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AMENDED & RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS

This document is recorded for the purpose of adopting an Amended and Restated Declaration of Covenants and Restrictions for Windings of Ferson Creek Homeowners Association (hereinafter “Declaration”), which was recorded as Document No. 1144002 (hereinafter “the Original Declaration”) in the Office of the Recorder of Deeds of Kane County, Illinois.

This Declaration is adopted pursuant to the provisions of Section 1-60(a) of the Common Interest Community Association Act, executed and acknowledged by at least two-thirds (2/3) of the members of the Board of Directors. This Declaration shall become effective upon recording, in the Office of the Recorder of Deeds of Kane County, Illinois.

RECITALS

WHEREAS, the Board of Directors desires to amend and restate the Declaration so as to comply with Illinois law; and

WHEREAS, the Declaration has been approved by at least two-thirds (2/3) of the Board of Directors.

NOW THEREFORE, the Declaration is hereby amended and restated in accordance with the text which follows:



ARTICLE I **DEFINITIONS**

Section 1. The following words when used in this Declaration or any Amendment thereto (unless the context shall prohibit) shall have the following meanings:

(a) “Acceptable technological means” shall mean without limitation, electronic transmission over the Internet or other network, whether by direct connection, intranet, telecopier, electronic mail, and any generally available technology that, by rule of the Association, is deemed to provide reasonable security, reliability, identification, and verifiability.

(b) “Accessory Building” shall mean a subordinate Building or a portion of a Unit , the use of which is incidental to the dwelling and customary in connection with that use.

(c) “Association” shall mean and refer to The Windings of Ferson Creek Homeowners Association, its successors and assigns, which is the association of all the Members, acting pursuant to the Bylaws and through its duly elected Board of Directors.

(d) “Basement” shall mean a portion of a Unit located partly underground but having less than one-half its clear floor-to-ceiling heights below the average grade of the adjoining ground at the Building front.

(e) “Board” shall mean the Association’s Board of Directors.

(f) “Board member” or “member of the board” shall mean a member of the board of directors.

(g) “Board of directors” shall mean the group of people elected by the Members of the Association, as the governing body to exercise for the Members all powers, duties, and authority vested in the board of directors under the Common Interest Community Association Act and this Association’s Declaration and Bylaws.

(h) “Building” shall mean all structures, attached or unattached, containing one or more Units.

(I) “Building Height” shall mean the vertical distance measured from the established Building grade at the Building front to the highest point of the underside of the ceiling beams, in the case of a flat roof; to the deck line of a mansard roof; and to the mean level of the underside of rafters between the eaves and the ridge of a gable, hip or gambrel roof. Chimneys and ornamental architectural projections shall not be included in calculating the height.



(j) “Bylaws” shall mean the Bylaws that shall govern the Association and which are appended hereto and recorded with this Declaration, as Exhibit A.

(k) “Cellar” shall mean the portion of the Unit located partly or wholly underground and having one-half or more than one-half of its clear floor-to-ceiling height below the average grade of the adjoining ground at the Building front.

(l) “Common Areas” shall mean the portion of the Property other than a Unit also referred to as the Common Properties, which includes those areas of land shown on the recorded subdivision plat of the Properties and devoted to the common use and enjoyment of the Owners of the Properties.

(m) “Common Expenses” shall mean the proposed or actual expenses affecting the Property, including reserves, if any, lawfully assessed by the Association.

(n) “Community Instruments” shall mean all documents and authorized amendments thereto recorded by the Developer or the Association, including, but not limited to, the Declaration, Bylaws, Operating Agreement, Plat of Survey, and Rules and Regulations.

(o) “Declaration” shall mean this duly recorded instrument that created this Association and any duly recorded amendments thereto.

(p) “Developer” shall mean any person who submitted this Property legally or equitably owned in fee simple by the person to the provisions of the Common Interest Community Association Act, or any person who offers Units legally or equitably owned in fee simple by the person for sale in the ordinary course of such person’s business, including any successor to such person’s entire interest in the property other than the purchaser of an individual Unit.

(q) “Dwelling Accessory Building” shall mean a subordinate Building or a portion of a dwelling, the use of which is incidental to the dwelling and customary in connection with that use.

(r) “Dwelling Lot” shall mean a lot intended for improvement with a dwelling.

(s) “Electronic transmission” shall mean any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient and that may be directly reproduced in paper form by the recipient through an automated process.

(t) “Front Building Line” shall mean a line on a lot that is delineated in the recorded Plat of subdivision which denotes the required depth of a front yard.



(u) “Front Lot Line” shall mean that boundary of a Lot which is along an existing or dedicated street or private easement of ingress and egress as shown on the recorded Plat. On corner Lots, the Owner may select either street lot line as a Front Lot Line, except as otherwise shown on the Plat.

(v) “Ground Floor Area” shall mean the living area in that story of the Unit which is the first story entirely above the established Building grade at the Building front.

(w) “Half Story” shall mean a space under a sloping roof which has the line of intersection of roof decking and wall not more than three feet above the top floor level, and in which space not more than sixty percent (60%) of the floor area is completed for principal or accessory use.

(x) “Living Area” shall mean that portion of a Unit which is enclosed and customarily used for dwelling purposes but shall not include open porches, open terraces, breezeways, cellars, attached garages, carports or Dwelling Accessory Buildings.

(y) “Lot” shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties with the exception of Common Areas or Common Properties as heretofore defined.

(z) “Majority” or “majority of the Unit Owners” shall mean the Members of more than fifty percent (50%) in the aggregate in interest of the undivided ownership of the Common Areas. Any specified percentage of the Members means such percentage in the aggregate in interest of such undivided ownership.

(aa) “Majority” or “majority of the Members of the Board of the Association” shall mean more than fifty percent (50%) of the total number of persons constituting such board pursuant to the Owner or operating agreement. Any specified percentage of the members of the common interest community association means that percentage of the total number of persons constituting such board pursuant to the Bylaws.

(bb) “Management company” or “community association manager” shall mean a person, partnership, corporation, or other legal entity entitled to transact business on behalf of others, acting on behalf of or as an agent for the Association for the purpose of carrying out the duties, responsibilities, and other obligations necessary for the day to day operation and management of any property subject to the Common Interest Community Association Act.

(cc) “Meeting of the board” or “board meeting” shall mean any gathering of a quorum of the members of the Board of the Association held for the purpose of conducting board business.



(dd) “Member” shall mean the person or entity designated as an Owner and entitled to one vote as defined by the Community Instruments. The terms “Member” and “Unit Owner” may be used interchangeably as defined by the Community Instruments, except in situations in which a matter of legal title to the Unit is involved or at issue, in which case the term “Unit Owner” would be the applicable term used.

(ee) “Membership” shall mean the collective group of Members entitled to vote as defined by the Community Instruments.

(ff) “Multifamily Structure” shall mean and refer to any Building containing two or more Units under one roof except when each such Unit is situated upon its own individual Lot.

(gg) “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit situated upon The Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(hh) “Parcel” shall mean the Lot or lots or tract or tracts of land described in the Declaration as part of the Association.

(ii) “Person” shall mean a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

(jj) “Plat” shall mean a plat or plats of survey of the parcel and of all Units in the Association, which may consist of a three-dimensional horizontal and vertical delineation of all such Units, structures, easements, and Common Areas on the Property.

(kk) “Prescribed delivery method” shall mean mailing, delivering, posting in the Association publication that is routinely mailed to all Members, electronic transmission, or any other delivery method that is approved in writing by the Member and authorized by the Community Instruments.

(ll) “Property” or “ Properties” shall mean all the land, property, and space comprising the parcel, all improvements and structures erected, constructed or contained therein or thereon, including any Building and all easements, rights, and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit, or enjoyment of the Members, under the authority or control of the Association.



(mm) “Purchaser” shall mean any person or persons, other than the Developer, who purchases a Unit in a bona fide transaction for value.

(nn) “Rear Lot Line” shall mean that boundary of a Lot which is most distant from 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.

(oo) “Record” shall mean to record in the Office of the Recorder for Kane County, Illinois wherein the property is located.

(pp) “Reserves” means those sums paid by Members which are separately maintained by the Association for purposes specified by the Declaration and Bylaws of Association.

(qq) “Side Lot Line” shall mean any boundary of a Lot which is not a Front or Rear Lot Line.

(rr) “Side Strip” shall mean the unpaved strip of land within a street right-of-way and which is parallel to the roadway.

(ss) “Story” shall mean that portion of a Unit 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 and a Cellar shall not be counted as a Story.

(tt) “Structure” shall mean anything erected or constructed, the use of which requires more or less permanent location on or in the ground, or attached to something having a permanent location on or in the ground. A sign or other advertising device, detached or projecting shall be construed to be a separate structure.

(uu) “Unit” means a part of the Property designed and intended for any type of independent use.

(vv) “Unit Owner” means the person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION:
ADDITIONS THERETO



Section 1. Existing Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Kane County, Illinois, and is more particularly described in Exhibit B, attached hereto, all of which real property shall hereinafter be referred to as "Existing Property".

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

(a) Approval by Members. Upon approval in writing of the Association pursuant to a vote of its Members, the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may cause to be recorded an Amendment to the Declaration.

(b) Mergers. In the event of a merger or consolidation of the Association with another association its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Existing Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Existing Property except as hereinafter provided.

ARTICLE III **GENERAL RESTRICTIONS**

Section 1. Land Use and Building Type. All Lots which are designated on any recorded subdivision map of the Properties with a numeral without a letter prefix are intended as dwelling lots and shall be used for private residence purposes only. No Building, except as specifically authorized elsewhere in this Declaration shall be erected, re-erected or maintained on a Dwelling Lot except one Unit designed by a licensed architect and designed for occupancy by a single family, and a private garage containing not more than four parking spaces for the sole use of the Owners or occupants of the Unit. Said garages may have living quarters in connection therewith for the sole use of the Owner or occupants or his guests, but shall not be used for rental purposes. No other Dwelling Accessory Buildings or Structures may be erected except in such manner and location as hereinafter provided or as approved in writing by the Association.



Section 2. Building Height. No Unit shall be erected, altered or placed which is more than thirty (30) feet in height or two and one-half (2-1/2) stories, whichever is less. No Dwelling Accessory Building or Structure shall exceed seventeen (17) feet in height unless a greater height is approved in writing by the Association.

Section 3. Dwelling Cost, Quality and Size. It is the intention and purpose of these covenants to ensure that all Units shall be of a quality of design, workmanship and materials approved by the Association. All Units shall be constructed in accordance with applicable Governmental Building code and with standards that may be required by the Architectural General Committee of the Association. The ground floor area of the dwelling shall be:

(a) For one-story Unit not less than 1600 square feet except not less than 2000 square feet if the Unit has three or more bedrooms.

(b) For Units of more than one story not less than 1200 square feet and the total living area in the Unit shall not be less than 2000 square feet, except that the ground floor area shall be not less than 2000 square feet if only one story is entirely above the Front Building Line grade.

Section 4. Location on the Lot. No Building shall be located on a Lot nearer to a Lot line than the Building lines shown on the recorded Plat. Tennis courts and swimming pools shall be screened from any interior street by wall, solid fence, evergreen hedge or other visual barrier as approved in writing by the Architectural Control Committee of the Association. No tennis court or swimming pool shall be located on a Lot nearer to the Front Lot Line or a Side Lot Line adjoining a street than the minimum setback shown on the recorded Plat.

Section 5. Driveways. Plans and specifications for driveways, culverts, pavement edging or markers shall be as approved in writing by the Architectural Control Committee.

Section 6. Home Occupations, Nuisances and Livestock. No noxious or offensive activity shall be carried on, in or upon any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No livestock or poultry other than customary domestic pets such as dogs and cats shall be kept or maintained on any Lot. The use of any garage, carport, driveway or parking area which may be in front or adjacent to a part of any Lot as a habitual parking place for commercial vehicles is prohibited. The parkway located between the pavement and the Lot line of each Lot shall not be used for the parking of private or commercial vehicles, boats or trailers. The term "commercial vehicle" shall include all automobiles, station wagons, trucks and vehicular equipment which bear signs or have printed on the side of same reference to any commercial undertaking or enterprise. The habitual violation of such parking regulations shall be deemed a nuisance. No trade or business may be conducted in or from any Unit,



Accessory Building, or Lot, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as:

- (a) The existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; and
- (b) The business activity conforms to all zoning requirements for the Properties; and
- (c) The business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and
- (d) The business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Association.

Section 7. Plant Diseases or Noxious Insects. No plants or seeds or other things or conditions harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a Lot.

Section 8. Temporary Structures. No trailer, 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 Unit shall be on the same Lot as the Unit or multifamily structure and such Buildings or structures shall be removed upon completion of construction.

Section 9. Easements. In the recorded Plat of subdivision of the existing property, Developer has:

(a) Reserved an easement to itself, and to successors and assigns, within the area as shown on the Plat and marked "Utility Easement," to install, lay, construct, renew, operate and maintain utility pipes and conduits and underground equipment for the purpose of serving the Properties with telephone, electric, water and other utility services; and also reserves the right to enter upon the Lots at all times for any such purposes, and the right to cut down and remove any trees or bushes that interfere or threaten interference with any such use or right. No permanent Building, Structure or trees shall be placed upon said easement except that said easement may be used for gardens, shrubs, landscaping and other purposes not then or later interfering with said reserved uses and rights; and

(b) Created an easement for surface drainage in and along the streets and such other



locations as are shown on the Plat marked "Drainage Easement."

Section 10. Maintenance of Side Strips. Each Owner shall be responsible for the maintenance of Side Strips located egress easements on which said Lots border.

Section 11. Wells and Septic Systems. No well or septic system shall be constructed or maintained on any Lot whenever water and sewer connections and facilities are available to the Lot.

ARTICLE IV **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 1. Membership. Every person or entity who is a record Owner of a fee, or undivided fee, interest in any Lot or Unit which is subject by covenants of record to assessment by the Association shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member.

Section 2. Voting Rights. The Association shall have one class of voting membership. Members shall be all those Owners as defined in Article I, Section 1(ff). Members shall be entitled to one vote for each Lot or Unit in which they hold the interests required for Membership by Section 1, except that any Owner of a Lot improved with a Multifamily Structure in which the Units are not owned by the respective occupants shall not have more than ten (10) votes plus one-third (1/3) vote for each Unit in excess of ten (10). When more than one (1) person holds such interest or interests in any Lot or Unit, all such persons shall be Members and the vote for such Lot or Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot or Unit.

ARTICLE V **PROPERTY RIGHTS IN THE COMMON PROPERTIES**

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3, every Member shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot or Unit.

Section 2. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Bylaws, to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage said Properties. In the event of a default upon any such mortgage, the lender's rights hereunder shall be limited to a right,



after taking possession of such Properties, to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of such Properties to a wider public until the mortgage debt is satisfied whereupon the possession of such Properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the above-described Properties against foreclosures; and

(c) The right of the Association, as provided in its Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

(d) The right of the Association to charge reasonable admission and other fees for the use of the Common Areas; and

(e) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of the Membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken; and

(f) The right of the Association to construct on, over and under the common properties and to maintain sewer, water, electric, gas, telephone and other utility facilities to serve the Properties or portions thereof and to grant easements to others in such regard.

ARTICLE VI **COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot or Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association:

(a) annual assessments or charges; and

(b) special assessments; such assessments to be fixed, established, and collected from



time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners in the Properties and in particular for the improvement and maintenance of Properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Units situated upon the Properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

Section 3. Annual Assessments. The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year. If an adopted budget or any separate assessment adopted by the Board would result in the sum of all regular and separate assessments payable in the current fiscal year exceeding one hundred fifteen percent (115%) of the sum of all regular and separate assessments payable during the preceding fiscal year, upon written petition by the Members with twenty percent (20%) of the votes of the Association, and such petition is delivered to the Board within fourteen (14) days of the Board's decision to adopt the budget or any separate assessments, the Board shall call a special meeting of the Members within thirty (30) days of the delivery of the petition. The purpose of the special meeting shall be to consider the budget or the separate assessment. Unless a majority of the total votes of the Members are cast at the meeting to reject the budget or separate assessment, the Board's action shall be deemed ratified.

Section 4. Special Assessments. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement upon the Common Areas including the necessary fixtures and personal property related thereto.

Section 5. Assessments for Additions and Alterations. Assessments for additions and alterations to the Common Areas or to Association-owned Property not included in the adopted annual budget, shall be separately assessed and are subject to the approval of a simple majority of the total Members at a meeting called for that purpose.



Section 6. Total Common Expenses Exceed Approved Amount. If total Common Expenses exceed the total amount of the approved and adopted budget, the Association shall disclose this variance to all of its Members and specifically identify the subsequent assessments needed to offset this variance in future budgets.

Section 7. Assessments Payable over More than One Year. The Board may adopt separate assessments payable over more than one fiscal year. For those multi-year assessments not related to an emergency or mandated by law or for an addition and alteration to the Common Areas or to Association-Owned property that was not included in the adopted annual budget, the entire amount of the multi-year assessments shall be deemed considered and authorized in the first fiscal year in which the assessment is approved.

Section 8. Date of Commencement of Annual Assessments, Due Dates. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement.

The due date of any special assessment shall be fixed in the resolution authorizing such assessment.

Section 9. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Properties and assessments applicable thereto which shall be kept in the office of the Association.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association upon demand and payment of a service fee of not more than \$10.00 shall at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 10. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien; Remedies of Association. If the assessments are not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless



expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of seven percent (7%) annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein:

- (a) All properties to the extent of any easement or other interest therein dedicated and accepted by local public authority and devoted to the public use; and
- (b) All Common Areas as defined in Article I, Section 1, hereof; and
- (c) All properties exempted from taxation by the laws of the State of Illinois, upon the terms and to the extent of such legal exemption.

Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

ARTICLE VII ARCHITECTURAL CONTROL COMMITTEE

Review by Committee. No Building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location and grade of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with. At the discretion of the committee, a filing fee of not exceeding \$50.00 shall accompany the submission of such plans to defray



committee expenses. No additional fee shall be required for resubmission of plans revised in accordance with committee recommendations. A copy of each approved set of plans shall be kept on file with the committee.

ARTICLE VIII **EXTERIOR MAINTENANCE**

Section 1. Exterior Maintenance. In addition to maintenance upon the Common Areas, the Association may at the request of the Owner provide exterior maintenance upon each Lot and Unit which is subject to assessment under Article VI hereof, as follows: paint, repair, replace, and care for roofs, gutters, down spouts, exterior Building surfaces, trees, shrubs, grass, walks, and other exterior improvements.

Section 2. Assessment of Cost. The cost of such exterior maintenance shall be assessed against the Lot or Unit upon which such maintenance is done and shall be added to and become part of the annual maintenance assessment or charge to which such Lot or Unit is subject under Article VI hereof and, as part of such annual assessment or charge, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article VI hereof, provided that the Board of Directors of the Association, when establishing the annual assessment against each Lot or Unit for any assessment year as required under Article VI hereof, may add thereto the estimated cost of the exterior maintenance for that year, but shall thereafter make such adjustment with the Owner as is necessary to reflect the actual cost thereof.

Section 3. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any Unit at reasonable hours on any day except Sunday.

ARTICLE IX **WATER AND SEWER SERVICE**

Every Owner of a Lot in the Properties shall be presumed conclusively to have covenanted by accepting a Deed of Conveyance to a Lot, regardless of the means of acquisition of title, to pay charges for water and sewer service to the public utility system organized to serve the area. At such time as the Owner shall elect to have water service and sewer service connected, he shall pay a separate connection charge for each service as approved by the Illinois Commerce Commission to the serving utility. Thereafter he shall pay for consumption of water and for use of the sewer system at reasonable rates subject to a minimum monthly charge established by the serving utility and authorized by the Illinois Commerce Commission. Said consumption and usage rates may be billed



monthly, bi-monthly, or quarterly at the option of the serving public utility.

All sewer connections shall be constructed of cast iron or ductile pipe throughout their length and shall be inspected prior to backfilling of any trenches by the Association or the serving utility. The intent is to eliminate the entry of storm and drainage water into the sanitary sewer which may occur if another type of material is used. Also, there shall be no discharge of water into the sanitary sewer from any roof, footing or yard drains, or any other source of water other than from household waste.

ARTICLE X **GENERAL PROVISIONS**

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns. By recorded amendment to this Declaration, two-thirds (2/3) of the then Owners of Lots, with the Owners of each Lot having one (1) vote, may modify any of the provisions of this Declaration, provided that it shall not substantially alter the scheme of this Declaration or of any succeeding supplemental Declaration.

Section 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing or by sending through Acceptable technological means if so consented to by the Member or Owner.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5. Gender Neutrality. All personal pronouns used in this Declaration shall include all other genders and the singular shall include the plural and vice versa.



EXHIBIT A BYLAWS

ARTICLE I Definitions

The definitions of all terms as provided for in the Amended and Restated Declaration of Covenants & Restrictions (hereinafter "Declaration") shall also apply within these Bylaws.

ARTICLE II Membership

Section 1. Every person or entity who is an Owner, as defined in the Declaration, shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member.

Section 2. The rights of Membership are subject to the terms of the Declaration recorded with the Recorder of Deeds of Kane County, Illinois, a copy of which Declaration is filed with these Bylaws.

Section 3. The Membership rights of any person whose interest in the Properties is subject to assessments under Article II, Section 2, whether or not he be personally obligated to pay such assessments, may be suspended by action of the Directors during the period when the assessments remain unpaid; but, upon payment of such assessments, his rights and privileges shall be automatically restored.

ARTICLE III Voting Rights

When there is more than one owner of a Unit and there is only one vote associated with that Unit, only one of the multiple Owners is entitled to vote. The voting rights of Members are as set forth in Article IV, Section 2, of the Declaration.

ARTICLE IV Property Rights and Rights of Enjoyment of Common Property

Section 1. Each Member shall be entitled to the use and enjoyment of the Common Areas and facilities as provided by deed of dedication and Article V, Declaration of Covenants and Restrictions, applicable to the Properties.

Section 2. Any Member may delegate his rights of enjoyment in the Common Areas and facilities to the members of his family who reside upon the Properties or to any of his tenants who reside thereon under a leasehold interest for a term of one year or more. Such Member shall notify the secretary in writing of the name of any such person and of the relationship of the Member to such person. The rights and privileges of such person are subject to suspension under Article II, Section 3, to the same extent as those of the member.



ARTICLE V

Association Purposes and Powers

Section 1. The Association has been organized for the purposes as set forth in Article 5 of the Articles of Incorporation and as provided in the Common Interest Community Association Act.

Section 2. Additions to the Properties may be made only in accordance with the applicable provisions of the Declaration.

Section 3. Subject to the applicable provisions of the Declaration, and to the extent provided by law, the Association may participate in mergers and consolidations with other not-for-profit corporations organized for the same purposes.

Section 4. The right of the corporation to incur indebtedness and mortgage its properties shall be limited as set forth in the Declaration and to the extent provided by law.

Section 5. The corporation shall have power to dispose of its real properties only as authorized by the applicable provisions of the Declaration.

ARTICLE VI

Board of Directors

Section 1. A Board of Directors who must be Members of the Association shall manage the affairs of the corporation. The Board of Directors shall consist of nine (9) persons who are elected by the Members, and are elected to serve for a term of three (3) years.

Section 2. Vacancies in the Board of Directors shall be filled by two-thirds (2/3) of remaining Directors, until the next annual meeting of the membership or until Members holding twenty percent (20%) of the votes of the Association request a meeting of the Members to be called to fill the vacancy for the balance of the term. A meeting of the Members shall be called for the purpose of filling the vacancy on the Board no later than thirty (30) days following the filing of a petition signed by the membership.

Section 3. If there are multiple Owners of a single Unit, only one of the multiple Owners shall be eligible to serve as a Member of the Board at any one time, unless the Unit Owner owns another Unit independently.

Section 4. Two-thirds (2/3) of the Members may remove a Board Member as a director at a duly called special meeting.

ARTICLE VII

Election of Directors; Nominating Committee; Election Committee

Section 1. Election to the Board of Directors shall be at the annual meeting of the membership and shall be by written ballot as hereinafter provided. At such election, the members or their proxies may cast, in respect to each vacancy, as many votes as they are



entitled to exercise under the provisions of the recorded covenants applicable to the Properties. The names receiving the largest number of votes shall be elected.

Section 2. A Nominating Committee shall make nominations for election to the Board of Directors, which shall be one of the standing Committees of the Association.

Section 3. The Nominating Committee shall consist of a chairman who shall be a Member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each such annual meeting.

Section 4. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members as the Committee in its discretion shall determine. Nominations shall be placed on a written ballot as provided in Section 5 and shall be made in advance of the time fixed in Section 5 for the mailing of such ballots to Members.

Section 5. All elections to the Board of Directors shall be made on written ballot which shall:

- (a) Describe the vacancies to be filled; and
- (b) Set forth the names of those nominated by the Nominating Committee for such vacancies; and
- (c) Contain a space for a write-in vote by the Members for each vacancy. Such ballots shall be prepared and mailed by the secretary to the members no less than ten (10) and no more than thirty (30) days in advance of the date set forth therein for a return (which shall be a date not later than the day before the annual meeting or special meeting called for elections).

Section 6. Each Member shall receive one (1) ballot for each Unit owned by the Member. The completed ballots shall be returned as follows: Each ballot shall be placed in a sealed envelope marked "Ballot" but not marked in any other way. Each such "Ballot" envelope shall contain only one ballot, and the Members shall be advised that, because of the verification procedures of Section 7, the inclusion of more than one ballot in any one "Ballot" envelope shall disqualify the return.

Such "Ballot" envelope shall be placed in another sealed envelope which shall bear on its face the name and signature of the Member or his proxy, the number of ballots being returned, and such other information as the Board of Directors may determine will serve to establish his right to cast the vote or votes presented in the ballot or ballots contained therein. The ballots shall be returned to the secretary or agent of the Board of Directors at the address stated in the ballot transmittal.



Section 7. Upon receipt of each return, the secretary or agent of the Board of Directors shall immediately place it in a safe or other locked place until the day set for the annual or other special meeting at which the elections are to be held. On that day, the external envelopes containing the “Ballot” envelopes shall be turned over, unopened, to an Election Committee which shall consist of five members appointed by the Board of Directors. The Election Committee shall then adopt a procedure that shall establish:

- (a) That the number of envelopes marked “Ballot” corresponds to the number of votes allowed to the Member or his proxy identified on the outside envelope containing them; and
- (b) That the outside envelope containing the proxy includes the signature of the Member or his proxy; and
- (c) If the vote is by proxy, that a proxy has been filed with the secretary as provided in Article XIII, Section 2, and that such proxy is valid.

Such procedure shall be taken in such manner that the vote of any Member or his proxy shall not be disclosed to anyone, even the Election Committee. The outside envelopes shall thereupon be placed in a safe or other locked place and the Election Committee shall proceed to the opening of the “Ballot” envelopes and the counting of the votes. If any “Ballot” envelope is found to contain more than one ballot, all such ballots shall be disqualified and shall not be counted.

ARTICLE VIII

Powers and Duties of the Board of Directors

Section 1. The Board of Directors shall have power:

- (a) To call a special meeting of the members whenever it deems necessary and it shall call a meeting at any time upon written request of twenty percent (20%) of the voting membership.
- (b) To appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these Bylaws shall be construed to prohibit the employment of any Member, officer or director of the Association in any capacity whatsoever. However, the Association may not enter into a contract with a current Member of the Board or with a corporation, limited liability company, or partnership in which the Board Member or a member of his immediate family has twenty-five percent (25%) or more interest, unless such notice of intent to enter into the contract is given to the Members within twenty (20) days after a decision is made to enter into the contract. The Members then must be given the opportunity to file a petition, signed by twenty percent (20%) of the Members and submitted to the Board within twenty (20) days after the Board action requesting a special meeting. The purpose of the special meeting is for the



Members to approve or disapprove the contract and such meeting must be called within thirty (30) days after the petition is filed. For purposes of this subsection, a Board member's "immediate family" shall be defined as the Board member's spouse, parents, siblings and children.

- (c) To establish, levy and assess, and collect the assessments or charges referred to in Article II, Section 2.
- (d) To adopt and publish rules and regulations governing the use of the Common Properties and facilities and the personal conduct of the Members and their guests thereon.
- (e) To exercise for the Association all powers, duties and authority vested in or delegated to this Association, except those reserved for the members as provided in the Declaration or under Illinois law.
- (f) In the event that any Member of the Board of Directors of this Association shall be absent from three (3) consecutive regular meetings of the Board of Directors, the Board may by action taken at the meeting during which said third absence occurs, declare the office of said absent Director to be vacant.
- (g) To engage the services of a manager or management company.
- (h) After having given notice and an opportunity to be heard, the Board shall have the power to levy and collect reasonable fines from members or Unit Owners for violations of the Declaration, these Bylaws, and the Rules and Regulations of the Association.
- (i) The Board shall have standing and capacity to act in a representative capacity in relation to matters involving the Common Areas or more than one Unit, on behalf of the Members or Unit Owners as their interests may appear.

Section 2. It shall be the duty of the Board of Directors:

- (a) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members.
- (b) To supervise all officers, agents and employees of this Association, and to see that their duties are properly performed.
- (c) As more fully provided in Article VI of the Declaration applicable to the Properties:
 - (1) To fix the amount of the annual and special assessments against each lot for each assessment period at least thirty days in advance of such date or period and, at the same time;



- (2) To prepare a roster of the Properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any member, and, at the same time;
- (3) To send written notice of each assessment to every owner subject thereto.
- (d) To issue, or to cause an appropriate officer to issue, upon demand by any person a certificate setting forth whether any assessment has been paid. Such certificate shall be conclusive evidence of any assessment therein stated to have been paid.
- (e) To provide for the maintenance, repair and replacement of the Common Areas and payments thereto.
- (f) To maintain certain records of the Association as further provided in Article XIV and under Illinois law.
- (g) To maintain fidelity insurance covering persons who control or disburse funds of the Association.

ARTICLE IX **Directors' Meetings**

Section 1. The Board of Directors shall meet at least four (4) times annually, on such dates and times as determined by the Board.

Section 2. The Board shall give the Members notice of all Board meetings at least forty-eight (48) hours prior to the meeting by sending notice by using a prescribed delivery method or by posting copies of notices of meetings in entranceways, elevators, or other conspicuous places in the Common Areas of the Association or in one or more locations in the proximity of Unit that are designated by the Board, at least forty-eight (48) hours prior to the meeting. However, notice of any meeting of the Board concerning the adoption of the proposed annual budget; regular assessments; or separate or special assessments shall be given to the Members within ten (10) to sixty (60) days prior to the meeting, unless otherwise provided by Illinois law.

Section 3. Special meetings of the Board may be called by the President or by twenty-five percent (25%) of the members of the Board.

Section 4. The transaction of any business at any meeting of the Board of Directors, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the Directors not present signs a written waiver of notice, or a consent to the holding of such meeting. All such waivers, consents or approvals shall be filed with the corporate records and made part of the minutes of the meeting.



Section 5. The majority of the Board of Directors shall constitute a quorum thereof.

Section 6. Any action required by law or these Bylaws to be or which may be taken at a meeting of the Members or Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all Members or Directors, as the case may be, entitled to vote with respect to the subject matter and in compliance with Illinois law.

Section 7. Meetings of the Board shall be open to any Unit Owner, except that the Board may close any portion of a noticed meeting or meet separately from a noticed meeting (a) to discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal or when the Association finds that such an action is probable or imminent; (b) to discuss third party contracts or information regarding appointment, employment, engagement, or dismissal of an employee, independent contractor, agent, or other provider of goods and services; (c) to interview a potential employee, independent contractor, agent, or other provider of goods and services; (d) to discuss violations of rules and regulations of the Association; (e) to discuss a Member's or Unit Owner's unpaid share of the common expenses; or (f) to consult with legal counsel for the Association. Any vote on these matters shall be taken at a meeting or portion thereof open to any Member.

Section 8. The Board must reserve a portion of the meeting of the Board for comments by Members; provided, however, the duration and meeting order for the Member comment period is within the sole discretion of the Board.

ARTICLE X

Officers

Section 1. The officers shall be a president, a vice president, a secretary and a treasurer. The president, vice president, secretary and treasurer shall be members of the Board of Directors.

Section 2. The officers shall be chosen by majority vote of the Directors.

Section 3. All officers shall hold office during the pleasure of the Board of Directors.

Section 4. The President shall preside at all meetings of the Board of Directors and of the membership, shall see that orders and resolutions of the Board of Directors are carried out and sign all notes, checks, leases, mortgages, deeds and all other written instruments.

Section 5. The vice president shall perform all the duties of the President in his absence.

Section 6. The secretary shall record the votes and keep the minutes of all meetings of the Board and of the membership. He shall keep the records of the Association. He shall record in a book kept for that purpose the names of all members of the Association together with their addresses as registered by such members.

Section 7. The treasurer shall receive and deposit in appropriate bank accounts all, monies of the Association and shall disburse such funds as directed by resolution of the Board of



Directors, provided however that a resolution of the Board of Directors shall not be necessary for disbursement made in the ordinary course of business conducted within the limits of a budget adopted by the Board. The treasurer shall sign all checks and notes of the Association, provided that such checks and notes shall also be signed by the president or the vice president.

Section 8. The treasurer shall keep proper books of account and may cause an annual audit of the Association books to be made by a certified public accountant at the completion of each fiscal year. He, with the approval of at least a majority of the Board shall prepare an annual budget, which shall indicate which portions are intended for reserves, capital expenditures or repairs or payment of real estate taxes. The treasurer, with the approval of the majority of the Board, shall provide all members with a reasonably detailed summary of the receipts, common expenses and reserves for the preceding budget year and shall make available for review to all members an itemized accounting of the common expenses from the preceding year actually incurred or paid, together with an indication of which portions were for reserves, capital expenditures or repairs or payment of real estate taxes and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the next excess or deficit of income over expenditures plus reserves or provide a consolidated annual independent audit report of the financial status of all fund accounts within the Association.

ARTICLE XI **Committees**

Section 1. The standing Committees of the Association shall be:

- The Nominations Committee
- The Recreation Committee
- The Maintenance Committee
- The Architectural Committee
- The Publicity Committee
- The Audit Committee

Unless otherwise provided herein, each Committee shall consist of a chairman and two or more Members and shall include a Member of the Board of Directors for Board contact. The Committees shall be appointed by the Board of Directors prior to each annual meeting to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each such annual meeting. The Board of Directors may appoint such other Committees, as it deems desirable.

Section 2. The Nominations Committee shall have the duties and functions described in Article VII.

Section 3. The Recreation Committee shall advise the Board of Directors on all matters pertaining to the recreational program and activities of the Association and shall perform such other functions as the Board, in its discretion, determines.



Section 4. The Maintenance Committee shall advise the Board of Directors on all matters pertaining to the maintenance, repair or improvement of the Common Properties and facilities of the Association, and shall perform such other functions as the Board, in its discretion, determines.

Section 5. The Architectural Control Committee shall have the duties and functions described in Article VII of the Declaration applicable to the Properties. It shall watch for any proposals, programs or activities which may adversely affect the residential value of the Properties and shall advise the Board of Directors regarding Association action on such matters.

Section 6. The Publicity Committee shall inform the members of all activities and functions of the Association and shall, after consulting with the Board of Directors, make such public releases and announcements as are in the best interests of the Association.

Section 7. The Audit Committee shall supervise the annual audit of the Association's books and approve the annual budget and balance sheet statement to be presented to the membership at its regular annual meeting as provided in Article X, Section 8. The treasurer shall be a Member of the Committee. This Committee shall only consist of Members of the Board.

ARTICLE XII

Meetings of Members

Section 1. The regular annual meeting of the Members shall be held on the second Monday of the month of January in each year, at the hour of 8:00 o'clock p.m. or on such other date and time as determined by the Board.

Section 2. Special meetings of the Members for any purpose may be called at any time by the President, or by twenty percent (20%) of the Members of the membership.

Section 3. The secretary shall give notice of any meetings to the Members. Notice may be given to the Member either personally, or by sending a copy of the notice through the mail, postage thereon fully prepaid to his address appearing on the books of the corporation. In addition, notice may be sent to any Member which may be accomplished using Acceptable technological means. Each Member shall register his address with the secretary, and notices of meetings shall be mailed to him at such address. Notice of any meeting of the membership, regular or special, shall be given at least ten (10) days and no more than thirty (30) days in advance of the meeting and shall set forth the purpose of calling the meeting of the membership.

Section 4. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of the membership shall constitute a quorum of the Members.

ARTICLE XIII

Proxies

Section 1. At all meetings of Members, each Member may vote in person or by proxy.



Section 2. All proxies shall be in writing, bear the date of execution and be filed with the secretary. No proxy shall extend beyond a period of eleven (11) months, or upon sale by the Member of his home or other interest in the Properties, whichever occurs first

ARTICLE XIV Books and Records

Section 1. The Board shall maintain the following records of the Association and make them available for examination and copying at convenient hours of weekdays, by any Member or Unit Owner:

- (a) Copies of the recorded Declaration, other community instruments, other duly recorded covenants and Bylaws and any Amendments, Articles of Incorporation, Articles of Organization, Annual Reports, and any Rules and Regulations adopted by the Board.
- (b) Detailed and accurate records in chronological order of the receipts and expenditures affecting the Common Areas, specifying and itemizing the maintenance and repair expenses of the Common Areas and any other expenses incurred, and copies of all contracts, leases, or other agreements entered into by the Board.
- (c) The minutes of all meetings of the Board for at least the last seven (7) years.
- (d) With a written statement of a proper purpose, ballots and proxies related for any election held for the Board and for any other matters voted on by the Members, which shall be maintained for not less than one (1) year.
- (e) With a written statement of a proper purpose, such other records of the Board as are available for inspection by members of a not-for-profit corporation pursuant to Section 107.75 of the General Not For Profit Corporation Act of 1986.
- (f) With respect to Units owned by a land trust, a living trust, or other legal entity, the trustee, officer, or manager of the entity may designate, in writing, a person to cast votes on behalf of the Member or Unit Owner and a designation shall remain in effect until a subsequent document is filed with the Association.

Section 2. Where a request for records under this Article is made in writing to the Board or its agent, failure to provide the requested record or to respond within thirty (30) days shall be deemed a denial by the Board.

Section 3. A reasonable fee may be charged by the Board for the cost of retrieving and copying records properly requested.



Section 4. If the Board fails to provide records properly requested under Section 1 within the time period provided in Section 2, the Member may seek appropriate relief and shall be entitled to an award of reasonable attorney's fees and costs if the Member prevails and the court finds that such failure is due to the acts or omissions of the Board.

ARTICLE XV
Amendments

Section 1. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of each class of members present in person or by proxy, provided that any matter stated herein to be or which is in fact governed by the covenants and restrictions applicable to the Properties may not be amended except as provided in such covenants and restrictions.

Section 2. In the case of any conflict between the Declaration and these Bylaws, the Covenants and Restrictions shall control.