

Prepared By and After  
Recording Return To:  
Sho Deen, Inc.  
Attention: Craig A. Shodeen  
17 North First Street  
Geneva, Illinois 60134

2001K007043

FILED FOR RECORD  
KANE COUNTY, ILL.

2001 JAN 23 PM 2:30

*Sandy Wegman*  
RECORDER

**COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR SINGLE FAMILY HOMES TO BE CONSTRUCTED IN  
MILL CREEK - NEIGHBORHOOD "R"  
KANE COUNTY, ILLINOIS**

K2042

THIS DECLARATION is made this 16th day of January, 2001 by The State Bank of Geneva, as Trustee under Trust Agreement dated October 14, 1999 and known as Trust No. 858 (the "Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real property described in Article I of this Declaration (the "Real Estate"); and

WHEREAS, Declarant is desirous of subjecting the Real Estate to the conditions, covenants, restrictions, reservations and easements hereinafter set forth, each and all of which is and are for the benefit of the Real Estate and each owner thereof and shall inure to the benefit of and pass with said Real Estate, and each and every parcel thereof;

WHEREAS, Sho Deen, Inc., an Illinois corporation, or its successor or assign, presently intends to construct single family homes on the Real Estate.

NOW, THEREFORE, Declarant does hereby declare that the Real Estate is, and shall be, held, transferred, sole, conveyed and occupied subject to the conditions, covenants, restrictions, reservations, and easements (sometimes hereinafter collectively referred to as "Covenants") hereinafter set forth.

**ARTICLE I Property Subject to this Declaration**

The Real Estate which is, and shall be held, transferred, sold, conveyed and occupied subject to the Covenants set forth herein is located in Kane County, Illinois, and is more particularly described as follows, to wit:

LOTS 1 THROUGH 34, BOTH INCLUSIVE, IN MILL CREEK, NEIGHBORHOOD "R", PHASE II, BLACKBERRY TOWNSHIP, KANE COUNTY, ILLINOIS AND LOTS 130 THROUGH 136, BOTH INCLUSIVE, IN MILL CREEK, NEIGHBORHOOD "R", PHASE II, BLACKBERRY TOWNSHIP, KANE COUNTY, ILLINOIS AND LOTS 144 THROUGH 238 BOTH INCLUSIVE, IN MILL CREEK, NEIGHBORHOOD "R", PHASE II, BLACKBERRY TOWNSHIP, KANE COUNTY, ILLINOIS.

**ARTICLE II General Purpose of This Declaration**

The Real Estate is subject to the Covenants hereby declared to insure the tasteful and consistent development of Mill Creek and every part thereof; to protect each property owner therein from such improper use of surrounding lots as may

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depreciate the value of their property; to guard against the erection thereon of buildings built of improper design or unsuitable materials; to insure adequate and reasonable development the Real Estate; to encourage the erection of original design and attractive improvements thereon, with appropriate locations thereof; to prevent haphazard and inharmonious improvements; to secure and maintain proper setbacks from streets, and adequate free spaces between structures; and, in general, to provide adequately for a residential subdivision of highest quality and character.

### ARTICLE III Definitions

**Basement.** A portion of a building located partly underground, but having half or more than half its clear floor-to-ceiling height below the average grade of the adjoining ground at the building front.

**Buildable Area.** (for the purpose of measuring lot width) The narrowest width within the 30 feet of lot depth immediately in back of the front yard setback line falling inside the side-yard setbacks.

**Building.** Any roofed structure intended for the shelter, housing, or enclosure of any person, animal or chattel.

**Building Accessory.** A subordinate building, the use of which is incidental to that of the principal building and customary in connection with that use.

**Building Height.** A subordinate building or portion of a principal building, the use of which is incidental to that of the principal building and customary in connection with that use.

**Developer.** SHO DEEN, INC., and its successors.

**Drainage Easements.** Areas that are integral to the overland drainage system of Mill Creek.

**Dwelling.** A single family residential building or portion, thereof, but specifically not including hotels, motels, rooming houses, nursing homes, mobile homes, or any form of camping vehicles.

**Family.** One or more persons each related to the other by blood, marriage, or legal adoption together with his or their domestic servants, maintaining a common household in a dwelling.

**Garage.** An enclosed storage area with doors, designed or used for storage of motor vehicles.

**Lot.** A parcel of land, under common fee ownership, occupied by or intended for occupancy by one dwelling and having frontage upon a street. Therefore, a "lot" may or may not coincide with a lot of record.

**Lot Area.** The area of horizontal plane, bounded by the vertical planes through front, side and rear lot lines.

**Lot Line, Front.** The boundary line of a lot which is an existing or dedicated street line as shown on the recorded plat. On corner lots, Sho Deen, Inc., or its successor, must approve the owner's selection of the intended front yard designation.

**Lot Line, Rear.** That boundary of a lot which is most distant from the front lot line, and is, or is approximately, parallel to the front lot line. If the rear lot line is less than ten (10) feet in length, or if the lot line forms a point at the rear, the rear lot line shall be deemed to be a line ten (10) feet in length within the lot, parallel to and at the maximum distance from the front lot line.

**Lot Line, Side.** Any boundary of a lot which is not a front or rear lot line.

**Mill Creek.** The real estate development in Kane County, Illinois commonly known as "Mill Creek".

**Parkway.** The unpaved strip of land within a street right-of-way and which is parallel to the roadway.

**Story.** That portion of a building included between the surface of any floor and the surface of the floor next above; or if there is no floor above, the space between the floor and the ceiling next above. A basement shall be counted as a story where one or more sides is a part of the exterior elevation. A cellar shall not be counted as a story.

**Structure.** Anything other than a dwelling, garage or accessory building erected or constructed on a lot the use of which requires more or less permanent location on or in the ground. A sign or other advertising device, detached or projecting, shall be construed to be a separate structure. For purposes of the definition, ornamental masonry walls and fences shall also be construed to be structures.

#### ARTICLE IV            General Restrictions

1. **Land Use and Building Type.** All lots in the Real Estate shall be used for private residence purposes only, and no building, except as specifically authorized elsewhere in this Declaration, shall be erected, re-erected or maintained thereon, except one dwelling, erected for occupancy by one family; and a private garage containing no more than three (3) parking spaces for the sole use of the owners or occupants of the dwelling. Other accessory buildings and structures may be erected in such manner and location only as hereinafter provided or as approved in writing by Sho Deen, Inc., or its successor.
2. **Building Height.** No dwelling shall be erected, altered, or placed which is more than two and one half (2 ½) stories at the front of the building or thirty-five (35) feet in height, whichever is lesser.
3. **Dwelling - Quality and Size.** It is the intention and purpose of these Covenants to assure that all dwellings shall be high quality design, workmanship and materials approved by Sho Deen, Inc., or its successor. All dwellings shall be constructed in accordance with applicable governmental building code and with more restrictive standards that may be required by Sho Deen, Inc., or its successor. The floor area of the dwelling, exclusive of garages, carports, open terraces, gazebos, and breezeways, shall be:
  - a) For one-story Dwellings - not less than 1,200 square feet.
  - b) For Dwellings of more than one story - the total living area in the dwelling shall not be less than 1,500 square feet with not less than 800 square feet on the ground floor.
4. **Location on Lot.** No building, garage, structure or fence shall be located on a lot within the front yard set back or the street side set back on corner lots unless approved by Sho Deen, Inc. or its successor. The construction of swimming pools shall require the prior approval of Sho Deen, Inc. or its successor and shall be screened from any interior street by a wall, solid fence, evergreen hedge or other visual barrier as approved in writing by Sho Deen, Inc. or its successor. No swimming pool shall be located on a lot nearer to the front lot ahead of the rear

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of any home on the same street which said residence faces. In the case of corner lots, a front yard setback must be honored on both exposures for the purpose of fence installation or swimming pool construction and enclosure.

5. **Driveways.** Access driveways and other paved areas for vehicle use on a lot shall have a base of compacted gravel, crushed stone or other approved base material, and shall have a wearing surface of asphaltic concrete, concrete, or the equivalent thereof.
6. **Easements.** An easement is hereby granted to Kane County, Blackberry Township, Geneva Township, Mill Creek Water Reclamation District and public or private suppliers of utility service, including but not limited to electric, telephone, gas, cable television, etc., and Elburn and Countryside Fire Protection District and Ambulance District to go upon the lots for the purpose of providing police and fire protection services and maintaining and repairing those portions of the lots (streets, sidewalks, sewer and water mains and lines), and drainage ways which shall require maintenance or repair for the purpose of keeping (a) the streets and sidewalks thereon open at all times for the passing of fire, police and other emergency vehicles, personnel and equipment from the date such notice is received; and (b) the sewer and water main lines functioning and for their intended purpose; and (c) the drainage ways clear of structure fill, landscaping or materials that inhibit the overland flow of water.
7. **Drainage Easements.** Structures, fill, landscaping, and materials that inhibit the overland flow of water are not permitted across or in the drainage easements between lots or lots and streets. Fences may be installed in drainage easements as long as the main body of the fence is at least six (6) inches above the finish grade of the overflow swale.
8. **Natural Drainage Ways.** Where there exists on any lot or lots a natural condition of accumulation of storm or surface water remaining over an extended period of time, the lot owner may, with the written approval of Sho Deen, Inc. or its successor, take such steps as shall be necessary to remedy such condition; provided, however, that no alterations or diversions of such natural water flow proposed by the lot owner will cause damage to other property, either inside or outside the confines of Mill Creek or affect the overall drainage system of Mill Creek.
9. **Home Occupations, Nuisances and Livestock.** No home occupation or profession shall be conducted in any dwelling or accessory building thereto located on the Real Estate except as allowed by the ordinances of the Kane County, Illinois. No obnoxious or offensive activity shall be carried on, in or upon the Real Estate, nor shall anything be done thereon which may be, or may become, any annoyance or nuisance to any other portion of the Real Estate. No livestock, poultry of any kind or more the two (2) dogs or cats over four months of age shall be kept or maintained on any lot. No burning of refuse or leaves, branches, etc. shall be permitted outside the dwelling. The dumping of grass clippings, leaves, branches, etc. on the golf course, common areas, parks, forest preserve, unsold platted lots or areas to be developed is strictly prohibited. The use of any open carport, driveway or parking area which may be a part of any lot as a habitual parking place for recreational or commercial vehicles or articles is prohibited. All "commercial vehicles" (trucks, trailers, etc.) and "recreational vehicles" shall be stored inside the garages at all times.
10. **Easement for Golf Balls.** All lots and the common public or private property of the Real Estate are burdened with an easement permitting golf balls unintentionally to come upon the lots or common public or private property near the golf course and for golfers at reasonable times and in a reasonable manner to come upon the common public property of the Real Estate to retrieve errant golf balls. Golfers may not enter upon any lot or common private

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property of a neighborhood, fenced or not, to retrieve errant golf balls without the owners permission prior to entry. The existence of this easement shall relieve golfers, Sho Deen, Inc., the golf course owner and operator, the Declarant, the developer of Mill Creek and home contractors in Mill Creek of liability for damage caused by errant golf balls.

11. **Exterior Wall Mounted Lights.** All homes must have a minimum of three (3) exterior wall mounted lights on the wall of the home and garage that front a single roadway. Homes located on a corner lot where in the garage fronts a roadway different from that of the home shall have a minimum of four (4) exterior wall mounted lights; two (2) on the garage and two (2) on the front of the home.
  
12. **Nameplates and Hospitality Light Standards, Television or Radio Antennae and Towers, Laundry Drying Facilities or Flag Poles.** There shall be no more than two nameplates on each lot. A nameplate shall be not more than thirty-six (36) square inches in area, and contain the name of the occupant and or the address of the dwelling. It may be located on the door of the dwelling or the wall adjacent thereto, or upon the wall of any accessory building or structure, or free-standing in the front or side yard, provided that the height of the free standing nameplate is not more that twelve (12) inches above the adjoining ground grade. One hospitality light standard, of a design approved by Sho Deen, Inc., or its successor, may be located within the front yard. No television or radio tower, antenna, or laundry-drying equipment shall be erected or used outdoors, whether attached to a building or structure or otherwise. Satellite dish systems shall not exceed 18" in size and must be installed in a discrete location approved by Sho Deen, Inc., or its successor. Flag poles are permitted, provided the pole is not more than twenty-five (25) feet in height, unless otherwise approved by Sho Deen, Inc., or its successor.
  
13. **Temporary Structures.** No trailer, basement of an uncompleted building, tent, shack, garage, barn, and no temporary building or structure of any kind shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling shall be on the same lot as the dwelling, and such buildings or structures shall be removed promptly upon completion of construction, and prior to occupancy of residence.
  
14. **Fences.** No fence shall be constructed on a Lot unless the type, materials and location of the fence is first approved by Sho Deen, Inc. in accordance with the provisions of paragraph 15 hereof. All fences shall also comply with the fence criteria set forth on Exhibit "A" attached hereto.
  
15. **Architectural Controls.** It is understood and agreed that the purpose of architectural controls is to secure an attractive, harmonious residential development having continuing appeal. No construction of a building, fence, wall or other structures shall be commenced, nor shall any addition change, or alteration thereto be made (except "interior" alterations) until the construction plans and specifications, showing the nature, kind, shape, height, materials, color scheme, and proposed location on said lot have been submitted to and approved in writing by Sho Deen, Inc., or its successor. Said approving agency hereby retains the right to refuse any such construction plans and specifications, or location, which are not suitable or desirable in the opinion of Sho Deen, Inc., or its successor, for aesthetic or other reasons; and in so passing upon such construction plans and specifications or location Sho Deen, Inc., or its successor, shall have the right to take into consideration the suitability of the proposed building or other structure with the surroundings, and the effect of the building or other structure on the compatibility with adjacent or neighboring properties. All plans, specifications and other materials pertinent to any proposed

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construction shall be submitted to the office of Sho Deen, Inc., or its successor together with the payment of fifty (\$50.00) dollars. A report in writing setting forth the decisions of Sho Deen, Inc., or its successor shall thereafter be transmitted to the applicant by Sho Deen, Inc., or its successor, within thirty (30) days after the date of filing the plans, specifications and other material by the applicant. Sho Deen, Inc., or its successor, following the submission of the aforesaid, will aid and assist the prospective residents or their agents and will make every attempt to reasonable cooperate with the wishes of the lot owner. Lot owners are encouraged to submit preliminary sketches for "informal comment" prior to the submittal of drawings and specifications for full review. In the event Sho Deen, Inc., or its successor, fails to approve or disapprove within thirty (30) days after submission, the final plans, specifications an other material, as required in this Declaration; or (b) no suit to enjoin construction has been filed within thirty (30) days commencement of such construction, approval shall not be required, and the related requirements of this Declaration shall be deemed to have received compliance.

- 16. **Underground Wiring.** No above ground communication, electric or television lines or cable shall be permitted to be placed anywhere in the Real Estate other than within buildings or structures. It is intended that all such necessary and approved conduits and cables will be constructed, placed and maintained underground.
- 17. **Maintenance of Parkways.** The owners of lots in the Real Estate shall be responsible for the maintenance of parkways located between their lot lines and the edges of street pavements on which said lots back up to and or front.
- 18. **Deviations by Agreement with Sho Deen, Inc., or Its Successor or Assign.** Sho Deen, Inc., or its successor, hereby reserves the right to enter into agreements with the owner of any lot or lots (without the consent of owners of other lots or adjoining or adjacent property) to deviate from any or all of the Covenants set forth in this Article IV, provided there are practical difficulties or particular hardships evidenced by the petitioning owner, and any such deviation (which shall be manifested by an agreement in writing) shall not constitute a waiver of the particular Covenant involved or any other Covenant as to the remaining property in Mill Creek.

**ARTICLE V**

**General Provisions**

- 1. Each of the Covenants set forth in this Declaration shall be binding for an initial period of thirty (30) years from date hereof, and thereafter for successive periods of twenty-five (25) years each.
- 2. The Covenants herein set forth shall run with the land and bind Sho Deen, Inc., or its successor, grantees and assigns, and all parties claiming by, through, or under them. Sho Deen, Inc., its successor, and each owner or owners of any of the above land from time to time shall have the right jointly and separately to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of the Covenants above set forth, or any of them, in addition to the right to bring an ordinary legal action for damages. Whenever there shall have been built on any lot in the Real Estate any structure which is and remains in violation of the Covenants above set forth, or any of them, for a period of thirty (30) days after actual receipt of written notice of such violation from Sho Deen, Inc., or its successor, or by the owner of such lot, then Sho Deen, Inc., or its successor or assign shall have, in addition to the foregoing rights, the right to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, and such entry and abatement or removal shall not be deemed a trespass. In no event shall the failure of Sho Deen, Inc., or its successor or assign, to enforce

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any of the Covenants herein set forth as to a particular violation be deemed to be a waiver of the right to do so as to any continuing or subsequent violation.

3. The record owners in fee simple of the lots in the Real Estate may revoke, modify, amend or supplement in whole or in part any or all of the Covenants and conditions contained in this Declaration and may release from any part or all of said Covenants all or any part of the real property subject thereto, but only at the following times and in the following manner:
  - a) Any such change or changes may be made effective at any time within ten (10) years from the date of recording of this Declaration if the record owners in fee simple of at least three-fourths of said lots consent thereto;
  - b) Any such change or changes may be made effective at the end of said initial thirty (30) year period or any such successive twenty-five (25) year period if the record owners in fee simple or at least two-thirds of said lots consent thereto at least five (5) years prior to the end of any such period;
  - c) Any such consents shall be effective only if expressed in a written instrument of instruments executed and acknowledged by each of the consenting owners and recorded in the Office of the Recorder of Deeds of Kane County, Illinois; provided, however, that Article V hereof may be amended at any time in the manner therein set forth. A recordable certificate by an accredited abstractor or title guaranty company doing business in Kane County, Illinois, as to the record ownership of said property shall be deemed conclusive evidence thereof with regard to compliance with the provisions of this section. Upon and after the effective date of any such change or changes, it or they shall be binding upon all persons, firms, and corporations then owning property in the Real Estate, through or under any one or more of them.
4. All Covenants, liens, and other provisions herein set forth shall be subject to and subordinate to all mortgages or deeds of trust in the nature of a mortgage now or hereinafter executed, encumbering any of the Real Estate and none of the said Covenants, liens or other provisions shall supersede or in any way reduce the security or affect the validity of any such mortgage or deed of trust in the nature of a mortgage. However, if any such property is acquired in lieu of foreclosure of any mortgage or under the provisions of any deed or trust in the nature of a mortgage or under any judicial sale, any purchaser at such sale, his or its grantees, heirs, personal representatives, successors or assigns shall hold any and all such property so purchased or acquired subject to all the Covenants, liens and other provisions of this Declaration.
5. If a court of competent jurisdiction shall hold invalid or unenforceable any part of any Covenant or provision contained in this Declaration, such holding shall not impair, invalidate or otherwise affect the remainder of this Declaration which shall remain in full force and effect.
6. When used in these Covenants "successor" means a person or corporation who succeeds to the position of Sho Deen, Inc., or its successor, as developer of lots in Mill Creek and "assign" means the Mill Creek homeowner who take by written assignment from Sho Deen, Inc., or its successor.

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CONSENT OF MORTGAGEE

Mid America Bank, f.s.b., Mortgagee pursuant to a certain Mortgage dated December 21, 2000 and recorded \_\_\_\_\_, 19\_\_ in the Office of the Recorder of Deeds of Kane County, Illinois as Document Number \_\_\_\_\_, does hereby consent to the recording of the foregoing Covenants, Conditions and Restrictions for Single Family Homes to be Constructed in Mill Creek - Neighborhood A and agrees that the lien of the aforesaid Mortgage shall be subject to the provisions of the aforesaid Declaration.

IN WITNESS WHEREOF, Mid America Bank, f.s.b., as Mortgagee aforesaid, has caused its corporate seal to be affixed hereto and has caused its name to be signed to these presents by its duly authorized officers, as of the 17<sup>th</sup> day of January, 2000.

Mid America Bank, f.s.b.  
as Mortgagee aforesaid  
By: Garrett E. Buhle  
Title: Vice President

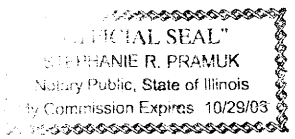
ATTEST:  
By: Linda S. Ceno  
Title: ASST V.P.

STATE OF ILLINOIS)  
D. Pugel SS.  
COUNTY OF KANE )

I, Stephanie R. Pramuk, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Garrett E. Buhle, Vice, President of Mid America Bank f.s.b., and Linda S. Ceno, ASST. V.P. Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and ASST. V.P. Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth; and the said ASST. V.P. Secretary did also then and there acknowledge that as custodian of the corporate seal of said Corporation, did affix the said corporate seal of said Corporation to said instrument as her own free and voluntary act, and as the free and voluntary act of said Corporation for the uses and purposes therein set forth.

GIVEN under my hand and seal this 17<sup>th</sup> day of January, 2000.

Stephanie R. Pramuk  
Notary Public



**EXHIBIT "A"**  
**FENCE INSTALLATION SPECIFICATIONS**

Proposed fence installations must be submitted to and approved by Sho Deen Inc. or its successors or assigns, **prior to installation**. The following information is provided to assist you in making your submittal. The specifications for the preferred standard fence is as follows:

Material:	Cedar	Rails:	Nominally 4" X 6"
Maximum Height	4 1/2 Feet at the Top of a Fence Post	Posts:	Nominally 6" X 6"
Style:	Rustic Split Rail (2 or 3 Rails)		

Standard "Picket" style fence, not to exceed 4 feet in height will also be accepted.

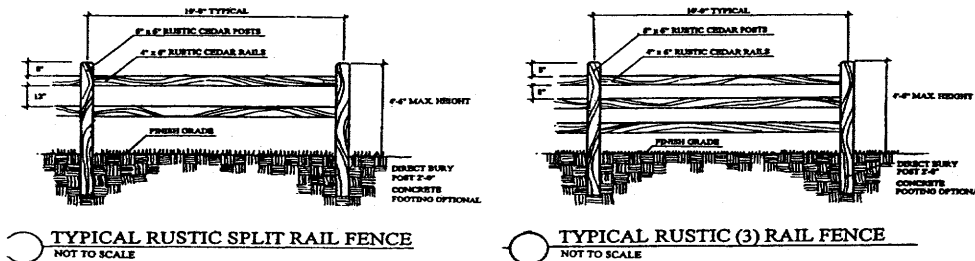
Please refer to the pictures below.

Fences cannot be placed on screen planting easements. Fences will not be allowed in front of the rear wall of a dwelling or attached garage or, on corner lots, beyond the actual set back of the side wall of the dwelling or garage that fronts a street. Fences may extend into utility easements at the owners risk.

The fence must be placed so the outside face of the fence is inside the property line. It is suggested the fence be placed six inches (6") inside the property line to allow for minor survey and installation discrepancies.

Fence installations on golf course lots and lots backing up to public and private open space and adjacent to roadways may be further restricted and will be handled on a case-by-case basis. Fence installations on lots with swimming pools will be revised on a case-by-case basis. Please contact Sho Deen, Inc. for additional information.

Fence Sketch:



**Information needed with submittal:**

A plat of survey with your house footprint indicating the exact location of the proposed fence installation and any existing easements, drainage structures or drainage paths. Hand drawn sketches of lot boundaries are not acceptable.

The complete details of the fence design including the height in all areas and placement and width of gates.

If there are existing fences on any of the adjoining properties that you will be attaching to or abutting, this must be indicated. The fence must match the height of any existing fences.

Send your submittal to Sho Deen Inc., 17 North First Street, Geneva, Illinois 60134. Decisions can generally be made within ten days to two weeks of the date a complete submittal is received by Sho Deen Inc.. However, please remember that the Mill Creek Covenants allow up to thirty days for Sho Deen Inc. to render a decision. In all instances you will be notified in writing of Sho Deen Inc.'s decision.

Sho Deen, Inc., its successors or assigns, reserves the right to change or modify the fence standards at any time without notice.

If you have any additional questions, please call (630) 232-8570.

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