

mvr (22)



JOSEPH J. TIRIO
RECORDER-MCHENRY COUNTY, IL
2017R0031964
08/28/2017 04:30PM PAGES 22
RECORDING FEE 48.00
GIS FEE 15.00
RHSPS HOUSING FEE 9.00

Prepared by and after
Recording Mail to:
Lisa M. Waggoner, Esq.
The Waggoner Law Firm, P.C.
Four North Walkup Avenue
Crystal Lake, IL 60014



**AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WYNDMUIR PROPERTY OWNERS ASSOCIATION**

THIS AMENDED AND RESTATED DECLARATION (the "Declaration") is made this 11th day of August, 2017 for the purposes hereinafter set forth, by the WYNDMUIR PROPERTY OWNERS ASSOCIATION (the "Association")

RECITALS

WHEREAS, a certain Declaration of Covenants, Conditions, and Restrictions for the Association was recorded in the office of the Recorder of Deeds of McHenry County, Illinois on May 16, 1988 as Document Number 88R01301 and affecting property legally described on Exhibit A attached hereto, which document was further amended by the First Amendment and Restatement recorded on December 27, 1994 as Document No. 94R070749, the Second Amendment to the First Amendment and Restatement of the Declaration of Covenants, Conditions and Restrictions for Wyndmuir, recorded on July 18, 2006, as Document No. 2006R0052023, the Revised Second Amendment recorded on April 24, 2007 as Document No. 2007R0027764, the Third Amendment recorded on April 28, 2008 as Document No. 2008R0024489 (all collectively hereinafter referred to as "Declaration"); and

WHEREAS, all of the property described on attached Exhibit A shall be referred to herein as the "Property;" and

WHEREAS, the administration of the Property commonly known as Wyndmuir Subdivision (the "Development"), pursuant to the terms of said Declaration, has been carried out by an Illinois not-for-profit corporation known as the Wyndmuir Property Owners Association, hereinafter referred to as the "Association;" and

WHEREAS, the Association is the assignee of the Declarant's rights as set forth and described in the Declaration; and

[Execution Copy]

72.-

WHEREAS, the Association has determined that it is in the best interest of all of the Owners in the Property that the terms and provisions of the Declaration shall be modified and restated to comply with current Illinois Statutes and current customs and practice in the community and the Board has recommended said modification and restatement to the Owners; and

WHEREAS, pursuant to Section 5.04.03, the Declaration may be amended by the Association upon the recommendation of the Board of Directors with the approval by affirmative vote of not less than two-thirds (2/3rds) of all the votes which the Class A Members of the Association shall then be entitled to vote;

WHEREAS, said recommendation has been made by the Board of Directors; and

WHEREAS, said recommendation has been approved by an affirmative vote of not less than two-thirds (2/3rds) of all votes which the Class A Members of the Association are entitled to vote as evidenced by the written consent of the necessary percentage of Class A Members, said written consents being filed with the Secretary of the Association.

NOW, THEREFORE, the Association hereby declares that the Declaration be and hereby is amended as follows:

ARTICLE 1
DEFINITIONS

1.01. **Association**: The Wyndmuir Property Owners Association, an Illinois not-for-profit corporation, its successors or assigns.

1.02. **Berms**: The embankments or serpentine mounds on the peripheral borders of the Property and, including areas located off the Property but for which the Association has maintenance responsibilities pursuant to recorded easement agreements or similar agreements, and elsewhere within the Common Properties.

1.03. **Members**: All Owners of Residential Units completed in the Development or Lots.

1.04. **City**: The City of Crystal Lake.

1.05. **Common Properties**: Those areas of the Property shown on any recorded subdivision plat of the Property, as Out Lots and so designated, intended to be devoted to the common use and enjoyment of the Owners.

1.06. **Declaration**: This Amended and Restated Declaration.

1.07. **Entrance**: The Terra Cotta Road entrances and such other access way for ingress and egress to the Property, including any structure, walls, fencing, permanent signs and landscaping along Terra Cotta Road or such other access way.

- 1.08. **Environmental Preservation Area**: Those parts, sections or areas within the Common Properties not improved or intended to be improved with private roads, drives, parking areas which shall consist of but not be limited to, natural woodlands and such paths or walkways leading thereto.
- 1.09. **Free Standing Enclosure Wall**: The enclosure, if any, on the perimeter of the Property.
- 1.10. **Front Entrance Walk**: The walk installed to directly serve a Residential Unit.
- 1.11. **Garage**: A building or a portion of a building originally designed and intended for the parking or storing of motor vehicles.
- 1.12. **Garage Drive**: The paved entry from a public or private road or Common Property leading to a garage door.
- 1.13. **Lot**: Any plat of land shown upon any recorded subdivision plat of the Property with the exception of Common Properties.
- 1.14. **Member**: An Owner or Tenant who holds membership in the Association as provided in Section 5.02, Article 5.
- 1.15. **Occupant**: A person, other than an Owner, legally occupying a Residential Unit.
- 1.16. **Owner**: The record owner, whether one or more persons or entities, whose aggregate interest owns the fee simple title to any Lot or Residential Unit situated upon the Property but shall not mean or refer to the mortgagee or secured party of an Owner or a Lot or Residential Unit unless and until such mortgagee or secured party has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- 1.17. **Privacy Wall**: A separation between Residential Units consisting of wood, brick, or other material designed to provide privacy between Residences.
- 1.18. **Private Road**: The paved area for ingress and egress by vehicles and pedestrians, excluding those portions which may be designated as "dedicated or public street."
- 1.19. **Property**: The Property described on attached Exhibit A, and such additional property made subject to this Declaration.
- 1.20. **Residence**: The building, including the garage, but excluding the Lot, which is situated on a Lot that is designed and intended for sole use and occupancy by a single family.
- 1.21. **Residential Owner**: The owner of a Residential Unit who has purchased said unit for the purpose of occupancy by a single family.

1.22. **Residential Unit:** A building, including the Garage and the Lot on which it is situated, designed and intended for the sole use and occupancy as a residence by a single family.

ARTICLE 2

[THIS PARAGRAPH INTENTIONALLY DELETED]

ARTICLE 3 REQUIREMENTS

3.01. **General:** The covenants, conditions and requirements of the 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.

3.02. **Guideline:** The Association recognizes that there are many factors which may adversely affect the environment, architectural integrity and the resultant value of the Property, and for these reasons the requirements as set forth herein are intended as a guideline to assist in the preservation of the natural order and use of the land and structures thereon subject to the conditions hereof.

3.03. **Land Use:** All Residential Units comprising the Property shall be used for a private residence purposes only. No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or designed for profit, altruism, or exploitation shall be conducted, maintained or permitted on any part of the Development. No "For Rent" signs or other displays or advertising may be maintained or permitted on any part of the Property or on or in any Residential Unit except as approved by the Association.

3.04. **Alterations and Additions:** No improvements may be constructed and no architectural changes or additions may be made to any Residence or Residential Unit, nor shall any Residential Owner or Occupant install exterior storm sashes, storm doors, canopies or awnings of any kind on any Residential Unit, or build enclosures for the front or rear entrances, unless first approved, as to location, design, material and color, by Association. Any Owner or Occupant requesting consent of the Association for such construction or an architectural change or addition to any Residential Unit shall provide at the time such request is made, detailed plans and specifications showing the nature, kind, shape, height, type of materials and location of same in such detail as may be required by the Association. No Owner or Occupant shall be permitted, except as may be approved in writing by the Association, to erect a permanent porch for the front or rear entrance; however, awning-type patio covers, fences, gazebos or other landscaping amenity structures for the rear garden, which must first be approved in writing by the Association as to color, design, material and location, may be erected and maintained in the rear yard. No storage sheds, outbuildings, pools, spas or hot tubs (located outside of the Residence) may be erected unless approved in writing by the Association. The Association may prohibit entirely the erection and use of such structures. No privacy wall or other enclosure wall may be erected unless approved in writing by the Association.

[Execution Copy]

3.05. **Masts and Antennae:** No mast, antennae or other structure for transmitting or receiving messages or programs by radio or television shall be erected, permitted or maintained upon the exterior of any building or upon any Residential Lot, Residential Unit, or elsewhere within the Property, except where approved by the Association, provided, however, that satellite dishes are acceptable, but are restricted to an outside diameter of not greater than one meter (39.7"), or the maximum diameter measurement allowed by Federal or other applicable codes or ordinances.

3.06. **Pets and Livestock:** Except as herein provided, no animals, rabbits, poultry, nor any kind, character, or species of fowl or livestock shall be kept upon or maintained on any part of the Property. The Association reserves the right to adopt reasonable regulations governing the keeping within any Residential Unit or upon any Lot of domestic dogs, cats or such other household pets which shall not become a nuisance to the Owners or Occupants.

3.07. **Laundry:** No clothes, sheets, blankets, or other articles shall be hung out or exposed on any part of any Residential Unit or Lot except as approved by the Association.

3.08. **Appearance of Area:** The Owners or occupants of any Residential Unit shall keep their Lot and Residential Unit free and clear of rubbish, debris or other unsightly materials, obstructions or structures and shall keep their garage doors in a closed position when the same are not in use. There shall be no storage of any items nor placement of statuary, sculpture or other objects purporting to be artistic in nature on the front lawns, sidewalks, front entries, garage drives or on the Common Properties; however, there may be such benches, or other decorative seating accommodations in these areas where the same shall be approved, in writing, by the Association.

3.09. **Grading:** Except as shall be designated and/or performed by the Association or as may be directed by the City of Crystal Lake, Illinois ("City"), as the case may be, there shall be no changes in the grading of any Lot established at the completion of the construction of the Residence thereon nor shall the established pattern of drainage of surface water from any Lot thereafter be altered by any means, without the written approval of the Association first obtained, it being expressly understood that the grading and drainage pattern of each Lot will, or may have been, established pursuant to a coordinated grading and drainage plan of the Property.

3.10. **Encroachment:** Each Lot is hereby declared to be subject to easement for encroachments, intentional and unintentional, in favor of each contiguous Residential Unit and upon such surrounding Common Properties with regard to the location and maintenance upon such portions of the contiguous Residential Unit or Residential Lot as may be affected thereby for buildings, patios, shrubs, trees, concrete, wood or masonry or stone decks, courtyards, chimneys, roofs, gutters, overhangs, sills and downspouts or such other structures or parts thereof which shall be in existence after completion of the original construction of each respective Residence and delivery thereof to the initial Residential Owner. Such permitted easements or encroachments shall not be deemed a license or permit for Residential Owner to expand or enlarge any residential Unit on to any said or contiguous or surrounding area in the

completion, improvement, repair or restoration of any Residential Unit except as may be permitted with the written consent and approval of the Association.

3.11. **Parking Areas**: The Owners or Occupants of Residential Units shall use their respective Garages for the parking or storage of their motor vehicles. The areas for parking within a cluster of homes or in cul de sacs (herein "Guest Parking") may be used for occasional short-term parking by the Owners, Occupants, guests and invitees of the Owners or Occupants abutting the said cluster or cul de sacs. This permission is not to be construed as permitted permanent parking. The Association may fine or otherwise punish Owners or Occupants who continue to utilize the Guest Parking as permanent parking, after the Owner or Occupant has received written notice of such violation.

3.12. **Recreational Vehicles**. The use of any Garage Drive or parking area as a parking place for recreational and/or commercial vehicles other than such commercial vehicles used in the rendering of services on behalf of an Owner is prohibited. The term "commercial vehicles" shall include all trucks and vehicular equipment which shall bear signs or have printed on the side of same reference to any commercial undertaking or enterprise other than private passenger vehicles. The term "recreational vehicles" includes but is not limited to boats, campers, motorcycles, snowmobiles, mobile homes and trailers. The Association, however, may adopt regulations permitting temporary and/or overnight parking for recreational vehicles upon a Garage Drive or other parking area for the accommodation of guests or other invitees of an Owner or Occupant.

3.13. **Planting**: 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, Residential Unit or elsewhere within the Property.

3.14. **Landscape and Native Growth**: From and after the completion of the construction of each Residential Unit and the delivery thereof to the initial Residential Owner thereof, there shall be permitted by the rules and regulations adopted by the Association from time to time certain landscape improvements or additions, however, no sound trees shall be removed from any Residential Unit without the prior written approval of the Association.

3.15. **Other Structures**: No structure of a temporary character, trailer, recreation vehicle, tent, shack or other outbuilding shall be used, stored or maintained anywhere on the Property as a residence either temporarily or permanently.

3.16. **Leasing of Units**. No Owner, who acquires an ownership interest in a Residential Unit after June 27, 2006, may enter into any lease, sublease or other tenancy arrangement of any Residential Unit. In no event may any Owner enter into a lease agreement for less than a twelve (12) month period. Each Owner leasing his or her Residential Unit as of June 27, 2006 may continue to do so until such time as the current Owner has no ownership interest in a Residential Unit.

3.16.01. Any lease entered into shall be in writing and for a period of no less than one (1) year. The lease must also contain a provision that failure by the tenant or the Owner to

abide by the Declaration, By-Laws and Rules and Regulations of the Association, as amended from time to time, may, at the discretion of the Board of Directors, result in the termination of the lease by the Board of Directors, and any Riders prescribed by the Association must be completed and attached to the lease.

3.16.02. Copies of all leases must be submitted to the Board within ten (10) days after execution and prior to occupancy. In addition, any Owner leasing a Residential Unit shall deliver to the Board not later than the date of occupancy by the tenants, an information sheet listing the names of the tenants, their home and work telephone numbers, names and ages of children and names of other persons to be residing in the Residential Unit and their relationship to the tenants. All Owners who do not reside in the Residential Units owned by them shall provide the Board with their permanent address and telephone number where they can be reached in an emergency, both at home and at work.

3.16.03. All tenants shall acknowledge in writing that they have received a copy of the Declaration, By-Laws, Rules and Regulations of the Association, and all amendments thereto and a copy of the written receipt shall be submitted to the Board of Directors.

3.16.04. The restrictions provided for in this Section 3.16 shall not apply to any lease, sublease or other transaction between co-Owners of the same Residential Unit, or between the Owner and the spouse of the Owner, or between the Owner and any child (natural or adopted), parent, sibling, or grandparent of the Owner.

3.16.05. Hardship. Any Owner may apply for a waiver of Section 3.16 in the following manner:

(a) The Owner must submit a request in writing to the Board of Directors requesting a waiver, setting out the reasons why they are entitled to same, specifically describing the hardship that will be caused by the inability to lease the Residential Unit.

(b) The Board of Directors must be provided with sufficient factual information to determine the extent of the hardship to be suffered by the Owner and the Board of Directors may make independent inquiries of third parties based upon the information provided by Owner.

(c) If, based on the data supplied to the Board of Directors by the Owner, the Board finds that the hardship suffered by the Owner is sufficient to justify a waiver, the Board may grant a waiver of Section 3.16, with such conditions or limitations as the Board shall impose at the time of granting the waiver.

3.16.06. Enforcement/Remedies.

(a) Any Residential Unit being leased out in violation of this Section 3.16 may be subject to a flat or daily fine to be determined by the Board of Directors upon notice and an opportunity to be heard.

(b) In addition to the authority to levy fines against the Owners for violation of this Section 3.16, the Board shall have all rights and remedies, including but not limited to the right to maintain an action for possession against the Owner and/or the tenant, under Article IX of the Code of Civil Procedure (735 ILCS 5/9 et seq.), an action for injunctive and other equitable relief, or an action at law for damages.

(c) Any action brought on behalf of the Association and/or the Board of Directors to enforce this Section 3.16 shall subject the Owner to the payment of all costs and attorney's fees at the time they are incurred by the Association.

(d) All unpaid charges as a result of the foregoing shall be deemed to be lien against the Residential Unit and collectible as any other unpaid regular or special assessment, including late fees and interest on the unpaid balance.

3.16.07. Association's Right to Lease. The provisions of this Section 3.16 shall not affect the rights of the Board of Directors to lease a unit on behalf of the Association under an act entitled Forcible Entry and Detainer, 735 ILCS 5/9-101, 111.1.

3.17 **Nuisance, Unpermitted Activities:** No nuisance, noxious or offensive activity shall be carried on nor shall anything be done, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or Occupants of the Lots.

ARTICLE 4 **PROPERTY RIGHTS AND EASEMENTS**

4.01. **Title to Common Properties:** The legal title to the Common Properties is vested in the Association.

4.02. **Easement of Use and Enjoyment:** Subject to the provisions of Article 6, every Member shall have a right and easement of enjoyment in and to the Common Properties which shall include access, ingress and egress to such Common Properties and such shall be appurtenant to and shall pass with the title to every Residential Unit. Furthermore, said Common Properties shall be utilized, when roadways are constructed thereon, for ingress and egress to the individual Lots.

4.03. **Delegation of Use and Enjoyment:** In accordance with the rules and regulations of the Association, any Owner or Occupant may delegate his rights of the responsible use and enjoyment of the Common Properties to his family, invitees or any other person legally occupying the Residential Unit.

4.04. **Extent of Member's Easements:** The rights and easements of enjoyment created hereby shall be subject to the following:

4.04.01. The right of the Association in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to

mortgage said Common Properties, except easements of ingress and egress to Residential Lots shall be superior to any such mortgage of the Common Properties.

4.04.02. The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and

4.04.03. The right of the Association to dedicate or transfer or enter into a contract or other form of agreement for transfer of 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, or determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by the Members entitled to cast two-thirds (2/3) of the votes of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken, and further provided that such dedication shall only be permitted for the benefit of the Owners and their use of the Property.

4.05. **Utility Easements Over Common Properties:** The right is reserved to the Association to make and grant, in addition to those shown on any subdivision plat or otherwise in force, such conveyances of and such easements and rights over, upon and under the easement and Common Properties and the Lots or any part thereof for the construction and maintenance of facilities for the supply of water, electricity and gas, the furnishing of telephone and communication service (including cable television service), to provide for drainage and removal of sewage and waste and such utilities or other services as shall be necessary or appropriate in order to provide said service to Owners and Residential Units or adjoining land owners.

4.06. **Lighting:** It is intended that the Association may from time to time install upon the Common Properties certain types of decorative lighting and with regard thereto, there shall be a right and easement in favor of the Association upon and across such of the Common Properties and Lots as may be required for the installation and maintenance of such decorative lighting and the lines, pipes and conduits thereto as shall be reasonably required.

4.07. **Rights of the Association:** The Association reserves to itself and grants to its successors, assigns, agents and employees the right and an easement to enter upon any Property or any Lot at any reasonable time and from time to time in order to provide exterior maintenance, snow removal, repairs and lawn or landscaping care, or such other maintenance as may be provided by the terms of this Declaration or any amendment thereto. The Association shall preserve and maintain any signs, structures, or legends as shall have been erected at the entrance and identifying the Property as a part of the Common Properties and the same shall not be altered, amended or removed or relocated.

4.08. **Inspection:** To assure to the Association its rights to perform its responsibilities, each Lot or Residential Unit is hereby declared to be subject to an easement and right to and in favor of the Association and each and all of its employees, agents, and instrumentalities to go upon such Lot or the Residential Unit upon reasonable notice to the Owner thereof for

reasonable inspection thereof from time to time and for the purpose of carrying out any and all of the obligations and functions as are herein imposed upon or permitted to the Association.

4.09. **Boundary Easement to Provide Access for Maintenance of the Environmental Preservation Areas and Common Properties:** There may from time to time be at or near the perimeter of the Property trees, shrubs, berms, free-standing enclosure walls and other landscaping, partially or entirely enclosing the Property, except for such gates and other openings as shall be appropriate. Without limitation of any other provision hereof, all those parts of the Residential Units lying within fifteen (15) feet of the perimeter of the Property are hereby declared to be subject to an easement for the installation and maintenance of such trees, shrubs, berms, free-standing enclosure walls, gates, other openings and landscaping. There shall be permitted upon the said boundary easement encroachments for buildings, patios, concrete, wood, masonry or stone decks, courtyards, chimneys, roofs, gutters, overhangs, sills and downspouts where such are a part of the original construction of any Residential Unit.

4.10. **Additional Rules, Regulations and Easements:** Each Residential Owner and/or Occupant shall be subject to such additional rules and regulations as may from time to time be adopted by the Association and each Residential Owner and/or Occupant agrees to abide by and comply with such rules and regulations as may subsequently be adopted therefor. Further, each Residential Owner shall grant, from time to time, such easements and rights with respect thereto as may be reasonably necessary to conform with the terms and conditions of this Declaration or any amendment thereto. Specifically, without limitation by any other provision hereof, each Lot in the Development is hereby declared to be subject to an easement for such maintenance, replacement and repair of the landscaping and/or the structure as might be determined to be necessary by the Association.

ARTICLE 5 **WYNDMUIR PROPERTY OWNERS ASSOCIATION**

5.01. **Formation:** To carry out the intents and purposes hereof, the Wyndmuir Property Owners Association has been formed under and pursuant to the General Not-For-Profit Corporation Act of Illinois.

5.02. **Membership and Voting Rights:**

5.02.01. The Owner or Tenant of each Residential Unit or Lot shall be a Member of the Association, and Members shall be entitled to cast upon all matters one vote for each Residential Unit or Lot, regardless of the number of persons or entities who shall share in the title to or be beneficially interested in such Residential Unit or Lot. Upon the sale or other transfer of any ownership interest or occupancy interest in any Residential Unit or Lot, the ownership of membership in the Association and the power to vote shall be deemed for all purposes as having been transferred to the person or other entity having acquired such ownership interest in proportion thereto.

5.02.02. The provisions of this Section shall be mandatory. No Owner of any interest in any Residential Unit or Lot shall have any right or power to disclaim, terminate or

withdraw from its membership in the Association or any of his obligations as such member, and no purported disclaimer, termination or withdrawal thereof or therefrom on the part of any such Owner shall be of any force or effect for any purpose.

5.03. **Purpose:** The purpose of the Association shall be to perform all the functions provided in this Declaration and the Association shall have and possess such powers as shall be necessary or appropriate for the accomplishment thereof.

5.04. **Powers of Association:**

5.04.01. The administration of the Property shall be vested in the Association. Members of the Board of Directors shall be Owners and Members. The Members shall annually elect the Board of Directors and the powers of the Association shall be vested in the Board of Directors (the "Board of Directors"). The Board shall consist of not less than five (5) and not more than nine (9) Owners. Elections shall be held in such a manner and at such intervals as the corporate charter and By-Laws of the Association shall provide from time to time.

5.04.02. All power and authority to act on behalf of the Association, both pursuant to this Declaration and otherwise, shall be vested in its Board of Directors and its officers under the direction of said Board, and shall not be subject to any requirement of approval on the part of its Members, except as provided by the terms of this Declaration or within the Articles or By-Laws of the Association. The corporate Articles and By-Laws of the Association may include such provisions for the protection and indemnification of its officers and directors as shall be permissible by law.

5.04.03. The making of changes or amendments to this Declaration or in the easements, restrictions and rights herein set forth, and the amendment, modification and revocation thereof, all pursuant to the powers so to do granted or reserved to the Association and by this Declaration, shall be done by the Association only upon the recommendation of its Board of Directors with the approval by affirmative vote of not less than two-thirds (2/3) of all the votes which the Members of the Association shall then be entitled to vote, unless otherwise provided within this Declaration.

5.04.04. The Board of Directors shall have the power after notice and an opportunity to be heard, to levy and collect reasonable fines from Members or Owners for violations of the Declaration, By-Laws and Rules and Regulations of the Association.

5.05 **Determination of the Board to be Binding:** All matters of dispute or disagreement between Owners or with respect to interpretation or application of the provisions of this Declaration or the Bylaws or Rules and Regulations shall be determined by the Board which determination shall be final and binding on the Association and on all Owners and Members.

ARTICLE 6
COVENANT FOR MAINTENANCE ASSESSMENTS

As the maintenance of the Common Properties and the preservation of the architectural and physical development of the Property is critical to the wellbeing and value of the Property, and as the objectives of conserving this environment cannot be attained without proper funding, the provisions of this Article 6 are set forth to assure financial resources for the proper administration of the Property.

6.01. The Owner of each Residential Unit and Lot within the Property hereby covenants and each Owner of any Residential Unit and Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, as may from time to time be levied; each of 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 Lots and shall be a continuing lien upon the Lot(s) against which each such assessment is made. Each such assessment, together with interest thereon at the prime rate plus one percent (1%) per annum and cost of collection thereof, shall also be the personal obligation of the person or entity who was the Owner of such Lot or Residential Unit at the time when the assessment fell due.

6.02. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, welfare and preservation of the environment of the Owners and in particular for the improvement, maintenance and provision of such services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and the improvements situated thereon, or situated offsite, but for which the Association has maintenance responsibilities pursuant to a recorded easement agreement or similar agreement, the repair, replacement and the erection or construction of any additions thereto, as well as the cost of labor, equipment, materials, maintenance, management and supervision thereof.

6.03. The Association shall obtain such funds as it shall require from time to time by assessment upon the Owners of all the Residential Units and Lots except as allowed under Section 6.05 of this Article. The amount of such assessments shall be determined not less frequently than annually by the Board of Directors of the Association, who shall notify the Members thereof of the imposition not less than thirty (30) days before such action becomes effective. All assessments shall be levied equally upon the Owners of each such Residential Unit or Lot and shall be paid in advance by the Members in intervals determined by the Board from time to time. Said payments as required herein shall be prorated to the date each such Owner shall receive fee title to each such Residential Unit or Lot. The annual amounts assessed may include provision for such reserves for future expenditures as the Board of Directors shall deem appropriate.

6.04. In addition to the annual assessments authorized by Section 6.03 hereof, the Association may levy in any assessment year a special assessment or assessments, applicable to that year only, for the purpose of defraying in whole or in part, the unexpected cost of any

construction or reconstruction, repair or replacement of improvements, landscaping or other items upon the Common Properties or Lots, including such necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of all the votes which all Members of the Association shall then be entitled to vote 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.

6.05. To the extent necessary to provide for expenditures for which the requisite funds shall not have been provided by such assessments, the Association shall have power to borrow monies from such sources and upon such terms and with such security as the Board of Directors shall determine, provided however, that no property owned by the Association shall be encumbered to secure such borrowing without the affirmative vote of not less than two-thirds (2/3) of all the votes which the Members of the Association shall then be entitled to vote.

6.06. The Association shall not distribute to its Members any sums in the nature of dividends and to the extent that funds shall not be required for current expenditures or for such reserves, the next to become due assessment may be eliminated or the amount thereof appropriately reduced. Such reduction shall not prevent reinstatement of or increase in such assessments when required, but such reinstatement or increase shall not be retroactive.

6.07. The Association shall have the right to engage the services of contractors or persons or entities for the purpose of providing such services, inclusive of management, as are delegated to the Association by this Declaration on such terms as it shall deem appropriate.

ARTICLE 7 MAINTENANCE

7.01. Landscaping and Lawn Maintenance Service:

7.01.01. No landscaping shall be changed, added or removed prior to the plans for said landscaping being submitted to the Association for approval. The Association shall review the plans at the next scheduled meeting of the Board of Directors and inform the Owner of approval, denial, or recommended changes within a reasonable time after the meeting of the Board of Directors.

7.01.02. The Owner or Occupant of each Residential Unit shall make a reasonable effort to maintain the life of all trees, shrubbery, plantings, and lawns within the water restriction guidelines established by the City from time to time.

7.01.03. The Owner of each Lot or Residential Unit shall be responsible for the replacement of its lawn, shrubbery, trees, evergreens or plantings, which may from time to time become diseased or deteriorate and die. The Association may assess replacement or maintenance costs against any Owner of a Lot or Residential Unit where such maintenance or replacements are necessitated by reason of the failure of such Residential Owner or Lot Owner to provide for proper maintenance or replacement of same, as herein provided. Where such maintenance or replacement is in an area which serves as a

screen or divider between two adjacent Residential Units or Lots, the cost of such maintenance or replacement shall be borne by the Owner of the Lot upon which the screen or divider is installed. Any unpaid costs assessed shall be a lien against the affected Owner's Lot until paid in full, together with all the costs of the Association associated therewith.

7.01.04. The replacement of shrubbery, evergreens or trees in the Common Properties shall be the responsibility of the Association. Without limitation to any other provision hereof, all those parts of any Lot lying within five (5) feet of any Common Properties or roadway shall be subject to an easement for the installation and maintenance of such plantings, trees, shrubs, and other landscaping as shall be situated thereon and shall be determined by the Association and the same shall be the responsibility of the Association. There shall be permitted upon the said easements encroachments for buildings, patios, concrete or masonry decks, courtyards, chimneys, roofs, gutters, overhangs, sills and downspouts where such area is part of the original construction of any Residential Unit and exists exclusively on the date of the recording of the original Declaration on December 27, 1994.

7.01.05. The Association may provide landscape maintenance upon each Residential Unit or Lot which shall, among other things, consist of cutting lawns, cultivating, trimming and feeding evergreens and shrubs; reseeding, fertilizing, weed control programs, spraying, feeding and trimming of trees, on all landscaped areas not occupied by buildings, but such service shall not include any lawn sprinkling or watering of evergreens, shrubberies on Residential Units or Lots, nor care of Owners private flower gardens, unless such services are specifically assumed by the Association and the Owner or Occupant is notified of same.

7.01.06. Such landscaping as is situated upon the Common Properties shall be maintained by the Association.

7.02. **Snow Clearance:** Snow clearance service shall be provided by the Association and shall include snow clearance from the roadways within the Common Properties and for parking areas within a cluster for front entrance walks and garage driveways.

7.03. **Enclosure Walls, Berms and Entrance:** The maintenance, repair and replacement of enclosure walls, signs, berm entrance structures and courtyards in the Common Properties shall be the responsibility of the Association. In those areas where there shall exist a Privacy Wall as a screen or divider between two adjacent Residential Units, the cost of such maintenance or replacement shall be borne by the Owner of the Lot upon which the Privacy Wall is installed.

7.04. **Private Streets and Parking Areas:** The Association shall be responsible for the maintenance and repair of all private streets and parking areas.

7.05. **Lighting and Electrical Service:** The Association shall be responsible for the maintenance of lighting and the supply of electrical service on all private streets, parking areas,

entrances and all illumination facilities upon the Common Properties which are designed for the benefit of the Residential Unit Owners and not the responsibility of the City.

7.06. **Sewer Repair**: In the event repairs are required to sewer lines not maintained by a municipal or other governmental authority, the expense of repairing the same shall be prorated and charged to the Owners of the affected Residential Units or Lots.

7.07. **Exterior Repainting**: As the character of the architecture and color coordination of the Residential Units within the Property play such an important role in the ultimate residential environment, there shall be no change in any exterior color of any Residential Unit except as approved in advance by the Board of Directors. The Owner is free to personally perform the painting/staining of the exterior or contract with a qualified contractor who shall perform the service in a good and workmanlike manner and shall complete the work in a reasonable time period. In the event an Owner fails to maintain the exterior of his/her unit in accordance with the standards of the balance of the Property, the Association shall have the right, upon due notice to said Owner, to contract for the performance of the work to the Residential Unit and the cost thereof, together with interest at the prime rate plus one percent (1%) per annum, shall be a lien against the Owner's property, as well as the personal obligation of the Owner.

7.08. **Other Maintenance**: If any Owner of a Residential Unit or Lot fails to maintain its Residence or Lot in a reasonably satisfactory manner, the Board of Directors may elect to cause the Association to perform the same. All costs for maintenance changes not specifically allocated by this Declaration to the Association or as shall be incurred by the Association shall be the responsibility of the individual Lot or Residential Owner who owns the Residential Unit or Lot upon which the work was performed. The Association may elect to perform any or all exterior maintenance of the Residential Units. The definition of such exterior maintenance shall be left to the discretion of the Association as it may determine from time to time. Any costs incurred by the Association aforesaid, together with interest at the prime rate plus one percent (1%) per annum, shall be a lien against the Owner's Property and the Owner's personal obligation.

7.09. **Quality of Maintenance**: Such maintenance as shall be the responsibility of any Owner shall be performed by the said Owner in such a manner and with such material as shall preserve the harmony of exterior design and appearance as the same existed on the date the initial construction of the Residential Unit. If in the opinion of the Association an Owner shall fail to fully perform those covenants relating to maintenance, as are herein provided, then the Association shall cause written notice thereof to be served upon the Owner which notice shall specify, with particularity, those items of maintenance which are to be performed by the Owner and giving to the Owner a period of thirty (30) days to fully comply with those matters set forth within the notice. In the event the Owner shall fail to comply with the said notice, the Association, without further notice or demand, shall be empowered to perform or cause to be performed that maintenance remaining unperformed by the Owner and the cost thereof shall be assessed to such Owner by appropriate action of the Board of Directors. This assessment, together with interest thereon at the prime rate plus one percent (1%) per annum and such costs

of collection thereof (including reasonable attorney's fees shall be a lien against the Owner's Lot, as well as the personal obligation of the Owner.

7.10. **Access at Reasonable Hours:** For the purpose of such maintenance as shall be authorized by this Declaration, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to an Owner, to enter upon any Lot or exterior of any Residential Unit at reasonable hours on any day except Sundays and holidays.

7.11. **Maintenance Payment:** All maintenance or other services to be provided by the Association as set forth within this Declaration shall be paid by the Association as set forth within this Declaration and shall be paid by the Association from Association assessed funds.

ARTICLE 8 **INSURANCE**

8.01. To preserve the environmental character and architectural standards of the Property, so the same shall not be altered as a consequence of loss by casualty, in the event that any Residential Unit or any of the improvements situated on any Lot shall be damaged by fire or other casualty, the Owner thereof shall cause such damaged property to be repaired or rebuilt, as the case may be, with all reasonable diligence, to the condition as near as is reasonably possible to which such property existed prior to the date of such casualty.

8.02. To assure the prompt repair, restoration or rebuilding of any Residence or other improvement on a Lot damaged or destroyed by fire or other casualty, each Owner shall maintain in full force and effect insurance covering the Lot or Residential Unit, consisting of or providing all the protection afforded by so-called fire and extended coverage, vandalism and malicious mischief to the full replacement value thereof, with loss payable on the basis of the cost of replacement without deduction for depreciation. All such insurance shall be issued by companies authorized to transact business in the State of Illinois.

8.03. In order to assure the correct completion of the work concerned, the Association shall have the right, but not the obligation to exercise such supervision and direction over any or all repair, restoration or rebuilding carried out pursuant to the provisions of this Article, and the Owner of each Residential Unit that shall have been damaged or destroyed shall fully cooperate with and abide by any and all instructions and directions of the Association in connection herewith.

8.04. The Association shall obtain and maintain such insurance as its Board of Directors shall from time to time deem appropriate with respect to damage to or destruction of the Common Properties, or to or of any of the improvements thereon, or to or of any other tangible or intangible assets for which the Association may have responsibility from time to time, from any cause; and shall also obtain such liability and other kinds of insurance protection against such other matters or happenings as its Board of Directors shall from time to time deem appropriate, including director and officer errors and omissions insurance.

8.05. Whenever the Association shall be satisfied that any insurance required pursuant to this Article to be maintained by any Owner is not in force, or is about to expire and will not be renewed prior to expiration, the Association shall have the right but not the obligation to proceed to obtain such insurance or such lesser coverage as it may deem advisable, and the cost thereof shall be due from the Owner of the Residential Unit or Lot so insured to the Association forthwith upon demand in the same manner and upon the same terms as the placement of any assessment as provided in Article 6 of this Declaration.

8.06. The Association shall have the right, but not the obligation, to require each Owner to deposit with the Association a certificate or certificates of insurance setting forth thereon the coverages required by this Article 8 and such certificate or certificates shall not be cancelable except upon fifteen (15) days' prior notice to the Association.

ARTICLE 9 GENERAL PROVISIONS

9.01. **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 Owners of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty-five (25) years from the date the original Declaration was recorded, being December 27, 1994, 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 three-fourths (3/4) of the Lots has been recorded, agreeing to terminate the covenants and restrictions upon the expiration of said twenty-five (25) year period, or any extension thereof.

9.02. **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, post-paid, to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing, or delivered to a Member or Owner via a delivery method permitted under the By-Laws.

9.03. **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.

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

9.05. **Amendment**: The making of changes or amendments to this Declaration or in the easements, restrictions and rights herein set forth, and the amendment, modification and revocation thereof, all pursuant to the powers so to do granted or reserved to the Association and
[Execution Copy]

by this Declaration, shall be done by the Association only upon the recommendation of its Board of Directors with the approval by affirmative vote of not less than two-thirds (2/3) of all the votes which the Members of the Association shall then be entitled to vote, unless otherwise provided within this Declaration.

9.06. **Municipal Regulation:**

9.06.01. There shall be upon the Common Properties such driveways, Private Roads and paths as shall be necessary, together with such streets or roads, if any, as may become dedicated within the Property, to provide ingress and egress to and from the Residential Units and Lots for the use and benefit of the Owners and their guests and invitees, and also such other Private Roads and spaces for the parking of motor vehicles as the Association shall from time to time determine and shall be in compliance with such governmental laws, ordinances and regulations as shall be applicable from time to time.

9.06.02. No vehicles shall be parked or left standing unattended at any time upon any of the Private Roads, Easements or any Common Properties, or operated upon any of said Private Roads in any manner violative of any law or ordinance which would be applicable if said Private Roads or paths were public ways, unless permission by ordinance or otherwise shall be given by the Association or the City and that the City shall have and is hereby granted, all the rights to enact and enforce provisions regarding traffic regulation and other police matters by imposition of fines and other penalties and by removal of violating vehicles as the City would at the time have if said Private Roads were public streets within the City.

9.07. **Superseded Declaration:** This Amended and Restated Declaration supersedes the First Amendment and Restatement of Declaration and the Initial Declaration in its entirety and the First Amended and Restated Declaration and the Initial Declaration shall have no force or effect whatsoever and are hereby released and canceled. All covenants, agreements, easements, restrictions, terms and provisions herein set forth and rules and regulations adopted hereunder in effect with respect to the easements, Common Properties, Lots and Residential Units shall hereby be and shall be deemed to have been granted, adopted, provided or imposed, as the case may be, upon the easements, Common Properties, Lots, and Residential Units of the Property.

9.08. **Easement to City of Crystal Lake:** An easement is hereby granted to the City to go upon the Easements, Private Roads and Common Properties at any time and from time to time for the purpose of maintenance and repair of water, sewage and any other facilities under the control of the City or which the City shall deem to require maintenance or repair, for the purpose of keeping the Private Roads and paths thereon open at all times for the passage of fire, police and other emergency vehicles, personnel and equipment, including in this connection but without being limited thereto, the removal of snow and other debris from said Private Roads, Common Properties and paths and for the purpose of the exercise or enforcement of any of the rights or privileges granted to said City herein. Nothing herein contained shall require the City to maintain any Private Road or access way within the Property and the City shall not be deemed liable for any injury or damage to person or property which shall be subject to this Declaration

EXHIBIT A

LOTS 1 THROUGH 72 INCLUSIVE AND OUTLOTS G AND H IN WYNDMUIR
SUBDIVISION UNIT ONE OF THE WEST HALF OF THE NORTHWEST QUARTER OF
SECTION 34, TOWNSHIP 44 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL
MERIDIAN, IN MCHENRY COUNTY, ILLINOIS.

(except for its acts of negligence or the negligent act of its employees or agents), or to excuse the Association from any of its obligation with respect thereto.

9.09. **Incorporation of Declaration, By-Laws and Rules and Regulations into Leases:** This Declaration, the By-Laws and the portion of the rules and regulations that relate to the use of the individual Residential Units or Lots or Common Properties shall be applicable to any person leasing a Residential Unit and shall be deemed to be incorporated in any lease entered into or renewed after the effective date of this Amended and Restated Declaration.

9.10. **Authority:** This Amended and Restated Declaration has been approved by a vote of fifty (50) Owners in favor and two (2) Owners against, being the two-thirds (2/3) majority Member approval required hereunder, pursuant to the provisions of Section 5.04.03 of the Declaration, said approval being evidenced by the written consents of the Owners on file with the Secretary of the Association.

9.11. **Compliance with Governmental Authority:** The Association reserves the right and power to record any special amendments to this Amended and Restated Declaration at any time and from time to time, to amend this Amended and Restated Declaration to comply with requirements or requests of any institutional lender, bank, savings and loan association, savings bank or other similar institution providing financing for improvements on the Common Properties, or as may be requested or required by the Department of Housing and Urban Development, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Veterans Administration, the Federal Housing Administration or any other governmental or quasi-governmental agency or public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be signed and acknowledged.

Dated as of this 11th day of August, 2017.

THE WYNDMUIR PROPERTY OWNERS
ASSOCIATION, an Illinois not-for-profit corporation

By: 

Its: President

Attest:

By: 

Its: Secretary

[Execution Copy]

AFFIDAVIT OF SECRETARY

STATE OF ILLINOIS)
)
COUNTY OF MCHENRY) SS

I, Betty C. McKillip state that I am the Secretary of the Board of Directors of the Wyndmuir Property Owners Association, and hereby certify that the consent for the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for Wyndmuir Property Owners Association has been given by the record owners in fee simple of at least two-thirds (2/3) of the Lots in the Property, by a written instrument or instruments executed and acknowledged by each of the consenting owners and this Affidavit shall serve as the certificate of compliance with the provisions of the Declaration and shall be recorded in the office of the Recorder of Deeds of McHenry County, Illinois.

By:
Betty C. McKillip
Betty C. McKillip, Secretary

Subscribed and sworn to before me this

14th day of August, 2017.

[Signature]
Notary Public

