

1328 417

This instrument prepared by,
and after recording, return to:

STATE OF ILLINOIS
ST. CLAIR COUNTY

Donald E. Wehl
Greensfelder, Hemker & Gale, P.C.
12 Wolf Creek Drive
Swansea, IL 62226

06 MAY -4 AM 11: 26

Mitchell T. Coattles

RECORDER

Above for recording information only

RESTRICTION INDENTURE FOR BRAESWOOD TRAILS – FIRST ADDITION

WHEREAS, there has been recorded in the Recorder's Office of St. Clair County, Illinois, on the _____ day of _____, 2006 in Book of Plats 107, Pages 28 & 29, a real estate subdivision plat known as "**BRAESWOOD TRAILS – FIRST ADDITION**," being a subdivision of the premises shown thereon, said premises being located in St. Clair County, Illinois.

AND WHEREAS, said plat, and the premises shown thereon, are hereby incorporated by reference.

AND WHEREAS, the maker of this Indenture, hereinafter subscribed, is the owner of the premises comprising the subdivision, with the right to convey the said premises, or any part or parts thereof.

AND WHEREAS, the maker of this Indenture desires to impose on the said premises certain conditions, easements, reservations, limitations, and restrictions.

AND WHEREAS, **BRAESWOOD TRAILS – FIRST ADDITION** is part of **BRAESWOOD TRAILS** and is subject to the Homeowners' Association By-Laws as recorded in Book 3874 on Pages 1557 through 1599, as Document A01772216 on 7/10/03, St. Clair County, Illinois records.

NOW, THEREFORE, in consideration of the mutual advantages to accrue to the undersigned, as well as to the future owners of the premises, this Restriction Indenture hereby imposes on the premises constituting "**BRAESWOOD TRAILS – FIRST ADDITION**" said certain easements, conditions, reservations, restrictions and limitations, which are hereby made a part of the plat of said subdivision hereinbefore referred to, to-wit:

1. **BUILDING LINES**

No building or structure, nor any part thereof, may be erected or maintained in the space between any building line shown on the said plat and the public thoroughfare which is adjacent to the front or side of any lot. No dwelling, nor any part thereof may be erected or maintained nearer to any line defining the limits of ownership of the adjacent property than the minimum distance allowed by the City of O'Fallon's Subdivision Control Ordinance. This provision shall only apply to exterior walls. No fence or fences shall be permitted on any lot which extends any farther forward than five (5) feet from the back corner of the residence.

\$37.00

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2. EASEMENTS

All easements, as shown on this plat, shall be, and the same are hereby set aside and reserved for poles, wires, water and gas mains, sewers, signage, water retention, and other subdivision essentials and facilities. Within these easements no trees, plantain or other vegetation, material or refuse shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may obstruct water, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels located in the easements. No building or structure, nor any part thereof, walk, pavement, driveway, retaining wall, or other interfering obstruction may be erected, constructed, or maintained within, on or over any easement, as shown on this plat, or which may hereafter be established. It is expressly declared and provided, however, that the said owners of the land comprising this subdivision at the time of its recording, reserve, and retain unto themselves, and so long as it remains in the ownership of any one or more of the lots, the right and privilege to eliminate any one or more of the easements, or any part or parts thereof, but there shall, at the time, be provided (for each lot affected thereby and for the building or structure which may then or thereafter be erected thereon) subdivision essentials and facilities similar to and as adequate as those eliminated, and there shall also be established such additional easement, or easements, if any, as may thereby be made necessary. Such elimination or establishment of any easement, easements, or any part or parts thereof shall become effective upon the execution by the said owners of an instrument appropriate thereto, which shall be duly acknowledged and filed for record in the said Recorder's Office. All future owners of said lots shall properly care for the appearance of, and keep free from unsightly accumulations, weeds, debris, and other waste matter; any failure to comply with this provision shall constitute a nuisance within the meaning of this Indenture. Other than the platted streets created by the Developers hereinafter named, no easement or right of access shall be granted or permitted across, through, or over any lot, the effect of which would be to provide access for vehicular or other traffic into or out of said subdivision or the streets or roads thereof; nor shall any lot be used in any manner to provide such access. Nothing contained in this easement section or in any other portion of these Subdivision Restrictions shall prohibit the Developers hereinafter named from utilizing any easement or lot for the purpose of providing access and utilities to any land that adjoins said subdivision or the streets or roads thereof.

3. NUISANCE

No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood. The drying of clothes and other materials shall not be permitted outside of an enclosed area except in the rear yard of the dwelling. Additionally, at no time shall any antenna, satellite, or microwave dish be installed on any lot, excepting any DSS Digital Satellite System or similar system using a fixed 18 inch or fixed 24 inch satellite antenna. No more than one antenna or dish will be allowed per lot and it shall not be mounted on the street side of any residence.

No trade or business or professional activity shall be carried on upon any building site. No business vehicles, including trucks (larger than 3/4 ton pick-up) or any similar vehicles used for business purposes shall be parked on any public way or on any property unless same are parked within an enclosed garage. This prohibition shall not apply to the vehicles of service or utility establishments, mercantile, or construction business while engaged in the rendering of service or performance of their business to and with the inhabitants of the premises or for the premises themselves. Parking of automobiles on any lot other than on a driveway provided thereon, shall be prohibited, except that any parking lots that are provided and approved by the Architectural Control Committee shall be allowable, and parking thereon shall not be prohibited. Repair of automobiles and building of boats or trailers shall be prohibited unless said repair and building is accomplished in an enclosed garage.

Boats, junked or abandoned vehicles, boat trailers, camping equipment, or mobile campers or trailers shall be prohibited from being parked on any private or public property. Nothing shall be done thereon which may become an annoyance or a nuisance to the neighborhood. No trailer, basement, tent, shack, garage, barn or other out-building shall be at any time used as a residence, temporarily or permanently, nor shall any structure of temporary character be used as a residence; no trailers of the residential and/or the commercial type, either empty, filled or otherwise, shall be maintained or permitted to remain on any portion of the premises for any length of time, including streets, alleys, easements, and driveways, excepting such trailers as are reasonably necessary for the moving in or from any home for the necessary and reasonable length of time required for such moving operations, and building supply trailers used by any contractor working in and about the development of said Subdivision.

Motorized cycles or carts not requiring registration with the State of Illinois (excluding construction, landscaping or maintenance equipment) shall be prohibited from using the access roads or subdivision roads on the subject premises.

4. MODEL HOMES

Construction of model homes is expressly permitted as long as they conform to the restrictions contained herein.

5. COAL, OIL, GAS AND OTHER MINERALS

All coal, oil, gas and other minerals underlying the premises, and all rights in favor of same, are reserved to owner. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon 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.

6. SIGNS

Other than entry signs for the subdivision, no signs (except security system or similar

inconspicuous signage with a surface area of less than one hundred (100) square inches per sign), advertisements, billboards, or advertising structures of any kind may be erected, maintained or displayed on any lot; provided, however, that nothing herein shall prohibit (i) Owners from placing one (1) "For Sale" sign (not to exceed 2 feet x 2 feet in dimension) on a lot; or (ii) signs erected or displayed by maker, maker's agents or brokers or by a successor builder-developer in connection with the development of the subdivision and the sale and/or construction of improvements on the lots.

7. MAINTENANCE

The land and all improvements shall be maintained by the owners in good condition and repair from the initial date of ownership throughout the period of construction and thereafter. All lot owners shall be required to cause the respective lots to be mowed at least every thirty (30) days during the months of May through October inclusive, of each year, so as to prevent an overgrowth of weeds and grass. All lot owners shall be required to install and/or maintain erosion fences and similar erosion devices to prevent mud, debris, etc., from entering culverts, streets, swales, sewers, adjoining property, waterways, or otherwise leaving the confines of the lot owners' premises. All lot owners shall also be required to maintain the detention facilities and detention areas that are located on their respective lots not less often than every thirty (30) days. Failure to observe the maintenance requirements set forth in this Restriction shall be subject to enforcement as provided in paragraph 22 of these Restrictions.

8. FENCES

No fences, screens, or similar exterior structures shall be constructed on any lot except as approved by the Architectural Control Committee. The Architectural Control Committee shall not approve any fence, screen, or similar exterior structure unless constructed solely of wrought iron, simulated wrought iron, PVC, or wood, except for nails, bolts and other hardware. No fences may be erected on any lot which extends any farther forward than five (5) feet from the back corner of the residence. No fences may exceed Four (4) feet in height. The homeowner shall be responsible for any surveying required to assure proper fence locations.

9. DRIVEWAYS-SIDEWALKS

All driveways and additions thereto shall be of Portland Cement or Bituminous Pavement. All lots will be required to install sidewalks as per the City of O'Fallon Subdivision Code.

10. ARCHITECTURAL CONTROL

No building, fence, wall, structure, or any visible T.V. antennae, except any DSS Digital Satellite System or similar system using a fixed 18 inch or fixed 24 inch satellite antenna, or landscaping shall be commenced, erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure, data as to materials, color and texture of all exteriors, including roof coverings, fences and walls have been approved by the hereinafter referred to Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures,

size of building, type of materials, and general suitability to the attractive appearance of the subdivision. All pools and pool houses shall be considered on a case by case basis. Approval shall be as provided below.

11. ARCHITECTURAL CONTROL COMMITTEE

The maker of this Indenture hereby names **RONALD L. NOBLE** and **WILLIAM M. VOLLMER** as the Architectural Control Committee for the subdivision. Either or both members of the Architectural Control Committee may act hereunder with full and complete authority to act as the Architectural Control Committee provided for in this Indenture. In the event of the death or resignation of either member of the committee, the surviving committee member may designate or name any owner of property in the subdivision as successor or successors on said committee, or may continue acting independently as the Architectural Control Committee.

No building shall be erected, placed or altered on any lot until the construction plans and specifications of the structure have been approved in writing by any member of the Architectural Control Committee as to the quality of workmanship, the materials, the harmony of external design with existing structures, and general conformity with this Restriction Indenture. A complete set of blueprints shall be left with the Architectural Control Committee until construction is completed. The committee's approval or disapproval as required in these covenants shall be in writing. If at any time the committee has ceased to exist as such, and has failed to designate successors, a majority of the lot owners may designate a new Architectural Control Committee consisting of two (2) lot owners in said subdivision. In no event shall it be determined that the Architectural Control Committee has ceased to exist as such during the lifetimes of **RONALD L. NOBLE** and **WILLIAM M. VOLLMER** without and until a written statement to that effect from them bearing their signatures has been obtained.

12. MINIMUM DWELLING SIZE/OTHER REQUIREMENTS

The Architectural Control Committee shall not approve any single story dwelling unless said dwelling has not less than One Thousand Seven Hundred Fifty (1750) square feet of living area exclusive of garages, basements, breeze-ways, open porches, or attics. All single-story dwellings shall have not less than Fifty percent (50%) of the exterior walls exposed to the weather composed of brick, brick veneer, rock, permastone, stucco, Dryvit, or other equivalent approved by the Architectural Control Committee. The Architectural Control Committee shall not approve any One and One-Half (1½) or Two (2) story or multi-level dwellings unless said dwelling has not less than Two Thousand Two Hundred (2200) square feet of living area exclusive of garages, basements, breeze-ways, open porches, or attics. All dwellings shall have not less than Fifty percent (50%) of the exterior walls exposed to the weather composed of brick, brick veneer, rock, permastone, stucco, Dryvit, or other equivalent except that this masonry requirement on multi-story dwellings only, may be waived in lieu of a combination of covered porches, dormers, decorative windows, building offsets, additional square footage, or other improvements that in the opinion of the

Architectural Control Committee make the dwelling aesthetically comparable to the neighboring multi-story dwellings. All dwellings shall have a minimum roof pitch of 6/12.

13. RESIDENTIAL AREA COVENANTS

All lots in this subdivision shall be used exclusively for residential purposes only. At the time of any conveyance, the conveyance shall provide that the property may only be used for a single-family residence.

14. MOBILE HOMES/OUTBUILDINGS/GARAGES

No mobile home, double-wide mobile home, trailer, trailer house, modular home, or modular house, may be located at any time on any lot in said subdivision. No outside storage buildings will be allowed on any lot. All garages on any lot shall be attached and be of construction and architectural type identical to the residence thereon. No carports may at any time be constructed or maintained on any lot. All attached garages shall be subject to approval of the Architectural Control Committee as hereinafter provided in Paragraphs 11 and 12. This separate Paragraph of the Restrictions shall not be construed to allow a garage as a separate building on any lot. All garages must be attached to the main residence on any lot.

15. FUEL STORAGE TANKS

No gas or oil fuel storage tank shall be permitted on any lot.

16. DURATION

Each and all of the restrictions and covenants herein contained shall continue and be in full force and effect for a period of thirty-five (35) years from the date of first recording of this Restriction Indenture. The restrictions and covenants herein set out shall run with the land in "**BRAESWOOD TRAILS – FIRST ADDITION**" and shall be binding upon all grantees, heirs, administrators, executors, successors and assignees of any party ever owning any lot or any part of any lot or any interest therein in "**BRAESWOOD TRAILS – FIRST ADDITION.**"

17. ENFORCEABILITY

The restrictions created by this Restrictions Indenture benefit and burden only the land described in "**BRAESWOOD TRAILS – FIRST ADDITION.**" Notwithstanding the sharing of present or future facilities by other land, whether developed by the owner or owners of "**BRAESWOOD TRAILS – FIRST ADDITION**" or otherwise, the general plan created by the Restrictions hereby created extends only to the land described in "**BRAESWOOD TRAILS – FIRST ADDITION**" and there is no intention to benefit any persons other than those having an interest in real estate lying within the boundaries of "**BRAESWOOD TRAILS – FIRST ADDITION.**" The existence of easement rights or covenant benefits by persons owning land or having an interest in land adjoining and outside the land described in "**BRAESWOOD TRAILS – FIRST ADDITION**" does not confer upon them any right whatsoever to enforce the restrictions hereby created.

18. LIVESTOCK AND POULTRY

No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats or household pets may be kept provided that they are not kept, bred, or maintained for any commercial purposes; provided no dog shall be permitted to run at large and shall be confined to the immediate premises of the owner by a leash or other reasonable measure of security. No steel enclosure, chain link cage or pen, outside kennel or pet house shall be permitted at any time.

19. GARBAGE AND REFUSE DISPOSAL

No lot shall be used or maintained as a dumping grounds for rubbish, trash, garbage, or other waste. All incinerators or other equipment for the storage or disposal of such wastes shall be kept within the building thereon. Waste materials shall not be burned on the premises.

20. COMPLETION REQUIREMENTS

Any residence or other structure constructed on any lot or lots must be entirely complete within twelve (12) months from the date on which construction thereof is begun.

21. FAILURE TO COMPLY WITH ENFORCEABILITY AND VALIDITY

Each and every grantee, by accepting any conveyance of, or interest in any of said lots, or any part of parts thereof, thereby binds himself, or herself (as the case may be) and all the 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 this Indenture or failure or observance thereof or failure of compliance therewith, be 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 part thereof, to the offending owner or owners, or the person or persons in possession thereof, it shall be lawful, in order that such violation be cured or corrected, or to recover damages therefor, for the owner, or owners, of any one or more of said lots, or any part or parts thereof, to institute and prosecute any proceedings at law or in equity against any and all parties involved in such violation or 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. It is hereby expressly declared and provided, however, that the makers of this Indenture, or the owners of the lands comprising this subdivision at the time of its recording or recordings, shall not, under any circumstances, be held responsible or liable for any violation or alleged violation of any covenant or covenants contained herein. Additionally, no covenant or covenants or no obligation or obligations contained herein shall be applicable to the makers of this Indenture, or to the owners of the lands comprising this subdivision at the time of its recording or recordings, or for the enforcement of the restrictions and provisions of this Indenture as against any person, or persons, who may hereafter own or control any one or more of said lots, or any part or parts thereof, and while each owner shall have the right to enforce the provisions of this Indenture against others and other owners, no owner or other person shall have the right to enforce covenants or obligations contained herein or otherwise against the

makers of this Indenture, or against the owners of the lands comprising this subdivision at the time of its recording or recordings.

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 for any other portion thereof.

In case any one or more of the restrictions and provisions of this Indenture prove to be unenforceable or invalid, the enforceability, validity, or binding effect of the other restrictions and provisions of this Indenture shall in no way be affected thereby, but they shall nevertheless, remain in full force and effect.

22. RESTRICTION ENFORCEMENT

The restrictions and covenants hereby created may be enforced either at law or in equity by **SCOTT/TROY DEVELOPERS, LLC**, or any one or any number of persons who may, from time to time, be the owner of lots covered and bound by this Restriction Indenture.

23. RESERVATION OF RIGHTS

The maker of this Indenture hereby names **SCOTT/TROY DEVELOPERS, LLC** as the Developers of "**BRAESWOOD TRAILS – FIRST ADDITION**" at the time of the recording of the initial plat and expressly reserves to them the right to alter, amend, modify, or otherwise revoke any of the obligations and /or covenants herein contained, and expressly declares that there is not in existence a general development scheme for this subdivision, and that no general development scheme for this subdivision will at anytime in the future be adhered to or be enforceable against the maker of this Indenture or the Developers of the lands comprising this subdivision at the time of its recordings or at any time thereafter.

24. ANNEXATION FEES

All lot purchasers at the time of applying for a building permit are responsible for payment of an Annexation Fee in an amount as determined by the City of O'Fallon.

25. STREET TREES

All lot purchasers are required to plant trees if required by the City of O'Fallon along all city streets adjacent to their respective lots upon completion of their home construction.

26. ARCHAEOLOGICAL PROPERTIES

Significant archaeological discoveries during excavation should be reported to the Illinois Historical Preservation Agency.

27. COMMON AREA MAINTENANCE

Common Area Maintenance shall be provided for this subdivision by the Homeowners' Association created by the Homeowners' Association By-Laws as recorded in Book 3874 on Pages 1557 through 1599 as Document A01772216 on 7/10/03, St. Clair County, Illinois

records, to govern **BRAESWOOD FOREST, BRAESWOOD ESTATES, and BRAESWOOD TRAILS**. Annual Common Area Maintenance Fees are due and payable as provided for in the By-laws in force and as amended from time to time.

28. HOMEOWNERS' ASSOCIATION

Owners of lots in **BRAESWOOD TRAILS – FIRST ADDITION** shall be members of the Homeowners Association as created in the By-Laws as recorded in Book 3874 on Pages 1557 through 1599 as Document A01772216 on 7/10/03, St. Clair County, Illinois records, which said Association shall maintain and pay for the expenses connected with the common areas, including dam maintenance. The association shall also govern the use of all Common Items reflected on the recorded plats for the respective subdivisions. Common Items shall include berms, berm sprinkler systems, park areas, lakes, walking trails, entrance monuments, entrance monument lighting, detention areas, dams, concrete swales in and/or for detention areas, and all other items set forth in the By-laws in force and as amended from time to time. Membership by owners shall be mandatory.

The association shall be responsible for the maintenance, repair and replacement of all Common Items; however, the areas adjoining Common Items shall be the maintenance responsibility of the lot owner or owners on which they are located for ordinary maintenance, with the exception of berms and the areas between berms and the traveled roadway. The association shall have the full responsibility for the maintenance of the berms and areas between the berms and the traveled roadway. The association shall also have the full responsibility for extraordinary maintenance, repairs and replacement of Common Items. The Homeowners' Association's Officers, Designated Agents, Contractors and Subcontractors shall have access over and upon sufficient space of each lot to allow for extraordinary maintenance, necessary repairs and/or replacement of the Common Items.

The Homeowners' Association shall be governed by a Governing Board and/or Board of Managers, and/or Association Manager pursuant to the By-laws in force and as amended from time to time.

The Homeowners' Association shall be created by the Developers as provided in the By-Laws. The Developers shall adopt the initial By-Laws and pay for all expenses of creating the association and all common maintenance with the Annual Common Area Maintenance Fees. The Annual Common Area Maintenance Fees shall be due and payable on a calendar year basis and shall be prorated as a closing expense when lots are sold including at the initial sale of each lot. To the extent Annual Common Area Maintenance Fees are insufficient for payment of expenses, the shortfall shall be paid by the Developers until the Homeowners' Association elects officers from the owners of lots developed in **BRAESWOOD FOREST, BRAESWOOD ESTATES, BRAESWOOD TRAILS and BRAESWOOD TRAILS – FIRST ADDITION**. Thereafter all expenses shall be paid as provided in the By-laws of the Homeowners' Association.

The initial By-laws shall provide for a permanent and perpetual Homeowners' Association

to be totally within the control of the lot owners for **BRAESWOOD FOREST, BRAESWOOD ESTATES, BRAESWOOD TRAILS** and **BRAESWOOD TRAILS – FIRST ADDITION**. Each lot owner shall be entitled to one vote on all matters requiring a vote. The By-laws shall further provide for the procedure for assessing Annual Common Area Maintenance Fees and all other costs incidental to the maintenance of the Homeowners' Association including Special Assessments, if any, necessary from time to time for the preservation of the association and Common Items. Similarly they shall provide for payment enforcement procedures which shall include the creation of a lien and the foreclosure of such lien against any lot upon which the Annual Common Area Maintenance Fees and/or Special Assessments are unpaid.

The Homeowners' Association shall be a totally autonomous entity, and may be incorporated under the General Not-For-Profit Corporation Act of the State of Illinois. The association shall initially be unincorporated; however, in the event it is incorporated, thereafter the corporation shall thereafter be the governing body. In the event no corporation is formed, the By-laws enacted by the Developers shall control the association as said By-laws are from time to time amended.

The initial By-laws shall also provide for the enactment of rules and regulations applicable to the common areas, Common Items, and all other items subject to governance of the Homeowners' Association.

IN WITNESS WHEREOF, this Restriction Indenture has been executed at Belleville, Illinois, for the uses and purposes therein set forth.

Dated this 4th day of April, A.D., 2006.

SCOTT/TROY DEVELOPERS, LLC

By William Vollmer
Managing Partner

STATE OF ILLINOIS)
)SS.
COUNTY OF ST. CLAIR)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT WILLIAM M. VOLLMER, personally known to me to be the Managing Partner of SCOTT/TROY DEVELOPERS, LLC, whose name is subscribed to the foregoing instrument appeared before me this day in person, and acknowledged that as such

Managing Partner, he signed, sealed and delivered the said instrument of writing as the free and voluntary act of WILLIAM M. VOLLMER as Managing Partner of SCOTT/TROY DEVELOPERS, LLC and not his act individually.

GIVEN under my hand and notarial seal, this 4th day of April, A.D., 2006.

Susan Brennan

Notary Public

