

**FIRST AMENDED AND RESTATED
CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS, GRANTS AND
EASEMENTS AFFECTING THE PROPERTY KNOWN AS**

ARBOR CREEK

CAMPTON AND ST. CHARLES TOWNSHIPS, KANE COUNTY ILLINOIS

THIS FIRST AMENDED AND RESTATED CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS, GRANTS and EASEMENTS AFFECTING THE PROPERTY KNOWN AS ARBOR CREEK is hereby executed this 6th day of August, 2009.

R E C I T A L S

WHEREAS, Conditions, Covenants, Restrictions, Reservations, Grants and Easements, affecting the property known as Arbor Creek (hereinafter "Declaration No. 1") were established pursuant to a document signed on October 16, 1989 and recorded as Document Number 2002773 at the Office of the Kane County Recorder; and,

WHEREAS, Conditions, Covenants, Restrictions, Reservations, Grants and Easements, affecting the property known as Arbor Creek (hereinafter "Declaration No. 2") were established pursuant to a document signed on September 24, 1991 and recorded as Document Number 91K52757 on September 27, 1991 at the Office of the Kane County Recorder; and,

WHEREAS, Conditions, Covenants, Restrictions, Reservations, Grants and Easements, affecting the property known as Arbor Creek, Unit 3 (hereinafter "Declaration No. 3") were established pursuant to a document signed on December 11, 1991 and recorded as Document Number 91K68336 on December 12, 1991 at the Office of the Kane County Recorder; and,

WHEREAS, Conditions, Covenants, Restrictions, Reservations, Grants and Easements, affecting the property known as Arbor Creek, Unit 4 (hereinafter "Declaration No. 4") were established pursuant to a document signed on June 26, 1992 and recorded as Document Number 92K46628 on June 29, 1992 at the Office of the Kane County Recorder; and

WHEREAS, Conditions Covenants, Restrictions, Reservations, Grants and Easements, affecting the property known as Arbor Creek, Unit 5 (hereinafter "Declaration No. 5") were established pursuant to a document signed on October 21, 1992 and recorded as Document Number 92K75472 on October 23, 1992 at the Office of the Kane County Recorder; and

WHEREAS, Declaration No. 1, Declaration No.2, Declaration No. 3, Declaration No. 4 and Declaration No. 5, (hereinafter referred to as the "Declarations") each provide the following provision setting forth a procedure for amendments:

"PROCEDURE FOR AMENDMENTS. This Article may be amended at any time by the written consent of the members of the Association who own legally and beneficially, a two-thirds (2/3) majority of both Class A and Class B members, if any, of the lots in Arbor Creek."

WHEREAS, the Owners desire to adopt this First Amended and Restated Conditions, Covenants, Restrictions, Reservations, Grants and Easements Affecting the Property Known as Arbor Creek to replace and supersede in their entirety the Declarations described above; and

WHEREAS, the real estate subject to the Declarations is identified and legally described in Exhibit "A" attached hereto and forming a part hereof.

NOW THEREFORE, the Owners hereby adopt this First Amended and Restated Conditions, Covenants, Restrictions, Reservations, Grants and Easements Affecting the Property Known as Arbor Creek.

ARTICLE I

GENERAL PURPOSES – DECLARATION

Section 1. GENERAL PURPOSES. This declaration is made by the owners of said property (hereinafter collectively referred to as "Declarant"), who desire to maintain thereon a Planned Community Development.

Section 2. DECLARATION. The Declarant desires to provide adequately for a Planned Community Development of the highest quality and character by establishing uniform building restrictions and protective covenants for the use and occupancy of real property described in Exhibit "A", which is attached hereto and made a part hereof, as follows:

- (A) For the purpose of securing an attractive, harmonious Planned Community Development that will have continuing appeal, the Declarant shall appoint a Design Review Committee to review the construction plans and specifications showing the nature, kind, shape, height, material and color scheme of all principal and accessory structures;
- (B) In order to preserve and enhance the values of the Planned Community development, the Declarant has deemed it desirable to create an entity to which is hereby delegated and assigned the powers of maintaining and administering the Planned Community Development and the facilities and improvements thereon, and enforcing the covenants, conditions and restrictions contained herein, and collecting and disbursing assessments and charges hereinafter created. For that purpose and others not in conflict with the Declaration, the Declarant will cause to be incorporated an Illinois general not-for-profit corporation to be known as Arbor Creek Homeowners' Association, Inc.

NOW, THEREFORE, the Declarant hereby declares that the said real estate and any additions thereto which may hereafter be made pursuant to the terms hereof, shall be conveyed by the Declarant, and occupied and used by the grantees of the Declarant, and their successors and assigns, subject to the covenants, restrictions, easements, charges and liens, sometimes hereinafter collectively referred to as "Covenants, Conditions, and Restrictions", hereinafter set forth. The provisions of the Declaration are intended to create mutual equitable servitudes upon

each lot becoming subject to this Declaration in favor of each and all other lots; to create privity of contract and estate between grantees of all such lots, their heirs, successors and assigns and to operate as covenants running with the land for the benefit of all such lots for the present and in the future.

ARTICLE II

DEFINITIONS

The following words and terms, when used in this Declaration or any supplemental declaration (unless the contract shall prohibit), shall have the following meanings:

1. ASSOCIATION shall mean and refer to the “Arbor Creek Homeowners’ Association, Inc”, and its successors and assigns.
2. COMMITTEE shall mean the Design Review Committee.
3. CONTRACT PURCHASER shall mean any person(s) or entity that purchases a lot by way of an installment sales contract.
4. DECLARANT shall mean the Owners of the property known as Arbor Creek.
5. DWELLING shall mean any building located on a Dwelling Lot and intended for the shelter and housing of a single family.
6. ACCESSORY STRUCTURE shall mean a subordinate building or a portion of a Dwelling, or any other structure of any kind the use of which is customarily incidental and accessory to the principal use of the Dwelling.
7. DWELLING LOT shall mean any lot intended for improvement with a Dwelling.
8. EXISTING PROPERTIES shall mean and refer to the existing Properties as defined in Exhibit “A” attached hereto and made a part hereof and the property described as Exhibit “B” attached hereto and made of part hereof when all or a portion of such property is subjective to this Declaration from time to time.
9. LIVING AREA shall mean those portions of a Dwelling which are enclosed and customarily used for dwelling purposes and having not less than seven feet six inches (7’6”) headroom, but shall not include open porches, open terraces, breezeways, attached garages, carports, basements (including “walk-out” lower levels), or accessory dwelling buildings.
10. LOT shall mean any parcel of land described by a number upon any recorded subdivision plat of the Properties; but shall not include any parcel designated therein as a “Tract”.
11. MEMBER shall mean all owners who are members as hereinafter provided.

12. OWNER shall mean the record owner (whether one or more persons or entities), of a fee or undivided fee interest or having an interest in real estate as a contract purchaser of any lot or living unit, situated upon the Properties but shall not include any such person or entity who holds such interest merely as a security for performance of an obligation.
13. SINGLE FAMILY shall mean one or more persons, each related to the other by blood, marriage or adoption, or a group of not more than four persons not all so related, who maintain a common household in a dwelling.
14. STORY shall mean that portion of a Dwelling included between the surface of any floor and the surface of a floor next above, or if there is no floor above, the space between the floor and the ceiling next above.
15. STRUCTURE shall mean any building or other improvement erected or constructed, the use of which requires more or less permanent location on or in the ground, or attached to something having more or less permanent location on or in the ground. All fences or signs or other advertising devices, attached or projecting, shall be construed to be a separate structure.
16. COMMON AREA shall mean property surrounding the bicycle path, the two ponds, the wetlands area, the cul-de-sacs and any other parcel of land within the subdivision not currently designated a lot number as more fully described in the Plats of Subdivision.

ARTICLE III

DESIGN REVIEW

Section 1. OBJECTIVES The Declarant's objectives are: To carry out the General Purposes as expressed in this Declaration and to assure a development of a distinctively high quality; to insure that Arbor Creek is a community in which all lots effectively implement energy efficient features making Arbor Creek one of the more desirable areas in which to live in Kane County, Illinois; to assure that any improvements or changes in the Properties will be in harmony with the natural beauty of the area.

Section 2. DESIGN REVIEW COMMITTEE the design review committee shall be a voluntary committee preferably consisting of a minimum of five members although not mandatory. The committee's purpose is to review and approve all proposed projects by homeowners taking place on their lot or to the exterior of their dwelling; to advise the board of potential covenant violations; and to annually submit Design Review guidelines to the board for approval.

Section 3. MATTERS REQUIRING APPROVAL Prior written approval shall be obtained from the Declarant with respect to all matters stated in this Declaration as requiring approval. Lot owners are encouraged to submit preliminary sketches for "informal comment" prior to submittal of final architectural drawings and specifications for final review. No building, fence, wall, pool, tennis court, driveway access, or any other principal or accessory structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to

or change or alteration be made until the plans and specifications showing the nature, kind, shape, elevations, heights, materials, color, location, grade, proposed landscaping, and site clearing or preparation have been submitted to and approved in writing by the Design Review Committee.

Section 4. PROCEDURE Whenever approval is required by the Design Review Committee, appropriate architectural plans, including a site layout, landscaping plan, and specifications shall be submitted to the Design Review Committee and they shall either approve or disapprove such design, location, proposed construction and site clearing and preparation activities within thirty (30) days after said plans and specifications have been submitted to it; except that if such plans and specifications are disapproved in any respect, the applicant shall be notified wherein such plans and specifications are deficient. The Design Review Committee may withhold approval for any reason deemed by it to be appropriate, including aesthetic reasons, except that approval will not be withheld for capricious, subjective, or unreasonable reasons. If such plans and specifications are neither approved nor disapproved within thirty (30) days after submission, approval shall be deemed to have been given and this article fully complied with.

Section 5. NON-LIABILITY FOR APPROVAL OF PLANS. Plans and specifications shall be approved by the Design Review Committee as to style, exterior design, appearance, and location, but such approval shall not constitute approval for engineering design, or for compliance with zoning and building ordinances. By approving such plans and specifications, neither the Design Review Committee, the members thereof, the Declarant, nor any professional consultant engaged by the Design Review Committee, assumes any liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications. Neither the Design Review Committee, any member thereof, nor the Developer 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, drawings and specifications, whether or not defective, (b) the construction of performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of manner of development of any property within Arbor Creek, or (d) the execution of filing of an estoppel certificate pursuant to the Design Guidelines, 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 Design Review Committee 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.

Section 6. ASSIGNABILITY. The function of the Design Review Committee under this Article may be assigned at the sole discretion of the Design Review Committee with board approval.

ARTICLE IV

PROTECTIVE COVENANTS

On and after the date hereof, title to the property legally described in Exhibit "A" shall be subject to the following covenants which shall run with the land and which are protective covenants applicable to all of the property described on Exhibit "A" attached hereto and made a

part hereof. Additional property as described on Exhibit "B" attached hereto and made a part hereof may be subjected to the Declaration from time to time. No principal building or other accessory structure of any kind shall be erected, moved to and on, altered or permitted to remain on any lot which does not comply with the following restrictions:

Section 1. LAND-USE SINGLE RESIDENTIAL. All properties submitted to this Declaration (and any future areas of Arbor Creek) shall be used only as Residential Dwelling Lots for a detached single-family residence with attached garage. Each dwelling shall be designed or erected for occupation by a single family for the sole use of the owner family. Leasing, licensing or rental of any Lot or Dwelling is expressly prohibited in Arbor Creek. No home occupation or profession shall be conducted on any lot except as permitted by local zoning ordinances and appropriate governmental regulation.

Section 2. SUBDIVISION OF LOTS. No lot shall be subdivided or resubdivided to create additional buildable lots. No more than one (1) such detached single-family Residential Dwelling with attached garage shall be built on any said lot. This restriction shall not prevent a purchased of two (2) or more contiguous lots from building a dwelling on more than one adjoining platted lots or two (2) dwellings on three (3) or more adjoining platted lots as shown on the development plat. Declarant reserves the right to make boundary and non-recorded easement adjustments not inconsistent with the intent of this section, which adjustments shall not be deemed to be a subdivision as contemplated herein.

Section 3. LOCATION OF STRUCTURE ON LOT. The Declarant deems that the establishment of standard inflexible building setback lines for location of structures on individual lots would incompatible with the objective of preserving the natural setting of the area and preserving and enhancing existing features of natural beauty and visual continuity of the area. The Declarant, therefore, reserves the right to establish setback lines on a lot-by-lot basis greater than the minimum described below. The minimum setback from any front lot line shall be thirty-five (35) feet. The minimum setback from any side lot lines shall be twenty (20) feet. The minimum setback from any rear lot line shall be twenty (20) feet.

Section 4. QUALITY OF STRUCTURE. It is the intent and purpose of these covenants to insure that all structures shall be of high quality design, workmanship and materials, and that they shall be compatible and harmonious with the natural setting of the area and other structures within the Development. All structures shall be constructed in accord with applicable building codes and with more restrictive standards which may be required by the Declarant and the Design Review Committee.

Section 5. SIZE OF STRUCTURE. No structure shall be constructed or altered which is more than three (3) stories or forty (40) feet in height, whichever is lesser. Chimneys and ornamental architectural projections shall not be included in calculating the height. The living area of the dwelling, exclusive of the attached garage, and/or open porches shall be:

(A) For one-story dwelling not less than 2,000 square feet;

(B) For dwelling of more than one story, not less than 2,200 square feet with 1,100 square feet on the first floor. All garages shall be attached to the dwelling and shall be constructed at the same time as the Residence Dwelling. There shall be no less than

a two (2) car attached garage nor more than a four- (4) car attached garage for each dwelling unit constructed.

Section 6. TEMPORARY STRUCTURES. No trailer, tent or garage shall be used at any time for a dwelling either temporarily or permanently. Any and all mobile homes, mobile or stationary trailers, commercial vehicles, recreational vans/vehicles, trucks, campers, boats or snowmobiles must be kept within an enclosed garage. Temporary parking of boats, recreational vehicles, and motor homes, etc. outside of a garage for up to 12 hours in a calendar month must be for cleaning and maintenance only. Owners must notify the board by leaving a message including time and dates on the Arbor Creek Voice Mail.

Automobiles for sale must be displayed on the homeowner's driveway. No vehicles for sale should be displayed on homeowner's lawn or on any common property in Arbor Creek.

Section 7. NUISANCES. No motorized vehicles, ATVs, Motorcycles, go-carts, golf-carts, motorized scooters etc. (except for vehicles designed for and used by handicapped persons) shall be allowed on the bike paths, and common property. Vehicular uses on streets are governed by appropriate governmental rules and regulations.

No noxious or offensive activity shall be carried on, in or upon any dwelling lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No noxious or offensive plant or seed or other thing or conditions harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any lot.

Section 8. FENCES. No fencing of any kind or a similar wall or barrier will be allowed on any dwelling lot, except as approved by the Design Review Committee. No wall, fence, hedge or shrubbery, which unreasonably restricts the view and impairs the openness of Arbor Creek shall be constructed on any lot.

Section 9. STRUCTURE AND LOT APPEARANCE. Dwelling and structures shall be kept in good appearance, structurally sound, and shall not be allowed to fall into disrepair.

No Owner shall accumulate or allow to accumulate on his lot junked vehicles, litter, refuse or other unsightly materials. Natural growth shall be kept trim and neat. Garbage shall be placed in receptacles provided therefore, and if outside, shall be properly screened.

Tarpaulins and similar covering materials are prohibited. Within one year of the date of occupancy of any of the dwellings constructed on the premises of any lot, all driveway and turn-around areas shall be finished with concrete, asphalt, blacktopping or other similar all-weather, clean, dust-free materials.

Section 10. GARDENS. Except as otherwise approved by the Declarant, no garden of any type, whether for the production or maintenance of shrubs, landscape plantings (other than decorative flower beds), or foods are permitted, with the exception that one (1) garden of an area not to exceed three percent (3%) of the lot size shall be permitted on each lot, and it shall not be placed between the house and the street. All lawns, gardens and other landscaped planting shall be kept reasonably free of weeds and maintained in a manner consistent with the overall look of the neighborhood.

Section 11. SWIMMING POOLS. Swimming pools above ground level are expressly prohibited. All swimming pools must be submitted to and approved by the Design Review Committee.

Section 12. FIRES. Other than barbeques in properly constructed barbeque pits or grills and fire pits, no open fires shall be permitted on a lot, nor shall any other similar activity or condition be permitted which would tend to increase insurance rates for other owners. There shall be no burning of refuse, garbage, landscape materials, leaves or building materials by an owner anywhere on their lot.

Section 13. ANIMALS. No animals, including but not limited to horses or other domestic farm animals, fowl or reptiles of any kind may be kept, bred or maintained on any lot, except for commonly accepted household pets, to be maintained and limited in number to two (2) species and not exceeding four (4) in total. No animals shall be kept, bred or raised within the Development for commercial purposes. In no event shall any domestic pet be allowed to run free away from its owner's lot, without a leash or so as to create a nuisance. There shall be no dog kennels or other animal shelters. Dog runs must be submitted to and approved by the Design Review Committee.

Section 14. ANTENNAE No mast, satellite dish, antennae or other structure for transmitting or receiving messages or programs by radio or television shall be erected, permitted or maintained in or upon any part of the exterior of a dwelling without the prior written approval of the Board.

Section 15. UNDERGROUND WIRING. No above ground electrical or communication wires or cables, except those which may exist as of the date of recording of this document, are permitted other than within dwelling. Existing communication wires or cables and poles may be replaced and maintained as necessary. All necessary and approved conduit and cable will be placed and maintained underground. Temporary above ground power facilities and connections thereto shall be exempt from the provisions of this Section.

Section 16. PARKING. There shall be no parking on any street within Arbor Creek between the hours of 2:00 A.M. and 6:00 A.M. without the permission of the Association.

Section 17. EASEMENTS RESERVED WITH RESPECT TO LOTS. Utility easements are as shown on the recorded plat of the existing properties, except that if any plat fails to establish easements for such purpose, a then (10) foot wide easement for utility and drainage is hereby reserved along all side lot lines; a fifteen (15) foot wide easement for utility and drainage is hereby reserved along all rear lot lines for lots that abut another lot along such rear line; a twenty (20) foot wide easement is hereby reserved for utility and drainage along all front lot lines and rear lot lines for lots that abut neighboring properties that are not part of Arbor Creek. Notwithstanding anything contained herein to the contrary, an owner who purchases or owns multiple contiguous lots may construct a dwelling or accessory structure which traverse lot lines and/or easement areas hereinabove reserved upon application to and approval by the Design

Review Committee. If such approved construction necessitates the rerouting of any surface or sub-surface drainage system or other utilities, such rerouting shall be done at the sole expense of the owner. All owners shall be responsible for proper care and maintenance of parkways located between their lot lines and edges of street pavements of which said lot faces.

Section 18. COMPLETION OF CONSTRUCTION. The construction of any dwelling or the renovation, re-construction or improvement of any existing dwelling shall be substantially completed within one (1) year from commencement of construction, except that such period, with the Design Review Committee's approval, may be extended for a reasonable time by reason of acts of God, labor disputes or other matters beyond the Owner's control.

Section 19. NATURAL DRAINAGE WAYS AND SUB-SURFACE DRAINAGE SYSTEMS. No owner shall erect, construct, maintain, permit or allow any principal or accessory structure, fence, dam, barrier, or other improvements or obstructions of any kind which would interrupt normal drainage on any private or public property or any portion of any public right-of-way or within any area designated on the plat of subdivision or other recorded document as a "drainage easement". The Declarant has heretofore been required by the County of Kane as a condition precedent to subdivision approval to install a comprehensive sub-surface drainage system. Said sub-surface drainage system is designed to accommodate discharge of storm water from individual sump pump systems, other approved sub-surface drainage lines and any other accumulations of precipitation-generated or other ground water. No owner shall disrupt or permit to be disrupted any portion or portions of said sub-surface drainage system, and no owner shall allow gutters and downspouts to be connected to or discharge directly into said sub-surface drainage system, and any such disruption or discharge will be subject to the enforcement provisions of Article VII, Section 2 hereof. Where there exists on any lot or lots a natural condition of accumulation of story or surface water remaining over an extended period of time, an owner may, with the prior written approval from the Design Review Committee or its successors or assign, take such steps as shall be necessary to remedy such condition, provided, however, that no alterations or diversions of such natural water flow proposed by owner shall be inconsistent with applicable provisions of the Illinois Compiled Statutes causing damage to other property, either inside or outside the properties. No Owner shall cause an accumulation of water due to discharge from individual sump pump systems on their property or their neighbor's property or common property. Sump pump systems should be tied to the subsurface drainage system or discharged in such a way that water does not accumulate. In addition, an owners shall not take any action which shall in any way obstruct, alter or otherwise interfere with drainage easements established by the Declarant for the benefit of the properties.

ARTICLE V

ARBOR CREEK HOMEOWNERS' ASSOCIATION

Section 1. CREATION AND PURPOSES. At any time prior to the sale of all lots in Arbor Creek, the Declarant shall form an Illinois General Not-For-Profit Corporation to be known as the "ARBOR CREEK HOMOWNERS' ASSOCIATION, INC.". Its stated purpose shall be to serve as the governing body for all of the owners for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the properties to which this Declaration applies, the assessment of expenses, payment of losses and other matters

as provided in this Declaration, the Articles, By-Laws, Association Rules or Design Guidelines. The Association shall provide for the enforcement of the high standards established for property in Arbor Creek under this Declaration, and the Association shall ensure the provision of certain services and facilities of common benefit to all or any portion of lot owners and, in general, to maintain and promote the desired character of Arbor Creek.

Section 2. MEMBERSHIP IN THE ASSOCIATION. Every person or entity, who is a record owner of the fee, or the undivided fee interest in any lot which is subject to the Declaration shall be a member of the Association, provided that any such person or entity who holds such interest merely as security of the performance of an obligation shall not be a member.

Section 3. VOTING RIGHTS. Homeowners shall be entitled to one vote for each lot in which they hold the interest required for membership in the Arbor Creek Homeowners' Association. When more than one person holds such interest or interests in any lot, all such persons shall be members, and the vote for such lot shall be exercised as they determine among themselves, but in no event shall more than one vote be cast with respect to any such lot.

Section 4. TERMINATION OF MEMBERSHIP IN THE ASSOCIATION. Membership in the Association shall automatically terminate upon the sale, transfer or other disposition of a member's title interest in any lot, at which time the new owner of such title interest shall automatically become a member thereof; provided, however, that such termination shall not relieve or release any former owner from any liability or obligations incurred under or in any way connected with the Association during the period of such former Owner's membership in the Association. Furthermore, such termination shall not impair any rights or remedies which the Board, the Association, or others may have against such former owner and member arising out of or in any way connected with such ownership.

Section 5. POWERS OF THE ASSOCIATION. The Association will have the following powers:

- (A) To the extent such services are not provided by any governmental body: To maintain entrance ways including gates, signs or other ornamental structures, center island of cul-de-sacs, landscape areas on and along Illinois Route 64 and any other common ground, including but not limited to Common Properties, public or private bicycle paths, walkways, detention or retention areas and sub-surface drainage systems accepted by the Association in Arbor Creek;
- (B) To mow, care for and maintain vacant or improved property, remove rubbish from same, to assure the uninterrupted functioning of the sub-surface drainage systems as referenced in Article IV, Section 20, and to do all other manner or other things necessary and desirable in the judgment of the officers of the Association to keep all private property and all parkways in front of any property in Arbor Creek, neat in appearance and in good order. Accompanying this authority shall be the specific right to make and collect reasonable charges and to bring an action in the Circuit Court of Kane County and to collect such charges from the owners of such property and the right to place a lien or liens and foreclose same against such property or properties as a remedy for the collection of such said reasonable charges;

- (C) To make such improvements to the entrance ways, center islands of cul-de-sacs and any other common ground in Arbor Creek and provide such other facilities and services as may be authorized from time to time by the affirmative vote of the majority of the Members of the Association acting in accordance with its By-laws, provided, however, that any such action so authorized shall always be for the express purpose of keeping Arbor Creek a highly desirable and quality residential community;
- (D) To abide by the lawful directives, ordinances, and regulations of any duly constituted governmental agency or unit of government regarding the operation of the project;
- (E) To make other rules and regulations with respect to the properties as it may determine.
- (F) To levy and collect reasonable fines from Members after notice and opportunity to be heard, for violations of the Declarations, By-Laws, and Rules and Regulations of the Association.

Section 6. METHOD OF PROVIDING GENERAL FUNDS.

- (A) The Association shall have the power to levy a reasonable annual assessment uniformly against each lot. In addition to an annual assessment, the Association may levy in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of capital improvements including, but not limited to: walks, roads and bicycle paths, if any, upon the common properties and to accomplish any act set forth in Section 5 hereof;
- (B) In the event of failures of any Owner to pay an assessment on or before thirty (30) days following the due date and following proper notice to such owner of such assessment, said assessment shall become delinquent and shall bear interest at a rate equal to two (2%) over the prime rate then being reported by the Wall Street Journal from the due date thereof to the date of payment of both principal and interest, and said assessment may thereafter be enforced against the owner personally. The Association may, at its discretion, file Certificates of Non-Payment of Assessments in the Office of the Recorder of Deeds whenever such assessments are delinquent, which certificate shall become a lien of such lot(s). The Association shall be entitled to collect from the owner or owners of the real property described therein an additional reasonable fee and reasonable attorney's fees and costs, which fees and costs are hereby declared to be in addition to the lien upon the lots(s) so described in said Certificate. Such fee shall be collectible in the same manner as the original assessments provided for herein and in addition to the interest and principal due thereon. It shall be the duty of the Association to bring suits to enforce such liens before the expiration thereof;

- (C) The liens herein provided shall be subject and subordinate to the lien of any valid mortgage or deed of trust now existing or which may hereafter be placed on said lot(s) prior to the effective dates of such liens, but not subsequent thereto;
- (D) Such liens shall continue until paid, unless within such time a suit shall have been filed for the collection of the assessment, in which case the lien shall continue until the termination of the suit and until the sale of the lots(s) under the levy and execution pursuant to a judgment granted as a result of said suit;

Section 7: PROCEDURE FOR AMENDMENTS. This Article may be amended at any time by the written consent of the members of the Association who own, legally or beneficially, a two-thirds (2/3) majority of the lots in Arbor Creek.

Section 8. EXEMPT PROPERTY. The following property, which is subject to this Declaration, shall be exempt from the assessments, charges and liens created herein; all property to the extent of any easement or interest therein dedicated and accepted by a local public authority and devoted to public use except the recorded public bike path easement; all property exempted from taxation by the laws of the State of Illinois, upon the terms and to the extent of such legal exemptions; and all property or lots owned by the family of Phil and Barbara Baert, residing at 39W003 Johnson Road.

ARTICLE VI

GENERAL PROVISIONS

Section 1. DURATION. The covenants and restrictions set forth in this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant, the Association or the owners of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this declaration is recorded with the Kane County Recorder, after which time the said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument, signed by the then owners of the majority of the lots within the existing properties, has been recorded, agreeing to change said covenants and restrictions in whole or in part; provided, however, that no such agreement of change shall be effective and recorded unless made and recorded one (1) year in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every lot owner at least ninety (90) days in advance of any such action taken except changes made by the Declarant which shall be made and recorded thirty days in advance of the effective date of such change.

Section 2. "ENFORCEMENT. Enforcement of these Covenants and Restrictions and/or provisions contained in this Declaration or in the Design Guidelines or any Rule or Regulation adopted hereunder may be by a proceeding at law or in equity brought by the Board of the Association or any Owner. All expenses incurred by the Board in connection with the enforcement of the provisions of the Declaration or in the Design Guidelines or any Rule or Regulation adopted by the Board or in connection with the exercise of its rights and remedies under this Declaration, including but without limitation, court costs, attorneys fees and any other fees and expenses and all damages,

liquidated or otherwise, together with interest thereon at the contract rate of interest then permitted in Illinois until paid shall be charged to and assessed against the defaulting Owner and the Association shall have a lien for all of the same upon such Owner's Lot as provided for in this Declaration and those costs and fees may be recovered in a proceeding brought to enforce same.

Section 3. NOTICES. Any notice sent or required to be sent to any member or lot owner under the provisions of this Declaration shall be deemed to have been properly given when mailed, postage prepaid, to the last know address of the person who appears as a member or lot owner on the records of the Declarant or the Association at the time of the mailing. Any notice sent or required to be sent to the Declarant under the provisions of this Declaration shall be deemed to have been properly given when mailed postage prepaid, to the Declarant.

Section 4. MODIFICATION. By recorded supplemental declaration, the Declarant may, in its sole discretion, modify any of the provisions of this Declaration for a period of twenty (20) years from the date hereof, provided that the Declarant shall not substantially alter the intent of this Declaration or of any succeeding supplemental declaration.

Section 5. SEVERABILITY. Invalidation of any one or more of these covenants or restrictions and/or any provision contained in this Declaration or in the Design Guidelines by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 6. OCCUPANTS. All of the obligations, liabilities, restrictions, and covenants imposed upon owners hereunder shall also be applicable to and imposed upon all persons occupying any lot who are not owners, other than the Declarant.

Section 7. DEEDS. Each Owner or Contract Purchaser under an Installment Sale Contract accepts such conveyance subject to the restrictions, covenants, obligations, and liabilities hereby created, reserved or declared, as though same were recited at length in such deed or Installment Sales Contract.

Section 8. BIKE PATHS AND TRAILS. Pursuant to the County approval of the Planned Unit Development for Arbor Creek Subdivision, Unit No. 1, Unit No. 2, Unit No. 3, Unit No. 4 and Unit No. 5, Declarant hereby reserves for the County of Kane for public use the bicycle and pedestrian trails in place or under construction as of August 1, 1993. Said trails are located on the various open space parcels in Unit No. 1, Unit No. 2, Unit No. 3, Unit No. 4 and Unit No. 5 of said Arbor Creek Subdivision.

IN WITNESS WHEREOF, the Owners hereto caused this First Amended and Restated Conditions, Covenants, Restrictions, Reservations, Grants and Easements Affecting The Property Known as Arbor Creek to be duly executed effective as of the date of first written above.

The undersigned constituting two-thirds (2/3) or more of the Members entitled to vote for the FIRST AMENDED AND RESTATED CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS, GRANTS and EASEMENTS AFFECTING THE PROPERTY KNOWN AS ARBOR CREEK hereby designate their approval of the Amendments set forth in this document.

(SEE ATTACHED SIGNATURE PAGES)

Prepared and return a copy to:
HOSCHEIT, McGUIRK, McCRACKEN
& CUSCADEN, P.C.
John M. McGuirk
1001 East Main Street, Suite G
St. Charles, IL 60174

AFFIDAVIT

The undersigned, RICHARD ROHLFING, being the President of Arbor Creek Homeowners Association, and MARJI MILLIGAN, being the Secretary of Arbor Creek Homeowners Association, hereby certify that the signatures hereinafter attached represent two thirds (2/3) of the lot owners in the Arbor Creek subdivision.

ARBOR CREEK HOMEOWNERS ASSOCIATION

By: _____
Richard Rohlring, its President

By: _____
Marji Milligan, its Secretary

SUBSCRIBED AND SWORN to before me
this ____ day of _____, 2009.

Notary Public

EXHIBIT "A"

UNIT 1

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 15, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41, in Unit No. 1, Arbor Creek, Campton and St. Charles Townships, Kane County, Illinois;

and

UNIT 2

Lots 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60 and parcel 1, parcel 2, and parcel 3 in Unit No. 2, Arbor Creek, Campton Township, Kane County, Illinois;

and

UNIT 3

Lots 661, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86 and parcel 1 or Unit No. 3, Arbor Creek, Campton Township, Kane County, Illinois;

and

UNIT 4

Lots 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, and 123 and parcel 1 of Unit No. 4, Arbor Creek, Campton Township, Kane County, Illinois;

and

UNIT 5

Lots 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154,, 155, 156, 157, 158, 159, 160, and 161, and Parcel 1, Parcel 2, and Parcel 3 of Unit No. 5, Arbor Creek, Campton Township, Kane County, Illinois.