

119030

SEP 25 P 2:52

VOLUME 93  
OF Misc.  
PAGE 770

  
Dave Little

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS  
AND RESTRICTIONS FOR  
TRI CON PARK SUBDIVISION**

This Declaration of Covenants, Conditions, Easements and Restrictions for Tri Con Park Subdivision (the "Declaration") is made this 20<sup>th</sup> day of September, 2001, by John H. Lunsford, or his successor in trust, as trustee under Declaration of Trust dated October 13, 1993 (the "JHL Trust") and Barbara A. Sweeney, Mary L. Rogers and Stephen L. Lunsford, as successor trustees to Mary L. Lunsford under Declaration of Trust dated October 13, 1993 (the "MLL Trust") (the JHL Trust and the MLL Trust together, "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of all of the lands contained in the area known as Tri Con Park Subdivision ("Tri Con Park"), as shown and described on the plat thereof recorded in Book 15 of Plats at page 1481 in the Office of the Recorder of Deeds in and for the County of Adams and State of Illinois (the "Plat"); and

WHEREAS, Tri Con Park consists of the following described real estate:

SEE EXHIBIT A ATTACHED HERETO  
AND MADE A PART HEREOF.

(collectively, the "Real Estate" or "Lots", and each individual parcel a "Lot"); and

WHEREAS, the Real Estate has received subdivision approval for the sale of the Lots, and accordingly, Declarant, in anticipation of such sales, wishes to impose on the Real Estate mutual and beneficial restrictions, covenants, conditions, easements and liens (the "Restrictions") under a general plan or scheme to maintain the Real Estate as a business park for commercial, business, warehousing and light industrial use.

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate shall be held, transferred, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following Restrictions, which are declared and agreed to be in furtherance of a plan for Tri Con Park as a business park and established by Declarant for the purpose of enhancing the value of Tri Con Park as a whole and each Lot which is a part thereof. All of the Restrictions shall run with the Real Estate and shall be binding upon the Declarant and upon all parties having

or acquiring any right, title or interest in the Real Estate or any Lot being a part thereof including, but not limited to, a purchaser under a contract for deed (such persons are sometimes herein referred to collectively as "Owners" or individually as "Owner").

I. General Purposes of Restrictions.

The Real Estate is hereby subjected to the Restrictions for the following purposes:

A. Proper Use. To insure the proper use and appropriate reimpovement and redevelopment of the Real Estate; to protect the Owners of the Lots in Tri Con Park from improper use, redevelopment or reimpovement of the Real Estate; and to prevent depreciation in the value of their Lots.

B. Hazardous and Danger Free Environment. To encourage use of the Real Estate and the redevelopment thereof in a manner which is free from danger of fire, explosion, toxic and obnoxious matter and other hazards, and from offensive noise, vibration, smoke, dust, odorous matter and other objectionable influences.

C. Preservation of Values. To conserve the value of the Lots and all buildings, structures and improvements located thereon (collectively, "Buildings").

D. Legal Compliance. To facilitate compliance with all applicable federal, state and local laws and regulations.

E. Maintenance of Buildings. To provide for the continuing care and maintenance of the Buildings on the Real Estate so that Tri Con Park may be and continue to be a location which provides an esthetically pleasing work place for the Owners, their tenants, employees and invitees.

F. Easement Rights. To establish and declare rights and privileges associated with certain easements, including specifically, but not limited to an access easement and utility easements, under, across and above the Real Estate as designated on the Plat of Easements as prepared by Klingner and Associates, P.C., being Exhibit "B" attached hereto and made a part hereof (the "Plat of Easements") for the purposes set forth thereon and herein and to subject the Owners of the Lots that may either be benefitted or burdened thereby to certain rights, obligations and conditions that shall govern the use, maintenance and repair of such easements.

II. Permissible Uses and Covenants.

A. Land Use. No Lot in Tri Con Park shall be used except for (i) light manufacturing, assembling, fabricating, warehousing, and the storing of goods and products; (ii) distributing and/or selling goods, products and services to businesses and commercial enterprises (as opposed to consumers); and, (iii) for other semi-industrial and commercial uses; provided, however, that the following uses, although not intended to be exhaustive, shall not be permissible in Tri Con Subdivision: retail restaurants, night clubs, bars or grills; except that each Owner may provide one cafeteria or food court for the use of his employees and visitors only; gambling, gaming or

betting parlors; high traffic retail sales or service businesses; auto body repair, painting, washing or reconditioning businesses; motels or hotels; adult book stores, motion picture theaters or massage parlors; tractor, trailer or bus storage yards or terminals; laboratories, being either medical, dental, research, experimental or testing; concrete block manufacturing or concrete ready mix plants; sodering and welding shops; public and community service uses, tire retreading, recapping and rebuilding, insecticides or fertilizer manufacturing, producing or blending; and residential occupancy.

B. Nuisances. No obnoxious or offensive activities shall be conducted upon the Real Estate, nor shall anything be done thereon which may be or become an annoyance or nuisance to the other Owners or occupants of Lots. No part of any Lot or Building located thereon shall be used in such a manner so as to constitute a nuisance to the occupants or Owners of any other Lot by way of creation of emission odors, gases, dust, smoke, noise, fumes, cinders, soot, vibrations, glare, radioactivity, waste materials or any other means or substances.

C. Legal Compliance. It shall be the sole responsibility and obligation of each Owner and its tenants, if any, to insure that all operations conducted on any Lot owned by such Owner are at all times in compliance with all applicable federal, state and local laws, regulations and ordinances, including, but not limited, to those relating to environmental matters such as the generation, emission, storage, discharge, release or disposal of hazardous or toxic waste or hazardous substances (collectively, "Pollutants"). The storage, use, generation of, release or disposal of any Pollutants on any Lot or Building located thereon by any Owner or occupant thereof shall be strictly prohibited unless such storage, use, generation, release or disposal is in strict compliance with all laws, statutes, rules and regulations related thereto.

D. Building Site Control. Declarant states that there presently exists three (3) Buildings on the Real Estate, one being located on each Lot. The Building on Lot 2 and the Building on Lot 3 share a common wall, provision for the use, maintenance and repair of which is provided in Section VIII herein. None of the existing Buildings shall be demolished, torn down, razed or structurally altered, reconstructed or a new Building constructed or built in replacement, substitution or in addition thereto unless the plans and specifications therefore have been approved by the Advisory Committee, consistent with the purposes set forth herein which approval shall not be unreasonably withheld. The Advisory Committee is also authorized to provide interpretations of these Restrictions for the benefit of Tri Con Park. The designation of the Advisory Committee, its procedures and duties shall be as provided in Section V.

E. Cooperation on Easements. The Advisory Committee, in cooperation with each Owner and tenant of any Lot agrees to coordinate and facilitate the planning, granting, executing, acknowledging and recording of all easements deemed necessary and reasonable by the Advisory Committee for the further development of Tri Con Park. Easements may include, but are not limited to, those necessary for electrical, telephone, gas, water, sanitary sewer, storm sewer, roads, streets, entrances, access roads and drainage. Each Owner or tenant and each of their respective heirs, devisees, legatees, grantees, transferees, appointees, legal representatives, successors and assigns or other personal representatives of a Lot or Lots, or portions thereof, as the case may be, hereby agree to cooperate in the planning, granting, executing, acknowledging

and recording of all easements or rights-of-way as may be deemed necessary and reasonable by Declarant for the further development of Tri Con Park. The final determination of what is reasonably necessary shall be within the sole discretion of Advisory Committee.

F. Materials - New Construction.

(1) When a new Building, including any addition to an existing Building, is constructed on any Lot, the finished exterior sidewalls thereof shall be of standard construction materials and shall consist of either brick (which shall include dryvit), stone, steel, reinforced concrete, glass, equivalent masonry construction, fabricated metal or a combination of these materials, or such other materials as shall be approved in advance by the Advisory Committee. All Buildings (including any addition to an existing Building) shall meet the then current building codes, as amended, of the City of Quincy, Illinois.

(2) All new Buildings (including any addition to an existing Building) shall be constructed with a substantial quantity of new materials and no used structure shall be located or placed on any Lot. In addition, no trailer, tent, shack, garage, barn or other similar outbuilding shall be constructed on any Lot or used by the Owner or any tenant (except that a trailer, temporarily, may be placed on a Lot in connection with any new Building construction), nor shall any Building of a temporary character be maintained upon any Lot, except during periods of new construction. No new Buildings (including any addition to an existing Building) shall be constructed or placed within any Easement Area.

G. Maintenance of Lots and Buildings. The maintenance of all Lots and Buildings is the continuing responsibility and obligation of each Owner and each of the same covenant and agree with the other Owners and Declarant to keep and maintain their Lot and Building in accordance with the provisions of these Restrictions.

(1) The Owner of each Lot in Tri Con Park shall at all times maintain his Lot and any Buildings situated thereon in a manner so as to prevent the Lot or Buildings from becoming unsightly and, specifically, such Owner shall:

(a) Not place or store any garbage or decomposable animal or vegetable wastes upon any Lot, except in tightly covered containers constructed of suitable materials and said containers shall be maintained in an orderly and sanitary condition. All other refuse shall be placed in containers or enclosures in a manner so not to create any nuisance by reason of wind litter, disorderly appearance or abnormal fire hazard.

(b) Not keep, store, maintain or accumulate any materials, inventory, goods in process, semi-manufactured items, finished products, plant equipment, parts, rubbish, waste material or other personal property on any part of any Lot outside the confines of the Buildings thereon, except where prior written approval by the Advisory Committee is secured, and adequate screening, fencing, setback and compliance with any other conditions required by the Advisory Committee have been met. The foregoing provisions shall not prohibit or prevent any Lot Owner

from temporarily, and on a short term basis, storing or assembling finished goods or products outside the confines of a Building prior to, or in anticipation of, their shipment or delivery.

(c) Mow and maintain such Lot at such time as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds thereon and remove all debris or rubbish from said Lot and the parking areas so that dust does not accumulate thereon.

(d) Not permit the discharge of sewage or other waste outside of any Buildings except through the city sewer system or other municipally approved sewers, if any.

(2) Exterior surfaces of Buildings, including all paved areas, must be kept in useable condition and state of repair and otherwise in conformity with the intent of these restrictions. Said exteriors shall be maintained and renewed or replaced as necessary by the Owner.

(3) All parking lots, loading areas and entrance areas shall be adequately illuminated for evening use and safety.

### III. Setbacks, Easement and Maintenance of Easements.

A. Setbacks. All building (setback lines) are established on the Plat. Within such building lines, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation of utilities or which may change the direction of flow or drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. Said building lines, as hereinabove provided, shall be applicable to any Building, fence, screening, parking area, loading or docking area signs or other above ground structure that is permanent in nature.

B. Utility Easements and Access Easements. Easements as shown on the Plat of Easements are reserved for (i) the installation, construction, repair, operation and maintenance of utilities including, but not limited to, gas, water, telephone, electricity, sewers, storm drain and for any other private or public utility or function necessary or expedient for public health, safety and welfare ("Utility Easements") and (ii) access to, and ingress and egress from, the Lots of Tri Con Park (the "Access Easements"). That portion of the Real Estate burdened with the Utility Easements and Access Easements, as shown on the Plat of Easements is sometimes hereinafter referred to as the "Easement Area". The cost and expense of constructing, installing, maintaining and repairing the Utility Easements and Access Easements shall be borne, allocated or shared as set forth below. However, real estate taxes or assessments relative to the Easement Area shall be shared equally by all of the Owners if not separately billed therefore.

C. Non-Exclusive Use. Each Owner of a Lot in Tri Con Park shall have the continuous and non-exclusive right to use the Easement Area for the construction, maintenance, repair, replacement and operation of utilities and for access to and from their Lots, as shown on the Plat of Easements and pursuant to the rights, duties and obligations declared and established herein on an equal basis with the other Owners of Lots in Tri Con Park. The Easement Area shall be used solely for ingress and egress, utility purposes and as otherwise provided herein and there

shall be no gates, fences, posts or other obstructions located in or upon the Easement Area which would interfere therewith.

D. Utility Easements: Construction, Use and Maintenance.

(1) Each Owner covenants and agrees that such Owner will, at the Owner's own cost and expense, do all work and things authorized to be done by such Owner on or effecting the Easement Area in a good and workmanlike manner and so as not to cause unnecessary damage or disturbance to the Easement Area or to interfere with the rights of the other Owners in and to the Easement Area. Such rights shall include the right, from time to time, for each Owner to enter upon and use the Easement Area for the purpose of installing, constructing, maintaining, repairing, replacing and operating, at such Owner's expense, as the occasion may require, utility pipes, lines, mains, conduits or other utility facilities and the like ("Utilities Facilities"); provided, however, that the same shall be done without causing unnecessary damage to the Easement Area and, provided, further, that such Owner restores the Easement Area after any such construction, installation, repair, maintenance or replacement to as near as the same condition as it was prior thereto. Each Owner shall be responsible and liable for any damage occasioned by such Owner or its agent in installing, constructing, repairing, operating or removing any Utilities Facilities or that may result from any reason or cause to the Easement Area in consequence of utilizing the rights and privileges granted hereunder. All Utilities Facilities shall be constructed in accordance with all federal, state and local laws and ordinances, as applicable, and all Utilities Facilities shall be constructed in a manner that does not interfere with the Access Easement. If a Utilities Facilities is constructed for the benefit of more than one Lot, the Owners of all such Lots benefitting thereby shall share in the cost and expense of installing, constructing, operating, maintaining, replacing, repairing and removing, if necessary, such Utilities Facilities. Otherwise, such cost and expense shall be borne solely by the Owner of the Lot benefitted thereby.

(2) Access Easements within the Easement Area and as shown on the Plat of Easements, are reserved over and across Lot 1 for the benefit of Lot 2 and Lot 3 and over and across Lot 1 and Lot 2 for the benefit of Lot 3 of Tri Con Park. The Access Easements shall benefit Lots 2 and 3 and each portion or portions thereof hereafter conveyed or transferred by the respective Owners thereof.

E. Access Easements: Use Limitations; Repairs and Maintenance.

(1) Except as may otherwise be agreed to by the Advisory Committee, the Access Easements can be used for vehicular traffic by vehicles of any size or weight. However, since regular or routine use of the Access Easement by vehicles in excess of 35,000 pounds ("Heavier Vehicles") is likely to cause greater damage and wear and tear thereto compared to routine use by cars, vans, SUVs and light trucks; (i) any damage done to any Access Easement as a result of its use by Heavier Vehicles by or for an Owner or (ii) any damage occurring due to the negligence or intentional actions of an Owner or any person or entity acting on behalf of that Owner, in either instance, i.e. (i) or (ii), as determined by the Advisory Committee, shall be repaired by or paid for entirely by such Owner, as determined by the Advisory Committee, as opposed to the repairs or costs being shared with the other Owners as is otherwise provided for herein.

(2) The Owners shall keep, repair and maintain the Access Easements to their present level of maintenance, being an asphalt surfaced roadway. The repair and maintenance obligations of the Owners with respect to the Access Easements shall include (i) to cut and trim trees, shrubbery, brush and other growth which may encroach on the Access Easements and to dispose of all such cuttings and trimmings; (ii) to mow and keep cut any grass, weeds or similar growth within the Access Easements; (iii) to plow, shovel and remove snow and ice from the Access Easements; (iv) to resurface or repair the Access Easements so as to provide a level, even and smooth surface; and (v) to do whatever else is reasonably necessary to make the Access Easements useful for the purposes contemplated (items (i) - (v), collectively "Routine Maintenance"). The Owners shall confer with each other prior to incurring any expense in performing any maintenance and repairs on the Access Easements for which reimbursement or payment will be sought. If (x) Routine Maintenance appears necessary or (y) any better level of maintenance is desired by an Owner, such as, for example, resurfacing in concrete or widening the Access Easements ("Extraordinary Maintenance"), then in either instance, i.e. (x) or (y), all of the Owners must agree thereon before proceeding therewith. While the Owners have no obligation to agree to a better level of maintenance, if they do so agree these Restrictions shall then apply considering that better level of maintenance. All of the Owners shall share equally in the cost of maintenance and repair (whether Routine Maintenance or Extraordinary Maintenance) of the Access Easement within Roadway Area 1 while only the Owners of Lot 2 and Lot 3 shall share equally in the cost of such maintenance and repair (whether Routine Maintenance or Extraordinary Maintenance) of the Access Easement within Roadway Area 2. If the Lot Owners are parties to any other agreement(s) which provides for the maintenance and repair of an Easement Area, either separately or with other lands, then the Lot Owners shall share equally any allocation of the maintenance and repair costs attributable to them, collectively, as the Lot Owners. Moreover, any such agreement shall be construed in a manner consistent with this Declaration, but in the event of any inconsistency or ambiguity between the terms thereof and the terms herein the terms of such other agreement, if that agreement is recorded, shall prevail. The Owner of Lot 1 shall have no obligation to pay any of the costs of maintaining or repairing the Access Easement within Roadway Area 2. Roadway Area 1 and Roadway Area 2 are as shown on the Plat of Easements.

F. Owner's Failure to Pay Costs. If any Owner fails to pay his share of the installation, construction, maintenance or repair costs associated with a Utility Easement or Access Easement in accordance with the foregoing provisions, the other Owners may pay such Owner's share and seek to recover from such delinquent Owner, by any lawful means, such Owner unpaid portion of such cost. An Owners failure to pay his share of the costs shall result in a lien being imposed upon his Lot for the amount thereof which lien shall only be discharged upon such Owner's payment in full of such Owner's share of such costs. Except as otherwise stated herein or reserved, the Owner of Lot 1 retains and shall continue to enjoy the use of the Easement Area for any and all purposes, including for access and utilities; provided, however, that such use does not interfere with or prevent the use of the Easement Area by the other Owners.

G. Insurance. Each of the Owners shall obtain and maintain a policy or policies of public liability insurance in the minimum general aggregate amount of \$2,000,000 insuring against liability for bodily injury (including death resulting therefrom) and liability for damage to property occurring as a result of their exercise of their easement rights and their use by the Easement Area.

All such policies shall name each Owner as an additional insured thereunder and shall contain a provision providing that at least 30 days prior written notice will be given to each party before the termination, cancellation or modification of such policy. The foregoing requirement to maintain insurance can be met, alternatively, by the Owners, together, obtaining one policy of insurance (as opposed to separate policies) so long as all of the other criteria and requirements therefore set out in this paragraph are met.

H. Standards. Whenever it is herein provided that an Owner has the right or obligation to enter into and use the Easement Area in order to perform or undertake any construction, repair, maintenance, replacement or other activity, the Owner performing such activity shall (1) perform the same in a good and workmanlike manner and in a manner which will interfere in the least possible manner with any other activity being conducted thereon; (2) not block access to and from such Easement Area; (3) take all steps necessary to repair the condition of the Easement Area upon which such work is being performed so that such condition is the same as existed prior to such work being performed; (4) perform all such work in a lien free manner; (5) to indemnify, defend and hold harmless the other Owners from and against all claims, demands, losses, costs and liabilities, including reasonable attorney fees, resulting from or arising out of the exercise by such Owner of such Owners rights herein or the failure by such Owner to met the Owner's obligation (if any) hereunder; provided, however, that this indemnification obligation shall not be effective to the extent that any such claims, demands, losses, costs (including reasonable attorneys fees) or liabilities are covered by insurance proceeds.

IV. Other Restrictions and Conditions.

A. Parking. No parking shall be permitted within the Easement Area. Adequate off-street parking in accordance with the minimum requirements therefore set forth in the Quincy City Code, along with loading and unloading facilities shall be provided by each Owner and/or tenants of each Lot for all employees, customers, agents, invitees and all other persons transacting business with either the Owner or occupants of any part or all of the Lot. No parking, loading, unloading and docking shall be permitted in any area of any Lot designated as setback areas. All parking areas, as well as all entrance ways, walkways and driveways, if any, shall be of hard surface material, i.e. either asphalt or concrete, and surfaced in such a manner as to eliminate, as much as practicable, any dust.

B. Signs. No signs of any type shall be erected or placed on any part of any Lot without first being approved by the Advisory Committee; provided, however, that (1) no sign shall be placed in a manner so as to obstruct the view or cause danger to any vehicular traffic; (2) other than real estate and direction signs, signs erected on a Lot shall be limited to identifying the name of the person or persons, companies or corporations, together with the type of business or its products and (3) all signs must comply with the City of Quincy's sign ordinance (the "City's Sign Ordinance") as now or hereafter amended. In the event of any inconsistency between the provisions of this paragraph and the City's Sign Ordinance, the later shall control.

C. Animals Prohibited. No live animals of any kind or type shall be kept or maintained on any part of any Lot or in any Building thereon, except for guide dogs and such



other animals as may be reasonably used for the protection or safeguarding of property, and then only when controlled by the Owner in a proper manner.

V. Advisory Committee.

A. Power to Grant Variances. The Advisory Committee may allow reasonable variations or adjustments of these Restrictions where literal application would result in unnecessary hardship; provided, however, that any such variance or adjustment must be granted in conformity with the general intent and purpose of these Restrictions and, also, that the granting of a variance or adjustment must not be materially detrimental or injurious to other Lots in Tri Con Park.

B. Composition of Advisory Committee. The Advisory Committee shall be composed of three (3) members with each Owner(s) of a Lot or such Owner's designated representative being a Member. Each Lot will be represented on the Advisory Committee by only one member regardless of the number of individuals and/or entities which own any Lot. The three initial members of the Advisory Committee shall be Lonnie R. Nuttelman, Tom Sparrow and John Lunsford. The Advisory Committee shall act unanimously.

C. Procedures. The approval or disapproval of the Advisory Committee, as required in these Restrictions, shall be in writing and shall be delivered to an Owner within thirty (30) days after all relevant information relating thereto shall have been submitted to the Advisory Committee. In order to have a sufficient basis for considering and acting upon a request, the Advisory Committee may require that an Owner submit preliminary architectural plans for a proposed Building, or Building addition; a Building site plan; a grading and elevation plan; a plan showing utilities and easement or any other information the Advisory Committee deems relevant or necessary in order to evaluate the proposal and to ensure compliance with the Restrictions contained herein.

The Advisory Committee shall give approval or disapproval of any plan, in writing, within thirty (30) days from the date the foregoing is submitted to it. In the event the Advisory Committee fails to approve or disapprove said plans within said time limits, such approval, in writing, shall not be required and the plans shall be deemed approved.

D. Liability of Advisory Committee. Neither the Advisory Committee nor any member thereof, nor Declarant, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

VI. Dispute Resolution. Any disagreement, deadlock or dispute by or among the Advisory Committee members or the Owners of the Lots (in either case "Disputants") relative to these Restrictions which cannot be settled by the Disputants through negotiations in good faith, shall be settled by arbitration. Such arbitration shall be before one disinterested arbitrator, or if one cannot be agreed upon by the Disputants, before four disinterested arbitrators, one named by each Disputant and one by the three of them so chosen. The arbitrator or arbitrators (with 3 out of 4 needing to be in agreement thereon) shall determine the controversy, dispute or disagreement

in accordance with the laws of the State of Illinois as applied to the facts found by him or them. The Disputants shall bear equally the expense of the arbitrators fees and all expenses incident to the proceedings. Each Disputant shall pay the cost of his counsel, if any, and the fees of any witnesses called by him. The decision of the arbitrator or arbitrators shall be final, conclusive and binding upon the Disputants and a judgment may be obtained thereon in any court of competent jurisdiction.

VII. Recording, Enforcement and Binding Effect of Restrictions.

A. Recording of Restrictions. These Restrictions shall become effective upon the recording of this Declaration with the Recorder of Deeds of Adams County, Illinois.

B. Covenants Running with the Land. The Restrictions herein set forth shall run with the land and shall bind Declarant, its successors and assigns, and each Owner, and all parties claiming by, through or under them, shall be taken to hold, agree and covenant with the Owner of said Lots, with its successors and assigns, and with each of them to conform to and observe these Restrictions. The Owner of any Lot subject to these Restrictions, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of any such Lot, accepts such deed and executes such contract subject to each restriction and agreement herein contained. Further, by acceptance of such deed or the execution of such contract, such person or persons acknowledges the rights and powers of Declarant with respect to these Restrictions and also for themselves, their heirs, personal representatives, successors and assigns, they do covenant and agree and consent to and with Declarant and to and with the grantees and subsequent Owners of each Lot affected by these Restrictions, to keep, observe and comply with and perform such Restrictions and agreements.

C. Remedies.

(1) Declarant, its successors and assigns, and any Owner or Owners may proceed at law or in equity to prevent the occurrence or continuation of any violations of these Restrictions, and shall have the right to obtain a prohibitive or mandatory injunction to enforce the observance of these Restrictions in addition to and cumulatively to any other remedy provided for herein, as well as the right to recover damages for the breach of these Restrictions. However, Declarant shall not be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.

(2) No delay or failure on the part of any aggrieved party to take any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available thereto upon the occurrence, reoccurrence or continuation of such violation or violations of these Restrictions.

D. Notice. Any notice or communication to any of the Owners or Declarant required or permitted under these Restrictions shall be in writing and either delivered personally or given by mail to the Owner of a Lot or Declarant, as the case may be, as follows:

To any Owner: At the address of his Lot

by United States mail, certified or registered, return receipt requested, with postage prepaid. Any notice mailed shall be deemed to have been given on the second business day next following the date of deposit of such item in a depository of the United States Postal Service. Any Owner or Declarant may change the address to which notice is to be sent by a notice given in accordance with this provision.

VIII. Common Wall Provisions.

A. The Building on Lot 2 is constructed up to the property line thereof. The East wall of the Building located on Lot 2 is, in fact, the West wall of the Building on Lot 3 adjacent thereto and located entirely thereon (as such, the "Common Wall"). Accordingly, Lot 2 and Lot 3 will be held, transferred, owned and operated subject to the rights of the respective Owners of Lot 2 and Lot 3 relative to the Common Wall as provided herein.

B. The Common Wall shall remain a Common wall although located on Lot 3 and owed entirely by and being the property of the Owner of Lot 3. In this regard, the Owner of Lot 2 shall be at liberty to use the Common Wall in any manner that does not interfere with the use of the Common Wall by the Owner of Lot 3. Such use shall include, but not be limited to, to support joists, cross beams, studs and other structural members as required of the Building on Lot 2 and by any Building that may subsequently be constructed on Lot 2. Nevertheless, such use shall not injure the Building on Lot 3 and shall not impair the Common Wall or the benefits thereof to which the Building on Lot 3 is entitled.

C. The Owner of Lot 3 (but not the Owner of Lot 2) shall have the right to add to or extend the Common Wall either horizontally or vertically; provided, however, that any added thickness shall not be placed on Lot 2 without that Owner's consent, in writing, and provided, further, that any such additions or extension shall not injure the Building or impair the Common Wall benefits and support to which the Building on Lot 2 is entitled. Any addition or extension to the Common Wall by the Owner of Lot 3 shall be built in a substantial and workmanlike manner of like durability, strength and fire resisting qualities as the existing Common Wall and shall conform in all respects to the laws and ordinances regulating the construction thereof in force at the time. In the event the Common Wall is added to or extended as above provided, the Owner of Lot 2 shall continue to have the right to use the Common Wall as so modified for any proper purpose for which the addition or extension may be made to the full extent of the width, length and height of the Common Wall in the same manner that the said Owner is entitled under this Agreement to use the Common Wall as now constructed. In modifying the Common Wall, the Owner of Lot 3 shall not decrease the Common Wall's thickness and all additions or extensions thereto shall be of at least the same thickness as the present Common Wall and shall be constructed

in the same or similar materials and of like quality. The Owner of Lot 3 in making any addition to or extension of the Common Wall under these Restrictions shall have the right to enter onto Lot 2 and the Building thereon to the extent it may be reasonably necessary in connection with the work, provided the Owner of Lot 3 exercises due care not to damage the Building on Lot 2.

D. Should the Owner of Lot 3 desire to replace the Building now on such Owner's Lot with a new Building, said Owner may tear down or alter the Common Wall provided that the same is replaced, reconstructed or altered so as to continue to serve as a Common Wall for the Building on Lot 2, i.e. its East wall in a manner similar to its existing use as of the date thereof.

E. There will be no available openings in the Common Wall as of the time these Restrictions are declared. No such opening shall be made available unless agreed to by the Owners of Lot 2 and Lot 3. No easement shall be created by reason of such openings either for access to and from, or for light and air.

F. Should it become necessary to repair the Common Wall or any part thereof, as constructed or extended, the cost of repair as such parts of the Common Wall at the time used by both parties shall be at the expense of both Owners in equal shares, and as to any remaining part, shall be wholly at the expense of the Owner who shall exclusively use that part, if any. Should the Common Wall be totally or partly destroyed by fire or other cause, the Owner of Lot 3 shall reconstruct the wall at such Owner's sole expense if such Owner alone intends to continue the use of the Common Wall or if the Owners of Lot 2 and Lot 3 mutually use the same, at the expense of both parties, who shall share such costs equally. In making repairs or rebuilding the Common Wall, the Owner of Lot 3 shall use good materials and workmanship, and shall conform all work with applicable federal, state and local building laws. The Common Wall as repaired, altered or reconstructed under the terms of these Restrictions shall be and remain at all times a Common Wall.

#### XI. General Provisions.

A. Severability. Every one of these Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every condition of the Restrictions. Accordingly, the invalidation of any one (1) of these Restrictions by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

B. Captions; References. The captions preceding the various sections and subsections of these Restrictions are for convenience of reference only, and none of them shall be used as an aid in the construction or interpretation of any provisions of these Restrictions. Whenever and wherever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter, as the context may require.

C. Term. These Restrictions be effective and binding on Declarant, each Owner, their respective assigns, successors and all parties claiming by, under or through them until

JANUARY 1, 2021, at which time these Restrictions shall be automatically extended for successive periods thereafter of ten (10) years each, as modified by execution and recording of an amendment by all of the then fee simple Owners of the Lots subject to these Restrictions.

D. Amendments. These Restrictions shall be amended upon the written consent and/or request of all of the then fee simple Owners of the Lots subject to these Restrictions. In determining the "then Owners of the Lots," each individual Lot shall have a single right. If there are multiple Owners of a Lot, a majority in interest shall exercise the right of the Lot. If there are two (2) Owners having an equal interest, they shall exercise the right jointly, or if they fail to agree, then the first acquiring ownership or the first named in the deed conveying such Lot to said Owners shall exercise the right. The consolidation or redividing of Lots, even if consistent with these Restrictions, shall not affect the Lots entitled to vote.

E. Governing Law. These Restrictions shall be governed by the laws of the State of Illinois.

F. Counterparts. These Restrictions may be executed in multiple counterparts, each of which shall be considered to be an original document, but all of which together will constitute one and the same instrument.

EXHIBIT "A"

A part of the Northwest Quarter of Section Twenty-Five (25), situated in Township One (1) South of the Base Line, Range Nine (9) West of the Fourth Principal Meridian, in the City of Quincy, Adams County, Illinois, described as follows: Commencing at a point on the West line of said Quarter Section 397 feet North of the Southwest corner thereof, thence East parallel with the South line of said Quarter Section 327 feet to a point, thence South parallel with the West line of said Quarter Section 133 feet, thence East parallel with the South line of said Quarter Section 663 feet, thence North parallel with the West line of said Quarter Section 264 feet, thence West parallel with the South line of said Quarter Section 990 feet to a point on the West line of said Quarter Section, and thence South on said West line of said Quarter Section 131 feet to the point of beginning, except the following parcel:

Beginning at a point on the West line of said Northwest Quarter, 32 rods North of the Southwest corner of said quarter section, thence South 133 feet, thence East 367 feet, thence North 133 feet, and thence West to the point of beginning, containing 1 acre, more or less, except 20 feet off the South side of said above described tract, together with an easement for ingress and egress over the roadway existing on the above excepted 20 feet of said above described tract.

Also, described as: Lots One (1), Two (2), and (3) of Tri Con Park Subdivision, in the City of Quincy, Adams County, IL.