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Prepared By and After
Recording Return To:
Sho-Deen, Inc.
Attention: Tammy Ann Klusak
17 North First Street
Geneva, Illinois 60134

Lynna M. Rivers
RECORDER

*PD
20.00*

**COVENANTS, CONDITIONS AND RESTRICTIONS
FOR SINGLE FAMILY HOMES TO BE CONSTRUCTED IN
MILL CREEK - NEIGHBORHOOD "D"
KANE COUNTY, ILLINOIS**

THIS DECLARATION IS MADE THIS 17th DAY OF April, 1996 BY (the "Declarant"), Harris Bank St. Charles, as trustee under trust agreement dated January 2, 1996 and known as land trust number LT-2429.

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Article I of this declaration; and

WHEREAS, Declarant is desirous of subjecting said real property to the conditions, covenants, restrictions, reservations and easements hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof and shall inure to the benefit of and pass with said property, and each and every parcel thereof:

NOW, THEREFORE, Declarant does hereby declare that the real property described in and referred to in Article I hereof is, and shall be, held, transferred, sole, conveyed and occupied subject to the conditions, covenants, restrictions, reservations, and easements (sometimes hereinafter collectively referred to as "Covenants") hereinafter set forth.

SHO-DEEN INCORPORATED, a Delaware corporation, or its successor or assign, presently intends to construct single family homes on the real property described in and referred to in Article I hereof.

ARTICLE I Property Subject to this Declaration

The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to the Covenants set forth herein is located in Kane County, Illinois, and is more particularly described as follows, to wit:

LOTS 1 THRU 70 IN MILLCREEK, NEIGHBORHOOD D, BLACKBERRY AND GENEVA TOWNSHIPS, KANE COUNTY, ILLINOIS.

ARTICLE II General Purpose of This Declaration

The real property described in Article I hereof is subject to the Covenants hereby declared to insure the tasteful and consistent development of Mill Creek and every part thereof; to protect each property owner therein from such improper use of surrounding lots as may depreciate the value of their property; to guard against the erection thereon of buildings built of improper design or unsuitable materials; to insure adequate and reasonable development of said property; to

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encourage the erection of original design and attractive improvements thereon, with appropriate locations thereof; to prevent haphazard and inharmonious improvements; to secure and maintain proper setbacks from streets, and adequate free spaces between structures; and, in general, to provide adequately for a residential subdivision of highest quality and character.

ARTICLE III

Definitions

Basement. A portion of a building located partly underground, but having half or more than half its clear floor-to-ceiling height below the average grade of the adjoining ground at the building front.

Buildable Area. (for the purpose of measuring lot width) The narrowest width within the 30 feet of lot depth immediately in back of the front yard setback line falling inside the side-yard setbacks.

Building. Any roofed structure intended for the shelter, housing, or enclosure of any person, animal or chattel.

Building Accessory. A subordinate building, the use of which is incidental to that of the principal building and customary in connection with that use.

Building Height. A subordinate building or portion of a principal building, the use of which is incidental to that of the principal building and customary in connection with that use.

Carriage House. The meaning set forth in the Mill Creek Planned Unit Development Zoning Petition dated May 11, 1994, as incorporated into ordinance No. 94-3393 dated June 14, 1995.

Developer. Sho-Deen, Incorporated, its successors and assigns.

Drainage Easements. Areas that are integral to the overland drainage system of Mill Creek.

Dwelling Primary. A single family residential building or portion, thereof, but specifically not including hotels, motels, rooming houses, nursing homes, mobile homes, or any form of camping vehicles.

Dwelling - Accessory. A single family residential dwelling attached to the primary residential dwelling on a single lot or adjoining lots having the same owner of record. Free standing accessory dwellings are prohibited unless described herein. Accessory dwellings are allowed above the garage which serves the primary residential dwelling, either attached or detached. The accessory dwelling may have ingress/egress through the primary residential dwelling and or private ingress/egress. The accessory dwelling may be used to generate rental income. The ownership of the accessory dwelling may not be deeded or in any way conveyed as a parcel separate from the primary residential dwelling.

Family. One or more persons each related to the other by blood, marriage, or legal adoption together with his or their domestic servants, maintaining a common household in a dwelling.

Garage. An enclosed storage area with doors, designed or used for storage of motor vehicles.

Lot. A parcel of land, under common fee ownership, occupied by or intended for occupancy by one dwelling and having frontage upon a street. Therefore, a "lot" may or may not coincide with a lot of record.

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Lot Area. The area of horizontal plane, bounded by the vertical planes through front, side and rear lot lines.

Lot Line, Front. The boundary line of a lot which is an existing or dedicated street line as shown on the recorded plat. On corner lots, Sho-Deen Incorporated, or its successor or assign, must approve the owner's selection of the intended front yard designation.

Lot Line, Rear. That boundary of a lot which is most distant from the front lot line, and is, or is approximately, parallel to the front lot line. If the rear lot line is less than ten (10) feet in length, or if the lot line forms a point at the rear, the rear lot line shall be deemed to be a line ten (10) feet in length within the lot, parallel to and at the maximum distance from the front lot line.

Lot Line, Side. Any boundary of a lot which is not a front or rear lot line.

Parkway. The unpaved strip of land within a street right-of-way and which is parallel to the roadway.

Story. That portion of a building included between the surface of any floor and the surface of the floor next above; or if there is no floor above, the space between the floor and the ceiling next above. A basement shall be counted as a story where one or more sides is a part of the exterior elevation. A cellar shall not be counted as a story.

Structure. Anything other than a dwelling, garage or accessory building erected or constructed on a lot the use of which requires more or less permanent location on or in the ground. A sign or other advertising device, detached or projecting, shall be construed to be a separate structure. For purposes of the definition, ornamental masonry walls and fences shall also be construed to be structures.

ARTICLE IV

General Restrictions

1. **Land Use and Building Type.** All lots in Mill Creek shall be used for private residence purposes only, and no building, except as specifically authorized elsewhere in this Declaration, shall be erected, re-erected or maintained thereon, except one primary dwelling, erected for occupancy by one family; one accessory dwelling, erected for the occupancy by one family and a private garage containing no more than three (3) parking spaces for the sole use of the owners or occupants of the dwellings. Other accessory buildings and structures may be erected in such manner and location only as hereinafter provided or as approved in writing by Sho-Deen Incorporated, or its successor or assign.
2. **Building Height.** No dwelling shall be erected, altered, or placed which is more than two and one half (2 ½) stories at the front of the building or thirty-five (35) feet in height, whichever is lesser.
3. **Dwelling - Quality and Size.** It is the intention and purpose of these Covenants to assure that all dwellings shall be high quality design, workmanship and materials approved by Sho-Deen Incorporated, or its successor or assign. All dwellings shall be constructed in accordance with applicable governmental building code and with more restrictive standards that may be required by Sho-Deen Incorporated, or its successor or assign. The floor area of the dwelling, exclusive of garages, carports, open terraces and breezeways, shall be:
 - a) For one-story Primary Dwellings - not less than 1,700 square feet.

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- b) For Primary Dwellings of more than one story - the total living area in the dwelling shall not be less than 1,800 square feet with not less than 900 square feet on the ground floor.
- c) For Accessory Dwellings - not less than 300 square feet or more than 800 square feet.
4. **Location on Lot.** No building, garage, structure or fence shall be located on a lot within the front yard set back or the street side set back on corner lots unless approved by Sho-Deen Incorporated or its successor or assign. The construction of swimming pools shall require the prior approval of Sho-Deen Incorporated or its successor or assign and shall be screened from any interior street by a wall, solid fence, evergreen hedge or other visual barrier as approved in writing by Sho-Deen Incorporated or its successor or assign. Above ground swimming pools are prohibited. No swimming pool shall be located on a lot nearer to the front lot ahead of the rear of any home on the same street which said residence faces. In the case of corner lots, a front yard setback must be honored on both exposures for the purpose of fence installation or swimming pool construction and enclosure.
5. **Driveways.** Access driveways and other paved areas for vehicle use on a lot shall have a base of compacted gravel, crushed stone or other approved base material, and shall have a wearing surface of asphaltic concrete, concrete, or the equivalent thereof.
6. **Easements.** An easement is hereby granted to Kane County, Blackberry Township, Geneva Township, Mill Creek Water Reclamation District and Public or Private Suppliers of Utility Service not limited to Electric, Gas, Cable, etc., and Elburn and Countryside Fire Protection District and Ambulance District to go upon the Lots and Common Areas for the purpose of providing police and fire protection services and maintaining and repairing those portions of the Lots (streets, sidewalks, sewer and water mains and lines), and drainage ways which shall require maintenance or repair for the purpose of keeping (a) the streets and sidewalks thereon open at all times for the passing of fire, police and other emergency vehicles, personnel and equipment from the date such notice is received; and (b) the sewer and water main lines functioning and for their intended purpose; and © the drainage ways clear of structure fill, landscaping or materials that inhibit the overland flow of water.
7. **Drainage Easements.** Structures, fill, landscaping, and materials that inhibit the overland flow of water are not permitted across or in the drainage easements between lots or lots and streets. Fences may be installed in drainage easements as long as the main body of the fence is at least six (6) inches above the finish grade of the overflow swale.
8. **Natural Drainage Ways.** Where there exists on any lot or lots a natural condition of accumulation of storm or surface water remaining over an extended period of time, the lot owner may, with the written approval of Sho-Deen Incorporated or its successor or assign, take such steps as shall be necessary to remedy such condition; provided, however, that no alterations or diversions of such natural water flow proposed by the lot owner will cause damage to other property, either inside or outside the confines of Mill Creek or affect the overall drainage system of Mill Creek.
9. **Home Occupations, Nuisances and Livestock.** No home occupation or profession shall be conducted in any dwelling or accessory building thereto located in Mill Creek except as allowed by the ordinances of the Kane County Illinois. No noxious or offensive activity shall be carried on, in or upon any premises, nor shall anything be done thereon which may be, or may become, any annoyance or nuisance to the neighborhood. No livestock, poultry of any kind or more the two (2) dogs or cats over four months of age shall be kept or maintained on any lot. No burning of refuse or leaves, branches, etc. shall be permitted outside the dwelling. The dumping of grass

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clippings, leaves, branches, etc. on the golf course, common areas, parks, forest preserve, unsold platted lots or areas to be developed is strictly prohibited. The use of any open carport, driveway or parking area which may be a part of any lot as a habitual parking place for recreational or commercial vehicles or articles is prohibited. All "commercial vehicles" (trucks, trailers, etc.) and "recreational vehicles" shall be stored inside the garages at all times.

10. **Easement for Golf Balls.** All lots and the common public or private property of Mill Creek Neighborhood D are burdened with an easement permitting golf balls unintentionally to come upon the lots or common public or private property near the golf course and for golfers at reasonable times and in a reasonable manner to come upon the common public property of a Neighborhood to retrieve errant golf balls. Golfers may not enter upon any lot or common private property of a neighborhood, fenced or not, to retrieve errant golf balls without the owners permission prior to entry. The existence of this easement shall relieve golfers, Sho-Deen, Inc., the golf course owner, the Declarant, the developer of Mill Creek and home contractors in Mill Creek of liability for damage caused by errant golf balls.
11. **Exterior Wall Mounted Lights.** All homes must have a minimum of three (3) exterior wall mounted lights on the wall of the home and garage that front a single roadway. Homes located on a corner lot where in the garage fronts a roadway different from that of the home shall have a minimum of four (4) exterior wall mounted lights; two (2) on the garage and two (2) on the front of the home.
12. **Nameplates and Hospitality Light Standards, Television or Radio Antennae and Towers, Laundry Drying Facilities or Flag Poles.** There shall be no more than two nameplates on each lot. A nameplate shall be not more than thirty-six (36) square inches in area, and contain the name of the occupant and or the address of the dwelling. It may be located on the door of the dwelling or the wall adjacent thereto, or upon the wall of any accessory building or structure, or free-standing in the front or side yard, provided that the height of the free standing nameplate is not more than twelve (12) inches above the adjoining ground grade. One hospitality light standard, of a design approved by Sho-Deen Incorporated, or its successor or assign, may be located within the front yard. No television or radio tower, antenna, or dish; or laundry-drying equipment shall be erected or used outdoors, whether attached to a building or structure or otherwise. Flag poles are permitted, provided the pole is not more than twenty-five (25) feet in height, unless otherwise approved by Sho-Deen Incorporated, or its successor or assign.
13. **Temporary Structures.** No trailer, basement of an uncompleted building, tent, shack, garage, barn, and no temporary building or structure of any kind shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling shall be on the same lot as the dwelling, and such buildings or structures shall be removed promptly upon completion of construction, and prior to occupancy of residence.
14. **Architectural Controls.** It is understood and agreed that the purpose of architectural controls is to secure an attractive, harmonious residential development having continuing appeal. No construction of a building, fence (vinyl coated or metallic type fences of any height and solid, barrier type fences are prohibited, see Exhibit "A"), wall or other structures shall be commenced, nor shall any addition change, or alteration thereto be made (except "interior" alterations) until the construction plans and specifications, showing the nature, kind, shape, height, materials, color scheme, and proposed location on said lot have been submitted to and approved in writing by Sho-Deen Incorporated, or its successor or assign. Said approving agency hereby retains the right to refuse any such construction plans and specifications, or location, which are not suitable or desirable in the opinion of Sho-Deen

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Incorporated, or its successor or assign, for aesthetic or other reasons; and in so passing upon such construction plans and specifications or location Sho-Deen Incorporated, or its successor or assign, shall have the right to take into consideration the suitability of the proposed building or other structure with the surroundings, and the effect of the building or other structure on the compatibility with adjacent or neighboring properties. All plans, specifications and other materials pertinent to any proposed construction shall be submitted to the office of Sho-Deen Incorporated, or its successor or assign together with the payment of fifty (\$50.00) dollars. A report in writing setting forth the decisions of Sho-Deen Incorporated, or its successor or assign shall thereafter be transmitted to the applicant by Sho-Deen Incorporated, or its successor or assign, within thirty (30) days after the date of filing the plans, specifications and other material by the applicant. Sho-Deen Incorporated, or its successor or assign, following the submission of the aforesaid, will aid and assist the prospective residents or their agents and will make every attempt to reasonable cooperate with the wishes of the lot owner. Lot owners are encouraged to submit preliminary sketches for "informal comment" prior to the submittal of drawings and specifications for full review. In the event Sho-Deen Incorporated, or its successor or assign, fails to approve or disapprove within thirty (30) days after submission, the final plans, specifications an other material, as required in this Declaration; or (b) no suit to enjoin construction has been filed within thirty (30) days commencement of such construction, approval shall not be required, and the related requirements of this Declaration shall be deemed to have received compliance.

- 15. **Underground Wiring.** No above ground communication, electric or television lines or cable shall be permitted to be placed anywhere in Mill Creek other than within buildings or structures. It is intended that all such necessary and approved conduits and cables will be constructed, placed and maintained underground.
- 16. **Maintenance of Parkways.** The owners of lots in Mill Creek shall be responsible for the maintenance of parkways located between their lot lines and the edges of street pavements on which said lots back up to and or front.
- 17. **Deviations by Agreement with Sho-Deen Incorporated, or Its Successor or Assign.** Sho-Deen Incorporated, or its successor or assign, hereby reserves the right to enter into agreements with the owner of any lot or lots (without the consent of owners of other lots or adjoining or adjacent property) to deviate from any or all of the Covenants set forth in this Article IV, provided there are practical difficulties or particular hardships evidenced by the petitioning owner, and any such deviation (which shall be manifested by an agreement in writing) shall not constitute a waiver of the particular Covenant involved or any other Covenant as to the remaining property in Mill Creek.
- 18. **Carriage House/Dwelling Accessory:** No Carriage House or Dwelling Accessory shall be constructed on a Lot without the prior written consent of the Developer, (which consent may be granted or withheld in the sole discretion of the Developer) and without being in compliance with the zoning ordinances of Kane County, Illinois. Nothing contained herein shall prohibit a property owner from remodeling, repairing or reconstructing a Carriage House or Dwelling Accessory which was originally constructed by the Developer.

ARTICLE V

General Provisions

- 1. Each of the Covenants set forth in this Declaration shall be binding for an initial period of thirty (30) years from the date hereof, and thereafter for successive periods of twenty-five (25) years each.

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2. The Covenants herein set forth shall run with the land and bind Sho-Deen Incorporated, or its successor, grantees and assigns, and all parties claiming by, through, or under them. Sho-Deen Incorporated, its successor or assign, and each owner or owners of any of the above land from time to time shall have the right jointly and separately to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of the Covenants above set forth, or any of them, in addition to the right to bring an ordinary legal action for damages. Whenever there shall have been built on any lot in Mill Creek any structure which is and remains in violation of the Covenants above set forth, or any of them, for a period of thirty (30) days after actual receipt of written notice of such violation from Sho-Deen Incorporated, or its successor or assign, by the owner of such lot, then Sho-Deen Incorporated, or its successor or assign shall have, in addition to the foregoing rights, the right to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, and such entry and abatement or removal shall not be deemed a trespass. In no event shall the failure of Sho-Deen Incorporated, or its successor or assign, to enforce any of the Covenants herein set forth as to a particular violation be deemed to be a waiver of the right to do so as to any continuing or subsequent violation.

3. The record owners in fee simple of the residential lots in Mill Creek may revoke, modify, amend or supplement in whole or in part any or all of the Covenants and conditions contained in this Declaration and may release from any part or all of said Covenants all or any part of the real property subject thereto, but only at the following times and in the following manner:
 - a) Any such change or changes may be made effective at any time within ten (10) years from the date of recording of this Declaration if the record owners in fee simple of at least three-fourths of said lots consent thereto;
 - b) Any such change or changes may be made effective at the end of said initial thirty (30) year period or any such successive twenty-five (25) year period if the record owners in fee simple or at least two-thirds of said lots consent thereto at least five (5) years prior to the end of any such period;
 - c) Any such consents shall be effective only if expressed in a written instrument of instruments executed and acknowledged by each of the consenting owners and recorded in the Office of the Recorder of Deeds of Kane County, Illinois; provided, however, that Article V hereof may be amended at any time in the manner therein set forth. A recordable certificate by an accredited abstractor or title guaranty company doing business in Kane County, Illinois, as to the record ownership of said property shall be deemed conclusive evidence thereof with regard to compliance with the provisions of this section. Upon and after the effective date of any such change or changes, it or they shall be binding upon all persons, firms, and corporations then owning property in Mill Creek, through or under any one or more of them.

4. All Covenants, liens, and other provisions herein set forth shall be subject to and subordinate to all mortgages or deeds of trust in the nature of a mortgage now or hereinafter executed, encumbering any of the real property in Mill Creek and none of the said Covenants, liens or other provisions shall supersede or in any way reduce the security or affect the validity of any such mortgage or deed of trust in the nature of a mortgage. However, if any such property is acquired in lieu of foreclosure of any mortgage or under the provisions of any deed or trust in the nature of a mortgage or under any judicial sale, any purchaser at such sale, his or its grantees, heirs, personal representatives, successors or assigns shall hold any and all such property so purchased or acquired subject to all the Covenants, liens and other provisions of this Declaration.

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- 5. If a court of competent jurisdiction shall hold invalid or unenforceable any part of any Covenant or provision contained in this Declaration, such holding shall not impair, invalidate or otherwise affect the remainder of this Declaration which shall remain in full force and effect.

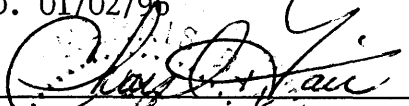
- 6. When used in these Covenants "successor" means a person or corporation who succeeds to the position of Sho-Deen Incorporated, or its successor or assign as developer of lots in Mill Creek and "assign" means the Mill Creek homeowner who take by written assignment from Sho-Deen Incorporated, or its successor.

IN WITNESS WHEREOF, Harris Bank, St. Charles, as Trustee under trust agreement number LT-2429 has caused its name to be signed to these presents by its Vice President & T.O. and attested by its A.T.O. the 17th day of April, 1996.

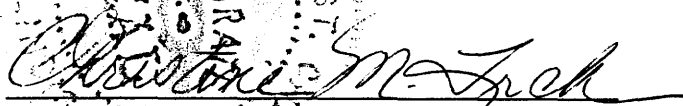
Subject to Exculpatory Rider Attached

**HARRIS BANK ST. CHARLES AS TRUSTEE
UNDER TRUST AGREEMENT NUMBER LT-2429**

DTD. 01/02/96



Cheryl Fair, Vice President & Trust Officer

ATTESTED


Christine M. Trch, Asst. Trust Officer

EXCULPATORY RIDER

It is expressly understood and agreed by every person, firm or corporation claiming any interest under this document that Harris Bank St. Charles shall have no liability, contingent or otherwise, arising out of, or in any way related to, (i) the presence, disposal, release or threatened release of any hazardous materials on, over, under, from, or affecting the property of the soil, water, vegetation, buildings, personal property, persons or animals thereof; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials; (iii) any lawsuit brought or threatened, settlement reached or government order relating to such hazardous materials, and/or (iv) any violation of laws, orders, regulations, requirements, or demands or government authorities, or any policies or requirements of the trustee which are based upon or in any way related to such hazardous materials including, without limitation, attorneys and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses.

In the event of any conflict between the provisions of this exculpatory rider and the provisions of the document to which it is attached, the provisions of this rider shall govern.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the Harris Bank St. Charles, on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

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EXHIBIT "A"

FENCE INSTALLATION SPECIFICATIONS

Now proposed fence installations must be submitted to and approved by Sho-Deen Incorporated or its successors or assigns, prior to installation. The following information is provided to assist you in making your submittal

Only one standard type of fence is approved for Mill Creek. The specifications for this standard fence is as follows:

Material:	Cedar	Rails:	Nominally 4" X 6"
Maximum Height:	4 1/2 Feet at the Top of a Fence Post	Posts:	Nominally 6" X 6"
Style:	Rustic Split Rail (2 or 3 Rails)		

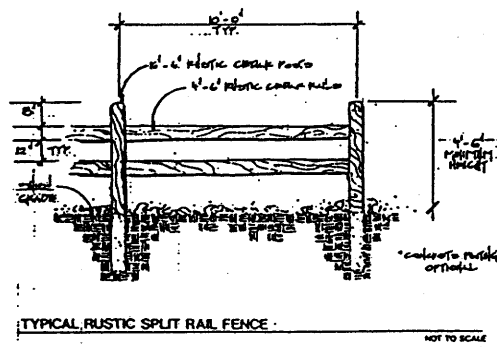
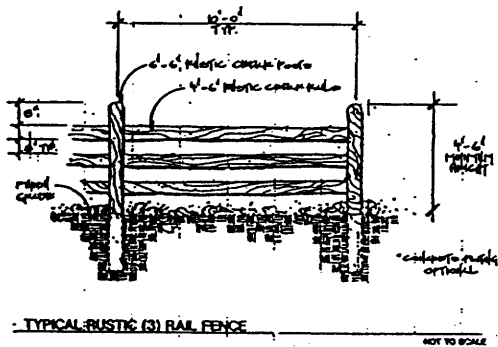
Please refer to the pictures below.

Fences cannot be placed on screen planting easements. Fences will not be allowed in front of the rear wall of a dwelling or attached garage or, on corner lots, beyond the actual set back of the side wall of the dwelling or garage that fronts a street. Fences may extend into utility easements at the owners risk.

The fence must be placed so the outside face of the fence is inside the property line. It is suggested the fence be placed six inches (6") inside the property line to allow for minor survey and installation discrepancies.

Fence installations on golf course lots and lots backing up to public and private open space and adjacent to roadways may be further restricted and will be handled on a case-by-case basis. Fence installations on lots with swimming pools will be revised on a case-by-case basis. Please contact Sho-Deen, Inc. for additional information.

Fence Sketch:



Information needed with submittal:

A plat of survey with your house footprint indicating the exact location of the proposed fence installation and any existing easements, drainage structures or drainage paths. Hand drawn sketches of lot boundaries are not acceptable.

The complete details of the fence design including the height in all areas and placement and width of gates.

If there are existing fences on any of the adjoining properties that you will be attaching to or abutting, this must be indicated. The fence must match the height of any existing fences.

Send your submittal to Sho-Deen Incorporated, 17 North First Street, Geneva, Illinois 60134. Decisions can generally be made within ten days to two weeks of the date a complete submittal is received by Sho-Deen Incorporated. However, please remember that the Mill Creek Covenants allow up to thirty days for Sho-Deen Incorporated to render a decision. In all instances you will be notified in writing of Sho-Deen Incorporated's decision.

Sho-Deen, Inc., it's successors or assigns, reserves the right to change or modify the fence standards at any time without notice.

If you have any additional questions, please call 232-8570.