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Alvin J. ...
COUNTY RECORDER

HUTMACHER, RAPP & ORTBAL, P. C.

**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS FOR
WESTPOINTE SUBDIVISION**

THIS DECLARATION, is made as of this 2nd day of January, 1997, by Cedar Creek Development, Inc., an Illinois corporation, hereinafter referred to as the "Declarants".

WITNESSETH THAT:

WHEREAS, the Declarants are the owners of all of the lands contained in the area known as "Westpointe Subdivision (herein "Westpointe" or "Subdivision"), as shown and described on the plat thereof recorded on December 26, 1996, in Book 15 of Plats, at page 789, as Document Number 053800, in the Office of the Recorder of Deeds in and for the County of Adams, State of Illinois (herein the "Plat"); and,

WHEREAS, Westpointe Subdivision consists of the following described real estate:

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), and Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20), Twenty-one (21), Twenty-two (22), Twenty-three (23), Twenty-four (24), Twenty-five (25), Twenty-six (26), and Twenty-seven (27), of Westpointe Subdivision, a Subdivision of a part of the Northeast Quarter of Section Twenty-six (26), in Township One (1) South of the Base Line and in Range Nine (9) West of the Fourth Principal Meridian, Adams County, Illinois, recorded in Book 15 of Plats, at page 789, in the Recorder's Office of Adams County, Illinois; and,

WHEREAS, Declarants desire to subject and impose upon the Subdivision (with the exception set forth in Paragraph 7) mutual and beneficial restrictions, covenants, conditions, easements, liens and charges hereinafter referred to as the "Restrictions" for the benefit and the complement of certain of the lots in the Subdivision and the future owners thereof.

NOW, THEREFORE, the Declarants hereby declare that the real property located within the Subdivision shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a common plan for improvement of the Subdivision, established by the Declarants for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each lot and parcel situated thereon.

1. RESIDENTIAL CHARACTER OF THE SUBDIVISION:

A. IN GENERAL: Every numbered lot in Westpointe Subdivision subject to these restrictions (that is, other than those lots described in paragraph 7, below), is a residential lot and shall be used exclusively for single family residential purposes. No building or structure shall be erected, placed or permitted to remain upon any of said lots other than one (1) single family dwelling and an attached private garage. No outbuildings of any sort shall be located on any lot. An attached private garage must be provided for each lot. "Family", for purposes hereof, shall mean an individual or two (2) or more persons related by blood, marriage or adoption, living together as a single housekeeping unit, or a group of two (2) or more persons all of whom are related by blood, marriage or adoption, except that the group may include one (1) person not so related, living together as a single housekeeping unit. Applicable zoning ordinances may impose a more restrictive definition. "Outbuildings" include, but are limited to, any garage, shed, playhouse or other structure which persons may enter or in which goods may be located or stored.

B. OCCUPANCY OR RESIDENTIAL USE OF PARTIALLY COMPLETED DWELLING HOUSES PROHIBITED: No dwelling house constructed on any of said lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether or not a house shall have been "substantially completed" shall be made by the "Architectural Trustee" hereinafter described, and the decision of that Trustee shall be binding on all parties concerned.

C. DIVISION OF LOTS: Lots may not be redivided except to increase the size of adjoining lots. If redivided, the appropriate adjoining lot combined with the redivided lot shall

thereafter be treated as a single lot with side-yard and other setback lines considered appropriately altered.

2. RESTRICTIONS CONCERNING SIZE AND PLACEMENT OF DWELLING HOUSES AND OTHER STRUCTURES AND THE MAINTENANCE THEREOF:

A. MINIMUM LIVING SPACE AREAS: No dwelling shall be constructed on any lot in the Subdivision exceeding the height hereafter stated having less than the following minimum square footages of living space, exclusive of porches (whether or not enclosed by screens or otherwise), breezeways, terraces, garages, car ports and other buildings:

The dwelling located on any lot shall not exceed two and one-half (2-1/2) stories in height. The ground floor area of the dwelling, exclusive of open porches, breezeways, garage and basement, if any, shall not be less than one thousand two hundred (1,200) square feet for a one (1) story dwelling. If more than one (1) story, there shall be a minimum of one thousand (1,000) square feet on the ground floor. No minimum shall apply above the first story. However, the dwelling shall have a total of at least one thousand eight hundred (1,800) square feet, exclusive of open porches, breezeways, garage and basement.

An attached garage shall be provided which contains at least four hundred (400) square feet.

B. SET-BACK REQUIREMENTS:

(i) **In General:** Except as may be otherwise provided in these restrictions or on the Plat, no dwelling house or above grade structure shall be constructed or placed on any numbered lot in the Subdivision (except fences or walls, the placement of which is provided for hereinafter) nearer to any lot line than the minimum building setback lines shown on the recorded Subdivision Plat, the provisions set forth herein, or applicable building or subdivision codes or restrictions, whichever is more.

(ii) **Yards:** Front, side and rear yards shall be established in accordance with the minimums prescribed by the ordinances of the City of Quincy, Adams County, Illinois, or as shown on the plat, if any, whichever is greater.

C. FENCES OR WALLS: No fence or wall shall be erected or constructed nearer to the front lot line than the minimum building setback lines shown on the recorded subdivision plat and no fence or wall shall exceed six (6) feet in height.

D. CONSTRUCTION MATERIALS: The finished exterior of every building constructed or placed on any numbered lot in the Subdivision shall be of material other than tar paper, rollbrick siding or any other similar material. The dwelling on any lot shall be of standard construction materials or goods.

E. DILIGENCE IN CONSTRUCTION: The exterior of every building whose construction or placement on any numbered lot in the Subdivision is begun shall be completed within twelve (12) months after the beginning of such construction or placement, unless prevented by weather or Act of God or because of the size or nature of the construction project. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

F. PROHIBITION OF USED STRUCTURES: All structures constructed or placed on any numbered lot in the Subdivision shall be constructed with a substantial quantity of new materials and no used structures shall be relocated or placed on any such lot.

G. MAINTENANCE OF LOTS AND IMPROVEMENTS: The owner of each lot in the Subdivision shall at all times maintain said lot and any improvements situated thereon in such a manner so as to prevent said lot or improvements from becoming unsightly; and, specifically, such owner shall:

(i) Mow said lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds thereon.

(ii) Remove all debris or rubbish from said lot.

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of said lot.

(iv) Cut down and remove dead or diseased trees from said lot.

(v) Keep the exterior of all improvements constructed on said lot in such a state of repair or maintenance as to avoid their becoming unsightly.

(vi) Keep and maintain driveways, entranceways and parking areas for a lot dust free from and after not later than one (1) year following the initial occupancy of a dwelling.

H. DIRT: No dirt shall be removed from the Subdivision without the approval of the Architectural Trustee. Should any lot owner have dirt to be removed from the lot, it shall be located at such owner's expense to another location within the Subdivision approved or designated by the Architectural Trustee.

3. **GENERAL PROHIBITIONS:**

A. **IN GENERAL:** No noxious or offensive activities shall be carried on on any lot in the Subdivision, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any owner of another lot in the Subdivision.

B. **SIGNS:** No sign of any kind shall be displayed to the public view on any lot except one (1) professional sign of not more than one (1) square foot, one (1) sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during construction and sales period.

C. **ANIMALS:** No animals, livestock, swine or poultry of any kind shall be kept, raised, bred or maintained on any lot in the Subdivision, except the usual household pets, provided they are not kept, raised, bred or maintained for commercial purposes, and provided further that they are not wild or dangerous or considered *ferae naturae* by law.

D. **GARBAGE AND REFUSE DISPOSAL:** No lot shall be used or maintained as a dumping ground for rubbish, garbage or litter. Trash, garbage, litter, ashes or other waste or refuse shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. All lots shall be kept in good and neat appearance, including, but not limited to, cutting grass and weeds, removing all garbage, rubbish and litter, and removing dead or diseased trees.

E. **RESTRICTIONS ON TEMPORARY STRUCTURES:** No temporary house, trailer, garage or other outbuilding shall be placed or erected on any lot, but this shall not prohibit reasonable construction vehicles or trailers during the course of construction.

F. **PARKING:** Trucks, trailers, boats, motorized recreational vehicles, attachable vans, mobile campers and similar equipment of eight thousand (8,000) pounds or less each may be kept in the subdivision, provided they are kept in the attached garage provided for a dwelling except for temporary periods only not exceeding thirty-six (36) continuous hours. Trucks, trailers, boats, motorized recreational vehicles, attachable vans, mobile campers and similar equipment exceeding eight thousand (8,000) pounds each may not be kept in the subdivision. Garage doors shall be kept closed except when in actual use.

G. **OIL AND MINING OPERATIONS:** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be

permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

H. SIGHT DISTANCE AT INTERSECTIONS: No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property line extended. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

I. UTILITIES AND OTHER APPARATUS: All utility lines and apparatus provided to or in the subdivision, including, but not necessarily limited to, water, sewer and gas pipes, telephone, cablevision and power lines and conduits, shall be buried below ground, except utility pedestals and transformers required to be above ground. No antenna, satellite disc or dish or similar television, radio or other wave reception apparatus or wires shall be installed on the exterior of any dwelling and garage. A satellite disc or dish may, however, be located within setback lines in a rear yard or, alternatively, attached to the residence but not visible from the street.

J. EASEMENTS: Easements for installation and maintenance of utilities and accessories, for drainage and other purposes are reserved as shown on the recorded Subdivision Plat. Within these easements, no building, structure, planting or other improvement shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. Subject to paragraph 2 (C), and provided drainage is not adversely affected, a fence or a brick, stone or masonry wall may be placed along a property line and on the easement if not more than two (2) feet in width, but an area adjacent to the easement of a width identical to the wall width may then be used for utility purposes. The easement area of such lot and adjoining public areas between a lot and street shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible. "Utilities" for purposes hereof shall include, but not be limited to, water, sewer, gas, electric, cablevision, community antenna, and similar services provided to lots and any pipelines, conduits, wires, pedestals, transformers or other items and accessories necessary to conduct or provide such utilities.

4. **ARCHITECTURAL CONTROL:**

A. **GENERALLY:** No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Trustee as to quality of workmanship and materials, harmony of external design with existing structures, compliance with these covenants, and as to location with respect to topography and finish grade elevation. It is intended that the Architectural Trustee when considering approval of plans and specifications may consider reasonable factors beyond those set forth in these covenants appropriate to the overall development of the subdivision. The Architectural Trustee is also authorized to provide interpretation of these covenants for the benefit of the subdivision.

B. **ARCHITECTURAL TRUSTEE:** The Architectural Trustee is Joseph W. Padavic. The Architectural Trustee may designate a representative to act for him. In the event of the death, resignation or inability to act of Joseph W. Padavic, Thomas W. Hilbing shall then be the Architectural Trustee with full authority to act. In the event of the death, resignation or inability to act of both Joseph W. Padavic and Thomas W. Hilbing, Robert J. Lansing shall then be the Architectural Trustee with full authority to act. In the event of the death, resignation or inability to act of Robert J. Lansing, a successor trustee may be designated by a majority of the then owners of the lots determined as provided in paragraph 5, below. The designation of the trustee shall be recorded in the Recorder's Office of Adams County, Illinois.

C. **PROCEDURES:** The approval or disapproval as required in the covenants shall be in writing. In the event the Architectural Trustee, or the Trustee's designated representative, fails to approve or disapprove any plans or specifications within thirty (30) days after such plans and specifications have been submitted to the Trustee, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof or sixty (60) days after completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

D. **LIABILITY OF TRUSTEE, ETC.:** Neither the Architectural Trustee nor any agent thereof, nor the Declarants, nor the Association, 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.

5. **DURATION:**

These covenants shall run with the land and shall be binding on the Declarants and all persons claiming under them for a period of twenty (20) years from the date these Restrictions are recorded, after which time said Restrictions shall be

automatically extended for successive periods of five (5) years unless seventy-five percent (75%) of the then owners of the lots sign and record an instrument revoking, altering or otherwise changing said Restrictions in whole or in part. At any time, ninety percent (90%) of the then owners of the lots may sign and record an instrument revoking, altering or otherwise changing said Restrictions in whole or in part.

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 or instrument conveying such lot shall exercise the right.

6. **ENFORCEMENT:** Enforcement shall be by proceedings at law or in equity against any person, firm or corporation violating or attempting to violate any restriction either to restrain violation or to recover damages. An action may be brought by any person, firm or corporation having any interest in a lot in the subdivision.

7. **EXCEPTION:** Notwithstanding anything herein to the contrary, these covenants do not apply in any respect to Lots One (1), Two (2), Three (3) and Twenty-seven (27), and such Lots shall not be considered for purposes of revoking, altering or otherwise changing these Restrictions. At any time, the owner or owners of said Lots may adopt these covenants in whole or in part and will thereupon be subject to such covenants adopted as if initially made subject to these covenants, subject to such exceptions as set forth in the adoption. Without limiting the possible uses of such Lots, notice is given that such lots may be used for the location of commercial or multi-family uses. The owner or owners of said lots shall, however, have standing under paragraph 6 to enforce these restrictions as to other lots.

8. **SEVERABILITY:** 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.

IN WITNESS WHEREOF, Declarants have duly executed this Declaration of Covenants, Conditions, Easements and Restrictions the day and year first above written.