

RECORDER  
DU PAGE COUNTY

*Agency*

BY-LAWS OF  
FIELDSWORTH HOMEOWNER'S ASSOCIATION  
AND  
DECLARATION OF COVENANTS, CONDITIONS  
EASEMENTS AND RESTRICTIONS

*PLAT RECORDED AS R93-216837*

ARTICLE I  
DECLARATIONS

1.01. The Developer hereby declares that the Covenants, Conditions, Easements and Restrictions of this Declaration shall:

a. Exist at all times hereafter among all parties having or acquiring any right, title or interest in any portions of the Premises;

b. Be binding upon and inure to the benefit of each Owner of a Dwelling Unit; and

c. Run with the land subjected to this Declaration, to be held, sold and conveyed subject thereto.

1.02. The Developer hereby declares that the property known as the "Premises" is and shall be transferred, held, sold, and conveyed subject to this Declaration of Covenants, Conditions Easements and Restrictions.

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ARTICLE II  
DEFINITIONS

2.01. Association: The Fieldsworth Homeowner's Association, a Illinois Not-For-Profit Corporation, its successors and/or assigns.

2.02. Board: The Board of Directors of the Fieldsworth Homeowner's Association, as constituted at any time or from time to time pursuant to the provisions of Article IV of this Declaration.

2.03. Declaration: This Declaration of Covenants, Conditions, Easements and Restrictions recorded with the Recorder of Deeds of DuPage County, Illinois, and any additions, corrections, amendments or supplements thereto.

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2.04. Developer: SIEFERT & FAGANEL PARTNERSHIP, an Illinois Partnership, hereinafter referred to as "Developer" or "Siefert/Faganel", and FIRST CHICAGO TRUST COMPANY OF ILLINOIS, As Trustee Under Trust Number 10-415 dated September 10, 1993, and/or any successor thereto.

2.05. Dwelling Unit: A detached single family residential housing unit constructed on the "Premises".

2.06. Maintenance Areas: That part of the Premises and/or improvements, consisting of the following:

a. the interior street lights and street lighting system(s) and appurtenances, including, without limitation, the payment of and for all electrical power thereto;

b. any and all storm water retention or detention ponds serving the premises, or any part thereof; and

c. such other improvements and/or structures as shall be declared by the Developer in writing to the Association as being part of the Maintenance Areas.

The Maintenance Area shall also include any and all additions, easements or interests in other real property as may be granted or conveyed to the Association pursuant to the provisions of this Declaration, or otherwise.

2.07. Member: Every person or entity who owns a "Dwelling Unit".

2.08. Owner: The person, persons, entity or entities whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Dwelling Unit.

2.09. Premises: That part of the "Proposed Development Area" which is subject to this Declaration, and any additional real property as may be rendered subject hereto pursuant to the provisions of this Declaration.

2.10. Proposed Development Area: The real property in DuPage County, Illinois, which is described in Section 3.04 hereof.

ARTICLE III  
ADDITIONS TO THE PREMISES

3.01. Notwithstanding anything contained to the contrary in this Declaration, the Developer may, at its sole and absolute

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discretion, from time to time hereafter:

a. add additional property to the Proposed Development Area, and/or

b. subject further portions of the Proposed Development Area, including any additions thereto, to this Declaration whereupon the same shall become part of the Premises.

By these provisions, the Developer is not obligated, in any manner whatsoever, either to make additions to the Proposed Development Area or to make any other portions of the Proposed Development Area, either as originally constituted or as additions are made thereto, to be subject to this Declaration.

3.02. Supplementary Declarations. Where the Developer elects, as above, to either make additions to the Proposed Development Area or to subject other portions of the Proposed Development Area to this Declaration as additions to the Premises, the same shall be accomplished by the recording of a Supplementary Declaration. Said Supplementary Declaration shall state what action is being taken and shall contain a legal description of the property which is the subject of such Supplementary Declaration.

3.03. Recording of Supplementary Declaration. Upon the execution and recording of the Supplementary Declaration, the property covered therein shall be subject to the covenants, conditions, easements and restrictions of this Declaration, including, but not limited to, the following:

a. The covenants, conditions, easements and restrictions set forth herein shall run with and bind the land of the Supplementary Declaration and shall inure to the benefit of and be the personal obligation of the Owners of the Dwelling Units thereon, in the same manner, to the same extent and with the same force and effect as this Declaration;

b. Every person or entity who is an Owner of any Dwelling Unit shall be a member of the Association on the same terms and subject to the same qualifications and limitations as those Members under the original provisions of this Declaration; and

c. In all respects, all of the provisions of this Declaration shall apply to the portions of the Premises or such other real estate designated in any Supplementary Declaration, and to the Owners, Mortgagees and Lessees thereof, with equal meaning and of like force and effect.

3.04. Designation of Proposed Development Area and Premises. The Developer hereby designates that property legally described on the attached Exhibit A, which Exhibit is hereby incorporated herein

by reference as though fully set forth, as the Proposed Development Area and the Premises.

ARTICLE IV  
MEMBERSHIP, MEMBERSHIP CLASSES, BOARD OF  
DIRECTORS AND VOTING RIGHTS

4.01. Membership. Every Owner of a Dwelling Unit is automatically a member of the Fieldsworth Homeowners Association. Membership is appurtenant to and shall not be separated from the ownership of a Dwelling Unit. Each Owner, by acceptance of a deed or other conveyance of a Dwelling Unit, shall automatically thereby become a member regardless of the inclusion or exclusion or the incorporation by reference of any specific expression, or lack thereof, in said deed or conveyance.

4.02. Designation of Member. There shall be one membership per Dwelling Unit. If the record owner shall be more than one person, or if the Owner is a Trustee, corporation, partnership or other legal entity, then the individual who shall enjoy the membership attributable thereto shall be designated by said Owner or Owners to the Association.

4.03. Membership Classes and Voting. The membership of the Association shall be divided into two classes, as follows:

a. Class A. Class A members shall be all Owners of Dwelling Units with the exception of the Developer, and shall be entitled to the vote as delineated in Paragraph 4.06(a) below.

b. Class B. Class B members shall be the Developer and shall be entitled to the number of votes delineated in Paragraph 4.06(b) below.

4.04. Termination of Class B Membership. The Class B Membership shall cease and terminate when the Developer elects to convert its Class B Membership to Class A Membership. Said election shall be accomplished by a written notice of such action from the Developer to the Association. The Developer may, however, revoke or withdraw, without cause, any such election and, thereupon, the Class B Membership shall be reinstated on the same basis as would have existed if no such election had been made.

4.05. Board of Directors. The affairs of the Association shall be managed by the Board of Directors, consisting of five persons, pursuant to those powers and authorities granted to it herein and, from time to time, by law. The members of the Board shall be elected by the members as hereinafter set forth. The Board of Directors shall

be elected at the Annual Meeting, or at a Special Meeting of the members called for that purpose, and shall serve for the duration of the term as described herein.

4.06. Election of Board of Directors. The Directors shall be elected on the following basis:

a. Class A Voting Rights. Class A members shall have one vote per Dwelling Unit.

b. Class B Voting Rights. Unit such time as all of the Dwelling Units projected for the Proposed Development Area have been constructed and either sold or occupied through an agreement with the Developer or its successors, assigns and/or agents, the Developer shall have votes as follows:

1. To the extent that portions of the Proposed Development Area have been subjected to this Declaration and have become part of the Premises, then in any such event, the Developer shall be entitled to five (5) full votes for each unconstructed or unoccupied Dwelling Unit; and

2. For the remainder of the Proposed Development Area, the Developer shall have five (5) full votes for each proposed Dwelling Unit.

4.07. Notice of Election of Board of Directors. Where a meeting of the members is to be held for the purpose of electing members of the Board of Directors, each member shall be given a written notice describing the date, time, place and purpose of the meeting. Notice shall be delivered or mailed ten (10) days prior to the date of the meeting.

4.08. Board Liability. The Directors from time to time constituting the Board of Directors shall not be liable to the Members for any mistake of judgment or for any acts made, or omissions to act, committed in good faith as such Directors.

4.09. Governing Law. In all respects, the Association, its Board of Directors, officers and members shall be governed by the laws of the State of Illinois and the Not-For-Profit Corporation Act of the State of Illinois.

4.10. Term of Office. Each member of the Board of Directors shall serve for a two (2) year term.

4.11. Vacancies on Board of Directors. Should the death or resignation of a Director create a vacancy on the Board, the unexpired term of such Director shall be filled by a successor selected by a majority of the remaining members of the Board.

4.12. Compensation. No Director shall receive compensation for any service he or she may render to the Association. A Director, however, may be reimbursed for actual expenses incurred in the performance of his or her duties as a Director, subject to the unanimous approval of all Directors.

4.13. Regular Meetings. An annual meeting of the Board of Directors shall be held immediately after and at the same place as the annual meeting of the Members. The Board of Directors may provide by resolution of the time and place, within the State of Illinois, for the holding of additional regular meetings of the Board without other notice.

4.14. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any two Directors. The person or persons authorized to call such special meetings of the Board may fix the time and place within the State of Illinois, as the place for the holding of any such special meeting.

4.15. Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board, provided that if less than a majority of the Directors are present at any such meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

4.16. Annual Meeting of Members. An annual meeting of the Members shall be held on the last Sunday in January of each year.

ARTICLE V

NOMINATION, ELECTION, DUTIES AND POWERS OF THE BOARD OF DIRECTORS

5.01. Nomination. Any member wishing to run for the Board of Directors shall submit to the Secretary of the Association, a nominating petition signed by no less than ten members of the Association in good standing. Said nominating petition shall be on such form, containing such information, as the Board of Directors shall determine, from time to time. Upon receipt of a nominating petition as herein provided, the Secretary of the Association shall include the name of the member so nominated to appear on the election ballot.

5.02. Election. Election to the Board of the Directors shall be by secret written ballot. At such election, the Members or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of this Declaration. The persons receiving the largest number of votes shall be deemed elected. Cumulative voting is not permitted.

5.03. Powers of the Board of Directors. The Board of Directors shall, in addition to the other powers enumerated in this Declaration, have the power to:

a. adopt and publish rules and regulations governing the use, repair and/or replacement of the maintenance areas;

b. establish procedures regulating the delegation of a Member's right of enjoyment of the maintenance areas;

c. exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of the Declaration or the Articles of Incorporation;

d. employ a manager, an independent contractor or such other employees as the Board deems necessary or desirable, and to prescribe their duties.

5.04. Duties of the Board of Directors. It shall be duty of the Board of Directors to:

a. cause to be kept a complete record of all of its acts and corporate affairs, and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote;

b. supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

c. as more fully provided for in this Declaration, to conduct a regular meeting of the Board of Directors on or before December 1st of each year, for the purpose of determining the regular assessment against each dwelling unit prior to the regular assessment period, to prepare an itemized list of all estimated expenditures and give written notice of each assessment to every owner, and to foreclose the lien against any property for which assessments are not paid within thirty (30) days after the due date thereof, or to bring an action at law against the Owner personally obligated to pay any such assessments;

d. as more fully provided for in this Declaration, to cause an appropriate officer of the Association to issue, upon demand by any owner, a certificate setting forth whether or not the assessments on such owner's lot have been paid. A reasonable charge may be made by the Board for the issuance of any such certificate, which certificate shall be conclusive of payment of any assessment therein stated to have been paid;

e. procure and maintain adequate liability insurance for

the actions of all Board members, officers and employees;

f. cause all officers and employees having a fiscal responsibility to be bonded as the Board may deem appropriate; and

g. cause the maintenance areas as herein defined to be duly and properly maintained as herein provided.

ARTICLE VI  
OFFICERS

6.01. Officers. The officers of the Association shall be a President, Vice President, Treasurer, Secretary and such other officers as may be elected in accordance with the provisions of this Declaration. The President shall be a member of the Board of Directors, and any two or more offices may be held by the same person, except for the offices of President and Secretary.

6.02. Election and Term of Office. The officers of the Association shall be elected annually by the Board of Directors at the annual meeting of the Board of Directors. If the election of officers shall not be held at such meeting, then such election shall be held as soon as possible thereafter. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each officer shall hold office until his or her successor shall have been duly elected and qualified.

6.03. Vacancies. A vacancy in any office because of a death, resignation, disqualification or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

6.04. President. The President shall be the principal executive officer of the Association and shall, in general, supervise and control all of the business and affairs of the Association. The President shall preside at all meetings of the members and of the Board of Directors and shall see that the orders and resolutions of the Board of Directors are carried out. The President may sign, with the Secretary or any other proper officer of the Association authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors have authorized to be executed and, in general, shall perform all duties incident to the office of President, and such other duties as may be prescribed by the Board of Directors, from time to time.

6.05. Vice President. In the absence of the President, or in the event of the President's inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting, shall have all the powers of, and be subject to, all the

restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

6.06. Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; provided, however, that a resolution of the Board of Directors shall not be necessary for disbursements made in the ordinary course of business conducted within the limits of a budget adopted by the Board. The Treasurer shall sign all checks and notes of the Association, provided that such checks and notes shall also be signed by the President or the Vice President. The Treasurer shall keep proper books of account and cause an annual audit of the Association books to be made by a certified public accountant at the completion of each fiscal year. The Treasurer shall prepare an annual budget and an annual balance sheet statement, and the budget and balance sheet statement shall be presented to the Membership at its annual meeting.

6.07. Secretary. The Secretary shall be the ex-officio Secretary of the Board of Directors, and shall record the votes and keep the minutes of all proceedings in a book to be kept for that purpose. The secretary shall keep the records of the Association and shall record in a book kept for that purpose the names of all Members of the Association, together with their addresses as Members.

ARTICLE VII  
MEMBERSHIP ASSESSMENTS

7.01. Assessment Obligation. Each Owner of a Dwelling Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be and is deemed to covenant and hereby agrees to pay the Fieldsworth Homeowner's Association such assessments as are levied pursuant to this Declaration.

7.02. Assessment Lien. Each assessment, whether special or annual, together with interest thereon, late charges, costs of collection and reasonable attorney's fees, shall be a charge upon the land and a continuing lien against the Dwelling Unit and land from the date the assessment is levied.

7.03. Personal Obligation. Each assessment, whether special or annual, together with interest thereon, late charges, the costs of collection and reasonable attorney's fees, in addition to Paragraph 7.02 hereinabove, shall be the personal obligation of the person, persons or entities holding title to the Dwelling Unit on the date

the assessment was levied.

7.04. Commencement of Assessments for Dwelling Units. No assessments, special or annual, may be assessed against any Dwelling Unit until the Dwelling Unit has been both constructed and has either been sold or is occupied through an agreement with the Developer, the Developer's successors, assigns and/or agents.

7.05. Annual Assessments. Annual Assessments to pay the cost of operating, maintaining and administering the Maintenance Areas shall, from time to time, be assessed against the Dwelling Unit Owners. The amount of Assessment and the terms of payment shall be determined by the Board of Directors.

7.06. Late Charges. Any assessment not paid within ten (10) days from its due date, shall be assessed a late charge as determined, from time to time, by the Board of Directors.

7.07. Initial Assessment. Commencing with the month following the date of conveyance from the Developer, the Owner of each Dwelling Unit shall pay an assessment of no less than \$ \_\_\_\_\_ per month until such time as the Board of Directors proposes and passes a different assessment. Assessments may be collected either on a monthly, quarterly or annual basis.

7.08. Special Assessments. In addition to any annual assessments authorized pursuant to Paragraph 7.05 above, the Association may levy a special assessment against the Dwelling Unit Owners. Notwithstanding the foregoing, the Special Assessment shall not be valid until it has been ratified by a resolution approved by the two thirds (2/3rds) affirmative vote of both Classes of Membership at a meeting specifically called by the Association for that purpose.

7.09. Special Assessment Meetings - Notice and Quorum Requirements. A written notice of any meeting called for the purpose of taking any action authorized under Paragraph 7.08 above shall be mailed to all Members not less than thirty (30) days nor more than sixty (60) days prior to the date of the meeting. Said notice shall specify the reasons for the proposed special assessment and the amount of said assessment. At the first such meeting called, the presence of members or of proxies entitled to cast seventy-five percent (75%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements; provided, however, that the required quorum at the subsequent meeting shall be the presence of fifty percent (50%) of the members of each class of membership.

7.10. Certificate of Payment. Upon the request of an Owner, the Association shall furnish said Owner with a written certificate

signed by a designated Officer of the Association setting forth any unpaid annual or special assessments levied against said Owner's Dwelling Unit. The Certificate shall be conclusive evidence of payment of any annual or special assessments not stated therein as unpaid. Said Certificate shall be dated and shall be conclusive evidence up to and through the date so shown thereon. The Association may charge a reasonable fee to the Owner for the processing of any such request.

7.11. Payment of Assessments. All assessments as herein provided shall be paid directly to the Association.

7.12. Delinquent Assessments. Assessments which are not paid when due shall be deemed delinquent. The Association may bring an action at law or in equity against the Dwelling Unit Owner to pay any such delinquent assessments. The Association, in addition thereto, may enforce and foreclose any lien it has or which may exist for its benefit. No Owner may waive or otherwise escape liability for any assessments provided for herein by non-use of the Maintenance Areas.

7.13. Subordination of Lien to Mortgage. The Lien of the Association provided for herein shall be subordinate to the Lien of any first mortgage. Sale or transfer of any Dwelling Unit shall not affect the assessment lien. However, the sale or transfer of any Dwelling Unit pursuant to a mortgage foreclosure decree or any proceeding in lieu thereof shall extinguish the lien of said assessment as to payments which became due prior to the date possession was taken on behalf of the mortgagee or its successors, assigns or agents. No other sale or transfer shall relieve a Dwelling Unit from liability for any assessments thereafter becoming due or from the lien thereon. Notwithstanding the above, nothing herein contained shall be construed to waive or extinguish the personal obligation to pay the assessment of the Owner holding title on the date of assessment.

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ARTICLE VIII  
PROPERTY RIGHTS

8.01. Duration of Declarations. The covenants, conditions, easements and restrictions created by this Declaration shall run with and bind the land for a period of forty (40) years from the date of its recording. After the expiration of forty (40) years, said covenants, conditions, easements and restrictions shall continue to run with and bind the land for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part by an instrument which is executed by the Owners of not less than three quarters (3/4) of the Dwelling Units of each class of membership as it then exists. Said executed document shall not be valid until recorded with the Recorder of Deeds of DuPage County, Illinois.

8.02. Members' Right of Enjoyment. All rights of the members granted under this Declaration shall be subject to any and all rights reserved to the Developer under this Declaration, including, but not limited to, Paragraph 8.03 hereinbelow.

8.03. Developer's Reserved Rights. Notwithstanding any of the provisions contained herein to the contrary, all covenants, conditions, easements and restrictions created under this Declaration shall be subject to the following:

a. Easements of record on the date hereof and any easements which may hereafter be granted by the Developer;

b. The Developer shall have the right of ingress and egress over and upon the Premises and Maintenance Areas for any and all purposes directly or indirectly needed by the Developer for any reason whatsoever;

c. The Developer shall have the right to adopt rules and regulations governing the use, maintenance and administration of the Maintenance Areas;

d. The Developer shall have the right to improve the Maintenance Areas as it deems appropriate and the Developer shall be the sole judge as to what improvements shall be constructed or installed in or upon said areas;

e. The Developer's officers, agents, employees, guests, assignees and designees shall have the right of access, use and enjoyment of the Maintenance Areas, which right shall not be infringed, suspended or terminated in any way by an Owner or the Association;

f. The Developer shall have the right to execute all

documents or undertake any actions affecting the Maintenance Areas which in the Developer's sole opinion are either desirable or necessary to fulfill or implement, either directly or indirectly, any of the Developer's rights granted or reserved in this Declaration;

g. The Developer shall have the right to designate and/or grant any and all easements which in its sole discretion are deemed necessary for the development of the Maintenance Areas. Said easements shall include, but not be limited to, easements over, above on, in connection with or under any part of the Maintenance Areas which may be granted to any public utility, private utility, private party or governmental body for the installation of electrical service, telephone service, gas pipes, water lines, sanitary sewer pipes, storm sewer pipes, cable television service or any other use necessary or desirable for the development of the Premises;

h. The Developer shall have the right to dedicate, transfer or convey any portion of the Maintenance Areas to any public agency, authority, utility, park district, or municipality, for any purposes and subject to any conditions as it deems appropriate. Any transfer or dedication pursuant to this Paragraph shall be consummated upon the execution and recording of the appropriate documentation reflecting the transfer of ownership.

8.04. Incorporation of Easements by Reference. Reference in the respective deeds of conveyance, or in any mortgage or trust deeds or other evidence of obligation, to the easements and covenants herein described shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees or trustees of said parcels as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in such documents.

ARTICLE IX  
RESTRICTIONS ON USE OF PREMISES  
AND DWELLING UNITS

9.01. Use and Occupancy Restrictions. The following use and occupancy restrictions shall apply to the Premises:

a. No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Premises or Dwelling Unit. Notwithstanding the foregoing, the Developer reserves the right for itself, its successors, agents or assigns, to use any dwelling unit as for for a model home and/or construction office, or for any other purposes granted to the Developer by the County of DuPage, Illinois;