

DECLARATION OF
COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
FOR **TIMBERLINE SECOND**
ADDITION, A SUBDIVISION

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[Signature]
COUNTY RECORDER

Ramona Churchill

THIS DECLARATION, is made as of this 23rd day of September, 1996, by James A. Stupavsky and Cheryl L. Stupavsky, husband and wife, hereinafter referred to as the "Declarants".

WITNESSETH THAT:

WHEREAS, the Declarants are the owners of all of the lands contained in the area known as "Timberline Second Addition, a Subdivision" (herein called "Timberline Second Addition" or "Subdivision"), as shown and described on the plat thereof recorded on September 16, 1996 in Book 15 of Plats, at page 696, as Document No. 49757, in the Office of the Recorder of Deeds in and for the County of Adams, State of Illinois (herein called the "Plat"); and

WHEREAS, Timberline Second Addition, consists of the following described real estate:

Lots Thirty-five (35), Thirty-six (36), Thirty-seven (37), Thirty-eight (38), Thirty-nine (39), Forty (40), and Forty-one (41) of Timberline Second Addition, a Subdivision of a part of the Northwest Quarter of the Northeast Quarter of Section Twenty-one (21), Township Two (2) South of the Base Line, in Range Eight (8) West of the Fourth Principal Meridian, Adams County, Illinois,

WHEREAS, Declarants desire to subject and impose upon the Subdivision mutual and beneficial restrictions, covenants, conditions, easements, liens and charges hereinafter referred to as the "Restrictions" for the benefit and the complement of all of the lots in the Subdivision and the future owners thereof;

NOW, THEREFORE, the Declarants hereby declare that the real property located within the Subdivision shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a common plan for improvement of the Subdivision, established by the Declarants for the purpose of enhancing and protecting the value, desirability and

attractiveness of the Subdivision as a whole and of each lot and parcel situated thereon. All of these Restrictions shall run with the land and shall be binding upon the Declarants and upon all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereto (such persons being sometimes hereinafter referred to as "Owners").

1. RESIDENTIAL CHARACTER OF THE SUBDIVISION:

A. IN GENERAL: Every numbered lot in Timberline Second Addition is a residential lot and shall be used exclusively for single family residential purposes. No structure shall be erected, placed or permitted to remain upon any of said lots other than one (1) single family dwelling and an attached private garage. No outbuildings shall be located on any lot, except, if any, one (1) outbuilding accessory to the single family residence. An attached private garage must be provided for each lot. "Family", for purposes hereof, shall mean an individual or two (2) or more persons related by blood, marriage or adoption, living together as a single housekeeping unit, or a group of two (2) or more persons all of whom are related by blood, marriage or adoption, except that the group may include one (1) person not so related, living together as a single housekeeping unit.

B. RESIDENTIAL USE OF ACCESSORY OUTBUILDINGS, ETC., PROHIBITED: No accessory outbuildings shall be erected on any of said lots prior to the erection thereon of a single family dwelling house, and in no event shall any such accessory outbuilding ever be used as a residence or dwelling house or place for human occupancy or habitation.

C. OCCUPANCY OR RESIDENTIAL USE OF PARTIALLY COMPLETED DWELLING HOUSES PROHIBITED: No dwelling house constructed on any of said lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether or not a house shall have been "substantially completed" shall be made by the "Architectural Trustee" hereinafter described, and the decision of that Committee shall be binding on all parties concerned.

D. CONSTRUCTION MATERIALS: The finished exterior of every building constructed or placed on any numbered lot in the Subdivision shall be of material other than tar paper, rollbrick siding or any other similar material. The dwelling and outbuildings located on any lot shall be of standard construction materials. Pre-fabricated structures, modular, mobile homes and the like may not be located on any lot. All exterior sidewalls of all dwellings and appurtenances thereto shall be approved by the Architectural Trustee.

2. **RESTRICTIONS CONCERNING SIZE AND PLACEMENT OF DWELLING HOUSES AND OTHER STRUCTURES AND THE MAINTENANCE THEREOF:**

A. **MINIMUM LIVING SPACE AREAS:** No dwelling shall be constructed on any lot in the Subdivision exceeding the height hereafter stated having less than the following minimum square footages of living space, exclusive of porches (whether or not enclosed by screens or otherwise), breezeways, terraces, garages, car ports and other buildings:

Each one story dwelling shall contain floor space, excluding porches, breezeways, garages and basement, if any, of at least 2,400 square feet. All other dwellings shall contain floor space, excluding porches, breezeways, garage, and basement, if any, of at least 2,400 square feet with a minimum of 1,500 square feet on the first floor and 900 square feet on the second floor.

No dwelling shall exceed two and one-half (2 1/2) stories in height.

A garage shall be provided which contains at least five hundred (500) square feet.

B. **SET-BACK REQUIREMENTS:**

(i) **In General:** Except as may be otherwise provided in these restrictions or on the Plat, no dwelling house or above grade structure shall be constructed or placed on any numbered lot in the Subdivision (except fences or walls, the placement of which is provided for hereinafter) nearer to any lot line than the minimum building setback lines shown on the recorded subdivision plat, or twenty-five (25) feet, whichever is more.

C. **FENCES OR WALLS:** In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Subdivision, all property lines shall be kept free and open one to another and no fences or walls shall be permitted on any lot or lot lines except where, in the opinion of the Architectural Trustee (as hereinafter described), a fence, wall or other enclosure, as a structure or aesthetic feature of a design concept, will contribute to and be in keeping with the character of the area. In such cases, the Architectural Trustee shall determine the size, location, height and composition of the fence, wall or other enclosure.

D. **CONSTRUCTION MATERIALS:** The finished exterior of every building constructed or placed on any numbered lot in the Subdivision shall be of material other than tar paper, rollbrick siding or any other similar material. The dwelling and outbuildings located on any lot shall be of standard construction materials. Pre-fabricated structures, mobile homes and the like

may not be located on any lot.

E. DILIGENCE IN CONSTRUCTION: The exterior of every building whose construction or placement on any numbered lot in the Subdivision is begun shall be completed within twelve (12) months after the beginning of such construction or placement, unless prevented by weather or act of God or because of the size or nature of the construction project. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

F. PROHIBITION OF USED STRUCTURES: All structures constructed or placed on any numbered lot in the Subdivision shall be constructed with a substantial quantity of new materials and no used structures shall be relocated or placed on any such lot.

G. MAINTENANCE OF LOTS AND IMPROVEMENTS: The owner of each lot in the Subdivision shall at all times maintain said lot and any improvements situated thereon in such manner so as to prevent said lot or improvements from becoming unsightly; and specifically, such owner shall:

(i) Mow said lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds thereon;

(ii) Remove all debris or rubbish from said lot;

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of said lot;

(iv) Cut down and remove dead trees from said lot;

(v) Keep the exterior of all improvements constructed on said lot in such a state of repair or maintenance as to avoid their becoming unsightly.

H. ASSOCIATION'S RIGHT TO PERFORM MAINTENANCE: In the event that the owner of any lot in the Subdivision shall fail to maintain said lot or any improvements situated thereon in accordance with the provisions of these restrictions, and any By-laws of Timberline Association (as is hereinafter described), which from time to time may be in effect, and which may be relevant to these restrictions, said Association shall have the right, by and through its agents or employees or contractors to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and the improvements situated thereon (if any), conform to the requirements of these

restrictions. The cost, therefore, to the Association shall be added to and become a part of the annual charge to which said lot is subject, and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees, or contractor shall be liable for any damage which may result from any maintenance work performed hereunder.

3. GENERAL PROHIBITIONS:

A. IN GENERAL: No noxious or offensive activities shall be carried on on any lot in the Subdivision, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any owner of another lot in the Subdivision.

B. SIGNS: No sign of any kind shall be displayed to the public view on any lot except one (1) professional sign of not more than one (1) square foot, one (1) sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during construction and sales period.

C. ANIMALS: No animals, livestock, swine or poultry of any kind shall be kept, raised, bred or maintained on any lot in the Subdivision, except the usual household pets, and as to the usual household pets, they shall not be kept, raised, bred or maintained for commercial purposes, they shall not be wild or dangerous or considered ferae naturae by law, and they shall be required, except when on a lease held by and under the control of a reasonable individual, to be kept and maintained in the structures on the property and/or suitable enclosed pens and if in suitable enclosed pens, such pens must be located to the rear of the residential dwelling and must be landscaped to hide the pen and to suitably blend in with the surroundings. Without limiting the scope of wild and dangerous animals, they specifically include snakes, bears and foxes, and other such animals, even though they may otherwise be domesticated and/or thought of as pets.

D. DISPOSAL OF GARBAGE, TRASH AND OTHER LIKE HOUSEHOLD REFUSE: No owner of any lot in the Subdivision shall burn or permit the burning out of doors of garbage, trash or other like household refuse, nor shall any such owner accumulate or permit the accumulation out of doors of such refuse on his lot, except as may be permitted in subparagraph E, below.

E. CONCEALMENT OF FUEL STORAGE TANKS AND TRASH RECEPTACLES: Every tank for the storage of fuel that is installed outside any building in the Subdivision shall be either buried below the surface of the ground, or screened to the satisfaction of the Architectural Trustee, by fencing shrubbery or other means. Every outdoor receptacle for ashes, trash, rubbish or garbage shall

be installed underground or shall be so placed and kept as not to be visible from any street or lake within the Subdivision at any time, except at the times when refuse collections are being made.

F. RESTRICTIONS ON TEMPORARY STRUCTURES: No temporary house, trailer, garage or other outbuildings shall be placed or erected on any lot, but this shall not prohibit reasonable construction vehicles or trailers during the course of constructions.

G. BOATING RESTRICTIONS: Power boating activities on the Timberline Lakes will be limited to outboard type boats powered by electric motors only. Horsepower of boats powered by electric motors to be limited to five (5) H.P. Rowboats, canoes, and small sailboats (of the "day sailor" class) are also permitted. No boat shall be equipped with facilities which will discharge any waste materials into the Timberline Lakes.

H. DITCHES AND SWALES SHALL NOT BE OBSTRUCTED: It shall be the duty of every owner of every lot in the Subdivision on which any part of an open storm drainage ditch, stream or swale is situated to keep such portion thereof as may be situated upon his lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably required to accomplish the purposes of this subsection.

I. TRUCKS, BOATS & MOTORS, ETC. RESTRICTIONS: Trucks of any size, boats, trailers of any kind, motorized recreational vehicles, attachable vans, mobile campers, or similar equipment may be kept in the subdivision, which includes streets and lots, provided a permanent off-street, fully enclosed shelter (attached garage) is provided for housing therein and that such equipment is not kept outside thereof for a period of 24 hours. The only exception to this will be allowed when trucks or storage equipment are necessary and utilized during building construction.

J. ANTENNA AND SATELLITE DISH RESTRICTIONS: No antennas of any type shall be allowed or permitted on the premises, and no satellite dishes shall be allowed or permitted, unless the satellite dish is small enough to be properly camouflaged with suitable landscaping and such satellite dishes, if sufficiently small enough, shall be suitably camouflaged.

K. INSTALLATION OF UTILITY SERVICES:

(i) All utility lines and apparatus provided to or in the Subdivision, including, but not necessarily limited to, water, sewer and gas pipes, telephone, cablevision, community antenna services, and power lines and conduits, shall be buried below ground, except utility pedestals and transformers required to be above ground.

(ii) Sanitation systems serving properties, whether sewer or septic systems, shall conform to all federal, state and local laws or ordinances.

L. **OIL AND MINING OPERATIONS:** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

4. **ARCHITECTURAL CONTROL:**

A. **POWERS:**

(i) **Generally:** No building, building structures or improvement of any type or kind may be constructed or placed on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Trustee as to quality of workmanship and materials, harmony of external design with existing structures, compliance with these covenants, and as to location with respect to topography and finish grade elevation. It is intended that the Architectural Trustee when considering approval of plans and specifications may consider reasonable factors beyond those set forth in these covenants appropriate to the overall development of the subdivision. The Architectural Trustee shall be the exclusive Builder of all buildings, building structures or improvements of any type or kind unless permission is granted by the Architectural Trustee for another builder or builders as to each lot. The location of the building, building structure, or improvement of any type or kind, as to the placement on the lot, shall be subject to the final approval of the Architectural Trustee and such placement or placements shall be in accordance with the sole determination of the Architectural Trustee after consulting with the Owner and giving due consideration to all factors involved.

(ii) **Power to Grant Variances:** The Architectural Trustee may allow reasonable variances or adjustments of these Restrictions where literal application thereof would result in unnecessary hardship, provided, however, that any such variance or adjustment is granted in conformity with the general intent and purposes of these Restrictions and also, that the granting of a variance or adjustment will not be materially detrimental or injurious to other lots in the Subdivision.

B. **ARCHITECTURAL TRUSTEE:** The Architectural Trustee is James A. Stupavsky. The Architectural Trustee may designate a representative to act for him. In the event of the death,

resignation or inability to act of James A. Stupavsky, Cheryl L. Stupavsky shall then be the Architectural Trustee with full authority to act. In the event of the death, resignation or inability to act of both James A. Stupavsky and Cheryl L. Stupavsky, a successor trustee may be designated by a majority of the then owners of the lots determined as provided in paragraph 12, below. The designation of the trustee shall be recorded in the Recorder's Office of Adams County, Illinois.

C. **PROCEDURES:** The approval or disapproval as required in the covenants shall be in writing. In the event the Architectural Trustee, or the Trustee's designated representative, fails to approve or disapprove any plans or specifications within thirty (30) days after such plans and specifications have been submitted to the Trustee, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

D. **ASSOCIATION:** Except as to undeveloped lots owned by James A. Stupavsky and/or Cheryl L. Stupavsky, at such time as a dwelling is constructed on each lot within the Subdivision, the continuing function of the Architectural Trustee shall transfer to the Board of Directors of Timberline Association.

E. **LIABILITY OF TRUSTEE, ETC.:** Neither the Architectural Trustee nor any agent thereof, nor the Declarants, nor the Association, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

F. **SPECIAL PROVISIONS CONCERNING PIERS:** When the Architectural Trustee shall permit the construction or placing of a structure wholly or partly within Timberline, such permits shall constitute a mere license from the Declarants or its successors in title to Timberline which may be terminated or restricted at any time.

5. **EASEMENTS:**

The Declarants create and reserve unto themselves, their successors and assigns, certain easements along, across, over, under and upon the real estate that constitutes the Subdivision. The easement so reserved by the Declarants are described as follows:

A. **UTILITY:** Easements for location, construction, establishment, maintenance and operation of all utilities and accessories and for other purposes are reserved as shown on the recorded Subdivision Plat. Within these easements, no permanent building, structure, planting or other improvement shall be placed

or permitted to remain which may damage or interfere with the installation, location, maintenance and replacement of utilities, or which may change the direction of flow or drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and adjoining public areas, if any, shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible. "Utilities" for purposes thereof shall include, but not be limited to, water, sewer, gas, electric, cablevision, community antenna services and similar services provided to lots and any pipelines, conduits, wires, pedestals, transformers or other items and accessories necessary to conduct or provide such utilities.

B. STABILIZATION: Lots 11, 28, and 30 of Timberline Subdivision shall further be subject to an easement for the repairs, maintenance and permanent stabilization of the dams and dam slopes by the Association which shall be financially responsible for such maintenance, repairs and stabilization.

C. ACTION: No owner of any lot in the Timberline Second Addition shall have any claim or cause of action against Declarants, their successors, assigns, or licensees, either in law or in equity, and arising out of the exercise of any easement reserved hereunder, excepting in cases of willful or wanton negligence.

D. TRANSFER: Declarants may at any time convey, transfer, grant, relinquish or assign the easements or rights provided in this paragraph or otherwise under this instrument to the Timberline Association.

E. SPECIAL EASEMENTS:

(i) The following twenty (20) foot easements shown on the Plat of Timberline Subdivision as recorded in the Office of Adams County, Illinois Recorder, are also for walking access of lot owners in the Association and their immediate families to the upper and lower lakes:

1. Between Lots 10 & 11
2. Between Lots 11 & 30
3. Between Lots 27 & 28
4. Between Lots 13 & 14

(ii) Lot 30 of Timberline Subdivision shall be subject to permanent easement for construction, maintenance, and repair of a dam, or portion thereof, as is determined by the Declarants as needed to form and maintain the lower lake.

6. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER:

A. **MULTIPLE LOTS:** Whenever two (2) or more contiguous lots in the Subdivision shall be owned by the same person, and such person shall desire to use two (2) or more of said lots as a site for a single dwelling house, the person shall apply in writing to the Architectural Trustee for permission to so use said lots. If written permission for such a use shall be granted, the lots constituting the site for such single dwelling house shall be treated as a single lot for the purpose of applying these Restrictions to said lots, so long as the lots remain improved with one single dwelling house.

B. **REDIVIDED LOTS:** Lots may not be redivided except to increase the size of adjoining lots. If redivided, the appropriate adjoining lot combined with the redivided lot shall thereafter be treated as a single lot with side-yard and other setback lines considered appropriately altered.

7. OWNERSHIP, USE AND ENJOYMENT OF THE TIMBERLINE LAKES:

The Subdivision has located two (2) lakes. They are described on the plat of the Subdivision as the Upper Lake and Lower Lake. Collectively, they are the Timberline Lakes. The Timberline Lakes are and shall remain private, and neither the Declarants execution or recording of the Plat nor the doing of any other act by the Declarants is, or is intended to be, or shall be constructed as, a dedication to the public or the Lakes or other amenities. A license upon such terms and conditions as Declarants, their successors, assigns, or licensees shall from time to time grant, for the use and enjoyment of each of said Lakes, or other amenities, is granted to the persons who are from time to time members of the Timberline Association hereinafter described.

Declarants have or are about to convey fee simple title, free of financial encumbrances of the Timberline Lakes and its related easements, or other amenities to the Timberline Association hereinafter described to the extent located within the Timberline Subdivision. Such conveyance shall be deemed to have been accepted by the Timberline Association and those persons who shall from time to time be members thereof, upon the recording of a deed or deeds conveying the same to the Association.

8. THE TIMBERLINE ASSOCIATION:

A. **IN GENERAL:** There has been or will be created, under the laws of the State of Illinois, a not-for-profit corporation to be known as the "Timberline Association" which is sometimes herein referred to as the "Association". Every person who acquired title (legal or equitable) to any residential lot in the Subdivision

shall be a member of the Association, except that only one (1) of any number of co-owners of a lot shall be a member, all other co-owners will be Associate Members. The foregoing provision requiring that owners of residential lots within the Subdivision be members of the Association is not intended to apply to those persons who hold an interest in such real estate merely as security for the performance of an obligation to pay money, e.g., mortgagees and land contract vendors. However, if such person should realize upon such person's security and become the real owner of a residential lot within the Subdivision, he will then be subject to all the requirements and limitations imposed in these Restrictions on owners of residential lots within the Subdivision and on members of the Association, including those provisions with respect to the payment of an annual charge.

B. PURPOSES OF THE TIMBERLINE ASSOCIATION: The general purposes of the Association are:

(i) To promote pleasure, social recreation and sports activities for its members, their families and guests and to develop and maintain a recreationally oriented environment in the Timberline Subdivision and, specifically, with respect to the Timberline Lakes;

(ii) To provide a means whereby the Timberline Lakes or other amenities and such other recreational facilities within the Subdivision as may be conveyed to the Association or established by it, may be operated, maintained, repaired and replaced; and,

(iii) To provide a means for the promulgation and enforcement of all regulations necessary to the governing of the use and enjoyment of the Timberline Lakes or other amenities, and such other recreational facilities within the Subdivision as may be conveyed to the Association or established by it.

C. POWER OF ASSOCIATION TO LEVY AND COLLECT CHARGES AND IMPOSE LIENS:

(i) The Association shall have all of the powers set forth in its Articles of Incorporation, together with all other powers that belong to it by law, as well as the power to levy a uniform annual charge against the members of the Association. Such charge shall be at least One Hundred Dollars (\$100.00) per year. However, if the Board of Directors of the Association acting in accordance with By-Laws of said Association, shall after consideration of the financial requirements of the Association, so determine, the annual charge may be greater than One Hundred Dollars (\$100.00).

Only one adult person having a legal or equitable ownership in each lot shall be a member of the Association, all other members of the household shall be Associate Members as defined by the Timberline Association. however, each household represented in such ownership, regardless of the number of persons included therein shall be required to pay only one (1) such annual charge for each lot owned. Charges are imposed irrespective of whether a residence has been constructed on the lot.

No charge shall ever be levied against the Association itself, or any corporation that may be created to acquire title to and operate services to the Subdivision.

The rights of members of the Association as such members shall be as set forth in the By-Laws of the Association.

(ii) Every such charge so made shall be paid by the member of the Association within thirty (30) days after billing each year, for the current year, commencing with the year 1992. The Board of Directors of the Association shall fix the amount of the annual charge per member by the first day of February of each year or as soon thereafter as is practicable, and written notice of the charge so fixed shall be sent to each member within thirty (30) days after being established.

(iii) If any charge levied or assessed against any lot subject to these restrictions shall not be paid when due, it shall then ipso facto become a lien upon the lot or lots owned by the persons owing such charge or charges, and shall remain a lien against said lot or lots until paid in full, together with interest as is hereinafter provided and other charges or costs which might become due as a result of non-payment, or as is hereinafter provided. Such charges as are provided for in these restrictions shall bear interest at the judgment interest rate then established by the State of Illinois until paid in full. If, in the opinion of the Board of Directors of the Association, such charges have remained due and payable for an unreasonably long period of time, they may, on behalf of the Association, institute such procedures, either in law or in equity, either by way of foreclosure of such lien or otherwise, to collect the amount of said charge in any court of competent jurisdiction. The owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obligated to pay any expenses or costs, including attorneys' fees, incurred by the Association in collecting the same. Every person who shall become the owner of any lot subject to these Restrictions, whether such ownership be legal or equitable, and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified and by acquisition of such interest, agrees that any such liens or charges which may be extant upon said lot or lots at the time of the acquisition of such interest are valid liens and shall

be paid. Every person who shall become an owner of a lot in the Subdivision is hereby notified that by the act of acquiring such title, such person will be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to these Restrictions.

(iv) The Association shall, upon demand, at any time, furnish a certificate in writing signed by an officer of the Association certifying that the assessments on a specified lot have been paid or that certain assessments against said lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

D. PURPOSE OF THE ASSESSMENTS: The charge or assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members of the Association, and in particular, for the improvements and maintenance of the properties owned or operated by the Association. The Association shall be responsible for the repairs and maintenance of the dams, impoundment areas, landscaping islands, common sand filter collector lines, and costs thereof, including the costs of street lighting.

E. SUSPENSION OF PRIVILEGES OF MEMBERSHIP:

Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights (if any) and the right to use the facilities of the Association of any member of associate member:

(i) For any period during which any Association charge owed by the member of associate member remains unpaid; and,

(ii) During the period of any continuing violation of the restrictive covenants for the Subdivision, after the existence of the violation shall have been declared by the Board of Directors of the Association; and,

(iii) Because of any violation of the By-Laws or Regulations of the Association.

9. REMEDIES:

A. RIGHT TO PROCEED: The Association or any party to whose benefit these Restrictions inure, including the Declarants, their successors and assigns, and lot owners, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, and shall have the right to obtain a prohibitive or mandatory injunction to enforce the observance of

these Restrictions in addition to and cumulatively with any other remedy provided for herein, as well as the right to recover damages for the breach of these Restrictions. However, neither the Declarants nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.

B. FAILURE TO PROCEED: No delay or failure on the part of an aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Restrictions.

10. EFFECT OF OWNER'S ACCEPTANCE OF DEED, ETC.:

A. SUBJECT TO RESTRICTIONS: The Owner of any lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Declarants or a subsequent owner of such lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. Further, that by acceptance of such deed or execution of such contract, such persons do acknowledge the rights and powers of the Declarants and of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, they do covenant and agree and consent to and with the Declarants, the Association and to and with the grantees and subsequent owners of each of the lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

B. LAKE: Each such person also agrees, by such acceptance of a deed or execution of a contract for the purchase of a lot, to assume, as against the Declarants, their successors and assigns, all of the risks and hazards of ownership or occupancy attendant to such lot, including, but not restricted to its proximity to Upper Lake or Lower Lake, together constituting the Timberline Lakes.

11. TITLES, ETC.:

The title preceding the various paragraphs and subparagraphs of the Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. Whenever and wherever applicable, the singular form of any work shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

12. **DURATION:**

These Restrictions shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date these Restrictions are recorded, after which time said Restrictions shall be automatically extended for successive periods of five (5) years unless at least two-thirds (2/3) of the then owners of the lots sign and record an instrument revoking, altering or otherwise changing said Restrictions in whole or in part. Based on seven (7) lots, five (5) lot owners would thus be required. At any time, at least four-fifths (4/5) of the then owners of the lots may sign and record an instrument revoking, altering or otherwise changing said covenants in whole or in part. Based on seven (7) lots, six (6) lot owners would thus be required.

In determining the "then owners of the lots", each individual lot shall have a single right. If there are multiple owners of a lot, a majority in interest shall exercise the right of the lot. If there are two (2) owners having an equal interest, they shall exercise the right jointly, or if they fail to agree, then the first acquiring ownership or the first named in the deed or instrument conveying such lot shall exercise the right.

The consolidation or redividing of lots even if consistent with these covenants, conditions, easements or restrictions, shall not affect the lots entitled to vote. Further, the owner or owners of those portions of lots consisting of Upper Lake or Lower Lake (e.g., the Timberline Association) shall be disregarded so long as Upper Lake and Lower Lake exist.

13. **SEVERABILITY**

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.