

Filed for record June 29 2000 at 4:07:50 P  
Document No. 13267 recorded in Book 163 Page 674 M In Boone Co. M/  
Bettie Johnson, Recorder of Deeds

**DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS**

**OF**

**SPRING CREEK  
A SUBDIVISION OF BOONE COUNTY, MISSOURI**

**BY**

**WYNFIELD DEVELOPMENT CORP.,  
DEVELOPER**

**Attn: Allan F. Price, President  
2504 Woodberry Court  
Columbia, MO 65203**

**Re: The following described real estate situated in Boone County, Missouri:**

**All real estate shown and described and subdivided by the plat of Spring Creek Plat 1, as recorded in Plat Book 34 at Page 9 of the Real Estate Records of Boone County, Missouri, including all of Lot 101 through 163 of Spring Creek Plat 1, as shown by such plat, and all other real estate contained within the boundaries of the parcel platted by such plat.**

**Prepared by:**

**B. Daniel Simon  
Brown, Willbrand, Simon & Powell, P.C.  
601 East Broadway, Suite 203  
P.O. Box 1304  
Columbia, Missouri 65205-1304**

**(573) 442-3181  
(573) 874-3796 fax**

**Nora Dietzel, Recorder of Deeds**

|   |      |
|---|------|
| BACKGROUND RECITALS .....   | -1-  |
| ARTICLE I   |      |
| <u>DEFINITIONS AND MISCELLANEOUS TERMS AND CONDITIONS</u> .....                     | -2-  |
| Section 1. <u>Association</u> .....   | -2-  |
| Section 2. <u>Parcel</u> .....  | -2-  |
| Section 3. <u>Property</u> .....  | -2-  |
| Section 4. <u>Record</u> .....  | -2-  |
| Section 5. <u>Plat</u> .....  | -2-  |
| Section 6. <u>Lot</u> .....   | -2-  |
| Section 7. <u>Lot Owner</u> .....   | -3-  |
| Section 8. <u>Common Area</u> .....   | -3-  |
| Section 9. <u>Common Elements</u> .....   | -4-  |
| Section 10. <u>Declaration</u> .....  | -5-  |
| Section 11. <u>Developer</u> .....  | -5-  |
| Section 12. <u>Person</u> .....   | -5-  |
| Section 13. <u>Class A Member</u> .....   | -5-  |
| Section 14. <u>Development</u> .....  | -5-  |
| Section 15. <u>Builder</u> .....  | -6-  |
| Section 16. <u>Singular, Plural or Gender</u> .....                                 | -6-  |
| Section 17. <u>Building</u> .....   | -6-  |
| ARTICLE II  |      |
| <u>MEMBERSHIP IN THE ASSOCIATION</u> .....  | -6-  |
| ARTICLE III   |      |
| <u>VOTING RIGHTS</u> .....  | -7-  |
| Class A .....   | -7-  |
| Class B .....   | -7-  |
| ARTICLE IV  |      |
| <u>LOTS</u> .....   | -8-  |
| ARTICLE V   |      |
| <u>THE ASSOCIATION</u> .....  | -9-  |
| Section 1. <u>Formation</u> .....   | -9-  |
| Section 2. <u>Articles of Incorporation and Bylaws</u> .....                        | -9-  |
| Section 3. <u>Administration</u> .....  | -10- |
| Section 4. <u>Board of Directors</u> .....  | -10- |
| Section 5. <u>General Powers and Duties of the Association</u> .....                | -10- |
| Section 6. <u>Entry Into Lots</u> .....   | -12- |
| Section 7. <u>Limitation Upon Power of Association and Board of Directors</u> ..... | -13- |
| Section 8. <u>Rules and Regulations</u> .....                                       | -13- |

|   |      |
|---|------|
| Section 9. <u>Active Business</u> ..... | -13- |
|---|------|

## Unofficial Document

### ARTICLE VI

|   |      |
|---|------|
| <u>MAINTENANCE FUND</u> .....   | -13- |
| Section 1. <u>Creation of a Lien and Personal Obligation for Assessments</u> .....      | -13- |
| Section 2. <u>Purpose of Assessments</u> .....  | -14- |
| Section 3. <u>Maintenance Fund</u> .....  | -14- |
| Section 4. <u>Initial Assessment and Annual Assessment</u> .....                        | -14- |
| A. <u>Initial Assessment</u> .....  | -14- |
| B. <u>Annual Assessment</u> .....   | -15- |
| Section 5. <u>Contingencies and Shortages</u> .....                                     | -16- |
| Section 6. <u>Failure to Agree</u> .....  | -16- |
| Section 7. <u>Special Assessments for Capital Improvements</u> .....                    | -17- |
| Section 8. <u>Special Lot Assessment</u> .....  | -17- |
| Section 9. <u>Special Tax Bills for Public Improvements/Common Improvements</u> .....   | -17- |
| Section 10. <u>Special Assessment for Replacement or Non-periodic Maintenance</u> ..... | -18- |
| Section 11. <u>Uniform Rate of Assessment</u> .....                                     | -18- |
| Section 12. <u>Alteration of Number of Lots</u> .....                                   | -18- |
| Section 13. <u>Shortages</u> .....  | -18- |
| Section 14. <u>Enforcement of Assessments</u> .....                                     | -19- |
| Section 15. <u>Notice and Priority of Lien in Favor of Association</u> .....            | -20- |
| Section 16. <u>Release of Assessment Liens</u> .....                                    | -22- |
| Section 17. <u>Relation of Assessment Lien to Other Liens and Encumbrances</u> .....    | -23- |
| Section 18. <u>Exempt Property</u> .....  | -23- |

### ARTICLE VII

|   |      |
|---|------|
| <u>ARCHITECTURAL CONTROL</u> .....  | -23- |
| Section 1. <u>Requirement for Approval of Plans and Specifications Before Start of Any Building, House or Any Improvement or Structure or Any Changes in Same</u> ..... | -23- |
| Section 2. <u>Developer's Discretion is Absolute</u> .....  | -24- |
| Section 3. <u>Procedures for Obtaining Approval of Plans and Specifications</u> .....   | -25- |
| Section 4. <u>Further Description of Plans and Specifications</u> .....   | -26- |
| Section 5. <u>Developer's Discretion/Discretion of Board or Architectural Control Committee Absolute</u> .....  | -26- |
| Section 6. <u>Burden of Proof</u> .....   | -27- |
| Section 7. <u>Minimum Building Standards</u> .....  | -28- |
| a. <u>"Building"</u> .....  | -28- |
| b. <u>"One Family Dwelling" or "Single Family Residence" or "Single Family Dwelling"</u> .....  | -28- |
| c. <u>"Dwelling"</u> .....  | -28- |
| d. <u>"Family"</u> .....  | -28- |
| e. <u>"Living Unit"</u> .....   | -29- |
| f. <u>"One Family Dwelling"</u> .....   | -29- |
| Section 9. <u>Setbacks</u> .....  | -29- |

|  |      |
|--|------|
| Section 10. <u>Exterior Finish Materials/Approval of Exterior Finish Materials/Roof Materials and Roof Type and Roof Slope</u> .....                       | -29- |
| Section 11. <u>One Family Dwelling Purposes</u> .....  | -30- |
| Section 12. <u>Minimum Size of Residential Buildings/Further Architectural Control Standards</u> .....   | -30- |
| A. <u>Minimum Size of Building</u> .....   | -30- |
| B. <u>Roof Pitch and Materials</u> .....   | -31- |
| Section 13. <u>Hard Surfaced Driveways</u> .....   | -32- |
| Section 14. <u>Pools, Hot Tubs, Retaining Walls and Accessory Improvements and Above-Ground Pools</u> .....  | -32- |
| Section 15. <u>Fences, Walls and Privacy Screens</u> .....   | -32- |
| Section 16. <u>Two Car Garages</u> .....   | -33- |
| Section 17. <u>Erosion Control</u> .....   | -33- |
| Section 18. <u>Accessory Buildings, Out Buildings and Other Improvements</u> .....   | -33- |
| Section 19. <u>Basketball Goals</u> .....  | -34- |
| Section 20. <u>Play Structures</u> .....   | -35- |
| Section 21. <u>Pools and Hot Tubs</u> .....  | -35- |
| Section 22. <u>Additions and Modifications</u> .....   | -35- |
| Section 23. <u>Exterior Wiring, Antennas or Installation of Satellite Receiver Dishes or Similar Improvements/Air Conditioners, Heat Pumps, Etc.</u> ..... | -35- |
| Section 24. <u>Above-Ground Swimming Pools</u> .....   | -36- |
| Section 25. <u>Sodding and Landscaping Requirements</u> .....  | -36- |
| Section 26. <u>Mailboxes</u> .....   | -38- |
| Section 27. <u>Drainage</u> .....  | -38- |
| Section 28. <u>Sprinkler Systems in Front Yards</u> .....  | -38- |
| Section 29. <u>Docks</u> .....   | -39- |

## ARTICLE VIII

|   |      |
|---|------|
| <u>MAINTENANCE</u> .....  | -39- |
| Section 1. <u>General Maintenance by Association</u> .....                  | -39- |
| Section 2. <u>Maintenance, Repairs and Replacements by Lot Owners</u> ..... | -40- |
| Section 3. <u>Standards of Maintenance, Repair and Replacement</u> .....    | -40- |
| Section 4. <u>Special Assessment</u> .....                                  | -40- |
| Section 5. <u>Landscaping</u> .....   | -41- |
| Section 6. <u>Lawn Irrigation System</u> .....                              | -41- |

## ARTICLE IX

|  |      |
|--|------|
| <u>GRANTS AND RESERVATIONS OF EASEMENTS</u> .....                                | -41- |
| Section 1. <u>Easements for Repair, Maintenance and Restoration</u> .....        | -41- |
| Section 2. <u>Other Easements</u> .....  | -41- |
| Section 3. <u>Pedestrian Access Easements</u> .....                              | -41- |
| Section 4. <u>Landscaping Easement</u> .....                                     | -42- |
| A. <u>Permanent Easement</u> .....   | -42- |
| B. <u>Imposition of Easement</u> .....   | -42- |
| C. <u>Running With Land/Easement in Favor of Association and Developer</u> ..... | -42- |



# Boone County, Missouri

678

|            |  |      |
|------------|--|------|
| D.         | <u>Purpose of Easement</u>                             | -43- |
| E.         | <u>Installation of Improvements Within Easement</u>    | -43- |
| F.         | <u>Lot Owner Barred</u>                                | -43- |
| G.         | <u>Maintenance</u>                                     | -44- |
| H.         | <u>Common Elements</u>                                 | -45- |
| I.         | <u>Delegation to Lot Owners</u>                        | -45- |
| Section 5. | <u>Sign Easements</u>                                  | -46- |
| Section 6. | <u>Easements Over Common Areas and Common Elements</u> | -46- |
| Section 7. | <u>Easement for Docks</u>                              | -47- |

## ARTICLE X

|   |      |
|---|------|
| <u>COMMON AREAS</u>                               | -47- |
| Section 1. <u>Members' Easements of Enjoyment</u> | -47- |
| Section 2. <u>Delegation of Use</u>               | -47- |
| Section 3. <u>Title to Common Areas</u>           | -47- |
| Section 4. <u>Members' Easements of Enjoyment</u> | -47- |
| Section 5. <u>Designation of Common Areas</u>     | -48- |
| Section 6. <u>Docks</u>                           | -48- |

## ARTICLE XI

|   |      |
|---|------|
| <u>USE RESTRICTIONS</u>   | -49- |
| Section 1. <u>One Family Dwelling Purposes</u>  | -49- |
| Section 2. <u>No Subdivision</u>  | -49- |
| Section 3. <u>Single Family Residence</u>   | -49- |
| Section 4. <u>No Roomers or Boarders</u>  | -49- |
| Section 5. <u>Home Occupation</u>   | -49- |
| Section 6. <u>Additional Structures/Docks</u>   | -50- |
| Section 7. <u>Parking</u>   | -50- |
| Section 8. <u>Noxious or Offensive Activities</u>                                     | -51- |
| Section 9. <u>Signs</u>   | -51- |
| Section 10. <u>Debris Free</u>  | -52- |
| Section 11. <u>Trash, Storage, Disposal</u>   | -52- |
| Section 12. <u>House Trailers, Mobile Homes, Modular Homes and Manufactures Homes</u> | -52- |
| Section 13. <u>Livestock, Poultry and Pets</u>  | -52- |
| Section 14. <u>Additional Structures</u>  | -53- |
| Section 15. <u>Maintenance</u>  | -53- |
| Section 16. <u>Open Fires</u>   | -54- |
| Section 17. <u>Storage Tanks</u>  | -54- |
| Section 18. <u>Automotive Repair</u>  | -54- |
| Section 19. <u>Satellite Receiver Dishes, Radio Antennas and Similar Structures</u>   | -54- |
| Section 20. <u>Two, Three and Four Wheeled Recreational Vehicles/Boats</u>            | -54- |
| Section 21. <u>Outside Improvements, Lawn Ornaments, Vegetable Gardens, Etc.</u>      | -55- |
| Section 22. <u>Fences</u>   | -55- |
| Section 23. <u>Fire Wood</u>  | -55- |
| Section 24. <u>Exterior Storage</u>   | -55- |

# Boone County, Missouri

679

|   |      |
|---|------|
| Section 25. <u>Additional and Accessory Structures or Improvements, Fences, Pools and Other Ancillary Structures.</u> | -56- |
| Section 26. <u>Above-Ground Swimming Pools.</u>   | -56- |
| Section 27. <u>Additional Provisions Dealing with Maintenance</u>   | -56- |
| Section 28. <u>Mowing and Trimming and Lawn and Landscaping Irrigation</u>  | -56- |
| Section 29. <u>Enforcement.</u>   | -57- |

## ARTICLE XII

|  |      |
|--|------|
| <u>GENERAL PROVISIONS</u>              | -59- |
| Section 1. <u>Enforcement.</u>         | -59- |
| Section 2. <u>Attorney's Fees.</u>     | -59- |
| Section 3. <u>Severability.</u>        | -60- |
| Section 4. <u>Amendment.</u>           | -60- |
| Section 5. <u>Notices</u>              | -60- |
| Section 6. <u>Language Variation.</u>  | -60- |
| Section 7. <u>Titles and Captions.</u> | -60- |

## ARTICLE XIII

|  |      |
|--|------|
| <u>DRAINAGE EASEMENTS AND DRAINAGE</u>                             | -60- |
| Section 1. <u>Drainage Easements.</u>                              | -60- |
| Section 2. <u>Drainage/Surface Water Drainage and Groundwater.</u> | -62- |
| Section 3. <u>Responsibility for Drainage.</u>                     | -62- |

Re: The following described real estate situated in Boone County, Missouri:

All real estate shown and described and subdivided by the plat of Spring Creek Plat 1, as recorded in Plat Book 34 at Page 9 of the Real Estate Records of Boone County, Missouri, including all of Lot 101 through 163 of Spring Creek Plat 1, as shown by such plat, and all other real estate contained within the boundaries of the parcel platted by such plat.

**DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS  
OF SPRING CREEK, A SUBDIVISION OF BOONE COUNTY, MISSOURI**

This Declaration of Covenants, Easements and Restrictions made on 28<sup>th</sup> day of June, 2000, by **WYNFIELD DEVELOPMENT CORP.**, a Missouri corporation [mailing address: Wynfield Development Corp., Attn: Allan F. Price, President, 2504 Woodberry Court, Columbia, MO 65203], which such corporation may hereinafter be referred to as "the Developer."

WITNESSETH:

**BACKGROUND RECITALS**  
["Recitals"]

The Developer is the owner of a tract of land in Boone County, Missouri, which may hereinafter be referred to as "the Parcel," and which has been platted as Spring Creek Plat 1, by the plat of Spring Creek Plat 1 recorded in Plat Book 34 at Page 9 of the Real Estate Records of Boone County, Missouri ("the Plat"). The Developer intends to commit all of the said Parcel, including all of the lots, tracts and parcels of real estate, as shown by the said Plat, and all streets shown by the Plat, to the provisions of this Declaration, and to the easements, restrictions, reservations and covenants provided by this Declaration.

The Developer intends to subject all of the land of the Parcel, and all Lots and streets contained within the Parcel, to certain easements, restrictions, reservations, covenants, liens, charges and assessments, which shall constitute covenants running with the land, and which shall be binding upon all of the present and future Lot Owners, and which are intended for the common benefit of all of the Lots and Lot Owners, and the Developer, accordingly, executes and records this Declaration.

NOW, THEREFORE, the Developer hereby declares that all of the real estate contained within that Parcel ("the Parcel") platted as Spring Creek Plat 1 by the Plat hereinabove described, and all Lots and streets contained within such Parcel, and any modifications of any of such Lots, and any improvements now or hereafter located thereon, shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, liens and charges, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of the real estate and the Buildings now or hereafter located thereon. These easements, covenants, restrictions, conditions, liens and charges shall run with the real estate and the real property, and shall be binding on all parties having or acquiring any right, title or interest in the real property or any part thereof, and shall be binding on all parties having or acquiring any right, title or interest in the above-described Parcel,

or any part thereof, or any Lot contained therein, or any improvements located thereon, and shall inure to the benefit of each owner thereof. The Developer further declares as follows:

**ARTICLE I**  
**DEFINITIONS AND MISCELLANEOUS TERMS AND CONDITIONS**

This instrument shall hereafter for convenience and for purposes of brevity and clarity, be defined as the "Declaration". For the purpose of brevity, certain words, phrases and terms used in this "Declaration" are defined as follows, and the following terms and conditions shall apply:

**Section 1. Association** means a not for profit corporation of the State of Missouri, to be known as "Spring Creek Homes Association of Boone County," or by a name similar thereto (as selected by the Developer, if such name is not legally available). Such Association shall be organized as a not for profit corporation of the State of Missouri, which shall be established as hereinafter provided in the Declaration. All references in this Declaration to "the Association" shall mean such not for profit corporation, and its successors and assigns, which shall serve as the Association of Lot Owners, and shall have the powers, duties, privileges, immunities and obligations conferred upon the Association by this Declaration.

**Section 2. Parcel** means the entirety of the parcel platted as Spring Creek Plat 1 by the Plat.

**Section 3. Property** means all the land, property and space comprising the Parcel, and all improvements and structures erected, constructed or contained therein or thereon, including any Building or Buildings, and all other building or buildings, and structures placed therein, and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Lot Owners.

**Section 4. Record** means to record in the Office of the Recorder of Deeds of Boone County, Missouri, wherein the Property is located.

**Section 5. Plat** means the Plat of Spring Creek Plat 1 hereinabove described, and any amendments, plattings, replatting or modifications thereof. The Developer reserves the right to amend the Plat as to any portions of the Parcel owned by the Developer, from time to time, but not as to any Lots or portions of the Parcel owned by persons other than the Developer.

**Section 6. Lot** means each of Lots 101 through 163, both inclusive, of the Parcel, as shown by the Plat; **excluding, however, the following Lots, which are intended to be Common Areas and Common Elements as hereinafter described:**

- Lot 158, which contains a lake;
- Lot 159, which is intended to be a Common Area;
- Lots 160, 161 and 162 (Lot 162 being the entryway to the Development), which are intended to be Common Areas and Common Elements; and

~~Unofficial Document~~  
- Lot 163, which is an island in the cul-de-sac or bulb located in the intersection of Ridgeview Drive and Hunter Valley Drive, and which shall be a Common Area.

Those Lots hereinabove excluded from the definition of a "Lot" shall be Common Areas and Common Elements as hereinafter described. All references to a "Lot" or "Lots," as such references are hereinafter set forth in this Declaration, shall mean and refer to each of Lots 101 through 163, both inclusive, as shown by the Plat, other than those Lots which are excluded from being "Lots" by the above provisions of this Section 6, and which shall be Common Areas and Common Elements. The provisions of this Section 6 and any provisions of this Declaration to the contrary notwithstanding, the Developer shall have the right, as to any Lots owned by the Developer, and without the consent of any persons whomsoever, to:

- a. Change the Lot lines;
- b. Subdivide such Lots so as to create additional Lots;
- c. Combine Lots so as to reduce the number of Lots;
- d. Otherwise amend or change the Lot lines of such Lots.

The number of Lots may, therefore, be changed by the Developer.

Section 7. Lot Owner means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Lot.

Section 8. Common Area shall mean any real estate contained within the Plat, other than the Lots, and shall also mean and include any Lots which may hereafter be conveyed to the Association by the Developer or any other property owner (with the consent and acceptance of the Association's Board of Directors), and any other Common Area or Common Lot or other common improvements shown upon any Plat, and it shall further include any entry-way monuments for the Development, entry-way structures for the Development and landscaping placed at the entrance to the Development or any portion of the Development, and shall further include the following:

- Lot 158, and the lake thereon, and the dam for such lake, and that area of "Cross Timber Court," shown as "Common Area Not Covered as Public Right-of-Way, But To Be Covered By Right-of-Use Agreement," by the Plat, which such "Common Area Not Covered as Public Right-of-Way" shall be a Common Area, and shall be maintained, repaired and replaced as such; and
- Lot 159 as shown by the Plat, which shall be a Common Area; and
- Lots 160, 161 and 162, as shown by the Plat, which are intended to be Common Areas, and which are located at the entryway to the Development, being the intersection of Spring Creek Road and Vawter School Road; and

– The entryway center island located in the intersection of Spring Creek Road and Vawter School Road, which is noted on the Plat as a Common Area; and

– Lot 163, which is in the bulb or cul-de-sac in the intersection of Hunter Valley Drive and Ridgeview Drive; and

– An easement for pedestrian purposes, labeled “16’ Pedestrian Access Easement,” which is located between Lots 115 and 116, as shown by the Plat (such easement being intended to be a Common Area).

**Section 9. Common Elements** shall mean the Common Areas described in Section 8 above, and all structures and improvements now or hereafter erected or constructed thereon and any other Common Areas hereafter designated as Common Area and any Lots or parcels or easements which the Developer may hereafter choose to call Common Area (with the consent of the Association’s Board) and any other parcels or tracts which the Developer, in the Developer’s discretion, may (with the consent of the Association’s Board) hereinafter designate as “Common Area”, and all buildings, structures and other improvements located thereon. The “Common Elements” shall further include:

– The lake located on Lot 158 and the dam therefor, and all appurtenances to such lake and such dam, and all appliances therefor and all components of same;

– All trees, lawns and landscaping placed within any Common Areas by the Developer or the Association;

– All trees, shrubs, lawns and other landscaping materials placed within a “Landscape Esmt.” (which may be hereinafter referred to as a “Landscape Easement”), which crosses Lots 101 through 106, both inclusive, and Lots 133 through 137, both inclusive [which such Lots border Vawter School Road], as it is intended that the landscaping placed within the said Landscape Easement shall be a Common Element of the Association;

– Such Landscape Easement, itself;

– A walkway or trail to be placed within the “16’ Pedestrian Access Easement,” located between Lots 115 and 116, as shown by the Plat and such Easement; and

– Any pedestrian access easement now or hereafter located within the Parcel, as shown by the Plat or any amendment of the Plat, including that described immediately above; and

– All drainage easements shown by the Plat, to the extent that same are not publicly owned or publicly maintained or publicly improved or utilized; and

– An entryway signs or entryway monuments for the Development, including landscaping thereof and lighting therefor, and all parts and components of the entryway for the Development, same being located within Lots 160, 161 and 162 and the Common Area for the Development located at the entrance for the Development, Spring Creek Road, at or near its intersection with Vawter School Road; and

– Any other entryway signs or entryway monuments for the Development; and

– Lot 163, and all lawns, trees, shrubs and other landscaping materials located thereon, and all lighting located thereon, and all other improvements placed thereon; and

– Any other trees, shrubs, landscaping materials, structures or improvements of any kind or nature whatsoever now or hereafter located within any Common Area.

**Section 10.** Declaration means this instrument.

**Section 11.** Developer shall mean and refer to Wynfield Development Corp., a corporation of the State of Missouri, and its successors, and shall further refer to any person or persons to whom such corporation or its successors shall assign all or any portion of its rights as the Developer under the terms of this Declaration. A conveyance by the Developer by Warranty Deed or otherwise shall not be deemed to be an assignment of any of the Developer's rights as the Developer unless such rights are specifically mentioned in such conveyance. Such rights can only be assigned by a written assignment, deed, deed of trust or other similar instrument by the Developer, which specifically refers to the rights of the Developer under this Declaration. The provisions of this Section 11 to the contrary notwithstanding, a conveyance by the Developer of any of the Property by deed of trust or mortgage, shall be deemed to carry therewith all of the rights of the Developer, as set forth in this Declaration, with respect to the property subject to the deed of trust or mortgage, including all architectural control rights attributable thereto, and all Class B voting rights attributable thereto. In other words, a conveyance by the Developer by deed of trust or mortgage shall be deemed to include therein all rights of the Developer (and Class B memberships) with respect to the real estate described in such deed of trust or mortgage, which shall be subject to the lien of the deed of trust or mortgage.

**Section 12.** Person means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

**Section 13.** Class A Member shall mean a Class A Member of the Association and shall mean a Lot Owner of a Lot owned by a person other than the Developer and the Developer's assignees. The qualifications for Class A membership are set forth below. "Class B Member" shall mean the Developer and any assignees of any of the Developer's Class B membership rights. A deed or other conveyance by the Developer shall not assign any of its rights as the Developer, or any of the Developer's Class B memberships, unless all such rights or Class B memberships are specifically mentioned therein; provided, however that the provisions of Section 11 dealing with mortgages and deeds of trust shall be in effect. Assignments of rights as the Developer, or assignments of the Developer's Class B membership rights, can be made, wholly or in part, only by written deeds, warranty deeds, or specific instruments of assignment, which specifically refer to the rights and memberships assigned.

**Section 14.** Development shall mean all real estate contained within the Parcel, and all Buildings and improvements now or hereafter located thereon, all of which shall be known as "Spring Creek."



**Section 15. Builder** shall mean an individual, company or corporation who or which acquires a Lot for purposes of building or constructing a Building thereon for sale to others. The Developer may sell a Lot to a Builder, other than the Developer, for purposes of building or constructing improvements located thereon for sale to others. Any Building or improvement erected on any such Lot, must be erected in accordance with the Architectural Control provisions hereinafter set forth in this Declaration. A sale of a Lot by the Developer to a Builder shall not constitute an assignment of the Class B votes attaching to such Lot, or of any of the Development rights or Architectural Control attaching to such Lot, or of any of the rights of the Developer as the "Developer", which attach to such Lot, unless the Developer, in addition to the sale of the Lot, by specific written assignment, assigns to the Builder the Class B voting rights attributable to the Lot, or the Developer's rights as the Developer attributable to such Lot, or the Class B membership attributable to such Lot. All Lots sold or conveyed to a Builder shall, unless specifically agreed to the contrary, remain subject to the Architectural Control provisions hereinafter set forth in this Declaration.

**Section 16. Singular, Plural or Gender**. Whenever the context so requires, the use of the plural shall include the singular and the singular the plural, and the use of any gender shall be deemed to include all genders.

**Section 17. Building** means and refers to a separate, detached, distinct Dwelling structure (i.e., a house), located within the Development. It is intended that each Lot will contain one Building (i.e., a house), and that the Development shall, therefore, consist of traditional, detached, single family Dwellings, such as those customarily found in Zoning District R-1 in the City of Columbia, Boone County, Missouri. "**Building**" shall, therefore, mean a single family residential structure, arranged, intended and designed for (and used for and only for) occupancy by one Family as a residence. Each structure located within the Development which contains a Living Unit shall be a Building. Each Building shall be located upon a Lot. The boundary lines of the real estate containing a Building, as shown on the Plat, shall be Lot. Only one Living Unit shall be contained in each Building.

## **ARTICLE II**

### **MEMBERSHIP IN THE ASSOCIATION**

Every Lot Owner, other than the Developer, shall automatically be a Class A Member of the Association, shall be subject to the jurisdiction of the Association, shall be subject to assessments levied by the Association under the following provisions of the Declaration, and shall be entitled to all rights and privileges of Class A membership in the Association. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation as members of the Association. There shall be one (1) Class A membership in the Association appurtenant to the ownership of any Lot which is subject to assessment by the Association. Class A membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of a Lot shall be the sole qualification for Class A membership in the Association. Class A membership in the Association shall be automatic, and shall not be discretionary. Class A membership shall automatically attach to ownership of a Lot, and ownership of a Lot shall subject the Lot Owner thereof to all duties and obligations of Class A membership, and to assessments levied by the Association. Class A membership in the Association cannot, under any circumstances, be partitioned or separated from



ownership of a Lot subject to the jurisdiction of the Association. Any covenant or agreement to the contrary shall be null and void. No Lot Owner shall execute any deed, lease, mortgage or other instrument affecting title to his Lot, without including therein both his interest in the Lot and his corresponding membership in the Association, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, lease, mortgage or instrument purporting to affect the one without including also the other, shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein. The Developer, or those to which it assigns all or any part of its rights as the Developer under the terms of the Declaration shall be the sole Class B Members of the Association. The Developer, and those to which it assigns all or any portion of its rights as the Developer under the terms of the Declaration shall become Class A Members upon and following the termination of Class B memberships as hereinafter provided in the Declaration, for each Lot in which they hold the interest required for Class A membership by this ARTICLE II. The Developer shall, before termination of Class B memberships, also be a Class A Member for each Lot held by the Developer for rental or lease purposes [or which is occupied as a residence], and which is subject to assessment under the following provisions of the Declaration. The Developer may assign all or any part of the Developer's rights as the Developer hereunder, and all or part of the Developer's Class B voting rights. However, such assignment shall be made only by warranty deeds, deeds, deeds of trust or specific instruments of assignment, properly recorded, which specifically refer to the rights to be assigned; provided, however, that the provisions of Section 11 of ARTICLE I with respect to conveyance by deeds of trust or mortgage shall be in full force and effect. Any such assignment shall not be deemed to be made by any deeds, assignments or other instruments of conveyance, executed by the Developer, which do not specifically refer to the Developer's rights as the Developer, or the Developer's Class B voting rights. The Developer may assign all or part of the Developer's rights as Developer, and all or part of the Developer's Class B voting rights, if the Developer, in the Developer's discretion elects to do so, to Builders and other developers erecting improvements upon the real estate contained within the Plat. If the Developer does make such an assignment, then the Developer or Builder to which such an assignment is made shall hold those numbers of Class B Memberships or voting rights specifically assigned, and shall lose one (1) Class B vote and one (1) Class B membership for each Lot subsequently conveyed by such developer or Builder to which such an assignment was made.

### **ARTICLE III** **VOTING RIGHTS**

The Association shall have two classes of voting memberships, and shall have two (2) classes of memberships, same being as follows:

Class A. Class A Members shall have one (1) vote at all meetings of the Association for each Lot in which they hold the interest required for Class A membership by ARTICLE II of the Declaration. When more than one (1) person holds such an interest in any Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Developer, and those to which the Developer assigns all or any portion of the Developer's rights as the Developer under the terms of this Declaration shall have fifty-eight (58) Class B memberships and Class B votes. When a Lot is sold, conveyed, rented, leased or

Unofficial Document

otherwise disposed of by the Developer or an assignee of the Class B voting rights attributable to such Lot, then the Class B voting rights attributable to such Lot shall immediately cease and terminate, and a Class A membership shall attach to each such Lot. If a Lot is sold, rented, leased or otherwise disposed of by the Developer or the Developer's assignee, or if it is occupied or a residence, then it shall be deemed to have been "conveyed" for purposes of determining the termination date of the Class B voting rights attributable to such Lot. In any event, all Class B voting rights and Class B memberships in the Association shall cease and terminate upon the happening of the earliest of the following events to occur:

(a) When all Class B memberships as to all existing Lots then contained within the Parcel and the Development have terminated; or

(b) On January 1, 2030; or

(c) The Developer so determines at an earlier date by recording, in the real estate records of Boone County, a written instrument evidencing such determination on the Developer's behalf.

A failure of the Developer to cast the Developer's Class B votes or to exercise any of the Developer's rights as the Developer shall not constitute a waiver of such votes or rights. If the Developer, on any occasion, elects not to cast the Developer's Class B votes, the Developer shall not, under any circumstances whatsoever, have waived the Developer's right to cast such votes at any time in the future. The Developer may, from time to time, relinquish control of the Association, by not casting the Developer's Class B votes, and then reassert such control at any later time of the Developer's choosing.

From and after the happening of the earliest of the above events to occur, all Class B memberships and Class B voting rights in the Association shall be terminated, and the Developer and any of the Developer's assignees of the Developer's rights as the Developer under the terms of this Declaration shall be deemed to be Class A Members, entitled to one (1) vote for each Lot in which they hold an interest required for Class A membership under the terms of ARTICLE II of the Declaration.

Prior to the occurrence of the earliest of the above events to occur the Developer shall hold a Class A membership and Class A voting right in the Association as to each Lot then owned by the Developer to which a Class B voting right does not attach.

#### ARTICLE IV LOTS

All Lots shall be legally described by the identifying number pertaining to such Lot, as shown on the Plat. Every deed, lease, mortgage or other instrument may legally describe a Lot by its identifying number as shown on the Plat, and every such description shall be deemed good and sufficient for the purposes. Any description of a Lot shall be deemed to include and convey, transfer, encumber or otherwise affect the Owner's corresponding membership in the Association, though the same is not expressly mentioned or described therein. Ownership of a Lot and of the Owner's

Unofficial Document

corresponding membership in the Association shall not be separated. No Lot owned by any person other than the Developer shall, by deed, plat, court decree or otherwise, be subdivided, or in any other manner, separated into tracts, parcels, portions or Units smaller than the whole Lot. Nothing contained herein, however, shall prevent partition of a Lot as between co-owners thereof, if such right of partition shall otherwise be available, but such partition shall not be in kind. The provisions of this ARTICLE IV to the contrary notwithstanding, and any of the provisions of this Declaration to the contrary notwithstanding, the Developer reserves, as to Lots owned by the Developer, the right to amend the Plat and any Plat, in any respects, by changing Lot lines of such Lots, subdividing such Lots, amending Lot lines for such Lots, moving Lot lines for such Lots, increasing the number of such Lots, reducing the number of such Lots, combining such Lots, or otherwise providing for amendments of the Plat as to such Lots. There shall be no restrictions upon the Developer's making any such revisions or amendments in the Plat or any plat as to any Lot owned by the Developer.

The Developer shall further have the right to join with Lot Owners of Lots not owned by the Developer, in amending the Plat as to Lots owned by such other Lot Owners, or so as to alter Lot lines with respect to Lots owned by the Developer and Lots owned by any other Lot Owner(s).

## **ARTICLE V**

### **THE ASSOCIATION**

**Section 1. Formation.** The Association shall be formed for the purposes of owning, and providing maintenance for any Common Areas and Common Elements, and for the further purposes of acting as an association of the Lot Owners and residents of the Development, and for the further purposes of enforcing any of the provisions of this Declaration which are to be enforced by the Association. The Developer shall cause the Association to be formed, by causing same to be incorporated in accordance with the general not-for-profit corporation law of the State of Missouri, upon the conveyance of the first Lot within the Development to a person or persons other than the Developer, or any of its assignees of Class B memberships in the Association. Upon the formation of such Association, every Lot Owner then holding or thereafter acquiring an interest in a Lot required for Class A membership under the terms of ARTICLE II of this Declaration, shall automatically become a Class A Member in the Association. Such membership in the Association shall be required, and shall be automatic. Once the Association is formed, every Lot Owner then owning a Lot, and any Lot Owner thereafter acquiring a Lot, shall automatically become a member of the Association. Membership shall not be voluntary. Membership shall be mandatory. When the Association is formed, every Lot Owner then holding or thereafter acquiring an interest in a Lot required for Class A membership shall automatically become a Class A Member in the Association, and the Developer and the Developer's assignees shall hold those Class B membership rights hereinafter provided for by the Declaration. A Lot Owner's Class A membership shall terminate upon the sale or other disposition by such Lot Owner of his Lot Ownership at which time the new Lot Owner shall automatically become a Class A Member of the Association.

**Section 2. Articles of Incorporation and Bylaws.** The corporation shall have as its Articles of Incorporation and Bylaws such Articles and Bylaws as are attached hereto as **Exhibit A** and **Exhibit B** respectively. Such exhibits are incorporated herein by reference.

Section 3. Administration. The Development shall be administered by the Association, which, in turn, shall be managed by a Board of Directors elected and constituted as hereinafter provided in this ARTICLE. The Board of Directors shall have general responsibility to administer the Development, approve the annual budget of the Association, provide for the collection of monthly or other assessments from Members, and arrange and direct or contract for the management of the Development, and otherwise administer with respect to any matter generally pertaining to enhancing, maintaining, benefitting and promoting the Development.

Section 4. Board of Directors. During such time as there are Class B voting rights in existence, the Board of Directors shall consist of three (3), five (5) or seven (7) directors, a majority of whom (who need not be Lot Owners) shall be elected by the Class B Members of the Association, and the remainder of whom shall be (a) natural person(s) who own(s) (an) Ownership Interest(s) in (a) Lot(s) (other than the Developer, a Builder or Class B Member) elected by the Class A Members of the Association. The members of the Board of Directors elected by the Class B Members need not be Lot Owners and need not own an ownership interest in any Lots. Directors elected by Class A Members must be natural persons and must hold ownership interests in a Lot or Lots. Directors elected by Class A Members must not be the Developer, and must not include any officer or employee or shareholder or director of the Developer, and may not include those to whom the Developer has assigned all or any portion of the Developer's rights as the Developer, or any officers, employees or members of such assignees.

After Class B voting rights have ceased to exist, the Board of Directors shall consist of three (3), five (5) or seven (7) natural persons (as determined by the Board of Directors of the Association immediately prior to each annual meeting of the Members of the Association), who must be owners of ownership interests in Lots. After Class B voting rights have ceased to exist, all members of the Board of Directors shall be elected by the members of the Association. The Directors shall be elected in that manner, and for those terms, specified by the Bylaws, except as hereinabove provided to the contrary.

Section 5. General Powers and Duties of the Association. The Association, for the benefit of all Lot Owners and their lessees, shall provide for, and shall acquire and shall pay out of the Maintenance Fund hereinafter provided for, the following:

(a) All maintenance, repairs, replacements, servicing and upkeep for the Common Areas and Common Elements and any Landscaping Easements (and landscaping and improvements thereon) and any "Pedestrian Access Easements" (which may be referred to herein as "Pedestrian Easements"), and any trail, walks, walkways, paths and landscaping located thereon, and any other easements [including drainage easements, to the extent not publicly used or maintained, and other easements] which are established for the benefit of the Development and/or the Association, by this Declaration, the Plat or otherwise; and

(b) The establishment of reasonable rules and regulations governing the Common Areas and the Common Elements; and

(c) Water, sewer, waste removal, electricity and telephone and other necessary utility service for the Common Elements and Common Area; and

(d) ~~Weed removal for weed cutting for, and all other~~ maintenance and repairs, servicing and upkeep for any lakes, ponds or other water impoundments constituting any part of the Common Elements, and maintenance, repairs, replacements and upkeep for the shorelines thereof, and the dams therefor, and the spillways therefor and every part and component thereof; and

(e) A policy or policies insuring the Association, and its members, and its Board of Directors against any liability to any persons, including Lot Owners or their invitees or tenants, instant to the ownership and/or use of the Common Area or Common Element in such limits as the Association's Board of Directors shall, in its sole and absolute discretion, from time to time, determine appropriate. The annual limits of coverage shall be reviewed at periodic intervals by the Association's Board of Directors. Such insurance shall be payable to the Association in trust for the benefit of the Association and the Lot Owners. The Association shall also obtain Worker's Compensation Insurance to the extent necessary to comply with any applicable laws and statutes of the State of Missouri; and

(f) Upon ten (10) days notice to the manager or the Association's Board of Directors, and upon the payment of a reasonable fee set by the corporation's Board of Directors, the furnishing to any Lot Owner a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing for such owner; and

(g) When the Association's Board of Directors, in its sole and absolute discretion, deems it advisable to do so, the retaining of the services of such accountants, attorneys, employees and other persons as the Association's Board of Directors shall, in its sole and absolute discretion, deem necessary in order to discharge the Association's duties. The designation and removal of personnel necessary for the maintenance, repair and replacement of the Common Elements shall be made by the Association's Board of Directors; and

(h) The cutting of grass and weeds within the Common Areas and all Landscaping Easement areas and other easement areas established for the benefit of the Association, and providing for the mowing, irrigating, fertilizing, maintaining, improving and replacing of all lawns, landscaping and improvements within the Common Areas and Common Elements and of all real estate contained within the Common Areas and the Common Elements and any Landscaping Easements, and any Pedestrian Access Easements (and the walkways therein) and any other easements established for the benefit of the Association, and all lawns, trees, shrubs, signs, monuments, entry-way structures and other improvements located thereon; and

(i) The providing of electrical service for any lighting located within or constituting any part of the Common Areas or Common Elements; and

(j) Maintenance, repair, replacement, servicing and upkeep of any signs, monuments or other structures or improvements located within any Common Area, or constituting any part of the Common Elements; and

(k) The establishing of reasonable rules and regulations governing the Common Area so as to protect the privacy of all Lot Owners, in the use and enjoyment of their Lots.



(l) The providing for the payment of taxes and assessments, general and special, levied against or by reason of the Common Areas and Common Elements;

(m) The obtaining, providing and paying for any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or other items which the Association is required to secure or pay for pursuant to the terms of this Declaration, or the Association's Bylaws, or by law, or which in the Association's opinion shall be necessary or proper for the maintenance and operation of the Development as a first class development, or for the enforcement of any restrictions set forth in the Declaration.

(n) In the discretion of its Board of Directors, providing for the maintenance and repair of any portion of any Lot or of any Building or improvement located on any Lot or of any utility line located inside a Lot, if such maintenance or repair is reasonably necessary, to protect the Association or the Common Elements, or the Development, or any part, portion or aspect of the value of the Property or the Parcel, or any part thereof, or any other portion of a Building or any other Building, or of a Lot, when the Lot Owner or Owners of said Lot have failed or refused to perform said maintenance or repairs within a reasonable time after written notice of the necessity of said maintenance or repairs has been delivered by the Association's Board of Directors; provided, however, that no such written notice shall be required in case of an emergency; and provided further, however, that the Board of Directors shall levy a special individual Lot assessment against the Lot and Lot Owners or Owners for the cost of the maintenance or repairs, which shall constitute a lien upon the Lot and its improvements, in addition to the lien hereinafter provided for ordinary assessments;

(o) Enforcing those standards for maintenance, repair, replacement and upkeep hereinafter set forth in this Declaration;

(p) Enforcing any of the provisions of this Declaration;

(q) Enforcing those restrictions hereinafter set forth in this Declaration, including those restrictions on use;

(r) Enforcing any provisions dealing with Architectural Control which it is required to enforce in accordance with the following provisions of this Declaration.

(s) Providing for all maintenance, repairs, replacements, servicing and upkeep of every kind, nature and description whatsoever of the Common Elements of the Association, including but not limited to, and any walkways, walks, sidewalk or pedestrian walks to be installed in any Pedestrian Access Easement, and for providing for all maintenance, repairs, replacements, servicing and upkeep of every kind, nature and description whatsoever for trees, shrubs and landscaping located within any Landscape Easements.

Section 6. Entry Into Lots. The Association, or its agents, or its Directors, may enter any Lot when necessary in connection with any lawn maintenance, or any other maintenance or construction or reconstruction for which the Association is responsible, or which it is authorized or empowered to perform. It, or its agents or directors may likewise enter any Buildings contained on any Lot and

any lawn, contained on any Lot, or any improvement contained on any Lot for maintenance, repairs, construction or painting, if same is necessary in connection with any maintenance or construction for which the Association is responsible or which it is authorized to perform. Such entry shall be made with as little inconvenience to the Lot Owners as practicable, and any damage caused thereby shall be repaired by the Association, at the expense of the Maintenance Fund established as hereinafter provided for.

**Section 7. Limitation Upon Power of Association and Board of Directors.** The powers of the Association and its Board of Directors as hereinabove set forth shall be limited in that they shall have no authority to acquire and pay for out of the Maintenance Fund any capital additions and improvements (other than for the purpose of replacing or restoring portions of the Common Elements, or improvements on Lots destroyed or damaged payable out of the insurance proceeds actually received, subject to all of the provisions of the Declaration) having a total cost in excess of Eight Thousand Dollars (\$8,000.00), nor shall the Association or its Board of Directors authorize any structural alterations, capital additions to, or capital improvements to the Common Elements requiring an expenditure in excess of Eight Thousand Dollars (\$8,000.00), without in each case obtaining the prior approval of a majority of the Class A Members and of the Class B Members and obtaining the written approval or waiver of any mortgagee holding any deed of trust on at least three (3) Lots, provided any such mortgagee notifies the Association's Board of Directors of its ownership and desire to have the right to so approve.

**Section 8. Rules and Regulations.** A majority of the Association's Board of Directors may adopt and amend administrative rules and regulations and such reasonable rules and regulations as it may deem advisable for the use, operation, maintenance, conservation and beautification of the Common Elements and Common Areas, and for the health, comfort, safety and general welfare of the Lot Owners and occupants of Buildings located on the Lots, and for the general appearance of the Development.

**Section 9. Active Business.** Nothing hereinabove contained shall be construed to give the Association or its Board of Directors authority to conduct an active business for profit on behalf of the Unit Owners or any of them.

## **ARTICLE VI MAINTENANCE FUND**

The Developer, for each Lot contained within the Parcel hereby covenants, and each Lot Owner of each Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any deed or other conveyance, is deemed to covenant and agree, to contribute and/or pay to the Association assessments determined in accordance with the following provisions of this ARTICLE VI.

**Section 1. Creation of a Lien and Personal Obligation for Assessments.** The Developer, for each Lot contained within the Property, on behalf of the Developer and for all present and future Owners of each such Lot, hereby agrees, and each Owner of each Lot within the Property by acceptance of a deed therefor, whether or not it shall be so expressed in any deed, or other conveyance, shall be deemed to covenant and agree to pay to the Association, or the duly authorized

officers, representatives or agents of the Association; (1) the Initial Assessment hereinafter described; and (2) Annual Assessments and charges hereinafter described; (3) special assessments for capital improvements hereinafter described; (4) special assessments for tax bills or public improvements hereinafter described; (5) any special assessments hereinafter described; (6) those special assessments for contingencies and shortages hereinafter described; (7) those special assessments for replacement or non-periodic maintenance hereinafter described; (8) those special Lot assessments hereinafter described; (9) all other assessments and charges and levies provided for by this Declaration; and (10) those special assessments levied by way of a fine or other imposition in accordance with Section 29 of ARTICLE XI of this Declaration; (11) any and all other special assessments and charges of any kind or nature whatsoever provided for by this Declaration. All such sums and assessments shall be fixed, established and collected from time to time as provided in this Declaration. All such Initial Assessments, Annual Assessments and special assessments, and other sums and assessments, together with interest thereon and costs of collection thereof as may be hereinafter provided for, shall be a charge on the Lots, and each of the Lots, and shall be a continuing lien upon the Lot and each of the Lots against which each such assessment or charge is made. Each such assessment or charge shall also be the joint and several personal obligation of the person or persons who were the Owners of the Lot at the time when the assessment fell due. The personal obligation shall not pass to such Owner's successors in title unless expressly assumed by them.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall constitute a Maintenance Fund, and shall be used exclusively by the Association to discharge its duties and obligations as provided for by the Declaration, and for the purpose of promoting the recreation, health, safety and welfare of the Lot Owners and residents of the Development, and in particular for the enforcement of these covenants and all terms hereof, and all restrictions set forth in this Declaration and for the improvement, maintenance and beautification of, and the providing of maintenance, repairs, services and facilities for, the Common Area and Common Elements, and the services and the facilities related to the use and enjoyment of the Common Area and Common Elements, and of any improvements situated upon the Common Area and of Common Elements, and to discharge such other duties and obligations as shall be conferred upon the Association by the terms and conditions of this Declaration, including but not limited to the payment of taxes and insurance on the Common Area and Common Elements, repairs to, maintenance of, replacement of and additions to the Common Area and Common Elements, and for the cost of labor, equipment, materials, management and supervision required for the Common Area and Common Elements and for performance by the Association of its duties hereunder.

**Section 3. Maintenance Fund.** The Initial Assessments, Annual Assessments or charges, and special assessments established and collected under the terms of this ARTICLE shall constitute a fund to be known as the "Maintenance Fund".

**Section 4. Initial Assessment and Annual Assessment:**

A. **Initial Assessment.** At the time of the conveyance of each Lot within the Development by the Developer or any of the Developer's assignees or any other Class B Member, or a Builder to a Lot Owner other than the Developer, the Developer's assignees or any other Class B Member of the Association or a Builder, the conveying party (i.e. the Developer, Class B Member, Developer's assignee or the Builder) shall collect from the new Lot Owner an Initial Assessment, to



be immediately remitted to the Association, in the sum of Two Hundred Dollars (\$200.00) for such Lot. In other words, each Lot Owner other than the Developer, the Developer's assignees, a Class B Member of the Association or a Builder, at the time of acquisition of his, her, its or their Lot shall be required to pay an Initial Assessment of Two Hundred Dollars (\$200.00), which shall be immediately remitted to the Association by the collecting party and shall be the Initial Assessment for such Lot.

Such Initial Assessment shall be one-time assessments, and shall be paid only at the time provided for the payment of such Assessments, by the above provisions of this subsection A. No Lot owned by the Developer, any other Class B Member, an assignee of the Developer or a Builder, shall be subject to an Initial Assessment. If a Lot is conveyed by the Developer, a Class B Member, an assignee of the Developer or a Builder, to a person other than the Developer, the Builder, another Class B Member or the Developer's assignee, and the Lot thereby becomes subject to the Initial Assessment, then the grantor of such conveyance shall, at the time of such conveyance, be required to collect the Initial Assessment (made payable to the Association) and to immediately remit such Assessment to the Association, and shall be personally responsible for paying such Initial Assessment if such conveying party fails to collect such Initial Assessment from the grantee.

B. Annual Assessment. Each Lot shall first become subject to an Annual Assessment on January 1 of that calendar year which next begins following the date when such Lot is subjected to the Initial Assessment pursuant to subsection A above. Even if a Lot is subject to Initial Assessment in December of a calendar year, such Lot shall, nevertheless, be subject to the Annual Assessment for the next succeeding calendar year, as of January 1 of such next succeeding calendar year. The first Annual Assessment shall become effective January 1, 2001, and shall be in the sum of Two Hundred Dollars (\$200.00) for calendar year 2001. On January 1, 2001, each Lot then owned by someone other than a Class B Member, the Developer, a Builder or one of the Developer's assignees, shall be subject to Annual Assessment for calendar year 2001, in the sum of Two Hundred Dollars (\$200.00). Such Annual Assessment shall be due and owing on January 1, 2001, and must be paid to the Association within thirty (30) days of such date, or as otherwise determined by the Board. Once Lots are subject to Initial Assessment, such Lots shall, as of January 1 of the calendar year which next begins after the Lot becomes subject to the Initial Assessment, and for each calendar year thereafter, in perpetuity, be subject to Annual Assessments. No Lot owned by the Developer, or another Class B Member, or a Builder or the Developer's assignee shall be subject to Annual Assessment. However, if a Lot owned by the Developer, another Class B Member, an assignee of the Developer or a Builder is held for rental or lease purposes, or is rented or leased, or is occupied as a residence or used as a residence, then such Lot shall, immediately, as of the date it is held for rental or lease purposes, or is occupied or used as a residence, become subject to Initial Assessment pursuant to subsection A above, and thereafter, as of January 1 of the next succeeding calendar year and each subsequent calendar year, be subject to Annual Assessments pursuant to this subsection B.

On or before December 31, 2002, and on or before December 31 of each subsequent calendar year, the Board of Directors of the Association shall meet and shall estimate the total amount necessary to pay the cost of wages, materials, insurance, repairs, services, supplies and any other work and services which will be required prior to December 31 of the next calendar year, for the rendering of all services and the performance of all powers and duties of the Association, together

Unofficial Document

with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall, as soon as practicable, notify each Lot Owner in writing as to the amount of such estimate with reasonable itemization thereof. Said "Estimated Cash Requirement" shall become the Annual Assessment for the coming calendar year, and shall be equally assessed to the Lot Owners of those Lots owned by persons other than the Developer, Builders, the Developer's assignees or other Class B Members, as of January 1 of the next calendar year. Such Annual Assessment shall be equally apportioned among all Lots owned by persons other than the Developer, other Class B Members, Builders, and the Developer's assignees; provided, however, that no Lot which is held for rental or lease purposes, or which is used for residential purposes, or to which a Class A membership has attached, shall be exempt from such assessments. The Owners of all Lots subject to such assessments shall be obligated to pay to the Association, each year, an equal share of the Estimated Cash Requirement determined in accordance with this Section 4, it being understood that the Annual Assessment for each Lot will be a sum determined by dividing the Estimated Cash Requirement of the Association, as determined by the Association's Board of Directors for each calendar year, by the total number of Lots within the Development which are subject to assessment at the beginning of such year. A Lot (and the Owners thereof) shall become subject to the Annual Assessment on the first day of the calendar year which next begins following the date of its conveyance to a Lot Owner other than the Developer, the Developer's assignee, another Class B Member, or a Builder, and shall be subject to assessment for such year and all subsequent years. Lots shall be subject to Annual Assessment once they have been conveyed to a person other than the Developer, another Class B Member, a Builder or an assignee of the Developer's rights, and shall thereafter remain subject to Annual Assessments, even though the Lots may be vacant or unoccupied. Any Lot which has been leased, rented or occupied as a residence shall also be permanently subject to Annual Assessments, even though the residence thereon may be unoccupied.

Lots shall not be subject to both an Initial Assessment and an Annual Assessment in any calendar year. If a Lot is subject to an Initial Assessment in a calendar year than it shall be subject to its first Annual Assessment on January 1 of the next calendar year. For example, if a Lot is acquired in December, 2000, it shall be subject to Initial Assessment in December, 2000, and shall become subject to Annual Assessments on January 1, 2001 for the calendar year 2001.

Section 5. Contingencies and Shortages. The Board of Directors shall build up and maintain such reasonable reserves for contingencies and replacements as the Board of Directors, in its sole and absolute discretion, shall from time to time deem appropriate. Extraordinary expenditures and replacements, not originally included in the annual "Estimated Cash Requirement" hereinabove described in Section 4, which may become necessary during the year, shall be charged first against such reserve. If the "Estimated Cash Requirement" established pursuant to Section 4 proves inadequate for any reason, then the sum of the deficiency (or the sum by which the Estimated Cash Requirement is inadequate) shall be shared equally by the Lot Owners of all Lots, subject to Annual Assessments as of the date the shortage is incurred, and all Lots to which Class A memberships have previously attached, whether or not then subject to Annual Assessments, and each Lot Owner's share of the deficiency shall constitute a special assessment against such Lot Owner and his Lot.

Section 6. Failure to Agree. In the event the Board of Directors fails to set an Annual Assessment for any calendar year, then the Annual Assessment for all Lots subject to assessment for

such year shall be the greater of the sum of the annual assessment in effect for the prior calendar year, or the sum of Two Hundred Dollars (\$200.00) per Lot.

Section 7. Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy in any assessment year, a special assessment against all Lots, as determined by the Board, which are subject to assessment as of the end of such year, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, or unexpected repair or replacement of a capital improvement upon the Common Area or Common Element, or otherwise determined to be for the mutual or common benefit of all Lot Owners or the Development, and any necessary fixtures and personal property related thereto; provided that any such assessment shall have the assent of a majority of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than ten (10) days nor more than forty (40) days in advance of the meeting setting forth the purpose of the meeting.

Section 8. Special Lot Assessment. If a Lot Owner fails to satisfy any maintenance obligations imposed upon him by this Declaration, by providing for the maintenance, repairs and replacements of the improvements, lawns and landscaping located within the boundary lines of his Lot, as required by this Declaration, and if the Association's Board of Directors, in its sole and absolute discretion, deems the performance of such maintenance, repair or replacement to be necessary to protect the Association, or the Common Elements, or any Lot or any portion of a Building located within any Lot, or any of the values of all or any part of the Property, and if the Lot Owner has failed or refused to perform said maintenance, repair or replacement within a reasonable time after written notice of the necessity for same has been delivered by the Association's Board of Directors (provided, however, that no such written notice shall be required in the case of an emergency), then the Association's Board of Directors shall be permitted (but shall not be required) to cause the maintenance, repair or replacement to be performed (including, but not limited to, grass cutting, irrigation, landscaping, gardening, snow removal, painting, cleaning, tuckpointing, maintenance, decorating, repair or replacement); provided, however, that the costs of same shall be charged to the Lot Owner obligated for the performance of such maintenance, repair or replacement, and that such cost shall become a Special Assessment against such Lot which shall be due and owing by the Lot Owner in time to permit timely payment of the costs of the work. Special Assessments ("Special Lot Assessments") provided for by this Section 8 shall be added to, and become a part of the assessments to which the Lot is subject, and shall constitute a lien upon the Lot, and shall be enforceable in that manner provided for in this ARTICLE VI.

Section 9. Special Tax Bills for Public Improvements/Common Improvements. The Association shall pay any special tax bill or benefit assessment of any public body for any public improvement which abuts or runs along any of the Common Area, or the cost of any public improvement or of any improvement, which, in the reasonable discretion of the Association's Board, is found to benefit the entire Development, or a very substantial number of the Lots, as opposed to Lot Owners of only specific Lots, or to benefit the Common Areas or Common Elements. The entire cost of any such tax bill or assessment or all such cost of any such improvement shall, automatically, become a Special Assessment against all Lots, and shall be equally divided among the Lots. The entire sum of such Special Assessments shall be used by the Association to pay the assessment or

Unofficial Document

tax bill levied by the public body or authority or the costs of such improvement. Such Special Assessment shall be due and owing by each Lot Owner in time to permit timely payment of the tax bill or assessment or cost. Special Assessments provided for by this Section 9 shall be enforceable in that manner hereinafter provided for in this ARTICLE VI for enforcement of all assessments. Special Assessments provided for by this Section 9 shall attach to all Lots, whether owned by Class A or Class B Members or other members, or Builders.

**Section 10. Special Assessment for Replacement or Non-periodic Maintenance.** In the event a necessity for a replacement of or for any capital improvement located within a Common Area, or any portion of the Common Elements, should occur, and in the further event the sum of the Annual Assessments then on hand shall be insufficient to cover the costs of such repair or replacement, together with the sum of other costs to be paid therefrom, or shall not have established a sufficient reserve for such repair or replacement (a requirement that such reserve be established, although possibly advisable, shall not be implied herefrom), then the entire sum of the costs of such repair or replacement, or of any non-periodic maintenance or repair of any kind or nature whatsoever shall be apportioned equally among all of the Lots then subject to Annual Assessments, and that portion of such costs apportioned to each such Lot shall constitute a special assessment against each such Lot. Such Special Assessment shall be used by the Association to pay the costs of such repair, replacement or non-periodic maintenance or repair, and shall be due and owing by each Lot Owner, upon demand by the Association's Board of Directors, in time to permit timely payment of the costs of such replacement, maintenance or repair. Special Assessments provided for in this Section 10 shall be enforceable in that manner hereinafter provided for in this ARTICLE VI for the enforcement of all assessments. The sum of such Special Assessment shall be established by the Association's Board of Directors in its sole, absolute, unmitigated and unencumbered discretion.

**Section 11. Uniform Rate of Assessment.** In all cases, the rates of those assessments hereinabove provided for by this ARTICLE VI must be fixed at a uniform rate for all Lots subject to assessment, with the exception of those "Special Lot Assessments", described above.

**Section 12. Alteration of Number of Lots.** It is understood that the Developer reserves the right to amend the Plat by changing the number of Lots, by subdividing Lots, and by changing the boundary lines of Lots. Any Lots owned by the Association shall be considered a Common Area or a Common Element, and not a Lot, and shall not be subject to assessment.

**Section 13. Shortages.** In the event the Annual Assessments to be paid to the Association shall, in any year, be insufficient to enable the Association and its Board of Directors to perform the Association's duties and obligations under this Declaration, then the excess of the costs incurred by the Association in performing its duties and obligations, over and above the sum of the Annual Assessments paid to the Association in such calendar year, shall constitute a special assessment against all Lots subject to assessment at the end of such calendar year. Such special assessment shall be equally apportioned among all such Lots, then subject to assessment, and the amount of such assessment apportioned as to each such Lot shall be payable at such time or times as the Association's Board of Directors, in its discretion, shall specify. Such assessments shall bear interest, and shall be enforceable in the manner provided for the enforcement of assessments by this ARTICLE VI, and shall constitute a lien against all Lots in the manner provided for other assessments by this ARTICLE VI.

Section 14. Enforcement of Assessments. All assessments provided for by this ARTICLE VI shall be delinquent if not paid within fifteen (15) days of the due date thereof. Each such assessment (or any installment thereon) not paid within fifteen (15) days of the due date thereof, shall bear interest from the date when due until the date when paid, at a rate equal to the greater of:

- Ten percent (10%) per annum; or
- A rate one percent (1%) above the Prime Interest Rate from time to time in effect.

All references herein to the "Prime Interest Rate" shall mean a rate of interest equal to the "Prime Rate" as set forth in the Money Rates section of the Wall Street Journal during the time in which an Assessment is delinquent. Interest shall accrue until the Assessment is paid. The Prime Rate of Interest shall change as often as the Prime Rate changes in the Money Rates section of the Wall Street Journal. Such Assessment and accrued interest thereon, and all costs of collection incurred by the Association in seeking to enforce payment of an Assessment (including but not limited to attorneys fees), shall be due and payable by the Lot Owner to the Association, and the Association may collect such Assessments (and all subsequent Assessments). All costs of collection of Assessments, including reasonable attorneys fees, shall be added to and shall constitute a part of such Assessments and shall be chargeable and collectable as a part of the Assessments. The Board of Directors of the Association may enforce Assessments as follows:

(1) All Assessments provided for by this Declaration shall constitute the personal obligations of the Lot Owners who own those Lots which are charged with said Assessment. If more than one person owns a Lot, then such obligation shall be the joint and several obligation of all such persons who own said Lot. In addition, such Assessment shall constitute a lien against a Lot Owners' Lot and all improvements located thereon, including any Residence located thereon, if not paid in a timely manner.

(2) In addition to any lien arising from an unpaid Assessment (and the accumulated and accrued interest thereon), all costs incurred by the Association in collecting said Assessment from said Lot Owner(s), including the Association's attorneys fees, court cost, and other litigation expenses, shall be added to and shall likewise constitute a part of the Assessment which constitutes a lien against said Lot. Said costs of collection also shall be chargeable to and collectible personally from any Lot Owner who fails to pay same in a timely manner.

(3) The Association, acting through its Board of Directors, may collect said Assessment by a lawsuit against the Lot Owner(s). Alternatively, or in addition, the Association may foreclose its lien against the Lot which is charged with the Assessment lien, and recover as a part of such action all interest, costs, and attorneys fees of such foreclosure action or such lawsuit, or both.

(4) No Lot Owner may waive or otherwise avoid liability for the Assessments provided for in this Declaration because of the non-use of a Lot or the non-use of the Common Area. Ownership of a Lot shall be all that is necessary to become liable for the payment of an Assessment under this Declaration.



(5) The lien to secure the payment of an Assessment shall be in favor of the Association and the Board of Directors of the Association shall have the discretion as to whether or not to enforce said lien, and as to the manner of such enforcement.

(6) Any lien against a Lot may be foreclosed upon in the same manner as a mortgage against real property, and pursuant to the procedures and requirements of Section 443.190 through 443.235 of the Revised Statutes of Missouri (including any substitute or successor statute). Any lien against a Lot may be foreclosed in like manner as a mortgage or deed of trust of real property (with full power of sale) as provided in Sections 443.190 through 443.235 of the Revised Statutes of Missouri and any amendatory or successor statutes thereto. If any such foreclosure does not result in full payment of the Assessment, then the Lot Owner shall remain obligated for the deficiency, together with interest thereon as described above and costs of collection thereof, including attorneys fees.

(7) The Association may elect to refrain from foreclosing upon any Assessment lien, and instead may bring suit against the Lot Owner(s) for the collection of same without waiving or affecting the Association's right to assert said lien against the Lot and without affecting the priority, status, or enforceability of said lien.

(8) The Association shall not be deemed to have waived any right to collect an Assessment by proceeding in a particular manner, i.e., the election by the Association to collect an unpaid Assessment by foreclosing on the Assessment lien which attaches to a Lot shall not preclude the Association from thereafter filing suit against the Lot Owner(s) to enforce said lien, or vice versa.

Section 15. Notice and Priority of Lien in Favor of Association. The lien which secures payment of an unpaid Assessment or Assessments described in this Declaration shall have such priority as is accorded to said lien based on the date when the Association records notice of said lien in the office of the Recorder of Deeds of Boone County, Missouri. The lien in favor of the Association shall be inferior to any mortgage or deed of trust placed of record against a Lot prior to the date of recordation of such lien notice in the office of the Recorder of Deeds of Boone County. The lien in favor of the Association shall arise and constitute a lien against a Lot from and after the date of such recordation. The Association may record such lien notice in the office of the of Deeds of Boone County, Missouri, at any time subsequent to the date when an Assessment becomes delinquent. No prior written notice to a Owner shall be required to be given by the Association before the recordation of such notice in the office of the Recorder of Deeds of Boone County, Missouri. A notice of lien recorded by the Association in substantially the following form shall be all that is required in order to give notice to the public and to any other person interested in the Lot as to the existence of the Association's lien against the Lot in question, to wit:

"Notice of Lien in Favor of Spring Creek Homes Association of Boone County"

Take notice that Spring Creek Homes Association of Boone County (the "Association"), is entitled to a lien to secure the payment of one or more unpaid and delinquent Assessments against the following real property located in Spring Creek Subdivision, a subdivision in Boone County, Missouri, to-wit:

# Boone County, Missouri

700

[HERE INSERT LEGAL DESCRIPTION OF LOT TO WHICH LIEN ATTACHES.]

The lien to which the Association is entitled exists to secure payment of one or more Assessments under the "Declaration of Covenants, Easements, and Restrictions of Spring Creek," a subdivision of Boone County, Missouri, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2000, and filed for record in Book \_\_\_\_ at Page \_\_\_\_ of the Boone County Records, as amended ("the Declaration"). The approximate amount of the Assessment which remains unpaid (and therefore the amount of the lien in favor of the Association) is \$ \_\_\_\_\_. However, the amount of this lien will increase by the amount of accrued interest in any costs incurred by the Association in enforcing this lien against the above-referenced property or in collecting said Assessment, including the Association's attorneys fees, all as set forth in the Declaration.

If further information is required concerning this lien or this notice, please contact [HERE INSERT NAME, ADDRESS, AND TELEPHONE NUMBER OF PRESIDENT OF ASSOCIATION].

IN WITNESS WHEREOF, Spring Creek Homes Association of Boone County, has caused this notice to be executed by its President as its duly authorized officer on this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

SPRING CREEK HOMES ASSOCIATION OF  
BOONE COUNTY

By: \_\_\_\_\_

President

State of Missouri )  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, who, upon his/her oath and being duly sworn did state and affirm that he/she is the President of Spring Creek Homes Association of Boone County, that the facts set forth above are true to the best of his/her knowledge and belief, and that this notice has been executed on behalf of Spring Creek Homes Association of Boone County, pursuant to the authority vested in the above-named officer of said Association by the Board of Directors thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal at my office in \_\_\_\_\_, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_.

**Section 16. Release of Assessment Liens.** Any Assessment lien in favor of the Association, upon the payment thereof may be released by the Association. In this regard, any document executed by the President of the Association (or by the Vice President of the Association, in the absence of the President) and acting pursuant to the authority vested in them by the Board of Directors of the Association, shall be valid and binding upon the Association. Any lien recorded by the Association may be released by the President (or Vice President, in the President's absence) of the Association by executing and recording a release of lien form in substantially as follows:

**"Release of Lien in Favor of Spring Creek Homes Association of Boone County"**

Take notice that the Assessment lien in favor of Spring Creek Homes Association of Boone County (the "Association") which was the subject of a notice recorded in the office of the Recorder of Deeds of Boone County, Missouri on \_\_\_\_\_ (date) in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the records of Boone County, Missouri, has been paid in full, satisfied, and is hereby released. This release applies to said notice of lien dated and recorded as set forth above only, and to no other lien in favor of the Association.

IN WITNESS WHEREOF, the Association, acting by and through its duly authorized officer, has executed this release of lien on this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

SPRING CREEK HOMES ASSOCIATION OF  
BOONE COUNTY

By: \_\_\_\_\_

President

State of Missouri )  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2000, personally appeared before me \_\_\_\_\_, who, upon his/her oath and being duly sworn did state and affirm that he/she is the President of Spring Creek Homes Association of Boone County, that the facts set forth above are true to the best of his/her knowledge and belief, and that this notice has been executed on behalf of Spring Creek Homes Association of Boone County, pursuant to the authority vested in the above-named officer of said Association by the Board of Directors thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal at my office in \_\_\_\_\_, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_.



**Section 17. Relation of Assessment Lien to Other Liens and Encumbrances.** An Assessment lien in favor of the Association shall be subordinate to the lien of any mortgage or deed of trust which is placed against any Lot and filed of record in the office of the Recorder of Deeds of Boone County, Missouri, at any time prior to the effective date of the Assessment lien. Said Assessment lien shall be superior to the lien of any mortgage or deed of trust filed of record against any Lot subsequent to the date of the recordation of notice of such Assessment lien by the Association. Furthermore:

(1) If a mortgage or deed of trust which is superior in priority to an Assessment lien is foreclosed upon, then such foreclosure sale shall pass title to the Lot free from the lien attributable to the Assessment lien. Lot Owner(s)' personal obligation to pay in full any and all Assessments due and payable at any time prior to the date of such foreclosure sale. Any purchaser of the Lot at such foreclosure sale shall acquire title to said Lot free of the Assessment lien which was inferior in priority to the lien of said deed of the trust or mortgage foreclosed upon. However, any Assessments due from and after the date of such foreclosure sale shall be payable by said purchaser in the same manner as any other Lot Owner in the Development, and any purchaser at any such foreclosure sale shall acquire title to said Lot subject to the terms and conditions of this Declaration.

(2) If any deed of trust or mortgage which is inferior to an Assessment lien is foreclosed upon, then any sale of the Lot at such foreclosure sale shall be subject to the Assessment lien which has not been paid and such lien shall remain an encumbrance on said Lot until said Assessment lien is paid in full.

**Section 18. Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Area and Elements; (c) the streets and roads; (d) all property to which a Class A membership has not attached; (e) all property owned by the Developer or a Class B member, or a Builder or the Developer's assignee, until sold, rented, leased or occupied as a residence; provided, however, that no property used or held for residential purposes shall be exempt from assessment.

## **ARTICLE VII ARCHITECTURAL CONTROL**

**Section 1. Requirement for Approval of Plans and Specifications Before Start of Any Building, House or Any Improvement or Structure or Any Changes in Same.** So long as Class B voting rights are in existence, and for so long thereafter as the Developer or the Developer's assignees of any of the Developer's rights as Developer hereunder owns any Lot then contained within the Development, no Building, house, dwelling, residence, ancillary building, fence, wall, driveway, parking area or other structure or improvement shall be commenced, erected or maintained within any Lot or within the Common Area, other than those placed thereon by the Developer, or the Developer's assignees, and those, the Plans and Specifications of which have been approved by the Developer or the Developer's assignees, and so long as Class B voting rights exist, and for so long thereafter as the Developer or the Developer's assignees of the Developer's rights as Developer hereunder own any Lot then contained within the Development, no exterior addition to, or change

to or alteration of (including, but not limited to, changes in materials, or changes in exterior surfaces, or changes in color) any Building, house, dwelling, residence, ancillary building, driveway, parking area, fence, wall structure or improvement shall be made until the Plans and Specifications for same have been approved by the Developer or the Developer's assignee. All such Plans and Specifications must show the nature, kind, color, shape, height, materials and the location of the Building or structure or improvement, or the intended addition to, or change in same. All such Plans and Specifications must be submitted to and approved in writing as to harmony with the Development of the of external design and with respect to location and relation to surrounding structures and topography by the Developer or the Developer's assignees of the Developer's rights as Developer hereunder. All Architectural Control powers shall be vested in the Developer and the Developer's assignees of the Developer's rights as Developer until Class B voting rights have terminated, and until, thereafter, the Developer and such assignees cease to own any Lot then contained within the Development, whether or not Class B voting rights are then in existence. After the Developer's Architectural Control powers have terminated in accordance with the above provisions of this ARTICLE VII, and, from that point forward (and thereafter) no Building, house, dwelling, residence, ancillary building, fence, wall or other structure or driveway or any improvement shall be commenced or erected within any Lot or within the Common Area, and no exterior addition to or change to (including, but not limited to, changes of building materials, materials, surfaces or color) or alteration shall be made on any structure, driveway, fence, wall, Building, house, dwelling, residence, ancillary building or improvement located within a Lot or within the Common Area or any Common Element until the Plans and Specifications showing the nature, kind, shape, height, color, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Control Committee composed of two (2) or more representatives appointed by the Board. In the event the Developer, or said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said Plans and Specifications have been submitted to it, approval will not be required and this ARTICLE will be deemed to have been fully complied with. In no event shall the Board of Directors of the Association, or its Architectural Control Committee approve any exterior addition to, or change to or alteration on any structure or Building or improvement located within a Lot, or within the Common Areas, or the erection of any structure or improvement within the Lots or the Common Areas unless same is deemed to be in the best interest of the Association and the Development, and is deemed to be in harmony as to external design and location in relation to surrounding structures and topography, and is deemed to be of the same quality as the then existing structures located within the Lots. As hereinabove indicated, so long as Class B voting rights exists, and for so long thereafter as the Developer owns any Lot then located within the Development, no Building, house, dwelling, residence, ancillary building, fence, wall, driveway or other structure or improvement shall be commenced, erected or maintained within a Lot or within the Common Areas, and no changes shall be made with respect to any such Building, house, dwelling, residence, ancillary building, fence, driveway, wall or other improvement or structure, other than those placed thereon, by the Developer or his assignees, and those, the Plans and Specifications for which have been previously approved by the Developer.

Section 2. Developer's Discretion is Absolute. THE DEVELOPER'S RIGHT TO APPROVE PLANS AND SPECIFICATIONS SHALL BE ABSOLUTE. NO REQUIREMENT THAT THE DEVELOPER BE REASONABLE IN APPROVING, OR IN REFUSING TO

UNOFFICIAL DOCUMENT

APPROVE, PLANS OR SPECIFICATIONS SHALL BE DEEMED TO BE EXPRESSED OR IMPLIED. THE DEVELOPER, IN APPROVING SUCH PLANS AND SPECIFICATIONS, SHALL APPROVE SAME ONLY IF THE DEVELOPER, IN THE DEVELOPER'S SOLE, ABSOLUTE AND UNMITIGATED DISCRETION DEEMS SAME TO BE IN THE BEST INTEREST OF THE DEVELOPMENT, AND ONLY IF THE DEVELOPER, IN THE DEVELOPER'S SOLE, ABSOLUTE AND UNMITIGATED AND UNLIMITED DISCRETION FINDS THAT THE PLANS AND SPECIFICATIONS SHOW A STRUCTURE (AND EXTERIOR FINISHING AND COLOR THEREFOR, AND A LOCATION THEREFOR), WHICH WOULD BE IN HARMONY WITH RESPECT TO SURROUNDING STRUCTURES AND TOPOGRAPHY, AND WHICH WOULD BE IN KEEPING WITH THE DEVELOPER'S PLANS AND THEME (IF ANY) FOR THE DEVELOPMENT. THE DEVELOPER SHALL HAVE THE RIGHT TO REFUSE TO APPROVE PLANS, DRAWINGS OR SPECIFICATIONS FOR ANY PROPOSED DWELLING, BUILDING, STRUCTURE OR IMPROVEMENT, OR ALTERATION OR CHANGE, WHICH THE DEVELOPER, IN THE DEVELOPER'S SOLE, ABSOLUTE AND UNMITIGATED DISCRETION FINDS NOT TO BE ATTRACTIVE, OR NOT TO BE OF HIGH QUALITY, OR NOT TO BE IN KEEPING WITH SURROUNDING STRUCTURES AND TOPOGRAPHY, OR NOT TO BE COMPATIBLE WITH THE EXISTING AND PLANNED STRUCTURES AND DEVELOPMENT WITHIN THE DEVELOPMENT, OR NOT TO BE IN KEEPING WITH THE DEVELOPER'S THEME FOR THE DEVELOPMENT, OR WHICH THE DEVELOPER, IN THE DEVELOPER'S SOLE, ABSOLUTE, UNLIMITED AND UNMITIGATED DISCRETION FINDS WOULD NOT BE IN KEEPING WITH, OR WOULD DETRACT FROM, THE GENERAL CHARACTER OF THE DEVELOPMENT FOR ANY REASON. CERTAIN DEVELOPMENT STANDARDS ARE ESTABLISHED BY SECTION 1 AND THE FOLLOWING SECTIONS OF THIS ARTICLE VII. EVEN THOUGH PLANS AND SPECIFICATIONS PRESENTED TO THE DEVELOPER COMPLY WITH SECTION 1 AND THE FOLLOWING SECTIONS OF THIS ARTICLE VII, THE DEVELOPER MAY, NEVERTHELESS, IN THE DEVELOPER'S SOLE, ABSOLUTE, UNLIMITED, UNMITIGATED AND UNFETTERED DISCRETION (FOR ANY REASON THE DEVELOPER FINDS TO BE APPROPRIATE, WHETHER REASONABLE OR UNREASONABLE AND WHETHER WITH OR WITHOUT CAUSE) REFUSE TO APPROVE THE PLANS AND SPECIFICATIONS. THE DEVELOPER, IN APPROVING PLANS AND SPECIFICATIONS, ACTS ONLY FOR THE DEVELOPER'S BENEFIT AS THE DEVELOPER AND FOR NO OTHER PERSON'S BENEFIT.

Section 3. Procedures for Obtaining Approval of Plans and Specifications. All Plans and Specifications required to be submitted to the Developer or the Association's Board of Directors or its Architectural Control Committee for the first Building (i.e., the first residential house) to be placed upon a Lot, shall be:

- a. Submitted, in duplicate, to the Developer, the Association's Board of Directors or its Architectural Control Committee, as the case may be; and
- b. Submitted with payment of a fee ("the Architectural Control Fee") of One Thousand Dollars (\$1,000.00).

The Architectural Control Fee must be paid at the time of the submittal of the Plans and Specifications, but need only be paid for the approval of Plans and Specifications for the first

Building (i.e., the first house) to be placed on each Lot. The Architectural Control Fee shall be segregated by the Developer from the Developer's other funds and, at the request of the person requesting approval of the Plans and Specifications, shall be escrowed with the title insurance agent usually and customarily utilized by the Developer; provided that if the Fee is paid to the Board or the Architectural Control Committee, then, in such event, it shall be escrowed with a title insurance agent acceptable to the Board or its agent. The terms of the deposit of the Architectural Control Fee shall be as follows:

- Two Hundred Dollars (\$200.00) shall be immediately refunded to the person requesting approval of the Plans and Specifications when the Plans and Specifications are finally approved, and any corrections required therein have been made;

- Eight Hundred Dollars (\$800.00) shall be refunded when the Building provided for by the Plans and Specifications has been completed in compliance with the approved Plans and Specifications, and all landscaping has been executed in accordance with the approved landscaping plan, and the required lawn irrigation system has been installed.

If the Building is not completed in accordance with the Plans and Specifications, or the landscaping is not executed and completed in accordance with the approved landscaping plan, or the irrigation system is not installed, then the party to whom the deposit was paid (the Developer, the Board or the Architectural Control Committee, as the case may be) may retain the deposit until such completion occurs and may use the deposit to offset any costs or expenses incurred by such party by reason of the failure to complete the building or landscaping or irrigation system in accordance with the approved Plans and Specifications or landscaping plan. All Plans and Specifications which are submitted must be accompanied by a landscaping plan, which complies with the requirements of this ARTICLE VII. No Building shall be commenced before the Plans and Specifications and landscaping plan therefor have been approved.

**Section 4. Further Description of Plans and Specifications.** All Plans and Specifications must be submitted, in duplicate, and shall show the nature, kind, shape, height and exterior building materials of and for the Building, house, dwelling, residence, ancillary building, structure or improvement (including material types, kinds, specifications and colors for the roof, exterior walls and all other exterior surfaces), and the location of same on the Lot [i.e. a house on Lot Plot Plan, drawn to scale] and the front, side and rear elevations of any Building and the floor plan of any Building. The Developer or the Board of Directors, as the case may be, shall be entitled to retain one (1) complete copy of the Plans and Specifications following approval, so as to enable the Developer, or the Association's Board of Directors, or its Architectural Control Committee, to monitor compliance with the Plans and Specifications approved by it.

**Section 5. Developer's Discretion/Discretion of Board or Architectural Control Committee Absolute.** Determinations made by the Developer shall be made by the Developer, in the Developer's sole, absolute, unlimited and unmitigated discretion, and no requirements of reasonableness shall be deemed to be expressed or implied. All determinations made by the Developer shall be binding and absolute. The Developer shall be and is hereby excused from any liability or responsibility to anyone, under any circumstances whatsoever, for any determinations made by the Developer with respect to approval of, or failure to approve, any plans, drawings or

Unofficial Document

specifications submitted for approval. All rights of the Developer exercised by the Developer pursuant to this ARTICLE, are exercised for the Developer's benefit alone, and are exercised by the Developer solely in the Developer's capacity as the Developer and for the Developer's benefit, and shall not be deemed to be exercised by the Developer for the benefit of the Owners of any of the Lots. If the Developer approves plans, drawings, and specifications, then the Developer shall have no liability or responsibility of any kind or nature whatsoever to the Owners of any other Lots with respect to plans, drawings and specifications so approved by the Developer. The Developer exercises the Developer's rights of Architectural Control solely for the Developer's benefit as a Developer, and not for the benefit of anyone else. The above provisions of this ARTICLE VII notwithstanding, all Architectural Control decisions made by the Board of the Association or its Architectural Control Committee must be sound and reasonable, and must not be arbitrary or capricious, and must have a sound basis in fact. If the Board or such committee rejects plans or specifications, reasonable grounds for such rejection must exist. In the event the Developer or the Board of Directors of the Association, or its Architectural Control Committee, or its designee, fails to approve or disapprove any plans, drawings or specifications submitted to it within thirty (30) days after such plans, drawings or specifications have been submitted to it, or in any event if no suit to enjoin the construction (or to require removal of same) of a substantial Building, or of a substantial addition thereto, has been commenced prior to or within one (1) year following completion thereof, then approval of the Developer, or the Board of Directors of the Association, or its Architectural Control Committee will not be required.

**Section 6. Burden of Proof.** THE BUILDER, LOT OWNER OR OTHER PERSON WHO HAS SOUGHT OR WHO SEEKS APPROVAL OF PLANS AND SPECIFICATIONS PURSUANT TO THESE ARCHITECTURAL CONTROL PROVISIONS SHALL HAVE THE BURDEN OF PROOF TO PROVE THAT TWO (2) COPIES OF THE PLANS AND SPECIFICATIONS, AND THE REQUIRED ARCHITECTURAL CONTROL FEE, WERE SUBMITTED TO THE DEVELOPER OR THE BOARD OF DIRECTORS OF THE ASSOCIATION OR ITS ARCHITECTURAL CONTROL COMMITTEE, AS THE CASE MAY BE. DOCUMENTARY PROOF SHALL BE REQUIRED. SUCH DOCUMENTARY PROOF SHALL CONSIST EITHER OF:

A. A RECEIPT SIGNED IN THE NAME OF THE DEVELOPER BY THE DEVELOPER'S PRESIDENT OR MANAGING OFFICER (SO LONG AS THE DEVELOPER HOLDS THE ARCHITECTURAL CONTROL POWERS), OR BY AN OFFICER OF THE ASSOCIATION'S BOARD OF DIRECTORS, OR A MEMBER OF ITS ARCHITECTURAL CONTROL COMMITTEE (IF THE BOARD OF DIRECTORS THEN HOLDS THE ARCHITECTURAL CONTROL POWERS); OR

B. A CERTIFIED MAIL OR REGISTERED MAIL RECEIPT, AND A RECEIPT FOR A CASHIER'S CHECK, AND AN AFFIDAVIT OF THE PARTY REQUESTING APPROVAL OF THE PLANS AND SPECIFICATIONS (RENDERED UNDER OATH), EVIDENCING THE FACT THAT THE PLANS AND SPECIFICATIONS AND REQUIRED ARCHITECTURAL CONTROL FEE WERE PLACED IN THE UNITED STATES MAIL, IN A CORRECTLY ADDRESSED AND STAMPED ENVELOPE, WITH CORRECT POSTAGE AFFIXED THERETO, ADDRESSED TO THE DEVELOPER (IF THE DEVELOPER HOLDS THE ARCHITECTURAL CONTROL POWERS) AS FOLLOWS:



# Boone County, Missouri

WYNFIELD DEVELOPMENT, INC.  
ATTN: MR. ALLAN F. PRICE, PRESIDENT  
2504 WOODBERRY COURT  
COLUMBIA, MO 65203

707

OR THE THEN PRESIDENT OF THE ASSOCIATION'S BOARD OF DIRECTORS IF THE BOARD OF DIRECTORS HOLDS THE ARCHITECTURAL CONTROL POWERS.

THE THIRTY (30) DAY TIME PERIOD HEREINABOVE DESCRIBED SHALL NOT START UNTIL TWO COPIES OF THE PLANS, DRAWINGS AND SPECIFICATIONS AND THE LANDSCAPING PLAN HAVE BEEN SUBMITTED TO THE DEVELOPER (IF THE DEVELOPER HOLDS THE ARCHITECTURAL CONTROL POWERS) OR THE BOARD OF DIRECTORS OR ITS ARCHITECTURAL CONTROL COMMITTEE.

**Section 7. Minimum Building Standards.** In any event, so long as this Declaration is in full force and effect, the minimum Building Standards and Architectural Control Standards and Landscaping Requirements and Standards, set forth in the following sections of this ARTICLE VII, must be complied with and shall be in full force and effect and shall apply, unless expressly waived, in writing, by the Developer (for so long as the Developer holds the Architectural Control powers under this ARTICLE VII) or by the Association's Board of Directors or its Architectural Control Committee, for good cause shown. The Developer, or the Association's Board of Directors or its Architectural Control Committee, whoever holds the Architectural Control powers, may (but need not) waive the requirements of any of the following sections of this ARTICLE VII, in whole or in part, or may modify same, for good cause shown.

**Section 8. Definitions.** For purposes of this Declaration, and particularly for purposes of this ARTICLE VII, the following terms shall have the following meanings:

- a. **"Building"** shall mean a Building, as defined in Section 17 of ARTICLE I of this Declaration.
- b. **"One Family Dwelling"** or **"Single Family Residence"** or **"Single Family Dwelling"** shall mean a Building, meaning a single, detached dwelling (i.e., a one Family house), of the type normally found within zoning district R-1 of the City of Columbia, Missouri, and further meaning a single, detached house/dwelling arranged, intended and designed for occupancy by only one Family, in a single Living Unit.
- c. **"Dwelling"** shall mean a Building, meaning a "One Family Dwelling" or "Single Family Residence" or "Single Family Dwelling," as hereinabove defined.
- d. **"Family"** shall be deemed to mean an individual or married couple, and the children thereof, and no more than two other persons (other than the individual or married couple and his, her or their children, natural or adopted) related directly to the individual or married couple by blood, marriage or adoption, occupying a single Living Unit with single kitchen facility. A Family may include not more than one additional person, not related to the Family by blood or marriage; provided that such additional person may be provided with sleeping accommodations, but

Unofficial Document

not with kitchen facilities in addition to those utilized by the Family. The above provisions of this subsection (d) to the contrary notwithstanding, two unmarried adults, and their respective children, may occupy a Dwelling and shall be a "Family". Short term guests shall be permitted, and there shall be no prohibitions upon renting or leasing of Living Units. The above provisions of this section (d) to the contrary notwithstanding, and any of the provisions of this Declaration to the contrary notwithstanding, the term "Family" shall also include a living arrangement wherein not more than three (3) adult persons, not all of whom are related to each other by blood, marriage or adoption, are sharing a single Dwelling as a not for profit, cost sharing arrangement. In other words, three (3) persons living together in a single Living Unit, not all of whom are related by blood, marriage or adoption to each other, shall, in addition to a "Family", as defined above, also, for purposes of this Declaration, be deemed to be a "Family". There shall be no prohibitions upon renting or leasing of Dwellings. The provisions of this subparagraph d to the contrary notwithstanding, and any of the provisions of this Declaration to the contrary notwithstanding, if the provisions of the applicable zoning ordinances define a "Family", in a more restrictive manner, then the more restrictive definitions of the applicable zoning ordinances shall apply and shall define a "Family" for purposes of this Declaration.

e. "Living Unit" shall mean that part of a Building designed and intended as a residence for a single Family. It is intended that each Building located or to be located within the Development shall contain only one Living Unit. Each Building shall, therefore, contain only one Living Unit, and shall, therefore, be a One Family Dwelling, Single Family Residence and Single Family Dwelling. No Building shall be placed on any Lot which at any time contains more than one Living Unit. No more than one Living Unit shall be placed in any Building at any time.

f. "One Family Dwelling" means a Building, as each Building must be a One-Family Dwelling, arranged, intended and designed for occupancy by (and used only for occupancy by) one Family, as a One-Family Dwelling (solely as a residence), and for no other purposes.

**Section 9. Setbacks.** No portion of a Building located on any Lot shall be located within any setback lines or Building setback lines, provided for by the Plat.

**Section 10. Exterior Finish Materials/Approval of Exterior Finish Materials/Roof Materials and Roof Type and Roof Slope.** All exterior finish materials, including those placed on the fronts, sides and rears of each Building located within the Parcel, and including the shingles and roofing materials and gutter and downspout materials for each Building, must be approved, in advance, by the Developer, so long as the Developer holds the Architectural Control power, and thereafter by the Association's Board of Directors or its Architectural Control Committee. Therefore, the Plans and Specifications submitted to the Developer, or the Board of Directors of the Association or its Architectural Control Committee shall show and describe (in addition to the other items hereinafter described):

i. All exterior finish materials, and the colors, types, tones and shades thereof, and the locations of same;

ii. ~~The type of roof, including the slope or pitch thereof, and the materials to be placed thereon.~~ **Unofficial Document**

The Developer, the Board of Directors of the Association or its Architectural Control Committee (whoever then holds the Architectural Control authority under this ARTICLE VII) shall, therefore, have advance approval of all original and replacement exterior finishes and materials, and the finishes and materials, once approved, must be used and if same are thereafter replaced must be replaced with substantially similar finishes in materials, of substantially the same quality, texture, shade, tone and color.

The provisions of this Section 10 shall apply not to just to original materials, but to replacement materials, including replacement roofs, roofing materials, exterior siding, exterior window types and all other exterior finish materials.

In addition, as hereinabove indicated in this Section 10, the Developer, or the Board of Directors of the Association or the Architectural Control Committee, whichever then holds the Architectural Control powers, shall also have the approval of the type of roof, including the slope or pitch thereof and the materials to be placed thereon.

All roofs must be pitched roofs, and must, in any event, comply with the requirements of subsection B of Section 12 below.

Section 11. One Family Dwelling Purposes. Each Building shall be used solely as a residence for one Family, and uses normally ancillary thereto. No Building or Lot shall be used for any purpose other than as a residence for a single Family.

Section 12. Minimum Size of Residential Buildings/Further Architectural Control Standards. No Building shall be permitted within the Parcel, or on any Lot contained within the Parcel, unless such Building is a One-Family Dwelling, and complies with the following Architectural Control standards:

A. Minimum Size of Building. No One Family Dwelling (i.e., no Building or Dwelling) shall be placed upon any of the Lots contained within the Parcel unless such Building or Dwelling complies with the following minimum size requirements:

a. No one story, ranch style Dwelling built on a slab, or on a crawl space, or on a non-walkout basement shall be permitted on any Lot unless the Enclosed Floor Area of the ground floor thereof (the main floor thereof), exclusive of open porches, patios, garages and any non-walkout basement space, contains not less than two thousand five hundred (2,500) square feet of finished floor space.

b. No ranch style, one story, One Family Dwelling shall be built on a walkout basement (a basement from which one may "walk out" onto the immediately adjacent surface of the ground) on any Lot, unless the Enclosed Floor Area of the ground floor thereof (the main floor thereof), exclusive of open porches, patios and garages and exclusive of the said walkout



basement, contains not less than two thousand one hundred (2,100) square feet of finished floor space.

Unofficial Document

c. No two story, trilevel or multistory or multilevel One Family Dwelling, shall be permitted upon any Lot, unless the Enclosed Floor Area thereof, exclusive of open patios, porches, and garages (and also exclusive of any basement or walkout basement), shall contain not less than two thousand seven hundred (2,700) square feet of finished floor area, and the Enclosed Floor Area of the ground floor of such Dwelling (the main floor of such Dwelling) shall contain not less than one thousand seven hundred (1,700) square feet (excluding all such patios, porches, and garages and basement space) of finished floor space on the main level.

The required areas hereinabove described shall be deemed to mean "Enclosed Floor Area" of finished floor space, as determined from outside measurements of the Building. The "Enclosed Floor Area" shall be computed on outside measurements of the Dwelling, but shall not include any garages, carports, porches (whether or not enclosed), screened-in porches, sun porches, patios, attics, decks (whether or not enclosed) or finished or unfinished basement space or walk-out basement space. "Enclosed Floor Area", shall mean that portion of the space within a Building which is intended for living, sleeping, eating or cooking, and shall also include (shall further include) the reasonable area included within reasonable, normal, ancillary bathrooms, utility areas, pantries, laundry space and other similar, reasonable accessory floor space; provided that all such accessory floor space must be finished and intended for year round use. Any unfinished storage space or unfinished utility space or finished or unfinished space in a "basement" or "cellar" shall not be included within Enclosed Floor Area. Any finished or unfinished space (however finished and whether or not finished) which is located in a basement shall not be included within nor considered to be a part of Enclosed Floor Area. It is, therefore, intended that the Enclosed Floor Area hereinabove referred to be generally included within the ground floor of the Dwelling (the main floor of the Dwelling) [i.e. the floor accessed by the front door or main door of the Dwelling], and stories located above such ground floor. If there is a dispute as to whether or not a Building includes the necessary Enclosed Floor Area, then such dispute shall be resolved by the Developer, the Board or its Architectural Control Committee, whoever holds the Architectural Control Authority, and such decision shall be binding, provided only that it is made in good faith and is reasonably supported by available facts, and is not arbitrary or capricious.

B. Roof Pitch and Materials. Unless the Developer otherwise approves, for good cause shown, all roofs for Buildings within the Parcel must be pitched roofs, rising or falling at least six feet (6') within each twelve foot (12') of horizontal distance (which is to say that each roof must be pitched on at least a 6:12 basis). Each roof must be covered (shingled) with one of the following types of shingles, or a shingle reasonably equivalent thereto:

- GAF Woodline®;
- Certainteed HorizonR®;
- Owens Corning Oakridge II®; or
- Tamko Heritage II®.

No white or light gray shingles or roofing materials shall be permitted within the Parcel. Shingles and exterior roofing materials must be of an earth tone or subdued color or tone.

Section 13. Hard Surfaced Driveways. The Plans and Specifications submitted to the Developer (so long as the Developer holds Architectural Control rights and thereafter to the Board of Directors of the Association) must show the locations of all drives, driveways, walkways and parking areas, and must show (accurately) the material with which the driveways and walkways will be surfaced. The surface materials of driveways and walkways shall, therefore, be subject to Architectural Control in the manner provided for by the above provisions of this ARTICLE VII. The Developer, so long as the Developer holds Architectural Control powers, shall have the complete discretion and authority as to the types of driveway paving materials which may be used, and all such paving materials shall be subject to the Developer's approval. All driveways and parking areas located within each Lot must be hard surfaced, in any event, with the types of materials approved by the Developer, so long as the Developer holds Architectural Control powers, and thereafter by the Association's Board of Directors. Approved materials may (in the discretion of the party holding Architectural Control powers) be either concrete or asphalt (or equivalent materials as determined by the party holding the Architectural Control powers, on a case by case basis). All materials for drives, driveways and parking areas must be approved by the Developer, so long as Class B voting rights exist, and for so long thereafter as the Developer owns any Lot within the Development, and, thereafter, by the Board of Directors of the Association or its Architectural Control Committee, in accordance with ARTICLE VII of this Declaration. So called "chip and seal" driveways are prohibited.

Section 14. Pools, Hot Tubs, Retaining Walls and Accessory Improvements and Above-Ground Pools. All pools, hot tubs, retaining walls and other accessory improvements, as well as decks, walkways, patios and other constructed improvements, must be submitted for approval by the Developer (so long as the Developer holds the Architectural Control powers and thereafter to the Board of Directors or its Architectural Control Committee) as to location, size, compatibility with adjoining properties and harmony with the Development before construction. IN NO EVENT SHALL ABOVE-GROUND SWIMMING POOLS BE PERMITTED. ABOVE-GROUND SWIMMING POOLS AND ABOVE-GROUND POOLS OF ANY KIND OR NATURE WHATSOEVER, AND ANY SIMILAR IMPROVEMENT, SHALL BE AND THE SAME ARE HEREBY EXPRESSLY PROHIBITED. Above ground hot tubs are permitted.

Section 15. Fences, Walls and Privacy Screens. Fences of any kind are not permitted unless expressly approved by the Developer (so long as the Developer holds the Architectural Control powers and thereafter by the Association's Board of Directors or its Architectural Control Committee). No chain link fences, chain fences, wire fences, aluminum fences or other metal fences shall be permitted. Fences may be approved or disapproved by the Developer or the Board of Directors of the Association (whichever holds Architectural Control powers) for whatever reason they find to be appropriate. Wood fences will be approved on a case-by-case basis and must be approved prior to installation. Some wood fences will not be approved and others will be approved, depending upon the design and appearance thereof and the quality thereof and the location at which same are to be installed. The design, the quality, the materials and the location of wood fences must be approved in advance pursuant to the Architectural Control provisions set forth herein. All fences, walls and privacy screens shall be consistent with any standard designs, heights or materials selected

by the Developer so long as the Developer holds Architectural Control powers and thereafter by the Association's Board of Directors. All fences, walls and privacy screens shall be constructed with the finished side facing out. Except as specifically authorized in advance by the Developer, so long as the Developer holds Architectural Control powers, and thereafter by the Board of Directors of the Association, no fence, wall or privacy screen shall extend in front of the front Building setback line.

**Section 16. Two Car Garages.** Each Building placed upon each of the Lots located within the Development must contain at least a two car, attached garage, in order that two automobiles may be parked within such garage, off street and off the driveway.

**Section 17. Erosion Control.** Before commencement of construction of any Building located upon a Lot reasonable Erosion Control (which must, in any event, comply with all applicable lawful requirements and must, at least, consist of a straw berm or other type of Erosion Control approved by the Developer, in advance of the start of construction) must be installed across the entire length of any side of the Lot which abuts a street or any other Lot or a stream or drainageway. The Lot Owner and the Lot Owner's Contractor shall have the obligation to use reasonable means to prevent the erosion of soil onto adjacent property or any public street or street or drainageway. The Lot Owner and the Lot Owner's Contractor shall have the absolute obligation to comply with all requirements of the Codes and Ordinances of the City of Columbia, Missouri with respect to erosion control, and shall indemnify, defend, save and hold harmless the Developer, the Board of Directors of the Association and all other persons, of and from all damages, costs, expenses, liabilities and responsibilities which arise out of any failure to so comply with such Ordinances.

**Section 18. Accessory Buildings, Out Buildings and Other Improvements.** No additional and/or accessory structures or improvements of any kind or nature whatsoever [including but not limited to:

- Dog houses;
- Pet houses;
- Exterior storage sheds;
- Additional driveways, walkways, parking areas;
- Garages;
- Sheds or storage areas whether temporary or permanent in character;
- Ponds;
- Swimming pools;
- Outdoor hot tubs;
- Wading pools;

## ~~Unofficial Document~~

- Walls, fences or similar structures;
- Buildings;
- Monuments;
- Exterior decorative structures;
- Lawn ornaments (other than temporary Christmas or Easter displays or similar displays which are of short term, temporary duration),
- Sheds;
- Posts, poles;
- Storage boxes;
- Barns;
- Stables;
- Garages;
- Above-ground swimming pools or any similar improvements of any kind or nature whatsoever;
- Pools and similar improvements;
- Trampolines and similar devices or equipment and similar improvements, temporary or permanent; or
- Tennis courts or similar items;

of any kind or nature whatsoever, temporary or permanent in nature, shall be erected or placed on any Lot in addition to the basic Building, garage, patios, walks, decks, driveways, porches and other improvements originally placed by the Developer or Builder and/or any reasonable similar replacement therefor, without the approval of the Developer or the Board of Directors of the Association, whichever then holds Architectural Control powers under this ARTICLE VII. As indicated in Section 14 above, above-ground swimming pools are, in any event, prohibited.

**Section 19. Basketball Goals.** All basketball goals must be consistent with standard designs and materials therefore approved by the Developer, so long as the Developer holds Architectural Control powers under this ARTICLE VII, and thereafter by the Association's Board of Directors. All backboards must be clear or painted white and all poles must be neutral in color. Outdoor basketball goals shall be located only at such locations as shall be approved, in advance, by the Developer so long as the Developer holds Architectural Control powers under this ARTICLE VII,

and thereafter by the Association's Board of Directors. The approving party shall have the right to make, alter and revoke reasonable rules regarding the hours of use of basketball goals and all such rules shall be binding upon all of the Lots and the Owners.

**Section 20. Play Structures.** All swings, swing sets, sandboxes, trampolines and other recreational or play structures of every kind, nature and description whatsoever (other than basketball goals) must be located behind the line consisting of the back most wall of the Building extended to the side lot lines.

**Section 21. Pools and Hot Tubs.** All pools and hot tubs shall be wholly screened from the ground view of the public and all other Lots. All pools and hot tubs must be kept cleaned and must be maintained in good operating condition. Above ground swimming pools are prohibited; although above ground hot tubs are permitted. The provisions of this Section 21 notwithstanding, the Plans and Specifications and landscaping plan for any pool or hot tub must be approved in accordance with the Architectural Control requirements of this ARTICLE VII.

**Section 22. Additions and Modifications.** No exterior addition to or change to (including but not limited to changes of building materials, roofing materials, surface materials, finish materials, other exterior materials or exterior colors) or alterations or additions shall be made on any structure or Building or any driveway, walkway, fence, wall or other structure or improvement of any kind or nature whatsoever located within a Lot until the Plans and Specifications showing the nature, kind, shape, height, color, materials, type and location of same shall have been submitted to and approved in writing as to harm in the external design and location and relation to existing structures and surrounding structures and topography by the Developer, so long as the Developer holds Architectural Control powers under this ARTICLE VII, and thereafter by the Association's Board of Directors, or its Architectural Control Committee.

**Section 23. Exterior Wiring, Antennas or Installation of Satellite Receiver Dishes or Similar Improvements/Air Conditioners, Heat Pumps, Etc.** No exterior wiring or antennas or satellite receiving dishes or similar improvements or equipment of any kind or nature whatsoever, nor anything having an appearance similar thereto, shall be permitted on the exterior portion of any Building situated upon any Lot, nor be placed upon any Lot, except as may be erected by the Developer or as shall be approved in advance in accordance with the above Architectural Control provisions of this ARTICLE VII, either by the Developer so long as the Developer holds Architectural Control powers and thereafter by the Association's Board of Directors. No air conditioning, heat pumps or other types of installation shall be installed or permitted which appear on the exterior of any Building or which protrude through the walls, roof or window area of any Building on any Lot, or which are located on any Lot, except as may be installed by the Developer or the Builder in the original construction or as may be subsequently approved in accordance with the Architectural Control provisions set forth in ARTICLE VII of this Declaration.

**Preemption by Federal Regulations and Federal Law.** It is understood that federal regulations of the Federal Communications Commission, and other federal law, to some extent, have preempted and may hereafter preempt the rights of Associations to approve or disapprove of certain satellite receiving dishes, or broadcast receiver dishes, or television receiving dishes. The intention is that the Developer, the Association's Board of Directors, or its Architectural Control Committee, shall

Unofficial Document

have and retain all authority under this ARTICLE VII (to the maximum extent lawfully permitted) which is permitted by applicable federal law and regulation, but that such authority shall automatically be modified to conform with federal law or regulation, or any other applicable law or regulation. To the extent that the party holding the Architectural Control powers and authority may control the type, location, or placement of satellite receiver dishes, television receiver dishes or antennas, or antennas designed to receive a direct broadcast satellite signal or service ("DBS"), the party holding the Architectural Control powers shall have the right and authority, reasonably (and acting in good faith) to specify the locations for, and the types of, and the color of and screening for, such satellite receiver dishes or antennas. All satellite dishes and antennas, whether broadcast or receiving, other than those which are governed by rules of the Federal Communications Commission or any similar governmental authority, shall be subject to all of the Architectural Control provisions of this ARTICLE VII. All DBS dishes and antennas, and other satellite dishes, which are governed by rules and regulations of the FCC or any other governmental authority, shall be subject to such reasonable restrictions as the party holding the Architectural Control powers under this ARTICLE VII may lawfully impose, in accordance with applicable FCC regulations or other applicable law.

**Section 24. Above-Ground Swimming Pools.** Above-ground swimming pools shall be and the same are expressly prohibited. No above-ground swimming pool shall be placed on any Lot, whether same is permanent or temporary in character. Above-ground swimming pools and above-ground pools shall be and the same are hereby prohibited, whether same are temporary or permanent in character. The prohibitions of this Section 14 shall not apply to hot tubs.

**Section 25. Sodding and Landscaping Requirements.** Unless waived by the approving party, as a part of all Plans and Specifications, and as a part of the required submission for the approval of the Plans and Specifications, the Builder or Lot Owner must provide to the party holding Architectural Control powers, a Landscaping Plan, and no Building or structure, or alteration of same, shall be commenced until the Landscaping Plan therefor has been approved in accordance with the requirements of this ARTICLE VII. In addition, as a part of the construction of the first dwelling/Building to be installed on each Lot, sodding and landscaping must be installed on such Lot, in accordance with the approved Landscaping Plan and, in any event, in accordance with the following minimum landscaping requirements and sodding requirements (which must be complied with), and each of the Lots shall be and must be sodded and landscaped pursuant to the following minimum landscaping and sodding requirements, which must be met and satisfied as a part of the construction of the first dwelling/Building to be installed on each Lot (unless the party holding the Architectural Control powers approves other landscaping):

- All front yards of, and all streetside side yards of corner Lots must be sodded. [The front yard shall be considered to be that portion of the Lot located between the plane of the front wall of the Dwelling/Building (extended to the side Lot lines) and the curb of the street.];

- Not less than two (2) deciduous or evergreen or ornamental trees, with a minimum of two inch caliper measured four feet above the ground, must be placed in the front yard of each Lot, and within the streetside side yard of any corner Lot;

- A planting bed with at least six shrubs of a type approved by the Developer so long as the Developer holds Architectural Control powers and thereafter the Board of Directors



of the Association must be placed within the front yard of each Lot and the streetside side yard of each corner Lot;

Unofficial Document

- All yards which are not sodded pursuant to these requirements must be seeded with reasonable grass or covered with ground cover, unless heavily wooded.

In the event any of the sodding, seeding or landscaping required by the provisions of this Section 25 is not installed in accordance with the provisions of this Section 25 then same may be installed by the Association. The sodding and landscaping of the front yard (and side yard if required) shall and must be completed as soon as reasonably practicable following the occupancy of the Dwelling/Building on the Lot, giving due consideration to weather conditions. All sodding and landscaping must, in any event, be installed and completed by the Lot owner within thirty (30) days of the date of the issuance of the occupancy permit for (or the initial occupancy of, whichever first occurs) the Dwelling/Building, unless such occupancy permit is issued or such initial occupancy occurs during the months of November, December, and January or February, in which event the sodding and landscaping must be completed and installed by the end of the next immediately succeeding month of May or within such period of thirty (30) days whichever shall last occur; provided, however, that sodding and landscaping completion may be delayed if reasonably required because of adverse weather or ground conditions. All sodding and landscaping must be installed in a good and workmanlike manner. In the event:

- i. The sodding or landscaping is not installed in accordance with the above requirements; or
- ii. The sodding or landscaping which is installed is not installed in a good and workmanlike manner; or
- iii. The sodding or landscaping which is installed does not comport with the minimum sodding and landscaping requirements hereinabove set forth in this Section 25; or
- iv. The sodding or landscaping which is installed does not comport with any required and approved landscaping plans; or
- v. Any of the sodding or landscaping is not completed as soon as reasonably practicable, and, in any event, within the time period specified above,

then the Association or Developer shall be permitted to enter upon the Lot (and shall have a full and complete easement and right of entry upon the Lot) in order to install the sodding or landscaping, or to complete the installation of the sodding or landscaping or to remedy any defects in same. The Association's or Developer's discretion to enter upon the Lot and to install or to not install the sodding or landscaping shall be absolute. The Association or Developer shall be under no obligation to install or remedy the sodding or landscaping. If the Association or Developer chooses to install the sodding or landscaping, then the Association or Developer and its employees, agents, contractors (and their employees) or designees shall have the total, complete and absolute, unlimited and unmitigated right, license and easement to enter upon the Lot (and all parts thereof), at any time and location of its choosing to install or remedy the sodding or landscaping and shall have the total,

complete and absolute and unlimited discretion in the selection of the landscaping materials and sod to be installed. If the Association or Developer installs or causes to be installed or completed any part of the sodding or landscaping, then the Lot upon which the landscaping or sod is so installed, and the Lot Owners of such Lot shall be subject to a Special Assessment, and such Special Assessment shall be charged to such Lot Owner of the Lot. Such assessment shall be in the sum of all costs incurred by the Association or Developer for the installation of the sodding and landscaping; plus twenty percent (20%) for the Association's or Developer's costs, expenses and inconvenience incurred in arranging for the installation of the sodding or landscaping. Such assessment shall be due from the Lot Owner, on demand, without delay. Such assessment shall constitute and shall be deemed to be a Special Lot Assessment against the Lot, which has been charged in accordance with the provisions of ARTICLE VI of this Declaration. Such Special Lot Assessment shall be immediately due and payable, and if not paid, shall bear interest from the date of demand until paid at the rate of ten percent (10%) per annum. Such Special Lot Assessment and the sum thereof, together with interest, and all costs of collection and enforcement thereof (including but not limited to attorney's fees), shall constitute a lien upon the Lot, which shall be collectible and enforceable as described in ARTICLE VI hereof, and, in addition the Lot Owners shall be (jointly and severally if more than one) liable and responsible for payment of such sum.

Section 26. Mailboxes. All mailboxes within the Development must match, meaning that mailboxes of the same type, scale, finish and appearance must be used. It is the intention that "identical" mailboxes shall, to the extent practicable, be used and that if it is not practicable to use identical mailboxes because mailboxes of the type initially used are no longer available, that any mailbox will as closely match the other mailboxes as is practicable. All mailboxes must be approved pursuant to the Architectural Control provisions set forth in this ARTICLE VII, and any mailbox which does not satisfy the "matching" requirement of this ARTICLE VII shall be subject to rejection.

Section 27. Drainage. It shall be the responsibility of the party seeking approval of the Plans and Specifications, and the party constructing any Building or improvement on any Lot, to comply with the requirements of ARTICLE XIII of this Declaration. Neither the Developer, nor the Association's Board of Directors, nor its Architectural Control Committee, whoever holds the Architectural Control powers, shall have any liability or responsibility to see to it that a Building or house is set on any Lot so as to provide for reasonable surface water drainage for such Lot or adjacent Lots. Such responsibility shall rest solely with the Lot Owner of the Lot upon which the Building, structure or improvement is placed.

Section 28. Sprinkler Systems in Front Yards. The Plans and Specifications for, and the Landscape Plans for, the Building to be placed on each Lot (i.e., the dwelling house to be placed on each Lot) must provide for the installation within the front yard thereof, and within the side yard of any corner Lot, of a lawn irrigation/lawn sprinkler system, which is approved by the Developer, or the Board of Directors of the Association, or its Architectural Control Committee, whoever then holds Architectural Control powers. In any event, each Lot must be equipped, at all times, with an approved and fully operational lawn sprinkler system/lawn irrigation system (which is so approved, and which is maintained in operating condition at all times) and which is used at all necessary times. Lawn sprinkler systems must be installed (and the completion of such installation must be accomplished) at the time of the completion of the landscaping, and must be completed to the reasonable satisfaction of the party who then holds the Architectural Control powers.

**Section 29. Docks, Plans and Specifications for any Dock** which any Lot Owner of a Lot which abuts upon any Lake which constitutes a part of the Common Areas intends to place on such Lake, must be approved, in advance of construction of the dock, by the Developer, the Board of Directors, or as Architectural Control Committee, whoever then holds the Architectural Control Powers under this ARTICLE VII, in the manner described in Section 1 of this ARTICLE VII. Plans and Specifications for Docks must, generally, provide for docks of uniform design, size, type, quality and finishes. The size, location, shape, design, materials and manner of construction of each dock shall be subject to architectural control approval pursuant to Section 1 of this ARTICLE VII.

## **ARTICLE VIII** **MAINTENANCE**

**Section 1. General Maintenance by Association.** The Association shall provide for all maintenance, repairs, replacements, servicing and upkeep for:

- Any lake, pond or other impoundment constituting a Common Element, and any dam therefor and any spillway therefor and any other structures, appliances or components appurtenant thereto;
- Any entryway structure or monument or sign for the Development, including the landscaping therefor and the lighting thereof and all other parts and components thereof;
- All trees, shrubs, lawns and other landscaping materials placed in any Common Area or constituting a Common Element;
- Any sidewalks, trails, paths or walkways placed within any Pedestrian Access Easement or Pedestrian Easement, including that located between Lots 115 and 116, as shown on the Plat;
- At the option of the Association's Board of Directors (and at the expense of all Lot Owners), any drainage easements, drainways or drainage structures which serve more than one Lot or several Lots or a number of Lots;
- All trees, shrubs, lawns, ground cover and landscaping material placed within the "Landscape Esmt." (herein referred to as a "Landscape Easement"), over, across and upon those Lots of the Development which abut upon Vawter School Road, and placed within any other Landscape Easements located within the Development; and
- All other maintenance, repairs, replacements, servicing and upkeep for all other Common Areas and Common Elements of every kind, nature and description whatsoever.

The Association shall provide for all mowing, fertilization, irrigation, maintenance, repair, replacement and upkeep of all lawns and landscaping and plantings located within Common Areas and Common Elements and any such Easements, and shall provide for all maintenance, repair, replacement, servicing and upkeep of any kind or nature whatsoever required for the maintenance, repair, replacement, servicing and upkeep of the Common Areas and Common Elements, including,

but not limited to the ~~entry way monuments, structures, signs and~~ similar items placed at the entrances to the Development or any portions of the Development and any improvements placed within any Landscaping Easements, or other such Easements. The Association shall pay all taxes upon the Common Areas and Common Elements, and shall provide adequate liability insurance, and fire and casualty insurance, for the Common Areas and Common Elements.

Section 2. Maintenance, Repairs and Replacements by Lot Owners. Each Lot Owner shall maintain, repair and replace his Lot, and the Building located thereon, and all improvements located thereon, and all lawns, grass, ground cover, trees, bushes, shrubs and landscaping contained thereon, and all improvements located thereon, and all parts thereof, so as to keep same at all times in a clean, neat, safe, attractive and aesthetically pleasing condition, free from weeds, all junk and debris and dead or dying lawns, trees or vegetation and any conditions of unsightliness, and other conditions reasonably requiring repair or remedies.

Section 3. Standards of Maintenance, Repair and Replacement. The Association shall maintain all Common Areas and Common Elements, and each Lot Owner shall maintain, repair and replace his Lot, and all portions thereof, and all Buildings and improvements located thereon, so as to maintain same in a clean, safe, neat and attractive condition, according to maximum reasonable standards of cleanliness, safety, neatness, attractiveness, aesthetics and beauty, so as to maintain the Development in as clean, safe, neat, attractive and aesthetically pleasing condition as is reasonably practicable. In the event of any dispute over the standards of maintenance, including the standards of cleanliness, safety, neatness, attractiveness, aesthetics and beauty, such dispute shall be resolved by the Association's Board of Directors, and such determination by the Association's Board of Directors shall be binding upon all parties. It is the intention of the Developer, and of all parties, that the Development, and all improvements located therein, be maintained as a Development of the highest order, and that maximum reasonable standards of cleanliness, safety, neatness, beauty, attractiveness and aesthetics be maintained, and that the Development be free of any conditions of unsightliness, including (by way of example only but not by way of limitation), the following: chipped, flaking or discolored paint; weeds; dead or dying lawns, trees, shrubs, vegetation or the like; discolored roofs or roofs requiring patching or maintenance; loose, rusted or discolored gutters or downspouts; walkways, driveways, sidewalks or parking areas requiring patching or resurfacing; brick surfaces in need of cleaning or tuckpointing; or other conditions of any kind or nature whatsoever, without limitation, which would reasonably be construed by reasonable people as not in keeping with reasonable maximum standards of cleanliness, safety, neatness, beauty, attractiveness or aesthetics.

Section 4. Special Assessment. In the event any Owner of any Lot fails to perform any repair, replacement or maintenance specifically imposed upon such Owner by this Declaration, including the provisions of this ARTICLE VIII, and in the further event the Association's Board of Directors, in its sole, absolute and unmitigated discretion determines that the conditions require maintenance, repair, replacement or servicing for the purposes of protecting the interests of any Lot Owner, or any other Lot Owners, or the public safety, or the safety of residents in or visitors to the Development, or to prevent or avoid damage to or destruction of any part, portion or aspect of the value of the Property or of any Lot, or of the Development or any part thereof the Association's Board of Directors shall have the right, but not the obligation, through its directors, agents and employees, and after approval of a majority of the Board of Directors (no approval by members of

the Association shall be required to enter without permission upon, or within said Lot, and any portions of the Lot, and any Building or Buildings thereon, and any Living Units, and to maintain, repair, replace or service the same. The costs of maintenance, repair, replacement or servicing shall constitute a special Lot assessment against the Lot Owner responsible for the maintenance, repair, replacement or servicing, and such Lot Owner's Lot, and the Building and improvements located thereon, and shall be a "Special Lot Assessment" and shall become a part of the assessments to which such Lot is subject, and shall constitute a lien, and shall bear interest and charges and be enforceable and collectible in the manner hereinabove described in ARTICLE VI of this Declaration for enforcing assessments.

**Section 5. Landscaping.** The Association shall provide for all maintenance, repairs, replacements, servicing and upkeep of any Landscaping installed with any Landscaping Easements, the obligations of which are not imposed upon the Owner's of the Lots within which the Landscaping Easements are located, as hereinafter provided for in Section 4 of ARTICLE IX below.

**Section 6. Lawn Irrigation System.** As indicated in Section 28 of ARTICLE VII, front yards on each Lot, and side yards for corner Lots, must be equipped with an approved lawn irrigation/lawn sprinkler system, which is installed as a part of the initial construction, and which is fully operational at all times. Such lawn sprinkler system must be operational at all times, and must be used at such times as are reasonably required to keep the grass and landscaping within the Lot in a well irrigated condition.

## ARTICLE IX GRANTS AND RESERVATIONS OF EASEMENTS

**Section 1. Easements for Repair, Maintenance and Restoration.** The Association, its directors, employees and agents, shall have a right of access and an easement to, over and through all of the Properties, including each Lot and the Buildings and structures located thereon, for ingress and egress and all other purposes which enable the Association to perform its obligations, rights and duties with respect to maintenance, repair, restoration and/or servicing of the Common Elements and Common Areas and any improvements located on Lots which the Association is, under ARTICLE V or ARTICLE VIII hereof, entitled to maintain for any reason whatsoever; provided that the exercise of this easement as it affects the individual Lots shall be at reasonable times and with reasonable notice to the individual Lot Owners in the absence of an emergency requiring immediate attention.

**Section 2. Other Easements.** All other easements, as shown by the Plat, whether public or private, shall exist as shown by the Plat.

**Section 3. Pedestrian Access Easements.** The Plat provides for a Pedestrian Access Easement between Lots 115 and 116, and other Pedestrian Access Easements may hereafter be provided within the Development. Each such Pedestrian Access Easement, and the sidewalk, walkway, trail, pathway or other improvement placed thereon, and all landscaping placed thereon, shall be a Common Element of the Development, intended for the use and benefit of all Lots. The intention is that the pedestrian sidewalk, walkway, path or trail placed in each of such Pedestrian Access Easements shall be used for jogging, walking and bicycling (using nonmotorized bicycles). A perpetual, irrevocable easement for the construction, maintenance, repair, replacement, use,



keeping and upkeep of sidewalks, walkways, paths and trails within each Pedestrian Access Easement shall exist, and is hereby established, and each Lot upon which a Pedestrian Access Easement exists (under the terms of the Plat or otherwise) shall be and it is hereby burdened with such an Easement, which shall run with the Lot, and shall bind the Developer and the Developer's successors in ownership of the Lot, and which shall inure to the benefit of the Association and the Lot Owners of each and all of the Lots, the terms of such Easement being as follows:

- a. The easement shall be perpetual and irrevocable, and shall run with the land;
- b. The easement shall permit the Developer and the Association, and each of them, to build, construct, maintain, repair, improve, keep and place a sidewalk, walkway, trail or pathway, of its choosing, at any location within the Easement;
- c. The Easement, and the sidewalk, walkway, pathway or other improvements located therein, and the landscaping therefore, shall be owned by the Association, and shall be maintained, repaired, replaced and improved by the Association as a Common Element, and shall be kept by the Association for the benefit of all Lot Owners;
- d. The Easement, and the sidewalk, walkway, path or trail located thereon shall be accessible to each of the Lot Owners and the members of their families, and their tenants and renters, for reasonable use for reasonable walking, jogging and nonmotorized bicycling purposes;
- e. The Easement, and the walk, walkway, sidewalk and other improvements located thereon shall, therefore, be accessible to Lot Owners of all Lots for such purposes.

**Section 4. Landscaping Easement.** The Plat provides for a "Landscape Esmt." upon Lots 133, 134, 135, 136, 137 and 160, and Lots 101 through 106, both inclusive, all of which such Lots abut upon Vawter School Road. Such Landscape Esmts. may hereinafter be referred to as a "Landscaping Easement" or "Landscape Easement." All areas shown by the Plat or by any Plat, or by any deed from the Developer, or otherwise, as being subject to a "Landscaping Easement" or any "Landscape Esmt" (or by similar designation) shall be subject to (and are hereby imposed with) an easement, which may be referred to herein as a "Landscaping Easement," and the terms and conditions of which shall be as follows:

A. **Permanent Easement.** The Landscaping Easement shall be irrevocable and permanent and may not be revoked or amended in any manner whatsoever.

B. **Imposition of Easement.** Each portion of the Lots imposed by the Plat or any document with a Landscaping Easement is hereby imposed with a Landscaping Easement, as defined in this Section 4, which shall run with each of the said Lots and which shall bind each of the Lot Owners thereof, and their heirs, personal representatives, legal representatives, successors and assigns and all future owners. The said Landscaping Easement shall run with the land/real estate of each of the said Lots.

C. **Running With Land/Easement in Favor of Association and Developer.** The Landscaping Easement shall run in favor of, and shall accrue to the benefit of the Developer and the



~~Unofficial Document~~

Developer's successors as the Developer, and shall also run in favor of and shall accrue to the benefit of the Association. The Developer and the Association shall have the right, jointly and severally, to enforce the easement as to the Landscaping Easements and shall be jointly benefitted by such Landscaping Easements. The Landscaping Easement shall, therefore, run in favor of the Developer and the Developer's successors as the Developer, and the Association and the Association's successors. The rights of the Developer as to the Landscaping Easements shall terminate when the Developer's rights as "the Developer" under the Declaration have terminated; provided, however, that the rights of the Association as to the Landscaping Easement shall thereafter continue in full force and effect in perpetuity.

D. Purpose of Easement. The purpose of the Landscaping Easement shall be to permit the Developer and the Association, and each of them, and their contractors, employees and designees, to enter upon the real estate imposed with such Landscaping Easements for purposes of doing the following:

- a. Grading the real estate so as to install berms and other scenic improvements;
- b. Planting, installing, replacing, irrigating, fertilizing, mowing, trimming, replacing and maintaining trees, shrubs, ground cover, plantings and other landscaping materials (selected by it in its sole discretion) of all types and kind;
- c. Otherwise improving or dealing with or maintaining the visual aspects of the real estate subjected to the Landscaping Easement;
- d. Installing, maintaining, repairing and replacing reasonable entryway signs, monuments, decorative structures, fences or similar improvements;
- e. Installing, maintaining, repairing and replacing irrigation systems and similar improvements.

E. Installation of Improvements Within Easement. Berms, trees, shrubs, plantings and other landscaping materials, and (at the option of the Developer and/or the Association) irrigation systems will be installed within the Landscaping Easements by the Developer or by the Developer's contractors or designees or by the Association or its Board of Directors or their designees. An easement for the location and maintenance thereof, and for the keeping, maintenance, replacement and repair thereof, shall be and it is hereby established, in perpetuity.

F. Lot Owner Barred. The Lot Owners of the Lots imposed with the Landscaping Easements are hereby barred from doing any of the following (and shall not do any of the following) as to the Land located within the boundaries of any Landscaping Easement or any plantings, trees, shrubs or other growing materials, signs, structures, walls, fences or monuments located within the boundaries of a Landscaping Easement:

- a. From grading the land;

## Unofficial Document

of the land;

- b. From in any manner altering the levels of characteristics or appearance
- c. From digging or excavating upon the land or grading the land;
- d. From removing any trees, shrubs, plantings or other landscaping materials or signs, structures, walls, fences or monuments installed upon the land by the Developer or the Association;
- e. From and any manner altering the appearance of the trees, shrubs, plantings or landscaping materials or monuments or signs installed upon the easement real estate by the Developer or the Association at anytime;
- f. From installing or altering any improvements, or structures within the real estate subject to the landscaping easement;
- g. From placing any fences, walls or similar structures within the real estate subject to the easement;
- h. From placing any improvements within the real estate subject to the easement;
- i. From engaging in any planting or gardening within the real estate subject to the easement, and from placing any trees, shrubs, or other plants or growing materials within the real estate subject to the easement, or altering the appearance of items within the real estate;

provided, however, that if construction of a sidewalk is required, and the sidewalk must be placed within the boundaries of the Landscaping Easement, then the Lot Owner shall be obligated to construct a sidewalk at the Lot Owner's sole expense, and shall have access to the land subject to the Landscaping Easement for purpose of constructing the sidewalk, and shall pay all costs and expenses of constructing the sidewalk; provided that same must be constructed in a reasonable, good, safe and workmanlike manner, and with minimal damage to any landscaping, and that any damage caused to any landscaping by the construction of the sidewalk must be repaired by the Lot Owner.

G. Maintenance. Unless the Association (pursuant to subsection I below) chooses to delegate to the Lot Owners the responsibility for all or part of the maintenance, repair, replacement, keeping and upkeep of the lawns, plantings, trees, shrubs and other landscaping materials growing within the Landscaping Easements, the Association shall, at its expense:

- Mow (so as to keep same weed-free and in good appearance);
- Fertilize, irrigate and otherwise maintain;
- Trim;

~~Unofficial Document~~

appearance,

all grass, ground cover, mulch, lawn, trees, shrubs and other landscaping materials and growing materials located within the Landscaping Easements, and shall keep and maintain in good repair and condition any sprinkler systems, irrigation systems, lighting systems or similar systems and all other improvements located within the Landscaping Easements. The Association shall, therefore, have the responsibility, at the expense of the Association, to maintain, repair and replace all landscaping, and similar items and improvements located within the Landscaping Easements as a part of the Common Elements.

H. Common Elements. The Landscaping Easements and all lawns, trees, shrubs, ground cover, mulch, landscaping, berms, irrigation systems, sprinkler systems and other improvements located therein, now or in the future, shall be a part of the Common Elements and shall be maintained, repaired and replaced as such.

I. Delegation to Lot Owners. The above provisions notwithstanding, the Association may elect to delegate to the Lot Owners of Lots containing Landscaping Easements or subject to Landscaping Easements (which such delegation may at any time be revoked by the Board) the duty or responsibility to perform all or any part of the following (and if such delegation occurs, and it may occur in the sole discretion of the Association's Board of Directors, then the Lot Owners shall have the absolute obligation to perform the following at their separate expense):

1. The responsibility to water and irrigate the trees, shrubs and other growing materials placed upon all or any part of the Landscaping Easements so as to maintain same in good condition;
2. The responsibility to mow or trim in a reasonable manner and take all other steps reasonably required to maintain lawns or landscaping materials growing within the Landscaping Easements or any portion thereof in good condition;
3. The responsibility to mow all grass growing within all or any part of the Landscaping Easement so as to maintain same in a weed-free condition and in good repair and condition and in a sightly condition;
4. The responsibility to fertilize and irrigate grass, and other plantings and to replace grass or other plantings should same die or otherwise require replacement;
5. The responsibility to remove all trash and debris from the real estate subject to the Landscaping Easement and to keep it free of trash and debris;
6. All other responsibilities to keep and maintain the improvements within the Landscaping Easement in good condition.

The Association's Board of Directors may delegate certain or all of such responsibilities to certain or all of the Lot Owners under the provisions of this subsection I at any time which the Association

Unofficial Document  
or its Board of Directors may find to be appropriate in its discretion. The discretion of the Association's Board of Directors in this respect shall be absolute. If any such delegation occurs then the Lot Owners to whom the responsibilities are delegated shall have the absolute responsibility, enforceable by the Association and each of the other Lot Owners, to perform their respective duties or obligations so delegated to them by the Association in such manner as to maintain the Landscaping Easements and all improvements, lawns, trees, shrubs and landscaping growing therein in a clean, safe, neat and attractive condition at all times. Any responsibility delegated to the Lot Owners must be discharged by the Lot Owners at their sole, separate expense. The responsibilities for maintenance, repair, replacement and upkeep of the Landscaping Easements and items therein may be delegated, in whole or in part, by the Association's Board of Directors [for example, only the responsibility to mow may be delegated]. Any delegation once made can be revoked by the Association's Board of Directors at any time of its choice. The discretions of the Association's Board of Directors in these respects shall be absolute.

**Section 5. Sign Easements.** The Plat identifies certain "Sign Easements". Any portion of any Lots shown by the Plat as being subject to a "Sign ESMT" shall be and it is hereby subjected to a "Sign Easement" as provided for by this Section 5. Such Sign Easement shall be and the same are hereby declared and established, and shall be perpetual easements, running with the Lots imposed thereby by the Plat, and shall run with the land of such Lots and shall be binding upon all present and future Lot Owners of such Lots. All Sign Easements shall run in favor of the Developer and the Association, jointly and severally. The Developer or the Association shall have exclusive access to and egress from the land subject to the Sign Easements, and even though the land subject to such Easements is owned by an individual Lot Owner access to the area subject to the Sign Easements is nevertheless to rest exclusively with the Developer, the Association and the Association's Board of Directors and their respective contractors, employees and designees. The Developer and the Association or its Board of Directors or their respective contractors or designees may enter upon the land subject to the Sign Easements at any time and may construct and install thereon, and keep, maintain, repair, use and replace thereon, and at all times maintain thereon, entryway signs, decorative plantings, monuments and other structures (and artificial lighting therefor) which serve as entryway signs for or monuments for or markers for or decorative entrances for the Development. All Sign Easements and all signs, monuments, trees, shrubs, landscaping, irrigation systems, lighting systems and other improvements installed within Sign Easements by the Developer or by the Association shall be Common Elements and shall be maintained, repaired, kept and replaced by the Association at the expense of the Association. Sign Easements shall be permanent and irrevocable and shall at all times run with the land and shall be binding upon all present and future Lot Owners of the land subjected thereto and shall run in favor of the Association and the Developer. Under no circumstances shall the Lot Owner enter upon the land subject to the Sign Easement or in any manner or respects whatsoever remove, take down or alter any sign or structure or improvement located therein or attempt to in any manner whatsoever place plantings within, or otherwise alter the appearance of the land subject to the Sign Easement or any signs, monuments, structures or other items located therein.

**Section 6. Easements Over Common Areas and Common Elements.** All Common Areas and Common Elements, including any Lake, pond, trail, walkway or bike path and the Pedestrian Access Easements referred to above shall be imposed with a perpetual, irrevocable, permanent easement, running with the Common Areas and Common Elements, which shall inure to the

Unofficial Document

Association and each Lot Owner and the occupants of each Lot and the members of their family and guests and personal invitees, such that the Association and its contractors and designees may enter upon the Common Areas and Common Elements at all times for purposes of maintaining, repairing, replacing, building, rebuilding and servicing same and placing any improvements thereon which are approved by the Association's Board of Directors; and the Lot Owners and the occupants of the Lots and the members of their families, guests and personal invitees may freely enter upon the Common Area and Common Elements and make use of same for their intended purposes. The above provisions notwithstanding, however, areas subjected to "Landscaping Easements", although considered to be Common Areas or Common Elements and although maintained by the Association, shall be restricted as to access to the occupants of the Lot occupied thereby. Simply because an area is subjected to a Landscaping Easement shall not entitle others (other than the Lot Owner) to enter upon the area subject to the Landscaping Easement; provided, however, that the Association and its Contractors and designees shall have unlimited access any egress for purposes set forth in Section 4 above.

Section 7. Easement for Docks. Lot Owners of Lots which abut upon any Lake which constitutes a part of the Common Areas or Common Elements shall have an easement for installation, location, maintenance and use on such Lake of one (only one) Dock; provided that such Dock must be installed in accordance with Section 29 of ARTICLE VII, the Architectural Control Provisions, and that such Dock must at all times be kept in good repair and condition, and in a condition of reasonable appearance.

## ARTICLE X COMMON AREAS

Section 1. Members' Easements of Enjoyment. Every member in the Association, and the members of their families, and their designees and delegates and renters and lessees, shall have the right of ingress and egress and an easement of enjoyment in and to the Common Area and the Common Elements and the facilities, improvements and recreational facilities located thereon, and such easements shall be appurtenant to and shall pass with the title to every assessed Lot.

Section 2. Delegation of Use. Any member may delegate his right of enjoyment to the Common Area, Common Elements and facilities to the members of his immediate family or his tenants, or contract purchasers, who reside on the property.

Section 3. Title to Common Areas. The title to certain of the Common Areas may be retained by the Developer until completion of the Development contemplated by the Developer. Even though title to such Common Areas and Common Elements may not be vested in the Association, same shall nevertheless be deemed to be Common Areas and Common Elements, whether or not conveyed to the Association, and shall be maintained by the Association from the Maintenance Fund.

Section 4. Members' Easements of Enjoyment. Every Lot Owner (i.e. "Member") and their guests, renters and invitees and lessees and the lessees of Developer shall have a right of ingress and egress and easement of enjoyment in and to the Common Area and Common Elements and the facilities, improvements and recreational facilities located thereon and such easement shall be

appurtenant to and shall pass with the title to every assessed lot. Said right of ingress and egress and easement of enjoyment shall exist whether or not the Developer has conveyed title to the Common Area to the Association and shall be subject to the following provisions:

- (a) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property;
- (b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by a Member for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations;
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board of Directors, provided, however, should the property sought to be transferred be subject to the lien of any mortgage or deed of trust, no such transfer shall be made without first obtaining the written consent of the mortgagee or the beneficial owner of said deed of trust thereto. No such dedication or transfer shall be effective unless an instrument signed by members entitled to cast sixty-five percent (65%) of the votes of the Class A membership and sixty-five percent (65%) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than ten (10) days nor more than forty (40) days in advance; and unless (in the event the portion of the Common Area to be dedicated or transferred is, for any reason, immediately adjacent to and abutting upon the boundary lines of a Lot or contained within a Lot) the Lot Owners of abutting or immediately adjacent Lots have agreed to such transfer;
- (d) The right of the Developer and of the Association through its Board of Directors to create, grant and convey easements upon, across and over the Common Areas and utility and Sewer Easement to public utilities or public bodies or public governments for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephones, electric lines and a community master television antenna system or cable T.V. system;
- (e) The right of the Association to publish rules and conditions to regulate and control the Members' use and enjoyment of the Common Area.

**Section 5. Designation of Common Areas.** The Developer reserves the right to designate any part of the real estate located within the Development, now or in the future, as Common Area. No requirement that the Developer designate Common Areas shall be deemed to be expressed or implied.

**Section 6. Docks.** Lot Owners of Lots which abut upon any Lake which constitutes a part of the Common Areas or Common Elements shall have an easement for installation, location, maintenance and use on such Lake of one (only one) Dock; provided that such Dock must be installed in accordance with Section 29 of ARTICLE VII, the Architectural Control Provisions, and



that such Dock must at all times be kept in good repair and condition, and in a condition of reasonable appearance.

Unofficial Document

**ARTICLE XI**  
**USE RESTRICTIONS**

The Lots and the Buildings and structures and Dwelling located thereon, and the Living Units located thereon, shall be subject to the following provisions and restrictions:

**Section 1. One Family Dwelling Purposes.** Only one Single Family Dwelling Building shall be placed on each Lot. Each such Building shall contain only one Living Unit, and shall be used solely for as a residence for a single Family. For purposes of this restriction upon use, a "Family" shall mean a "Family", as hereinabove defined in subparagraph d of Section 8 of ARTICLE VII of this Declaration. There shall be no prohibitions upon renting or leasing of Dwellings. No such prohibitions shall be either expressed or implied. Each Lot shall, therefore, be used only for One Family Dwelling purposes, meaning that one Single Family Dwelling (a single detached Building arranged, intended and designed for occupancy by one Family in one Living Unit) shall be placed on each Lot.

**Section 2. No Subdivision.** Once a Lot has been sold by the Developer, or the Developer's assignees of any of the Developer's rights as the Developer of the Parcel, such Lot shall not be subdivided by deed, plat or lease, or otherwise be caused to be separated into Lots, tracts, parcels or units smaller than the whole Lot; provided, however, that nothing contained herein shall prevent the Developer from subdividing its Lots, or amending Lot lines for such Lots, or from combining such Lots, or from eliminating certain of such Lots, and that nothing herein shall prevent the partition of a Lot as between co-owners thereof, if such right of partition shall otherwise be available, but such partition shall not be in kind.

**Section 3. Single Family Residence.** No Dwelling or Building shall be used for any purpose other than as a residence site for a single Family. For purposes of this restriction, and for other purposes of this Declaration, the term "Family" is defined in Section 8d of ARTICLE VII of the above provisions of this Declaration.

**Section 4. No Roomers or Boarders.** Except to the extent provided in Section 1, it is hereby provided that no boarders or roomers shall be permitted in addition to the Family occupying each Building/Single Family Dwelling. Renting or leasing of Buildings, for Single Family Dwelling purposes, is, however, permitted. Short term guests are permitted.

**Section 5. Home Occupation.** The restriction above to use of any Building as a Single Family Residence shall not prohibit the conduct of a "home occupation" upon said Lot as defined herein. Home occupation means any occupation or profession carried on by members of the immediate "Family" residing on the premises, in connection with which there is not used any sign or display that will indicate from the exterior that the Building is being utilized in whole or in part for any purpose other than that of a Single Family Residence Dwelling; in connection with which there is no commodity sold upon the premises, and no person is employed other than a member of the immediate Family residing on the premises, and no mechanical or electrical equipment is used

## Unofficial Document

except such as is permissible for and is customarily found in purely domestic or household premises for the Family residing therein; and in connection with which no noise (of any kind or nature whatsoever), and no disturbance (of any kind or nature whatsoever), and no odor or fumes or vapors or dust or air borne particles (of any kind or nature whatsoever) are generated; and in connection with which no tools or equipment are used except such as are permissible for and are customarily found in purely domestic or household premises for the family residing therein; and in connection with which no traffic is generated; and in connection with which no item of goods, material or equipment is stored in the premises. A professional person may use his residence for infrequent consultation, or emergency treatment, or performance of his profession. Permitted home occupations shall not include barber shops, beauty shops, shoe or hat repair shops, tailoring shops or any type of pick up station or similar commercial activities but the recitation of these particular exclusions shall not be deemed to constitute authorization for the conducting of other businesses or enterprises which are precluded by the previous language of this paragraph or by other sections of the Declaration, Articles or Bylaws. Nothing herein shall be construed to permit home occupations not permitted by applicable zoning laws. No churches, religious establishments or institutions, schools, places of instruction, daycare homes, daycare centers, preschool centers, nursery schools, child placement centers, babysitting centers, child education centers, child experiment stations, group houses, religious institutions, halfway houses, child development institutions, or similar facilities, shall be permitted, and daycare of children for hire shall not be permitted. No Lot, or any part thereof, shall be used for a professional or commercial purpose except as permitted by this Section 5.

**Section 6. Additional Structures/Docks.** No additional and/or accessory building, sheds, garages, barns, dog houses, structures or other improvements of any kind or nature whatsoever, pools, ponds, swimming pools, outdoor hot tubs, walls, fences or buildings of any nature whatsoever, or sheds, posts, poles, storage sheds, dog houses, storage boxes, barns, stables, garages, basketball or volleyball courts or goals or tennis courts or similar items of any nature whatsoever (temporary or permanent) shall be erected, kept or used upon any Lot, in addition to the basic Building, garage, patios, walks, decks, porches or other improvements originally provided by the Developer or Builder, or any reasonably similar replacement thereof, or addition thereto, without the approval of the Developer, so long as the Developer holds those Architectural Control powers provided for by ARTICLE VII, and thereafter by the Association's Board of Directors or its Architectural Control Committee, as provided for by ARTICLE VII. No Dock may be installed upon any Lake, or impoundment, which constitutes a part of the Common Areas or Common Elements, until the Plans and Specifications therefore have been approved in accordance with Section 29 of ARTICLE VII of this Declaration. Any such Dock must be kept and maintained by the Lot Owner in good repair and condition, and in a condition of reasonable appearance.

**Section 7. Parking.** No uncovered parking space on the Parcel or within the Development or any street, or within any Lot, shall be used for the parking of any trailer, truck, boat, camper, mobile home, motor home or anything other than operative automobiles, which are in good condition and repair, and which are used with very substantial, regular frequency. Any vehicle parked within the Development or upon any street running within the Development, must be a vehicle which is in good condition, and which is in good operating condition, and which is used with very substantial regular frequency. It is the intention of the parties that inoperative automobiles, or other vehicles, not be placed within the Development, and not be parked or stored within the Development, or upon any street within the Development. Automobiles or vehicles not used with substantial regular

Unofficial Document

frequency shall not be placed within uncovered parking spaces within the Development. The word "trailer" shall include trailer coach, house trailer, mobile home, automobile trailer, campcar, camper, recreational vehicle or any other vehicle whether or not self-propelled, constructed or existing in such a manner as would permit the use and occupancy thereof for human habitation, for storage, or the conveyance of machinery, tools or equipment, whether resting on wheels, jacks, tires or other foundation and used or so constructed that it is or may be mounted on wheels or other similar transporting device and used as a conveyance on streets and highways. The word "truck" shall include and mean every type of motor vehicle other than automobiles and vans and pick-up trucks and other similar utility vehicles used regularly as passenger vehicles by persons occupying the Lots. No covering or walling in of uncovered parking spaces shall be permitted except as specifically approved in accordance with the architectural control provisions set forth in ARTICLE VII hereof. Provided, however, that this Section shall not apply so as to interfere with normal construction methods in the construction and development of any part of the Development or the property or the Parcel, or of additional Buildings thereon. The above provisions of this Section 7 to the contrary notwithstanding, occupants of a Lot shall be permitted to park within the boundary lines of such Lot, and within the parking spaces provided within such Lot, for reasonable periods of time (not to exceed 24 hours, and not to exceed 4 such periods of 24 hours within any calendar month), a trailer, truck, camper, mobile home or motor home so as to permit the reasonable loading and unloading of such trailer, truck, camper, mobile home or motor home. Such vehicle shall be parked within the Lot solely for reasonable loading and unloading, and for no other purposes. All present and future Lot Owners and occupants and of the Lots shall be deemed to have agreed by accepting deeds for their Lots, or entering into leases therefor, that the provisions of this Section 7 shall apply not only to the Lots, but also to any public or private streets which abut upon any of the Lots. All Lot Owners agree, on behalf of themselves and their successors, and all present and future Owners and occupants of Lots, to be bound by the restrictions set forth in this Section 7 as to all public and private streets and portions thereof, and the provisions of this Section 7 shall be as enforceable as to the public streets, as would be the case with respect to the Lots, as the public and private streets shall be used only for parking of vehicles permitted to be parked within the Development in accordance with this Section 7. No trailer, truck, boat, camper, mobile home, motor home or anything other than operative automobiles, which are then in good condition and repair and which are then used with very substantial, regular frequency, shall be parked on any street within the Development, other than as same may be specifically permitted by the above provisions of this Section 7. The streets within the Development shall not, in any event, be used as a location for the regular parking of automobiles or vehicles of residents, and vehicles of residents shall be parked within the off street parking spaces.

**Section 8. Noxious or Offensive Activities.** No illegal, noxious or offensive activities shall be carried on upon any Lot, nor shall anything (including but not limited to activities generating odors, noise or unsightly appearances) be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which would substantially interfere with use and enjoyment of neighboring Lots, or with the values of such Lots.

**Section 9. Signs.** No signs of any kind shall be displayed to the public view upon the Properties except that one sign, of not more than 5 feet square (5' x 5') advertising property for sale or rent, or signs used by a Builder to advertise property during construction and sale, may appear on each Lot.

Section 10. Debris Free. All Lots shall be kept neat and free of debris, and shall be maintained in a sightly and sanitary condition.

Section 11. Trash, Storage, Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. All trash, rubbish, garbage and other waste or materials being thrown away or disposed of must be placed or contained in one or more trash cans or containers, which cans or containers shall be fly tight, rodent proof, nonflammable, reasonably waterproof and shall be covered. Such cans or containers are to be stored in concealed locations on Lots, and may be placed in open locations only for a period of not in excess of eight (8) continuous hours in any week, so as to facilitate collection.

Section 12. House Trailers, Mobile Homes, Modular Homes and Manufactures Homes. No house trailer, mobile home, motor home, R.V. or recreational vehicle, modular home or manufactured home shall be placed, kept or maintained on any Lot for any purposes (other than for loading and unloading as described in subparagraph G above), and no motor home or vehicle shall be used for human habitation.

Section 13. Livestock, Poultry and Pets. No animals, swine, reptiles, livestock, poultry or pets of any kind shall be raised, bred or kept upon or in any portion of the Parcel or the Lots, except that dogs, cats or other normal, reasonable household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes and that they are kept, at all times, within the Lot of the Lot Owner keeping same and that they are, at all times, under such Lot Owner's control. No pets shall be allowed to run loose on any portion of the Parcel other than the Lot in which kept, and while on any portion of the Parcel shall be kept upon a leash or similar physical restraint, and while within the Lot shall be within the Lot Owner's control. The Owner of a Lot which has pets kept in or upon it--and not residents or the Owners of other Lots, or of that real estate last described in this instrument,--shall bear all risks which result from the presence of pets. Accordingly, such Owners shall be absolutely responsible for adherence by the pets to these conditions and absolutely liable for any and all damage done by such pets, and due care or absence of negligence shall not constitute a defense. No pets shall be permitted to disturb others by excessive barking, noise or other activities, or unpleasant odors. No pets shall be permitted to, in any manner whatsoever, create a nuisance, or to otherwise interfere with the peaceful enjoyment by others of their Lots and the improvements located thereon, or to damage or destroy the property of others, or to injure any persons, animals, or wildlife. Any dogs, cats or other normal household pets shall also be subject to the following provisions:

(a) No more than two (2) dogs and/or cats or other normal household pets per household may be kept in or upon any Lot. No pit bulls, Rottweilers, Dobermans or other recognized vicious breeds of any kind are permitted. No exotic or dangerous animals shall be kept. No animals, other than dogs, cats and other normal household pets shall be kept.

(b) No vicious animals are permitted. No exotic or dangerous animals shall be kept.

(c) No pets shall be allowed to run lose on portions of the Property other than the Lot within which same are kept.

(d) No pets shall be allowed to disturb others by barking, noise or other activities, or by disagreeable odors.

(e) No pets shall be allowed to run loose within any portion of the Development; provided, however, that pets may be chained or allowed to run within any Lot owned by the Owner of such pet, if such Lot is sufficiently fenced to enclose such pets.

(f) No pets shall be allowed to disturb others in any manner whatsoever, or to damage or harm persons or property in any manner whatsoever.

(g) It is understood that the enjoyment of the Properties by all Owners and residents thereof, and the success of this Development, might be jeopardized by violations of these conditions; accordingly, the Directors may by majority vote and after two (2) complaints require that any certain pets be removed from the Properties and the Owner of the Lot within which such pet is kept shall have a period of thirty (30) days to comply with such decision of the Directors.

(h) The Owner of a Lot which has a pet kept in or upon it - and not residents or the Owners of any other part of the Properties - shall bear all risks which result from the presence of the pet. Accordingly, such Owner shall be absolutely responsible for adherence by the pet to these conditions and be absolutely liable for any and all injury and damage done by such pet to persons or property, and due care or absence of negligence, or absence of demonstration by the pet of propensities or tendencies to perform certain acts, shall not constitute a defense.

(i) No dog pens or fencing for pets shall be permitted within the Development except as approved in advance in accordance with the Architectural Control provisions set forth in ARTICLE VII hereof. "Dog pens" and pens shall include pens with improved or non-improved floors, with fences on top and/or around (with or without enclosed shelters) which are used to encage animals.

(j) No dog houses or other pet housing shall be allowed within the Development, except those approved in advance in accordance with the architectural control provisions set forth in ARTICLE VII hereof.

(k) Although pets may run in daylight hours, in fenced enclosures approved pursuant to the Architectural Control provisions, pets shall not, after sunset and before sunrise, be kept, housed or allowed to run outside the Building (i.e., the dwelling house) of the Owner.

**Section 14. Additional Structures.** No additional and/or accessory structures, fences, walls or other improvements of any nature whatsoever, shall be erected upon any Lot, or upon any portion of a structure located upon a Lot, in addition to the basic Building, patio, fences, walls and any other improvements originally approved by the Architectural Control Committee under the provisions of this Declaration, without the approval of the Architectural Control Committee provided for by this Declaration.

**Section 15. Maintenance.** Each individual Lot Owner shall maintain his, her or their Lot, and the Building/Dwelling located thereon, and all improvements located thereon, and all lawns,



Unofficial Document

trees, shrubs and landscaping located thereon. In a clean, neat, safe, attractive and very well maintained condition, free of trash, rubbish and debris, and free of conditions of unsightliness, and disrepair (including, but not limited to, dead or dying trees, shrubs, lawns and landscaping; chipped or peeling or discolored paint; walls in need of obvious tuckpointing, cleaning or other maintenance; conditions of obvious disrepair or lack of maintenance; roofs requiring patching; discolored roofs; gutters or downspouts requiring painting, cleaning, replacement or other maintenance; chipped or faded shutters, or similar items; other conditions of obvious unsightliness), and in such a condition as to provide as attractive and pleasing appearance as is reasonable practicable, and as is in keeping with the general character of the neighborhood.

**Section 16. Open Fires.** No open fires shall be permitted on the individual Lots, with the exception of outdoor grill-type fires used for the preparation of food to be consumed on the premises.

**Section 17. Storage Tanks.** No above or below ground tank for the storage of fuel or other liquids may be maintained on any Lot (above or below the surface of the ground), unless approved in accordance with the Architectural Control provisions of ARTICLE VII.

**Section 18. Automotive Repair.** No automotive or equipment repair or rebuilding or other form of automotive or equipment manufacture, maintenance or repair (other than normal periodic vehicle maintenance), whether for hire or otherwise, shall occur on the Parcel or upon any Lot hereby restricted.

**Section 19. Satellite Receiver Dishes, Radio Antennas and Similar Structures.** Satellite receiver dishes, radio receiver antennas, radio antennas, antennas and similar devices shall be subject to the provision of Section 23 of ARTICLE VII of this Declaration, and shall, to the extent lawful, be subject to the Architectural Control provisions of such ARTICLE VII.

**Section 20. Two, Three and Four Wheeled Recreational Vehicles/Boats.** Motorcycles, mopeds, powered scooters, powered tricycles, motor bikes, or two, three or four wheeled recreational vehicles (other than normal bicycles and children's tricycles), may not be run within the Development, either on the streets or roads or within any Lot or the Trail; provided, however, that they may be used solely to go to and from work or one's job or to school, and for other normal transportation. No such vehicles shall be used within the Development or on the Trail for purposes of recreation. All such vehicles must have a suitable muffler, so as to provide for quiet operation. The restriction set forth in Section 20 shall apply to the Lot and to each of the Streets located within the Development, and the trail, and it is hereby agreed, on behalf of the Lot Owners and the occupants of all Lots they shall so apply. Each Lot Owner, by accepting a deed for such Lot Owner's Lot, agrees on behalf of such Lot Owner and such Lot Owner's successors and their respective family members, guests, invitees, lessees, renters and family members, that the provisions of this Section 20 shall apply to all Lots and to all public streets. No motorized vehicles shall be run or used on the Trail. No motors or engines may be installed or used or used on any boat or watercraft on any Lake constituting any part of the Common Areas or Common Elements, without the prior approval of the Board of Directors of the Association, and such approval may be denied by the Board for any reason such Board finds to be appropriate, in its sole, absolute, unlimited and unmitigated discretion; although electric motors or electric trolling motors may be permitted. Personal watercraft (jet skis and similar watercraft) are prohibited.



Section 21. Outside Improvements, Lawn Ornaments, Vegetable Gardens, Etc. Nothing shall be placed or located within:

- The front yard of any Lot; or
- The side yard of any corner Lot,

other than reasonable sidewalks, reasonable driveways, and normal, reasonable grass, ground cover, trees, shrubs, flowers and other normal, reasonable landscaping materials. All driveway, parking spaces and parking areas shall be subject to approval by the Architectural Control Committee, and shall not be installed without the prior written approval of the Architectural Control Committee. It is specifically intended that paving of any portions of Lots, other than for normal, reasonable driveways, shall be prohibited, and specifically that paving of Lots in order to provide exterior parking pads (other than normal driveways) shall be prohibited. No:

a. Statues, monuments, or lawn ornaments shall be permitted; other than that normal temporary displays, such as Christmas and Easter displays, shall be permitted on a short term basis of very short duration;

b. No vegetables or grains (including, but not limited to, tomatoes, corn, or other vegetables or cereal grains) shall be planted in any front yard or side yard;

Front yards and side yards shall be restricted to normal sidewalks, normal driveways, unusual and customary grass, trees, shrubs, flowers and other landscaping materials.

Section 22. Fences. No fences shall be permitted, except as approved in accordance with ARTICLE VII of this Declaration.

Section 23. Fire Wood. No fire wood shall be stock piled or stored:

- a. In the front yard of any Lot;
- b. In the side yard of any Lot which faces a street;
- c. Within any portion of a Lot located in front of the plane of the front wall of the Building located on the Lot, as such plane is extended to the side Lot lines of the Lot;
- d. On any driveway of any Lot;
- e. On any place on a Lot which is in plain view of a street.

Section 24. Exterior Storage. Exterior storage of boats, canoes, tricycles, bicycles, other similar vehicles, lawn mowers, tractors, any equipment of any kind or nature whatsoever (other than permanently installed swings or other playground equipment - which can only be located in a rear yard, in any event) is specifically prohibited. The outdoor placement of or storage of boats, canoes, trailers, materials, equipment or any other items on the outside portion of any Building shall be

prohibited; with the provision that the placement of such functional items as patio and outdoor living equipment shall be permitted, and that the use of children's bicycles and play equipment (but not the storage of same) shall be permitted.

Section 25. Additional and Accessory Structures or Improvements, Fences, Pools and Other Ancillary Structures. No additional and/or accessory structure, improvement or fence of any kind or nature whatsoever, nor any tennis court, stable, barn, dog house, dog pen, animal house, animal pen, garage, storage shed of any kind or nature whatsoever, nor any pool, pond, swimming pool, outdoor hot tub, wall, fence or building of any nature whatsoever, nor any shed, post, pole, storage shed, dog house, storage box, garage or any similar item of any nature whatsoever shall be erected upon any Lot, in addition to the basic Building, garage, patios, walks, decks, porches and similar improvements, or any reasonably similar replacement thereof, shall be placed or erected upon any Lot without the Architectural Control approval in accordance with ARTICLE VII of this Declaration.

Section 26. Above-Ground Swimming Pools. Above-ground swimming pools shall be and the same are hereby expressly prohibited. No above-ground swimming pools shall be placed on any Lot, whether same is permanent or temporary in character. This prohibition shall not apply to hot tubs.

Section 27. Additional Provisions Dealing with Maintenance. All portions of Lots, and Buildings thereon, including all lawns, landscaping, and all Buildings, structures and improvements situated on the Lots shall be maintained in a highly clean, neat, safe, sanitary, debris-free, weed and pest free, attractive and aesthetically pleasing condition, in good repair and condition, free and clear of all unsightly conditions including, but not limited to, weed infestation or growth, dead and dying lawns or vegetation, chipped and peeling paint, brickwork requiring tuckpointing, faded paint, roofs requiring repair, maintenance or replacement, and lawns requiring watering, mowing, weeding, fertilization or replacement. In the event any Lot Owner shall fail or refuse to maintain his property in as clean, safe, neat, attractive and aesthetically pleasing a condition as is reasonably possible, or if such standards are disputed by the Lot Owner, the Association's Board of Directors (if it elects to do so), by majority vote, may notify the Lot Owner of a deficiency and same shall be corrected by the Lot Owner within fifteen (15) days of the date of notice. If the Lot Owner fails to correct the deficiency within the time provided, the Association, through its Board of Directors, may correct the deficiency as provided elsewhere in this Declaration, and the costs of correcting same shall be the sole responsibility of the Lot Owner. While the Developer recognizes that "beauty is in the eyes of the beholder", it is the intention of this Declaration that this Development and the Lots therein be maintained in a conservative, meticulous manner, with complete regard to traditional values and aesthetics.

Section 28. Mowing and Trimming and Lawn and Landscaping Irrigation. All Lots must be mowed, trimmed and maintained by the individual Lot Owners, regardless of whether or not a Building has been constructed thereon. All lawns, trees, shrubs and other landscaping material located within each Lot must be kept in a properly mowed, trimmed, fertilized, weed free and properly irrigated condition. Lawn sprinkler systems are required to be installed within the front yard of each Lot and within the side yard of each corner Lot, and such lawn sprinkler systems must be kept, at all times, in good operating condition, and must be used as reasonably required to provide adequate irrigation for all grass, lawns, ground cover and other landscaping within the Lot. The Lot

must at all times be kept in a weed free condition, free and clear of dead or dying grass, trees, shrubs or other landscaping material. It is of the essence of the duties of the Lot Owner that adequate irrigation be provided through the use of a lawn sprinkler system as described in this Declaration.

**Section 29. Enforcement.** In addition to any rights and remedies provided to the Association, or the Developer, or any Lot Owner by this Declaration or by law for the enforcement of any of the uses and restrictions established in any ARTICLE of this Declaration, including, but not limited to ARTICLE VII or this ARTICLE XI, and in addition to any other rights and remedies provided for in this Declaration or by law, the Board of Directors of the Association shall, in the event of a violation of any of the restrictions established by this Declaration in any of its ARTICLES, including (but not limited to) those set forth in ARTICLE VII or this ARTICLE XI, in its sole, absolute and unmitigated discretion, have the following additional rights, powers and authorities:

(a) To deny to any Lots or any Owners which are in violation of the use restrictions or which are being used in violation of such use restrictions, any maintenance or other services which the Association might otherwise be required to provide or access or use of the Common Areas;

(b) To impose upon the Lot (and the Owners thereof), being used in violation of any of the use restrictions, a special assessment (by way of a fine), in such amount as the Association's Board of Directors, in its sole, absolute and unmitigated discretion shall deem appropriate, not to exceed Two Hundred Dollars (\$200.00) per month during the continuance of the violation. Such fine shall constitute a special Lot assessment upon the Lot (and the Owners thereof) subjected to the assessment. Such special assessment shall be payable to the Association, upon demand, and shall be added to (and become a part of), the other assessments to which the Lot (and the Owner thereof) is subject, and shall be enforceable in the same manner as is provided for the enforcement of other assessments under ARTICLE VI of this Declaration;

(c) To deny to the applicable Lot, and the Owners, occupants, guests and invitees thereof, access to the Lot.

(d) To enter upon the Lot and to abate the violation or remove it, and to charge the cost of such abatement to the Lot and the Lot Owner as a Special Lot Assessment.

With the exception of those situations involving a legitimate emergency, posing a danger to the safety of the properties or any portion thereof, or any of the residents thereof, or any guests or invitees therein, the Association's Board of Directors shall not, in the event of a violation or apparent violation of ARTICLE VII or any of the use restrictions hereinabove set forth in this ARTICLE XI, seek to utilize any of those powers or remedies conferred upon it by subsections (a) through (d) of this Section 29, without first giving written notice of intention to do so to the Owners or occupants (in the event the occupants are different than the Owners) of the applicable Lot. Such written notice shall specify the violation or apparent violation of the use restrictions hereinabove set forth in this ARTICLE XI or the restrictions of any other ARTICLE, and shall notify the said Owners or occupants of the intention of the Association's Board of Directors to resort to one or more of the powers, authorities and remedies conferred upon it by such subsections (a) through (d). Such notice

Unofficial Document

shall further give such Owners or occupants notice of the time and place at which such Owners or occupants may appear before a meeting of the Association's Board of Directors. At such meeting such Owners or occupants, and any other interested persons, shall be permitted to present such evidence and/or arguments, both for and against the violation or apparent violation of the use restrictions hereinabove set forth in this ARTICLE XI or the restrictions of any other ARTICLE, as shall appear to be reasonably relevant to the issue as to whether the apparent violation exists or has occurred. Evidence presented to the Board may be taken under oath, or not under oath, as the Board, in its discretion, sees fit. Parties (including the Owners) appearing before the Board, shall be entitled to have an attorney represent them, should they desire to do so; provided that all costs and expenses incurred in connection with such attorney's representation shall be paid by the party utilizing the attorney's services. Formal rules of evidence shall not apply, but the Board shall utilize its best efforts to hear only such evidence, as would appear to be reasonably competent, and as would appear to be reasonably relevant to the issue as to whether the violation or apparent violation of the use restrictions hereinabove set forth has occurred, or is occurring. At the conclusion of the presentation of evidence to the Board, the Owners or occupants of the applicable Lot, and all other interested parties shall be permitted to present such arguments or statements to the Board as they shall deem proper and appropriate. Following the presentation of the evidence, and such statements or arguments, the Board shall make a determination as to whether the violation or apparent violation exists, or has occurred, and shall determine the fines to be imposed, or the other remedies to be utilized by the Board in attempting to terminate or remedy the violation or apparent violation. All decisions of the Board, in this regard, shall be by majority vote of those members of the Board who are present and voting. Presence of a majority of the Board of Directors shall constitute a quorum for all purposes under this Section 29. As soon as practicable following the decision by the Board, the Board shall notify the Owners or occupants of the applicable Lot of its decision, in writing and (in the event, the decision is that the breach or violation of the use restrictions has occurred, or is occurring), such writing shall further state the sum of the fine or fines to be imposed, and/or a description of the other remedies or powers to be exercised by the Board in an attempt to eliminate the breach or violation. The occupants or owners of the applicable Lot shall have five (5) days, from the date of delivery of such written notice to the Lot, to remedy or eliminate the breach or violation. In the event the breach or violation is not remedied during such five (5) day period, then the action of the Board of Directors, commencing on the sixth (6th) day following the delivery of such notice, shall be in full force and effect, and the fines or other remedies described in the written notice from the Board of its decision (or other remedies described in such decision) shall be in full force and affect, and shall be applied or imposed, beginning with the said sixth (6th) day. Where a Lot is occupied by a person or persons other than the Owners, the Board of Directors, where it is reasonably practicable to do so, shall notify both the occupants and the Owners of a hearing before the Board of Directors, of the type hereinabove described, and of the Board's decision and intentions, as hereinabove described.

The Developer for each Lot located within the Property, hereby covenants, on behalf of the Developer and the Developer's successors, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any deed or other conveyance, is deemed to covenant and agree to the provisions of this Section 29, and to the rights, powers, remedies and authorities imposed within the Association's Board of Directors by this Section 29, and to waive any right to recourse against, or damages from, or claims or complaints against, the Association's Board of Directors, or the Association, or any members of such Board of Directors or such Association,

Unofficial Document

which may arise out of any exercise by the Association or its Board of Directors of the rights, remedies, powers and authorities provided by this Section 29. In addition, should the Association, or its Board of Directors, by reason of a violation of the restrictions set forth in ARTICLE VII or this ARTICLE XI or any of the other Articles of this Declaration, seek from any Court any temporary restraining order, restraining order, injunction, temporary injunction, preliminary injunction or similar relief, all requirements, of any kind or nature whatsoever, that the Association, or its Board of Directors post an injunction bond, or a bond, or a surety bond, or any type of bond of any kind or nature whatsoever, shall be and the same are hereby waived by each Lot Owner, and by the Developer (on behalf of themselves and on behalf of their successors, and each and all successors in ownership to any Lot). The Developer for each Lot located within the Property hereby covenants, on behalf of the Developer and the Developer's successors, and each Owner of any Lot by acceptance of a Deed therefor shall be deemed to covenant and agree, that the Association shall, upon presentation to a Court having appropriate jurisdiction of a petition seeking a temporary restraining order against a violation or threatened violation of the use restrictions hereinabove set forth, be fully entitled to receive such temporary restraining order, ex parte, without the necessity for the posting of any bond, injunction bond, surety bond or other type of bond of any kind or nature whatsoever. The Developer, on behalf of the Developer and the Developer's successors in ownership of any portion of the properties, and each Owner of any Lot by acceptance of a Deed therefor, recognize that strict compliance with the use restrictions hereinabove set forth in ARTICLE VII or any of the other Articles of this Document or this ARTICLE XI is of the utmost importance to the protection of the Properties, and the value thereof, and that a breach or threatened breach of said use restrictions would cause substantial damage to the Properties, and the Lot Owners, and the occupants of the Properties, and would constitute a substantial threat to proper enjoyment of the Lots by the Owners and/or occupants thereof. Strict performance of, and observation of, and compliance with, the use restrictions hereinabove set forth in this Declaration, including this ARTICLE XI is, therefore, of the essence.

#### **ARTICLE XII**

#### **GENERAL PROVISIONS**

**Section 1. Enforcement.** The Developer, or the Developer's assignee of the Developer's rights as Developer hereunder, or the Association, or any Lot Owner or any Owner of any Lot, shall have the right to enforce, by any proceedings, at law or in equity, any covenants, restrictions or charges now or hereafter imposed by the provisions of this Declaration. Failure by the Developer, the Developer's assignee, the Association or any Lot Owner to enforce any covenants or restrictions herein contained shall in no event be deemed to be a waiver of the right to do so thereafter.

**Section 2. Attorney's Fees.** If any party shall seek to enforce against any other party any of the provisions of this Declaration, by legal or equitable proceedings, then the prevailing party in such proceedings shall receive from the other party to such proceedings, in addition to such other rights and remedies to which such prevailing party shall otherwise be entitled, such prevailing party's reasonable costs, expenses and attorney's fees incurred in connection with such proceedings, and in the preparation for such proceedings, and shall be entitled to judgment for such attorney's fees, costs and expenses.



**Section 3. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

**Section 4. Amendment.** The covenants, conditions, restrictions, easements, charges and liens of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, and the Owner of each Lot subject to this Declaration, and the Developer, and their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument signed by not less than sixty percent (60%) of the Lot Owners has been recorded, which instrument provides for amending or terminating this Declaration, in whole or in part. During the first twenty (20) year period of this Declaration, it may be amended in whole or in part only by an instrument signed by the Developer [so long as it holds Class B voting rights and/or any Architectural Control Rights], and the Owners of not less than sixty percent (60%) of the Lots (including the Lots owned by the Developer, so long as the Developer owns any Lots). Any amendment so made may not reduce the Developer's Class B voting rights or any of his development rights or Architectural Control rights, and may not otherwise adversely affect the Developer's rights hereunder unless the Developer specifically consents to said amendment. Any amendment made in accordance with this Section 4 shall be binding upon all Lot Owners. All amendments to this Declaration shall be recorded in Boone County, Missouri.

**Section 5. Notices.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

**Section 6. Language Variation.** The use of pronouns or of singular or plural as used herein shall be deemed to be changed as necessary to conform to actual facts.

**Section 7. Titles and Captions.** The titles or captions of the various provisions of this Declaration are not part of the covenants hereof, but are merely labels to assist in locating paragraphs and provisions herein.

### ARTICLE XIII DRAINAGE EASEMENTS AND DRAINAGE

**Section 1. Drainage Easements.** There are references to "Drainage Easements" on the Plat, and Drainage Easements, as shown by the Plat, are hereby established in favor of the City of Columbia, a municipal corporation of the State of Missouri, and to the extent not utilized, enforced or maintained by such municipal corporation, then (and also, in any event) in favor of the Association. It is intended that the land subject to Drainage Easements, if not utilized for Drainage Easement purposes by the City of Columbia, or the Association, shall nevertheless be subject to the following requirements:



- Unofficial Document**
- a. ~~The land shall be used for reasonable surface water drainage and passage of surface water and storm water;~~
- b. If any creek, ditch, swale, depression or other normal drainway or drainageway now or hereafter exists within the boundaries of such easements, then same shall not be blocked, or altered without the prior written approval by the Developer so long as the Developer holds architectural control powers and thereafter by the Association's Board of Directors or its Architectural Control Committee;
- c. Normal drainage of surface water and storm water over the land subjected to such easements shall not be blocked or interfered with;
- d. The land subject to the Drainage Easements shall be subject to an easement, which authorizes the installation of such drainways, drainageways, swales, ditches or other drainage improvements as is reasonably required to drain the Lots reasonably drained thereby;
- e. The Developer (or the Board of Directors or Architectural Control Committee, if it then holds architectural control powers) may require, in the Developer's discretion or its discretion, that the Plans and Specifications to be submitted, show and demonstrate the provisions which will be made in order to drain water including storm water and surface water, over, across and within the Drainage Easement (including surface water and storm water passing from other Lots real estate); provided, however, that the Developer, or the Board of Directors or Architectural Control Committee, shall have no liability, obligation or responsibility, under any circumstances whatsoever, for any damages, costs or expenses which arise or allegedly arise as a result of improper drainage caused by the erection of any Buildings or structures or other improvements, or the alteration of the lay of the land, in accordance with any Plans and Specifications approved by the Developer, the Board of Directors or the Architectural Control Committee;
- f. Lot Owners shall be required to diligently cooperate with each other (using the utmost good faith) in order to make reasonable accommodation for drainage of surface water over the land within Drainage Easements, and in order to reasonably share drainage needs;
- g. Where it is reasonable and appropriate, a Lot Owner of a Lot imposed with a Drainage Easement must make reasonable accommodations for the drainage of water, and may (if it is reasonable to do so) install or improve ditches, drainways or underground drainage structures (subject, however, to the overriding right in the City of Columbia, Missouri, the public entity to utilize the land subject to the Drainage Easement as a Drainage Easement in such manner as it finds to be appropriate for the drainage of water);
- h. If there is a dispute among Lot Owners over the utilization of a drainway, or Drainage Easement, or land subject to a Drainage Easement, for drainage purposes, then such dispute may, in the discretion of the Board of Directors of the Association, be resolved by the Association's Board of Directors, and all determinations made by the Board of Directors in this respect shall be binding upon all parties, provided only that such determinations are made reasonably and in good faith;

i. ~~If there is a substantial swale, drainageway, ditch, creek, drainage structure or similar drainway, which runs within a Drainage Easement, and which is, for any reason, not maintained by the City of Columbia, or not improved by the City of Columbia as required to achieve reasonable drainage of the Lots served thereby, then such drainageway, ditch, creek, swale, drainage structure or similar drainway, to the extent same is not publicly maintained or improved or replaced by the City, may, in the discretion of the Association's Board, be maintained, repaired or replaced by the Association, as a Common Element of the Development. Any such substantial swale, drainway, creek, drainageway, ditch or other drainage structure or improvement may, in any event, be maintained, repaired and replaced by the Association or its Board, through the use of the Maintenance Fund, in such Board's discretion. The Association or its Board may also enter into agreements with the City of Columbia, Missouri, or anyone else for sharing of costs of maintenance, repair, replacement or upgrading of any such drainage or drainway in the Development;~~

j. Drainageways, creeks, ditches and drainage structures which serve a substantial number of Lots, as opposed to only a limited number of Lots, shall be considered to be improvements which can be made, maintained, repaired, replaced or improved by the Association, through the use of Special Assessments, as described in Section 7 of ARTICLE VI of this Declaration, so that if a substantial number of Lots are drained by or are served by a substantial drainage, drainway, drainage structure or similar improvement, then the Association and its Board of Directors, in the discretion of the Board, shall the authority to provide funds for the maintenance, repair, replacement, enhancement, upgrading or improvement of same;

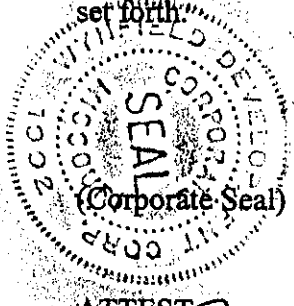
k. The Association's Board of Directors may, on behalf of the Association and/or the Lot Owners, either individually or in concert with others (including, but not limited to), make agreements to extend, alter or improve any drainway, drainageway, ditch, creek, swale or similar drainway, as reasonably required to provide drainage, and pay the cost of same from the Maintenance Fund, or may charge the cost of same as a special assessment against the Lots served thereby.

Section 2. Drainage/Surface Water Drainage and Groundwater. Each Lot Owner of each Lot must proceed, reasonably, in dealing with drainage of and across, such Lot, and in dealing with surface water to be drained from and across, such Lot Owner's Lot. No Lot Owner shall unreasonably block, interfere with or obstruct the flow of surface water from other Lots and property, across such Lot Owner's Lot. Reasonableness in dealing with groundwater and surface water is required.

Section 3. Responsibility for Drainage. It shall be the responsibility of the Lot Owner of each Lot to provide for adequate drainage from such Lot Owner's house/dwelling/Building. Neither the Developer, nor any Architectural Control Committee, nor the Association nor its Board, shall have any liability, obligation or responsibility, under the Architectural Control provisions of this Declaration, or otherwise, to assure a Lot Owner, or any Lot Owner of any other Lot, of adequate or appropriate drainage of groundwater, surface water or storm water. The responsibility to provide for adequate drainage shall be the responsibility of the Lot Owner and the Lot Owner's Builder and the Builders of Dwellings, and shall not be the responsibility of the Developer of the Association or its Board of Directors. Nevertheless, all Lot Owners must proceed reasonably, and in good faith, and must design their Buildings and structures, in accordance with sound design, building and construction practices, so as to provide for adequate drainage thereof, and also so as to not

unreasonably obstruct or interfere with drainage of surface water/groundwater from other Lots or through natural drainage ways. The erection of dams or berms to prevent the reasonable flow of groundwater/surface water shall be prohibited.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed in its name and on its behalf by its duly authorized officers effective on the day and year hereinabove first set forth.



WYNFIELD DEVELOPMENT CORP.

By: *Allan F. Price*

Allan F. Price, President

ATTEST:

*Robert Wilson*  
Robert Wilson, Secretary

**Exhibits:**

**Exhibit A** - Articles of Incorporation

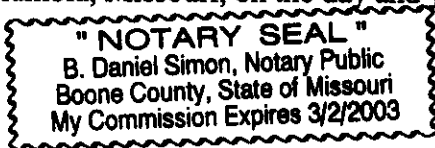
**Exhibit B** - Bylaws

Approval & Subordination of Deed of Trust

STATE OF MISSOURI     )  
  ) ss.  
COUNTY OF BOONE     )

On this 28<sup>th</sup> day of June, 2000, before me, the undersigned, a Notary Public, personally appeared Allan F. Price, to me personally known, who being by me first duly sworn, did state and acknowledge that he is President of Wynfield Development Corp., a Missouri corporation; that as such he was duly authorized by such corporation's Board of Directors to execute the foregoing document in the name of and on behalf of such corporation; and that he had executed the foregoing document, in his capacity as such President, in the name of and on behalf of said corporation; and that the corporate seal affixed to the foregoing document constitutes the corporate seal of said corporation; and that the foregoing document constitutes the free and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto affixed my hand and notarial seal at my office in Columbia, Missouri, on the day and year hereinabove first written.



*B. Daniel Simon*, Notary Public  
\_\_\_\_\_, County, State of Missouri

My commission expires: \_\_\_\_\_.

## Unofficial Document

**ARTICLES OF INCORPORATION**  
**SPRING CREEK HOMES ASSOCIATION OF BOONE COUNTY,**  
**A GENERAL NOT-FOR-PROFIT CORPORATION**

HONORABLE REBECCA COOK  
SECRETARY OF STATE  
STATE OF MISSOURI  
JEFFERSON CITY, MISSOURI 65101

We, the undersigned,

| <u>Name</u>    | <u>Street</u>        | <u>City</u> | <u>State &amp; Zip Code</u> |
|----------------|----------------------|-------------|-----------------------------|
| Allan F. Price | 2504 Woodberry Court | Columbia    | Missouri 65203              |
| Tina W. Price  | 2504 Woodberry Court | Columbia    | Missouri 65203              |
| Robert Wilson  | 8280 Nature Lane     | Columbia    | Missouri 65203              |

being natural persons of the age of eighteen (18) years or more and citizens of the United States, for the purpose of forming a corporation under the "General Not-For-Profit Corporation Law" of the State of Missouri, do hereby adopt the following Articles of Incorporation:

1. Name. The name of the corporation is: SPRING CREEK HOMES ASSOCIATION OF BOONE COUNTY.
2. Mutual Benefit Corporation. The corporation is a mutual benefit corporation.
3. Registered Office and Agent. The address of its initial Registered Office in the State of Missouri is: 2504 Woodberry Court, Columbia, Missouri 65203, and the name of its initial Registered Agent at said address is: Allan F. Price.
4. First Board of Directors. The first Board of Directors shall be three (3) in number, which shall serve until the first annual meeting of the Corporation, their names and addresses being as follows:

"EXHIBIT A"

BDS/Spring Creek/Art of Inc.001

6/26/00

Nora Dietzel, Recorder of Deeds

# Boone County, Missouri

744

| Name           | Street               | City     | State & Zip Code |
|----------------|----------------------|----------|------------------|
| Allan F. Price | 2504 Woodberry Court | Columbia | Missouri 65203   |
| Tina W. Price  | 2504 Woodberry Court | Columbia | Missouri 65203   |
| Robert Wilson  | 8280 Nature Lane     | Columbia | Missouri 65203   |

## Unofficial Document

5. Members of Corporation. The Corporation will have members as more fully defined and described in that document titled "Declaration of Covenants, Conditions, Reservations, Easements and Restrictions of Spring Creek" a development within Boone County, Missouri, which has been recorded in Book \_\_\_\_ at Page \_\_\_\_ of the real estate records of Boone County, Missouri. As more fully defined and described in such Declaration ("the Declaration") the Corporation shall have two classes of members, Class A members and Class B members as follows:

A. Class A Members. Class A Members shall be the Owners of those Lots within Spring Creek ("the Development"), as described in the Declaration, which are owned by persons other than the Developer or another Class B Member of the Corporation; [provided that if the Developer holds a Lot for rental or lease purposes or uses same for residential purposes then the Developer shall also be a Class A Member with respect to such Lot held for rental or lease purposes or used for residential purposes. If a Lot is rented or leased by the Developer or any assignee of the Developer's rights or any Class B Member, or is used for residential purposes, then, immediately, a Class A membership shall attach to such Lot and the Lot Owner of such Lot shall be a Class A Member. The qualifications of Class A membership are more fully set forth and described in the Declaration];

B. Class B Member. The Class B Member of the Corporation shall be Wynfield Development Corp., a corporation of the State of Missouri, and its successors and assigns, who are referred to in the Declaration as "the Developer" ("the Developer"). [The Developer shall be the sole

Class B Member. The said Wynfield Development Corp. and any person to whom it assigns all or any portions of its rights as the Developer, shall be the sole Class B Members, all as more fully described in the Declaration.]

The characteristics, qualifications, rights, limitations and obligations attaching to each of such class of members shall be those more fully described in the Declaration, which provides, generally, as follows:

Class A Members shall have one (1) vote at all meetings of the Corporation for each Lot in which they hold the interest required for Class A Membership as described in the Declaration. When more than one person in any Lot holds an interest in any Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. The Class B Members (at the outset the only Class B Member shall be the Developer) shall, initially, in the aggregate, be entitled to fifty-eight (58) Class B votes, which such number of votes shall be decreased as Lots are sold or rented or leased or occupied as a residence.

There is one Class B membership and one Class B vote attributable to each Lot. Until Class B voting rights end, in the manner described in the Declaration, the Board of Directors shall consist of three (3), five (5) or seven (7) Directors, as provided for by Section 4 of Article V of the Declaration. The members of the first Board of Directors are named herein, and shall serve until the first annual meeting of the members of the Association and, thereafter, until their successors are duly elected and qualified. Until Class B voting rights end all directors shall be elected annually at each annual meeting of the members. So long as Class B voting rights are in existence, a majority of the Board of Directors shall consist of natural persons (who need not be Lot Owners) elected by the Class B Members, with the remaining Director or Directors, as the case may be, to be (a) natural person(s) holding (an) ownership interest(s) in one or more Lots (other than the Developer and those



to which the Developer has assigned all or any portions of the Developer's rights as the Developer) elected by the Class A Members of the Association. After Class B voting rights have ceased to exist, the Board of Directors shall consist of three (3), five (5) or seven (7) natural persons, who shall be holders of ownership interests in Lots, elected by the members of the corporation.

The Directors shall otherwise be elected in that manner, and for those terms specified in the Bylaws of the Corporation as same are from time to time in existence.

6. Purposes. The purpose or purposes for which the Corporation is organized are:

A. To act as a Homeowners Association for Lot Owners and Homeowners of a Development located in Boone County, Missouri, known as "SPRING CREEK," and platted as "SPRING CREEK";

B. To have those purposes, and to discharge those functions, provided for the "Association" by the "Declaration of Covenants, Conditions, Reservations, Easements and Restrictions of Spring Creek" hereinabove described ("the Declaration");

C. To serve as the Association named in the Declaration;

D. To serve as the Association for the Lot Owners in the Development described in the Declaration;

E. To fulfill all duties and obligations to the Owners of Lots located within the Development, which are imposed upon the Corporation formed hereby (hereinafter referred to as "the Association") by the Declaration;

F. To act as a Homeowners Association for all Lot Owners located within the Development;

G. ~~To levy, assess, collect, use and administer assessments against the members~~

of the Association as described in the Declaration and to expend same as described in the Declaration;

H. To enforce those covenants, restrictions and requirements as to use and occupancy provided for by the Declaration, and to enforce all provisions of the Declaration;

I. To provide for all maintenance, services, repairs, upkeep and operations and other services which are to be performed by the Association pursuant to the Declaration;

J. To establish rules and regulations for the government and administration of the Association, and the Development;

K. In no event to carry on or conduct an active business for profit, or to in any manner engage in lobbying or political activities of any kind or nature whatsoever, and in no event to support political activities or political candidates of any kind or nature whatsoever;

L. To have all of the common law and statutory powers of a Missouri corporation which is not for profit, and which are not in conflict with the terms of these Articles of Incorporation or the Declaration;

M. To have all of the powers and duties set forth in Chapter 355 of the Revised Statutes of Missouri;

N. To hold all funds resulting from the collection of assessments from the Lot Owners of Lots located within the Development, and all funds collected by way of assessments paid by the members of this Corporation, and to hold such funds, in trust, for the benefit of the Owners of Lots located within the Development, and to use such funds in accordance with the Declaration;

O. To levy, assess, collect, use and administer assessments against its members for use by the Corporation in discharging its duties as hereinabove described;

# Unofficial Document

P. To provide facilities for the social and cultural pursuits of the residents of the

Development;

Q. To encourage and provide facilities for the athletic, recreational, social and

cultural pursuits of residents of the Development;

R. To carry on any and all pursuits and activities consistent with the purposes of

the Corporation as hereinabove described.;

S. To own, manage, operate and maintain the Common Areas and Common

Elements of the Development.

7. By-Laws. The Board of Directors of the Corporation shall adopt Bylaws, rules and regulations for the government of the Corporation, which may be changed from time to time. The power to make, alter, amend or repeal the Bylaws for the regulation and management of the affairs of the Corporation shall be vested in the Board of Directors and members of the Corporation as set forth in the Bylaws of the Corporation and as set forth in the Declaration.

8. Members and Voting Rights. The voting rights and powers of the members of the Corporation shall be as established by the Declaration, which is hereby incorporated herein by reference the same as though fully set forth herein.

9. Declaration. The Declaration is incorporated herein by reference the same as though fully set out herein. Unless it is plainly evident from the context that a different meaning is intended, all terms used herein shall have the same meaning as they are defined to have in the Declaration

10. No Benefit to Private Persons. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members, Directors, officers or other private persons except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered.

11. ~~Restriction on Activity~~ ~~Unofficial Document~~ No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation not affecting the Development, and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

12. Dissolution. If the Corporation shall be voluntarily or involuntarily dissolved pursuant to the laws of the State of Missouri, the assets of the Corporation in the process of dissolution shall be applied and distributed as follows:

A. All liabilities and obligations of the Corporation shall be paid, satisfied and discharged, or adequate provisions shall be made therefor;

B. Assets held by the Corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

C. Assets held with a charitable, religious, eleemosynary, benevolent, educational or similar use, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, trusts, societies or other organizations engaged in a charitable, religious, eleemosynary, benevolent, educational or similar activity pursuant to a plan of distribution adopted as provided by the laws of the State of Missouri dealing with not-for-profit corporations;

D. Any remaining assets shall be distributed, in equal shares, to the Owners of the Lots located within the Development, with Common Areas and Common Elements being conveyed to all Lot Owners as equal tenants in common; provided, however, that the Attorney General of the State of Missouri shall be notified of the intention to so distribute such assets, in writing, at least thirty (30) days prior to such distribution.

13. Management of Affairs of Corporation Except to the extent otherwise specifically provided to the contrary by these Articles of Incorporation, the Declaration, or the By-Laws of the Corporation, the management and administration of the Corporation and its business and affairs, shall be vested in the Corporation's Board of Directors.

14. Perpetual Duration. The period of duration of the Corporation is: perpetual.

IN WITNESS WHEREOF, we have hereunto affixed our signatures on this \_\_\_\_ day of

\_\_\_\_\_, 2000.

*Allan F. Price*

Allan F. Price

*Tina W. Price*

Tina W. Price

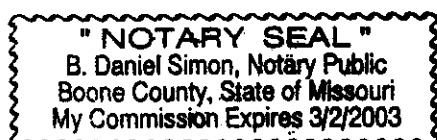
*Robert Wilson*

Robert Wilson

STATE OF MISSOURI     )  
                                      )SS.  
COUNTY OF BOONE     )

I, B. Daniel Simon, a Notary Public, do hereby certify that on the 28<sup>th</sup> day of June, 2000, personally appeared before me Allan F. Price, Tina W. Price and Robert Wilson, to me personally known, who being first duly sworn by me severally acknowledged that they signed as their free act and deed the foregoing document in the respective capacities therein set forth and declared that the statements contained therein are true, to their best knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year first above written.



*B. Daniel Simon*  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, State of Missouri

My commission expires: \_\_\_\_\_.

# Boone County, Missouri

## Unofficial Document

751

OF

### SPRING CREEK HOMES ASSOCIATION OF BOONE COUNTY

#### ARTICLE I

##### Name and Location

The name of the corporation is Spring Creek Homes Association of Boone County, hereafter referred to as "the Association". The principal office of the corporation shall be located in Boone County, Missouri, or at such other place as the Association's Board of Directors shall from time to time designate.

#### ARTICLE II

##### Definitions

The following terms shall have the following meanings when used in these Bylaws:

Section 1. General Definitions. "Declaration" means the "Declaration of Covenants, Conditions, Reservations, Easements and Restrictions of Spring Creek," made by Wynfield Development Corp., a Missouri corporation ("the Developer"), and recorded in the Real Estate Records of Boone County, Missouri.

Section 2. Other Definitions. Unless it is plainly evident from the context that a different meaning is intended, all other terms used herein shall have the same meaning as they are defined to have in the Declaration.

#### ARTICLE III

##### Membership in the Association

Every Lot Owner of a Lot owned by a party other than the Developer and the Developer's assignees shall be a Class A Member of the Association, shall be subject to the jurisdiction of the Association, shall be subject to assessments levied by the Association under the provisions of the Declaration, and shall be entitled to all rights and provisions of Class A membership in the Association. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation as members of the Association. There shall be one (1) Class A membership in the Association appurtenant to the ownership of any Lot which is subject to assessment by the Association. Class A membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

BDS\Spring Creek\Bylaws.001

"EXHIBIT B"

6/26/00

Nora Dietzel, Recorder of Deeds



**Unofficial Document**

Ownership of a Lot shall be the sole qualification for Class A membership in the Association. Class A membership in the Association cannot, under any circumstances, be partitioned or separated from ownership of a Lot subject to the jurisdiction of the Association. Any covenant or agreement to the contrary shall be null and void. No Lot Owner shall execute any deed, lease, mortgage or other instrument affecting title to his Lot ownership without including therein both his interest in the Lot and his corresponding membership in the Association, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, lease, mortgage or instrument purporting to affect the one without including also the other, shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein. The Developer, or those to which it assigns all or any part of its rights as the Developer under the terms of the Declaration shall be the sole Class B Members, and shall become Class A Members upon and following the termination of Class B memberships as hereinafter provided, for each Lot in which they hold the interest required for Class A membership by this ARTICLE III. The Developer shall also be a Class A member before termination of Class B memberships for all Lots held for rental or lease purposes.

#### ARTICLE IV

##### Voting Rights

The Association shall have two (2) classes of voting memberships, Class A and Class B. The qualifications for Class A membership and Class B membership, and the identities of the Class A and Class B members, and the nature and extent of the voting rights of Class A and Class Members shall be as specified in the Declaration.

#### ARTICLE V

##### Membership Meetings

Section 1. Place of Meetings. Meetings of the membership shall be held at the principal office or place of business of the corporation, or at such other suitable place convenient to the membership as may be designated by the Board of Directors.

Section 2. Annual Meetings. The first annual meeting of the members of the Association shall be held at a reasonably convenient location within Boone County, Missouri selected by the Board, within 365 days following the formation of the Association, or 180 days following the first day of the first calendar year which next begins after the conveyance of the first Lot contained within the Development to a person other than a Class B Member of the Association, whichever shall last occur. Thereafter, the annual meetings of the members of the Association shall be held within the first 180 days following the close of each calendar year, at such times as the Board of Directors shall determine appropriate.

Section 3. Special Meetings. Special meetings of the membership may be called at any time for the purpose of considering matters which, by the terms of the Declaration, or by the terms of the

## Unofficial Document

Association's Articles of Incorporation, or by the terms of these Bylaws, require the approval of some or all of the members, or for any other reasonable purpose. Said meeting shall be called by a written notice, authorized by a majority of the Board of Directors, or upon a petition signed by twenty percent (20%) of the Class A or all of the Class B Members (if there are Class B Members) of the Association having been presented to the Association's Secretary. The notice of any special meeting shall state the time and place of such meeting and the purposes thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of four-fifths (4/5) of the members of each class present, either in person or by proxy.

Section 4. Notice of Meetings. Except when otherwise provided by the Declaration and except when notice is waived as hereinafter provided, written or printed notice of any annual or special meeting of the members shall be sent by the Secretary of the corporation to all members by mailing the same, postage prepaid, at least ten (10) days and not more than forty (40) days prior to the meeting, addressed to the members at their respective addresses as recorded upon the membership books of the Association. Notice may also be accomplished by service of same upon the member at his Lot or last known address. Notice by either such method shall be considered as notice served. Any notice shall state the place, day and hour of the meeting and the purpose or purposes for which it is called. No notice of any annual or special meeting of the members is required if all members file with the records of the meeting written waivers of such notice. In the absence or disability of the Secretary, notice as provided for in this Section may be sent out by any such officer as may be designated by the Board of Directors.

Section 5. Waiver of Notice. Any member may waive notice of any membership meeting, either in writing or by telegram, signed by the member whether such member attends the meeting or not. The presence of a member at any membership meeting shall be deemed to constitute a waiver by the member of notice to the meeting unless such member attends for the express purpose of objecting to the transaction of business at the meeting.

Section 6. Quorum. The presence of twenty percent (20%) of the members of the Association of each class, either in person or by proxy, shall constitute a quorum for the transacting of business at all meetings of the members, unless a greater quorum is required for the transaction of the particular business by the Declaration. Unless otherwise specified by these Bylaws or the Declaration, or by the Association's Articles of Incorporation, or by law, decisions at membership meetings shall be by the majority vote of the members present at each class. If a quorum is not present, a majority of the members of each class present can adjourn the meeting to another date and time not less than forty-eight (48) hours from the time the original meeting was called, unless otherwise required by the Declaration at which time the quorum requirement shall be reduced by one-half (1/2). No notice of such date and time shall be required. If a quorum is not present at the second such meeting, then a majority of the members of each class then present can adjourn such meeting to another date and time not less than forty-eight (48) hours from the time the second or continued meeting was called, unless otherwise required by the Declaration, at which time the quorum requirement shall again be reduced by a further one-half (1/2) of the required quorum at the first continuance of the meeting. No notice of such date and time of such further continued meeting shall be required.

## Unofficial Document

Section 7. Proxies. A member may appoint any other member or the Developer or the manager or managing agent of the Association, if any, as his proxy. In no case may any member, (except the Developer or the manager or managing agent, if any) cast more than one (1) vote by proxy. Any proxy must be filed with the Secretary of the Association before the appointed time of each meeting. Unless limited by its terms, any proxy shall continue until revoked by a written notice of revocation filed with the Secretary of the Association or by the death of the member.

Section 8. Meetings, Convened, How. Every meeting of the members, for whatever purpose, shall be convened and chaired by the Association's President, if he be present, otherwise by the Vice President, or in his absence or refusal to act by persons selected by the Board of Directors.

Section 9. Order of Business. The order of business at all annual meetings of the members shall be as follows:

- (a) Roll call and certification of proxies.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers, if any.
- (e) Reports of committees, if any.
- (f) Election of inspectors in election.
- (g) Election of directors.
- (h) Unfinished business.
- (i) New business.

In the case of special meetings, items (a) through (d) shall be applicable and thereafter the agenda shall consist of the items specified in the notice of the meetings.

## ARTICLE VI

### Directors

Section 1. Number and Classification. Until Class B voting rights have expired, the Board of Directors of the Association shall consist of three (3), five (5) or seven (7) Directors as shall from time to time be determined, annually, by the Board. During such time as there are Class B voting rights in existence, a majority of such Directors (i.e., two of three Directors, or three of five Directors, or four of seven Directors, as the case may be), shall be natural persons elected by the Class B Members (who need not be Lot Owners), with the remaining Directors to be natural persons, who are Owners of (an) ownership interest(s) in (a) Lot(s) (other than the Developer, and those to which it has assigned all or any portions of its rights as the Developer) elected by the Class A Members of the Association. After all Class B voting rights have ceased to exist, the Board of Directors shall consist of three (3), five (5) or seven (7) natural persons (as determined by the Board from time to time), who must be Owners of ownership interests in Lots, elected by the members of the Association. Until Class B voting rights are terminated, all Directors shall be elected at the annual meeting of the Association's members and shall serve for one (1) year and until their respective successors are duly elected and qualified. Prior to the first annual meeting of the members

Unofficial Document

of the Association which is to be held after termination of Class B voting rights, the then Board of Directors shall determine the number of persons who shall constitute the Board of Directors for the coming year. At the first annual meeting of the members of the Association which is held after termination of Class B voting rights, all Directors shall be elected. All Directors elected after Class B voting rights have terminated must be natural persons, who are Lot Owners of Lots, or who hold ownership interests in Lots. At the first annual meeting of the members of the Association which is held after the termination of Class B voting rights, Directors shall be elected for the following terms:

One-third (1/3) of the Directors shall be elected to serve a term of office of three (3) years. One-third (1/3) of the number of Directors to be elected shall serve a term of office of two (2) years. The remaining Director(s) shall serve a term of office of just one (1) year. If the number of Directors is not divisible by 3, then the number shall be divided up or down to the nearest whole number. For example, if the number of Directors is five (5), two (2) officers shall be elected for three (3) years, two (2) for two (2) years, and one (1) for one (1) year. The term of office of the Director(s) receiving the greatest number of votes shall be fixed at three (3) years, and the term of office of the Directors(s) receiving the second greatest number of votes shall be fixed at two (2) years; and the term of office of the remaining Directors shall be fixed at one (1) years.

Thereafter, at the expiration of each term of office of each respective Director, such Director's successor shall be elected to serve a term of three (3) years. Directors shall, in all events, hold office until their successors have been duly elected and have held their first annual meeting, and until such occurrence, shall possess all of the powers, authorities, duties, discretions and immunities of Directors, which is to say that a sitting Board of Directors shall serve until a new Board has been duly elected and has held its first meeting. There shall be no cumulative voting on Directors. In the event of a tie vote, the election to the office of Director shall be determined by lot or as the then-serving president of the Association shall otherwise determine, in the exercise of his or her reasonable discretion. If there is a tie vote, then the terms of offices of the Directors shall be determined by lot or as the then-serving president of the Association, in his or her sole and absolute discretion, shall determine appropriate. There shall be a single ballot or vote upon all Directors to be elected.

Section 2. Nominating Procedure. The Board of Directors may, in its sole and absolute discretion, constitute a "Nominating Committee," and may place names in nomination to fill the office of Directors. However, whether or not the Board so nominates persons to stand for election as members of the Board of Directors, persons to stand for election as members of the Board of Directors shall or may be nominated from the floor at the annual meeting of the members.

Section 3. Vacancies. The Board shall fill vacancies in its membership occurring between elections. A Board member, who is absent without sufficient cause (such sufficient cause being determined within the sole and absolute discretion of the remaining members of the Board by the majority vote thereof) from three (3) consecutive meetings of the Board may, at the option of the remaining members of the Board, be considered to have resigned, and such vacancies shall be filled by the unanimous vote of the remaining members of the Board; provided, however, that before such

option is exercised by the Board, such member shall be given at least eight (8) days written notice that the exercising of such option is an issue to be placed before the Board so that such Board member shall have ample opportunity to appear before the Board to explain his absence from the meetings of the Board. For purposes of determining whether or not to exercise such option, the size of the Board of Directors shall be deemed to be reduced by one. Vacancies in positions on the Board filled by the vote of Class B Members shall be filled by the remaining Directors elected by Class B Members.

Section 4. Management. The management of the Corporation's business, funds, assets, deposits, properties and affairs shall be vested in the Board of Directors. The Board of Directors shall, however, if it in its sole and absolute discretion deems it advisable to do so, employ for the Association, a professional manager, management firm or managing agent, at a rate of compensation to be established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize, including, but not necessarily limited to those duties and services specified in the Declaration. The employment of such a manager, management firm or managing agent shall be upon such terms and conditions as the Association's Board of Directors shall, in its sole and absolute discretion, elect. Notwithstanding anything to the contrary hereinabove set forth in this Section 4, the Association or its Board of Directors shall not delegate any of its responsibilities for a term extending beyond the termination of Class B voting rights, prior to the conclusion of Class B voting rights, and shall not, prior to the termination of such Class B voting rights, employ any professional manager, managing agent or management firm for a term extending beyond the termination of Class B voting rights. Any management agreement shall be terminable by the Association on six (6) months notice.

Section 5. Term of Office. The term of office of Directors shall be as specified in Section 1 of this ARTICLE VI; provided, however, that so long as there are Class B voting rights in the Association, all Directors shall be elected at each annual meeting of the members, meaning that such Directors shall term of one (1) year only.

Section 6. Termination of Directorship. The term of any Director who becomes more than thirty (30) days delinquent in the payment of any assessments due under the Declaration, or any share of the common expenses, and/or carrying charges shall be automatically terminated and the remaining Directors shall appoint his successor as provided in Section 3 of this Article.

Section 7. Compensation. Directors, as such, shall not receive any stated compensation or salaries for their services as Directors.

Section 8. Organization Meeting. The first meeting of the newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors are elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a majority of the whole Board of Directors shall be present.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least one (1) such meeting shall be held during each calendar year. Notice of regular meetings of



the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least six (6) days prior to the day named for such meeting.

**Section 10. Special Meetings.** Special meetings of the Board of Directors may be called by the President on three (3) days notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of any Director.

**Section 11. Waiver of Notice.** Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of notice by him of the time, place and purpose thereof. If all Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

**Section 12. Quorum.** At all meetings of the Board of Directors a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**Section 13. Action Without Meeting.** Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors.

**Section 14. Fidelity Bonds and Officers and Directors Insurance.** The Board of Directors shall, if it in its discretion deems it appropriate to do so, require that all officers and employees of the Association handling or responsible for corporate or trust funds shall furnish adequate fidelity bonds and may purchase Officers and Directors Liability Insurance, the cost of which shall be paid for from the Maintenance Fund or the assessments of members. The premiums on such bonds and insurance shall be paid by the Association.

**Section 15. Powers and Duties.** The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law, or by the Declaration or by these By-Laws, directed to be exercised and done by the members of the Association or by the Unit Owners. The property, funds and affairs of the Association shall be controlled and managed by the Board of Directors, which shall exercise all powers of the Association not reserved by these Bylaws or by the Declaration or Articles of Incorporation to the members of the Association or the Unit Owners. The Association's Board of Directors shall have the authority to employ, discharge and determine the compensation of such management personnel, management firm, managing agent, professional management and employees as in its opinion are needed to do the work of the Association; provided, however, that so long as Class B voting rights are in existence the Directors shall not delegate responsibilities, or employ



managing agents or a management firm, except within those limitations specified by Section 4 of this Article.

Unofficial Document

## ARTICLE VII

### Officers

Section 1. Number. The officers of the Board and the Association shall consist of a President, a Vice-President, a Secretary and a Treasurer. The Board of Directors may, if it in its sole and absolute discretion determines appropriate, also choose and appoint one or more additional Vice Presidents and one or more Assistant Secretaries and Assistant Treasurers, and such additional officers and agents, if any, as it may deem necessary from time to time. Any person may fill more than one of the offices; provided, however, that no person may be both the president and the secretary. The Board may, for example, elect a single person as being the vice president, and the secretary. Such officers shall be selected by the Board of Directors at the organizational meeting of the Board of Directors following the annual meeting of the members of the Association. The President and Vice-President must be members of the Board of Directors. The Secretary and/or Treasurer and any Assistant Secretaries or Assistant Treasurers need not be members of the Board of Directors if the Board of Directors determines such to be the case.

Section 2. Term. The officers shall hold office at the pleasure of the Board of Directors, for a period of one (1) year from the date of their respective elections, and until their successors are duly elected and qualified.

Section 3. Vacancies. A vacancy in any office for any reason shall be filled by the Board of Directors at any meeting for the unexpired portion of the term.

## ARTICLE VIII

### Duties of Officers

Section 1. General Powers. The officers shall have such power and authority in the control and management of the property and business of the Association as is usual and proper in the case of, and incident to, such corporate officers, except insofar as such power and authority is limited by these By-Laws, or by resolution of the Board of Directors.

Section 2. President. The President shall be the principal officer of the Association, and shall, in general, control and manage the property and affairs of the Association. He shall preside at all meetings of the Board of Directors and shall perform such other duties as may be prescribed by the Board of Directors from time to time. He shall sign all notes, agreements, conveyances or other instruments in writing made and entered into for or on behalf of the Association. He shall have all the general powers and duties which are usually vested in the office of President of a corporation, including but not limited to the power to appoint committees from time to time among the membership of the Association as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Association.

~~Unofficial Document~~  
Section 3. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent and unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

Section 4. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the members of the Association; he shall have custody of the seal of the Association; he shall have charge of the membership transfer books and of such other books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary.

Section 5. Treasurer. The Treasurer shall have responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors.

Section 6. Assistant Secretaries. The Assistant Secretaries, in order of succession, shall perform all of the duties of the Secretary in the event of the death, disability or absence of the Secretary, and such other duties, if any, as may be prescribed by the Board of Directors.

Section 7. Assistant Treasurers. The Assistant Treasurers shall, as to the funds entrusted to them, perform all of the duties of the Treasurers.

Section 8. Compensation of Officers. No officer shall receive any salary or other compensation for services rendered to the Association in his capacity as an officer of the Association. No remuneration shall be paid to any officer for services performed by him for the Association in any other capacity unless a resolution authorizing such remuneration shall have been adopted by the Board of Directors before the services are undertaken.

## ARTICLE IX

### Liability and Indemnification Of Officers and Directors

Section 1. Liability and Indemnification of Officers and Directors. The Association shall indemnify (to the maximum extent permitted by the law of Missouri) every officer and director of the Association, against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including the settlement of any such suit or proceeding if approved by the then Board of Directors of the Association) to which he may be made a party by reason of being or having been an officer or director of the Association whether or not such person is an officer or director at the time such expenses are incurred. The officers and directors of the Association shall not be liable to the members of the Association for any mistake of judgment, negligence or otherwise, except for their

own individual willful misconduct or bad faith. The officers and directors of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association or the Development (except to the extent that such officers or directors may also be Owners of Units) and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right of indemnification provided for herein shall not be exclusive of any other rights to which any officer or director of the Association, or former officer or directors of the Association may be entitled.

Section 2. Common or Interested Directors. The Directors shall exercise their powers and duties in good faith and with a view of the interests of the Association. No contract or other transaction between the Association and one or more of its Directors, or between the Association and any corporation, firm or association (including the Developer) in which one or more of the Directors of the Association are Directors or officers or are pecuniarily or otherwise interested, is either void or voidable because such Director or Directors are present at the meeting of the Board of Directors or any committee therefor which authorizes or approves the contract or transaction, or because of his or their votes as counted for such purpose, if any of the conditions specified in any of the following subparagraphs exist:

(a) The fact of the common directorate or interest is disclosed or known to the Board of Directors or a majority thereof or is noted in the minutes, and the Board authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or

(b) The fact of the common directorate or interest is disclosed or known to the members, or a majority thereof, and they approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or

(c) The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Common or interested Directors may be counted in determining the presence of a quorum at any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction, and may vote thereafter to authorize any contract or transaction with like force and effect as if he were not such Director or officer of such other corporation or not so interested.

## ARTICLE X

### Management

Section 1. Management. The Association, by and through its Board of Directors, shall enforce the provisions of the Declaration and of these Bylaws, and shall perform all duties and obligations conferred upon the Association by the Declaration, and shall have all powers, privileges, powers and discretions conferred upon the Association by the Declaration, and shall pay out of the

Maintenance Fund, established by the Declaration for those articles, items, duties and services to be supplied and performed by the Association through the use of such funds under the terms of the Declaration.

**Section 2. Manager or Managing Agent.** The Association, by and through its Board of Directors, may delegate any of its duties, powers or functions to a manager or managing agent, provided that such delegation shall be revocable upon no more than six (6) months written notice. The Association, and its officers, and its Board of Directors shall not be liable for any omission or improper exercise by the manager or managing agent of any such duty, power or function so delegated. Notwithstanding anything to the contrary set forth in this Section 2, so long as Class B voting rights are in existence, the Association shall not employ any professional manager, for a term extending beyond the termination of Class B voting rights, and shall not delegate any of its responsibilities for a term extending beyond the termination of Class B voting rights.

**Section 3. Duties to Maintain.** The Association, shall have the duty and obligation to perform the repairs and maintenance imposed upon the Association and/or the Board of Managers by the Declaration. Each Unit Owner shall have the duty and obligation to perform the maintenance upon his, her or their Unit imposed upon him, her or them by the Declaration, and shall be required to perform with respect to each Unit, all maintenance not specifically imposed by the Declaration upon the Association and/or the Board of Managers. The Unit Owners upon whom collective obligations of maintenance, repair and replacement are imposed by the Declaration, shall have the duty and obligation, to the Association and all other Unit Owners, to perform or to cause to be performed the maintenance, repairs and servicing described in the Declaration.

**Section 4. Access at Reasonable Times.** For the purposes of discharging its duties and responsibilities as provided by these By-Laws and the Declaration, or in the event of a bona fide emergency involving illness or potential danger to life or property, the Association, through its duly authorized agents, Directors or employees, shall have the right, after reasonable efforts to give notice to the Unit Owner, to enter into any Unit or any Apartment at any hour considered to be reasonable under the circumstances.

**Section 5. Limitation of Liability.** The Association, and its Directors, and its officers, shall not be liable for any failure of water supply or other services to be obtained by the Association or paid for out of the Maintenance Fund established by the Declaration, or for injury or damage to person or property caused by the elements or by the Owner of any Unit, or any other person, or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to the Owner or occupant of any Unit for loss or damage by theft or otherwise of articles which may be stored upon any of the Common Elements. No diminution or abatement of maintenance fund assessments as provided for by the Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements, or the Units or the buildings located thereon, or from any action taken by the Association to comply with any law or ordinance or with the order or directive of any municipal or other governmental authority. The directors, officers and the employees of the Association, and the Association itself (except to the extent of the cost of procuring same), shall not be liable for any

failure by the Association to provide or perform any management, maintenance, repairs, servicing, upkeep or other services, or to procure any insurance, required by the Declaration.

## ARTICLE XI

### Assessments

This ARTICLE XI of these Bylaws shall be identical in form and content to Article 6 of the Declaration, which such Article is incorporated herein by reference.

## ARTICLE XII

### Financial Management

Section 1. Fiscal Year. The fiscal year of the Association shall begin on the 1st day of January of each year. The commencement date of the fiscal year herein established shall be subject to change by the Board of Directors should corporate practice subsequently dictate.

Section 2. Books and Accounts. Books and accounts for all funds collected by the Association shall be kept under the direction of the Treasurer, in accordance with good bookkeeping principals consistently applied. The same shall include books with detailed accounts, in chronological order, of receipts and of the expenditures affecting the funds collected and the administration of such funds.

Section 3. Auditing. Upon request by a majority of the Board of Directors of the Association, any Treasurer or Assistant Treasurer of the Association, whether present or past, shall submit his or her books and records for audit by an independent Certified Public Accountant, retained by the Association at its expense, whose report shall be prepared and certified in accordance with generally accepted auditing principles. In lieu of any such audit by an independent Certified Public Accountant, the Association's Board of Directors may appoint an "audit committee." Such audit committee shall consist of one (1) director and two (2) Class A members of the Association, who are not a members of the Board of Directors. If an audit committee is used, then the books and records shall be audited by such audit committee, which shall report to the Association's Board of Directors and its members.

Section 4. Inspection of Books. The books and accounts of the Association, or of the Treasurer or any Assistant Treasurer thereof, and vouchers accrediting the entries made thereupon, shall be available for examination by the members of the Association, and/or their duly authorized agents or attorneys during normal business hours and for purposes reasonably related to their interests as members.

Section 5. Execution of Corporate Documents. With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Association by either the President or Vice President and by the Secretary, and all checks shall be executed on behalf of the

Association by such officers, agents or other persons as are from time to time so authorized by the Board of Directors.

Unofficial Document

Section 6. Seal. The Board of Directors may, if it in its discretion deems it appropriate, provide a corporate seal containing the name of the Association, which seal shall be in the charge of the Secretary. If so directed by the Board of Directors, a duplicate seal may be kept and used by the Treasurer or any assistant secretary or assistant Treasurer.

### ARTICLE XIII

#### Insurance

The Association's Board of Directors shall have the duty to obtain and maintain fire and casualty insurance to the extent reasonably available on any reasonably insurable improvements owned by the Association. The Association's Board of Directors, in its discretion, shall obtain, at the expense of the Association:

- a. Such other fire and casualty insurance and physical damage insurance as it finds to be appropriate;
- b. Such public liability insurance coverages and liability insurance coverages (in such amounts and for such limits) as it finds to be appropriate;
- c. Worker's compensation insurance coverages shall be maintained to the extent required by law, and may, if not required by law, nevertheless be maintained if the Directors, in their discretion, find it to be appropriate that such insurance be maintained in effect;
- d. Officers' and Directors' Liability Insurance Coverage, covering the Officers and Directors of the Association, to the extent the Board shall find to be appropriate;
- e. Such other insurance coverages as the Board finds to be appropriate in its discretion.

The Association's Board of Directors shall have the authority (but not the obligation) to enforce requirements imposed by the Declaration upon Unit Owners that Unit Owners obtain any insurance coverages.

### ARTICLE XIV

#### Amendment

Those provisions of these By-Laws which also appear in the Declaration may be amended only in that manner provided for the amendment of the Declaration by the Declaration. The remaining provisions of these By-Laws may be amended by the affirmative vote of a majority of the



members of each class present at any meeting of the members at which a quorum is present, and which is duly called for that purpose. Amendments may be proposed by the Board of Directors or by a petition signed by members representing at least twenty percent (20%) of the voting members of a single class of members. A description of any proposed amendment of these By-Laws or the Declaration shall accompany the notice of any regular or special meeting at which such proposed amendment is to be voted upon.

## ARTICLE XV

### Conflict With The Declaration

Section 1. Conflict. In the event any of the provisions of these By-Laws, or any provision of an amended version of these By-Laws, conflicts with the terms and provisions of the Declaration in any way whatsoever, these By-Laws shall be deemed to be subordinate and subject to all provisions of the Declaration. All of the terms hereof except where clearly repugnant to the context, shall have the same meaning as in the Declaration. In the event of any conflict between these By-Laws and the Declaration, the provisions of the Declaration shall control.

Section 2. Severability. In the event any provision or provisions of these By-Laws shall be determined to be invalid, void or unenforceable, such determination shall not render invalid, void or unenforceable any other provisions hereof which can be given effect.


Section 3. Waiver. No restriction, condition, obligation or provision of these By-Laws or the Declaration shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 4. Captions. The captions contained in these By-Laws are for convenience only and are a part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws.

Section 5. Gender, etc. Whenever in these By-Laws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

Adopted as the By-Laws of SPRING CREEK HOMES ASSOCIATION OF BOONE COUNTY, a not-for-profit corporation of the State of Missouri, effective the \_\_\_\_ day of \_\_\_\_\_, 2000 (same being attached to the Declaration, as the first By-Laws of the Association).

**MEMBERS OF THE FIRST BOARD OF  
DIRECTORS OF THE ASSOCIATION:**



\_\_\_\_\_  
Allan F. Price

Unofficial Document

Tina W. Price  
Tina W. Price

Robert Wilson  
Robert Wilson

SECRETARY OF THE ASSOCIATION:

Tina W. Price  
Tina W. Price

**APPROVAL AND SUBORDINATION BY HOLDER OF FIRST MORTGAGE  
DEED OF TRUST AND MODIFICATION OF FIRST MORTGAGE DEED OF TRUST**

The above described Declaration of Covenants, Easements and Restrictions of Spring Creek, and the Plat of Spring Creek Plat 1 referred to in the foregoing Declaration, together with the dedications of streets, rights-of-way and easements provided for by the said plat, are hereby approved by FIRSTAR Bank, N.A., a banking corporation with its principal place of business located in Columbia, Missouri and a place of business in Columbia, Missouri, which is the beneficial holder of one or more deeds of trust recorded in the Records of Boone County, Missouri as follows:

Deed of trust dated October 14, 1999, in the amount of Three Million One Hundred Twenty-four Thousand Dollars (\$3,124,000.00), recorded October 18, 1999, at Book 1572, Page 729, Records of Boone County, Missouri.

The said bank hereby states that the above Declaration and such plat are hereby approved, and that the above-described deed(s) of trust shall be subject to and is (are) subordinated to such Declaration, the same as though the Declaration and such plat had been recorded prior to the recording of such deed(s) of trust. In order to induce the undersigned beneficial holder under the said deed(s) of trust to enter into this Approval and Subordination, the undersigned, Wynfield Development Corp., a corporation, the Developer, acting by and through its undersigned officers, who warrant and represent hereby that they are lawfully authorized to enter into this agreement on behalf of such Developer, the mortgagee, hereby agrees that the said bank, the beneficial holder under the deed(s) of trust, that the deed(s) of trust shall be and it is (they are) hereby amended in order to include therein, immediately following the legal description of the real estate described therein, the following as an additional part of the "Mortgaged Property" or "Mortgaged Premises" or real estate, subjected to the deed(s) of trust, and that the following is hereby subjected to a security interest and collateral interest and lien under the terms of the said deed(s) of trust in favor of the said bank, which shall accompany all real estate at any time subject to the said deed(s) of trust:

"Together with all Class B memberships now in existence or hereafter coming into existence, and all rights to Class B memberships, and all Class B voting rights now in existence or hereafter coming into existence, attributable to the real estate hereinabove described, or any parts thereof, now or hereafter held by party or parties of the First Part (Grantor or Grantors) with respect to Spring Creek Homes Association of Boone County, the Association named in the foregoing Declaration, a not-for-profit corporation of the State of Missouri, which is now in existence or will hereafter be formed, and all rights as the Developer of any kind, nature or description whatsoever with respect to the real estate described in this deed of trust, all as provided for in and as described that "Declaration of Covenants, Easements and Restrictions of Spring Creek" hereinabove set forth; and all rights of the Developer with respect to presently existing or hereafter created Class B memberships and Class B voting rights in the Association attributable to any and all Lots and other parcels and tracts of real estate hereinabove described (and all portions thereof and subdivisions thereof), and including all presently existing or hereafter created rights as the Developer under that Declaration hereinabove described of any kind, nature or description whatsoever, without limitation, attributable to the real estate hereinabove described (or any part thereof), including, but not limited to, all rights

## Unofficial Document

to elect directors of the Association and all Architectural Control Rights provided for by the Declaration, and all Class B memberships provided for by the Declaration; all memberships, rights, Class B votes, Class B voting rights, Class B memberships and rights as the Developer and all such Architectural Control Rights being hereby assigned to party of the Second Part, the Trustee, in trust, for the purposes herein expressed, all of same to be deemed to constitute a part of the real estate hereinabove described, which in the event of default, may be sold by the Trustee (party of the Second Part) together with the real estate, in the manner hereinafter described in this document."

It is the intention of the Developer and of the undersigned beneficial holder under the said deed(s) of trust that the said deed(s) of trust shall be and is (are) hereby modified in order to include (as the subject matter of the deed(s) of trust and as a part of the subject matter of the lien and security interests provided for by such deed(s) of trust) in addition to the real estate described in such deed of trust, the Class B memberships, Class B voting rights, Architectural Control powers and other rights as the Developer hereinabove described. This Agreement is made and entered into in order to induce the undersigned beneficial holder to execute the foregoing Approval and Subordination.

**FIRSTAR BANK, N.A.** IN WITNESS WHEREOF, Wynfield Development Corp., the above-named Developer, and ~~Boone County National Bank~~, the above-named bank, have executed this document effective this 28<sup>th</sup> day of June, 2000; the Undersigned officers of Wynfield Development Corp. hereby warranting and representing that they are lawfully authorized to execute this document in the name of and on behalf of the said corporation.



**DEVELOPER:**  
**WYNFIELD DEVELOPMENT CORP.**

By: [Signature]  
Allan F. Price, its President

ATTEST:

[Signature]  
Robert Wilson, its Secretary

(Corporate Seal)

**FIRSTAR BANK, N.A.**

**CORPORATE SEAL**

**BANK:**  
**FIRSTAR BANK, N.A.**

By: [Signature]  
Matthew Williams  
its VICE PRESIDENT

ATTEST:

[Signature]  
Beverly A. Campbell  
its Secretary

# Boone County, Missouri

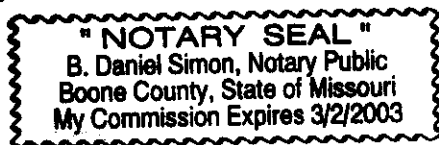
STATE OF MISSOURI Unofficial Document

768

) SS.  
COUNTY OF Boone )

On this 28<sup>th</sup> day of June, 2000, before me, the undersigned, a Notary Public in and for the State of Missouri and County of Cooper, personally appeared Allan F. Price, to me personally known, who being by me first duly sworn, did state and acknowledge that he is President of Wynfield Development Corp., that as such he is duly authorized to execute the foregoing document in the name of and on behalf of such Corporation; that he had executed the foregoing document in the name of and on behalf of such Corporation, in his capacity as President of such Corporation, by authority granted to him by the Shareholders and Directors of said Corporation; that the corporate seal affixed to the foregoing document constitutes the corporate seal of said Corporation; and that the foregoing document constitutes the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto affixed my hand and notarial seal on the day and year first above written.



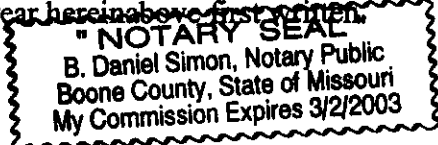
B. Daniel Simon  
Notary Public  
County, State of Missouri

My commission expires: \_\_\_\_\_

STATE OF MISSOURI )  
) SS.  
COUNTY OF Boone )

On this 28<sup>th</sup> day of June, 2000, before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared Matthew Williams, to me personally known, who being by me first duly sworn, did state and acknowledge that he or she was vice president of FIRSTAR Bank, N.A., banking corporation, that as such he or she had executed the foregoing document in his or her said capacity, and that he or she had executed the foregoing document in the name of and on behalf of such Bank by authority granted to him or her by such Bank's shareholders and Board of Directors; and that the foregoing document was executed as the free act and deed of said Bank.

IN TESTIMONY WHEREOF, I have hereunto affixed my hand and notarial seal on the day and year hereinabove first written.



B. Daniel Simon  
Notary Public  
County, State of Missouri

My commission expires: \_\_\_\_\_

BDS\Spring Creek\Dec of Cov.004

-3-

6/26/00

STATE OF MISSOURI )  
COUNTY OF BOONE ) SS.

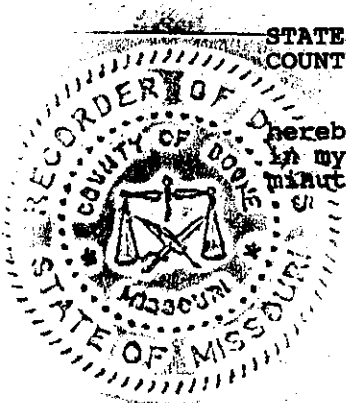
Document No. 13267

I, the undersigned Recorder of Deeds for said county and state do hereby certify that the foregoing instrument of writing was filed for record in my office on the 29th day of June, 2000 at 4 o'clock and 07:50 minutes PM and is truly recorded in Book 1633 Page 674.

Witness my hand and official seal on the day and year aforesaid.

BETTIE JOHNSON, RECORDER OF DEEDS

by Brenda Cook deputy  
Brenda Cook



Nora Dietzel, Recorder of Deeds