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SANGAMON COUNTY
ILLINOIS

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Mary Ann Samuel
RECORDER

**DECLARATION OF
EASEMENTS, COVENANTS AND RESTRICTIONS
FOR HERITAGE POINT, THIRD ADDITION**

PREPARED BY AND RETURN TO:

**PRESNEY KELLY & PRESNEY
726 S. 2ND STREET
SPRINGFIELD, IL 62704
(217) 525-0016**

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**DECLARATION OF
EASEMENTS, COVENANTS AND RESTRICTIONS FOR
HERITAGE POINT
THIRD ADDITION**

WHEREAS, WARREN-BOYNTON STATE BANK, as Trustee under Trust Agreement dated November 7, 1991, also known as Trust #110, is the record owner of title of Heritage Point, Third Addition, Sangamon County, Illinois, a subdivision of the following described property:

(SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION)

WHEREAS, NEW BERLIN DEVELOPMENT CORPORATION, an Illinois corporation, is the beneficial owner of said trust and is the Developer of the above Heritage Point, Third Addition, Sangamon County, Illinois; and

WHEREAS, WARREN-BOYNTON STATE BANK, as Trustee, joins in this document solely for placing this document within the chain of title and to consent to the terms and effects of this document; and

WHEREAS, the Developer desires to formulate an Association; and

WHEREAS, it is desirable to secure the best use and improvements of the lots therein, and to protect the owners of such lots against such use of other lots therein as would depreciate the value of such property, and to prevent the erection of poorly designed or constructed buildings, and to make the best use of and preserve the natural beauty of said property and to locate the buildings thereon with regard to topographic features; and

WHEREAS, the Developer desires to create a quality residential subdivision having a standard architectural harmony

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achieved through consistency of features such as color, texture, material type or exterior style, placement of landscape flora and the preservation of the natural state, and through relative consistency of design; and

WHEREAS, to secure such objectives, said Developer desires to subject the lots in said subdivision to the following restrictions and covenants, including but not limited to methods of construction and maintenance as will secure a continuous standard for the proper development of said subdivision.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the aforesaid New Berlin Development Corporation hereby declares that all lots and building sites in Heritage Point, Third Addition, and all future lots in Heritage Point Estates Subdivision or Heritage Point Third Addition and any other Additions thereto which are included by the Developer under these covenants and restrictions as provided more fully below, shall be sold, transferred and conveyed subject to the following covenants and restrictions:

1. USE RESTRICTIONS.

A. The term "building site" as used in this Declaration shall mean any lot of record or portion thereof under a single ownership whether owned by a trust, a partnership, a corporation, an individual or individuals, including ownership in tenancy in common, joint tenancy and tenancy by the entirety, intended for use as or used as the site and location of a single family dwelling.

B. Developer hereby creates an ARCHITECTURAL CONTROL COMMITTEE, composed of Tom Sapp and Keith King. In the event of

the death or resignation of any member of said Committee, the remaining members shall appoint a member to fill the vacancy. The Architectural Control Committee shall have the right to prevent the clearing of a lot and subsequent excavation and grading prior to construction of the main residence upon such a lot according to the following: Prior to the construction of any building, wall, retaining wall, excavation, or construction of a residence, a lot owner is required to seek approval of building plans through the Architectural Control Committee. The committee shall consider quality of workmanship and materials, external design, location with respect to topography and finished grades, elevations and building lines, location of driveways and walkways, color and scheme. To comply with this requirement, each lot owner, prior to any construction on the lot, shall first submit a preliminary plan to the Architectural Control Committee stating in general the type, style, size and general design of the residence to be constructed, along with its location on the building site and the name of the lot owner's designated general contractor. After approval in writing of the preliminary plan by the Architectural Control Committee, the lot owner shall then submit two (2) sets of the actual plans and specifications of the improvement to be constructed. Such plans and specifications shall include the floor plan, exterior color schemes, and materials, elevations and actual plat plan showing distances from easements and lot line and the location of the finished grade height of the first floor. The lot owner agrees that he/she will not obtain a building permit until

the Architectural Control Committee has approved the final plans. If no objections to the plans are raised by the Architectural Control Committee within thirty (30) days of submission of the final plans to said Committee, the plans shall be deemed to have been approved by said Architectural Control Committee.

C. The following minimum requirements shall apply to all residential improvements within this subdivision:

(1) Minimum floor area of a single level dwelling unit shall be 1,500 square feet, exclusive of basement area, if any.

(2) Minimum floor area of a one and one-half level (including bi-level homes) dwelling unit shall be 1,600 square feet, exclusive of basement area, if any.

(3) The minimum floor area of a two level dwelling unit shall be 1,800 square feet, exclusive of basement area, if any.

(4) Minimum floor area for any duplex dwelling unit shall be 1,200 square feet, exclusive of basement area, if any. Said duplex lots identified on the plat of the subdivision in the legend thereof.

(5) The minimum side yard dimension shall be those set forth in applicable zoning ordinances and as established on each individual site by the Architectural Control committee, which shall have the authority to require site plans requiring side yards with a minimum twenty (20) feet total between two

adjacent dwelling units. A duplex is to be considered one dwelling unit and does not require a side yard between units.

(6) No building shall be located nearer than the front line as shown on the recorded Plat or twenty (20) feet from the rear lot line.

(7) Each single family dwelling shall have an attached garage suitable for the storage of at least two vehicles.

(8) No above-ground swimming pools shall be permitted on any building site. In-ground pools shall be permissible, provided, however, that any fence enclosing such in-ground pool shall be subject to prior approval by the Architectural Control Committee.

(9) In order to preserve the view for all owners of property, all fences of whatever type and whatever nature and wherever located shall be approved by the Architectural Control Committee prior to commencement of construction. No fence shall be erected or maintained on any site abutting a lake or pond.

(10) No outside or unattached storage buildings nor detached garages shall be permitted on any building site, except as approved by the Architectural Control Committee.

(11) No satellite dish, television antennae or similar device used for television reception shall be placed or located upon any building site nor attached to any building or any structure adjacent to any building, except as approved by the Architectural Control Committee.

(12) No kennel, dog house, dog run or similar structure shall be located upon any building site.

(13) All mailboxes located within Heritage Point Estates shall be of a uniform design, construction and installation as approved and required by the Architectural Control Committee. No separate mailbox or other receptacle for newspapers or other periodicals shall be placed upon said mailbox without the permission of the Architectural Control Committee.

(14) No spirituous, vinous or malt liquor shall be sold or kept for sale on such lot.

(15) No lot shall be used for any commercial purpose.

(16) No machinery, appliance, or structure of any kind shall be permitted upon, maintained or operated in or on the premises of such lot for the facilitation and carrying on of any trade, business or industry, except as required by the Developer for the completion of the improvements to the subdivision.

(17) No sign of any kind shall be maintained or displayed on such lot, except one sign of not more than one square foot in area identifying the occupants of the dwelling, one sign of not more than five square feet in area advertising the property for sale or rent, and similar signs used by contractors doing the construction of any improvements thereon.

(18) All areas of such lot not occupied by a building, a driveway not more than 36 feet in width and sidewalks, and

that part of the public right of way lying between the paved part of the street and the sidewalk shall be sodded or seeded by the lot owner, and landscaped and maintained as a lawn.

(19) Neither the lot owner nor any person or persons claiming under him/her shall or will at any time raise the grade of any lot of lots herein conveyed above the grade established or to be established by the Architectural Control Committee.

(20) Construction must be commenced within six (6) months from the purchase of a lot (measured from the closing date of the transaction), and exterior construction completed and the dwelling occupied within eighteen (18) months of the purchase of the lot. Variances from these deadlines may be granted by the Architectural Control Committee for good cause shown (weather conditions, or other conditions beyond the control of the builders).

The foregoing requirements shall be in addition to any other requirements set forth elsewhere herein.

2. RIGHTS OF WAY AND EASEMENTS.

Rights of way and easements for installation and maintenance of utilities, water retention facilities, drainage facilities and boulevards are reserved as shown on the recorded plat. Within these easements no structure, fence, planting or other material shall be placed or permitted to remain which may damage or impair the function or interfere with the installation and maintenance of utilities or easements. Any improvements so located shall be

removed upon the request of the Developer, its successors or assigns, or any public utility using said area, at the expense of the owner of said lot or tract. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except those improvements for which a public utility or authority is obligated to maintain.

3. EROSION CONTROL AND LANDSCAPE WASTE.

During clearing and construction, until all exposed dirt from excavating has been removed from the building site or brought to an approved final grade surrounding the dwelling unit, and until the building site is permanently landscaped with vegetation or landscaping material, the building site owner shall prevent the erosion and washing of soil from the building site by employing the following measures:

A. Disposing of all landscape waste, such as brush, weeds, removed trees and excess dirt, in a lawful fashion by burial, incineration or removal, without causing damage to an adjacent building site or other property within Heritage Point Estates Subdivision.

B. In the case of making improvements to a building site, the owner shall place, or require a general or sub-contractor to place all excavated soils deposited within the building site at least five (5) feet from any lot line, and the owner or general or sub-contractor shall not place any soil piles on an easement or right-of-way of record. During and prior to completion of construction efforts, the building site owner or contractor of the

building site owner's designation shall erect and maintain a water permeable cloth dike of suitable strength and durability across the front of a building site and around the perimeter of excavated soil piles or shall employ other effective means to prevent such soils from eroding or washing into easements or rights-of-way or other building sites. Such dikes or other systems shall be maintained until the excess soil has been brought to approved final grade or removed from the building site.

C. Immediately after the final grade has been established and approved on the building site surrounding the building site, the building site owner shall provide and install vegetation to cover exposed soils by planting approved ground cover, sodding, seeding and strawing, or covering the exposed areas with approved landscape material to prevent erosion. Drainage easements on building sites shall be maintained by the building site owner according to the plat of record and the specifications of final grade as approved by the village engineer.

D. Soils, mud and landscape waste carried from a building site onto other properties and common areas such as easements, rights of way and roadways by erosive forces or by vehicles leaving a construction site shall be cleaned up daily or as necessary at the expense of the building site owner.

4. CONSTRUCTION MATERIAL WASTE.

At each building site, excess material and waste from construction shall be gathered and disposed of regularly in a

lawful fashion. No building site shall be used or maintained at any time for a dumping ground.

5. DRIVEWAYS.

Driveways shall be of a minimum of twenty (20) feet in width and constructed of concrete.

6. NUISANCES AND TRASH.

A. No noxious or offensive trade or activities shall be carried on in said subdivision, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood.

B. No structure of a temporary character, trailer, basement, shack, garage, barn or other outbuilding shall be erected or placed on any building site at any time, except during the construction period, without approval of the Architectural Control Committee. No unattached garage or outbuilding shall be approved by the Architectural Control Committee unless it is compatible with the existing single family dwelling on the premises and is of comparable quality and construction.

C. No animals, livestock or poultry of any kind shall be raised, bred or kept on any building site in said subdivision except dogs and cats and other common pet animals, and not for any commercial purposes.

D. All weeds shall be kept cut on sold vacant building sites, and no vacant building sites shall be permitted to fall into an unsightly condition, except that the building site owner shall not be obligated to clear natural wooded areas of brush and

undergrowth. No building site shall be used or maintained as a dumping ground for rubbish, and all trash, garbage or other waste shall be kept in sanitary containers. Any vacant building site which falls into an unsightly condition may be mowed or cleaned up by the Developer at the expense of the owner.

E. No permanent fence shall be constructed in front of a residence without the prior approval of the Architectural Control Committee. In the case of corner building sites, both street sides of the residence shall be considered as front lines.

7. VEHICLES.

No building site owner or occupant shall permit any truck (other than a pickup truck kept for personal, non-commercial use), semi-tractor truck, commercial vehicle, recreational vehicle, boat or trailer, including without limitation, cargo trailer, campers, house trailers, mobile homes or carryalls, to be parked or stored on the building site, in the driveway or in the street in front or alongside of the building site. This shall not prevent the building site owner or the occupant from storing a truck, commercial vehicle, boat or trailer owned by such owner or occupant, or used by him in his business, in any garage on the premises. No derelict vehicles shall be kept or stored on any building site.

8. SIDEWALKS.

After the construction of the sidewalk in front of a building site and acceptance by the village engineer or his representative,

the building site owner shall be responsible for replacing at his own expense, any broken section.

9. DURATION OF RESTRICTION.

The aforesaid covenants shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of thirty-five (35) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument rescinding or modifying these covenants which is signed by more than seventy-five percent (75%) of the then record owners of the building sites delineated in this plat or any other plats of said Heritage Point, Third Addition, shall be recorded in the office of the Recorder of Deeds of Sangamon County, Illinois. Each building site or dwelling unit entitled to vote in matters pertaining to the Homeowners' Association shall have one vote agreeing to change or rescind said covenants in whole or in part. No amendment to these covenants and restrictions shall operate to terminate the existence of the Homeowners' Association nor shall it relieve the Homeowners' Association from its obligations hereunder to assess fees and maintain all water retention facilities, drainage facilities, non-private utility easements and boulevards as set forth in this plat and subsequent plats for Heritage Point Estates Subdivision.

10. REMEDIES FOR VIOLATION.

In the event of a violation or breach of any of these covenants and restrictions by any person or entity subject to such

covenants and restrictions, a person or entity enjoying the benefit of these restrictions shall have the right to proceed in a judicial action at law or in equity to compel compliance with the terms of these covenants and restrictions or to prevent the breach or violation of them. Developer shall, in addition, have the right to compensation for actual expenses incurred as a result of any such breach or violation.

11. HOMEOWNERS' ASSOCIATION.

Every person or entity who is the record owner of a fee or undivided fee interest in any building site or any part thereof in the case of ownership of an individual duplex or condominium unit shall be deemed to have membership in the Heritage Point Estates Homeowners' Association as provided and disclosed in the document dated November 9, 1994, and recorded in the Office of the Recorder of Sangamon County, Illinois as Document No. 94-44250.

12. SEVERABILITY.

Invalidation of one of these covenants or restrictions by judgment or other order shall not in any manner affect any of the other covenants which shall remain in full force and effect.

13. EXCULPATORY CLAUSE.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of

them, made and intended not as personal representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally, but are made and intended for the purpose of binding only that portion of the trust property specifically held by the Trustee under the trust and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the Trustee or any of the beneficiaries under said Trust Agreement, on account of this instrument or on account of any representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either express or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, WARREN-BOYNTON STATE BANK, as Trustee under Trust Agreement dated November 7, 1991, also known as Trust #110, and NEW BERLIN DEVELOPMENT CORPORATION has caused this instrument to be executed this 6th day of September 1997.

WARREN-BOYNTON STATE BANK, as Trustee under Trust Agreement dated November 7, 1991, also known as Trust #110

BY: Ashley J. Turner.
Its Trust Officer.

ATTEST:

Will M. [Signature]
Its Asst. Trust Officer

NEW BERLIN DEVELOPMENT CORPORATION
an Illinois corporation

By: *Keith King*
Its *President*

ATTEST:

Tom Saff
Its *V. President*

Prepared by:
Paul E. Presney Sr.
Presney Kelly & Presney
726 South Second Street
Springfield, IL 62704
Telephone: (217) 525-0016

EXHIBIT A

Part of the Southwest Quarter of Section 20, Township 15 North, Range 7 West of the Third Principal Meridian, Sangamon County, Illinois, described as follows:

From the Southeast corner of Lot 1 of Hatfield's Addition to the Town of New Berlin, thence North 89°43'55" East, 350.94 feet; thence North 79°11'46" East, 10.83 feet; thence North 89°50'06" East, 309.35 feet to the point of beginning; thence North 0°16'05" West, 648.57 feet; thence North 47°01'21" East, 88.46 feet; thence North 0°16'05" West, 139.09 feet; thence North 89°43'55" East, 285.00 feet; thence South 0°16'05" East, 114.09 feet to a point on a curve to the left of radius of 25.00 feet; thence Southeasterly on said curve for a chord distance of 35.36 feet; thence South 42°14'33" West, 81.39 feet; thence South 0°16'05" East, 649.15 feet; thence South 89°50'06" West, 320.00 feet to the point of beginning, containing 6.114 acres, more or less.

Situated in Sangamon County, Illinois.