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A02164169

MICHAEL T. COSTELLO
RECORDER OF DEEDS
BELLEVILLE, IL
RECORDED ON

06/08/2009 02:28:05PM

RHSP FEE: 10.00

TOTAL FEE: \$30.00

PAGES: 2

RETURN TO:
J2K LLC
209 SUN VALLEY DR
SMITHTON, IL. 62285

FIRST AMENDMENT TO
DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS
A02148274

**DO NOT REMOVE THIS PAGE!
IT IS NOW THE FIRST PAGE OF
THE ORIGINAL DOCUMENT.**

FIRST AMENDMENT TO
DECLARATION OF PROTECTIVE COVENANTS AND
RESTRICTIONS

SOUTH WOODS
Smithton, Illinois

An Amendment to the South Woods Declaration of Protective Covenants and Restrictions recorded March 4, 2009 in the St. Clair County Recorder's Office as Document # A02148274.

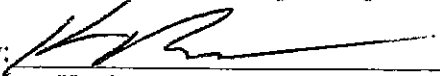
The following section is amended as follows:

9. FENCING: All fences must be approved by the ACC prior to installation. All fences must consist of vinyl, iron, aluminum, brick, wood or stone materials. Metal chain-link fences are not permitted. No fence or screening may be erected or maintained on any lot nearer to any street than **the mid-point of the side-wall(s)** of said dwellings unless approved by the ACC. On lots with two sides abutting a street, a fence placed on the side yard abutting one or more city streets shall be set back a minimum of twenty-five (25) feet from the street right-of-way. A fence shall be placed no closer than five (5) feet of the property line per the Village of Smithton's code. Please refer to the Easements section (Section 8) of this document regarding fences within an easement. No fence shall exceed 6' 6" in height as measured from ground level. All fences must be professionally installed, kept in good repair, i.e. painted and kept plumb. Failure to comply with this provision shall constitute a nuisance within the meaning of this document.

The above changes were approved by the Declarant accordance with Section 26 of the Declaration of Protective Covenants and Restrictions

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hand and seal this 5th day of June, 2009.

Declarant:
TQG, by J2K, LLC, its Operating Manager

By: 
Kevin Bollman, Manager

Kevin Bollman

MAR 04 2009

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A02148274

STATE OF ILLINOIS
ST. CLAIR COUNTY
BELLEVILLE IL 62220

\$90⁰⁰

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Michael T. Grotter

RECORDER

DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS

**SOUTH WOODS
Smithton, Illinois**

State Imposed
Surcharge

Rental Housing surcharge: \$10.00

The maker of this Indenture, TQG LLC, is the owner and developer (herein referred to as "Developer" and/or "Declarant") of all the real estate contained in South Woods Subdivision, a subdivision in the County of St. Clair, as per plat(s) thereof recorded as A02148273 in the Recorder's Office of St. Clair County, Illinois, (herein referred to as "Subdivision" and/or "Lots") which plat and Lots shown thereon and this instrument shall be complimentary to each other.

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WHEREAS, the Developer hereby imposes upon all of the aforesaid land in said subdivision certain conditions, restrictions, reservations, and limitations, which shall run with the land, shall be for the benefit of, and enforceable by, the present owner of said Subdivision and future owners of any parcel within said Subdivision, and their heirs, successors and assigns and all future grantees(s) of said real estate or any part or parts thereof and shall be binding on all parties having any right, title or interest in the said land or any part thereof, whether or not the said restrictions be specifically incorporated in the conveyance of any said lot or tract of land.

NOW THEREFORE, in consideration of the mutual advantages accruing to the current owner of the aforesaid Lots, as well as the mutual advantages which will accrue to the future owners of said Lots, there is hereby imposed on each lot of the above-described property the following:

1. DWELLING SIZE AND SPECIFICATIONS:

- a) "Manor Lots:" 1-7, 65-67, 79-86, and 97-103. Single story dwellings shall have no less than 1300 square feet of above ground living area. One and one-half (1/2) story and two story dwellings shall have no less than 1600 square feet of above ground living area. All one and one-half (1/2) story and two story dwellings shall have no less than 900 square feet of living area on its first floor level.
- b) "Estates Lots:" 32-47, 58-64, 104 & 105. Single story dwellings shall have no less than 1600 square feet of above ground living area. One and one-half (1/2) story and two story dwellings shall have no less than 1900 square feet of above ground living area.
- c) All dwellings must have at least a two (2) car garage attached to the main dwelling of not less than 380 square feet.

All Lots shall be used exclusively for residential purposes. No lot shall be resubdivided or otherwise divided so as to make it smaller, unless prior approval is obtained in writing from the

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Developer and other jurisdictional body. No commercial or industrial activity may be conducted or performed on any lot.

2. ARCHITECTURAL CONTROL COMMITTEE: The Architectural Control Committee (herein referred to as the "ACC") shall initially consist of Jon Poetker, Kevin Bollman, and Aimee Winter until such time that the above members resign by giving notice of resignation in a newspaper of general circulation in the area of the Village of Smithton, Illinois. The initial members shall remain the ACC until such time as the Developer no longer owns any of the lots within the Subdivision or future phases. At such time when the initial ACC members resign, the Homeowners' Association shall appoint replacement members and define the parameters of the successor ACC.
3. CONSTRUCTION APPROVAL / ARCHITECTURAL CONTROL: No construction or alteration of any kind or the placement of any structure, pool, or material upon any Lots shall be permitted until the construction plans and specifications have been approved by the ACC in writing. A copy of the plans and specifications shall be delivered to the ACC a minimum of ten (10) days prior to the beginning of such construction. Plans shall include such detail as ACC may reasonably require, including colors. ACC shall render a written response regarding approval or disapproval of building plans within ten (10) days of receiving a complete submittal. No changes or deviation from the approved plans and specifications shall be allowed without approval from the ACC in writing. Such approvals are intended to provide conformity and harmony of external design of all improvements and structures within the Subdivision.
4. CONSTRUCTION MATERIALS: Roofs must have a minimum of a 6/12 pitch, except by variance approved by the ACC, and all roof shingles shall carry a minimum 25-year warranty, be of an architectural type or shakes, and shall be approved by the ACC. No exterior walls shall be covered with exposed asbestos, asphalt, fiber or gypsum materials, or concrete blocks. Metal siding is not allowed. Driveways shall be constructed of concrete unless a variance is approved by the ACC. Nor asphalt driveways are permitted. ACC has the sole right, discretion and authority to approve exceptions or alterations to construction materials. Manor Lots have no masonry requirement, except for lots 1, 2, 3, 4, 100, 101, 102, and 103, which shall have a minimum of 25% brick, stone, or dri-vit type material on the first floor elevation of the front side of a home located on such lots. All Estates Lots must have brick, stone, or dri-vit type material up to the first floor elevation on at least 75% of the front side of a home located on such lot.
5. COMPLETION REQUIREMENTS: Construction of a main residential home must be complete within twelve (12) months from the start of construction.
6. EARTH REMOVAL / SEEDING / DRAINAGE: In the event the removal of earth from a lot is necessary for the construction of any dwellings, such excess dirt shall be moved from the dwelling site and deposited at such site or sites on Developer's property or removed entirely from the subdivision as Developer might direct, all at the sole cost and expense of the lot owner. All interior lots shall be sod or seeded from the street to the front exterior of the dwelling as soon after completion of construction of the dwelling as possible at the expense of the owner. Nothing shall be done on said lots to constitute an interference with water run-off or rain water from an adjacent lot so as to interfere with proper drainage of any part of the

Subdivision without prior approval of the Developer and Village of Smithton and/or the Homeowners' Association after it is established. All lots shall be graded and sloped so that a drainage course shall be along the side and rear property lines, equally spaced on both adjoining lots where feasible or to other natural drainage areas as appropriate. In the event that any grade is disturbed or changed by a lot owner or occupant, the Developer and ACC are herewith held harmless from any and all consequences to the affected or adjacent parcels.

7. BUILDING LINES: No building, or any part thereof, shall be erected or placed on any lot in the Subdivision nearer to the roads than the building lines shown on the plat of the said Subdivision. Set-back lines shall be in accordance with regulations of The Village of Smithton and the State of Illinois.
8. EASEMENTS: Easements as shown on the record plat are hereby set aside and reserved for poles, wire, water/gas mains, storm and sanitary sewers, drainage ways, telephone/cable/internet service and other subdivision utilities, landscaping, essentials and facilities. No building or structure, nor any part thereof, retaining wall, or other interfering obstructions may be erected, constructed, or maintained within, on or over any easement as shown on this plat or which may hereafter be established. Furthermore, no structure, plantings or other material shall be placed or permitted to remain which may damage, interfere with, or alter the direction or volume of storm water flow. However, subject to the regulations of the Village of Smithton, and so long as storm water flow is not affected, any lot owner may at his/her own risk and expense pave an easement, or erect a fence on an easement, understanding that any excavation or demolition necessary to install or service utilities within the said easement may damage or destroy such pavement or fence and the expense of restoring the pavement or fence shall be born solely by the owner of the parcel whose pavement or fence is damaged. All future owners of said lot(s) shall properly care for the easement areas and keep them free from unsightly accumulation of weeds, debris and other waste matter. Failure to comply with this provision shall constitute a nuisance within the meaning of this document.
9. FENCING: All fences must be approved by the ACC prior to installation. All fences must consist of vinyl, iron, aluminum, brick, wood or stone materials. Metal chain-link fences are not permitted. No fence or screening may be erected or maintained on any lot nearer to any street than the rear corner of said dwellings unless approved by the ACC. On lots with two sides abutting a street, a fence placed on the side yard abutting one or more city streets shall be set back a minimum of twenty-five (25) feet from the street right-of-way. A fence shall be placed no closer than five (5) feet of the property line per the Village of Smithton's code. Please refer to the Easements section (Section 8) of this document regarding fences within an easement. No fence shall exceed 6' 6" in height as measured from ground level. All fences must be professionally installed, kept in good repair, i.e. painted and kept plumb. Failure to comply with this provision shall constitute a nuisance within the meaning of this document.
10. ACCESSORY BUILDINGS / TEMPORARY STRUCTURES: Accessory buildings are allowed. A utility or accessory building shall be built with the same character and materials as the home and must be a permanent structure built on site. Location on a Lot shall be according to Village of Smithton's setbacks and easements. No accessory building is allowed to be constructed before the primary residence construction has commenced. No such accessory building shall be used or occupied for any residential, commercial or industrial use. Only one

accessory building, excluding gazebos and bathhouses is allowed per lot. Any accessory building must be greater than 120 square feet with a maximum of 200 square feet and not exceed 12 feet in height and must be approved by the ACC prior to construction. No structure of a temporary character shall be stored on any lot under any circumstances. Temporary structures include pre-fabricated storage buildings and the like.

11. FUEL / PROPANE STORAGE TANK: Fuel / Propane storage tanks are not permitted except for temporary heating purposes during the construction of a home and portable BBQ tanks.
12. NUISANCES: No loud, noxious or offensive activity shall be carried out on upon any lot, nor shall anything be done thereon which may be, or may become, an annoyance or a nuisance to the occupant of the other Lots within the Subdivision, nor shall any lot be used for storage of wrecked, junked or permanently disabled automobiles or trucks which are not currently licensed or for keeping and storing anything that make the property unsightly. No accumulation of trash, garbage or other debris will be permitted on any lot. No weeds exceeding 10 inches in height will be permitted in any open areas. Garage doors should remain closed unless in use. All lawns shall be kept property cut and trimmed, not to exceed six (6) inches in height. No obnoxious, toxic or corrosive matter, smoke, fumes or gases shall be discharged into the air or across the boundaries of any lot in such concentrations as to be detrimental to or endanger the public health, safety, comfort or welfare or to cause injury to or damage property. The owner of each lot to which these covenants apply shall keep their property maintained in a clean and orderly manner as shall not allow debris to collect on the property.
13. ANIMALS: No animals, livestock or poultry of any kind shall be raised, bred or kept on the premises. Any type of venomous or dangerous animals such as snakes, guard dogs, etc. are not allowed. Domesticated cats, dogs, birds, etc. are allowed provided they are not kept, bred nor maintained for any commercial purpose. Such pets shall not be permitted to run at large or to be a nuisance to other property owners in the subdivision through the noise they cause or their excrements. No steel or chain-link pet enclosures are allowed.
14. STORAGE: One recreational vehicle, camper, trailer or boat will be allowed to be temporarily parked on the street or driveway for no more than five (5) consecutive days and in no event may such vehicle be parked on a street or driveway more than a total of thirty (30) days in any calendar year. Such vehicles shall not be permanently stored on a lot for more than these timeframes.
15. SIGN: No sign of any kind shall be displayed to the public eye on any lot except as authorized by county or city ordinance. One sign for the purpose to advertise premises for sale or rent is permitted, but the sign may not exceed 6 square feet in area. Signs used by a builder or Developer to advertise the premises during construction and sale period likewise are permitted and are to be placed by discretion of Developer and ACC.
16. MOBILE HOMES: No mobile, modular or pre-engineered home may be located at any time upon the premises. Homes must be built from the ground up. Pre-engineered components of homes, such as trusses, windows, etc., are permitted as part of normal home construction.

17. SATELLITE DISHES/SOLAR PANELS/ANTENNAE: No satellite dishes larger than 30" in diameter shall be allowed. Satellite dishes shall not be permitted on or in view of the front of a home. No exterior television or radio antenna, towers or similar structures are permitted on any lot. All electric service, telephone lines, cable TV lines and other utility lines shall be placed underground. No utility entrances shall be visible from street. No electrical power shall be run from any home to an RV or any other vehicle for more than 24 total consecutive hours in any give month. Homeowners are responsible for insuring that cable and telephone wire is run below the ground surface.
18. POOLS / SPORTS EQUIPMENT: Pools are permitted, but must be approved by the ACC before installation. No inflatable pools or pools constructed with P.V.C. piping will be allowed. Pools shall be permanent structures of durable and attractive quality, all in the sole discretion of the ACC. All Pools must be fenced and fence is required to be six (6) feet minimum height and in accordance to Village of Smithton code. Pools are allowed in rear yards only. No sports equipment shall be permitted on streets or within 10' of a street. Pools, sports equipment, etc. must be kept in good repair. Failure to comply with this provision shall constitute a nuisance within the meaning of this document.
19. LIGHTING CONTROLS: Any lights used for illumination of signs, parking areas, swimming pools or for any other purposes, shall be arranged in such a manner that the main beam of light is directed away from neighboring residential properties. Holiday decorative lighting is permitted to the extent it does not be come a nuisance as defined herein. Holiday decorative lighting may be installed no earlier than five weeks prior to a holiday and must be removed from all structures and property within four (4) weeks after a holiday. Streetlights shall be installed in accordance with City of Smithton subdivision code and the recorded plat.
20. HOMEOWNERS ASSOCIATION: The Homeowner's Association (HOA) will be formed when the first home in South Woods is sold. The HOA will be filed as a not-for-profit corporation with the State of Illinois and shall adopt bylaws at the first meeting of the members. Bylaws shall be kept on file and recorded with St. Clair County. All amendments to either the bylaws or this document shall be recorded as well. All Lot owners and homeowners will act as members of the HOA. Members of the HOA must be Lot owners or homeowners in South Woods or subsequent phases. One owner of each single family residential Lot shall have one (1) vote in electing the board members or in special voting sessions called by the Board of Directors. The Homeowner's Association's Board of Directors shall consist of either 3 or 5 members and will consist of at least a President, Vice President, and Secretary/Treasurer. The Board will be elected by the members annually in a formal meeting by majority vote of the HOA members. The Board will then determine how the HOA is to be governed deciding such issues as: Annual fee, responsibility for maintenance, insurance and taxes for common ground, continuity of protective covenants, amendments to bylaws, etc.

The Lots within South Woods that are developed in subsequent Phases shall be made subject to this indenture by amendment and the owners of such Lots shall become members of the HOA upon recording of the Final Plat of any such Phase with St. Clair County.

The Developer hereby invests the Homeowners Association and their successors with the rights, powers and authorities described in this instrument and with the following rights, powers and authorities:

(1) To exercise control over any common ground shown on said plat; obtain insurance for, and pay real estate taxes and assessments due on such common ground; to repair, maintain and improve same with shrubbery, vegetation, decorations, buildings, recreational facilities of any kind or description, other structures (including storm water retention basins and discharge structures which are to be maintained in accordance with improvement plans filed with the Village of Smithton), and any and all other types of facilities in the interest of health, welfare, safety, morals, recreation, entertainment, education and general use of the owners of Lots in South Woods all in conformity with applicable laws; to prescribe by reasonable rules and regulations the terms and conditions of the use of common ground, all for the benefit and use of the owners of the Lots in South Woods Phase I and according to the discretion of the Homeowners Association.

(3) To clean up rubbish/debris and remove grass/weeds from and to trim, cut back, remove, replace and maintain trees, shrubbery/flowers upon any vacant or neglected lot(s) or property. The owner of such lot(s) may be charged with reasonable expenses so incurred. The Homeowners Association, their agents or employees shall not be deemed guilty or liable for any matter of trespass or any other act for any such injury, abatement or removal of planting.

(4) To purchase and maintain in force, liability insurance, protecting the Homeowners Association members/lot owners from any and all claims for personal injuries and property damage arising from use of common areas and facilities.

(5) To assess appropriate dues and fees payable by the homeowners and to collect such from the homeowners for the purposes of covering the expenses of the items above. Fees and dues shall be held in a checking account in a local bank under the name of the HOA, as filed with the state, until such time that they are disbursed for the purpose of covering the costs of the HOA, or refunded to the members. Statements and financial records of the HOA shall be at all times accessible for review by the members of the HOA. The initial annual fee of the HOA shall be \$90.00 and shall be collected at the time of closing on a home within South Woods Phase I. The fee collected shall be prorated to the closing date to include the remaining days within the current calendar year. Annual fees will be due on January 15 of each year.

Notwithstanding any other condition herein, the Homeowners Association shall make suitable provisions for compliance with all subdivision ordinances, rules and regulations of The Village of Smithton or any other jurisdictional body of which the subdivision may be or become a part thereof. Specifically and not by way of limitation, the Homeowners Association shall make provision for the maintenance and operation of all common ground and all other items used by the owners of the Lots and homes in South Woods.

21. ENFORCEABILITY: The restrictions created by this Indenture benefit and encumber only the land described herein and known as South Woods with no intention to benefit real estate lying outside the boundaries of South Woods Phase I and subsequent phases of South Woods. These restrictions do not confer upon anyone else any right whatsoever to enforce the restrictions hereby created. These restrictions are enforceable by the Developer and/or his assigns until such time that the Homeowner's Association is formed at which time the Homeowner's Association will assume that responsibility.
22. FAILURE TO COMPLY AND VALIDITY: Each and every grantee, by accepting any conveyance of, or interest in any said Lots within South Woods or any part thereof, thereby binds itself, himself/herself and all heirs, assigns, successors, and legal representatives of each and every grantee, to the observance of and the compliance with the restrictions and provisions of this Indenture. If any violation of the restrictions and provisions of the Indenture, or failure or observance thereof, or failure of compliance therewith, is not cured or corrected within ten (10) days after notice thereof has been mailed or delivered by any one or more owners of said Lots, or any party thereof, to the offending owner or owners, or person or persons, in possession thereof, it shall be lawful in order that such violation be cured or corrected, or to recover damages therefore, or party thereof, to institute and prosecute and proceedings at law or equity against any and all parties involved in such violation of failure of observance, or failure of compliance as aforesaid, including the owner or owners of the involved Lot or Lots, or any part or parts thereof. In the event of legal action, the prevailing party shall be entitled to an award of reasonable attorneys fees for prosecution of this violation. It is hereby expressly declared and provided, however, that the makers of this Indenture, Developer or owners of the land comprising this development tract at the time of its recording, shall not, under any circumstances, be held responsible or liable for the enforcement of the restrictions and provisions of this Indenture against any person, or person who may hereafter own or control any one or more of the said Lots, or any part or parts thereof, which the maker of the Indenture shall not at the time own or fully control. The failure to promptly institute procedures for enforcement of these restrictions shall not operate as an estoppel against the enforcement of the violated portion of these restrictions or any portion thereof.
23. SEVERABILITY: In the event that it is found that one or more of the restrictions and provisions of this Indenture shall prove to be unenforceable, the validity or binding effect of the remaining restrictions and provisions of this Indenture shall in no way be affected thereby, and they shall, nevertheless, remain in force and effect.
24. DURATION: All of the restrictions, covenants and provisions herein contained shall continue and be in full force and effect for a period of twenty-five (25) years from the date of first recording of this Indenture, at which point they shall be automatically renewed for successive ten (10) year periods thereafter unless by written instrument signed by not less than two-thirds (2/3) of the owners of the lots in said subdivision, terminate, amend or alter said restrictions or a portion thereof.
25. EXCEPTIONS: The Developer and his assigns may use any house or houses constructed on any lot the Subdivision for an office and display house until all Lots are built upon

26. MODIFICATION, AMENDMENT OR ELIMINATION: These conditions, restrictions, reservations and limitations and all of the terms herein, may be modified, amended or eliminated by Declarant at any time while the Declarant has ownership of a majority of the lots in Subdivision and then by the HOA after it is formed. If the HOA desires to modify, amend or eliminate any part of this document, such modification, amendment or elimination must first be approved by the Developer until the Developer has sold the last lot within any phase, current or future, of South Woods.

The provisions of this document shall be binding upon and shall inure to the benefit of he heirs, successors and assigns of the Declarant and all present and future persons or parties owning and interest or having an interest in any portion of the subject premises as platted.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands and seals this 4th day of March, 2009.

Owner:

TQG, LLC,
By J2K, LLC, its Operating Manager

By: [Signature]

Title: Manager

Date: 3/4/09

STATE OF ILLINOIS

COUNTY OF ST. CLAIR

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Kevin D. Bollman, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act and for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 7 day of March, 2009.

[Signature: Pamela A. Ridall]
Notary Public

