

90-23925

Document No. _____ filed for Record in Recorder's
Office of Peoria County, Illinois _____ OCT 5 1990
at 12:56 o'clock _____ Recorder of Deeds

[Signature]

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DECLARATION OF RESTRICTIONS

BENNINGTON PARK

THIS DECLARATION OF RESTRICTIONS is made this 5th day of October, 1990, by, Charles Rock & Associates, Inc., hereinafter referred to as the "Developer", for certain property, which shall hereinafter be referred to as the "Subdivision", and is legally described as follows:

Bennington Park, a Subdivision of part of the Southwest Quarter of Section Twenty (20), Township Ten (10) North, Range Eight (8) East of the Fourth Principal Meridian, Peoria County, Illinois, as shown by a Plat recorded in Plat Book 4, Page 131, as Document No. 90-23924, in the Office of the Peoria County Recorder of Deeds.

I. RESTRICTIONS:

- 1) APPLICATION OF RESTRICTIONS. All persons, corporations, trusts or other entities that now hold or shall hereafter acquire any interest in any part of the Subdivision shall be taken to agree to comply with the covenants, conditions, restrictions and stipulations contained herein as to the use of the Subdivision and the construction of residences and improvements therein, as hereinafter set forth.
- 2) PROPERTY USE. The Subdivision and all lots therein shall be used only for single-family residences. No portion of the Subdivision, improved or unimproved, shall be used for any commercial, manufacturing, professional, religious, fraternal, or other business purpose.
- 3) CONSTRUCTION REQUIREMENTS. The construction of residences on lots in the Subdivision shall be governed by the following specifications:

INDEX TO LOTS 1-32, Inclusive, Bennington Park
PIN Division of: 09-20-476-002
09-20-476-003
09-20-426-004

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- a) Setback Lines. The exterior walls of any building, garage, enclosed porch, swimming pool or other outbuilding shall not be erected or maintained closer to the front lot line than the setback lines shown on the plat of the Subdivision. Such structures shall also not be erected or maintained at any given point closer to the side or rear lot lines than ten (10) percent of the respective width or depth of the lot at such point.
- b) Footage Requirements. As to residences of one level, the first floor living area shall have a total living area, exclusive of garage and basement, of not less than 2,400 square feet. Residences of more than one level shall have a total living area of not less than 2,800 square feet on the main level and not less than 1,400 square feet total. No residence shall exceed two and one-half stories in height.
- c) Permitted Exteriors. No wall board, aluminum siding, vinyl siding, sheet metal, tar paper, or roofing paper shall be used for any exterior wall covering or roofs. Aluminum may be used for gutters and downspouts, soffit and fascia boards. Stone, brick, wood, and stucco style materials, shall be permitted exteriors, provided such materials are of suitable quality, grade and coloration so as to conform and harmonize with other improvements in the Subdivision. No excessively bright colors or light shadings shall be permitted on the exteriors of any building in the Subdivision.
- d) Garages. Each residence constructed on a lot in the Subdivision shall contain an attached, enclosed garage adequate to store, at a minimum, two standard-sized passenger vehicles, or, as a maximum, three standard-sized passenger vehicles. Any such garage shall be in conformity with the attached residence as to exterior, architecture and location.
- e) Sewage Requirements. All residences shall connect with sanitary and storm sewers when such service becomes available. Until such services become available, all residences shall utilize properly working septic fields.
- f) Excavation. All materials excavated from any lot in the Subdivision shall be removed from the Subdivision unless permission is otherwise granted in writing by the Developer.
- g) Swimming Pools. All swimming pools must be enclosed by fencing approved by the Developer and shall, in all respects, comply with applicable ordinances and building

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codes. All devices used in connection with the swimming pool, including the filter and circulating pump, shall be located inside the required fence and concealed from view.

- h) Driveways and Curb Cuts. All driveways leading from the street to the garage must be of blacktop, concrete, or other materials permitted by the Developer. Curbs which are removed for the purpose of making a driveway entrance shall be replaced as far as the nearest construction or expansion joint to insure a smoothly joining entrance, with a radius of return of at least five (5) feet.
- i) Sidewalks. Sidewalks must be installed by and at the expense of a lot owner upon the earlier of (i) six months after completion of construction of a residence on the lot, (ii) when required by governmental authority, or (iii) within two years of completion of construction of residences on 80% of the lots constituting the Subdivision. Details as to sidewalk size, placement, and materials are to be supplied by the Developer, with all sidewalks to be in conformity with other sidewalks in the Subdivision.
- j) Developer Approval. No building, outbuilding, tower, satellite dish, or swimming pool shall be erected, placed, or altered on any lot in the Subdivision until the building plans, specifications and site plans of said improvements have been submitted to and approved by the Developer. The Developer, as part of the approval process, shall evaluate the proposed improvements as to conformity and harmony of external design with existing structures in the Subdivision and as to location of the building with respect to topography and finished ground elevation. A minimum of two (2) copies of all building plans, specifications, and site plans shall be submitted before commencement of any construction on a lot. One copy of said building plans, specifications, and site plans shall be retained by the Developer. The Developer, at Developer's option, may require that samples of all exterior materials be submitted for examination prior to approval. If the Developer fails to give written approval or disapproval to such plans and specifications within thirty (30) days after same have been received by the Developer, the plans and specifications shall be deemed approved. All improvements shall be constructed in strict conformity with approved plans and specifications. Any changes during construction of the size or exterior of the building, either as to materials or colors, must be approved in writing by the Developer prior to continuation of construction.

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- 4) **TEMPORARY STRUCTURES.** No trailer, basement, tent, shack, garage, barn or other outbuilding shall be at any time used as a residence, temporarily or permanently, in the Subdivision. No home shall be occupied as a residence until the exterior of such residence is completed in accordance with the approved plans and a certificate of occupancy has been issued.
- 5) **REPLATTING.** No lot or lots as platted shall be divided so as to result in creating additional lots. Two (2) adjoining lots may not be used for the construction of one residence. However, the Developer, at Developer's sole discretion, may permit a portion of a lot to be added to an adjacent lot to create a larger lot, provided that the remainder of the one lot is of sufficient size to construct a residence upon it in accordance with the construction requirements detailed herein, and further provided that the location of the building setback lines shall be modified to reflect the new size of each lot.
- 6) **FOLIAGE REMOVAL.** No trees or other significant foliage, other than trees or foliage which are dead, hazardous, or reasonably impede construction of a residence or interfere with an easement, shall be destroyed or removed from any lot without the consent of the Developer.
- 7) **OFFENSIVE ACTIVITIES.** No noxious, hazardous, or offensive trade, object, or activity which may be or may become a nuisance, hazard or danger to the neighborhood, by sight, sound, odor, or otherwise, shall be performed or maintained on any lot or other part of the Subdivision.
- 8) **ANIMALS.** No animals other than domesticated house pets shall be kept or maintained within the Subdivision. Any pet runs or enclosures must be approved in writing by the Developer.
- 9) **PROPERTY MAINTENANCE.** All lot owners shall keep their property well maintained and in a presentable condition. In the event a lot presents a nuisance or an unattractive appearance because of accumulated debris, weeds or grasses, the Developer shall attempt to notify the owner of said lot in writing of the objectionable condition of the lot, with said notice to be mailed by certified mail, if more current information is not available, to the address listed with the Peoria County Supervisor of Assessments for the mailing of tax bills for said lot. If the condition of said lot is not adequately improved within ten days of the mailing of such notice, the Developer may undertake any such reasonable acts as may be necessary to improve the condition of the lot. Any charges sustained by the Developer may be charged to the lot owner, and, at the option of the Developer, may constitute and be recorded as a lien against said lot. Such liens may be enforced against the owner's property as permitted by law.

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- 10) **VEHICLE STORAGE.** No passenger cars, recreational vehicles, trailers, vans, mobile homes, boats, or other objects of substantial size, whether operative or inoperative, may be parked or stored on a regular basis within the confines of the Subdivision unless same is enclosed and concealed from view within a garage on the owner's property. This provision, to the extent permitted by law, shall apply to those parts of the Subdivision dedicated as public roadways.
- 11) **SUPPLY STORAGE.** Except as necessarily incidental to construction of buildings and structures on lots, no new or used construction materials, supplies, unused machinery, or the like shall be kept or allowed to remain in the Subdivision unless stored inside a building and concealed from view.
- 12) **EASEMENTS.** Easements for public utility installation and maintenance are reserved as shown on the recorded plat. Said utilities shall be permitted access to the indicated easements for the purpose of serving individual lots, the Subdivision, and adjoining property with standard public utilities, including, without limitation, electric, gas, water, sewer, television cable and telephone service. No permanent buildings, structures, or other significant foliage shall be placed on said easements, but the easements may be used for gardens, shrubs, landscaping, and other purposes that do not interfere with the maintenance or use of the easements.
- 13) **COMMENCEMENT OF CONSTRUCTION.** Any individual or entity acquiring a lot from the Developer must commence construction within thirty-six (36) months after the conveyance of title, unless a written extension is granted by the Developer. All construction must be completed in accordance with approved plans, including all landscaping work, within nine (9) months after commencement of construction. In the event such construction is not commenced within the allotted time, the Developer shall have the absolute right, at its sole option, to repurchase the lot by repayment of the original purchase price, in cash, with no interest to have accrued thereon. In the event a dwelling is commenced but not completed within the allotted time, the Developer shall have the absolute right, at its sole option, to repurchase the lot for the original purchase price, plus 90% of the fair market value of the partially completed dwelling thereon. If an agreement cannot be reached as to the fair market value thereof, same shall be determined by arbitration by an arbitrator to be appointed by the lot owner, an arbitrator to be appointed by the Developer, and, if necessary, a third arbitrator to be appointed by the first two arbitrators, with a decision of the majority of arbitrators to be binding upon both the Developer and the lot owner. Costs of the arbitration shall be equally shared between the Developer and the lot owner.

- 14) OUTDOOR LIGHTING. All lot owners, upon completion of construction of the residence, shall install in the front area of their lot suitable, Developer-approved, lighting for night illumination of the frontage area of their lot unless adequate street lighting is otherwise provided.
- 15) FENCING. No enclosures or fences shall be constructed along or within the borderline of any lot without the written permission of the Developer.
- 16) AMENDMENT OF RESTRICTIONS/PLATS. Until the Developer divests himself of all interest in all lots of the Subdivision, the Developer shall retain the right to amend, modify or annul any of the Restrictions detailed herein or on the Plat of the Subdivision by a written instrument to be recorded in the Office of the Recorder of Deeds, Peoria County, Illinois. Upon the sale of all of the Developer's interest in the Subdivision, these Restrictions may be amended by the affirmative vote of two-thirds of the total lot owners in the Subdivision, with the collective owners of each lot to have one vote in regards to any such issue. However, after the Developer's sale of any lot, no amendment of these Restrictions or the Plat of the Subdivision shall significantly impede or alter the continued development of the Subdivision in accordance with the general intent of the Developer as expressed herein.
- 17) ENFORCEMENT OF RESTRICTIONS. Any lot owner in the Subdivision shall be entitled to prosecute, in any proceeding in law or equity, any owner violating or attempting to violate any of the restrictions or covenants contained herein, to either prevent said owner from committing said violation or to recover damages for such violation.
- 18) INVALIDATION OF RESTRICTIONS. Invalidation of any portion of these Restrictions by judgment or Court order shall not affect any remaining Restrictions, which shall remain in full force and effect and be construed, as closely as possible, with the original intent of the Developer.
- 19) ASSIGNMENT BY DEVELOPER. The Developer shall have the right to sell, assign, transfer, or convey the rights of the Developer. Any such transfer shall be in writing and recorded in the office of the Recorder of Deeds, Peoria County. The Developer may, from time to time, appoint a designated agent to act for the Developer, and shall, upon request, furnish satisfactory evidence concerning the appointment and authority of said representative.
- 20) CERTIFICATE OF COMPLIANCE. Upon receipt of a written request by the owner of any lot, plus payment of a reasonable fee if so required, the Developer will issue a Certificate of

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Compliance stating that the building or buildings on said lot comply with these Restrictions, if such is the fact. Such Certificate shall be conclusive evidence of satisfactory compliance with these Restrictions, except said Certificate shall not be conclusive as to matters of survey.

- 21) LIMITATION OF LIABILITY. In no event shall any action or inaction by the Developer in regards to the Developer's powers or duties expressed herein constitute or give rise to any liability against the Developer, provided such action or inaction does not constitute fraud or gross negligence.

II. HOMEOWNERS ASSOCIATION

- 1) MEMBERSHIP IN ASSOCIATION. Upon its formation, all lot owners in the Subdivision shall become members of the Bennington Park Homeowners Association (hereinafter referred to as the "Association"). Membership in the Association shall run with the land, and any conveyance of an interest to property in the Subdivision shall be deemed a conveyance of the associated membership in the Association.
- 2) FORMATION OF ASSOCIATION. The Association shall be formed the earlier of: a) the sale of all of the Developer's interest in the Subdivision, or b) the sale of 75% of the total lots in the Subdivision, plus written approval by the Developer for formation of the Association. Formation of the Association shall be evidenced by the recording of a written instrument in the office of the Peoria County Recorder of Deeds, Peoria County, Illinois.
- 3) POWERS AND DUTIES OF ASSOCIATION. Once formed, the Association shall have the following powers and duties:
- a) The Association shall specifically have the authority to bring suit to enforce compliance with any of the restrictions pertaining to the Subdivision in its own name and on its own behalf.
 - b) The Association shall be responsible for the care, maintenance, and upkeep of the common areas and entryways of the Subdivision, with said areas to include, without limitation, such areas as may hereinafter be subject to easements in favor of the Developer or the Homeowners Association for maintenance of Subdivision signs, landscaping, or common areas.
 - c) Upon written grant of authority from the Developer, the Association shall be responsible for the approval of

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construction in the Subdivision in accordance with the restrictions and issuance of certificates of compliance.

d) The Association shall be authorized to assess fees against the lot owners in the Subdivision for the operational costs and projects of the Association in accordance with the guidelines hereinafter established.

4) ORGANIZATION AND OPERATION OF THE ASSOCIATION. Once formed, the Association may establish guidelines and by-laws for operation of and membership in the Association. The Association may elect to be organized and operate as a not-for-profit corporation.

5) INITIAL MEETING AND ORGANIZATION OF ASSOCIATION. The document filed with the Peoria County Recorder of Deeds indicating the formation of the Association shall also detail the date, time and place of the initial meeting of the Association, with said meeting to be held within 45 days of recording of said document. Additional notice of the meeting shall be provided by the Developer by either the delivery or mailing of notice, regular mail, to each lot owner in the Subdivision, or by the posting of a notice of the meeting in at least three conspicuous locations in the Subdivision at least 14 days prior to the scheduled meeting. Thereafter, the Developer shall have no further responsibilities in regards to maintenance of the common areas of the Subdivision or to participate with the continued functions of the Association.

6) VOTING RIGHTS. In regards to all Association matters, one vote may be cast by the collective owners of any lot in the Subdivision. In the event any lot has been divided, the respective owners of said lot may cast a percentage of one vote, with said percentage to relate to the portion owned of the originally platted lot. Voting in Association matters may be done in person or by written proxy for specific issues, or general proxies provided same, on their face, expire within six months of execution.

7) ELECTION OF TRUSTEES. At the initial meeting of the Association, each lot owner shall be entitled to cast one vote for each lot owned for the election of Trustees of the Association. Those three individuals receiving the highest total of votes shall be elected as Trustees of the Association. The Trustees shall have the following rights and duties:

a) To formulate a budget based on the estimated annual expenses of the Association for maintenance of common areas and organization costs with a reasonable reserve.

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- b) To provide for the assessment of fees to each lot owner in an amount necessary to provide the estimated funds required pursuant to the budget.
 - c) To employ, on behalf of the Association, such maintenance or service personnel as may be required to provide services to the common areas of the Association, and to employ and retain on behalf of the Association such legal, accounting, or other professional services as may be required by the Association.
 - d) To formulate and propose, as part of the initial organization of the Association, general by-laws and guidelines for the Association.
 - e) To pay the bills of the Association and to maintain accounts, books and records in accordance with standard accounting practice.
- 8) PROVISIONS RELATING TO TRUSTEES. Unless and until the Association adopts new by-laws, each Trustee shall be elected for a period of two years, provided, however, that the two Trustees receiving the fewest number of votes at the initial meeting of the Association shall be elected for a term of one year, with their successors to be elected for two year terms. The Trustees shall provide for at least an annual meeting of the Association to be held at a reasonable time and place, which meeting shall include the election of new Trustees, with notice of said meeting to be made by delivering or mailing such notice, regular mail, to all lot owners or by conspicuously posting notice of said meeting for 14 days in advance of the meeting in at least three places in the Subdivision. Trustees shall not be entitled to receipt of compensation for their acts as Trustees, nor shall any Trustee receive compensation for professional advice provided to the Association. Absent fraud or gross negligence, no Trustee shall be personally liable for any acts or failure to act on behalf of the Association.
- 9) ADOPTION OR AMENDMENT OF BY-LAWS. The Association may adopt or amend the By-laws of the Association upon the affirmative vote of three-fourths of all lot owners in the Subdivision.
- 10) ASSESSMENTS. The Association shall be empowered to assess each individual lot owner for said lot owner's proportionate share of the budget established by the Trustees, within the guidelines hereinafter established. Assessments against each lot in the Subdivision shall be in equal amounts, irrespective of a lot's size. Any amount assessed against an individual lot which remains unpaid thirty days after said assessment becomes due may, at the option of the Association, become a lien against the lot once notice of same is placed of record

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with the Peoria County Recorder of Deeds. In order to become a valid lien, said lien must be placed of record within two years of the time said amount claimed became due, with the lien to expire two years after recording of same. Payment of said lien may be enforced by foreclosure of lien, or any other method permitted by law, and the Association may recover reasonable attorney's fees and court costs incurred in recovery of amounts due. Regardless of the budget established by the Trustees, the amount of the annual assessment charged to the lot owners may not exceed the sum of \$100.00 per year, adjusted for inflation, unless the amount of the annual assessment is approved by at least three-fourths of the lot owners in the Subdivision.

- 11) MERGER OF ASSOCIATIONS. Upon receipt of written approval of fifty percent of the lot owners in the Subdivision, the Association may merge with homeowners associations for contiguous subdivisions.

IN WITNESS WHEREOF, the undersigned, on behalf of Charles Rock and Associates, Inc., has hereby placed its seal this 5th day of October, 1990.

CHARLES ROCK & ASSOCIATES, INC.

By: Charles M. Rock
CHARLES M. ROCK, Vice-President

ATTEST:

Margy C. Mattern
MARGY C. MATTERN, Secretary

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