

JAN 30 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
STATE OF ILLINOIS
Pollution Control Board


PEOPLE OF THE STATE OF ILLINOIS,)
)
 Plaintiff,)
)
)
)
 PARAMOUNT DEVELOPERS, INC.,)
 An Illinois Corporation)
)
)
 Defendant.)
)

Case No. PCB 04-84

NOTICE OF FILING

TO: See attached Service List.

PLEASE TAKE NOTICE that on January 26, 2004, we filed with the Illinois Pollution Control Board, Illinois, the DEFENDANT'S ANSWER a copy of which is attached here to and herewith served upon you.


Attorney for Defendant

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Denkewalter & Angelo
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JAN 30 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
)
 Complainant,)
)
)
 PARAMOUNT DEVELOPERS, INC.,)
 An Illinois Corporation)
)
 Respondent.)
)
)

Case No. PCB 04-84

ANSWER

NOW COMES the Defendant, PARAMOUNT DEVELOPERS, INC., by and through its attorneys, Denkewalter & Angelo, and Answers:

COUNT I

1. Defendant admits who is bringing the Complaint.
2. Defendant admits allegations in Paragraph 2.
3. Defendant believes that Plaintiff letter referenced in Paragraph 3 addressed to Charles Allenson who was not employed by Defendant at the time of the letter.
4. Defendant's Kim R. Denkewalter contacted the EPA after receipt of the letter referenced and informed the EPA that Defendant Paramount Developers, Inc. no longer had any interest in the property in question due to a Settlement Agreement and Quit Claim Deed dated October 11, 2000 (attached as Exhibit 1).
5. Defendant admits allegations in Paragraph 5.
6. Defendant denies building the residential homes at the site except for three model homes which are not completed and states that all single family residences are being constructed by others since the Settlement for October 11, 2000.

7. That as of July 19, 2001, Paramount Developers, Inc. no longer controls that area near the waterways, therefore Paramount Developers, Inc. denies the allegations.
8. That at the time claimed, Paramount Developers, Inc. was not in control of the land upon which the fencing should have been located.
9. That at the time of the Complaint, Paramount Developers, Inc. was not in control of the area that needed the erosion control.
10. That on May 9, 2002 Paramount Developers, Inc. was not in control and did not install any fencing at all.
11. That on May 12, 2003, Paramount Developers, Inc. has ceased operating as a company had no employees and did no work.
12. That Paramount Developers, Inc. never controlled the area since October 2000.
13. Defendant admits the definition.
14. Defendant admits the definition.
15. Defendant admits qualifying as a person under the statute.
16. Defendant admits the definition.
17. Defendant denies that those terms are included in the previous definition.
18. Defendant admits the definition.
19. Defendant denies having any interest in the property as of the date of the statute (see Exhibit 1).
20. Defendant admits the definition..
21. Defendant denies allowing any discharge as of the date of the statute.

WHEREFORE Defendant Paramount Developers, Inc.

1. Denies any liability for anything alleged taking place after the date of the Settlement Agreement in Exhibit 1.
2. Denies the applicability of any statute dated after the October 11, 2000 date of the Settlement Agreement.

COUNT II

Defendant Paramount Developers, Inc. states:

1. Admits that the Complaint is on behalf of The People of Illinois
2. Denies the applicability of suing based upon a law dated after any infraction which would by definition be "Ex Post Facto" and unconstitutional.
- 3-17. Defendant incorporated its answers by reference.
18. Defendant admits the allegation in Paragraph 18.
19. Paramount denies liability based upon the date of the statute.

WHEREFORE Paramount Developers prays that Count II be dismissed.

COUNT III

- 1-19. Defendant restates and incorporates by reference those answers.
20. Defendant admits the definition.
21. Defendant admits receiving the application but turned over all construction responsibility as of October 11, 2000.
22. That Paramount turned over all responsibility to Hinsbrook Bank & Trust under Trust 98-076 (and their subcontractor Adcock Construction Inc.) pursuant to the Settlement Agreement.
23. Defendant Paramount Developers, Inc. monitored the site up until October 11, 2000 and failed to monitor after the Settlement Agreement because Paramount Developers, Inc. no longer had any interest in the property bordering the water.
24. Defendant Paramount Developers, Inc. admits not installing adequate storm drains as it had assigned its rights to the aforementioned Hinsbrook Trust.
25. Defendant Paramount Developers, Inc. admits it never filed ION but denies responsibility for the filings.
26. Defendant had no knowledge of the Water Pollution regulation.
27. Defendant admits to failing to file ION but denies responsibility after October 11, 2000.

28. Defendant admits the allegations in Paragraph 28.
29. Defendant denies liability based upon statutes that are effective after the date of termination of interest.

WHEREFORE Defendant Paramount Developers, Inc. requests that Count III be dismissed on a re-plead to include the proper party Defendant.

COUNT IV

- 1-20. Defendant restates and incorporates its previous answer by reference.
21. Defendant admits the definition.
22. Defendant admits the definition.
23. Defendant admits the definition.
24. Defendant lacks knowledge to answer Paragraph 24.
25. Defendant denies allegation of Paragraph 25.
26. Defendant denies any violation prior to October 11, 2000.
27. Defendant denies applicability of the 2002 statute.

WHEREFORE:

1. Defendant asks that this matter be dismissed except as to matters prior to October 11, 2000.
2. Defendant is no longer an active company so it has ceased to violate any administrative regulations.
3. Defendant requests that the People request for damages be dismissed.

Denkewalter & Angelo
5215 Old Orchard Rd., Suite 1010
Skokie, Illinois 60077
(847) 583-2244
Cook County Atty. Code: 20430

PARAMOUNT DEVELOPERS, INC.

Defendant

By: 

Defendant's Attorney

**SETTLEMENT AGREEMENT AND
AGREEMENT OF PURCHASE AND SALE**

This Settlement Agreement and Agreement of Purchase and Sale (the "Agreement") is made as of this 11th day of October, 2000, by and between **HINSBROOK BANK AND TRUST**, not personally but solely as Trustee under a Trust Agreement dated November 5, 1998 and known as Trust No. 98-076 (the "Seller") and **THE HOMES AT RIVERBEND LLC**, an Illinois limited liability company (the "Purchaser").

RECITALS

A. Pursuant to that certain Agreement of Purchase and Sale ("Prior Agreement") by and between Seller and Purchaser dated as of June 29, 1999, Purchaser agreed to purchase and Seller agreed to sell certain real estate located in Lisle, Illinois, as more particularly described therein.

B. Pursuant to the Prior Agreement, Purchaser and Seller are joint declarants as set forth in the River Bend Master Property Owners' Association Declaration of Covenants, Condition, Restrictions and Easements (the "Master Declaration") dated as of August 17, 1999, and recorded in the office of the Du Page County Recorder on August 31, 1999, as document number R1999 - 188830.

C. The Master Declaration submits certain real property legally described on the attached Exhibit A (the "Property") to certain covenants, conditions, restrictions and easements, all as set forth in the Master Declaration.

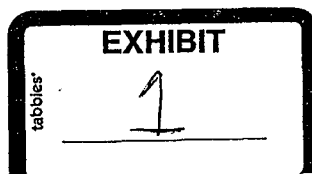
D. A dispute has arisen between the parties regarding the satisfactory performance of each party's obligations under the Prior Agreement.

E. On August 15, 2000, Purchaser filed a Verified Complaint in the Circuit Court of the Eighteenth Judicial Circuit in Du Page County, Illinois, against Seller and the following entities or persons (collectively, "Seller Affiliates"): Hatch Farm Partners, Hatch Farm Project, Inc., Spinning Wheel Associates, Ltd., Li-Su L. Tan, Joseph Chang, and Martin Wei (such complaint and all matters related thereto is hereinafter referred to as the "Litigation").

F. Purchaser and Seller desire to settle all claims (including any claims related to the Litigation), to reinstate the Prior Agreement, solely on the terms and conditions set forth herein; and to facilitate the sale by Seller to Purchaser of 18 improved town home lots identified as lots 44 through 59 and lots 61 and 62 on the site plan attached Exhibit B (each such lot is hereinafter referred to individually as a "Lot") within the Property.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser agree as follows.

1. Incorporation of Recitals. The foregoing Recitals are incorporated herein by reference.



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2. Termination of Prior Agreement; Mutual Release.
- A. The Prior Agreement is terminated and shall be of no further effect.
- B. Purchaser for itself, and its present legal representatives, successors, assigns, agents, employees, officers, directors, predecessors in interest, and all persons acting by or through them (collectively, the "Purchaser Releasers") hereby releases and forever discharges Seller, Seller's Affiliates, and their respective past and present legal representatives, successors, assigns, agents, employees, officers, directors, predecessors in interest, and all persons acting by or through them (collectively, the "Seller Releasees"), of and from any and all actions, inactions, or grounds for complaint and of any cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, including all direct and/or indirect liabilities (and vicarious liability), claims or demands of any nature whatsoever, known or unknown, fixed or contingent of which the Purchaser Releasers, or any of them, now or may hereafter have against the Seller Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to and including the date of the execution hereof, whether under the Prior Agreement or otherwise; provided, however, that this release shall not apply to any claims arising from a breach of or misrepresentation under the provisions of this Agreement. The covenants of this paragraph shall not merge, and shall survive Closing or termination of this Agreement.
- C. Seller for itself, and its present legal representatives, successors, assigns, agents, employees, officers, directors, predecessors in interest, and all persons acting by or through them (collectively, the "Seller Releasers") hereby releases and forever discharges Purchaser, and its respective past and present legal representatives, successors, assigns, agents, employees, officers, directors, predecessors in interest, and all persons acting by or through them (collectively, the "Purchaser Releasees"), of and from any and all actions, inactions, or grounds for complaint and of any cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, including all direct and/or indirect liabilities (and vicarious liability), claims or demands of any nature whatsoever, known or unknown, fixed or contingent of which the Seller Releasers, or any of them, now or may hereafter have against the Purchaser Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to and including the date of the execution hereof, whether under the Prior Agreement or otherwise; provided, however, that this release shall not apply to any claims arising from a breach of or misrepresentation under the provisions of this Agreement. The covenants of this paragraph shall not merge, and shall survive Closing or termination of this Agreement.
- D. Concurrent with the execution hereof, Seller and Purchaser shall execute and Purchaser shall cause to be filed in the circuit court of the Eighteenth Judicial Circuit

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a stipulation to dismiss with prejudice the Verified Complaint filed by Purchaser in Case Number 00 CH 00993, and Purchaser shall cause said complaint and the Litigation to be dismissed with prejudice.

E. ^{KNO} Concurrent with the initial Closing (as set forth below), Purchaser shall convey to Seller Lots ~~28~~ and ~~31~~ (the "Single Family Lots"), which are located on the Property but within the area designated on the Plat for construction of single family homes and which Purchaser acquired under the Prior Agreement. Title of such Single Family Lots shall be in the same condition as of the date on which Purchaser acquired such lots. Seller shall credit the amount of \$~~231,000~~ against the Purchaser Price (as hereinafter defined) paid for the Lots purchased at the initial Closing under this Agreement. _{KNO}

3. Sale of Lots. On or before November 3 2000, Seller shall sell the Lots to Purchaser, subject to the following terms, conditions, covenants, and warranties:

A. Purchase Price. The purchase price ("Purchase Price") for each Lot is set forth the Schedule of Lots and Closing Dates attached hereto as Exhibit C. After the first Closing, the Purchase Price shall be adjusted upward by an amount equal to any cost overruns, or downward by an amount equal to any cost savings, realized by Seller in the development and construction of the site improvements in connection with (i) Four Lakes Drive, (ii) the lakeside retaining wall, and (iii) the storm water retention area outfall structure, which amounts shall be determined by Seller and shall be credited or charged to Seller on a per lot, pro rata basis at the time of each succeeding subsequent closing. Attached hereto as Exhibit T, is a schedule comparing Cumulative Totals which would have been payable under the Prior Agreement with Cumulative Totals which will be payable under this Agreement. On the first day of each month, commencing November 1, 2000, the Purchase Price for the next Lot or Lots to be purchased under this Agreement shall be adjusted upward by an amount equal to one percent (1%) of the difference, if any, between the Cumulative Totals which would have been payable under the Prior Agreement and the Cumulative Totals actually paid under this Agreement.

B. Earnest Money.

(i) At the time of each Closing, Purchaser shall pay to Seller an amount equal to ten percent (10%) of the gross aggregate purchase price of the Lots being conveyed at such Closing (the "Earnest Money"), which sum shall be held by Seller as earnest money for subsequent closings. The Earnest Money may be commingled with other funds of Seller, and no interest shall be payable with respect thereto. The Earnest Money is non-refundable if Purchaser fails to close at any Closing or if this Agreement is terminated without fault by Seller.

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- (ii) Seller has received and retained the amount of \$133,000, which Seller received as earnest money under the Prior Agreement. At the final Closing, Seller shall credit the amount of \$133,000 and all other Earnest Money paid pursuant to this Agreement against the Purchaser Price payable at the final Closing.
- (iii) Notwithstanding the foregoing, the amount of Earnest Money shall at no time exceed the amount of \$250,000.

C. Method of Closing.

- (i) The first closing hereunder shall occur on or before November 3, 2000. Each subsequent Closing shall occur through an escrow (the "Escrow") at Title Services, Inc., Wheaton, Illinois (the "Title Company") on fifteen (15) days prior written notice from Purchaser to Seller and no later than the dates set forth on the attached Exhibit C.
- (ii) At each Closing, Seller shall deliver or cause to be delivered to Purchaser through the Escrow:
 - (a) a standard form of Trustee's Deed (the "Deed") in proper statutory form for recording, which shall be duly executed and acknowledged by Seller so as to convey to Purchaser fee simple absolute title to the Property, subject only to the Permitted Exceptions (hereinafter defined);
 - (b) a disclosure document, if required under the Illinois Responsible Property Transfer Act;
 - (c) FIRPTA affidavit; and
 - (d) such other documents and agreements as are required under this Agreement
- (iii) At each Closing, Purchaser shall deliver to Seller all of the deliveries provided for in this Agreement including, without limitation:
 - (a) the Purchase Price, as adjusted for prorations, and all other sums due and payable under this Agreement;
 - (b) such other documents as are required under this Agreement.
- (iv) Each Closing shall be a "New York style" closing, whereby Seller shall cause the Title Company to deliver to Purchaser simultaneously with Purchaser's delivery of the Purchase Price to Seller in accordance with the requirements

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of this Agreement, commitments (dated as of the Closing Date and reflecting Purchaser or its designee as fee simple title holder) to issue an ALTA Standard Form Owner's Policy, in the amount of Purchaser Price (the "Title Policy") or a commitment to endorse the Title Policy to increase the insured amount by the Purchaser Price paid at such Closing and to amend Schedule A of the Title Policy to include the Lots conveyed at such Closing. Seller shall deliver possession to Purchaser at Closing and any additional costs due to the New York style closing including gap coverage, shall be paid by the Purchaser.

- (v) Seller shall pay title premiums incurred for the issuance of the Title Policy and any State and County transfer taxes. Purchaser shall pay for all recording fees, all endorsements to the Title Policy, all costs associated with Purchaser's pre-closing investigation, any municipal transfer taxes, and any costs or expenses incurred in connection with any financing obtained by Purchaser.

4. Condition of Property; Seller's Completion of Site Improvements. By execution hereof, Purchaser acknowledges that it has had an opportunity to visit the Lots and to conduct such inspections, testings, and reviews as it deems relevant to determine the condition of the Lots. By accepting title of each Lot at each Closing, Purchaser agrees to accept such Lot in "AS/IS" condition at each Closing; subject to Seller's satisfactory and timely completion of the site improvements described in the attached Exhibit E hereto.

Purchaser and Seller have appointed Spaceco Engineering, 9575 West Higgins Road, Suite 700, Rosemont, Illinois ("Spaceco"), to inspect and review the satisfactory and timely completion of the site improvements more particularly described in Exhibit E. The determination of Spaceco regarding Seller's satisfactory completion of this condition shall be binding upon the parties and shall not be subject to judicial review.

5. Title and Survey.

A. Purchaser has inspected title of Property and shall accept title of each Lot at each Closing subject to the following (the "Permitted Exceptions"):

- (i) all matters set forth on Schedule B II of the title commitment no. 113788c issued by the Title Company, a copy of which is attached hereto as Exhibit D;
- (ii) all matters created by, through or under any acts or omissions of Purchaser;
- (iii) an easement or easements reserved in the Deed for the benefit of any of the Property retained by Seller, and any other covenants provided for herein;

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- (iv) the Master Declaration, the Townhouse Declaration and the Party Wall Agreement;
- (v) Real estate taxes and assessments for 1999 and subsequent years; and
- (vi) any other exceptions that Purchaser agrees to in writing or is deemed to be a Permitted Exception pursuant to Section 5 (B) below.

B. Prior to each Closing, Seller shall order a later date endorsement to the Title Commitment. Upon receipt of such later date, any title exception set forth therein which is not a Permitted Exception under Section 5(A) above shall be deemed to be a Permitted Exception, unless Purchaser notifies Seller in writing of Purchaser's objection within five (5) days after receipt of the later date endorsement. Purchaser may not object to any title matter unless such title matter materially and adversely affects the ability of the Purchaser to develop, construct or sell townhomes on the Lots. Seller shall have a reasonable opportunity to cure any unpermitted title exception; provided however that Seller's failure to cure shall not be deemed to be an event of default, and in such event, Purchaser may elect either (i) to waive the objection and close, or (ii) terminate this Agreement without penalty to Seller, in which event Earnest Money shall be returned to Purchaser, or (iii) to not close on any Lot having an easement or encumbrance unknown or unidentified as of the date hereof.

C. Purchaser acknowledges that it is responsible for ordering and obtaining copies of individual surveys for each of the Lots prepared by Spaceco Engineers at Seller's expense. Purchaser shall deposit two original copies of each survey in escrow with the Title Company, and at the time of Closing, one original copy shall be delivered to Seller and one to the Title Company. Purchaser has reviewed each Survey, and waives any objections thereto.

6. Taxes. Purchaser shall pay all real estate taxes and assessments for the Lots, including any taxes accruing for the calendar year 1999. There shall be no prorations at any Closing of the Lots, except that Seller shall credit Purchaser for Seller's portion of the 1999 real estate taxes attributable to common areas as defined in the Master Declaration within the Property. Purchaser agrees to make all such tax and assessment payments promptly, and such taxes or assessments which are due and payable at the time of any Closing shall be paid at the time thereof.

7. Purchaser's Representations, Warranties, and Covenants.

A. Purchaser is a limited liability company duly organized and in good standing under the laws of the State of Illinois. Purchaser has full power and authority to execute and deliver this Agreement and all other documents now or hereafter to be executed and delivered by Purchaser pursuant to this Agreement ("Purchaser's Documents") and to perform all obligations arising under this Agreement and Purchaser Documents,

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- B. This Agreement and Purchaser's Documents are, the legal, valid and binding obligations of Purchaser, enforceable in accordance with their respective terms, covenants and conditions, subject to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally, and except as may be limited by applicable laws, general equitable principles or judicial decisions which may qualify, limit or produce certain rights, remedies or provisions contained in this Agreement or the Purchaser's Documents.
- C. The execution and delivery of this Agreement and the Purchaser's Document do not, and the consummation of the transactions contemplated hereby shall not contravene any provision of the articles of organization or operation agreement of Purchaser or any judgment order, decree, writ or injunction or any provision of any existing law or regulation, by which Purchaser is bound.
- D. Other than that of Purchaser's mortgage lender, no consent or approval of any third party is required to permit Purchaser to complete the transaction contemplated by this Agreement.
- E. No undisclosed litigation, governmental investigation or other proceeding is pending or, to the best knowledge of Purchaser upon due inquiry, threatened against or relating to the transactions contemplated by this Agreement.
- F. Purchaser acknowledges that title of all improvements constructed in or on the common areas of Property shall remain with Seller until such time as the common areas of the Property are conveyed to the master association in accordance with the Master Declaration. Purchaser hereby waives any and all right, title and interest in any and all such improvements and any claim for payment or reimbursement in connection therewith, except for the price reduction provided in paragraph 3(A) above.
- G. Purchaser shall indemnify, defend and hold Seller, its beneficiaries, agents, principals, employees, and successors and assigns, and the Property, harmless from and against any and all losses, costs, claims, expenses, liens, damages, judgments and fees (including attorneys fees and costs) arising out of or resulting in any way from claims and demands relating to the construction or development activities of Purchaser, its employees, contractors or agents on any portion of the Property and hereby releases Seller and its beneficiaries from any and all such matters.
- H. Purchaser shall be solely responsible for the maintenance, repair, and replacement and insurance of all of the common areas of the Property, without regard to the occurrence of Closings, at all times prior to the conveyance of such common areas to the appropriate homeowner's association.

It shall be a condition precedent to Seller's obligation to perform any obligation hereunder that all of the foregoing representations and warranties be and remain true on date of each Closing.

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8. Seller's Representation and Warranties. Seller represents and warrants, which representations and warranties shall be deemed to continue to the date of each Closing, unless Seller notifies Purchaser of any changes, to Purchaser as follows:

- A. Seller is a duly formed Illinois land trust and has been duly directed to execute and deliver this Agreement.
- B. Seller has full power and authority to execute and deliver this Agreement and all other documents now or hereafter to be executed and delivered by it pursuant to this Agreement ("Seller's Documents") and to perform all obligations arising under this Agreement and Seller's Documents.
- C. This Agreement constitutes, and Seller's Documents will each constitute, the legal, valid and binding obligations of Seller, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement or creditors' rights generally and except as may be limited by applicable laws, general equity principles or judicial decisions which may qualify, limit or preclude certain right, remedies or provisions contained in this Agreement and/or Seller's Documents.
- D. The execution and deliver of this Agreement and Seller's Documents do not, and the consummation of the transactions contemplated hereby shall not, contravene any provision of the Trust Agreement.
- E. No consent or approval of any third party is required to permit Seller to consummate the transactions contemplated by this Agreement, other than approval of Seller's beneficiaries, which has been given.
- F. There shall be no parties in possession of any portion of the Property at Closing, other than the Seller.
- G. There are no pending or, to the best of Seller's knowledge, threatened condemnation or eminent domain proceedings affecting the Property or any part thereof,
- H. There is no suit, proceeding of litigation pending, or the best of Seller's knowledge, threatened against the Seller or the Property.
- I. Other than contemplated by this Agreement, there are no pending, or to the best of Seller's knowledge, threatened, proceedings for the rezoning of the Property or any portion thereof. Seller has not received written notice of and has no knowledge of any incurred violation of any zoning, subdivision, environmental, hazardous waste, building code, health, fire, safety or other

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law, order or regulation with respect to the maintenance, operation or use of the Property.

If, subsequent to the date of this Agreement and prior to the first Closing a change in facts or circumstances occurs which make Paragraphs (a)-(i) of Seller's representations or warranties untrue in any material and adverse respect which would prevent or materially impair the use of the Property for residential development then Purchaser may elect to terminate this Agreement if Seller cannot correct such defects within thirty (30) days of notice, which must be given within ten (10) days of Purchaser learning of any such defect, whereupon the Earnest Money shall promptly be returned to Purchaser and upon such refund Seller have no further liability to Purchaser hereunder.

9. Development Covenants; Remedies.

- A. Organization of Town home Association. Prior to the first Closing, Seller and Purchaser shall record a declaration of covenants, conditions, restrictions and easements ("Town home Declaration") against the Lots and any lots in the Property currently owned by Purchaser on which Purchaser intends to develop townhomes (such lots being referred to as the "Town home Property"). The Town home Declaration shall provide, in part, for the organization of an association of the owners of the town home dwelling units, for common area easements among the Town home Property, and for rules and regulations relating to use and enjoyment of the Town home Property. The Town home Declaration shall be subject and subordinate to the Master Declaration, and shall further provide that Purchaser surrenders and transfers any and all rights as a Declarant under either the Master Declaration or Town home Declaration to Seller, and shall provide that Seller shall be authorized, as sole declarant, to sign any plats, corrections, amendments of the Master Declaration or amendments of the Town home Declaration on behalf of Purchaser and Seller, and any mortgagee, as may be necessary.
- B. Reconveyance. Purchaser has deposited in the Escrow an executed, recordable quit claim deed for each Lot (each such quit claim deed is referred to individually as a "Reconveyance Deed"), conveying title of each Lot to Seller. If Purchaser is in default of any provision of this Agreement or the Master Declaration, Seller may unilaterally direct the Title Company to release all Reconveyance Deeds held by the Title Company pursuant to this Agreement to Seller for immediate recording. Upon disbursement of Seller's proceeds at each Closing, the Title Company shall be deemed authorized to release the Reconveyance Deeds held in escrow for only those Lots which were sold at such Closing.
- C. Remedies. If Purchaser fails to perform any obligation hereunder, including without limitation, fails to timely close at any scheduled closing set forth on Exhibit C, then in addition to any other right or remedy of Seller set forth herein, (1) this Agreement shall terminate automatically and without notice; and (2) Purchaser shall have no further right to acquire any more Lots within the Property; and (3) Seller shall retain,

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provisions of this Agreement shall not be affected thereby, but each such term and provision all be valid and shall remain in full force and effect.

- C. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of, the successors and permitted assigns of the parties hereto.
- D. Assignment. Purchaser shall not assign all or any part of its interests under this Agreement other than to a person or entity affiliated with Purchaser, without Seller's prior consent. Any permitted assignment shall be made pursuant to an assignment and assumption agreement by which the assignee agrees to assume all of the Purchaser's obligations under this Agreement and Purchaser shall not be released of his obligations herein
- E. Entire Agreement. This Agreement embodies the entire agreement between the parties hereto with respect to the Property and supersedes any and all prior agreements and understandings, written or oral, formal or informal. Seller has made no representations or warranties to Purchaser, except as expressly set forth herein. No modifications or amendments to this Agreement, or any kind, whatsoever, shall be made or claimed by Seller or Purchaser, and no notices of any extension, change, modification or amendment made or claimed by Seller or Purchaser, shall have any force or effect whatsoever unless the same shall be endorsed in writing and fully signed by Seller and Purchaser.
- F. Waiver; Extensions. No waiver or any breach of any agreement or provision herein contained shall be deemed a waiver of any proceeding or succeeding breach thereof or of any other agreement or provision herein contained. No extension of time for performance of any obligation or acts shall be deemed an extension of the time for performance of any other obligations or acts.
- G. Time. Whenever the time for performance of any act hereunder falls on a Saturday, Sunday or legal holiday, such time shall be extended to the next business day.
- H. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument.
- I. Cumulative Remedies. Each right and remedy of Seller and Purchaser provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement and the exercise or beginning of the exercise by Seller or Purchaser of any one or more of the rights or remedies provided for in this Agreement shall not preclude the right or remedies provided for in this Agreement.
- J. Binding Effect. This Agreement does not constitute an offer to sell or an Agreement to purchase and shall not bind Seller or Purchaser unless and until each of Seller and Purchaser, in its sole and unreviewable discretion elects to be bound hereby by

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executing and unconditionally delivering to the other party hereto an original counterpart hereof.

- K. Business Day. For all purposes of this Agreement, "Business Day" shall mean any day other than a Saturday or Sunday and other than a legal holiday celebrated in Joliet, Illinois.
- L. No Third Party Beneficiaries. None of the provisions of this Agreement are intended to be, nor shall they be construed to be, for the benefit of any third party.
- M. Election Requirement. Whenever this Agreement shall provide for an "election" to be made by Seller or Purchaser, such "election" shall be made in writing and delivered to the other party in the same manner as notices under this Agreement.
- N. No Recording. This Agreement shall not be recordable, and if Purchaser records this Agreement or any memorandum thereof, Purchaser shall, without notice or opportunity to cure, be deemed to be in default and breach of this Agreement.

In witness whereof, Seller and Purchaser have executed this Agreement as of October 11, 2000.

SELLER:

HINSBROOK BANK AND TRUST, not personally but solely as Trustee under a Trust Agreement dated November 5, 1998 and known as Trust No. 98-076

By: *Randy McVague*
Its: *Trust officer*

PURCHASER:

THE HOMES AT RIVERBEND LLC, an Illinois limited liability company

By: *K.R. DeBorja*
Its: *Managing Member*

This document is executed by Hinsbrook Bank & Trust, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed by the grantee herein and by every person now or hereafter claiming any right hereunder that nothing contained herein shall be construed as creating any liability on Hinsbrook Bank & Trust.

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EXHIBIT A

Legal Description of the Property

LOTS 1 THROUGH 65, INCLUSIVE, AND OUTLOTS "A" THROUGH "O," INCLUSIVE, IN RIVER BEND, BEING A RESUBDIVISION OF LOT 3 IN HATCH FARM, BEING A RESUBDIVISION OF PART OF THE SOUTH HALF OF SECTION 15, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 2, 1999, AS DOCUMENT NUMBER R1999-123594, AND CERTIFICATE OF CORRECTION RECORDED JUNE 18, 1999 AS DOCUMENT NUMBER R1999 - 136476, IN DUPAGE COUNTY, ILLINOIS.

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Take Down Schedule - TOWNHOMES ONLY

	Date to Close By	Lot	Purchase Price	Overruns	Premiums	Total
I	T/H 11/03/00	62/106	34,000.00	5,635.00	1,750.60	
		62/107	34,000.00	5,635.00	1,750.60	
		62/108	34,000.00	5,635.00	1,750.60	
		62/109	34,000.00	5,635.00	1,750.60	
			=====	=====	=====	=====
		136,000.00	22,540.00	7,002.40	165,542.40	
I	T/H 11/03/00	61/100	34,000.00	5,635.00	1,750.60	
		61/101	34,000.00	5,635.00	1,750.60	
		61/102	34,000.00	5,635.00	1,750.60	
		61/103	34,000.00	5,635.00	1,750.60	
		61/104	34,000.00	5,635.00	1,750.60	
		61/105	34,000.00	5,635.00	1,750.60	
		=====	=====	=====		
		204,000.00	33,810.00	10,503.60	248,313.60	
I	T/H 11/03/00	56/77	38,000.00	5,635.00	1,750.60	
		56/78	38,000.00	5,635.00	1,750.60	
		56/79	38,000.00	5,635.00	1,750.60	
		56/80	38,000.00	5,635.00	1,750.60	
		=====	=====	=====		
		152,000.00	22,540.00	7,002.40	181,542.40	
I	T/H 11/03/00	57/81	38,000.00	5,635.00	1,750.60	
		57/82	38,000.00	5,635.00	1,750.60	
		57/83	38,000.00	5,635.00	1,750.60	
		57/84	38,000.00	5,635.00	1,750.60	
		=====	=====	=====		
		152,000.00	22,540.00	7,002.40	181,542.40	
I	T/H 11/03/00	58/85	38,000.00	5,635.00	1,750.60	
		58/86	38,000.00	5,635.00	1,750.60	
		58/87	38,000.00	5,635.00	1,750.60	
		58/88	38,000.00	5,635.00	1,750.60	
		58/89	38,000.00	5,635.00	1,750.60	
		58/90	38,000.00	5,635.00	1,750.60	
		=====	=====	=====		
		228,000.00	33,810.00	10,503.60	272,313.60	
II	T/H 03/31/01	59/91	38,000.00	5,635.00	1,750.60	
		59/92	38,000.00	5,635.00	1,750.60	
		59/93	38,000.00	5,635.00	1,750.60	
		59/94	38,000.00	5,635.00	1,750.60	
		59/95	38,000.00	5,635.00	1,750.60	
		=====	=====	=====		
		190,000.00	28,175.00	8,753.00	226,928.00	

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Take Down Schedule - TOWNHOMES ONLY

	Date to Close By	Lot	Purchase Price	Overruns	Premiums	Total
III	T/H 05/30/01	54/69	42,000.00	5,635.00	1,750.60	
		54/70	42,000.00	5,635.00	1,750.60	
		54/71	42,000.00	5,635.00	1,750.60	
		54/72	42,000.00	5,635.00	1,750.60	
			=====	=====	=====	=====
			168,000.00	22,540.00	7,002.40	197,542.40
III	T/H 05/30/01	55/73	42,000.00	5,635.00	1,750.60	
		55/74	42,000.00	5,635.00	1,750.60	
		55/75	42,000.00	5,635.00	1,750.60	
		55/76	42,000.00	5,635.00	1,750.60	
			=====	=====	=====	=====
			168,000.00	22,540.00	7,002.40	197,542.40
IV	T/H 03/31/01	53/65	42,000.00	5,635.00	1,750.60	
		53/66	42,000.00	5,635.00	1,750.60	
		53/67	42,000.00	5,635.00	1,750.60	
		53/68	42,000.00	5,635.00	1,750.60	
			=====	=====	=====	=====
			168,000.00	22,540.00	7,002.40	197,542.40
V	T/H 07/31/01	52/61	42,000.00	5,635.00	1,750.60	
		52/62	42,000.00	5,635.00	1,750.60	
		52/63	42,000.00	5,635.00	1,750.60	
		52/64	42,000.00	5,635.00	1,750.60	
			=====	=====	=====	=====
			168,000.00	22,540.00	7,002.40	197,542.40
V	T/H 07/31/01	51/55	43,000.00	5,635.00	1,750.60	
		51/56	43,000.00	5,635.00	1,750.60	
		51/57	43,000.00	5,635.00	1,750.60	
		51/58	43,000.00	5,635.00	1,750.60	
		51/59	43,000.00	5,635.00	1,750.60	
		51/60	43,000.00	5,635.00	1,750.60	
			=====	=====	=====	=====
			258,000.00	33,810.00	10,503.60	302,313.60
VI	T/H 09/30/01	50/49	43,000.00	5,635.00	1,750.60	
		50/50	43,000.00	5,635.00	1,750.60	
		50/51	43,000.00	5,635.00	1,750.60	
		50/52	43,000.00	5,635.00	1,750.60	
		50/53	43,000.00	5,635.00	1,750.60	
		50/54	43,000.00	5,635.00	1,750.60	
			=====	=====	=====	=====
			258,000.00	33,810.00	10,503.60	302,313.60

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Take Down Schedule - TOWNHOMES ONLY

	Date to Close By	Lot	Purchase Price	Overruns	Premiums	Total
VII T/H	11/30/01	49/44	42,000.00	5,635.00	1,750.60	
		49/45	42,000.00	5,635.00	1,750.60	
		49/46	42,000.00	5,635.00	1,750.60	
		49/47	42,000.00	5,635.00	1,750.60	
		49/48	42,000.00	5,635.00	1,750.60	
			=====	=====	=====	
			210,000.00	28,175.00	8,753.00	246,928.00
VII T/H	11/30/01	47/36	42,000.00	5,635.00	1,750.60	
		47/37	42,000.00	5,635.00	1,750.60	
		47/38	42,000.00	5,635.00	1,750.60	
		47/39	42,000.00	5,635.00	1,750.60	
			=====	=====	=====	
			168,000.00	22,540.00	7,002.40	197,542.40
VIII T/H	02/28/02	46/32	42,000.00	5,635.00	1,750.60	
		46/33	42,000.00	5,635.00	1,750.60	
		46/34	42,000.00	5,635.00	1,750.60	
		46/35	42,000.00	5,635.00	1,750.60	
			=====	=====	=====	
			168,000.00	22,540.00	7,002.40	197,542.40
VIII T/H	02/28/02	48/40	39,000.00	5,635.00	1,750.60	
		48/41	39,000.00	5,635.00	1,750.60	
		48/42	39,000.00	5,635.00	1,750.60	
		48/43	39,000.00	5,635.00	1,750.60	
			=====	=====	=====	
			156,000.00	22,540.00	7,002.40	185,542.40
IX T/H	04/30/02	44/20	34,000.00	5,635.00	1,750.60	
		44/21	34,000.00	5,635.00	1,750.60	
		44/22	34,000.00	5,635.00	1,750.60	
		44/23	34,000.00	5,635.00	1,750.60	
		44/24	34,000.00	5,635.00	1,750.60	
		44/25	34,000.00	5,635.00	1,750.60	
			=====	=====	=====	
			204,000.00	33,810.00	10,503.60	248,313.60
IX T/H	04/30/02	45/26	42,000.00	5,635.00	1,750.60	
		45/27	42,000.00	5,635.00	1,750.60	
		45/28	42,000.00	5,635.00	1,750.60	
		45/29	42,000.00	5,635.00	1,750.60	
		45/30	42,000.00	5,635.00	1,750.60	
		45/31	42,000.00	5,635.00	1,750.60	
			=====	=====	=====	
			252,000.00	33,810.00	10,503.60	296,313.60
Total Takedown						4,043,161.60

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Take Down Schedule - TOWNHOMES ONLY

Date to Close By	Lot	Purchase Price	Overruns	Premiums	Total
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Acknowledged:

By: _____

By: _____

REP

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EXHIBIT E

Schedule of Site Improvements

HMF

KICD

~~ST
DRAFT~~

September 19, 2000

Mr. Kim Denkewalter
790 Frontage Road
Northfield, Ill 60093

Dear Mr. Denkewalter:

Regarding the "items to be completed" list for the infrastructure at River Bend, Lisle, Illinois:

- A). I met with Norm Swain (the Project Superintendent) on Monday, September 18, 2000. The following schedule for improvement to be completed was discussed and agreed upon:
1. Complete sewer, drainage and storm system along west side of River Bend Drive, River Bend Lane, River Bend Place and Longwood Drive:
 - (a). the construction staking for the completion of offsite watermain on the Tennis Club property will be completed by September 28, 2000.
 - (b). The installation of this offsite main will be complete by October 13, 2000.
 - (c). When the installation is complete, the old water line (Citizens Utilities) will be abandoned.
 - (d). Installation of the final sections of storm sewer can begin on the day the Citizens' watermain is abandoned. This work will be completed before October 25, 2000.
 - (e). The final phase curb and pavement installation will be completed by November 15, 2000.
 - (f). Any gaps left in the existing curb at this date will be closed. Any storm inlets that need to be height adjusted will be attended to at the same time.

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2. Complete curb, gutter and inlets at River Bend Drive, River Bend Lane, River Bend Place and Longwood Drive:
 - a. Please refer to schedule items (a) through (f) at Item 1 above.
 3. Complete grading, sub base and first lift of asphalt on Longwood Drive, River Bend Drive, River Bend Place and River Bend Lane:
 - a. Please refer to schedule items (a) through (f) at Item 1 above.
 4. Complete curb, gutter and inlets in front of building lot 65, 64, SFD lot 34, 19 and building lot 62:
 - (a). Please refer to schedule items (a) through (f) at Item 1 above.
 5. Complete curb, gutter, inlets, sidewalks and street asphalt along south side of Four lakes Drive, along the entire north boundary of the Homes at River Bend community:
 - (a). The completion of this work is bonded to the Village of Lisle. The work is scheduled to start in July or August of 2001.
 6. Complete all aspects including monument signs for the Four Lake Drive/River Bend Drive entrance to the Homes at River Bend community:
 - (a). Refer to schedule items (a) to (f) in Item 1 above.
 - (b). There is no provision or obligation of Seller to install monument signs at Four lakes Drive - River Bend Drive intersection.
- B. Seller and Buyer will agree that the written determination of Spaceco Engineering, 9575 W. Higgins Road, Suite 700, Rosemont, Il 60018 (847) 696-4060 will be the sole determinant as to:
1. Completion of the work enumerated in Item A 1 through 6 above.

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2. Whether all site work is completed in accordance with the plans and specifications contained in the engineering drawings for the project as reviewed and accepted by the Village Engineer.
-
- C. The black dirt stockpile will remain on lots 46 and 47 until all other lots are started, as there is no other practical location to stockpile this material. It is acknowledged that moving this material offsite prior to its use would incur significant additional expense for Buyer, as the required black dirt would need to be imported.

Sincerely,

David M. Froberg
for Hatch Farm Partners LLC

DME

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EXHIBIT T

Schedule of Cumulative Totals

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EXHIBIT D

Title Report

Schedule B of the policy or policies to be issued will contain the exceptions shown on the inside front cover of this commitment and the following exceptions, unless same are disposed of to the satisfaction of the Company:

- 1.: Taxes for 1999 and subsequent years, which are not yet due or payable.

PERMANENT REAL ESTATE INDEX NO. 08-15-403-004
Affects: Premises in question and other property

Total 1998 taxes - \$8,796.82 - Paid

PERMANENT REAL ESTATE INDEX NO. 08-15-403-008
Affects: Premises in question and other property

Total 1998 taxes - \$77,252.32 - Paid

- 2.: A 10 foot building line as established by plat:
Recorded: June 2, 1999
Document #: R1999123594
Affects: Northerly lot lines of Lots 40 and 41 and Easterly lot lines of Lots 41 and 42.
- 3.: A building line as established by aforesaid plat:
Affects: A portion of Southwest corner of Lot 63 (see plat for exact location)
- 4.: Easement in favor of the Village of Lisle established by plat aforesaid:
For: Municipal and public utilities
Affects: Southerly 5 feet of Lot 42; a portion of Southwest corner of Lot 63 and a strip of varying footage along Easterly lot line of Lot 41 (see plat for exact location)
- 5.: Note contained in plat aforesaid:
Outlots B, C, D, E, F, I, J, K, L, M, N, & O are designated as common area.
- 6.: Note contained in plat aforesaid:
Outlot A is designated as a drainage and stormwater management easement.
- 7.: Ingress and egress to insured premises is over a private street.
Affects: Lots 40, 41 and 42

Continued...

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8.: The following exceptions will be added to the commitment upon recordation of the Declarations of Covenants, Conditions and restrictions:

A.: Covenants, conditions and restrictions established by Declaration:
Recorded: _____, 1999
Document #: _____
Relate to: _____

NOTE: Said covenants, conditions and restrictions do not provide for a reversion of title in the event of a breach thereof.

B.: NOTE: In the event of a conveyance or mortgage of the subject property, we should be furnished a written statement from the Homeowner's Association stating that all assessments have been paid and that these assessments are not a lien on the real estate.

C.: Covenants, conditions and restrictions established by Declaration:
Recorded: _____, 1999
Document #: _____
Relate to: _____

NOTE: Said covenants, conditions and restrictions do not provide for a reversion of title in the event of a breach thereof.

D.: NOTE: In the event of a conveyance or mortgage of the subject property, we should be furnished a written statement from the Homeowner's Association stating that all assessments have been paid and that these assessments are not a lien on the real estate.

9.: Covenants, conditions and restrictions established by Deed of Declaration:
Recorded: October 15, 1975
Document #: R75-70627
Relate to: All walkways, driveways, roadways, utility services and recreational facilities shall be available on a non-exclusive basis to said parties, subject to the terms, provisions and conditions set forth.
Affects: Subject premises and other property

NOTE: Said covenants, conditions and restrictions do not provide for a reversion of title in the event of a breach thereof.

Continued...

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10.: Covenants, conditions and restrictions established by Deed of Declaration:
Recorded: July 9, 1970
Document #: R70-23096
Relate to: The character and use of improvements on the land, easements for ingress and egress, parking, utility services, use, maintenance, repair and replacement of recreational facilities, the prorating of costs and expenses of the recreational facilities; use of recreational facilities will facilitate uniform fees, together with the provisions contained therein.

NOTE: Said covenants, conditions and restrictions do not provide for a reversion of title in the event of a breach thereof.

11.: Covenants, conditions and restrictions established by Declaration of Restrictive Covenant and Easement Agreement:
Recorded: July 13, 1983
Document #: R83-45175
Relate to: Use and character of the building to be erected on the land, to the use and enjoyment by any residential occupants of the recreational facilities set forth in document R70-23096 and providing unto Equity Realty Inc. an easement to erect, service and maintain signs on, over, across and upon the area measured 25 feet perpendicular to each side of Four Lakes Drive, together with provisions for said easement as contained therein.

NOTE: Said covenants, conditions and restrictions do not provide for a reversion of title in the event of a breach thereof.

(Time limit - 20 years from date hereof; land to be used for and improved with commercial uses including office building, shopping center, research facilities, health care facilities, single family, apartment, attached dwelling and multiple family residential uses and light industrial type uses).

12.: Terms, provisions and conditions contained in Annexation Agreement:
Recorded: January 31, 1992
Document #: R92-018449
and Amended by Amendment No. 1 to the Annexation Agreement:
Recorded: October 7, 1998
Document #: R98-207422
and Amended by Amendment No. 2 to the Annexation Agreement:
Recorded: June 2, 1999
Document #: R1999123593

Relates to: The Development of the land, building type and use, roadways and easements, required monetary contributions and impact fees, school, park and library donations, construction, installation and maintenance of stormwater management facilities, and utility and sanitary sewer easements.

Continued...

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13.: Terms, provisions and conditions contained in Hatch Farm Stormwater Management Facilities License and Maintenance Agreement:
Recorded: February 3, 1992
Document #: R92-018532
Relates to: To the construction, installation and maintenance of stormwater management facility, rights of licensee to inspect and repair and remedies for the failure to reimburse licensee for repairs.
Affects: Outlots

NOTE: Said covenants, conditions and restrictions do not provide for a reversion of title in the event of a breach thereof.

14.: Terms, provisions and conditions contained in Four Lakes Hatch Farm Tennis Club Cost Reimbursement Agreement and contained in Four Lakes Hatch Farm-Tennis Club Development Agreement:
Recorded: May 20, 1992
Document #: R92-094601
Recorded: May 20, 1992
Document #: R92-094602
Relates to: The development of the land, together with such other provisions as therein contained.

NOTE: Said covenants, conditions and restrictions do not provide for a reversion of title in the event of a breach thereof.

15.: Easement for public utilities as established by Grant of Easement:
Recorded: December 29, 1973
Document #: R73-77389
Affects: Outlots A, G & O

16.: Easement for public utilities as established by Electric and Telephone Line Right on Corporate Property:
Recorded: October 1, 1969
Document #: R69-43529
Affects: Outlot G

17.: Easement for sewer lines as established by Right of Way Easement:
Recorded: June 26, 1973
Document #: R73-38144
Relates to: Strip of land 100 feet in width (for a period of 2 years only) and a strip of land 30 feet in width (no time period).
Affects: Outlot A

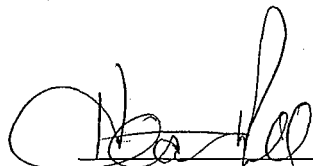
18.: Easement for ingress and egress as established by Four Lakes Assessment Plat Unit No. 10:
Recorded: April 21, 1981
Document #: R81-19812
Affects: Outlot A

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CERTIFICATE OF SERVICE

I, Heather Nee, a non attorney, certify that on the 26th day of January, 2004, I caused to be Served by First Class Mail the foregoing Defendant's Answer to the Parties named on the attached Service list, by depositing same in postage prepaid envelopes with the United States Postal Service located in Skokie, Illinois 60077.


Heather Nee