

ORDINANCE NO. 2000-09-104

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF URBANA AND TATMAN/HORVE, L.L.C. FOR THE KINCH/FLORIDA RESIDENTIAL DEVELOPMENT ("FAIRWAY ESTATES")

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That an Agreement by and between the City of Urbana and Tatman/Horve, L.L.C., in the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

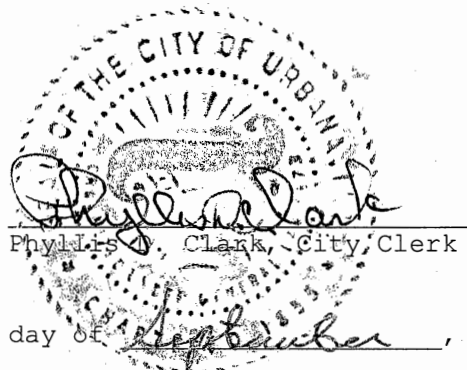
Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this 5th day of September, 2000.

AYES: Hayes, Huth, Kearns, Patt, Taylor, Whelan, Wyman

NAYS:

ABSTAINS:



APPROVED by the Mayor this 11th day of September,

2000.

Tod Satterthwaite
Tod Satterthwaite, Mayor

**KINCH/FLORIDA RESIDENTIAL DEVELOPMENT
("FAIRWAY ESTATES")**

DEVELOPMENT AGREEMENT

by and between

THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

and

TATMAN/HORVE, L.L.C.

Dated September 5, 2000

Document Prepared by:

**City of Urbana
400 South Vine Street
Urbana, Illinois 61801**

THIS DEVELOPMENT AGREEMENT (including attachments and exhibits, and referred to hereinafter as the "**Agreement**") shall be effective as of the date executed by the Mayor of the City of Urbana, and is by and between the City of Urbana, an Illinois home-rule municipality, in Champaign County, Illinois (the "City"), and Tatman/Horve, L.L.C. (hereinafter referred to as the "Developer").

NOW, THEREFORE, for and in consideration of the mutual obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer hereby agree as follows:

RECITALS

WHEREAS, as a result of previous development agreements with a former owner, the City does own 18.51 acres of land in three tracts at 1504 South Kinch Street, Urbana, Illinois located generally at the eastern terminus of Florida Avenue and southern terminus of Kinch Street described more particularly in Exhibit A and referred to hereafter as the "Site"; and

WHEREAS, the Site is currently undeveloped and is characterized by poor stormwater drainage conditions and overgrown vegetation posing a maintenance burden upon the City; and

WHEREAS, the City desires to have the Site developed with residential uses consistent with the goals and objectives of the Urbana Comprehensive Plan and involving the construction of collector and arterial streets necessary to improve public safety, access, and convenience for the general public at this location; and

WHEREAS, the City issued a Request for Proposals to developers on May 15, 2000 requesting written proposals for development of the Site consistent with a number of requirements and criteria as set forth in the proposal, including the following:

1. Development of a residential neighborhood that is compatible with existing and planned developments surrounding the site;
2. Eastward extension of Florida Avenue as a minor arterial street to connect with the future Smith Road east of the Site, including the construction of related infrastructure improvements (e.g., sidewalks, street lights, curb, and gutter), in accordance with the alignment and specifications provided by the City's Engineering Division and with the standards of the Urbana Subdivision and Land Development Code. Driveway access should not front onto Florida Avenue, as it is a limited access minor arterial;
3. Extension and connection of Kinch Street to Florida Avenue, including the construction of related infrastructure improvements (e.g., sidewalks, curb, and gutter) in accordance with the alignment and specifications provided by the City's Engineering Division and with the standards of the Urbana Subdivision and Land Development Code;
4. Consideration of connections to stub streets to the north (Hillside Drive and Greenridge Drive) as well as to future Smith Road to the east. The integrity, function, and safety of areawide circulation should be considered in the proposed layout;
5. Construction of public utilities necessary to provide adequate service to the site, consistent with the requirements of service providers and with the standards of the Urbana Subdivision and Land Development Code;
6. Provision of necessary stormwater conveyance and detention facilities, consistent with the requirements of the Urbana Subdivision and Land Development Code. Proposed layout should consider site topography and drainage features and connection to surrounding stormwater drainage facilities;
7. Conformance to the Urbana Zoning Ordinance requirements for the R-2 and R-3 Districts;
8. Conformance to the requirements of the Urbana Subdivision and Land Development Code, including preparation of Preliminary and Final Plat documents;
9. Optional consideration of additional off-site construction of Florida Avenue eastward to connect to Smith Road extended and possibly beyond. Such construction would be in conjunction with the adjoining property owner; and

10. Optional consideration of off-site construction of Smith Road to the east of the Site in conjunction with the adjoining property owner.

WHEREAS, the Developer submitted a response to the Request for Proposals on July 14, 2000 with a proposal to develop 48 single-family and one two-family residential lots and associated infrastructure at the Site in a general layout as presented in Exhibit B and referred to hereinafter as the “Development”; and

WHEREAS, as set forth in their proposal, the Developer proposes to construct all infrastructure necessary for the Development, including construction of Kinch Street and other local roads and necessary storm sewers and stormwater detention, and with the exception of the construction of Florida Avenue which shall be the responsibility of the City; and

WHEREAS, a proposal review committee set forth by the Request for Proposals reviewed the submitted proposals and found that the Developer’s proposal best met the requirements and criteria of the Request; and

WHEREAS, the City Council of the City on September 5, 2000 adopted Ordinance No. 2000-09-104, entitled “An Ordinance Approving a Development Agreement By and Between the City of Urbana, Champaign County, Illinois and Tatman/Horve, L.L.C. for the Kinch/Florida Residential Development (“Fairway Estates”)”.

DEVELOPMENT AGREEMENT

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. For purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meaning provided from place to place herein, including as follows:

"City" means the City of Urbana, Champaign County, Illinois.

"Corporate Authorities" means the City Council of the City of Urbana, Illinois.

"Developer" means Tatman/Horve, L.L.C.

"Development" means the proposal by the Developer to build 49 residential lots and associated infrastructure as set forth in the Developer's proposal dated July 14, 2000 and as illustrated in the general layout shown in Exhibit B.

"Parties" means, collectively, the City and the Developer.

"Proposal" means the Proposal to Develop Kinch/Florida Residential Development, "Fairway Estates" submitted by Developers Paul Tatman and Steve Horve to the City on July 14, 2000.

"Public Improvements" means Florida Avenue, Kinch Street, local streets, sanitary sewers, storm sewers, stormwater detention and other infrastructure constructed within the Development.

"Request for Proposals" means the Request for Proposals for the Kinch/Florida Residential Development prepared and issued by the City of Urbana Department of Community Development Services on May 15, 2000.

"Site" means the 18.51-acre property in the vicinity of the northwest corner of Kinch Street and Florida Avenue as described in Exhibit A.

"Site Plan" means the general layout for platting of the proposed Development as illustrated in Exhibit B.

“**Subdivision and Land Development Code**” means Chapter 21 of the Code of Ordinances, City of Urbana, Illinois entitled “the Urbana Subdivision and Land Development Code”, as adopted on November 21, 1988 and subsequently amended.

Section 1.2 Construction. This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- (a) Definitions include both singular and plural.
- (b) Pronouns include both singular and plural and cover all genders.
- (c) Headings of sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- (d) All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the City. In order to induce the Developer to enter into this Agreement, the City hereby makes certain representations and warranties to the Developer, as follows:

Section 2.1.1 Organization and Standing. The City is a home rule municipality duly organized, validly existing and in good standing under the Constitution and laws of the State of Illinois.

Section 2.1.2 Power and Authority. The City has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder. And to the extent, if at all, anything to be done under this Agreement by the City which is not in

conformance with applicable Illinois State Statutes, the provisions of this Agreement shall control, it being the intention of the City to invoke its constitutional Home Rule powers and Article VII, Section 10 (Intergovernmental Cooperation) of the Illinois Constitution to support the provisions of this agreement.

Section 2.1.3 Validity. The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the City's Corporate Authorities. This Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms; however, such enforceability may be limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

Section 2.1.4 No Violation. Neither the execution nor the delivery of this Agreement or the performance of the City's agreements, obligations and undertakings hereunder will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of any agreement, rule, regulation, statute, ordinance, judgment, decree or other law by which the City may be bound.

Section 2.1.5 Governmental Consents and Approvals. No consent or approval by any governmental authority other than the City is required in connection with the execution and delivery by the City of this Agreement.

Section 2.2 Representations and Warranties of the Developer. In order to induce the City to enter into this Agreement, the Developer makes the following representations and warranties to the City:

Section 2.2.1 Organization. The Developer is a Limited Liability Corporation duly organized, validly existing and in good standing under the laws of the State of Illinois, and is duly qualified to transact business in Illinois.

Section 2.2.2 Power and Authority. The Developer has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings.

Section 2.2.3 Authorization and Enforceability. The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary corporate action on the part of the Developer. This Agreement is a legal, valid and binding agreement, obligation and undertaking of the Developer, enforceable against the Developer in accordance with its terms, except to the extent that such enforceability may be limited by law, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

Section 2.2.4 No Violation. Neither the execution nor the delivery or performance of this Agreement will conflict with, violate or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, or (with or without the giving of notice or the passage of time or both) entitle any Party to terminate or declare a default under any contract, agreement, lease, license or instrument or any rule, regulation, statute, ordinance, judicial decision, judgment, decree or other law to which the Developer is a party or by which the Developer or any of its assets may be bound.

Section 2.2.5 Consents. No consent or approval by any governmental authority or other person is required in connection with the execution and delivery by the Developer of this Agreement or the performance thereof by the Developer.

Section 2.2.6 No Proceedings or Judgments. There is no claim, action or proceeding now pending or to the best of its knowledge, threatened before any court, administrative or regulatory body, or governmental agency (a) to which the Developer is a party and (b) which will, or could, prevent the Developer's performance of its obligations under this Agreement.

Section 2.3 Disclaimer of Warranties. The City, the Owner and the Developer acknowledge that none has made any warranties to the other, except as set forth in this Agreement. Nothing has come to the attention of the Owner or Developer to question the assumptions or conclusions or other terms and the Developer assumes all risks in connection with the practical realization of any such private development.

ARTICLE III

CITY'S OBLIGATIONS

Section 3.1 Transfer of Property. The conveyance of the site (Exhibit "A") shall be made at the time the construction bond for the public improvements (except Florida Avenue) which are required by the Urbana Subdivision and Land Development Code is approved by the City. The construction bond shall be in the amount, and in the form required by the Urbana Subdivision and Land Development Code. If the Developer's obligations as set forth in Article IV are not fulfilled by the Developer or pursuant to the construction bond posted, the City may, after thirty (30) day's notice to the Developer, record the Quit Claim Deed provided by the Developer to the City contemporaneous with the conveyance of the site to Developer.

Within a reasonable time after the approval of this Agreement by the Urbana City Council, the City shall deliver to Developer a Commitment for Title Insurance issued by a title insurance company doing business in Champaign County, committing the title company to issue a policy in the usual form insuring title to the site in the City for the amount of \$25,000.00. The City shall pay the cost of providing title insurance as described herein. Permissible exceptions to title shall include only the lien of general taxes, and zoning laws and easements apparent or of record. If the title evidence discloses exceptions other than those permitted, Developer shall get written notice of such exceptions to Seller within a reasonable time. Seller shall have a

reasonable time to have such title exceptions removed. If the City is unable to cure such exception, then the Developer shall have the option to terminate this Agreement.

Section 3.2 Site Plan Approval. The City hereby approves the Site Plan attached as Exhibit B subject to the terms and conditions outlined herein. This Site Plan shall form the basis for subdivision platting of the property under the provisions of the Urbana Subdivision and Land Development Code.

Section 3.3 Subdivision Plat Approval. The Corporate Authorities agree to approve subdivision platting of the Development as generally shown in the Site Plan (Exhibit B) subject to the provisions of the Urbana Subdivision and Land Development Code, including consideration of a waiver to allow 28-foot wide local streets (as measured from back-of-curb to back-of-curb).

Section 3.4 Florida Avenue. The City agrees to pay for the engineering and construction of Florida Avenue as an urban arterial street along the south side of the Site as generally shown in Exhibit B. The City will reimburse the Developer for engineering fees up to 15% of the construction costs. Engineering fees shall include all surveying, design, testing services, plans and specifications, and construction inspection, engineering and staking for Florida Avenue. The Developer shall solicit at least three bids for Florida Avenue and the contract shall be awarded to the lowest, responsible bidder. The City Engineer shall approve the general contractor and the price prior to commencement of work. Such construction shall be completed within 24 months of the execution of this Agreement. The Developer's engineer and the City shall meet as necessary to develop an approved set of plans. Florida Avenue shall be constructed as an arterial consistent with the standards of the Urbana Land Development and Subdivision Code, except that temporary deferral of curb and gutter may be allowed at the City's discretion to permit phased construction of this improvement. Construction of Florida Avenue shall be at the City's expense, but shall be undertaken by the Developer as a part of the Development.

Section 3.5 Drainage Improvement Grant Assistance. The City agrees to apply \$33,750 in Project Impact grant funds toward drainage improvements necessary for this Development by means of a reimbursement payment to the Developer, subject to receipt of a request for this payment prior to April 2001 and upon the submission of proper receipts and documentation to the City of Urbana Comptroller. The drainage improvements eligible for this assistance include connection of an existing 48-inch diameter storm sewer to an existing 54-inch St. Joseph Drainage District storm sewer via a stormwater detention basin, as shown in Exhibit B. All storm sewer and inlet work associated with the Florida Avenue improvements shall be paid by the City per Section 3.4. The City further agrees to conduct environmental review and other processing requirements of this grant fund. If request for payment is not received by April 2001, such funds may not be available and the Developer will be responsible for payment of all costs of drainage improvements.

Section 3.6 Acceptance of Public Improvements. Upon completion of construction of the Development, the City agrees to accept all Public Improvements associated with the Development, including streets, sidewalks, and utilities, under the terms and provisions of the Urbana Subdivision and Land Development Code.

Section 3.7 Engineering Assistance. The City agrees to provide an electronic version of the layout shown in Exhibit B to the Developer for purposes of assisting the Developer's Engineer in preparing subdivision plats for the Development.

Section 3.8 Marketing Assistance. The City agrees to provide assistance in marketing the Development to potential homebuyers. Such assistance shall include City participation in sales events and inclusion of the Development in newsletters and other communication and development incentive tools utilized by the Community Development Department of the City. The City further agrees to budget a minimum of \$1,000 toward marketing efforts for the Development.

ARTICLE IV

DEVELOPER'S OBLIGATIONS

Section 4.1 Agreement to Accept Property and Construct the Development. The Developer agrees to accept title to the Site (at such time as construction bonds are posted for the Development under the provisions of the Urbana Subdivision and Land Development Code) and to construct the Development in the form of a high quality residential subdivision to include 49 single-family residences and one duplex and associated infrastructure, as generally illustrated in Exhibit B, and in conformance to the Urbana Subdivision and Land Development Code.

Section 4.2 Site Plan Compliance. The Developer agrees to develop the Development in substantial conformance with the Site Plan attached in Exhibit B and referenced herein.

Section 4.3 Subdivision Plat Preparation. The Developer agrees to prepare Preliminary and Final Plats for the Development in substantial conformance with the layout shown in the Site Plan attached in Exhibit B and in compliance with the Urbana Subdivision and Land Development Code. The Developer agrees to complete Final Platting of all lots in the Development within 24 months from execution of this Agreement. An extension of 12 months or less from this timing requirement shall be authorized upon written agreement by the City.

Section 4.4 Public Improvements. The Developer agrees to construct all Public Improvements shown on the Site Plan in Exhibit B and necessary for the Development, including Florida Avenue, Kinch Street and other local streets, storm sewer improvements, stormwater detention, and other utilities, in conformance with the development standards contained in the Urbana Subdivision and Land Development Code. As set forth in Article III of this Agreement, the City shall reimburse the Developer for construction of Florida Avenue and shall provide Stormwater Drainage Improvement grant assistance.

Section 4.5 Kinch Street. The Developer agrees to construct Kinch Street as a collector street consistent with the standards of the Urbana Land Development and Subdivision Code, with a width of 31 feet, as measured from the backs-of-curb.

Section 4.6 Local Streets. The Developer agrees to construct the streets within the Development as local streets consistent with the standards of the Urbana Land Development and Subdivision Code, except that a waiver to allow a 28-foot wide street, as measured from the backs-of-curb, shall be considered by the Corporate Authorities.

Section 4.7 Drainage Improvement Grant Assistance. The Developer agrees to apply to the City for \$33,750 in Project Impact grant funds toward drainage improvements necessary for this Development prior to April 2001 and to submit proper receipts and documentation to the City of Urbana Comptroller. Eligible drainage improvements include connection of an existing 48-inch diameter storm sewer to an existing 54-inch diameter sewer via a stormwater detention basin, all as shown on Exhibit B. If proper request for payment is not received by April 2001, such funds may not be available and the Developer will be responsible for payment of all costs of drainage improvements.

Section 4.8 Invoices and Change Orders. The Developer shall make all payments to the construction contractor, engineer, and their respective subcontractors and subconsultants, material suppliers, etc. Developer shall invoice the City in accordance with the cost described in Section 3.4 and Section 3.5. Payments shall be made to the Developer within thirty (30) days after the City receives the invoices. The Developer shall provide reasonable documentation to the City regarding the actual cost of the work as costs are incurred and submit invoices based upon percentage of completion, less a five percent retainage pending final completion. Any change orders for work other than that approved per Section 3.4 shall first be approved by the City Engineer. Failure to do so may result in no compensation by the City for work performed. Lien waivers must be submitted prior to final payment.

Section 4.9 Dedication of Improvements and Easements. The Developer agrees to dedicate Public Improvements, including public streets and right-of-way, and to provide necessary

easements for utilities as a part of the subdivision plat(s) for the Development. However, the proposed stormwater detention basin shall be the responsibility of the future Homeowner's Association for the Development and shall not be dedicated to the City.

Section 4.10 Timing of Construction. The Developer agrees to complete construction of Kinch Street within 12 months and construction of Florida Avenue within 24 months from execution of this Agreement. An extension of 12 months or less from any of these timing requirements shall be authorized upon written agreement by the City.

Section 4.11 Speculative Homes. The Developer agrees to construct a minimum of six speculative homes as models at the Site within 12 months from execution of this Agreement applying a variety of floor plans and elevations. Possible floor plans and elevations to be used shall include those presented in the Proposal as well as any additional floor plans and elevations that may be selected by the Developer. An extension of 12 months or less from this timing requirement shall be authorized upon written agreement by the City. The speculative homes and all other homes approved in the Development by the Architectural Control Committee required herein shall have a minimum square footage areas of 1100 for single-story single family homes and 1500 square feet for two-story single family homes. All homes shall include garages and driveways.

Section 4.12 Subdivision Covenants. The Developer agrees to adopt subdivision covenants for the Development generally consistent with those included in the Proposal, and attached hereto as Exhibit C, including limitations on building type, architectural control, and dwelling quality and size, except that such covenants shall require minimum square footage areas of 1100 for single-story single family homes and 1500 square feet for two-story single family homes. The Developer agrees to submit such subdivision covenants to staff of the City for review and approval as a part of the subdivision platting process.

Section 4.13 Architectural Control Committee. The Developer agrees to establish an Architectural Control Committee as a part of the subdivision covenants for the Development. Such

Committee shall include the Developers and shall review and approve all buildings in the Development with respect to quality of workmanship and material, harmony of exterior design with proposed and existing structures, and as to location with respect to adjoining properties, topography, trees and shrubs, and finish grade elevations.

Section 4.14 Homeowner's Association. The Developer agrees to establish a Homeowner's Association for the Development as a part of the subdivision covenants. Through these covenants, the Homeowner's Association shall be made responsible for the proper functioning and maintenance of the detention basin proposed on the Site.

Section 4.15 Engineering Plans. The Developer agrees to have construction plans for the Public Improvements of the Development prepared and sealed by a professional engineer licensed in the State of Illinois in compliance with the Urbana Subdivision and Land Development Code. Such plans shall be subject to review and approval by the City Engineer.

Section 4.16 Performance Bond. The Developer agrees to post a performance bond for the public improvements associated with the Development in conformance with the Urbana Subdivision and Land Development Code. Calculation of the performance bond amount may exclude the cost of construction of Florida Avenue, since this cost will be the responsibility of the City as set forth in Article III of this Agreement.

Section 4.17 Marketing. The Developer agrees to apply due diligence in marketing the Development to prospective homebuyers. The Developer agrees to request City assistance as appropriate and necessary in marketing efforts as set forth in Article IV of this Agreement.

ARTICLE V

DEFAULTS AND REMEDIES

Section 5.1 Defaults - Rights to Cure. Failure or delay by either Party to timely perform any term or provision of this Agreement shall constitute a default under this Agreement. The Party who so fails or delays must, upon receipt of written notice of the existence of such default by the Party defaulted upon, immediately commence to cure, correct or remedy such default and thereafter proceed with diligence to cure such default. The Party claiming such default shall give written notice of the alleged default to the other Party. Except as required to protect against immediate, irreparable harm, the Party asserting a default may not institute proceedings against the other Party until thirty (30) days after having given such notice. If such default is cured within such thirty (30) day period, the default shall not be deemed to constitute a breach of this Agreement. If the default is one which can not reasonably be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of such default, so long as there is diligent proceeding to cure such default. If such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. However, a default not cured as provided above shall constitute a breach of this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1 Entire Contract and Amendments. This Agreement (together with the Exhibits attached hereto) is the entire contract between the City and the Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the City and the Developer, and may not be modified or amended except by a written instrument executed by the Parties.

Section 6.2 Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City and the Developer and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to the City or the Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the City or the Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

Section 6.3 Counterparts. Any number of counterparts of this Agreement may be executed and delivered and each shall be considered an original and together they shall constitute one agreement.

Section 6.4 Special and Limited Obligation. This Agreement shall constitute special and limited obligation of the City according to the terms hereof. This Agreement shall never constitute a general obligation of the City to which its credit, resources or general taxing power are pledged.

Section 6.5 Legally Valid and Binding. This Agreement shall constitute a legally valid and binding obligation of the City according to the terms hereof.

Section 6.6 Waiver. Any Party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

Section 6.7 Cooperation and Further Assurances. The City and the Developer each covenants and agrees that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City or the Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

Section 6.8 Notices. All notices, demands, requests, consents, approvals or other communications or instruments required or otherwise given under this Agreement shall be in writing and shall be executed by the party or an officer, agent or attorney of the party, and shall be deemed to have been effective as of the date of actual delivery, if delivered personally or by telecommunication actually received, or as of the third (3rd) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows (unless another address is provided in writing):

To the Developer:

Paul Tatman
Tatman/Horve, L.L.C.
3103 Tatman Court, Suite 104
Urbana, Illinois 61802
Office Phone: (217) 365-9198
Mobile Phone: (217) 202-0801
Fax: (217) 365-9367

And

Steve Horve
Tatman/Horve, L.L.C.
330 Marion Avenue
Forsyth, Illinois 62535
Office Phone: (217) 875-1362
Mobile Phone: (217) 454-5446
Fax: (217) 875-1748

To the City:

Bruce K. Walden, Chief Administrative Officer
City of Urbana, Illinois
400 South Vine Street
Urbana, Illinois 61801
Phone: (217) 384-2454
Fax: (217) 384-2426

With a copy to:

Legal Division
400 South Vine Street
Urbana, Illinois 61801
Phone: (217) 384-2464
Fax: (217) 384-2460

Section 6.9 Successors in Interest. This Agreement shall only be binding upon and inure to the benefit of the Parties hereto and their respectively authorized successors and assigns.

Section 6.10 No Joint Venture, Agency or Partnership Created. Nothing in this Agreement nor any actions of the Parties to this Agreement shall be construed by the Parties or any third person to create the relationship of a partnership, agency or joint venture between or among such Parties.

Section 6.11 Illinois Law. This Agreement shall be construed and interpreted under the laws of the State of Illinois.

Section 6.12 Costs and Expenses. If either Party defaults in the performance of its obligations hereunder, the Parties agree that the defaulting Party shall pay the non-defaulting Party's costs of enforcing the defaulting Party's obligations under this Agreement, including but not limited to attorneys' fees and expenses.

Section 6.13 No Personal Liability of Officials of City. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, officer, agent, employee or attorney of the City, in his or her individual capacity, and neither the members of the Corporate Authorities nor any official of the City shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution, delivery and performance of this Agreement.

Section 6.14 Repealer. To the extent that any ordinance, resolution, rule, order or provision of the City's code of ordinances or any part thereof is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling.

Section 6.15 Term. This Agreement shall remain in full force and effect until final acceptance of all public improvements associated with the Development and return of performance bond to the Developer, including any maintenance bond. Provisions of this Agreement pertaining to Subdivision Covenants shall remain in force until such time as all homes within the Development are fully constructed.

Section 6.16 Eligibility. If the Developer does not gain title to the Site under the provisions of this Agreement as described herein, the Developer will no longer be considered the developer of said site and is no longer eligible for the benefits set forth herein.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed by their duly authorized officers as of the date set forth above.

CITY OF URBANA, ILLINOIS

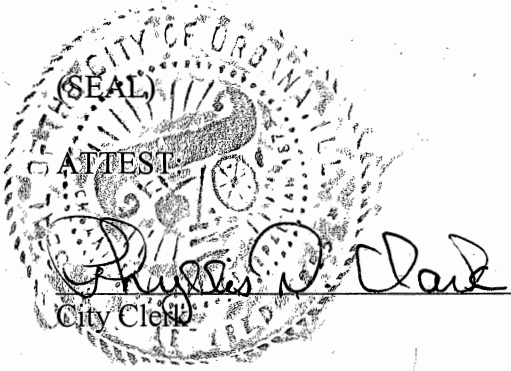
By: Terl Sattelluato
Mayor

Date: 9/14/00

TATMAN/HORVE, L.L.C.

By: [Signature]
Its: Pres.

Date: 9-22-00



ATTEST:

Vivian P Petrotte
Notary Public

Date: 9.22.00

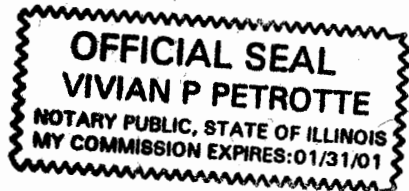
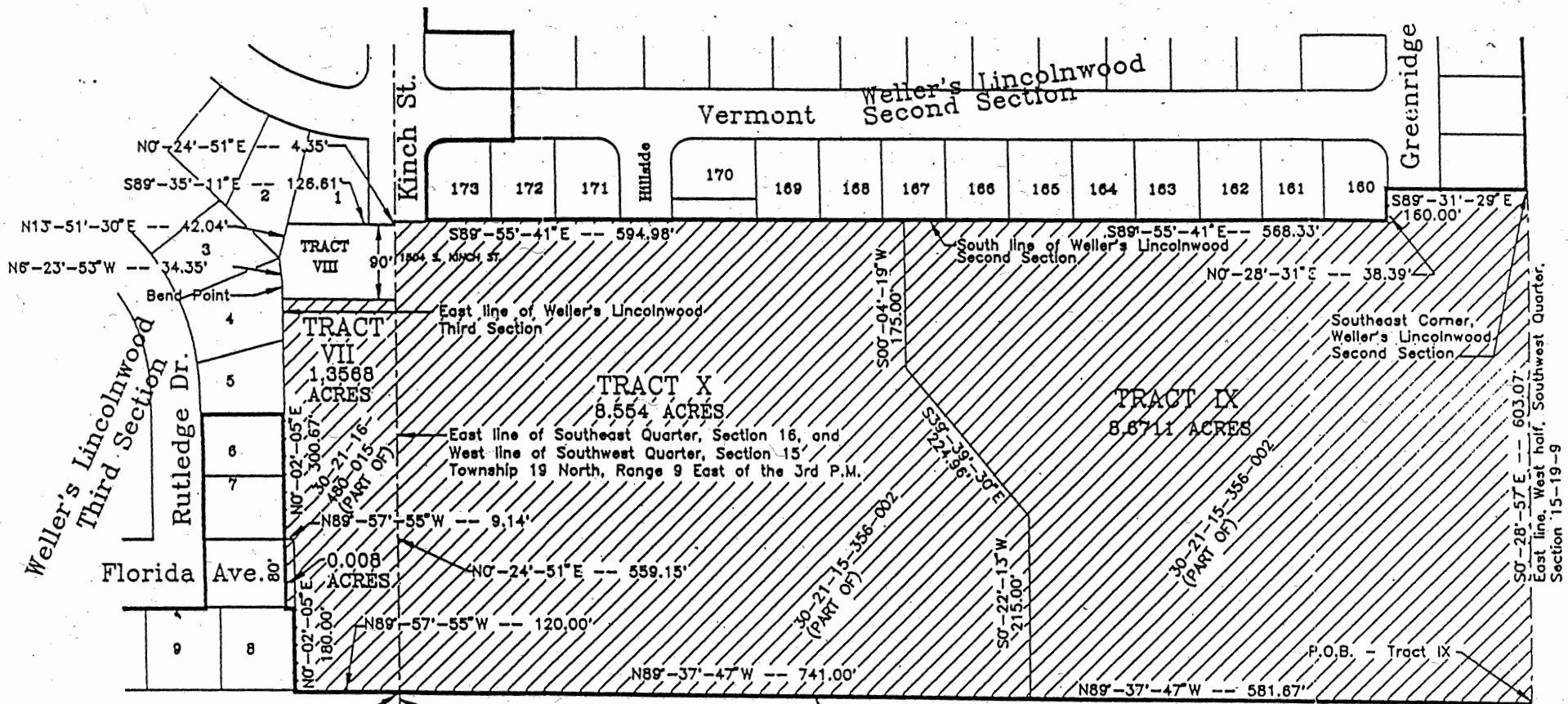


Exhibit A

Legal Description

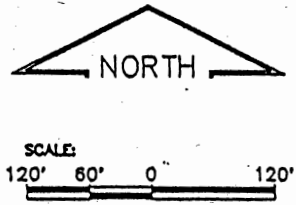




P.O.B. - Tract VII and Tract X
 Southeast Corner of Section 16 and Southwest
 Corner of Section 15, T 19 N, R 9 E, of the
 3rd P.M.

Apparent old fence line as described
 in a document filed in Book 788 at Page 371
 in the Office of the Recorder, Champaign Co. Illinois.

Southeast corner of the West Half of the
 Southwest Quarter of Section 15, T19N,
 R9E of the 3rd P.M.

MAP SHOWING AREA ANNEXED BY
 CITY ORDINANCE NO. 9192-104
 CITY OF URBANA, ILLINOIS
 CHAMPAIGN COUNTY
 DATE: JUNE 23, 1992



AREA OF ANNEXATION: 
 NEW CITY LIMITS: 
 DRAWN BY: K.L.H. 8/30/92
 CHECKED BY: B.W.F. 8/30/92

ENGINEERING
 DEPARTMENT

 ACTING CITY ENGINEER



TRACT VII

A part of the Southeast Quarter of Section 16, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, more particularly described as follows:

All of the following described tract except the North 90 feet of even width thereof:

Beginning on the East line of the Southeast Quarter of said Section 16 at a point 19.04 feet Northerly of the Southeast corner of said section; thence North $89^{\circ}-57'-55''$ West 120.00 feet to the Southeast corner of Lot 8 of Weller's Lincolnwood – Third Section as recorded in the Office of the Recorder of Champaign County in Plat Book Y at page 147; thence North $0^{\circ}-02'-05''$ East, the meridian being the same as used for said subdivision, 180.00 feet along the boundary of said subdivision; thence North $89^{\circ}-57'-53''$ West 9.14 feet to the Southeast corner of Lot 7 of said subdivision; thence North $0^{\circ}-02'-05''$ East 300.67 feet to a platted bend point; thence North $6^{\circ}-23'-53''$ West 34.35 feet to the Southeast corner of Lot 2 of said subdivision; thence North $13^{\circ}-51'-30''$ East 42.04 feet to the Southwest corner of Lot 1 of said subdivision; thence South $89^{\circ}-35'-11''$ East along the South line of said Lot 1 and the Eastward extension of said lot line 126.61 feet to the East line of the Southeast Quarter of said Section 16; thence South $0^{\circ}-25'-51''$ West 554.8 feet to the Point of Beginning, containing 1.3568 acres, more or less, all situated in the County of Champaign, State of Illinois.

Together with the following described adjacent public right-of-way which is by operation of law, automatically annexed with the adoption of this annexation ordinance pertaining to this parcel:

A portion of E. Florida Avenue Right-of-way encompassing 0.008 acres (364.39 sq. ft.), more or less.

TRACT IX

A part of the Southwest Quarter of Section 15, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, more particularly described as follows:

Commencing at the Southeast corner of the West Half of said Southwest Quarter; thence, N $0^{\circ}-43'-10''$ W, along the East line of said West Half, 19.04 feet, to an old fence line as described in a document filed in Book 768 at Page 371 in the Office of the Recorder, Champaign County, Illinois, said point also being the Point of Beginning; thence, N $89^{\circ}-37'-47''$ W, along said fence line, 581.67 feet; thence, N $0^{\circ}-22'-13''$ E, 215.00 feet; thence, N $39^{\circ}-39'-30''$ W, 224.96 feet; thence, N $0^{\circ}-04'-19''$ E, 175.00 feet, to the South line of Weller's Lincolnwood Second Section; thence, S $89^{\circ}-55'-41''$ E, along said South line, 568.33 feet, to the Southeast corner of Lot 160 of Weller's Lincolnwood Second Section; thence, N $0^{\circ}-28'-31''$ E, along the East line of said Lot 160, 38.39 feet; thence, S

89°-31'-29" E, along the South line of Weller's Lincolnwood Second Section, 160.00 feet, to the Southeast corner of Weller's Lincolnwood Second Section, said point also being on the East line of the West Half of the Southwest Quarter of said Section 15; thence, S 0° 28'-57" E, 603.07 feet to the Point of Beginning, containing 8.554 acres, more or less, all situated in Champaign County, Illinois.

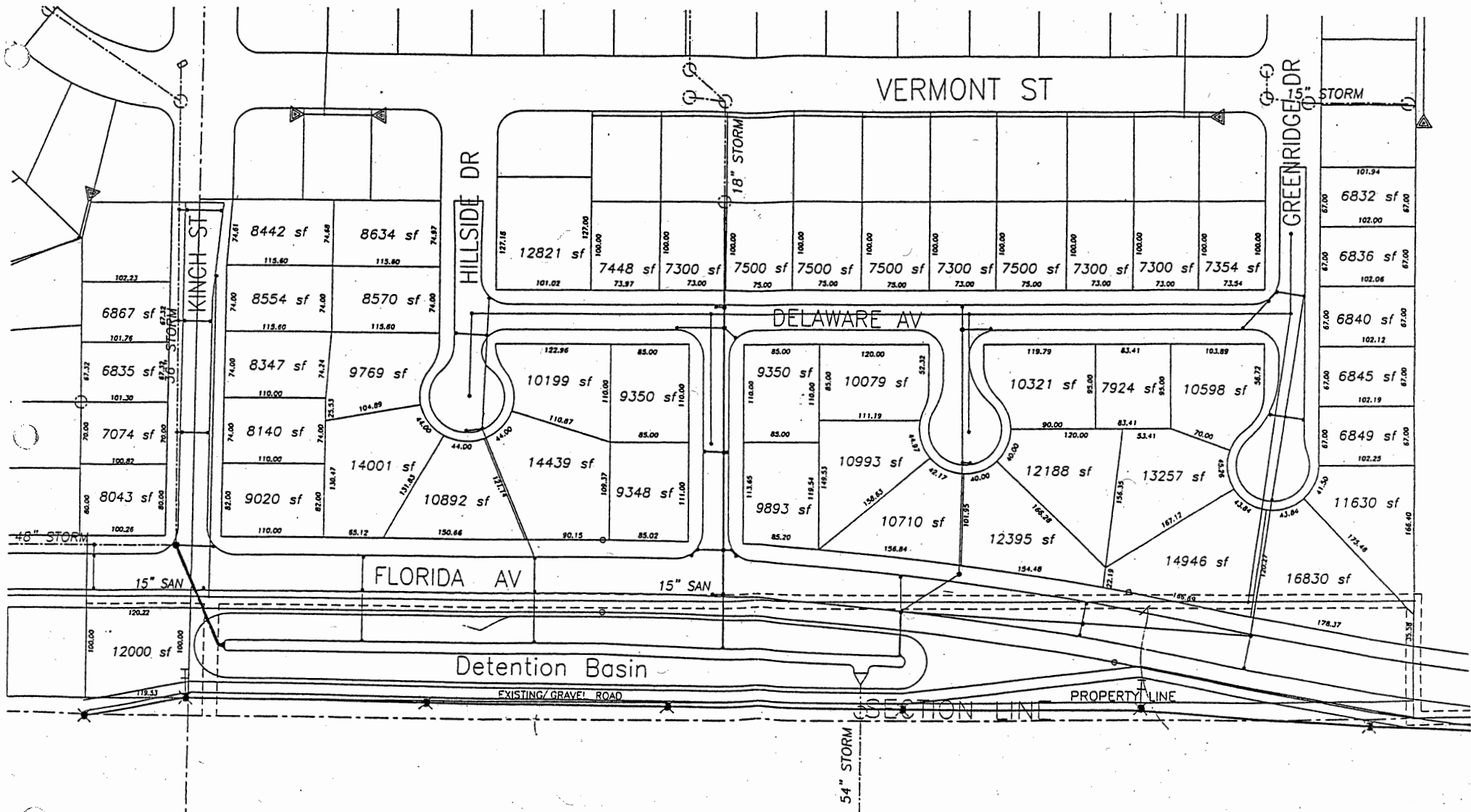
TRACT X

A part of the Southwest Quarter of Section 15, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, more particularly described as follows:

Commencing at the Southwest corner of said Section 15; thence, N 0°-24'-51" E, along the West line of said Southwest Quarter 19.04 feet, to an old fence line, as described in a document filed in Book 768 at Page 371 in the Office of the Recorder, Champaign County, Illinois, said point being the Point of Beginning; thence, continuing N 0°-24'-51" E, along said West line, 559.15 feet, to the South line of Weller's Lincolnwood Second Section, extended; thence, S 89°-55'-41" E, along said South line, 594.98 feet; thence, S 0°-04'-19" W, 175.00, feet; thence, S 39°-39'-30" E. 224.96 feet; thence, S 0°-22'-13" W, 215.00 feet, to an old fence line, as described in a document filed in Book 768 at Page 371 in the Office of the Recorder, Champaign County, Illinois; thence, N 89°-37'-47" W, along said fence line, 741.00 feet, to the Point of Beginning, containing 8.6711 acres, more or less, all situated in the County of Champaign, State of Illinois.

Exhibit B

Proposed Site Plan



6867 sf
6835 sf
7074 sf
8043 sf

8442 sf	8634 sf
8554 sf	8570 sf
8347 sf	9769 sf
8140 sf	14001 sf
9020 sf	10892 sf

12821 sf	7448 sf	7300 sf	7500 sf	7500 sf	7500 sf	7300 sf	7500 sf	7300 sf	7300 sf	7354 sf
----------	---------	---------	---------	---------	---------	---------	---------	---------	---------	---------

10199 sf	9350 sf
14439 sf	9348 sf

9350 sf	10079 sf
10993 sf	10710 sf
9893 sf	12395 sf

10321 sf	7924 sf	10598 sf
12188 sf	13257 sf	
12395 sf	14946 sf	

6832 sf
6836 sf
6840 sf
6845 sf
6849 sf
11630 sf
16830 sf

Exhibit C

Example Subdivision Covenants

SAMPLE

OWNER'S DECLARATION

BE IT KNOWN THAT HORVE BUILDERS, A PARTNERSHIP, being the owner of the premises described in the preceding Surveyor's Certificate, situated in the County of Macon and State of Illinois, does hereby subdivide said tract of land and does hereby make the attached plat of said subdivision for the purpose of the sale of the several lots therein by number as designated on said plat, and does hereby designate the subdivision as "EAGLE RIDGE ESTATES THIRD ADDITION", and the same shall be so known hereafter; and does hereby dedicate to the public to be used as public highways or streets and also for sewers, watermains, drainage facilities and public utility purposes, that portion of the above described premises shown on the plat as street or boulevards; and does hereby dedicate for sewers, watermains, drainage facilities and public utility purposes the various easement strips so designated on the plat as "Easement"; hereby waiving in such portions so dedicated all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois.

The following covenants and restrictions in their entirety shall apply to each and every lot in the subdivision:

PART A

RESIDENTIAL AREA COVENANTS

1. **LAND USE AND BUILDING TYPE:**

No lot shall be used except for residential purposes; no building shall be erected, altered, place, or permitted to remain on any lot other than one detached single family

dwelling not to exceed two and one-half stories in height and a private garage for not more than three cars. All construction shall conform to the Village of Forsyth Subdivision Ordinances and applicable building codes, including the construction of sidewalks across the front of each lot which shall be the responsibility of the lot owner to construct prior to the occupancy of any residence or within two years from date lot is first sold by the developer, whichever shall first occur.

2. ARCHITECTURAL CONTROL:

No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plot plan showing the location of the structures have been approved by the Architectural Control Committee as to quality of workmanship and material, harmony of exterior design with proposed and existing structures, and as to location with respect to adjoining properties, topography trees and shrubs, and finish grade elevation. No fence or wall shall be erected, placed or altered except on the rear of any lot unless similarly approved. Approval shall be as provided in part "B" hereof. No exterior TV antennas or satellite TV dishes shall be permitted.

The Architectural Control Committee shall be: Steve K. Horve, Jeff G.

Horve.

No liability of any sort shall extend to the Architectural Control Committee as a result of their approval of said plans.

3. DWELLING QUALITY AND SIZE:

The ground floor area of the main structure, exclusive of open porches and attached garages, shall be not less than 600 square feet for a dwelling of at least two-stories and all other dwellings shall have a minimum of 1000 square feet. All

construction shall be of new materials and of quality workmanship. Lot owner shall, within one year of construction of a residence plant at least two (2) trees on the lot within the area designated as "building setback" on the plat.

4. EASEMENT:

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. All electric distribution lines, telephone lines, or other utilities lines, whether within the easements shown on the plat or elsewhere in the Addition, shall be located beneath the surface of the ground. All buildings or outside facilities requiring electric, telephone or other utility service, shall be connected to and served by electric distribution lines, telephone lines, or other utility lines which are located beneath the surface of the ground.

A perpetual easement is hereby created over, under and across the area marked 'easement for public utilities' as an easement appurtenant to each lot in this subdivision for the installation, use, maintenance, repair and replacement of public utilities, including sewer, water, gas, electricity, telephone and cable television, with the right to use reasonable working space adjacent to said utility easement, and ways of access thereto, as needed during construction, repair or maintenance of said facilities. No trees, shrubbery, structures or materials shall be permitted to remain upon and within said utility easement which may damage or interfere with the installation, operation or maintenance of the utilities. It shall be the responsibility of the lot owner to insure that manhole covers and domestic service boxes shall be at grade level and shall not be covered by sod or other landscaping so as to be inaccessible to the Village of Forsyth or the Sanitary District.

Any cost incurred by the Village or Sanitary district in uncovering such facilities shall be the expense of the lot owner.

Drainage easements must remain open and graded to drain and that the Village has the right to remove any obstacles that may impede free flow of drainage.

All utilities serving this subdivision shall be installed underground and not otherwise whether located within said utility easement, on private easements elsewhere on the lots in said subdivision, or in the streets, except switch and meter boxes, service risers, transformers, regulators and similar equipment, and certain overhead electric transmission and distribution lines deemed necessary by the utility to connect the same to underground lines and wires. Each lot owner shall grant a written easement for such underground service when, because of the location thereof or other reasons, such easement is requested by the utility providing such service.

5. BUILDING LOCATION:

No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building set back lines shown on the recorded plat.

Buildings cannot block drainage from adjacent properties.

6. NUISANCES:

No obnoxious or offensive activity shall be carried on upon any lot, nor shall anything be done which may be or may become annoyances or nuisance to the neighborhood.

7. TEMPORARY STRUCTURES:

No structure of a temporary character, trailer, basement, tent, shack, garage or other building shall be used on any lot at any time as a residence, either temporarily or

permanently. No trailers, campers, motor homes or boats shall be permanently parked in the driveways of any residence for periods in excess of one week nor otherwise permanently stored on the premises unless contained in garages or other approved structures.

8. SIGNS:

No sign of any kind shall be displayed to the public view on a lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during a reasonable construction and sales period. An appropriate subdivision sign at the entrance to the addition shall be permitted.

9. LIVESTOCK AND POULTRY:

No animals, livestock, or poultry or any kind shall be raised, bred, or kept on any lot, except that dogs, cats, or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose.

10. GARBAGE AND REFUSE DISPOSAL:

No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste nor shall same be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

11. SURFACE WATER:

No down spout or surface water drain from any residence or garage shall be connected or drained into the sanitary sewer. All drains from sump pumps shall connect to storm sewers.

PART B

ARCHITECTURAL CONTROL COMMITTEE

1. The Architectural Control committee may designate a representative to act for it. In the event of the death or resignation of any member of the Committee the remaining members shall have full authority to designate a successor. Neither the members of the Committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenant. At any time the then recorded owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the Committee or to withdraw from the Committee or restore it to any or all of its powers and duties.
2. The Committee's approval or disapproval as required in these covenants shall be in writing. In the event the Committee or its designated representative fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or in any event if no suits to enjoin the construction has been required and the related covenants shall be deemed to have been fully complied with.

PART C

GENERAL PROVISIONS

1. TERM:

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the majority of

owners of the lots has been recorded, agreeing to change these covenants in whole or in part. A majority of owners shall be determined by counting one vote for the owner or the representative of the owner of each lot, and no fractional vote shall be allowed for adjoining footage representing a fraction of the adjoining lot.

2. ENFORCEMENT:

Enforcement shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

3. SEVERABILITY:

Invalidation of any of these covenants by judgment or Court Order, municipal, state or federal law, shall in no wise affect any of the other provisions which shall remain in full force and effect.

4. EXCULPATORY CLAUSE:

It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreement of said owner are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertakings and agreements by the owner or for the purpose or with the intention of binding said owner personally but are made and intended for the purpose of binding only that portion of the property specifically described herein, and this instrument is executed and delivered by said owner not in its own right, by solely in the exercise of the powers conferred upon it as such owner; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable HORVE BUILDERS A PARTNERSHIP on

account of this instrument or on account of any representation, covenant, undertaking or agreement of the said owner in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of May, 1999.

JEFF HORVE / STEVE K HORVE PARTNER

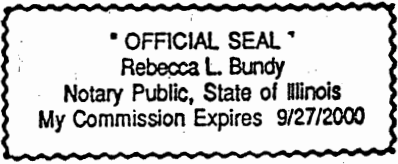
By: *Jeff G. Horve*
Jeff G. Horve / Steve K. Horve

STATE OF ILLINOIS)
)
) SS.
COUNTY OF MACON)

I, the undersigned, a Notary Public in and for said County and State aforesaid, do hereby certify, that Jeff G. Horve & Steve K. Horve, Owners, personally known to me to be the same person whose name if 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, and as directed by Jeff G. Horve and Steve K. Horve, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

GIVEN under my hand and Notarial Seal this 19th day of May, 1999.

Rebecca L Bundy
Notary Public



SCHOOL DISTRICT CERTIFICATE

This is to certify that we, Horve Builders, a Partnership, owner of the property herein described in the surveyor's certificate, which will be known as "EAGLE RIDGE ESTATES THIRD ADDITION", to the best of my knowledge, is located within the boundaries of the Village of Forsyth, Maroa-Forsyth Community School District #2 in Macon County.

DATED THIS 19th DAY of May, 1999

Jeff G. Horve
Jeff G. Horve, a Partner

STATE OF ILLINOIS)
)ss
COUNTY OF MACON)

I, Rebecca L. Bundy a Notary Public in and for the County and State aforesaid, do hereby certify that Jeff G. Horve, personally known to me to be the same person whose name is subscribed to the foregoing owner's statement, appeared before me, this day, in person and acknowledged the execution of this statement of this statement as their free and voluntary act.

Given under my hand and notarial seal this 19th day of May, 1999.

Rebecca L. Bundy

Notary Public

