

2022K057578

**SANDY WEGMAN
RECORDER - KANE COUNTY, IL
RECORDED: 12/6/2022 9:25 AM
REC FEE: 75.00 RHSPS: 9.00
PAGES: 52**

AMENDED AND RESTATED DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR FOX CREEK

This Amended and Restated Declaration of Covenants, Restrictions and Easements for Fox Creek (hereinafter referred to as "Declaration") and the Second Amended and Restated By-Laws of Fox Creek Property Owners Association, Inc. (hereinafter referred to as "By-Laws"), attached hereto as Exhibit "B", is recorded for the purpose of amending and restating the Declaration of Covenants, Restrictions and Easements for Fox Creek, which was recorded with the Recorder of Deeds of Kane County, Illinois on March 8, 2004 as Document No. 2004K028188 and re-recorded on February 14, 2005 as Document No. 2005K017130 (hereinafter referred to as "Unit 1 Declaration"), the Declaration of Covenants, Restrictions and Easements for Fox Creek, which was recorded with the Recorder of Deeds of Kane County, Illinois on August 17, 2004 as Document No. 2004K109300 (hereinafter referred to as "Unit 2 Declaration"), and the First Amended By-Laws of Fox Creek Property Owners Association, Inc. (hereinafter referred to as "Original By-Laws"), and all prior amendments to those documents.

This Declaration and the By-Laws attached hereto as Exhibit "B" are made and entered into by the Board of Directors of the Fox Creek Property Owners Association, Inc. in accordance with the provisions of Section 1-60(a) of the Illinois Common Interest Community Association Act (765 ILCS 160/1-60(a)), which provides that the Association

may correct errors or omissions in the Unit 1 Declaration, Unit 2 Declaration, and Original By-Laws as may be required to conform to said Act and any other applicable statute by vote of two-thirds (2/3) of the members of the Board.

RECITALS

WHEREAS, the Fox Creek Property Owners Association, Inc. (hereinafter the "Association") through its Board of Directors administers the property legally described in Exhibit "A" (hereinafter referred to as the "Land");

WHEREAS, the Unit 1 Declaration was recorded with the Recorder of Deeds of Kane County, Illinois on March 8, 2004 as Document No. 2004K028188 and re-recorded on February 14, 2005 as Document No. 2005K017130;

WHEREAS, the Unit 1 Declaration was amended by the First Amendment to the Declaration of Covenants, Restrictions and Easements for Fox Creek Unit 1, which was recorded with the Recorder of Deeds of Kane County, Illinois on February 14, 2005 as Document No. 2005K017131;

WHEREAS, the Unit 1 Declaration was further amended by the Corrected and Re-recorded First Amendment to the Declaration of Covenants, Restrictions and Easements for Fox Creek Unit 1, which was recorded with the Recorder of Deeds of Kane County, Illinois on June 22, 2021 as Document No. 2021K047757;

WHEREAS, the Unit 2 Declaration was recorded with the Recorder of Deeds of Kane County, Illinois on August 17, 2004 as Document No. 2004K109300;

WHEREAS, the Unit 2 Declaration was amended by the First Amendment to the Declaration of Covenants, Restrictions and Easements for Fox Creek Unit 2, which was recorded with the Recorder of Deeds of Kane County, Illinois on February 14, 2005 as Document No. 2005K017132;

WHEREAS, the Unit 2 Declaration was further amended by the Corrected and Re-recorded First Amendment to the Declaration of Covenants, Restrictions and Easements for Fox Creek Unit 2, which was recorded with the Recorder of Deeds of Kane County, Illinois on June 22, 2021 as Document No. 2021K047758;

WHEREAS, Appendix "A" to the Unit 1 Declaration and Unit 2 Declaration was amended by the revised Appendix "A" recorded with the Recorder of Deeds of Kane County, Illinois on March 17, 2017 as Document No. 2017K013913;

WHEREAS, Appendix "A" to the Unit 1 Declaration and Unit 2 Declaration was additionally amended by the revised Appendix "A" recorded with the Recorder of Deeds of Kane County, Illinois on November 7, 2019 as Document No. 2019K053957;

WHEREAS, Appendix "A" to the Unit 1 Declaration and Unit 2 Declaration was additionally amended by the revised Appendix "A" recorded with the Recorder of Deeds of Kane County, Illinois on September 29, 2020 as Document No. 2020K057000;

WHEREAS, the Board of Directors of the Association desires to amend and restate the Unit 1 Declaration, Unit 2 Declaration and Original By-Laws, replacing them, in their entirety, with this Amended and Restated Declaration of Covenants, Restrictions and Easements for Fox Creek and the Second Amended and Restated By-Laws of Fox Creek Property Owners Association, Inc., attached hereto as Exhibit "B";

WHEREAS, the Board of Directors desires to amend the Unit 1 Declaration, Unit 2 Declaration and Original By-Laws, to conform those documents to the current provisions of the Illinois Common Interest Community Association Act as well as any other applicable statutes and correct any scrivener's errors or omissions;

WHEREAS, this Amended and Restated Declaration of Covenants, Restrictions and Easements for Fox Creek and the Second Amended and Restated By-Laws of Fox Creek Property Owners Association, Inc., attached hereto as Exhibit "B", have been approved by the affirmative vote of at least two-thirds (2/3) of the members of the Board at a meeting of the Board;

WHEREAS, this Amended and Restated Declaration of Covenants, Restrictions and Easements for Fox Creek and the Second Amended and Restated By-Laws of Fox Creek Property Owners Association, Inc., attached hereto as Exhibit "B", shall become effective either on January 1, 2023 or upon the date of recordation in the Office of Recorder of Deeds, Kane County, Illinois, with the effective date being the later of those two dates to occur.

NOW THEREFORE, the Unit 1 Declaration and Unit 2 Declaration are hereby restated and amended as follows:

ARTICLE I

DEFINITIONS

The following words and phrases when used in this Declaration shall have the following meanings:

Section 1.1: ACCEPTABLE TECHNOLOGICAL MEANS includes, 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.

Section 1.2: ACT shall mean and refer to the Illinois Common Interest Community Association Act (765 ILCS 160/1-1 et. seq.), as amended from time to time.

Section 1.3: ARTICLES shall mean the Articles of Incorporation of the Fox Creek Property Owners Association, Inc.

Section 1.4: ASSOCIATION shall mean and refer to the Fox Creek Property Owners Association, Inc., an Illinois, not-for-profit corporation, its successors and assigns.

Section 1.5: ASSOCIATION EXPENSES shall mean the expenses for which the Owners are or may be liable to the Association in accordance with the method of allocation thereof described in Article V hereof and includes the following:

- (A) Common Area Expenses which means and includes expenses incurred or to be incurred by the Association with regard to ownership, operation, administration, maintenance and repair of the Common Areas or any part thereof; and
- (B) Expenses which means and includes those expenses incurred or to be incurred by the Association with regard to the operation, administration, maintenance and repair of the lots and Buildings as set forth in the provisions of this Declaration.

Section 1.6: ARCHITECTURAL REVIEW COMMITTEE or ARC shall mean the architectural review committee established in accordance with this Declaration, and more particularly described in Article II herein.

Section 1.7: BOARD OF DIRECTORS or BOARD shall mean the Board of Directors of the Association.

Section 1.8: BY-LAWS shall mean the Second Amended and Restated By-Laws of Fox Creek Property Owners Association, Inc., attached hereto as Exhibit "B", and any amendments, supplements or modifications thereto.

Section 1.9: COMMON AREAS shall mean the portions of the Land not included within the Lots nor dedicated to a party other than the Association unless the Association maintains such dedicated area pursuant to the terms hereof, and such additional Common Areas as may hereafter be declared as such. Common Areas include the road right of way within the property described as the Fox Creek attached hereto as Exhibit "A", as well as any street lighting within

or adjacent to the aforesaid road right of way.

Section 1.10: COUNTY shall mean Kane County, Illinois.

Section 1.11: DECLARATION shall mean this instrument and any amendments, supplements or modifications hereto.

Section 1.12: DEVELOPMENT PLAN shall mean and refer to FOX CREEK's Development Plan approved by appropriate government agencies for the development of FOX CREEK, as amended or implemented from time to time, by such plats as may be approved and filed of record or declarations of condominium filed of record.

Section 1.13: DOCUMENTS shall mean in the aggregate this Declaration and any and all Supplemental Declarations, the Articles, the By-Laws, the Rules and Regulations of the Association, and all of the instruments and documents referred to or incorporated therein or attached thereto as the same may be amended from time to time.

Section 1.14: ELECTRONIC TRANSMISSION means 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.

Section 1.15: FOX CREEK shall mean the residential community in the development which is to be developed upon the Land and all improvements now or hereafter located thereon and includes the Land and all improvements on any Land submitted to the provisions of this Declaration, and any lands added hereafter pursuant to the right to add additional lands.

Section 1.16: INSTITUTIONAL MORTGAGEE shall mean any lending institution or real estate investment trust having a first mortgage lien upon a Lot and includes any insurance company doing business in Illinois and approved by the Commissioner of Insurance of the State of Illinois, a Federal or State Savings and Loan Association, Building and Loan Association or bank doing business in the State of Illinois and approved by the office of the Comptroller, Division of Banking of the State of Illinois, a mortgage banking company licensed in the State of Illinois and "Secondary Mortgage Market Institution" which includes the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation and such other secondary mortgage market institutions as the Board shall hereafter approve in writing; and any mortgagee which has loaned money to the developer of the Land secured by a mortgage encumbering any portion of the

Land.

Section 1.17: LAND shall mean the land more particularly described as Fox Creek, attached hereto as Exhibit "A", which is committed by this Declaration to the provisions hereof and any additional real estate which may hereafter be declared to be subject to this Declaration and all improvements made to such land including residences.

Section 1.18: LOT shall mean a portion of the Land upon which is or will be located a home, the legal description of which is set forth in the deed of conveyance of the said lot.

Section 1.19: OWNER shall mean the owner or owners of the fee title to a Lot located within the property identified as the Land.

Section 1.20: PERSON means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

Section 1.21: PRESCRIBED DELIVERY METHOD means mailing, delivering, posting in an 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 Documents.

Section 1.22: SINGLE FAMILY OCCUPANCY. Single Family Occupancy shall mean and refer to occupancy by a family unit consisting of not more than five (5) adult members.

Section 1.23: SUPPLEMENTAL DECLARATION shall mean a Supplemental Declaration of Covenants, Conditions, and Restrictions recorded amongst the Public Records of the County submitting all or a portion of additional land to the terms and provisions of this Declaration.

ARTICLE II

COVENANTS AND RESTRICTIONS; CONVEYANCE TO ASSOCIATION OF COMMON AREAS

The Land shall be used, transferred, demised, sold, conveyed and occupied subject to and in accordance with the following:

Section 2.1: **Lane Use Covenants**

(A) Land. The Land shall be for residential use only.

- (B) Common Areas. The portions of the Land not included within the Lots nor dedicated to a party other than the Association shall be used and conveyed solely in accordance with this Declaration.
- (C) Land Use. Except for the road right of way and other improvements within FOX CREEK, the Common Areas shall be grassed or planted and kept grassed or planted as green open space, or planted with such other form of ground cover or landscaping as the ARC considers consistent with the plan for development for the beautification of FOX CREEK.
- (D) Private Use. The Homeowner's Common Areas hereinafter described as private areas, are not for the use and enjoyment of the public, but are expressly reserved for the private use and enjoyment of the Association, Owners and their lessees and their family members, guests and invitees in accordance with this Declaration. The common areas hereinafter described as public areas are for the use and enjoyment of the public.

Section 2.2: Restrictions on Occupancy and Use of the Land

In consideration of the benefits hereinafter contained and the payment of the Association Expenses referred to herein, it is hereby declared that the Land, including but not limited to the Lots and Homes shall at all times be used, constructed, occupied and held subject to the following:

- (A) Plans and Specifications and Architectural Review Committee. For the purpose of insuring the development of FOX CREEK as an area of high standards, an ARC shall be established as follows:
 - (1) The ARC. The Board of Directors of the Association shall appoint the members of the ARC. The members of the ARC shall consist of at least two (2) members of the Board of Directors, and a majority of the members of the ARC shall be members of the Board of Directors. The members of the ARC shall serve at the pleasure of the Board of Directors.
 - (2) ARC Action. A majority of the ARC may designate a member of the ARC to act for it. Approval or disapproval by a majority of the members of the ARC (or by the member designated by the majority of the members) shall constitute the official approval or disapproval of the ARC. Any approval or disapproval of the ARC shall be subject to review by the Board ("Appeal").
 - (3) Requirement of ARC Approval. No improvement or structure of any kind, including, without limitation, any building, wall, fence, swimming pool, tennis court, or screened enclosure, shall be erected, placed or maintained and no addition, alteration,

modification or change to any such improvement or structure shall be made without the prior written approval of the ARC.

- (4) Method of Obtaining ARC Approval. In order to obtain the approval of the ARC, a complete set of plans and specifications for proposed construction and any and all other reasonably requested information and materials related thereto ("Plans") shall be submitted to the ARC for its review. The Plans shall include, as appropriate, the proposed location, grade, elevations, shape dimensions, exterior color plans, landscaping plans, approximate costs, and nature, type and color of materials to be used. The ARC may also require the submission of additional information and materials as may be reasonably necessary for the ARC to evaluate the proposed construction or alteration. The ARC shall evaluate all Plans utilizing standards of the highest level as to the aesthetic quality and materials and workmanship to be used and as to suitability and harmony of location, structure and external design in relation to surrounding topography and structure.
- (5) Approval or Disapproval by the ARC. The ARC shall have the right to refuse to approve any Plans which, in its sole discretion, are not suitable or desirable. Any and all approvals or disapprovals of the ARC shall be in writing and shall be sent to the respective Owner. In the event the ARC fails to approve or to disapprove in writing any proposed Plans within forty-five (45) days after their submission to the ARC, then said Plans shall be deemed to have been approved by the ARC and the appropriate written approval delivered forthwith; provided, however, any Owner intending to rely upon the ARC's failure to act, shall submit notice of such intention in writing to the ARC together with a copy of all materials submitted to the ARC in connection with the Owner's application for approval ("Notice"). If, within ten (10) days of submission of the Notice and the Plans to the ARC, the ARC issues a written disapproval or if an Owner fails to provide the ARC with Notice, the Plans shall be deemed disapproved notwithstanding anything herein to the contrary.
- (6) Indemnification. Each and every member of the ARC shall be indemnified by the Association and the Owners against all costs, expenses and liabilities, including counsel fees at all trial and appellate levels, reasonably incurred by or imposed upon him or her in connection with any proceeding, litigation or settlement in which he or she becomes involved by reason of being or having been a member of the ARC. The foregoing provisions for indemnification shall apply whether or not he or she is a member of the ARC at the time such expenses are incurred. Notwithstanding

the above, in instances where a member of the ARC admits or is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties, the indemnification provisions of the Declaration shall not apply; otherwise the foregoing rights to indemnification shall be in addition to and not exclusive of any all rights of indemnification to which a member of the ARC may be entitled whether by statute or common law.

- (7) Enforcement. There is specifically reserved unto the ARC the right of entry and inspection upon any Lot or other portion of the Land for the purpose of determination by the ARC whether there exists any construction of any improvement which violates the terms of any approval by the ARC, or the terms of this Declaration or of any other covenants, conditions and restrictions to which its deed or other instrument of conveyance make reference. The ARC is specifically empowered to enforce the provisions of this Declaration by a legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the ARC shall be entitled to recover all court costs, expenses and reasonable attorneys' fees in connection therewith. The Association shall indemnify and hold harmless the ARC from all costs, expenses and liabilities, including attorneys' fees incurred by virtue of any member of the ARC's service as a member of the ARC.
- (8) Development Standards. The ARC is empowered to publish or modify from time to time, design and development standards ("Standards") for FOX CREEK, including but not limited to standards for the following:
- (i) architectural design of improvements;
 - (ii) fences, walls and similar structures;
 - (iii) exterior building materials and colors;
 - (iv) exterior landscaping;
 - (v) exterior appurtenances relating to utility installation;
 - (vi) signs and graphics, mailboxes and exterior lighting;
 - (vii) building set backs, pools and pool decks, side yards and related height bulk and design criteria;
 - (viii) pedestrian and bicycle ways, sidewalks and pathways; and
 - (ix) all buildings, landscaping and improvements on land owned or controlled by the Association.

The Standards shall be reasonable and in conformance with the plan of development of FOX CREEK. A copy of any Standards promulgated and any modification or amendment thereof shall be

available to Owners and mortgagees.

- (9) Scope of Review. The ARC shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of the aesthetic consideration and overall benefit or detriment which would result to the immediate vicinity and to FOX CREEK and the Land as a whole. The ARC shall take into consideration the aesthetic aspects of the architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, and shall not be responsible for reviewing, nor shall its approval of any plans or design be deemed approval of, any design or plan from the standpoint of structural safety or conformance with building or other codes.
- (10) Variance from Standards. The ARC may authorize, in a reasonable manner so as not to destroy the general scheme or plans of the development of FOX CREEK, variances from compliance with the Standards, as the same may be modified or amended by the ARC from time to time, when circumstances such as topography, natural obstructions, hardship, aesthetics or environmental considerations may require. If any such variances are granted by the ARC, no violation of the restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of the Declaration for any purpose except as to that particular property and particular provision hereof or standards promulgated hereby which are covered by the variance. Such variance shall be evidence in writing and executed by a member of the ARC.
- (11) Non-Liability for Approval of Plans. Plans and specifications approved by the ARC shall not constitute approval for engineering design, or for compliance with zoning and building ordinances. By approving such plans and specifications, neither the ARC, the members thereof, nor any professional consultant engaged by any of the aforementioned parties, assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the ARC, nor its successors, or assigns or any member thereof, shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of:
 - (a) the approval or disapproval of any plans, locations, grading plans, landscape plans, drawings and specifications, whether or not defective,

- (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications,
 - (c) the development or manner of development of any property within Fox Creek, or
 - (d) the execution and filing of an estoppel certificate pursuant to the Standards, whether or not the facts therein are correct, provided, however, that such action, with the actual knowledge possessed by such party, was taken in good faith. Approval of plans and specifications by the ARC is not, and shall not be deemed to be the representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations, including but not limited to zoning ordinances and building codes.
- (B) Builder Qualifications. In the event a contractor or subcontractor fails to comply with any of the terms and provisions of this Declaration, the Articles, or the By-Laws or any of the architectural standards or, to the extent applicable, Standards promulgated by the ARC, the ARC shall have the right to revoke such written approval and to prohibit such contractor or subcontractor, as the case may be, from entering upon the property constituting FOX CREEK. In the event that any improvements or landscaping are made in violation of the covenants contained herein, then the ARC shall have the right to specially assess the Owner for damages caused by such violation, in addition to its other remedies hereunder. The ARC may, from time to time, publish a list of builders it has in advance determined to be acceptable.
- (C) Commencement of Construction. Construction of a dwelling shall be commenced within two (2) years of the date of closing on said Lot. In the event Owner fails to commence construction within said time frame, then the original developer of the Land or its successors or assigns shall have an automatic right to repurchase the Lot for the same sales price of the original sale by the developer. This provision shall apply to any and all subsequent Owners of said property.
- (D) Completion of Construction. Any construction undertaken on any Lot shall be continued with diligence toward the completion thereof and construction of any dwelling shall be substantially completed within one (1) year from the date of issuance of a building permit therefor. Completion of construction shall include completion of any sidewalks, driveways, and landscaping required for the residence. This one (1) year period of time may be extended by written agreement of the original developer of the Land, or its successors or assigns.

- (E) Builder's Rules. The ARC shall have the right to promulgate and impose rules and regulations in addition to the "Standards" and to modify, alter, amend, rescind, and augment any of the same (collectively "Builder's Rules"). The Builder's Rules may contain, but are not limited to, any of the following which may be in furtherance of any provision set forth in this Declaration, including but not limited to prohibitions on nuisances, location and appearance of port-a-johns, trash dumpsters, construction sheds and trailers, vehicles of contractors and subcontractors and employees, storage of construction materials and equipment, cleaning of debris from streets and a deposit to be paid by each contractor to be returned upon completion of improvements provided the contractor had complied with: (i) requirements regarding maintenance and condition of the construction site and the public streets near the construction site (including the removal of debris and repair of damage to said streets and other improvements) in accordance with the provisions of this Declaration; and (ii) compliance with regulation regarding hours in which work is permitted on the improvements. No Builder's Rules shall be promulgated which are in conflict with the provisions of this Declaration.
- (F) Other Provisions as to Use of the Land. The following occupancy and use restrictions shall apply to each Owner and his or her lessees and family members, guests and invitees:
1. Residential Use. The Lots and all Lots enlarged, reduced or recreated by the shifting or relocation of property lines are restricted to residential use with each individual unit to be restricted to residence by a single family, their household, servants and guests. No temporary buildings, including, but not limited to tents, trailers, tanks and shacks, may be placed on a Lot without the written consent of the Association.
 2. Square Footage Requirements. The square footage requirements shall be as set forth on "Appendix A".
 3. Setback Requirements. The setback requirements shall be as set forth in "Appendix B".
 4. No Trade, Business, Profession, etc. No trade, business, profession, or any other type of commercial activity shall be carried on upon the Land. The prohibition against commercial activity shall not prohibit the creation, within FOX CREEK and at the sole discretion of the Association, of a storage facility for "Prohibited Vehicles" as defined in Section 2.2(F)(12) hereof.

5. Nuisance. No Owner shall cause or permit to come from his or her abode any unreasonable noises or obnoxious odors or commit or permit to be carried on in his or her home or elsewhere on the Land any nuisance or any immoral or illegal activities.
6. Litter and Garbage Collection. No Owner shall sweep or throw from his or her abode any dirt or other materials or litter in any way on the Land. No garbage, trash, refuse or rubbish shall be deposited, dumped or kept on any part of the Land except in closed containers, for pick-up in accordance with any rules and regulations promulgated by the Association. No Owner may dispose of or keep refuse, trash or garbage containers in or on any exterior area of the Owner's residence.
7. Removal of Sod and Shrubbery; Alteration of Drainage, etc. No sod, topsoil, muck, trees or shrubbery shall be removed from the Land and no change may be made in the condition of the soil or the level of any Land.
8. Water Supply. No individual water supply system for drinking purposes or household use shall be permitted on any Lot. This provision, however, shall not preclude the installation of any water supply system for irrigation or sprinkler purposes; provided, however, that such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the Association and the applicable governmental authorities.
9. Sewage Disposal. No individual sewage disposal system shall be permitted on any Lot.
10. Sidewalks. Each Owner shall be responsible for keeping the sidewalk and bike paths abutting his or her Lot, if any, free from any obstruction and clutter including, but not limited to, bicycles, grass clippings and garbage.
11. Lighting. No lighting shall be permitted which alters the residential character of FOX CREEK; provided, however, nothing herein contained shall be deemed to prohibit the maintenance upon the roadways with FOX CREEK lighting as installed by the original developer of the Land or the Association for the purposes of lighting the roadways, sidewalks and pathways of FOX CREEK. No lighting of outdoor activity areas upon a Lot shall be permitted unless approved by the Association.

12. Vehicular Parking.

- (a) Except as provided in the next subparagraph hereof, no Person, firm or corporation shall park or cause to be parked on the Land, including but not limited to their Lot or in the streets, alleys or parkways abutting their Lot, any recreational vehicle, house trailer, boat, boat trailer or truck (including either tractor or trailer or both) which truck has a carrying capacity of over three-fourths (3/4) ton ("Prohibited Vehicles"), for a period exceeding forty-eight (48) hours without written consent from the ARC or Board of Directors.
- (b) Any recreational vehicle, boat, boat trailer, panel truck, pick-up truck which has a carrying capacity not over three-fourths (3/4) ton shall be permitted but shall at all times be kept in a closed garage or screened from view from all other portions of FOX CREEK by a fence or landscaping approved by the Association. Trucks having a carrying capacity of over three-fourths (3/4) ton may be kept in a closed garage.
- (c) No maintenance or repair shall be done upon or to any vehicle (including, but not limited to, four (4) wheel passenger automobiles) except within a closed garage and totally isolated from public view.
- (d) Nothing herein shall prohibit the establishment by the Association of any area within FOX CREEK designated and available for the storage of Prohibited Vehicles if the establishment of such storage facility is otherwise permitted by applicable government regulation and approved by the Association.

13. Radio Transmission Equipment. No ham radios or radio transmission equipment shall be operated upon or permitted to be operated upon the Land without the prior written consent of the Association.

14. Antennae and Aerials. Except as may be permitted by the Association, no antennae, satellite dishes, or any other aerials (except those eighteen inches (18") in diameter and otherwise allowed by law) shall be placed upon the Land, or upon any homes or other structures.

15. Casualty Destruction to Improvements. In the event a residence is damaged or destroyed by casualty, hazard or other loss, then, within a reasonable period of time after such incident, the Owner

thereof shall either commence to rebuild or repair the damaged home or improvement upon obtaining Association approval if required hereunder and shall diligently continue such rebuilding or repairing activities to completion or (upon a determination by the Owner thereof that the improvements will not be repaired or replaced) promptly clear damaged improvements and grass over the landscape on the Lot in a sightly manner. Notwithstanding the foregoing, in the event the Owner rebuilds or repairs his or her damaged abode or improvements without substantial alteration from what was existing prior to the damage or destruction, then the Association's approval shall not be required.

16. Increase in Insurance Rates. No Owner may take any action which will result in an increase in the rate of any insurance policy or policies covering any portion of FOX CREEK.
17. Reconstruction. Any repair, rebuilding or reconstruction of a damaged home shall be substantially in accordance with the architectural plans and specifications for: (i) the originally constructed home, (ii) a previously reconstructed home, or (iii) new plans and specifications approved by the Association.
18. Owner Liability. An Owner shall be liable for the expense of any maintenance, repair or replacement of any real or personal property in FOX CREEK rendered necessary by his or her act, neglect or carelessness, or by that of any member of his or her family, or his, her or their guests, employees, invitees, agents or lessees, but only to the extent that such expense is not met by proceeds of insurance which may be carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a home or the Common Areas. An Owner shall also be liable for any personal injuries caused by his or her negligent acts or those of any members of his or her family, or his, her or their guests, employees, invitees, agents or lessees. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies or rights of subrogation.
19. Rules and Regulations. Each Owner shall be subject to such rules and regulations with respect to FOX CREEK as the Association determines from time to time to be in the best interest of the Association and the Owners.
20. Garages. Because of the importance of keeping vehicles within garage areas, no Owner may convert any garage area for any other use. This restriction shall not apply to original construction by the

original developer of the Land.

21. Pets. Normal household pets shall be permitted, subject to rules and regulations established by the Association. No other animals shall be permitted upon the Land.
22. Fences. Except as may be permitted by the Association, with respect to Fox Creek, Campton Township, Kane County, Illinois, no perimeter fences of any type, other than those required for enclosing swimming pools, shall be permitted. Any proposed fences for swimming pools shall be submitted to the ARC for approval in compliance with Article II herein.
23. Swimming Pools. No above ground swimming pools shall be permitted upon the Land. All plans and specifications for in-ground swimming pools shall be submitted to the ARC for approval.
24. Subdivision or Structural Changes. No residential Lot shall be divided or subdivided, nor shall any structural alteration or change be made to the dwelling located on said residential Lot without proper approval of the ARC. Any subdivision or combination of residential Lots shall be consistent with zoning and/or easement restrictions affecting the residential Lot(s).
25. Clothes Drying Areas. No clothes lines, hangers or drying facilities shall be permitted or maintained on the exterior of any improvement, and no clothes, rugs, drapes, spreads, or household articles or goods of any sort shall be dried, aired, beaten, cleaned or dusted by hanging or extending the same from any window or door.
26. Partition Prohibition. No residential Lot shall be the subject of a partition action in any Court of the State of Illinois if such action would result in different parts of said residential Lot being owned by different Owners. All Owners do by their acceptance of a conveyance of such residential Lot, waive any right to maintain or bring such action.
27. Signs. No signs of any type shall be maintained, kept or permitted on any part of the Land or in or on any residential Lot or condominium unit where the same may be viewed from the Property, except for signs approved by the ARC.

Section 2.3: **Non-Severable Interest of Owners**

The ownership of a Lot, the residence constructed thereon, all easement rights appurtenant thereto as provided for in the Declaration or any Supplemental Declaration including, but not limited to, utility and governmental services easements for encroachments, membership in the Association; and all other appurtenances thereto under the Documents (hereinafter collectively referred to as the "Interest"); shall not be severable, and an Owner shall not and may not sell, convey, demise, lease, assign, pledge or otherwise transfer or encumber any of his or her right, title or interest in and to his or her respective Interests or any of such Interest unless such sale, conveyance, demise, lease, assignment, pledge or other form of transfer or encumbrance includes all of his or her right, title and interest in and to the Interests including, but not limited to, the home and the Lot upon which it is constructed.

Section 2.4: **Disputes as to Use**

In the event there is any dispute as to whether the use of the Land or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in this Declaration, such dispute shall be referred to the Board of Directors, and a determination rendered by the Board of Directors with respect to such dispute shall be final and binding on all parties concerned therewith.

Section 2.5: **Conveyance to Association**

Fee simple title in and to the Common Areas together with the improvements located thereon is to be held by the Association. Ownership of the Common Areas by the Association is subject to (1) taxes for the year of conveyance and subsequent years; (2) such facts as an accurate survey would show; (3) the terms and provisions of this Document; (4) easements, restrictions, reservations, conditions and limitations of record; and (5) applicable zoning ordinances and regulations. The Association shall have the right and power to convey Association property and/or easements therein to any grantee for consideration or for no consideration.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION; BOARD OF DIRECTORS

Section 3.1: **Membership and Voting Rights**

Membership in the Association shall be established and terminated as set forth in the Articles and/or By-Laws. Each Owner shall be entitled to the benefit of and is subject to, the provisions of the Documents as same may be amended from time

to time. The voting rights of the Members shall be as set forth in the Articles and or By-Laws.

Section 3.2: Board of Directors

The Association shall be governed by the Board of Directors which shall be appointed, designated or elected, as the case may be, as set forth in the Articles and/or By-Laws.

Section 3.3: Initiation of Legal Action

Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of the Owners of a majority of all Lots within the Land (at a duly called meeting of the Association at which a quorum is present) prior to the payment of legal or other fees to persons or entities engaged by the Association for the purposes of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- (A) The collection of assessments and "Maintenance Fees"; or
- (B) The collection of other charges which Owners are obligated to pay pursuant to the applicable Documents; or
- (C) The enforcement of the use and occupancy restrictions contained in the applicable Documents; or
- (D) In an emergency where waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Land or to Owner(s).

ARTICLE IV

USE AND MAINTENANCE OF THE LAND AND MAINTENANCE OF COMMON AREAS

Section 4.1: Covenants for Use

Each Owner, by acceptance of a deed or other instrument of conveyance conveying a Lot within FOX CREEK whether or not it shall be so expressed in such deed or instrument, covenants and agrees that the home and the Lot shall be used, held, maintained and conveyed solely in accordance with the covenants, reservations, easements, restrictions and lien rights regarding same as are or may be set forth in the applicable Documents including, but not limited to, this Declaration and all applicable Supplemental Declarations.

No Owner shall in any way damage, injure or impair the Common Areas.

Section 4.2: **Maintenance and Repair of Land**

The maintenance and repair of the Land is either the responsibility of the Owners or the Association as hereinafter more particularly set forth:

- (A) Maintenance of Lots. Except as set forth hereinafter regarding ordinary lot maintenance, each Owner shall maintain in good condition and repair at his or her own expense:
 - 1. All portions of his or her Lot and home. This obligation includes the obligation to paint and maintain the exterior portions of an Owner's home, however, before painting the exterior of a home the Owner must obtain Association approval.
 - 2. All utility lines, ducts, conduits, pipes, wires and other utility fixtures and appurtenances which are located upon or under his or her Lot and which service only his or her home.
 - 3. All glass and screens in windows and doors, in a manner consistent and in uniformity with the standards promulgated by the Association.
 - 4. Reserved
 - 5. Landscape. All residents shall be required to landscape at a minimum with planting beds in the front yard and must seed or sod the entire yard. The landscaping shall be completed within six (6) months following the issuance of an occupancy permit or as soon as reasonably possible the next planting season. The ARC reserves the right to disapprove any landscaping and require changes or alterations thereto if need be.

- (B) Owner Responsibilities. Each Owner shall perform promptly all such maintenance and repairs and shall be liable for any damages that arise due to his or her failure to perform such maintenance and repairs. Furthermore, should the Owner neglect to perform such maintenance and repair, the Association shall have the right to have maintenance performed by its agents or employees and the Owner in question shall be liable to the Association for the cost and expense so incurred and shall be subject to a special assessment therefore.

- (C) Notification to Association. Each Owner shall promptly report to the Association any defect known to such Owner which requires repair of the property for which the Association or a party other than that Owner is responsible.

Section 4.3: Maintenance and Repair of Common Areas

Maintenance and repair of Common Areas and any improvements located thereon is the responsibility of the Association including landscape maintenance and drainage maintenance. The Association shall not waive or abandon the foregoing maintenance obligations without the prior written consent of all Institutional Mortgagees.

ARTICLE V

ASSOCIATION EXPENSES

In order to fulfill the covenants contained in this Declaration and in order to maintain and operate the Common Areas for the use, safety, welfare and benefit of Owners, their families, invitees, guests and lessees there is hereby imposed upon each Lot and its Owners the affirmative covenant and obligation to pay the Association (in the manner set forth in Article VI hereof), and upon the Association, the obligation to assess, collect and expend, the Association Expenses, for those Association expenses described in this Declaration, including the following:

Section 5.1: Common Area

- (A) Taxes. Any and all taxes levied or assessed at any and all times upon the Common Areas by any and all taxing authorities, including all taxes, charges, assessments and impositions and liens for public improvements, special charges and assessments, and water drainage districts and, in general, all taxes and tax liens which may be assessed against the Common Areas and against any and all personal property and improvements which are now or which hereafter may be placed thereon, including any interest, penalties and other charges which may accrue on such taxes.
- (B) Utility Charges. All charges levied for utilities providing services for the Common Areas, whether supplied by a private or public firm including, without limitation, all charges for water, gas electricity, telephone, sewer and any other type of utility or service charge.
- (C) Insurance. The premiums on any policy or policies of insurance required to be obtained by the Association under this Declaration or the Documents.
- (D) Maintenance, Repair and Replacement. Any and all expenses necessary to:
 - 1. Maintain and preserve the Common Areas (including such

expenses as grass cutting, tree trimming and other landscape maintenance, operating and maintaining sprinklers and the like): and

2. To keep, maintain, repair and replace any and all improvements upon the Common Area in a manner consistent with the development of FOX CREEK, the covenants and restrictions contained herein and all orders, ordinances, rulings and regulations of any and all federal, state and city governments having jurisdiction thereover as well as the statutes and laws of the State of Illinois and the United States.

- (E) Administrative Expenses. The costs of administration for the Association, including any secretaries, bookkeepers and other employees necessary to carry out the obligations and covenants of the Association under this Declaration, notwithstanding the fact that some of these services may be expended in providing services to or collecting sums owed by particular Owners. In addition, the Association may retain a managing company, or contractors to assist in the operation of the Association and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs of any management company or contractor so retained shall be deemed to be part of the Common Area Expenses.
- (F) Indemnification. The costs to the Association of indemnifying its Officers and members of the Board of Directors for all costs and expenses whatsoever incurred in the pursuance of their duties, obligations and functions hereunder and in any legal defense of such actions or in settlement thereof including, without limitation, counsel fees and costs at all levels of any trial or appeal or other proceeding, costs of investigation and discovery, etc.
- (G) Enforcement. Any and all expenses incurred by the Association in enforcing any of the covenants, restrictions, terms and conditions of the Declaration or in curing any default, violation or failure to perform or abide by such covenants, restrictions, terms and conditions.
- (H) Reserve Funds. The costs to establish, at the discretion of the Association, an adequate reserve fund for replacement and/or capital refurbishment of the Common Areas in amounts determined proper and sufficient by the Association. Each Owner acknowledges, understands and consents that such reserve funds are the exclusive property of the Association as a whole and that no Owner shall have any interest/claim or right to any reserve funds. The Association shall be responsible for maintaining the reserve funds in a separate reserve

account and to use such funds only for capital costs and expenses as aforesaid.

- (l) Miscellaneous Expenses. The costs of all items of expense pertaining to or for the benefit of the Common Areas or any part thereof, or the Association not herein specifically enumerated and which is determined to be a Common Area Expense by the Association including, but not limited to, the cost of refuse collection if billed to the Association and not individual Owners and the cost of providing security services to FOX CREEK in the event the Board of Directors elects to provide such services.

ARTICLE VI

METHOD OF DETERMINING ASSESSMENT OF ASSOCIATION EXPENSES

Section 6.1: **Assessments**

It is hereby declared, and all Owners and the Association agree, that the Association Expenses shall be disbursed by the Association out of funds assessed and collected from assessments paid by all Owners in FOX CREEK.

Section 6.2: **Determining Individual Assessments**

- (A) As provided in the By-Laws of the Association, the Board shall prepare an annual estimated budget which shall reflect the annual Association Expense described in Article V. Thereupon the Board of Directors shall allocate to all FOX CREEK Lots an equal share of the said annual Association Expenses. The share of the Annual Association Expenses allocated to an Owner is the "Individual Assessment" for each Lot.
- (B) The Individual Assessment shall be payable at such time as the Board of Directors determines.
- (C) Each Owner shall receive through a Prescribed Delivery Method, at least thirty (30) days but not more than sixty (60) days prior to the adoption thereof by the Board, a copy of the proposed annual budget together with an indication of which portions are intended for reserves, capital expenditures or repairs or payment of real estate taxes.

Section 6.3: **Liability of Owners for Individual Assessments**

By the acceptance of a deed or other instrument of conveyance of a Lot in FOX CREEK each Owner thereof acknowledges that each Lot and the Owners thereof are jointly and severally liable for their own Individual Assessment as provided for herein. Accordingly, subject to such specific limitations, it is recognized and

agreed by each Owner for himself or herself and his or her heirs, executors, successors and assigns, that in the event Owners fail or refuse to pay their Individual Assessment or any portion thereof or their respective portions, then the other Owners may be responsible for increased Individual Assessments due to the nonpayment by such other Owners, and such increased Individual Assessment can and may be enforced by the Association in the same manner as all other assessments hereunder as provided in this Declaration.

Section 6.4: **Additional Assessment Provisions**

- (a) 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 and fifteen percent (115%) of the sum of all regular and separate Assessments payable during the preceding fiscal year, the Association, upon written petition by Owners with twenty percent (20%) of the votes of the Association delivered to the Board within fourteen (14) days of the Board action, shall call a meeting of the Owners within thirty (30) days of the date of delivery of the petition to consider the budget or separate Assessment; unless a majority of the total votes of the Owners are cast at the meeting to reject the budget or separate Assessment, it shall be deemed ratified.
- (b) If total Association Expenses exceed the total amount of the approved and adopted budget, the Association shall disclose this variance to all the Owners and specifically identify the subsequent Assessments needed to offset this variance in future budgets
- (c) Separate Assessments for expenditures relating to emergencies or mandated by law may be adopted by the Board without being subject to Owner approval or the provisions of subsection (a) or (d) of this Section. As used herein, "emergency" means a danger to or a compromise of the structural integrity of the Common Areas or any of the common facilities of the Land. "Emergency" also includes a danger to the life, health or safety of the membership.
- (d) 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 approval of a simple majority of the total Owners at a meeting called for that purpose.
- (e) The Board may adopt separate Assessments payable over more than one fiscal year. With respect to multi-year Assessments not governed by subsections (c) and (d) of this Section, the entire amount of the multi-year Assessment shall be deemed considered and authorized in the first fiscal year in which the Assessment is approved.

Section 6.5: **Itemized Accounting**

The Board shall provide all Owners with a reasonably detailed summary of the receipts, Association Expenses, and reserves for the preceding budget year. The Board shall (i) make available for review to all Owners an itemized accounting of the Association Expenses for 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 net excess or deficit of income over expenditures plus reserves or (ii) provide a consolidated annual independent audit report of the financial status of all fund accounts within the Association.

ARTICLE VII

ESTABLISHMENT AND ENFORCEMENT OF LIENS

Section 7.1: **Liens**

Any and all Individual Assessments for Association Expenses, and Special Assessments and all installments thereof (collectively the "Assessments") with interest thereon at the highest rate allowed by law and costs of collection, including attorneys' fees are hereby declared to be a charge and continuing lien upon Lot and the home against which each such Assessment is made. Each Assessment against a Lot and the home, together with interest thereon at the highest non-usurious rate allowed by law (and if not such rate specified by law, then at eighteen percent (18%) per annum) and costs of collection thereof, including attorneys' fees, shall be the personal obligation of the Person, Persons or entity owning the Lot and/or home assessed. As to Institutional Mortgagees, said lien shall be effective only from and after the time of recordation amongst the Public Records of the County, of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a recordable satisfaction of the statement of lien. Where an Institutional Mortgagee obtains title to a Lot or home as a result of foreclosure of its mortgage or deed given in lieu of foreclosure, such acquirer of title, its successors, and assigns, shall not be liable for the share of Assessments pertaining to such Lot and/or home or chargeable to the former Owner which become due prior to the acquisition of title as a result of the foreclosure, unless such share is secured by a claim of lien for Assessments that is recorded prior to the recording of the foreclosed mortgage. Such unpaid share of Assessments shall be added to the Assessments collectible from all other Lots and homes. The foregoing shall not excuse an Institutional Mortgage from payment of Assessments

pertaining to a Lot and/or home which accrue during the period of ownership of such Lot and/or home by such Institutional Mortgagee whether or not such Lot and/or home is occupied.

Section 7.2: Enforcement

In the event any Owner shall fail to pay Assessments or any installment thereof charged to his or her Lot within fifteen (15) days after the same becomes due ("Delinquent Owner"), then the Association, through its Board of Directors, shall have any of the following remedies to the extent permitted by law:

- (A) To accelerate the entire amount of any Assessments for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.
- (B) To advance on behalf of the Delinquent Owner funds to accomplish the needs of the Association and the amount or amounts of monies so advanced, including reasonable attorneys' fees and expenses which might have been reasonably incurred because of or in connection with such advance, including costs and expenses of the Association if it must borrow to pay expenses because of the Delinquent Owner, together with interest at the highest non-usurious rate allowable by law (and if no such rate is specified by law, then an eighteen percent (18%) per annum), may thereupon be collected or enforced by the Association and such advance or loan by the Association shall not waive the default.
- (C) To place of record a claim of lien against the home/and or Lot of the Delinquent Owner.
- (D) To file an action in equity to foreclose its lien at anytime after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property.
- (E) To file an action at law to collect said Assessment plus interest at the highest non-usurious rate allowable by law (and if no such rate is specified by law, then at eighteen percent (18%) per annum) plus court costs and attorneys' fees without waiving any lien rights and/or rights of foreclosure in the Association.

ARTICLE VIII

INSURANCE

Section 8.1: **Common Areas Insurance**

The Association shall purchase the following coverage for the Common Areas subject to the following provisions:

- (A) Liability Insurance. The costs of the policy or policies of insurance in the form generally known as Public Liability and/or Owners policies insuring the Association against any and all claims and demands made by any Person or Persons whomsoever for injuries received in connection with the use, operation and maintenance of Common Areas and improvements and buildings located thereon, or for any other risk insured against by such policies which the Association, in its sole discretion, determines to insure against. Each policy purchased by the Association shall have limits of not less than Three Million Dollars (\$3,000,000) or such other amount as may be determined from time to time by the Association covering all claims for personal injury and One Hundred Thousand (\$100,000) or such other amount as may be determined from time to time by the Association for property damage arising out of a single occurrence. The coverage of the liability insurance policies purchased by the Association shall include protection against liability for property damage, bodily injuries and deaths of person in connection with the operation, maintenance or use of the Common Areas, legal liability arising out of lawsuits related to employment contracts of the Association, water damage liability, liability for non-owned and hired automobiles, liability of hazards related to usage and liability for property of others. All such policies will name the Association as the insured under such policy or policies. The insurance purchased shall contain a "severability of interest endorsement", or equivalent coverage, if such endorsement is reasonably obtained, which would preclude the insurer from denying the claim of an Owner because of the negligent acts of either the Association or any other Owners or deny the claim of the Association because of the negligent acts of an Owner.
- (B) Casualty Insurance. The costs of the policy or policies of insurance to allow the Association to insure any improvements now located or which may hereafter be located, built or placed upon the Common Areas against loss or damage caused by or resulting from at least the following: fire and other hazards covered by the standard extended coverage endorsement, sprinkler leakage, windstorm, vandalism, malicious mischief, water damage, debris removal and

demolition, and such other risks as the Association shall determine are customarily covered with respect to FOX CREEK in construction, location and use.

Section 8.2: **Miscellaneous Insurance**

The Association may also obtain such forms of insurance and in such coverages as the Association shall determine for the protection and preservation of the Common Areas. Such insurance may include without limitation, worker's compensation insurance and flood insurance, and fidelity coverage to protect against dishonest acts of the officers, directors and employees of the Association. The Association shall obtain and maintain fidelity insurance covering Persons who control or disburse funds of the Association for the maximum amount of coverage that is commercially available or reasonably required to protect funds in the custody or control of the Association.

ARTICLE IX

GRANT AND RESERVATION OF EASEMENTS

The following easements over and across the Land are granted for the duration of the term of this Declaration (except as hereafter provided) and for the benefit of the parties or properties as hereinafter specified for the following purposes:

Section 9.1: **Rights-of-Way**

A perpetual nonexclusive easement is hereby declared, granted and reserved in favor of the Association, Owners, their lessees and family members, guests and invitees over and upon the walks, road right of way, and other rights-of-way within the Common Areas to provide ingress, egress and access to and from, through and between the Land and publicly dedicated roads.

Section 9.2: **Rights of Association to Enter Upon the Land**

An easement or easements for ingress and egress in favor of the Association by its Board of Directors or the designees of the Association to enter upon each portion of the Land for the purpose of fulfilling its duties and responsibilities of ownership, administration, maintenance and repair in accordance with the Documents.

Section 9.3: **Use and Enjoyment of Common Area**

A nonexclusive easement for the use and enjoyment and for access over and to the Common Areas on behalf of the Association and Owners their lessees, family members, guests and invitees; provided, however, an Owner's easement to such use and enjoyment may be temporarily suspended by the Association upon

written notice for a period not to exceed thirty (30) days for failure of an Owner, his or her lessee, or their family members, guests or invitees to conform to the rules and regulations promulgated by the Association in regard to use of the Common Areas.

Section 9.4: Easement for Owners within Fox Creek

An easement over and to the Common Areas in favor of the owners of any residential dwelling unit now or hereafter located upon any portion of FOX CREEK for purposes of ingress and egress across, over and upon the Land and the private roadways located or to be located thereon to and from publicly dedicated rights-of-way.

ARTICLE X

CONDEMNATION

Repair and Placement. If any improvements upon the Common Areas not included in the taken area shall be damaged or partially destroyed by such condemnation, then the Association shall proceed with reasonable diligence to demolish, if necessary, and to construct, repair, replace or rebuild such improvements so such improvements are complete and in good condition and repair. The Association shall hold that portion, if any, of the taken area award which represents consequential damages to said improvements or replacements thereof in trust for application of the same to the cost and expense as herein provided. Repair of such improvements shall be conducted under the supervision of any architect or engineer licensed in the State of Illinois selected by the Association, and such work shall be done in accordance with plans and specifications prepared and approved in writing by such architect or engineer.

ARTICLE XI

ENFORCEMENT

The covenants and restrictions contained in these Documents may be enforced by the Association and any Owner in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any person, firm or entity violating or attempting to violate any covenant or restriction hereunder. The failure by any party to enforce any covenant, restriction or easement herein contained shall in no event be deemed a waiver of such covenant, restriction or easement or of the right of such party to thereafter enforce such covenant, restriction or easement. The prevailing party in any such litigation shall be entitled to reasonable attorneys' fees.

ARTICLE XII

AMENDMENT AND MODIFICATION

Section 12.1:

In addition to amendments provided for elsewhere in the Articles, this Declaration may be amended at any regular or special meeting of the Owners called and held in accordance with the By-Laws by the affirmative vote of the Owners owning Sixty Seven Percent (67%) of the Lots. An amendment to the Declaration shall be evidenced by a certificate executed by the Association. The amendment shall become effective upon the recording of the certificate amongst the Public Records of the County.

Section 12.2:

Whenever it shall appear to the Association that there is a technical or minor defect, error or omission in the Declaration, the Association, through its Board of Directors, may amend the Declaration. The amendment shall become effective upon the recording of a certificate amongst the Public Records of the County.

Section 12.3:

No amendment shall be adopted which shall materially impair or prejudice the rights or priorities of the Association and any Institutional Mortgagee under this Declaration without the specific written approval of the Association or any Institutional Mortgagee affected thereby, nor shall any amendment which would affect the surface water management system, including the water management portions of the Common Areas, be made without the prior approval of the County of Kane or the Wasco Sanitary District.

Section 12.4:

The following amendments shall require the affirmative votes of the Owners owning at least seventy percent (70%) of the Lots.

- (A) Amend Article VI of this Declaration to change the method of determining the obligations, assessments, or other charges which may be levied against any Owner;
- (B) Amend Article VIII of this Declaration to decrease the minimum insurance requirements.

ARTICLE XIII

TERM

This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, easements, burdens and liens contained herein, including without limitation, the provisions for assessment of a home shall run with and bind the Land and inure to the benefit of the Association, Owners and their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date of the recording of this Declaration amongst the Public Records of the County, after which time this Declaration shall be automatically renewed and extended for successive period of ten (10) years each, unless at least one (1) year prior to the termination of such twenty-five (25) year term or of any such ten (10) year extension thereof there is recorded amongst the Public Records of the County, an instrument signed by the then Owners owning two-thirds (2/3) of the Lots and all Institutional Mortgagees in existence one (1) year prior to the termination of such term or extension agreeing to terminate this Declaration, upon which event this Declaration shall be terminated upon the expiration of the twenty-five (25) year term or the ten (10) year extension during which such instrument of termination is recorded.

ARTICLE XIV

GENERAL PROVISIONS

Section 14.1: Notices

Any notices or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid, to: (i) any Owner, to the last known address of the person whose name appears as the Owner on the records of the Association at the time of such mailing; and (ii) the Association at such address as the Association shall hereafter notify all Owners of in writing. Additionally, any notice to an Owner may be provided to an Owner via Acceptable Technological Means if the Owner has consented in writing to receiving notice via such Acceptable Technological Means.

Section 14.2: Captions

Article and Section captions inserted throughout this Declaration are intended only as a matter of convenience and for reference only and in no way shall such captions or headings define, limit or in any way affect any of the terms and provisions of this Declaration.

Section 14.3: Context

Whenever the context so requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

Section 14.4: Severability

In the event any one of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said juridical determination shall in no way affect any of the other provisions hereof which shall remain in full force and effect. Further, the invalidation of any of the covenants or restrictions or terms and conditions of this Declaration or a reduction in the term of the same by reason of the rule of law known as the "rule against perpetuities" shall in no way affect any other provision which shall remain in full force and effect for such period of time as may be permitted by law.

Section 14.5: Management

The Association, pursuant to resolution duly adopted by its Board of Directors, shall have the continuing authority to delegate all or any portion of its responsibilities for maintenance, operation and administration, as provided herein, to a managing agency or entity selected by the Board of Directors from time to time.

Section 14.6: Attorneys' Fees

Any provision herein for the collection or recovery of attorneys' fees shall be deemed to include, but not be limited to, court costs and attorneys' fees for the attorneys' services at all trial and appellate levels and post judgment proceedings and, unless the context clearly indicates a contrary intention, whether or not suit is instituted.

Section 14.7: Interpretation

In the event of a conflict between the provisions of this Declaration and the Articles and By-Laws, the provisions of this Declaration shall control. In the event of a conflict between this Declaration and the Master Declaration, the Master Declaration shall control.

Section 14.8: Rule Against Perpetuities

In the event any court should hereafter determine any provisions as originally drafted herein are in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of the period

involved, the period specified in the Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rule of law, and for such purpose, "measuring lives" shall be those of the signatories hereof.

Additional provisions added by Corrected and Re-recorded First Amendment to the Declaration of Covenants, Restrictions and Easements for Fox Creek Unit 1 and Corrected and Re-recorded First Amendment to the Declaration of Covenants, Restrictions and Easements for Fox Creek Unit 2:

1. Except as otherwise set forth herein, each of lots 85 through 88 in Unit 1 and lots 89 through 92 in Unit 2 (hereinafter referred to as the "Original Owner Lots") are hereby exempt from the Declaration, and from all dues or assessments levied in connection with the Declaration, until, with respect to each such Original Owner Lot individually, the earlier of:
 - A. Transfer of any such Original Owner Lot from Christine Brauer (hereinafter referred to as the "Original Owner") (including any heir, legatee or beneficiary) to any third party;
 - B. The commencement of construction or the issuance of a building permit on any such Original Owner Lot;
 - C. The calendar year following the year in which Original Owner no longer owns any portion of the Retained Property; or
 - D. The 2030 Association budget year.
2. Farming operations shall be permitted on the Original Owner Lots provided that no farming shall take place closer than thirty (30) feet from the front lot line, provided further that no farming shall interfere with any utilities or underground improvements existing on such Original Owner Lots, and provided further that said Original Owner Lots shall be neatly maintained, and no dumping shall be permitted on such Original Owner Lots.

END OF TEXT OF DECLARATION

This instrument was prepared by, and upon recording return to:

Costello Sury & Rooney, P.C.
One Lincoln Centre, Suite 1670
Oakbrook Terrace, Illinois 60181
(630) 690-6446

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

The undersigned hereby certifies that I am the duly elected, qualified and acting President of the Board of Directors of Fox Creek Property Owners Association, Inc., and that the attached is a true, correct, and accurate copy of the Amended and Restated Declaration of Covenants, Restrictions and Easements for Fox Creek and the Second Amended and Restated By-Laws of Fox Creek Property Owners Association, Inc., attached hereto as Exhibit "B", and that said documents were approved by at least two-thirds (2/3) of the directors on the Board of Directors of Fox Creek Property Owners Association, Inc. at a Board meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 2ND day of DECEMBER, 2022.

Fox Creek Property Owners Association, Inc.

James McKelvie
[Printed Name]

By: James McKelvie
As President of the Board of Directors

I, Jenni Myers, a Notary Public, hereby certify that on the above date, the above President of the Board of Directors of Fox Creek Property Owners Association, Inc., which Board member is personally known to me, appeared before me and acknowledged that, as such Board member, he/she signed this instrument as his/her free and voluntary act of said Board for the uses and purposes therein set forth.

BY: Jenni Myers 12/2/22



List of Appendices and Exhibits

Appendix "A" – Living Area Restrictions

Appendix "B" – Yard Setbacks

Exhibit "A" – Legal Description of the Land

Exhibit "B" – By-Laws

Appendix "A"

Living Area Restrictions

*Unless otherwise amended by the ARC, no home shall be constructed which has less than 3,000 square feet of living area for a two story home, or 2,500 square feet of living area for a ranch home. The term "living area" shall not include garage, porch or area below grade. Raised ranches, tri-level and bi-level homes shall not be permitted.

Appendix "B"

Yard Setbacks

Unless otherwise amended by the Architectural Review Committee (ARC), the front yard setback of homes on lots 1 through 12 inclusive, 53 through 64 inclusive, 65 through 73 inclusive, and 74 through 88 inclusive in Fox Creek shall be set back no less than 25 feet and no more than 30 feet from the lot line. The front yard setbacks of homes on lots 13 through 21 inclusive shall be no less than 35 feet and no more than 40 feet from the lot line.

Unless otherwise amended by the Architectural Review Committee (ARC), the front yard setback of homes on lots 22 through 38 inclusive, and lot 39 if the home fronts on Fox Creek Drive, in Fox Creek, shall be set back no less than 35 feet and no more than 40 feet from the lot line. The front yard setbacks of homes on lots 40 through 52 inclusive, lots 89 through 92 inclusive, and lot 39 if the home fronts Ellis Johnson Lane shall be no less than 25 feet and no more than 30 feet from the lot line.

Side yard setbacks for lots 1 through 12 inclusive, 53 through 64 inclusive, 65 through 73 inclusive, and 74 through 88 inclusive, must be a minimum of six feet with a required combined setback of fifteen feet. Side yard setbacks for lots 13 through 21 inclusive shall be a minimum of eight feet with a required combined setback of eighteen feet.

Side yard setbacks for lots 22 through 39 inclusive, must be a minimum of 8 feet with a required combined setback of 18 feet. Side yard setbacks for lots 40 through 52 inclusive and lots 89 through 92 inclusive shall be a minimum of 6 feet with a required combined setback of 15 feet.

The ARC and declarant shall have the right to establish the setbacks without the above parameters.

Variances from this covenant may be made by the ARC or the declarant with respect to corner lots.

Exhibit "A"

Legal Description of the Land

Parcel 1, Parcel 2, Parcel 3, Lots 1 through 21 inclusive, Lots 53 through 88 inclusive, in Fox Creek, Unit No. 1, Campton Township, Kane County, Illinois.

AND

Parcel 1 and Parcel 2, Lots 22 through 52 inclusive, Lots 89 through 92 inclusive, in Fox Creek, Unit No. 2, Campton Township, Kane County, Illinois.

EXHIBIT "B"

SECOND AMENDED AND RESTATED BY-LAWS OF FOX CREEK PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE I

PURPOSES

The purposes for which the FOX CREEK PROPERTY OWNERS ASSOCIATION, INC. ("Association") is organized are to perform the general management and supervision of the Land and the ownership of the Common Areas thereof and to be responsible to perform all of the obligations in the Declaration. Further, the Association shall have the powers now or hereafter granted by the Act and the General Not-For-Profit Corporation Act of the State of Illinois which shall be consistent with the purposes specified herein and in the Declaration.

The By-Laws shall refer to and incorporate by reference all of the provisions of the Amended and Restated Declaration of Covenants, Restrictions and Easements for Fox Creek ("Declaration") to which these By-Laws are attached as Exhibit "B". Terms used in these By-Laws shall have the same definitions as given to the terms in the Declaration unless otherwise provided herein.

ARTICLE II

OFFICES

The Association shall have and continuously maintain in this state a registered office and a registered agent whose office is identical with such registered office, and may have other offices within or without the State of Illinois as the Board of Directors may from time to time determine.

ARTICLE III

MEMBERS

Section 1: **Members**

As provided in the Declaration, every Owner of a single-family Lot which is subject to the Declaration shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to the Declaration. Ownership of such Lot shall be the sole qualification for membership.

Section 2: **Membership Subject to Assessment**

The rights of membership are subject to the payment of annual and special assessments levied by the Association as set forth in the Declaration.

Section 3: **Voting Rights**

Each member shall be entitled to one vote on each matter submitted to a vote of the members. Where there is more than one Owner of a Lot, such co-owners shall be entitled to one vote. In no event shall more than one vote per Lot be permitted.

ARTICLE IV

MEETING OF MEMBERS

Section 1: **Annual Meeting**

An annual meeting of the members shall be held as established by the Board of Directors for the purpose of electing directors and for the transaction of such other business as may come before the meeting.

Section 2: **Special Meeting**

Special meetings of the members maybe called either by the president, the Board of Directors, or not less than twenty percent (20%) of the members having voting rights. Special meetings may be called for the purpose of conducting elections and transacting any other business of the Association. The Board may establish regularly scheduled meetings at its discretion

Section 3: **Place of Meeting**

The Board of Directors may designate the place of meeting for any annual meeting or for special or regularly scheduled meeting called by the Board of Directors. If no designation is made, the place of the meeting shall be at the principal office of the Association.

Section 4: **Notice of Meetings**

Written or printed notice stating the place, day and hour of any meeting of members shall be delivered by a Prescribed Delivery Method to each member entitled to vote at such meeting, not less than ten (10) nor more than thirty (30) days before the date of such meeting, by or at the direction of the president, the secretary, the officers or persons calling the meeting.

In case of a special meeting or when required by statute or by these By-Laws, the purpose for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed delivered when deposited in the United States mail addressed to the member at his or her address as it appears on the records of the Association, with postage thereon prepaid. If no objection to the form and time of such notice is made within thirty (30) days of any meeting, objections shall be deemed waived.

Section 5: Informal Action by Members

Any action required to be taken at a meeting of the members of the Association, or any other action which may be taken at a meeting of members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

Section 6: Quorum

The members holding twenty percent (20%) of the votes which may be cast at any meeting, by proxy or otherwise, shall constitute a quorum at such meeting. If a quorum is not present at any meeting of members, a majority of the members present may adjourn the meeting from time to time without further notice.

Section 7: Proxies

At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his/her Lot.

ARTICLE V

BOARD OF DIRECTORS

Section 1: General Powers

The affairs of the Association shall be managed by its Board of Directors (the "Board").

Section 2: Number, Tenure and Qualifications

The number of directors shall be not less than three (3) and not more than five (5). Each director shall hold office until the next annual meeting of members (unless the Board specifies a different term in any particular election) and until his or her successors shall have been elected and qualified. Directors shall be elected from the members of the Association. If there are multiple Owners of a

single Lot, only one of the multiple Owners shall be eligible to serve as a member of the Board at any one time, unless the Owner owns another Lot independently. The Board may elect to alter or stagger the terms of the Directors in its sole discretion, by majority vote of the Board. No individual term shall exceed two (2) years, however directors may serve multiple terms.

Section 3: **Removal of Directors**

Two-thirds (2/3) of the members in the Association may remove a Board member as a director at a duly called special meeting.

Section 4: **Regular Meetings**

A regular annual meeting of the Board of Directors shall be held immediately after, or concurrent with, and at the same place as, the annual meeting of members.

Section 5: **Special Meetings**

Special meetings of the Board of Directors maybe called by or at the request of the president or twenty-five percent (25%) of the directors.

Section 6: **Notice**

- (a) Notice of any meeting of the Board of Directors shall be given at least two (2) days previously thereto by written notice delivered by a Prescribed Delivery Method to each director at his or her address as shown by the records of the Association. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these By-Laws.

- (b) 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 or other conspicuous places in the Common Area at least forty-eight (48) hours prior to the meeting except where there is no common entranceway for seven (7) or more Lots, the Board may

designate one or more locations in the proximity of these Lots where the notices of meetings shall be posted.

- (c) The Board shall give members notice of any Board meeting, through a Prescribed Delivery Method, concerning the adoption of (i) the proposed annual budget, (ii) regular assessments, or (iii) a separate or special assessment within ten (10) to sixty (60) days prior to the meeting.

Section 7: **Quorum**

A majority of the Board of Directors shall constitute a quorum for transaction of business at any meeting of the Board, provided, that if less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 8: **Manner of Acting**

The act of a majority of the directors present at a meeting at which quorum is present shall be the act of the Board of Directors, except where otherwise provided by law or by these By-Laws.

Section 9: **Vacancies**

If there is a vacancy on the Board, the remaining members of the Board may fill the vacancy by a two-thirds (2/3) vote of the remaining Board members 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 fill the vacancy for the balance of the term. A meeting of the members shall be called for purposes of filling a vacancy on the Board no later than thirty (30) days following the filing of a petition signed by membership holding twenty percent (20%) of the votes of the Association requesting such a meeting.

Election to the Board shall be by secret written ballot. 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 Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is permitted.

Section 10: **Compensation**

Directors as such shall not receive any stated salaries for their services, but by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, may be allowed for attendance at any special meeting on behalf of the Association, provided that nothing herein contained shall be construed to preclude any director from serving the Association in any other capacity and receiving compensation thereof.

Section 11: Informal Action

The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

Section 12: Board Liability

The directors from time to time constituting the Board shall not be liable to the members for any mistake or judgment or for any acts made, or omissions to act committed in good faith as such directors.

Section 13: Indemnification

Each person who at any time is or shall have been a director, officer, employee or agent of this Association, or is or shall have been serving at the request of the Association as a director, officer, employee or agent of another association, partnership, joint venture, trust or other enterprise, shall be indemnified by this Association in accordance with and to the full extent permitted by the Illinois Not-For-Profit Corporation Act of 1986 as in effect at the time of adoption of these By-Laws or as amended from time to time. The foregoing right of indemnification shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any by-laws, agreement, vote of members or disinterested directors or otherwise. If authorized by the Board of Directors, the Association may purchase and maintain insurance on behalf of any person to the full extent permitted by the Illinois General Not-For-Profit Corporation Act as in effect at the time of the adoption of these By-Laws or as amended from time to time. If the Association pays indemnity or makes an advance of expenses to a director, officer, employee or agent, the Association shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

Section 14: Powers and Duties of the Board of Directors

Powers – The Board shall have power to:

- (a) Adopt and publish reasonable rules and regulations governing the use by and the personal conduct of the members and their guests therein, and to establish penalties for the infraction thereof; provided that any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the members;
- (b) Suspend the voting rights of a member during any period in which such member shall be in default in the payment of any assessment levied by

the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days, for infraction of published rules and regulations;

- (c) Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the members by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;
- (d) Declare the office of a member of the Board to be vacant in the event such director shall be absent from three (3) consecutive regular meetings of the Board;
- (e) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.
- (f) Obtain legal counsel to enforce the provisions of the Declaration.

Duties – It shall be the duty of the Board to:

- (a) 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, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the members;
- (b) Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;
- (c) As more fully provided is the Declaration, to:
 - (1) fix the amount of the annual or special assessments against each Lot at least thirty (30) days in advance of each annual assessment period;
 - (2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and
 - (3) foreclose the lien against any Lot for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same;
- (d) Issue, or to cause an appropriate officer to issue, upon demand by an Owner, a certificate setting forth whether or not any assessment on the Owner's Lot has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an

assessment has been paid, such certificate shall be conclusive evidence of such payment;

- (e) Procure and maintain adequate liability and hazard insurance on property owned by the Association;
- (f) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.

Section 15: Open Meetings

Meetings of the Board shall be open to any Owner, except that the Board may close any portion of a noticed meeting or meet separately from a noticed meeting: (i) 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, (ii) 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, (iii) to interview a potential employee, independent contractor, agent, or other provider of goods and services, (iv) to discuss violations of rules and regulations of the Association, (v) to discuss a member's or Owner's unpaid share of Association Expenses, or (vi) to consult with the Association's legal counsel. Any vote on these matters shall be taken at a meeting or portion thereof open to any member.

Section 16: Member Comment Period

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 VI

OFFICERS

Section 1: Officers

The officers of the Association shall be a president, a vice president, a treasurer, a secretary and such other officers as maybe elected in accordance with the provisions of this article. The Board of Directors may elect to appoint such other officers, including one or more assistant secretaries and one or more assistant treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time, by the Board of Directors. Any two or more offices may be held by the same person, except the offices of president and secretary.

Section 2: **Election and Term of Office**

The officers of the Association shall be elected annually by the Board of Directors at the regular annual meeting of the Board of Directors. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified.

Section 3: **Removal/Resignation**

Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever, in its judgment, the best interests of the Association would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer may resign at any time by giving written notice to the Board. Such resignation shall be effective on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4: **Vacancies**

A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 5: **President**

The president shall be the principal executive officer of the Association and shall in general supervise and control all of the business and affairs of the Association. He or she shall preside at all meetings of the members and of the Board of Directors. The president may sign, with the secretary or any other proper officer of the Association authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors have authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws or by statute to some other office or agent of the Association; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the Board of Directors from time to time.

Section 6: **Vice President**

In the absence of the president or in the event of his or her inability or refusal to act, the vice president shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the

president. The vice president shall perform such other duties as from time to time may be assigned to him or her by the president or by the Board of Directors.

Section 7: **Treasurer**

If required by the Board of Directors, the treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine. The treasurer shall have charge and custody of and be responsible for all funds and securities of the Association, receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the depositories as shall be selected in accordance with the provisions of Article VIII of these By-Laws; and in general perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him or her by the president or by the Board of Directors.

Section 8: **Secretary**

The secretary shall keep the minutes of the meetings of the members and of the Board of Directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; be custodian of the corporate records and of the seal of the Association and see that the seal of the Association is affixed to all documents, the execution of which on behalf of the Association under its seal is duly authorized in accordance with the provisions of these By-Laws; keep a register of the post office address of each member which shall be furnished to the secretary by such member; and in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the president or by the Board of Directors.

Section 9: **Assistant Treasurers and Assistant Secretaries**

If required by the Board of Directors, the assistant treasurers shall give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine. The assistant treasurers and assistant secretaries, in general, shall perform such duties as shall be assigned to them by the treasurer or the secretary or by the president or the Board of Directors.

ARTICLE VII

COMMITTEES

Section 1: **Other Committees**

Committees may be designated by the president and confirmed by a resolution adopted by a majority of the directors present at a meeting at which a quorum is

present. Except as otherwise provided in such resolution, members of each such committees shall be members of the Association, and the president of the Association shall appoint the members thereof. Any member thereof may be removed by the person or persons authorized to appoint such member whenever in their judgment the best interests of the Association shall be served by such removal.

Section 2: Term of Office

Each member shall continue as such until the next annual meeting of the members of the Association and until his or her successor is appointed, unless the committee shall be sooner terminated, or unless such member be removed from such committee, or unless such member shall cease to qualify as a member thereof.

Section 3: Chairperson

One member of each committee shall be appointed chairperson.

Section 4: Vacancies

Vacancies in the membership of any committee may be filled by appointments made in the manner as provided in the case of the original appointments.

Section 5: Quorum

Unless otherwise provided in the resolution of the Board of Directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 6: Rules

Each committee may adopt rules for its own government not inconsistent with these By-Laws or with rules adopted by the Board of Directors.

ARTICLE VIII

CONTRACT, CHECKS, DEPOSITS, FUNDS AND PROPERTY

Section 1: Contracts

The Board of Directors may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument in the name of and

on behalf of the Association and such authority may be general or confined to specific instances.

Section 2: Checks, Drafts, etc.

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the treasurer or an assistant treasurer and counter-signed by the president or a vice president of the Association.

Section 3: Deposits

All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

Section 4: Gifts

The Board of Directors may accept on behalf of the Association any contribution, gift, bequest or devise for general purposes or for any special purpose of the Association.

Section 5: Delivery of Property

Upon the completion of his or her term, each officer or director of the Association, and every other office holder, shall deliver to his or her successor, or to the Board of Directors, all funds, records, properties and effects of the Association in his or her possession.

ARTICLE IX

ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the Lot against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate specified in the Declaration, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot, and interest, costs, and reasonable attorneys' fees of any such action shall be added to the amount of such assessments provided for herein.

ARTICLE X

BOOKS AND RECORDS

- (a) 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 Owner, their mortgagees, and their duly authorized agents or attorneys:
 - (i) Copies of the recorded Declaration, other Association instruments, other duly recorded covenants and By-Laws and any amendments, Articles of Incorporation, articles of organization, annual reports, and any rules and regulations adopted by the Board shall be available.
 - (ii) 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 shall be maintained.
 - (iii) The minutes of all meetings of the Board which shall be maintained for not less than seven (7) years.
 - (iv) With a written statement of a proper purpose, ballots and proxies related thereto, if any, 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.
 - (v) 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 shall be maintained.
 - (vi) With respect to Lots 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 Owner and a designation shall remain in effect until a subsequent document is filed with the Association.
 - (vii) Any reserve study.

- (b) 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.
- (c) A reasonable fee may be charged by the Board for the cost of retrieving and copying records properly requested.
- (d) If the Board fails to provide records properly requested under paragraph (a) of this Article within the time period provided in that paragraph (a), 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 XI

FISCAL YEAR

The fiscal year of the Association shall begin on the first day of January and end on the last day of December in each year.

ARTICLE XII

WAIVER OF NOTICE

Whenever any notice whatsoever is required to be given under the provisions of the Act, the General Not for Profit Corporation Act of Illinois or under the provisions of the Articles of Incorporation or the By-Laws of the Association, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XIII

AMENDMENT TO BY-LAWS

These By-Laws may be altered, amended or repealed and new By-Laws may be adopted by two-thirds (2/3) of the directors present at any regular meeting or at any special meeting, provided that at least two (2) days' written notice to each director is given of the intention to alter, amend or repeal or to adopt new By-Laws at such meeting.

ARTICLE XIV

STORMWATER MANAGEMENT COMPLIANCE

Notwithstanding anything herein to the contrary, the Association hereby adopts the following provisions from Section 602[c] of the Kane County Stormwater Management Ordinance ("Ordinance"):

- (1) The Association hereby acknowledges and accepts its obligation to maintain those portions of any stormwater drainage system and special management areas conveyed or otherwise transferred to it under the Ordinance.
- (2) The Association hereby acknowledges and confirms that the system of assessments provided for herein and in the Declaration shall be utilized to provide sufficient resources to enable the Association to provide for the maintenance of those portions of any stormwater drainage system and special management areas conveyed or otherwise transferred to it under the Ordinance.
- (3) The Association hereby adopts the plan of long term maintenance set forth in the application for a stormwater management permit, with approved amendments.
- (4) The President of the Association shall be the officer responsible for ensuring that the obligations imposed upon the Association by the Ordinance are carried out.
- (5) Notwithstanding anything herein to the contrary, any proposed amendment to these By-Laws which seeks to change any provision of these By-Laws required by the Ordinance must first be approved in writing by the permitting authority set forth in the Ordinance.
- (6) Notwithstanding anything herein to the contrary, any dissolution of the Association shall require the written consent of the permitting authority set forth in the Ordinance.

END OF TEXT OF BY-LAWS

This instrument was prepared by, and upon recording return to:

Costello Sury & Rooney, P.C.
One Lincoln Centre, Suite 1670
Oakbrook Terrace, Illinois 60181
(630) 690-6446