(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 purpose 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.

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

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

Section 1. Property Subject to Declaration. The real property which is, and shall be held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to this Declaration is located in the City of Springfield, Illinois, and is more particularly described in the Plat of Subdivision of Fairway Oaks recorded as Document Number 963289, of Sangamon County, Illinois Records, and incorporated herein by reference.

Section 2. The Common Areas. The Common Areas to be owned by the Association at the time of conveyance of the first lot are Lots 18 and 19 as shown on the plat recorded as Document Number 963289, of 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 Standards Committee; and

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

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

(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, and,

(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 180 days after 15 lots have transferred from Declarant 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.

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## 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 Area 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 infraction, 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 Area contained with the Properties to any public agency, authority or utility for such purposes as benefit of the Properties or parties thereof and Owners of Lots contained therein;

(d) The right 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 Area, or any portion thereof, for acquiring additional Common Area, 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 Area; 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 agency, authority or utility for such purpose and subject to such conditions as may be agreed to 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 percent 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 membership 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:

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(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 and become converted to Class "A" membership on the happening of either of the following events, whichever occurs earlier:

- (1) When the total votes outstanding of the Class "A" membership equal the total votes outstanding of the Class "B" membership; or
- (2) December 31, 1994; or
- (3) At such time as 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, scenic enjoyment, health, 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 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 the Association:

(a) An entering membership fee, (b) annual assessments, (c) special assessments and/or individual assessments against any particular lot, shall be established and collected pursuant to the terms of this Declaration, including but not limited to reasonable fines as may be imposed herein. All such assessments together with interest thereon, late charges and costs of collection thereof, including reasonable attorney's fees (i) shall be a charge and a continuing lien upon the Lot against which any such assessment is made, 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.

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Section 3. Entering Membership Fee. Each person or entity who holds an ownership interest in a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association within ten (10) days after first becoming a Member of the Association, an entering membership fee of One Hundred Dollars (\$100.00) 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 more than once, without regard to the number of Lots in which said Owner from time to time may hold an ownership interest, and without regard to the number of times said Owner may again become a Member of the Association after said Owner's initial membership therein terminates.

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 Lot 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 percent (51%) 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.

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 Area, including the necessary fixtures and personal property related thereto, provided, that, any such assessment shall have the assent of two-thirds (2/3) of the votes of the total membership including the 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 repairs of the Common Area is caused through the willful or negligent act of an Owner, his family, Lessee's 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 Standards Committee, then, the Association, after approval by 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, or if such work cannot be accomplished within said fifteen day period, to commence said maintenance, repair or replacement. If such Owner fails or refuses to discharge properly his obligations as outlined above, the Association shall have the right, through its duly authorized agents or employees to enter at reasonable hours of any day, upon said lot to perform such work. The Association may levy an individual assessment upon any lot, except as provided in Section 7 of this Article, to cover the cost and expense incurred by the Association in fulfilling the provisions of this section.

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

- (a) All properties to the extent of any easement or other interest therein dedicated and accepted by any public authority and devoted to public use.
- (b) All common area 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, 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 attorney's 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 Lot, 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 improvement 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 Lot 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 Lot.

Section 11. Subordination of Lien. The lien provided for in this Declaration shall be subordinate to the lien of any first mortgage now or hereafter placed 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 certify 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.

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## 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 and repair 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 services for the utility systems, and for any drainage collection facility serving the properties and the improvements situated thereon.

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.

## ARTICLE VIII

### EASEMENTS

Section 1. Utility Easements. There is hereby created an easement upon, across, over, through and under the properties for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems including, but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the Developer or the providing utility or service company to install and maintain facilities and equipment on the property, to excavate for such purposes and to affix and maintain wires, circuits and conduits on, in and under the land providing such company restores disturbed areas to the condition in which they were found.

Section 2. Easements for Drainage. Perpetual easements are hereby reserved on, over and under that part of Lots 5, 9 & 10 as shown on the plat of subdivision. Said easements are to be maintained by the respective owners of said lots and the existing grade and elevation shall not be altered. For a period of two years from the date of conveyance of each Lot, the Developer reserves an easement and right on, over and under the ground within that Lot to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which the Developer shall restore the affected property to its original condition as near as practicable. The Developer shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Developer an emergency exists which precludes such notice.

Section 3. Construction Easements and Rights. Notwithstanding any provision of this Declaration, so long as the Developer or Participating Builders are engaged in developing or improving any portion of the properties, such persons shall have an easement of ingress, egress and use over any lands not occupied by an Owner for (1) movement and storage of building materials and equipment, (2) erection and maintenance of directional and promotional signs and (3) conduct of sales activities. Such easement shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness and general appearance of the properties.

Section 4. Easement to Inspect. There is hereby created an easement in favor of the Association for ingress and egress on any Lot to inspect such property for alleged violations of the Governing Documents, based on formal, written complaints, and/or compliance with architectural standards and/or approved plans for alterations and improvements. **1347035**

Section 5. Easement for Landscaping and Related Purposes. There shall be and is hereby reserved to the Developer for so long as it retains its rights as Developer, a non-exclusive easement over all Lots and Common Areas (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs,



plantings, street lights, entrance features and/or "theme areas", lighting, stone, wood, or masonry wall features and/or related landscaping.

## ARTICLE IX

### RESTRICTIVE COVENANTS

Section 1. Land Use. The properties committed to this Declaration as described in Article II shall be used for residential purposes, only, and no trade or business of any kind may be carried on therein.

Section 2. Nuisances. No nuisance or offensive activity shall be permitted upon the properties so as to jeopardize property values or be detrimental to the enjoyment, comfort and wellbeing of the members. Each Owner shall refrain and prohibit any act or use of a lot which could reasonably cause embarrassment or annoyance to other Owners or occupants, and the Board shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.

Section 3. Architectural Standards. No construction or erection of any nature whatsoever shall be commenced or maintained upon any part of the properties except as is installed or approved by the Declarant in connection with the initial construction of buildings on the properties, unless and until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved as to harmony of external design and location in relation to surrounding structures and topography, in writing by the Board, or by an Architectural Standards Committee composed of three or more representatives appointed by the Board. No alterations, repairs, excavations, fences, awning, patio cover, swimming pool, light pole or fixture, mailbox, landscaping or other work which in any way alters the exterior of any Lot or Common Area or the improvements located thereon shall be commenced, made or done on such property without the prior written approval of the Board or the Architectural Standards Committee. In the event said Board, or its designated committee, fails to approve or to disapprove such construction, additions or alterations within thirty (30) days after said plans and specifications shall have been submitted to it, approval will not be required and this Article IX will be deemed to have been fully complied with.

1. Only one detached single-family dwelling and private garage appertaining thereto shall be erected on each lot. No use shall be made of each lot except such as is incidental to the occupation thereof for residential purpose by one private family residing in a detached, single-family dwelling. 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.

2. The minimum floor area of each dwelling constructed in such subdivision, exclusive of basement, open porches and garages, shall be as follows:

(a) One (1) story dwelling, at least 2200 square feet total:

(b) One story and a half (1½) dwelling at least 1500 square feet on the ground level; 2600 square feet total:

(c) Two (2) story dwelling, at least 2600 feet total, with at least 1200 square feet on ground level.

Other types of dwelling may be constructed in such subdivision only with the written consent of the Architectural Control Committee. All computations of floor areas shall be exclusive of garages, porches, or terraces. Each garage shall be attached to the dwelling. It must be architecturally related to the dwelling and no garage shall provide space for less than two (2) automobiles. No carport may be erected and maintained on any lot in the subdivision, unless it is approved in writing by the Architectural Control Committee prior to construction.

3. 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 as shown on the recorded plat of said subdivision, and nearer than ten (10) feet to any interior lot line. Interior lot lines as used herein means the lot lines having no street frontage shown on the recorded plat of said subdivision except when a single site in said subdivision consists or more than one lot contiguous to all or part of another lot with the ownership of all such site in common, then the exterior lines of such site that have no street frontage shall be considered to be the interior lot lines for all of such site. Where a side yard is used for a driveway purpose,



that side yard adjacent to the dwelling shall not be less than ten (10) feet in width.

4. No lot shall be re-subdivided nor shall a fractional part of any lot be sold.

5. All construction must be diligently pursued to completion within a reasonable period. No building shall be occupied for living purposes which is not functionally complete in detail as to the exterior, nor shall any building materials, paint or building equipment be exposed to the public view if occupied as a dwelling. No structure of a temporary character, trailer basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

Section 4. Antennas. No outside television or radio aerial or antenna, or other aerial or antenna, for reception or transmission, shall be maintained on the exterior of any lot, living unit, or the common area without the prior written consent of the Board or the Architectural Control Committee.

Section 5. Pets. No member or resident shall keep or maintain upon a lot, within a living unit or upon the Common Area any animals, birds or pets of any kind, except for generally recognized domestic household pets, provided, however, that such pets shall not be bred, kept or maintained for 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 member 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 Board 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 Living Unit) any such pet or pets when the Board determines such action to be in the best interest, well being and enjoyment of any or all of the members and/or residents of Fairway Oaks Subdivision.

Section 6. Signs. No sign or signs of any kind shall be erected, posted or displayed to the public view upon any lot, living unit or any other portion of the properties, without the prior written consent of the Board or the Architectural Standards Committee, except street signs and other identification signs authorized or installed by the Association or the Declarant.

Section 7. Parking and Storage of Vehicles. 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 area, 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 this section, the Board shall have the power and authority from time to time to adopt additional rules regarding the parking and storage of vehicles.

Section 8. Garbage and Refuse Disposal. No Owner, occupant or tenant of any lot or living unit shall store, keep, deposit, or leave any garbage or rubbish, or any other junk or waste materials on any lot or on any other part of the properties, except such garbage and rubbish which shall necessarily accumulate from the last garbage and rubbish collection, provided any such garbage shall be kept in sanitary containers which shall be of the type and size designated by the Association, and provided further that such containers and rubbish shall not be permitted to remain in public view except on days of collection.

Section 9. Additional Rules. From time to time the Board 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 Members, tenants, guests and invitees. Such additional rules may only be adopted or amended by a two-thirds vote of the Board, following a hearing for which due notice has been provided to all Members. All such additional rules and any subsequent amendment thereto shall be placed in the Book of Resolutions and furnished in writing to all members prior to such rules effective date, and shall

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be binding on all Members, except where expressly provided otherwise in such rule.

Section 10. Exceptions. The Board may issue temporary permits to except any prohibitions expressed or implied by this Article IX, provided the Board can show good cause and acts in accordance with adopted guidelines and procedures which are in keeping with the purposes and intent of this declaration. Notwithstanding any provisions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and the builder or builders (if other than Declarant) of residences to maintain and carry on all activities pertaining to such construction, during the period of construction and sale of the Lots or residences, upon such portion of the Common Area as the Declarant may deem necessary. So long as the Developer or participating builders are engaged in developing or improving any portion of the properties, such persons shall be exempted from rules affecting movement, dispositions and storage of building materials and equipment, erection and maintenance of directional and promotional signs and conduct of sales activities. Such exemption shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety cleanliness and general appearance of the properties.

## ARTICLE X

### 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 death of persons, and property damage, in such limits as the Board shall deem desirable, and workmen's compensation insurance and such other liability insurance as it may deem desirable, insuring the Association its Directors, officers, committee members, employees, and agents from liability in connection with the Common Areas, improvements located thereon, and other real and personal property of the Association, and insuring the Directors, officers and committee members of the Association from liability for good faith acts or omissions beyond the scope of their respective authorities. Such insurance coverage shall include cross liability claims of one (1) or more insured parties against other insured parties. Premiums for all such insurance shall be common expenses of the Association.

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

## ARTICLE XI

### ENFORCEMENT AUTHORITY AND PROCEDURE

Section 1. Authority. The Board shall be authorized and empowered to (i) make and enforce reasonable rules and regulations governing the conduct, use and enjoyment of the properties; (ii) impose reasonable fines, which shall constitute a lien upon the lot of a member, and/or suspend such member's right to use the common areas and the right to vote, for not more than thirty (30) days, or such time as a violation may continue and sixty (60) days thereafter for violation of this Declaration, the By-Laws or any rules and regulations which have been duly adopted by the Association; (iii) begin any action in any court on behalf of the Association and all owners to abate any nuisance, or otherwise to protect the values and integrity

of the community.

Section 2. Procedure. The Board shall not impose a fine, suspend voting, begin court action or infringe upon any other rights of a member or other occupant for violation of rules unless and until the following procedure is followed:

(a) Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:

- (i) The alleged violation;
- (ii) The action required to abate the violation, and
- (iii) A time period, not less than ten (10) days, during which the violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of sanction after notice and hearing if the violation is not continuing.

(b) Notice. Within twelve months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board shall serve the violator with written notice of a hearing to be held by the Board in executive session. The notice shall contain:

- (i) The nature of the alleged violation;
- (ii) The time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;
- (iii) An invitation to attend the hearing and produce any statement, evidence and witnesses on his or her behalf; and
- (iv) The proposed sanction to be imposed.

(c) Hearing. The hearing shall be held in executive session pursuant to this notice affording the member a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer or director who delivered such notice. The notice requirement shall be deemed satisfied if a violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

## ARTICLE XII

### GENERAL PROVISIONS

Section 1. Articles and By-Laws of Association. The Articles of Incorporation and By-Laws of the Association have been appended hereto and by this reference are incorporated in and made a part hereto.

Section 2. Severability. If any provisions of this Declaration or the By-Laws of the Association or any section, sentence, clause, phrase or word or the application thereof in any circumstance, is held invalid by the judgment or order of any court of general jurisdiction, the validity of the remainder of the Declaration and said By-Laws, and the validity of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby.

Section 3. Title-holding Trust. In the event title to any Parcel is conveyed to a title-holding trust, under the terms of which trust the powers of management, operation and control of said Parcel remain vested in the trust beneficiary or beneficiaries thereunder from time to time shall be deemed the Owner or Owners of said Parcel and subject to all of the terms and provisions of this Declaration and the By-Laws of the Association. No claims shall be made against any such title-holding trustee personally for payment of any entering membership fee, assessment, lien or other charge created by this Declaration or said By-Laws, and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such entering membership fee, assessment, lien or other charge, provided, however, that the amount of such entering membership fee, assessment, lien or other charge shall continue to be a charge and lien upon each Parcel conveyed to said title-holding trust, and the joint and several personal obligation of the beneficiaries of said trust at the time any entering member-

ship fee, assessment lien or other charge with respect to any such Parcel became due and payable, notwithstanding any transfers of the beneficial interest of said trust, or any transfers of title to any such Parcel.

Section 4. Notice of Sale, Lease or Mortgage. In the event an Owner sells, leases, mortgages, or "executes a contract for deed" of the Owner's property, the Owner will be required to give to the Association in writing the name of the purchaser, lessee or mortgagee of the property.

Section 5. Rights of Declarant - Indemnification. For such time as the Declarant or assigns shall hold Class "B" votes, or has an interest in any portion of the property described in Exhibit B, the Association shall not oppose the development activities thereon, and the Association shall indemnify Declarant against any and all expenses, including reasonable legal fees imposed upon the Declarant in connection with any action, suit or other proceeding (including settlement of any such suit or proceeding) to which he may be made a party, if such action or suit is brought by any member or group of members. Any such member or members who shall have a grievance of any kind or nature against the Declarant in respect to the properties or the Development thereof, shall file such grievance in writing with the Association.

(a) Hearing. If the Board determines the grievance to be a matter of sufficient substance it shall give not less than a ten (10) day written notice to Declarant, outlining the nature of the grievance and the name or names of the member or members who have filed such grievance, and establishing the time and date of a hearing to be conducted by the Board, in executive session, with each of the grieved parties in attendance.

(b) Professionals Appointed. If the parties fail to mutually agree upon a solution of the matter, the Board upon behalf of such member or members, and the Declarant shall each select a professional as their respective representatives to analyze the area or areas of contention and to make recommendations at a subsequent hearing in executive session, upon no less than ten (10) days written notice.

(c) Arbitration. If the professionals are unable to resolve the matter, it shall then be submitted to the American Arbitration Association for settlement, which determination shall become final and binding upon the parties.

(d) Protection of Values. The provisions of this Section 5 are for the benefit of the Declarant and all owners and members as a vital means of avoiding adverse publicity associated with legal action and court proceedings which can diminish sale and resale values of all lots and homes within the properties.

Section 6. Amendments. The covenants and restrictions of this Declaration may be amended by an instrument signed by not less than seventy-five (75%) percent of the Class "A" and "B" votes. Any amendment must be properly recorded in the public records of Sangamon County, Illinois.

Section 7. Duration. The covenants and restrictions of this Declaration shall run and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless at the expiration of any such period the covenants and restrictions are expressly terminated by an instrument signed by Owners of not less than seventy-five (75%) percent of the Lots. A termination must be approved by a Resolution of the City Council of the City of Springfield, Illinois and be recorded in order to become effective.

Section 8. Exculpatory Clause. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Trustee which in form purporting to be the representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal representatives, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally, but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability

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RECORDED

*J/B*

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*Mary Ann Linnell*

RECORDER, SANGAMON CO., IL.

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