

20.

**DECLARATION AND INDENTURE OF CONDITIONS,
COVENANT RESTRICTIONS AND EASEMENTS FOR BIRDSONG MEADOWS
A SUBDIVISION IN ST. CHARLES COUNTY, MISSOURI**

THIS Declaration and Indenture of Conditions, Covenants, Restrictions, and Easements for Birdsong Meadows, a Subdivision in St. Charles County, Missouri (hereinafter referred to as "Declaration"), is made this 15th day of JUNE, 1995 by St. Paul Development, Co., a Missouri corporation (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of a certain tract of real estate described in Section II of this Declaration; and

WHEREAS, Declarant intends to subdivide and develop said tract as a residential subdivision, and make said tract subject to, or authorize the Birdsong Meadows Homeowners Association, a Missouri Not-For-Profit corporation to be formed by Declarant (hereinafter the "Association"), to make said tract subject to the conditions, restrictions, covenants, reservations, easements, liens and charges hereinafter set forth; and

WHEREAS, this Declaration is for the benefit of the future owners of the lots in said tract; and

WHEREAS, The Declarant and the Association agree this Declaration is for the benefit of the current and future owners of the lots in said tract; and

WHEREAS, the purpose and intent of this Declaration is to preserve said tract as a restricted neighborhood in the interest of fostering and enhancing owners' health, safety and welfare and the spirit of neighborly understanding and cooperation; to apply this Declaration not only to all of said tract but to any other tract(s) which may be made subject to this Declaration;

NOW, THEREFORE, in consideration of the premises and of the benefits that shall accrue to the lot owners and the Association and to the subsequent owners of any lots or parcels in Birdsong Meadows, the Declarant does for itself, its successors and assigns, hereby declare that Birdsong Meadows, and every part and lot thereof, is held and shall be held, conveyed, devised, leased, rented, encumbered, used, occupied and improved and otherwise affected in any manner subject to the provisions of this Declaration. All provisions hereof shall be deemed to be covenants running with the land or as equitable servitudes as the case may be, and shall constitute benefits and burdens to the lot owners and Association, its successors and assigns, and to all parties hereafter owning any interest in any part or lot in Birdsong Meadows after ownership of Declarant.

Richard Vogelgesang
2700 Eisenbath Rd
St. Paul Mo 63366

**SECTION I
DEFINITION OF TERMS**

These words and terms when used in this Declaration are defined as follows:

1. Association - means Birdsong Meadows Homeowners Association, a Missouri Not-For-Profit Corporation, its successors and assigns.
2. Declarant - means St. Paul Development, Co., a Missouri Corporation formed and doing business in the State of Missouri, its successors and assigns. A subsequent owner of any lot shall be considered a successor and assign of the Declarant.
3. Declaration - means this Declaration of Conditions, Covenants, Restrictions, and Easements for Birdsong Meadows, a Subdivision in St. Charles County, Missouri as recorded in Book 32, page 367-369 at the office of the St. Charles County Recorder of Deeds, as may properly be amended from time to time. This Declaration of Conditions, Covenants, Restrictions and Easements for the Birdsong Meadows as recorded in the office of the St. Charles County Recorder of Deeds and may be amended from time to time.
4. Lot - means an individual plot of land or parcel in Birdsong Meadows, together with improvements thereon, as identified on final plats recorded in the office of the St. Charles County Recorder of Deeds.
5. Owner - means any record owner, whether one or more persons or entities, of the fee simple title to any lot which is part of Birdsong Meadows, including Declarant, its successors and assigns, and contract sellers. The term "Owner" shall not refer to any mortgagee unless such mortgagee has acquired legal title in fee simple (e.g. pursuant to foreclosure or any proceeding in lieu of foreclosure).
6. Mortgage - means any mortgage, deed of trust, or other security interest by which a lot or any part thereof is encumbered excepting any security instrument effecting personal property or chattels.
7. Mortgagee - means any person named as the mortgagee or beneficiary under any mortgage under which the interest of any owner is encumbered, or any successor to the interest of such person under such mortgage.
8. Birdsong Meadows - means the real estate described in Section II of this Declaration; said real estate encompasses all of Birdsong Meadows.
9. Trustees - means the elected officers of the Homeowners Association, also known as the Association.

**SECTION II
PROPERTY SUBJECT TO THIS DECLARATION**

The property which is, and shall be, held and shall be conveyed, transferred and sold subject to the conditions, restrictions, covenants, reservations, easements, liens and charges with respect to the various portions thereof set forth in the various clauses and subdivisions of this Declaration is located in the County of St. Charles, State of Missouri, and is more particularly described as follows, to-wit:

**PROPERTY DESCRIPTION IS INSERTED HERE, OR CAN BE
INSERTED AS AN EXHIBIT AND ATTACHED AT THE END OF
THE DOCUMENT.**

No property other than that described above shall be deemed subject to this Declaration, unless and until specifically made subject thereto.

The Association may, from time to time, subject additional real property to the conditions, restrictions, covenants, reservations, liens and charges herein set forth by appropriate reference hereto.

SECTION III

PURPOSE

The real property described in Section II hereof is subjected to the covenants, restrictions, conditions, reservations liens and charges hereby declared to insure the best use and the most appropriate development and improvement of each building site thereof; to protect the owners of building sites against such improper use of surrounding building sites as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable material; to obtain harmonious color schemes; to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on building sites; to prevent haphazard and inharmonious improvement of building sites; to secure and maintain proper setbacks from streets, and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvements in said property, and thereby to enhance the values of investments made by purchasers of building sites therein.

SECTION IV**CREATION OF HOMEOWNERS ASSOCIATION**

Declarant has caused to be formed a Not-For-Profit Corporation under the laws of the State of Missouri known as Birdsong Meadows Homeowners Association which corporation shall exercise all of the rights and privileges granted the Association under the terms of this Declaration according to the Association's Articles of Incorporation and By-Laws, subject to such right of amendment as shall be set forth in the initial Articles of Incorporation or By-Laws and this Declaration, this Declaration shall control.

SECTION V**RESERVATION OF EXPENDITURES**

The Association reserves the right to receive and retain any monetary consideration which may be refunded or allowed on account of any sums previously expended, deposited, or subsequently provided by it for joint main sewers, gas pipes, water pipes, conduits, holes, wires, street lights, roads, streets, recording fees, subdivision fees, consultation fees, or other fees, charges, costs and expenses incurred with respect to the subdivision and development of Birdsong Meadows.

SECTION VI**COMMON GROUND**

The Association and its successors and assigns shall have the following rights, powers and authorities pertaining to the common ground as heretofore defined:

1. The Association shall hold fee simple title to any and all areas hereafter conveyed by Declarant and its successors and assigns to the Association either by deed or by dedication and acknowledgement on a final recorded plat, which areas may in such conveyances be described by metes and bounds, or may be described by words of general reference such as "common ground", "common areas", "park", "entrance", "common easement", "common facilities", or "common land" or any other term or reference indicating that any such area shall be common ground for the benefit of lot owners within Birdsong Meadows; provided however, that nothing stated herein shall prevent the Declarant or its successors in title and interest to designate, provide, and set apart common easements and other forms of common ground restricted to the benefit of the owners of one of more plats or parcels of Birdsong Meadows.

2. Title to common ground so conveyed for the benefit of the owners shall be vested in the Association for a period of seventy-five (75) years from the date of the recording of this Declaration. At the expiration of such initial seventy-five (75) year period, fee simple title to such land shall then vest in the record owners of all lots or parcels in Birdsong Meadows (regardless of the number of subdivision plats which may have been filed or recorded) as joint tenants, but the rights of such joint tenants shall be only appurtenant to and in conjunction with the ownership of a lot or parcel in Birdsong Meadows, and any conveyance or change in ownership of any lot or parcel in Birdsong Meadows and any conveyance or change in ownership of any lot or parcel in Birdsong Meadows shall carry with it ownership in such common ground as that none of the owners of the lots or parcels in Birdsong Meadows shall have such rights of ownership so as to permit conveyance to be made of an interest in such common ground except as an incident to ownership of a lot or parcel; and in the event any conveyance is made of any lot or parcel in the Birdsong Meadows without any mention of ownership of such common ground, it shall be conclusively presumed that the conveyance was intended to and did intend to include the conveyance of such interest in such common ground. Provided, however, notwithstanding anything herein to the contrary, upon majority vote of all lot owners, the lot owners of Birdsong Meadows may extend the ownership of the common ground by the Association.

3. In the event the majority of owners in Birdsong Meadows shall desire to extend the term of the ownership of such common ground by the Association beyond the initial seventy-five year period specified above, such owners may, by written instrument recorded in the St. Charles County Recorder of Deeds, extend the initial term of ownership for additional terms of twenty-five (25) year each, provided that such written instruments are recorded prior to the expiration of the original term or extended term, and the ownership by the Association of such common ground heretofore described shall thereupon continue for additional periods of twenty-five (25) years from the date of expiration of the initial term or extended term, as the case may be. Upon the expiration of a term in which ownership, the title of such land shall vest in the record owners of lots and parcels in Birdsong Meadows provided in Section VI paragraph 2 herein.

4. In the event the corporation charter of the Association is forfeited or such corporation is dissolved or liquidated by any means whatsoever, title to common ground shall immediately upon such forfeiture, dissolution or liquidation vest in the last Board of Directors of the Association who shall continue to hold title to the common ground and to exercise all rights granted the Association under the terms of the Declaration. The successors to such last Board of Directors shall be elected by the owners of lots and parcels in the Birdsong Meadows in the same manner as provided in the Articles of Incorporation and By-Laws of the Association in effect at the time of such forfeiture, dissolution or liquidation. In the event that such forfeiture, dissolution or liquidation is set aside and the corporate charter of the Association reinstated as provided by law, the title to such land

shall revert in the Association which shall continue thenceforth to exercise all powers granted it under this Declaration.

5. Subject to the right of Declarant, its successors and assigns to restrict certain areas for the common benefit, use and enjoyment of the owners, all land conveyed to the Association as common ground shall be held by the Association for the benefit, use and enjoyment of all the owners and their tenants or invited guests, subject however to the reasonable limitations prescribed by the Association as set forth herein or otherwise determined under the Articles of Incorporation of By-Laws of the Association.

6. If the Association establishes and designates the name of any park or particular area of common ground subject to this Declaration, this name may not be removed, amended or changed without the consent of seventy-five percent (75%) of the lots subject to this Declaration.

SECTION VII

DUTIES AND POWERS OF THE ASSOCIATION

The Association and its successors shall have the following rights, powers and prerogatives:

1. To exercise such control over the parks, common easements, entrance ways, private streets and roads, bridle paths, any common ground as heretofore defined, lights, gates, shrubbery, storm water sewers, and any and all other rights, property, or appurtenances conveyed or transferred to the Association may be conveyed by the Declarant, its successors or assigns or by any separate instrument of bill of sale as well as all streets, or parts thereof not maintained by governmental authority, roads and easements and all improvements situated thereon, in order to maintain, repair, rebuild, supervise and insure the proper use of such rights and property including the right to construct, operate and maintain on, under or over any part of such property, sewers, pipes, holes, wires, structure and buildings of any type, other facilities and public utilities for services to the lots and parcels shown on any plat of Birdsong Meadows or to grant such rights of others by appropriate instrument including a private or public easement.

2. Publicly to dedicate any private street or sewer system constructed or to be constructed on any part of Birdsong Meadows whenever such dedication would be accepted by a proper public agency in the event the recorded plat thereof does not provide for such dedication to public use.

3. To exercise control over all such common ground, to pay real estate taxes and assessments on any such common ground, if any, out of the general assessment hereinafter provided, to maintain and improve the same as well as any public street with shrubbery, vegetation, decorations, buildings, recreational facilities of any kind or description, other structures, and any and all types of facilities* in the interest of the health, welfare, safety, morals, recreation, entertainment, education or general use of the owners of the lots and parcels in Birdsong Meadows; to maintain and repair such buildings, structures and facilities; to prescribe by reasonable rules and regulations the terms and conditions of the use of such common land and appurtenant facilities, all for the benefit and use of the owners of the lots and parcels in Birdsong Meadows, according to the discretion of the Association.

4. To prevent any infringement and to compel the performance of any restriction set out in this Declaration or established by law, and also any rule and regulation issued by the Association for the use of such common ground and appurtenances or any matters pertaining thereto. In the event the Association is successful in any such action the owners against which such action has been maintained shall be obligated to pay all expenses of the Association in maintaining such action, including a reasonable attorney's fee, which expenses shall become a lien against the land of such owners to be collected, with interest, in the same manner as provided in Section VIII, paragraph 3. This provision is intended to be cumulative and not to restrict the right of any lot owner or parcel to proceed in his own behalf, but the power and authority herein granted the Association is intended to be discretionary and not mandatory.

5. To clean up rubbish and debris, remove grass and weeds from, and to trim cut back, remove, replace and maintain trees and the shrubbery and flowers upon any vacant or neglected lots or parcels in Birdsong Meadows, including the right to charge the owner or owners with the expense thereof in which event such charge shall be a lien against the property of such owner and owners as provided in Section VIII, paragraph 3 below. Neither the Association or any of its authorized officers, directors, agents or employees shall be deemed guilty or liable for any matter of trespass or damage arising from such action on their part pursuant to the provisions of this paragraph.

6. To consider, approve or reject any and all plans and specifications for any and all buildings or structures, fences, detached buildings, outbuildings, accessory buildings, swimming pools, tennis courts or other recreational facilities proposed for construction on any lot or parcel or proposed additions to such buildings and structures or alterations in the external appearances of any building or structure already constructed, it being provided that no building or structure, fence, detached building, outbuilding, accessory, swimming pool, tennis court or other structure may be erected or structurally altered unless the written approval of the Association to the plans and specifications therefor and to the grade proposed therefor is first obtained. In the event the Association fails to approve or

* Including the retention lake as indicated in the easement on lots 2, 4, 5, and the Richard and Sharon Voegesang property. R.V.

disapprove within sixty (60) days after building plans or other specifications for such buildings or structures have been submitted to it for approval, it shall be conclusively presumed that such approval was obtained. In granting or rejecting such approval, the Association may, but shall not be required, to take into consideration from time to time as it deems appropriate according to circumstances then existing, any or all of the following factors;

- a) The size, height, living area, cost building materials, and aesthetic appearance of such building or structure.
- b) The conformity of such building or structure to other buildings and structures in Birdsong Meadows.
- c) The grade or elevation at which such building or structure is proposed to be constructed in relation to any other building or structure on the same lot or parcel or any other lot or parcel in Birdsong Meadows.
- d) The proximity or relationship of such building or structure on the same lot or parcel or any other lot or parcel in Birdsong Meadows to any other building or structure or the proximity and relationship of such building or structure to any building line, property line, street right-a-way, easement, or common land area in Birdsong Meadows.

In the event the Association shall fail to exercise any right or power granted it under the provisions of this paragraph and such failure is held or could be held to be an express or implied waiver of any such right or power granted hereunder, such right or power may be reinstated upon reasonable notice to the owners of lots or parcels in Birdsong Meadows.

7. The Association may delegate its powers and duties granted to it in paragraph 6 to an Architectural Control Committee to be established at the discretion of the Association, but if said Committee is established, it shall be required to have a minimum of three (3) members. The Board of Trustees shall act as the Architectural Control Committee unless and until such time as a separate committee is appointed pursuant to this paragraph.

8. All projects involving the proposed erection of any building or structure, fence, detached building, outbuilding, swimming pool, tennis court, driveway or other structure on any lot or parcel must be completed within 45 days from the start of construction unless, for good cause shown, the Association or Architectural Control Committee grants additional time in writing to complete the work. Failure to finish timely will result in a \$20.00 per day additional assessment.

9. To purchase and maintain in force liability protecting the Association, its agents, officers and employees and the owners of lots and parcels from any and all claims for personal injuries and property damage arising from any act or omission of the Association pertaining to its powers herein granted including, but not limited to, the constructing, installation, maintenance and repair of structure, landscaping, and other improvements whether on private or public land. Also, to purchase and maintain in force fire and extended coverage hazard insurance and such other insurance as the Association shall from time to time deem necessary or advisable.

10. In exercising the rights, powers and privileges granted to the Association and in discharging the duties imposed upon it by the provisions of this Declaration, from time to time to enter into contracts, employ agents, employees, and labor as it shall deem necessary, to employ counsel to institute, prosecute or defend any suit as it shall deem necessary or advisable.

11. To enter into any agreements, oral or written, including licensee or lease agreements, with the owners of any public or private horse stable or stables, whether situated within the Birdsong Meadows, or not, for the use of part or all of the common ground by the owner or owners of such stables and their agents, employees, and customers on such terms and conditions as the Association shall from time to time deem proper.

12. To enter into agreements, both oral and written, with the owners of various lots or parcels in Birdsong Meadows or with any governmental agency or unit of any management agency, Board of Trustees, or other legal entity that may exercise property or contract rights for the benefit of the owners of one or more plats or parcels of land in Birdsong Meadows, including but not limited to, the sharing of employees and agents, or their salaries, charges and expenses; the sharing or leasing of building space, the sharing of maintenance equipment and all costs relating to the purchase, leasing or maintenance thereof.

13. With reference to the common ground only, to designate visitor's parking areas and residents' parking spaces and to prohibit or designate areas for the parking of vehicles other than passenger cars; to remove vehicles which appear to be abandoned.

14. To close any private street or areas from time to time in order to preserve the Association's title to such streets and areas.

15. With reference to the common ground only, to grant easements of any kind to any person, persons or legal entity for any purpose whether for the benefit of the owners of lots or parcels in Birdsong Meadows or not.

16. To borrow money from time to time for the purposes set forth herein under such terms and conditions as the Association shall deem proper and to give security therefor including a Deed of Trust, security agreement, or other form of pledge or security instrument, encumbering any property owned or held by the Association, including the common ground or any part thereof.

17. To adopt such rules, regulations, fines and penalties as it may deem proper to prevent the use of any common ground easement, pathway, or bridle path by motorized vehicles or to levy a fine or other penalty against any person, including the parents of any minor, who has violated any such rules or regulations or restrictions pertaining thereto, including the right to take possession of any such motorized vehicle which has been used to so violate any such rule, regulation or restriction and to require the payment of any sum that it may deem proper for its release.

18. To indemnify the Board of Directors of the Association or any of them, from all costs, damages, and expenses (including attorney's fees) incurred by them in any action brought against them arising out of any act or omission pertaining to this Declaration and the powers granted them hereunder unless in any such action the Association or any director or directors thereof commit fraud or gross negligence in such act or omission.

19. In the event the corporate charter of the Association is forfeited or such corporation is dissolved or liquidated by any means whatsoever, all rights, powers, and prerogatives granted the Association hereunder shall be held and exercised by the last Board of Directors of the Association. The successors to such last Board of Directors and to their rights, powers, and prerogatives shall be elected by the owners of lots and parcels in Birdsong Meadows in the same manner as provided in the Articles of Incorporation and By-Laws of the Association in effect at the time of such forfeiture, dissolution or liquidation. In the event that such forfeiture, dissolution or liquidation is set aside and the corporate charter of the Association reinstated as provided by law, all such rights, powers and prerogatives shall thenceforth revert to and be held and exercised by the Association.

20. The above paragraphs are grants of powers only and the Association may or may not exercise them from time to time as is shall deem proper under the circumstances then prevailing in its sole discretion.

SECTION VIII

ASSESSMENTS AND ENFORCEMENT

The Association is hereby authorized, empowered and granted the right to make assessments upon and against lots and parcels within Birdsong Meadows for the purposes

herein stated and at the rate hereinafter provided, and in the manner and subject to the following provisions:

1. The Association or any successor Board of Directors operating as a result of a corporate forfeiture or dissolution, is authorized to make uniform annual assessments in an amount not to exceed \$150.00 per lot in each calendar year upon and against each lot upon which a residence has been constructed and sold for the purpose of carrying out any and all of the general duties and powers of the Association hereunder and for the further purpose of enabling the Association to defend and enforce the restrictions herein set forth adequately to maintain streets, such common ground, utilities, parking spaces, entrance ways, landscaping and shrubbery, and to dispose of garbage and rubbish or to abate any nuisance on any property in Birdsong Meadows, or to perform or execute any powers or duties provided for in this instrument, or otherwise properly to protect the health, safety and general welfare of the residents of Birdsong Meadows, as well as the maintenance of a capitol improvement fund, replacement reserve, or contingency fund. Each annual assessment shall be levied prior to December 31 in the year prior to the year for which it is levied, notice thereof being effective upon deposit in the United States mail with postage prepaid, addressed to the last known or usual post office address of the owner. In determining the last known address of the owner, the Association may rely on the St. Charles County Assessor's records without further search. If such notice is given not later than December 15th of each such calendar year, such annual assessment shall be due on February 1 following and shall become delinquent if not paid by March 1. The failure to give such notice within such period of time shall not effect the obligation to pay such assessment, but shall only effect the obligation any delinquency charge or the right of the Association to take any action against any such owner who has not given such notice as hereinafter provided. The limit set forth in the preceding subparagraph for annual assessment may be increased without vote of the members, by the Board of Directors in an amount equal to the annual increase in the cost of living as determined by the consumer price index - all items, for the City of St. Louis, Bureau of Statistics. For such purpose, the year 1984 shall be considered the base year (1984 = 100) and the amount of such increase shall be calculated on an annual basis thereafter by comparing the rise in the cost of living for the previous calendar year.

2. If at anytime the Association considers it necessary to make any expenditure requiring an assessment additional to the annual assessment, it shall submit a written outline of the contemplated project and the amount of the assessment required, to the owners. Such assessment shall be effective if approved as follows:

a) If approved by fifty-one percent (51%) of the votes cast in person or by written proxy, at a special meeting called with at least ten (10) days prior written notice (the number of lots being required for a quorum to be determined by the By-Laws of the Association); or

- b) On the written consent of fifty-one (51%) of the lot owners entitled to vote thereon; or
- c) By any combination of such written consents, proxies or votes.

The limit of annual assessments for general purposes as set forth in paragraph 1 above shall not apply to any assessment made under the provisions of this paragraph 2.

3. All past due assessments shall bear interest at the rate of ten percent (10%), unless the Board of Directors of the Association, or the Trustees of the Association, by majority vote approves a higher rate not to exceed the highest rate of interest allowed under Section 408.030 Revised Statutes of Missouri. Such delinquent assessments shall bear interest from the date of delinquency and the person or persons responsible for the payment of such assessments shall be liable for the costs of collection including a reasonable attorney's fee and costs of collection on the amount of the assessment owed. Such delinquent amounts together with interest and the expenses of collection shall be a lien against the property until the amount thereof, together with all charges demanded are fully paid. As assessment becomes past due, the Association may execute and acknowledge and file a lien, setting forth the amount of the lien. Such lien may then be enforced by non-judicial foreclosure as provided for by Missouri law for foreclosure sales.

4. Should the Board of Trustees of the Association elect to enforce any provision, covenant, restriction or condition set out in the Articles of Incorporation, this Declaration, or the By-Laws, then the person, persons, or entity in which enforcement is sought is liable for all costs of enforcement including court costs and a reasonable attorney fee. Said amount shall be a lien against the property upon the filing of said lien setting forth the amount of the lien. Such lien may then be enforced by non-judicial foreclosure as provided for by Missouri law for foreclosure sales.

Association shall deposit the funds coming into its hands from all such assessments, and any other income received by the Association, in a bank protected by the Federal Deposit Insurance Corporation or in a savings and loan association protected by the Federal Savings and Loan Insurance Corporation.

SECTION IX

ARCHITECTURAL CONTROL COMMITTEE

No building, fence, wall, or other structure of any kind shall be erected, placed or altered on any lot until the construction plans and specifications, and a plan showing the location of the structure have been approved by the Architectural Control Committee as

to quality of workmanship and materials, harmony of external design with existing structures, minimum square footage requirements, and as to location with respect to topography and finish grade elevation. Said building or structure shall be located at such place or places where, in the opinion of said Committee the location and the architectural design of such proposed structure will not detract materially from the appearance and the value of the other properties. Construction plans and specifications with elevations of lot corners, finish floor elevations and house location on the lot along with a complete set of prints with front, rear and side elevations, shall be submitted to the Architectural Control Committee at least thirty (30) days before construction of a building or structure or fence is commenced.

A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this Declaration. The Association Board of Directors shall assume the responsibilities of the Architectural Control Committee, and shall act as such Committee until such time as an election can be held by the lot owners at an Association meeting designated for such an election. The number of members and terms of the committee members shall be determined by the Association. The Association may establish the procedure to be used by the Homeowners for submitting plans to the Architectural Control Committee. Once an Architectural Control Committee is established, it shall thereafter be a different committee from the Association Board of Directors.

The Committee has the right and power to approve plans or reject any such plans which in its opinion would be injurious to or out of harmony with the present or future development of Birdsong Meadows.

The Committee's approval or disapproval as required in these covenants shall be in writing. In the event the Committee or its designated representative, fails to approve or disapprove within sixty (60) days after plans and specifications have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

No trees shall be removed without approval of the Architectural Committee.

Fences are permitted. Permitted fences shall be constructed in a workmanlike manner of substantial new material and shall blend in with existing materials on the property, and shall not be more than forty-two inches (42") in height, unless applicable local ordinances and/or regulations require greater height for a permitted use under their terms hereof. Chain link is a permissible material. All fencing must meet the approval of the Architectural Control Committee as to material, height, design and method of

construction, and the homeowner seeking to erect any fence shall submit such plans, drawings and specifications as the Committee may require.

SECTION X

RESTRICTIONS

1. Dwelling Size and Height.

A. One Story. No lot shall be used except for single family residential purposes. No buildings shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling not to exceed thirty-five (35) feet in height, and with a living area of not less than eighteen hundred (1,800) square feet exclusive of areas encompassed by attached garage, porches, decks, or patios.

B. Other Than One Story. A dwelling of the design of more than one story (except dwellings of the design commonly referred to or known as split-level or split-foyer) shall have a first floor area, exclusive of areas encompassed by attached garage, porches, decks, and patios of not less than fifteen hundred (1,500) square feet on the first floor.

In all cases, a dwelling shall have a minimum side yard of forty (40) feet, minimum rear yard of fifty (50) feet and minimum front yard of fifty (50) feet.

All measurements for square footage requirements under this section shall be made from the outside wall excluding attached garage, porches, decks, and patios.

2. Garages, carports, and outbuildings. Each residence shall include a minimum of a two-car attached garage and have a solid, continuous, poured foundation of concrete.

No person may dwell in or occupy on any of said lots, any garage, outbuilding, trailer or other structure not designed as a permanent or stationary home, nor may any persons use any of said lots or any building of structure thereon for any purpose prohibited by law or ordinance or for the commission of maintenance of any nuisance, which shall include the repair of any automobile or any vehicle on any street located in the subdivision.

No basketball backboard, goal posts, tether ball or other permanent sporting equipment shall be affixed on the front of the garage or dwelling facing the street, or placed in a front yard between the dwelling and the street upon which it faces, provided that this restriction shall not apply to the side yard or a corner lot which fronts upon a street.

No curport shall be allowed on any lot. No outbuildings customarily used as storage space shall be permitted upon any lot, without prior written approval from the Architectural Control Committee.

Except during the construction period, no lot owner shall park any motor vehicle in excess of eight (8) feet high or fifteen (15) feet long on any lot other than in a garage for a period in excess of eight hours per day. No repair or maintenance work shall be done or performed on any motor vehicle, any boat or truck, except in an enclosed garage. No vehicle shall be parked on a public street for more than twelve hours in a twenty-four hour period from twelve noon to twelve noon of the following day.

3. Commercial Activity. No residents, accessory building or any portion of any lot shall be used as a boarding house, nursing home, rooming house, clubhouse or roadhouse, nor shall any residence, accessory building or any lot be used or devoted to any manufacturing, industrial or commercial activity whatsoever, except that garage sales may be held at such times and under regulations prescribed by the Board of Trustees.

4. Above Ground Pools/In Ground Pools. All above ground type swimming pools must be approved by the Architectural Control Committee before construction can begin. In ground pools are permissible, but all plans for same must be approved by the Architectural Control Committee.

5. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

6. Signs. No sign of any kind shall be displayed to the public view on any lot, except one sign of not more than five square feet advertising the property for sale or lease. One sign for political campaign not to exceed five square feet may be displayed for any one election in accordance with restrictions imposed by county or municipal ordinance. Any lot owner may post an occasional sign for less than forty-eight (48) hours not to exceed three (3) time per calendar year. Provided however, that Declarant or any builder or developer is exempt from this sign regulation for the purpose of advertising the sale of lots and newly constructed homes, provided said signs do not obscure of limit vision. The Association Trustees are empowered to determine if any party is exempt from the sign requirement and if exempt if the placement of those signs obscure vision.

7. Animals and Pets. No poultry, pigeons, cattle, hogs, horses, rabbits or other animals or livestock of any kind may be raised, bred or kept upon any lot except that a dog or cat as household pets shall be permitted by a lot owner provided they are not kept, bred or maintained for any commercial purpose and the number of such household pets does not exceed two (2) dogs and two (2) cats per lot. Such pets may only be kept if they are

restrained so as not to run at large beyond lot property lines. Any such household pet taken outside of the lot shall be under leash. Dog runs are prohibited.

8. Antennas and Aerials. No radio towers, antennas, aerials, dishes (including any type of microwave reflector, whether constructed of mesh, fiberglass, or spun aluminum) or other similar devices or installations designed or used for the transmission of radio or television waves or signals from space shall be permitted upon any lot without approval of the Architectural Control Committee; provided, however, television satellite dishes which are eighteen inches (18") or less in diameter shall be permitted, with the placement thereof to be approved by the Architectural Control Committee.

9. Fuel Tanks. No tank, bottle or container for the storage of fuel shall be erected, placed or permitted on any lot whether above or below the surface or ground level.

10. Sewage and Garbage Disposal. All water and sewage from household uses shall be disposed of through public sanitary sewer system if available, or through approved septic tank system. All construction of sewerage disposal systems shall be in accordance with the "Engineering Report for Waste water Disposal - BIRDSONG MEADOWS - ST. CHARLES COUNTY, MISSOURI", which report is dated November 14, 1994. A copy of said report shall be provided to each lot owner within ten (10) days after request for same is submitted in writing to the Trustees. No waste water shall be permitted to be discharged across lot lines/boundaries; and in the event that such discharge continues after the owner of said lot receives twenty (20) days written notice from the Trustees then the Trustees shall be empowered to cause said condition of off-lot discharges to be remedied and shall assess the lot owner for the costs of said corrective action. No outside toilet or latrine shall be constructed on any lot in the subdivision. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers and may not be set outside for pickup unless placed in receptacles or cans. No trash, rubbish or garbage receptacles or cans shall be placed outside any building except after 6:00 p.m. on the day of the week before the day in which collection is scheduled and no receptacle or container may remain street side after 6:00 p.m. the day of collection. Declarant, builders, and their subcontractors, are exempt from this provision except that they shall have a reasonable duty to keep the streets free and clear of rubbish and building materials.

Garbage, deleterious substances, cans, bottles, refuse, debris, or discarded material shall not be permitted to accumulate upon any lot, but the same must be removed at the expense of the lot owner and at such frequent intervals as necessary to keep the lot clean and sanitary. No lot shall be used as storage place of salvaged material or dismantled thereon for salvage purposes any old machines or automobiles. Automobiles that are not

licensed and in operable condition may not be parked or stored on any lot unless in an enclosed garage.

Any builder, contractor, developer is responsible for washing down street during any construction period. They are also responsible for confining all construction debris to a preapproved construction area designated by the Architectural Control Committee. The builder, contractor or developer is responsible for emptying any dumpster or trash receptacle as needed. No debris may be permitted to end up in any pond or other body of water. Any violation of this provision can result in the Association assessing charges for clean up and/ or penalty of up to \$50.00 per day for violating the Declaration.

11. Sight Distance at Intersections. With respect to any corner lot, there shall be no shrubbery, trees, flowers, vegetation, walls and fences greater than one (1) foot in height with a triangular area bounded by the property lines on each street and a line connecting said property lines thirty (30) feet from the intersections thereof, or in a case where the intersection is rounded, thirty (30) feet from the point where a straight projection of property lines would intersect; provided, however, that tree boughs or branches may overhang such areas so long as they do not extend lower than seven (7) feet from the ground. In the event of violation of this restriction, the Board, their agents, servants and employees shall have the absolute right to enter upon the lot involved and remove, trim, cut or destroy any shrubbery, trees other vegetation or other structures or obstacles in violation of this restriction and further, the Trustees shall be entitled to assess the lot owner for the cost thereof as an additional assessment.

12. Field Crops, Grasses and Weeds. No lot may be planted in field crops which may attain a height greater than twelve (12) inches and all grasses and weeds which may grow upon any lot shall be cut and trimmed by the owner thereof so as to permit a height greater than six inches (6"). Such field crops or gardens may only be grown in the backyard area.

13. Motor Vehicle Restrictions. No motor vehicles in excess of eight (8) feet in height or fifteen (15) feet in length or any trailer, boat trailer, boat, camper, camping truck or similar vehicle shall be parked on the streets of said subdivision for more than one (1) hour between the hours of five o'clock p.m. of one day to eight o'clock a.m. of the following day. No motor vehicle in excess of eight (8) feet in height or fifteen (15) feet in length or trailer, boat trailer, boat, camper, camping truck or any other similar vehicles shall be parked or permitted to remain on any lot in said subdivision unless such vehicles are garaged in the garage attached to the residence or are parked to either side or to the rear of the residence, and are parked upon a concrete slab which has a perimeter dimension equal to the wheelbase and frame (front to rear) dimension of the camper, boat, trailer, etc. Camper shells on 3/4 ton pick-ups or smaller vehicles may be parked on a lot without being garaged.

14. Lots Resubdivided. No lot shall be resubdivided except with unanimous approval of the lot owners attending a special meeting called in part or in whole for that purpose. Said special meeting to be called in accordance with the procedures established for calling a special meeting.

15. Mining and Drilling. No oil or natural gas drilling, oil or natural gas development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil or natural gas wells, tanks, tunnels, mineral excavations, pipes or pipelines, or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

16. Care and Appearance of Premises. The structures on and surface of each lot shall be maintained in a neat and attractive manner. The Association Board of Directors shall have the right (upon twenty (20) days notice to the owner of the property involved, setting for the action intended to be taken and if at the end of such time such action has not been taken by the owner), at the expense of the owner, to remove trash or rubbish, cut grass, weeds and vegetation or to trim or prune any hedge or other planting that, in the opinion of the Association Board of Directors is detrimental to adjoining property or is unattractive in appearance. The Association Board of Directors upon like notice and conditions, is authorized to care for vacant or unimproved property, all to the cost and expense of the owner. Such costs and expenses incurred by the Association shall be paid to the Association upon demand and, if to paid within ten (10) days thereof shall become a lien upon the property affected.

SECTION XI

MISCELLANEOUS PROVISIONS

1. Enforcement of any of the covenants or conditions of this Declaration may be by proceeding at law or in equity against any person or persons violating or attempting to violate any such covenant or condition any may be brought to restrain any such violation and to recover damages therefor or both.

2. This Declaration may be amended by assent of fifty-one percent (51%) of the owners, but is not effective until such modification or amendment is duly recorded in the office of the St. Charles County Recorder of Deeds. Such modification or amendment may only be accomplished in accordance with the meeting and quorum requirements (or in the alternative, by written petition) as set out in the Association's By-Laws.

3. Whenever any consent, approval, vote, proxy or other action (whether written or oral) of the owners of any lot or parcel is required by the terms of this Declaration, such consents, approval, vote, proxy or other action may be made or given by any one of the joint owners, if there is more than one owner, regardless of the type of joint tenancy.

4. Nothing contained in this instrument shall be construed to make the provisions of this instrument applicable solely to the real estate described in Section II herein, and other tracts of land may from time to time be made subject to this Declaration by written instrument or subdivision plat adopting the covenants and conditions of this Declaration by reference.

5. The members of the Association shall be those persons who are the lot owners of the lots which are subject to this Declaration; said memberships being appurtenant to and in conjunction with the ownership of such lots. any conveyance or change of ownership or any lot shall carry with it membership in the Association. No member shall have a right to convey his membership in the Association except as an incident to the ownership of a regularly platted lot.

6. In addition to any other power granted by this Declaration, the Association shall have the right and power to abandon any easement or portion thereof by executing and recording a proper and appropriate instrument in the office of the St. Charles County Recorder of Deeds, provided that the Association first determines that it is in the best interests of the owners that the same be abandoned. The Association shall further have the right and power to negotiate with any public agency for the acquisition of any part of the common ground for any public purpose and to execute instruments necessary for that purpose. If acquisition by right of eminent domain shall become necessary the Association need only be made a party to such action and in any event, the proceeds received by reason of sale, settlement, or final award of judgment shall be held and used for the benefit of those entitled to the use of the common ground.

7. Any motor vehicle displaying a "for sale" type sign may not be parked in the street.

8. Lot owners must notify the Association of any change in ownership of a lot.

10. Should any court declare any provision hereof void, unenforceable, or illegal it shall be severed from this document but all other provisions shall survive.

IN WITNESS WHEREOF, The Declarant has hereunto executed this Declaration on the day and year first above written.

(signatures on next page)

[Signature Page for Covenants & Restrictions of Birdsong Meadows]

St. Paul Development, Co.

By: *Thomas D. Sims*
Thomas D. Sims, President

STATE OF MISSOURI
COUNTY OF ST. CHARLES
RECORDER OF DEEDS
FILED FOR RECORD

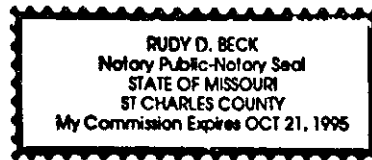
AUG 30 1995

State of Missouri)
County of St. Charles) SS.

By *Barbara Hall*
Time 3:00 PM

The above and foregoing was signed by Thomas D. Sims, to me personally known and who executed the foregoing in his capacity as President of St. Paul Development Co., and stated that the foregoing document was authorized to be signed by him by the Board of Directors of said corporation.

Rudy D. Beck
Notary Public
My Commission Expires:



END OF DOCUMENT