

the windings
of Ferson Creek
ST. CHARLES, ILLINOIS

A DEVELOPMENT OF

THE BRANIGAR ORGANIZATION, INC.

Oak Brook, Illinois

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Modifications to Covenants: Text that has been withdrawn is shown as a “~~strikethrough~~”; added Text is shown in **Bold & Underlined.**

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**GENERAL PLAN OF DEVELOPMENT
FOR THE WINDINGS OF FERSON CREEK:
A COMMUNITY UNIT DEVELOPMENT BY
THE BRANIGAR ORGANIZATION, INC.**

The Windings of Ferson Creek is a community unit real estate development located on Empire Road in Kane County, Illinois. The developer is The Branigar Organization, Inc., an Illinois corporation. The developer, and its predecessors in business, has been in the real estate subdivision business for fifty years. It has developed more than eighty subdivisions in Illinois; it has constructed, developed and sold a resort subdivision area in Wisconsin known as Lake Redstone, having approximately 1700 lots and a man-made lake of approximately 750 acres in area; and has developed and is developing and selling subdivision lands in the State of Florida.

The developer has assembled several tracts of Land, which together will constitute the community unit development, which is named "The Windings of Ferson Creek." The plat of subdivision for the first stage of the development, encompassing an area of 55 acres, more or less, has been recorded with the Recorder of Deeds of Kane County, Illinois, Plat Book 53, Pages U and 7. Each lot purchaser is furnished a reduced-size copy of the plat of the subdivision within which his lot is located.

The services of the experienced land-planning firm of Selleg, Stevens, Peterson & Flock, Inc. have been used in the layout and design work for the development. The properties have been zoned by zoning authorities of Kane County under the zoning laws of that county as a community unit development for residential purposes, including single-family residential lots and some locations for multiple-housing units. A general map of the properties presently included in the community unit development, as approved by the County Zoning Board, is furnished to each lot purchaser. This map encompasses approximately 259 acres, of which approximately 37 acres will be reserved as a "green belt area" for the common use and benefit of all residents in the community unit development. These common areas are shown in green on the general map. The general land uses for which the properties included on the map are zoned also are as indicated thereon.

The developer, its successors and assigns, has reserved the right to bring within the general scheme of the development, on a stage-by-stage basis, through successive subdivision plats to be recorded as additions to The Windings of Ferson Creek subdivision, all properties located within the area shown on the general map. In addition thereto, the developer reserves the right to bring within the community unit development additional adjoining acreage (but not exceeding 50% of the acreage included in the general map) which would lend itself to development in accordance with the general scheme, except that no such acreage may be added after January 1, 1975.

The developer intends to improve the subdivided properties with streets meeting specifications of Kane County Highway Department; a water distribution system to service each lot with potable water at reasonable tap-on fees and rates as established and in effect from time to time by the utility which will own and operate the system; and a

common sanitary sewer system available for servicing each lot at connection fees and rates established and in effect from time to time by the utility which owns and operates the system. Electric and telephone utility services will be available through public utilities servicing the area. Utility rates, fees and charges are subject to regulation by the Illinois Commerce Commission. The developer also intends to construct and establish on a portion of the common properties (location as shown on the general map) a club house, one or more tennis courts, swimming pool and ski area for the common use and benefit of all owners. The construction cost of these recreational facilities will be borne by the developer, and title to such facilities will be transferred to and held by the Association (referred to below) for the private common use and benefit of all subdivision owners.

The developer has organized under the laws of Illinois a not-for-profit corporation known as The Windings of Ferson Creek Homeowner's Association. By acceptance of a deed, each owner automatically becomes a member of the Association. At an appropriate point in time when there are sufficient residents to properly manage the Association (but not later than July 1, 1974), the developer will convey the common properties within the subdivided areas to the Association which will be responsible for the management, use and maintenance thereof.

The developer has recorded with the Recorder of Deeds of Kane County, Illinois, a Declaration of Covenants and Restrictions, which affect each subdivided lot. This document permits the Association to make assessments against lot owners for their just share of the cost to the Association of performing services relating to and the maintenance of the common properties and payment of taxes thereon. Such assessments when made will be liens against the properties and also will be the personal obligations of the respective owners. **ATTENTION OF EACH LOT OWNER IS DIRECTED TO THAT PORTION OF THE DECLARATION OF COVENANTS AND RESTRICTIONS WHICH DEFINES THE RIGHTS OF THE ASSOCIATION IN THIS REGARD AND THE MAXIMUM AMOUNT WHICH MAY BE ASSESSED AGAINST THE PROPERTY OF EACH OWNER.** A complete copy of the Declaration is set forth in this pamphlet, together with a copy of the Articles of Incorporation of the Homeowner's Association and its bylaws. As additional properties are brought into the development by recording of plats, the lots in such proposed additions will, become subject to assessment for their just share of the Association expenses and the owners of such lots will be members of the Association.

This General Plan of Development sets forth the developer's present intentions for developing the properties. However, the developer reserves the right to modify or deviate from such general plan so long as any such deviation or modification does not destroy the general concept of the development.

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION, made this 3rd day of July A.D. 1969, by THE BRANIGAR ORGANIZATION, INC., an Illinois corporation hereinafter called "Developer"

W I T N E S S E T H:

WHEREAS, Developer is the owner of the real property described in Article II of this declaration and desires to create thereon a residential Community Unit Development with parks, play grounds, private open spaces, and other common facilities for the benefit of the said Community Unit Development; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said Community Unit Development and for the maintenance of said parks, playgrounds, open spaces and other common facilities; and, to this end, desires to subject the real property described in Article II together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said Community Unit Development, to create an agency to which should be delegated and assigned the powers of maintaining and administering the Community Unit Development properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated under the laws of the State of Illinois, as a non-profit corporation,

THE WINDINGS OF FERSON CREEK HOMEOWNERS ASSOCIATION,

for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that the real property described in Article II, and such additions thereto as hereafter may be made pursuant to Article II hereof, shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

ARTICLES OF INCORPORATION OF HOMEOWNERS ASSOCIATION

ARTICLE I – DEFINITIONS

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

- (a) “**Association**” shall mean and refer to The Windings Ferson Creek Homeowners Association, its successors and assigns.
- (b) “**The Properties**” shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or an Supplemental Declaration under the provisions of Article II hereof.
- (c) “**Common Properties**” shall mean and refer to those areas of land shown on any recorded subdivision plat of The Properties and intended to be devoted to the common use and enjoyment of the owners of The Properties.
- (d) “**Lot**” shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties with the exception of Common Properties as heretofore defined.
- (e) “**Living Unit**” shall mean and refer to any portion of a building situated upon The Properties designed and intended for use and occupancy as a residence by a single family.
- (f) “**Multifamily Structure**” shall mean and refer to any building containing two or more Living Units under one roof except when each such living unit is situated upon its own individual Lot.
- (g) “**Owner**” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit situated upon The Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (h) “**Member**” shall mean and refer to all those Owners who are members of the Association as provided in Article IV, Section 1, hereof.
- (i) “**Dwelling Lot**” shall mean a lot intended for improvement with a dwelling.
- (j) “**Dwelling**” shall mean any building located on a dwelling lot and intended for the shelter and housing of a single family.
- (k) “**Dwelling Accessory Building**” shall mean a subordinate building or a portion of a dwelling, the use of which is incidental to the dwelling and customary in connection with that use.
- (l) “**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 three persons not all so related, together with his or their domestic servants, maintaining a common household in a dwelling.
- (m) “**Basement**” shall mean a portion of a dwelling located partly underground but having less than one-half its clear floor-to-ceiling heights below the average grade of the adjoining ground at the building front.

- (n) “**Cellar**” shall mean the portion of the dwelling located partly or wholly under ground and having one-half or more than one-half of its clear floor-to-ceiling height below the average grade of the adjoining ground at the building front.
- (o) “**Building Height**” shall mean the vertical distance measured from the established building grade at the building front to the highest point of the underside of the ceiling beams, in the case of a flat roof; to the deck line of a mansard roof; and to the mean level of the underside of rafters between the eaves and the ridge of a gable, hip or gambrel roof. Chimneys and ornamental architectural projections shall not be included in calculating the height.
- (p) “**Front Building Line**” shall mean a line on a lot that is delineated in the recorded plat of subdivision which denotes the required depth of a front yard.
- (q) “**Lot Area**” shall mean the area of a horizontal plane bounded by the vertical planes through front, side and rear lot lines.
- (r) “**Front Lot Line**” shall mean that boundary of a lot, which is along an existing or dedicated street, or private easement of ingress and egress as shown on the recorded plat. On corner lots the owner may select either street lot line as a front lot line, except as otherwise shown on the plat.
- (s) “**Rear Lot Line**” shall mean that boundary of a lot, which is most distant from and is, or is approximately, parallel to the front lot line. If the rear lot line is less than 10 feet in length or if the lot line forms a point at the rear, the rear lot line shall be deemed to be a line 10 feet in length within the lot, parallel to and at the maximum distance from the front lot line.
- (t) “**Side Lot Line**” shall mean any boundary of a lot that is not a front or rear lot line.
- (u) “**Side Strip**” shall mean the unpaved strip of land within a street right-of-way and which is parallel to the roadway.
- (v) “**Story**” shall mean that portion of a dwelling included between the surface of any floor and the surface of the floor next above; or if there is no floor above, the space between the floor and the ceiling next above. A basement shall be counted as a story and a cellar shall not be counted as a story.
- (w) “**Half Story**” shall mean a space under a sloping roof which has the line of intersection of roof decking and wall not more than three feet above the top floor level, and in which space not more than 60% of the floor area is completed for principal or accessory use.
- (x) “**Ground Floor Area**” shall mean the living area in that story of the dwelling, which is the first story entirely above the established building grade at the building front.
- (y) “**Living Area**” shall mean that portion of a dwelling which is enclosed and customarily used for dwelling purposes but shall not include open porches, open terraces, breezeways, cellars, attached garages, carports or dwelling accessory buildings.
- (z) “**Structure**” shall mean anything erected or constructed, the use of which requires more or less permanent location on or in the ground, or attached to something having a permanent location on or in the ground. A sign or other advertising device, detached or projecting shall be construed to be a separate structure.

ARTICLE II - PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO

Section 1. Existing Property

The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in Kane County, Illinois, and is more particularly described as Lots I to 62 inclusive in Branigar's The Windings of Ferson Creek along Empire Road, a sub division in Kane County, Illinois, in accordance with plat thereof recorded in Plat Book 53 at Pages 146 and 147 of the records of the Recorder of Deeds of Kane County, all of which real property shall hereinafter be referred to as "Existing Property."

Section 2. Additions to Existing Property

Additional lands may become subject to this Declaration in the following manner:

- (a) Additions in Accordance with a General Plan of Development. The Developer, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of the development, provided that such additions are in accord with a General Plan of Development prepared prior to the sale of any Lot and made known to every purchaser (which may be done by brochure delivered to each purchaser) prior to such sale.

Such General Plan of Development shall show the proposed additions to the Existing Property and contain:

- (1) a general indication of size and location of additional development stages and proposed land uses in each;
- (2) the approximate size and location of common properties proposed for each stage;
- (3) the general nature of proposed common facilities and improvements;
- (4) a statement that the proposed additions, if made, will become subject to assessment for their just share of Association expenses; and
- (5) a schedule for termination of the Developer's right under the provisions of this sub-section to bring additional development stages within the scheme.

Unless otherwise stated therein, such General Plan shall not bind the Developer, its successors and assigns, to make the proposed additions or to adhere to the Plan in any subsequent development of the land shown thereon.

The additions, authorized under this and the succeeding sub-section, shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property.

Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established

by this Declaration within the Existing Property.

- (b) Other Additions. Upon approval in writing of the Association pursuant to a vote of its members as provided in its Articles of Incorporation, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions, as described in sub-section (a) hereof.
- (c) Mergers. In the event of a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Existing Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by this Declaration within the Existing Property except as hereinafter provided.

ARTICLE III - GENERAL RESTRICTIONS

Section 1. Land Use and Building Type

All lots, which are designated on any recorded subdivision map of the properties with a numeral without a letter prefix, are intended as dwelling lots and shall be used for private residence purposes only. No building, except as specifically authorized elsewhere in this Declaration shall be erected, re-erected or maintained on a dwelling lot except one dwelling designed by a licensed architect and designed for occupancy by a single family, and a private garage containing no more than four parking spaces for the sole use of the owners or occupants of the dwelling. Said garages may have living quarters in connection therewith for the sole use of the owner or occupants or his servants or guests but shall not be used for rental purposes. No other dwelling, accessory buildings or structures may be erected except in such manner and location as hereafter provided or as approved in writing by the Association.

The dwelling may be used for rental purposes provided that all annual and special assessments have been timely paid and the lease of said dwelling:

- (a) is in writing for a rental term of not less than one (1) year;**
- (b) acknowledges this Declaration and other rules and regulations applicable to the dwelling and both the lesser and lessee agree to abide by their collective terms and provisions;**
- (c) the lessee qualifies as a Single Family, as defined by Article I section 1(l) of this Declaration; and**
- (d) a copy of the written lease is provided to the Association prior to the lessee taking possession of the dwelling.**

(This modification was adopted in January 2011, and became effective on June 5, 2011).

Section 2. Building Height

No dwelling shall be erected, altered or placed which is more than thirty feet in height or 2-1/2 stories, or whichever is less. No dwelling accessory building or structure shall exceed seventeen feet in height unless the Association approves a greater height in writing.

Section 3. Dwelling Cost

Quality and Size It is the intention and purpose of these covenants to insure that all dwellings shall be of a quality of design, workmanship and materials approved by the Association. All dwellings shall be constructed in accordance with applicable Governmental building code and with more restrictive standards that may be required by the Architectural Control Committee of the Association. The ground floor area of the dwelling shall be:

- (a) For one story dwelling not less than 1600 square feet except not less than 2000 square feet if the dwelling has three or more bedrooms.
- (b) For dwellings of more than one story not less than 1200 square feet and the total living area in the dwelling shall not be less than 2000 square feet, except that the ground floor area shall be not less than 2000 square feet if only one story is entirely above the front building line grade.

Section 4. Location on the Lot

No building shall be located on a lot nearer to a lot line than the building lines shown on the recorded plat of subdivision. Tennis courts and swimming pools shall be screened from any interior street by wall, solid fence, evergreen hedge or other visual barrier as approved in writing by the Architectural Control Committee of the Association. No tennis court or swimming pool shall be located on a lot nearer to the front lot line or a side lot line adjoining a street than the minimum setback shown on the recorded plat.

Section 5. Driveways Plans

Specifications for driveways, culverts, pavement edging or markers shall be as approved in writing by the Architectural Control Committee.

Section 6. Home Occupations, Nuisances and Livestock

~~No home occupation or profession shall be conducted in any living unit or accessory building.~~ *(This modification was adopted in March 2006, and became effective on April 12, 2009).* No noxious or offensive activity shall be carried on, in or upon any premises, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

No livestock or poultry other than customary domestic pets such as dogs and cats shall be kept or maintained on any lot.

The use of any garage, carport, driveway or parking area which may be in front or adjacent to a part of any lot as a habitual parking place for commercial vehicles is prohibited. The parkway located between the pavement and the lot line of each lot shall not be used for the parking of private or commercial vehicles, boats or trailers. The term

“commercial vehicle” shall include all automobiles, station wagons, trucks and vehicular equipment which bear signs or have printed on the side of same reference to any commercial undertaking or enterprise. The habitual violation of such parking regulations shall be deemed a nuisance. **No trade or business may be conducted in or from any living unit, accessory building, or lot, except that an owner or occupant residing in a living unit may conduct business activities within the living unit so long as:**

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

(This modification was adopted in March 2006, and became effective on April 12, 2009).

Section 7. Plant Diseases or Noxious Insects

No plants or seeds or other things or conditions harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a lot.

Section 8. Temporary Structures

No trailer or a basement of an uncompleted building, tent, shack, garage, barn (except as permitted in Section 1 of this Article) and no temporary building or structure of any kind shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a living unit shall be on the same lot as the dwelling or multifamily structure and such buildings or structures shall be removed upon completion of construction.

Section 9. Easements

In the recorded plat of sub division of the existing property, Developer has:

- (a) Reserved an easement to itself, and to successors and assigns, within the area as shown on the plat and marked. “Utility Easement”, to install, lay, construct, renew, operate and maintain utility pipes and conduits and underground equipment for the purpose of serving the properties with telephone, electric, water and other utility services; and also reserves the right to enter upon the lots at all times for any such purposes, and the right to cut down and remove any trees or bushes that interfere or threaten interference with any such use or right. No permanent building, structure or trees shall be placed upon said easement except that said easement may be used for gardens, shrubs, landscaping and other purposes not then or later interfering with said reserved uses and rights;
- (b) Created an easement for surface drainage in and along the streets and such other locations as are shown on the plat marked “Drainage Easement”.

Section 10. Maintenance of Side Strips

Each owner shall be responsible for the maintenance of side strips located between his lot lines and the edges of street or ingress or egress easements on which said lots border.

Section 11. Wells and Septic Systems

No well or septic system shall be constructed or maintained on any lot whenever water and sewer connections and facilities are available to the lot.

Section 12. Deviations from Agreement with the Association

- (a) Developer hereby grants and gives the Association, its successors or assigns, the right to enter into agreements with the grantee of any lot or lots without the consent of owners of other lots or adjoining or adjacent property to deviate from any of the covenants set forth in this Article III for reasons of practical difficulties or particular hardships evidenced by any such grantee. Any such deviation, which shall be manifested by agreement in writing, shall not constitute a waiver of any such covenant as to other lots in The Properties.

- (b) Notwithstanding anything herein which is to the contrary, Developer reserves the right to construct and maintain on a lot or lots selected by it in the existing property a structure or structures for use by it, and its successors and assigns, as an office or offices in connection with the conduct of its real estate business and to erect and maintain signs at selected locations and conduct other activities related to its real estate business. Developer further reserves the right to permit an architect or architects or interior decorator or decorators designated by it, to maintain in and use within the residence located on lot 55 in the existing property an architectural studio or interior decorator's studio (but not retail shop) under circumstances which will not, in its opinion, offend the general character and use of the planned unit development.

ARTICLE IV - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership

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

Section 2. Voting Rights

The Association shall have two classes of voting membership.

Class A. Class A members shall be all those owners as defined in Section 1 with the exception of the Developer. Class A members shall be entitled to one vote for each Lot or Living Unit in which they hold the interests required for membership by Section 1, except that any owner of a lot improved with a multifamily structure in which the living units are not owned by the respective occupants shall

not have more than 10 votes plus 1/3 vote for each living unit in excess of 10. When more than one person holds such interest or interests in any Lot or Living Unit all such persons shall be members, and the vote for such Lot or Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or Living Unit.

Class B. Class B members shall be the Developer. The Class B member shall be entitled to three votes for each Lot in which it holds the interest required for membership by Section 1 and for every Living Unit in any multifamily structure owned by it until such unit is first sold or leased, provided that the Class B membership shall cease and become converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) On January 1, 1975.

From and after the happening of either of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each Lot or Living Unit in which it holds the interests required for membership under Section 1. For purposes of determining the votes allowed under this Section, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted.

ARTICLE V - PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment

Subject to the provisions of Section 3, every member shall have a right and easement of enjoyment in and to the common properties and such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit.

Section 2. Title to Common Properties

The Developer may retain the legal title to the common properties until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same but, notwithstanding any provision herein, the Developer hereby covenants, for itself, its successors and assigns, that it shall convey the common properties to the Association, free and clear of all liens and encumbrances, not later than January 1, 1975.

Section 3. Extent of Members' Easements

The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Developer and of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the common properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members and, if necessary, to open the

enjoyment of such properties to a wider public until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the members hereunder shall be fully restored; and

- (b) The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosures; and
- (c) The right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and
- (d) The right of the Association to charge reasonable admission and other fees for the use of the common properties; and
- (e) The right of the Association to dedicate or transfer all or any part of the common properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action hereunder is sent to every member at least ninety (90) days in advance of any action taken; and
- (f) The right of the Developer, its successors and assigns, to construct on, over and under the common properties and to maintain sewer, water, electric, gas, telephone and other utility facilities to serve the properties or portions thereof and to grant easements to others in such regard.

ARTICLE VI - COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments

The Developer for each Lot and Living Unit owned by him within the properties hereby covenants and each owner of any Lot or Living Unit by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association:

- (1) Annual assessments or charges;
- (2) Special assessments for capital improvements; such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of

the person who was the owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments

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

Section 3. Basis and Maximum of Annual Assessments

The annual assessment shall be one hundred dollars (\$100) per Lot or Living Unit. From and after January 1, 1975, the annual assessment may be increased by vote of the members, as hereinafter provided, for the next succeeding three years and at the end of each such period of three years for each succeeding period of three years.

The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount.

Section 4. Special Assessments for Capital Improvements

In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the common properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds ($2/3^{\text{rds}}$) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments

From and after January 1, 1975 the Association may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively, provided that any such change shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy, at a meeting called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 3 hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article II, Section 2, hereof.

Section 6. Quorum for Any Action Authorized Under Sections 4 and 5

The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the first meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting of members, or of proxies, entitled to cast sixty (60) per cent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 4 and 5, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments; Due Dates

The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement, but in any event not before January 1, 1971.

The first annual assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year, after the first year, shall become due and payable on the first day of March of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof as the remaining number of months in that year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property, which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Directors

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

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

Section 9. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien; Remedies of Association

If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

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

Section 10. Subordination of the Lien to Mortgages

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 11. Exempt Property

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

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

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

ARTICLE VII - ARCHITECTURAL CONTROL COMMITTEE

Section 1. Review by Committee

No building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location and grade of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board.

In the event said Board, or its designated committee, fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no Suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with. At the discretion of the committee, a filing fee of not exceeding \$50.00 shall accompany the submission of such plans to defray committee expenses. No additional fee shall be required for resubmission of plans revised in accordance with committee recommendations. A copy of each approved set of plans shall be kept on file with the committee.

ARTICLE VIII - EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance

In addition to maintenance upon the common properties, the Association may at the request of the owner provide exterior maintenance upon each Lot and Living Unit which is subject to assessment under Article VI hereof, as follows: Paint, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements.

Section 2. Assessment of Cost

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

Section 3. Access at Reasonable Hours

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

ARTICLE IX - WATER AND SEWER SERVICE

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

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

ARTICLE X - GENERAL PROVISIONS

Section 1. Duration

The covenants and restrictions of this Declaration shall run, with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, ~~for a term of 20 years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of two-thirds of the Lots or Living Units has been recorded, agreeing to change said covenants and restrictions in whole or in part.~~

~~For purposes of meeting the two-thirds requirement, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every owner at least ninety (90) days in advance of any action taken. **By recorded supplemental Declaration, two-thirds (2/3^{rds}) of the then owners of Lots, with the owners of each Lot having one (1) vote, may modify any of the provisions of this Declaration, provided, however, that no such modification shall be effective unless made and recorded a minimum of ninety (90) days in advance of the effective date of such supplemental Declaration, and provided that it shall not substantially alter the scheme of this Declaration or of any succeeding supplemental Declaration.**~~
(These modifications were adopted in March 2006, and became effective on April 12, 2009).

Section 2. Notices

Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as member or owner on the records of the Association at the time of such mailing.

Section 3. Enforcement

Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. **The prevailing party in any such litigation shall be entitled to reasonable attorneys fees and costs.**
(This modification was adopted in January 2011, and became effective on June 5, 2011).

Section 4. Severability

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions that shall remain in full force and effect.

ARTICLES of INCORPORATION

ARTICLE 1. Name of the Corporation

The Windings of Ferson Creek Homeowners Association.

ARTICLE 2. Duration of the Corporation

Perpetual.

ARTICLE 3. Registered Office

Irving Park & Medinah Roads, Medinah, Illinois 60157, County of DuPage. The name of its initial Registered Agent at said address is Robert D. Parr.

ARTICLE 4. First Board of Directors

Maynard O. Hestrom, Irving Park & Medinah Roads, Medinah, Illinois
Robert D. Farr, Irving Park & Medinah Roads, Medinah, Illinois
Lester L. Harber, Irving Park & Medinah Roads, Medinah, Illinois

ARTICLE 5. Purposes of the Corporation

The corporation does not contemplate pecuniary gain or profit, direct or indirect, to its members. The purposes for which it is formed are:

To promote the health, safety, and welfare of the residents within all lots in The Windings of Ferson Creek, a subdivision in Kane County, Illinois, in accordance with plat thereof recorded with the Recorder of Deeds of Kane County, and such additions thereto as may hereafter be brought within the jurisdiction of this corporation by annexation as provided in Article 8 herein, hereafter referred to as "The Properties", and for this purpose to:

- (a) Own, acquire, build, operate, and maintain recreation parks, playgrounds, swimming pools, golf courses, commons, streets, footways, including buildings, structures, personal properties incident thereto, hereinafter referred to as "the common properties and facilities";
- (b) Provide exterior maintenance for the lots and homes within The Properties;
- (c) Provide garbage and trash collection;
- (d) Provide fire and police protection;
- (e) Maintain unkempt lands or trees;
- (f) Supplement municipal services;

- (g) Fix assessments (or charges) to be levied against The Properties;
- (h) Pay taxes, if any, on the common properties and facilities;
- (i) Enforce any and all covenants, restrictions and agreements applicable to The Properties; and
- (j) Insofar as permitted by law, to do any other thing that, in the opinion of the Board of Directors, will promote the common benefit and enjoyment of the residents of The Properties.

ARTICLE 6. Members

Every person or entity who is a record owner of a fee or undivided fee interest in any lot (or living unit) which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

ARTICLE 7. Board of Directors

The affairs of the corporation shall be managed by a Board of Directors who need not be members of the corporation. The first Board of Directors shall serve until their successors shall have been elected and qualify. Beginning with the annual meeting to be held on the second Monday of January 1971, the number of Directors shall be increased to nine and elected by the members, three of whom shall be elected to serve for one year, three for two years and three for three years. At each annual meeting thereafter, the members shall elect three directors each to serve for a term of three years.

ARTICLE 8. Additions to Properties and Membership

Additions to the properties described in Article 5 may be made only in accordance with the provisions of the recorded covenants and restrictions applicable to said properties. Such additions, when properly made under the applicable covenants, shall extend the jurisdiction, functions, duties, and membership of this corporation to such properties. Where the applicable covenants require that certain additions be approved by this corporation, such approval must have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be mailed to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

ARTICLE 9. Mergers and Consolidations

Subject to the provisions of the recorded covenants and restrictions applicable to the properties described in Article 5, and to the extent permitted by law, the corporation may

participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be mailed to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

ARTICLE 10. Mortgages: Other Indebtedness

The corporation shall have power to mortgage its properties only to the extent authorized under the recorded covenants and restrictions applicable to said properties.

The total debts of the corporation including the principal amount of such mortgages, outstanding at any time, shall not exceed the total of two years' assessments current at that time, provided that authority to exceed said maximum in any particular case may be given by an affirmative vote of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be mailed to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

ARTICLE 11. Quorum for Any Action

Governed by Articles 8, 9 and 10 of these Articles the quorum required for any action governed by Articles 8, 9 and 10 of these Articles shall be as follows:

At the first meeting duly called as provided therein, the presence of members, or of proxies, entitled to cast sixty (60) per cent of all]. The votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth in said Articles, and the required quorum at any subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following such preceding meeting.

ARTICLE 12. Dedication of Properties or Transfer of Function to Public Agency or Utility

The corporation shall have power to dispose of its real properties only as authorized under the recorded covenants and restrictions applicable to said properties.

ARTICLE 13. Dissolution

The Corporation may be dissolved only with the assent given in writing and signed by the members entitled to cast two-thirds of each class of its member ship. Written notice of a proposal to dissolve, setting forth the reasons therefore and the disposition to be made of the assets (which shall be consonant with Article 14 hereof) shall be mailed to every member at least ninety (90) days in advance of any action taken.

ARTICLE 14. Disposition of Assets upon Dissolution

Upon dissolution of the corporation, the assets, both real and personal of the corporation, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation. No such disposition of Association properties shall be effective to divest or diminish any right or title of any member vested in him under the recorded covenants and deeds applicable to The Properties unless made in accordance with the provisions of such covenants and deeds.

ARTICLE 15. Amendments

These Articles may be amended in accordance with the law, provided that the voting and quorum requirements specified for any action under any provision of these Articles shall apply also to any amendment of such provision, and provided further that no amendment shall be effective to impair or dilute any rights of members that are governed by the recorded covenants and restrictions applicable to The Properties (as, for example, membership and voting rights) which are part of the property interests created thereby.

BYLAWS

ARTICLE I – Definitions

Section 1. “Association” shall mean and refer to The Windings of Ferson Creek Homeowners Association, a non-profit corporation organized and existing under the laws of Illinois.

Section 2. “The Properties” shall mean and refer to all lots in The Windings of Ferson Creek, a subdivision in Kane County, Illinois, according to plat thereof recorded with the Recorder of Deeds of Kane County and such additions thereto as may hereafter be brought within the jurisdiction of the Association by annexation as provided in Article V, Section 2, herein.

Section 3. “Common Properties” shall mean and refer to parks, playgrounds, swimming pools, golf courses, commons, streets, footways, including buildings, structures, personal properties incident thereto, and any other properties owned and maintained by the Association for the common benefit and enjoyment of the residents within The Properties.

ARTICLE II – Membership

Section 1. Every person or entity who is a record owner of a fee or undivided fee interest in any lot (or living unit) which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. The rights of membership are subject to the payment of annual and special assessments levied by the Association, the obligation of which assessments is imposed against each owner of and becomes a lien upon the property against which such assessments are made as provided by Article VI of the Declaration of Covenants and Restrictions to which The Properties are subject and recorded with the Recorder of Deeds of Kane County, Illinois, a copy of which Declaration is filed with these Bylaws.

Section 3. The membership rights of any person whose interest in The Properties is subject to assessments under Article II, Section 2, whether or not he be personally obligated to pay such assessments, may be suspended by action of the Directors during the period when the assessments remain unpaid; but, upon payment of such assessments, his rights and privileges shall be automatically restored. If the Directors have adopted and published rules and regulations governing the use of the Common Properties and facilities, and the personal conduct of any person thereon, as provided in Article VIII,

Section 1, they may, in their discretion, suspend the rights of any such person for violation of such rules and regulations for a period not to exceed thirty (30) days.

ARTICLE III - Voting Rights

Section 1. The voting rights of members are as set forth in Article IV, Section 2, of the Declaration of Covenants and Restrictions.

ARTICLE IV - Property Rights and Rights of Enjoyment of Common Property

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

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

ARTICLE V - Association Purposes and Powers

Section 1. The Association has been organized for the purposes as set forth in Article 5 of the Articles of Incorporation, a copy of which are filed with these Bylaws.

Section 2. Additions to The Properties described in Article 5 of the Articles of Incorporation may be made only in accordance with the applicable provisions of the Declaration of Covenants and Restrictions.

Section 3. Subject to the applicable provisions of the Declaration of Covenants and Restrictions, and to the extent provided by law, the Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes as provided in Article 9 of the Articles of Incorporation.

Section 4. The right of the corporation to incur indebtedness and mortgage its properties shall be limited as set forth in Article 10 of the Articles of Incorporation.

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

ARTICLE VI - Board of Directors

Section 1. A Board of Directors who need not be members of the corporation shall manage the affairs of the corporation. The first Board of Directors shall serve until their successors shall have been elected and qualify. Beginning with the annual meeting to be held on the second Monday of January 1971, the number of Directors shall be increased to nine and elected by the members, three of whom shall be elected to serve for one year, three for two years and three for three years. At each annual meeting thereafter, the members shall elect three directors each to serve for a term of three years.

Section 2. Vacancies in the Board of Directors shall be filled by the majority of remaining Directors, any such appointed Director to hold office until his successor is elected by the members, who may make such election at the next annual meeting of the members or at any special meeting duly called for that purpose.

ARTICLE VII - Election of Directors; Nominating Committee; Election Committee

Section 1. Election to the Board of Directors shall be by written ballot as hereinafter provided. At such election, the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the recorded covenants applicable to the Properties. The names receiving the largest number of votes shall be elected.

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

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

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

Section 5. All elections to the Board of Directors shall be made on written ballot which shall: (a) describe the vacancies to be filled; (b) set forth the names of those nominated by the Nominating Committee for such vacancies; and (c) contain a space for a write-in vote

by the members for each vacancy. Such ballots shall be prepared and mailed by the secretary to the members at least fourteen (14) days in advance of the date set forth therein for a return (which shall be a date not later than the day before the annual meeting or special meeting called for elections).

Section 6. Each member shall receive as many ballots as he has votes. Notwithstanding that a member may be entitled to several votes, he shall exercise on any one ballot only one vote for each vacancy shown thereon. The completed ballots shall be returned as follows: Each ballot shall be placed in a sealed envelope marked "Ballot" but not marked in any other way. Each such "Ballot" envelope shall contain only one ballot, and the members shall be advised that, because of the verification procedures of Section 7, the inclusion of more than one ballot in any one "Ballot" envelope shall disqualify the return.

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

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

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

Such procedure shall be taken in such manner that the vote of any member or his proxy shall not be disclosed to anyone, even the Election Committee. The outside envelopes shall thereupon be placed in a safe or other locked place and the Election Committee shall proceed to the opening of the "Ballot" envelopes and the counting of the votes. If any "Ballot" envelope is found to contain more than one ballot, all such ballots shall be disqualified and shall not be counted. Immediately after the announcement of the results, unless the members present demand a review of the procedure, the ballots and the outside envelopes shall be destroyed.

ARTICLE VIII - Powers and Duties of the Board of Directors

Section 1. The Board of Directors shall have power:

- (a) To call a special meetings of the members whenever it deems necessary and it shall call a meeting at any time upon written request of one-fourth (1/4) of the voting membership, as provided in Article XII, Section 2.
- (b) To appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these Bylaws shall be construed to prohibit the employment of any member, officer or director of the Association in any capacity whatsoever.
- (c) To establish, levy and assess, and collect the assessments or charges referred to in Article II, Section 2.
- (d) To adopt and publish rules and regulations governing the use of the Common Properties and facilities and the personal conduct of the members and their guests thereon.
- (e) To exercise for the Association all powers, duties and authority vested in or delegated to this Association, except those reserved to the meeting or to members in the covenants.
- (f) In the event that any member of the Board of Directors of this Association shall be absent from three (3) consecutive regular meetings of the Board of Directors, the Board may by action taken at the meeting during which said third absence occurs, declare the office of said absent Director to be vacant.

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

- (a) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting when such is request in writing by one-fourth (1/4) of the voting membership, as provided in Article XII, Section 2.
- (b) To supervise all officers, agents and employees of this Association, and to see that their duties are properly performed.
- (c) As more fully provided in Article VI of the Declaration of Covenants and Restrictions applicable to The Properties:
 - (1) To fix the amount of the annual and special assessments against each lot for each assessment period at least thirty days in advance of such date or period and, at the same time;

- (2) To prepare a roster of The Properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any member, and, at the same time;
 - (3) To send written notice of each assessment to every owner subject thereto.
- (a) To issue, or to cause an appropriate officer to issue, upon demand by any person a certificate setting forth whether any assessment has been paid. Such certificate shall be conclusive evidence of any assessment therein stated to have been paid.

ARTICLE IX - Directors' Meetings

Section 1. A regular meeting of the Board of Directors shall be held on the first Monday of each month at 8:00 o'clock P.M. provided that the Board of Directors may, by resolution, change the day and hour of holding such regular meeting.

Section 2. Notice of such regular meeting is hereby dispensed with. If the day for the regular meeting shall fall upon a holiday, the meeting shall be held at the same hour on the first day following which is not a holiday, and no notice thereof need be given.

Section 3. Any two Directors shall hold special meetings of the Board of Directors when called by any officer of the Association or after not less than three (3) days' notice to each Director.

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

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

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

ARTICLE X – Officers

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

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

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

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

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

Section 6. The secretary shall be ex officio the secretary of the Board of Directors, shall record the votes and keep the minutes of all proceedings in a book to be kept for the purpose. He shall sign all certificates of membership. He shall keep the records of the Association. He shall record in a book kept for that purpose the names of all members of the Association together with their addresses as registered by such members.

Section 7. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors, provided however that a resolution of the Board of Directors shall not be necessary for disbursement made in the ordinary course of business conducted within the limits of a budget adopted by the Board. The treasurer shall sign all checks and notes of the Association, provided that such checks and notes shall also be signed by the president or the vice president.

Section 8. The treasurer shall keep proper books of account and may cause an annual audit of the Association books to be made by a certified public accountant at the completion of each fiscal year. He shall prepare an annual budget and an annual balance sheet statement, and the budget and balance sheet statement shall be presented to the membership at its regular annual meeting.

ARTICLE XI – Committees

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

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

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

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

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

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

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

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

Section 7. The Audit Committee shall supervise the annual audit of the Association's books and approve the annual budget and balance sheet statement to be presented to the membership at its regular annual meeting as provided in Article X, Section 8. The treasurer shall be an ex officio member of the committee.

Section 8. With the exception of the Nominations Committee and the Architectural Control Committee (but then only as to those functions that are governed by Article VI, Declaration of Covenants and Restrictions applicable to The Properties), each committee shall have power to appoint a subcommittee from among its membership and may delegate to any such subcommittee any of its powers, duties and functions.

Section 9. It shall be the duty of each committee to receive complaints from members of any matter involving Association functions, duties and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, director or officer of the Association as is further concerned with

the matter presented.

ARTICLE XII - Meetings of Members

Section 1. The regular annual meeting of the members shall be held on the second Monday of the month of January in each year, at the hour of 8:00 o'clock P.M. If the day for the annual meeting of the member shall fall upon a holiday, the meeting will be held at the same hour on the first day following which is not a holiday.

Section 2. Special meetings of the members for any purpose may be called at any time by the president, the vice president, the secretary or treasurer, or by any two or more members of the Board of Directors, or upon written request of the members who have a right to vote one-fourth (1/4th) of all of the votes of the entire membership or who have a right to vote one-fourth (1/4th) of the votes of Class A membership.

Section 3. The secretary shall give notice of any meetings to the members. Notice may be given to the member either personally, or by sending a copy of the notice through the mail, postage thereon fully prepaid to his address appearing on the books of the corporation. Each member shall register his address with the secretary, and notices of meetings shall be mailed to him at such address. Notice of any meeting, regular or special, shall be mailed at least six (6) days in advance of the meeting and shall set forth in general the nature of the business to be transacted, provided however that if the business of any meeting shall involve an election governed by Article VII or any action governed by the Articles of Incorporation or by the covenants applicable to The Properties, notice of such meeting shall be given or sent as therein provided.

Section 4. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action governed by these Bylaws. Any action governed by the Articles of Incorporation or by the covenants applicable to The Properties shall require a quorum as therein provided.

ARTICLE XIII – Proxies

Section 1. At all corporate meetings of members, each member may vote in person or by proxy.

Section 2. All proxies shall be in writing and filed with the secretary. No proxy shall extend beyond a period of eleven (11) months, and every proxy shall automatically cease upon sale by the member of his home or other interest in The Properties.

ARTICLE XIV - Books and Papers

Section 1. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to the inspection of any members.

ARTICLE XV - Corporate Seal

Section 1. The Association shall have a seal in circular form having within its circumference the words: "Windings of Ferson Creek Homeowners Association", or an abbreviation thereof approved by the Directors.

ARTICLE XVI – Amendments

Section 1. These Bylaws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of each class of members present in person or by proxy, provided that those provisions of these Bylaws which are governed by the Articles of Incorporation of this Association may not be amended except as provided in the Articles of Incorporation or applicable law; and provided further that any matter stated herein to be or which is in fact governed by the covenants and restrictions applicable to The Properties may not be amended except as provided in such covenants and restrictions.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Covenants and Restrictions applicable to The Properties referred to in Article I Section 2 and these Bylaws, the Covenants and Restrictions shall control.

IN WITNESS WHEREOF, we, being all of the Directors of the Windings of Ferson Creek Homeowners Association, have here unto set our hands this 5th day of May, 1969.

/s/ Maynard O. Hestrom

/s/ Robert D. Farr

/s/ Lester L. Harber