

- 1.19 **“Mortgage”** shall mean any mortgage, deed of trust, contract for deed or other security document pledging or conveying in trust any Lot or interest therein as security for payment of a debt or obligation.
- 1.20 **“Mortgagee”** means any person named as a mortgagee or deed of trust beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.
- 1.21 **“Owner”** means the owner of record, whether one or more persons or entities of fee simple title to any Lot, including the Developer and the purchaser under a contract for deed. The term shall not include any person or entity having any interest in a Lot merely as a security for the performance of an obligation, including a Mortgagee or a trustee or beneficiary under a deed of trust, unless and until such person has acquired fee simple title to the Lot pursuant to foreclosure or other proceedings.
- 1.22 **“Owner’s Proportionate Share”** means a fraction, the numerator of which is the number of Lots then owned by such Owner within the Property and the denominator of which is the total number of Lots then within the Property, as it may be expanded.
- 1.23 **“Party Wall”** means any wall which is in common between 2 or more Residences.
- 1.24 **“Property”** means and refers to the real property described in the Plat and on Exhibit A attached to this Declaration and all additional property, if any, brought within the jurisdiction of this Declaration by all Supplemental Declarations.
- 1.25 **“Proposed Construction”** has the meaning set forth in Article 10.2 hereof.
- 1.26 **“Residence”** means a patio home, a single-family or two-family dwelling constructed on any one Lot. For purposes hereof, “single-family” and “two-family” shall have the same meaning as in the ordinances of the City.
- 1.27 **“Review Committee”** has the meaning set forth in Article 9.1 hereof.
- 1.28 **“Special Assessment”** has the meaning set forth in Article 6.3 hereof.
- 1.29 **“Street”** shall mean any roadway, street, court, circle, terrace, drive or other right-of-way designated for vehicular traffic shown on the Plat.
- 1.30 **“Subdivision”** means collectively, the Lots, Common Area, all other parts of the Property, and all Expansion Property.
- 1.31 **“Successor Developer”** means any person or entity to whom the Developer assigns or transfers all, or any part, of its rights, obligations or interests as the developer of the Property, as evidenced by an assignment or deed of record in the Recorder’s Office, designating such person or entity as a Successor Developer.
- 1.32 **“Supplemental Declaration”** means an instrument which amends or modifies this Declaration, as more fully provided herein, including any which includes or adds Expansion Property.

- 1.33 “**Turnover Date**” means the date the Developer, in its sole and absolute discretion, selects as the Turnover Date for the Property then covered by and subject to this Declaration (evidenced by a writing recorded in the Recorder’s Office).
- 1.34 “**Working Capital Fund Contribution**” shall have the meaning set forth in Article 6.12 hereof.

ARTICLE 2
Persons and Property Bound by Declaration

The benefits and burdens of this Declaration shall run with the land and shall inure to the benefit of, and be binding upon, the Developer and all persons or entities who shall hereafter acquire any interest in the Lots or other property within the Subdivision and Property. The Developer and all persons who take any interest in a Lot shall, by taking such interest, be deemed to agree and covenant with all other Owners, the Association and the Developer, and their respective heirs, personal representatives, successors, transferees and assigns, to conform to, and observe, the covenants, conditions and restrictions in this Declaration, all Supplemental Declarations and the other Association Documents for the term hereof.

ARTICLE 3
Membership, Voting and Operations

3.1 Membership in Association. The Owner of each Lot within the Subdivision shall be a Member of the Association. The Developer shall also be a Member of the Association. If a Lot is owned by more than one Owner, all Owners of the Lot, collectively, shall be deemed the Member of the Association for such Lot so that there shall be only 1 “Member” (and vote) per Lot, except as provided below for with respect to the Developer whose voting rights and votes are not tied to ownership of a Lot. The Association shall be the sole judge of the qualifications of its Members and of their right to participate in its meetings and proceedings.

3.2 One Class of Members. There shall be one class of Members consisting of the Developer and all Owners.

3.3 Meetings. Annual and special meetings of the Members shall be called, held, and conducted in the manner provided in the Bylaws or, in the absence of any provision in the Bylaws, as provided by applicable Missouri law.

3.4 Voting Rights. Except as otherwise provided herein, including in Article 3.9 below with respect to preferential voting rights of Developer, all Members shall be entitled to vote on Association matters requiring a vote under this Declaration. Except as otherwise provided herein, including Article 3.9 below with respect to preferential voting rights of Developer, on all matters to be voted on by the Members, each Member shall have one (1) vote for each Lot owned. If more than one Owner exists for any Lot, the vote for such Lot shall be exercised as the Owners determine among themselves and as they notify the Secretary of the Association in writing. Fractional votes shall not be permitted and there shall be only one (1) vote cast with respect to any Lot. Proxy voting is expressly prohibited. Unless specifically provided herein to the contrary, all matters requiring a vote of the Members under this Declaration shall be approved by a simple majority of the votes present at an annual or special meeting duly called where a quorum is present. A quorum shall be the presence, in person, of 10% of the votes entitled to be cast at such meeting.

3.5 Transfer of Membership. Membership is appurtenant to, and may not be separated from, ownership of any Lot (except for membership of Developer which is not appurtenant to any particular Lot). An Owner (other than Developer) may not transfer, pledge or alienate membership in the Association in any way except in connection with the sale or encumbrance of the Lot and then only to the purchaser or Mortgagee of the Lot. Upon the sale of a Lot, the membership associated with the Lot shall automatically transfer to the purchaser of the Lot, or the purchaser's Mortgagee if so designated by the purchaser. Prior to the sale of any Lot, the selling Owner shall pay to the Association a "transfer fee" in the amount of One Hundred-Fifty and 00/100 Dollars (\$150.00) for each Lot being sold by such Owner.

3.6 Books and Records. The Association shall make available for inspection, upon request, during normal business hours and under reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records, and financial statements of the Association. The Association may charge a reasonable fee for copying such materials.

3.7 Association as Successor Developer. On the Turnover Date, the Association shall succeed to all (if any) of the duties and responsibilities of the Developer under this Declaration. The Association shall not, however, succeed to any easements or rights of the Developer or others reserved in the Association Documents or pertaining to any other real property adjacent to the Subdivision which is owned by the Developer.

3.8 Implied Rights and Obligations. The Association may exercise all rights and privileges expressly granted to the Association in the Association Documents and all other rights and/or privileges reasonably implied from those expressly granted right and privileges or reasonably necessary to effectuate any such duties and obligations expressly imposed upon the Association by the Association Documents.

3.9 Developer's Control of Association Prior to Turnover Date. Until the Turnover Date, the Developer shall maintain absolute and exclusive control over the Association, the Board of Directors, and the Review Committee, including appointment, election and removal of all directors of the Association and all members of the Review Committee. Until the Turnover Date, only the Developer shall be entitled to cast any votes with respect to the election and removal of Association directors and members of the Review Committee or any other matters requiring the vote or approval of Members or Owners. The Developer may (but shall not be required to) at any time relinquish (either permanently or temporarily for a particular purpose) all or any part of the Developer's control and rights under this Article 3.9. Prior to the Turnover Date, Developer has the absolute right to modify or amend this Declaration pursuant to Article 15.2.

ARTICLE 4 Power and Authority

4.1 Power and Authority of the Association. Subject to any limitations in applicable laws and regulations and the Articles and Bylaws, the Association has the power and authority to take all action, and to refrain from taking any action, on behalf of the Association, it deems reasonably necessary to protect the rights and to fulfill the obligations of the Association under the terms of this Declaration. Such power and authority includes, without limitation, the following, which the Association may (but shall not be obligated or required to) exercise in its discretion:

- (a) Accept by conveyance from the Developer and own the Common Area and any other areas of the Property to be held for the general benefit of the Owners;

- (b) Enforce, either in the Association's name or in the name of any Owner within the Subdivision, the covenants, conditions, restrictions and easements imposed upon the Lots, the Common Area or other parts of the Property as are in effect from time to time. The expenses and costs of any enforcement proceedings shall be paid out of the general funds of the Association. Nothing herein contained shall prevent the Developer, or any Owner having the right to do so, from enforcing in their own name any such covenants, conditions, restrictions or easements;
- (c) Levy and collect the Assessments and Working Capital Fund Contributions which are provided for in this Declaration and to charge reasonable admission fees, service charges and other amounts for the use of the Common Area;
- (d) Manage and control as trustee and attorney-in-fact for all Members, all Improvements upon and to the Common Area, other areas of the Property owned by the Association, or any other areas which are owned by either the Association or Developer but held for the general benefit of the Owners;
- (e) To the extent not provided by the City, maintain, repair and replace all pedestrian ways, gates, entrances, fountains, gardens, water run-off detention areas, ponds or basins, lighting, water sprinkling systems, sewer lines from a collector (as defined in Article 1.9 above) for the Residences connecting to the City's public sewer main, landscaped areas within the Common Area or rights-of-way or platted landscape easements, fences and ornamental features within the Common Areas, Subdivision identification signs and monuments and any other amenities;
- (f) To the extent not provided by the City, provide and maintain lights and lighting on Streets, parks, parking, pedestrian ways, gateways, entrances or other features, and in other public places, semi-public places or the Common Area;
- (g) To the extent not provided by the City, erect and maintain signs for marking of Streets, and safety signs for protection of children and other persons, after such signs are approved by appropriate public authorities;
- (h) Exercise control over easements (including any for water drainage control) it acquires from time to time or has pursuant to the Plat;
- (i) Acquire and own title to such real estate as is reasonably necessary in order to carry out the purposes of the Association and promote the health, safety, welfare and recreation of Owners in the Subdivision, pay taxes on real estate and facilities owned by the Association, and pay taxes assessed against the Common Area (whether owned by Developer or the Association) or other land in public or semi-public places within the Subdivision;
- (j) Enter into such agreements with other homes associations, municipalities or other governmental agencies, individuals or corporations in order to implement the purposes of the Association, and to provide such Improvements for the benefit of the Owners and Members of the Association within the intent of this Declaration;
- (k) Acquire, provide and maintain insurance for the protection of the Association (including liability insurance for its officers and directors), the Developer, the Members, and the Common Area, including, without limitation, comprehensive public liability, officers and directors, workers compensation, fidelity insurance and bonds to protect against dishonest acts on the part of the

Association's officers, directors, trustees, employees and agents and such other insurance against risks of a similar or dissimilar nature as the Board of Directors deems appropriate with respect to the Association's responsibilities and duties, including contractual liability for the indemnification set forth in Article 16.7 below, provided however, in no event shall the Association be required at any time to provide casualty and property coverage on the Residences and their exteriors (such being the obligation of each Owner);

- (l) Dedicate, sell, subdivide or transfer all or any part of the Common Area to any public or private agency, authority, person or entity, but only with the prior written consent of the Developer prior to the Turnover Date;
- (m) Create, grant and convey easements (to such persons or classes of persons [regardless of whether such person or classes of persons are Members or Owners] for such consideration, if any, as the Board of Directors shall specify in its discretion) upon, across, over, through and under the Common Area for ingress or egress, walking trails or installation, replacement, repair and maintenance of all utilities or other such facilities including, but not limited to, water, sewers, natural gas, telephones, electricity and television cable systems, provided however, until the Turnover Date, such creation, grant and conveyance of easements may only be done with the prior written consent of Developer;
- (n) Establish and publish rules and regulations to regulate and control the Owners' use and enjoyment of the Common Area as well as such other activities which affect the Members' quiet and peaceful use of the Lots within the Subdivision;
- (o) Employ or provide duly qualified officers for the purpose of providing police or security protection as the Board of Directors deems necessary or desirable in addition to that rendered by public authorities;
- (p) Borrow money from any person, including the Developer, for the proper conduct of the Association's affairs, and the exercise of its powers and authority and the fulfillment of its obligations, subject to any limitations set forth in the Bylaws;
- (q) Suspend the voting rights of any Member (other than the Developer) during any period in which such Member is in default on payment of any Assessment or after notice and hearing for a period not to exceed ninety (90) days for infraction of published rules and regulations, unless such infraction is ongoing, in which case the rights may be suspended during the period of the infraction and for up to ninety (90) days thereafter;
- (r) Fine a Member (other than Developer) for infraction of any of the provisions of this Declaration or any published rules or regulations in amounts as may be determined and changed from time to time by the Board of Directors;
- (s) Provide for, or manage, the collection and disposal activities of rubbish, trash and garbage in the Subdivision;
- (t) Care for, spray, trim, protect, plant and replant trees, shrubbery, grass and sod along all Streets, within Lots, and in the Common Area and other areas within the Subdivision set aside for the general use of Owners or on landscaped easements where the maintenance thereof is for the general welfare and benefit of the Members;

- (u) Mow, care for, maintain and remove rubbish from vacant and unimproved Lots or other parts of the Property and to do any other things reasonably necessary or desirable to keep any vacant and unimproved property in the Subdivision neat in appearance and in good order;
- (v) Provide for reasonably adequate plowing and removal of snow from driveways and sidewalks;
- (w) Exercise all rights, power and authority granted to the Association by this Declaration; and
- (x) Engage a Manager to perform such duties, powers or functions of the Association as the Board of Directors may authorize from time to time as set forth in Article 4.4 below.

4.2 Exercise Authority. Unless specifically reserved to the Members by this Declaration, the Bylaws, the Articles or applicable law, all powers and authority of the Association shall be exercised by the Board of Directors, acting within its sole discretion. Although the Association may exercise the powers and authority granted in Article 4.1 hereof, the mere existence of such powers and authority shall not require the Board of Directors to exercise such powers or authority. For example, although the Association has the power to provide for collection and disposal of rubbish, trash, refuse and garbage in the Subdivision, the Board of Directors may, in its discretion, choose not to exercise that power and, in lieu thereof, require the Owners to contract with the City or private haulers to dispose of their trash. The Association shall exercise such powers and authority in the discretion of its Board of Directors, unless otherwise specifically required or permitted herein or in the Articles or Bylaws to be exercised by the Members.

4.3 Casualty Damage/Public Liability Insurance on Lots and Residence. Each Owner (rather than the Association) shall obtain and maintain in full force and effect casualty insurance on the Residences and other insurable Improvements on the Lots (including the fixtures initially installed in the Residences and replacements thereof up to the value of those initially installed therein by or for the Owners, and including furniture, wall coverings, Improvements, additions or other personal property supplied or installed by the Owners), together with all heating, ventilation, air conditioning equipment and other service machinery and utilities contained therein and covering the interest of the Owners and their Mortgagees, as their interests may appear. The insurance shall be carried in an amount also equal to the full replacement value (i.e. one hundred percent (100%) of the current replacement cost exclusive of land, foundation, excavation and other items normally excluded from coverage), without deduction for depreciation. Such insurance shall afford protection against loss or damage caused by fire, windstorm, hail and other hazards covered by the standard extended coverage policy or endorsement including debris removal, demolition, vandalism, malicious mischief and water damage. Such policy shall also insure against public liability with minimum limits of \$100,000.00 per person, per person, \$300,000.00 per occurrence. Each Owner shall furnish Association with evidence of the existence of such insurance coverage as the Association may from time to time require by written demand made upon the Owner.

4.4 Insurance Requirements Generally. All insurance coverage obtained by the Association or an Owner shall comply with the following terms and conditions:

- (a) The Developer and the Association shall be additional named insureds on all such policies of insurance which an Owner is herein required to obtain and maintain in force. On public liability policies obtained by Association, Developer shall be named as an additional insured;

(b) Coverage under the policies shall not be prejudiced by (i) any act or neglect of any Owner, or their tenants, servants, agents, invitees, and guests when such act or neglect is not within the control of the Association, or (ii) any act, neglect or failure of the Association with respect to any portion of the Property over which the Association has no control;

(c) All policies shall be written by insurers licensed to do business in Missouri and holding a rating of B/VI or better in the financial category as established by A.M. Best Company, Inc., if reasonably available, or, if not reasonably available, the most nearly equivalent rating; and

(d) All liability insurance shall also include a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another insured.

4.5 Manager. Any powers, duties or rights of the Association created pursuant to this Declaration, or of the Board of Directors, as provided by law and herein, may be delegated to a Manager under a management agreement, which Manager may or may not have a relationship to the Developer or its principals or affiliates; provided, however, that no such delegation shall relieve the Association of its obligation to perform such delegated duty.

ARTICLE 5 Common Area

5.1 Property Rights in the Common Area. Subject to the other provisions hereof, every Member shall have a non-exclusive right and easement of enjoyment in and to the Common Area (subject to such restrictions as may be placed thereon by the Association) and such right and easement shall be appurtenant to and shall pass with the title to every Lot.

5.2 Maintenance of the Common Area. The Association shall manage, repair, maintain, replace, improve, operate and deal with the Common Area and keep it, and all Improvements thereon, in reasonably good condition. The cost of performing these duties shall be a Common Expense. The Board of Directors may employ or contract with a Manager or third parties to render such services with respect to the Common Area.

5.3 Insurance. The Association may provide and maintain insurance for the protection, repair and replacement of the Common Area as set forth above and may also provide and maintain directors' and officers' liability insurance for the directors and officers of the Association.

5.4 No Partition. The Common Area shall be owned by either the Association or the Developer, and no Owner, group of Owners, or the Association shall bring any action for partition or division of the Common Area.

ARTICLE 6 Assessments, Fines and Working Capital Fund Contribution

6.1 Obligation; Purpose. The Association may assess against all Lots (and each Owner, by acceptance of a deed to such Owner's Lot, hereby agrees to pay to the Association) the Annual Assessment, the Special Assessment, and the Default Assessment. For purposes hereof, (a) "Annual Assessment" means assessments imposed and levied by the Board of Directors against each Owner in accordance with such Owner's Proportionate Share which are necessary to meet the Common Expenses, (b) "Special

Assessment” means assessments for capital Improvements to the Common Area and other purposes stated in Article 6.3 of this Declaration, and (c) **“Default Assessment”** means assessments imposed against a Lot as the result of the Owner’s failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents. The Assessments shall be used for the benefit of the Owners and occupants of the Subdivision as set forth herein and, except for any Default Assessment, shall be levied against Lots and Owners pursuant to each Owner’s Proportionate Share.

6.2 Annual Assessments. Subject to the limitations set forth herein and the limitations set forth in the Articles and Bylaws, the Board of Directors, in its sole discretion, shall establish Annual Assessments based upon the estimated Common Expenses for the subsequent fiscal year of the Association. The Annual Assessments shall be in such amounts as are set forth in the budgets established by the Board of Directors from time to time. The Board of Directors shall endeavor to establish the amount of the Annual Assessments on or before January 1 of each year; provided, however, if the Board of Directors fails to timely establish the amount of the Annual Assessments for any fiscal year, the amount of such Annual Assessments for the year shall automatically be the same as the amount of the Annual Assessments for the immediately prior year, subject to the Board of Directors right to establish an increase in the rate of assessment with an effective date other than January 1st, as described below. The Annual Assessments provided for herein shall be based upon the calendar year and shall be due and payable on January 1st of each year; provided, however, that (i) the first assessment for each Lot shall be due and payable upon closing of the Lot purchase by buyer) and shall be prorated as of the date thereof and (ii) the Board of Directors may allow the Annual Assessments to be paid in two or more installments during the year. Prior to the Turnover Date, the Board of Directors may increase the rate of the Annual Assessments as the Board of Directors deems appropriate without a vote of the membership. After the Turnover Date, the amount of the Annual Assessments established by the Board of Directors may not exceed (a) one hundred and twenty percent (120%) of the amount of the Annual Assessments for the immediately preceding year without the approval of a simple majority of votes present (in person) at a meeting duly called (and at which a quorum is present) or (b) one hundred fifty percent (150%) of the amount of the Annual Assessments for the immediately preceding year without the approval of sixty-six and 2/3 percent (66 2/3%) of the votes present (in person) at a meeting duly called (and at which a quorum is present). If the effective date of any increase in the rate of assessment is other than January 1st, a proper portion (as determined by the Board of Directors) of the amount of the resulting increase in Annual Assessments for the remainder of such year shall be due and payable on such effective date. The Board of Directors may, but shall have no obligation to, make pro rata refunds of any Annual Assessments in excess of the actual Common Expenses incurred in any fiscal year to the Owners or may hold the same in reserve.

6.3 Special Assessments. Except as limited or prohibited by the Articles or Bylaws, the Board of Directors may levy in any fiscal year one or more Special Assessments, payable over any period as it determines, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair, renovation or replacement of the Common Area (or Improvements therein or thereon) or for any other expenses incurred by the Association in fulfilling its obligations or exercising its rights under this Declaration or otherwise imposed upon the Association including, but not limited to, maintenance and repair of any detention ponds, tracts, or basins serving the Property (on or off the Property). In imposing any Special Assessment, the Board of Directors shall specifically refer to this Article 6.3. The Board of Directors shall promptly give the Owners written notice of the amount of all Special Assessments and the time for payment thereof. No payment of all or part of any Special Assessment shall be due less than thirty (30) days after such notice is given. This Article 6.3 shall not be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration.

6.4 Default Assessment. The Board of Directors may impose a Default Assessment against an Owner at any time. Notice of the amount and due date of each Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date. Each Default Assessment shall become a lien against such Owner's Lot when due and may be foreclosed or otherwise collected as provided in this Declaration.

6.5 Fines. The Board of Directors may assess and impose a "Fine" of Fifty Dollars (\$50) per month (or such other amount as the Board of Directors shall determine appropriate from time to time) for each month in which any infraction of any of the provisions of this Declaration, the Articles, Bylaws or any rules or regulations promulgated by the Board of Directors is committed by any Owner or any tenant of any Owner. The Board of Directors may promulgate and change from time to time rules or regulations setting forth procedures for appealing Fines. Fines shall be imposed only after notice and an opportunity to be heard before the Board of Directors. Cause for Fines shall not be for frivolous reasons but for those actions which violate the security of the Owners, endanger occupants, cause a nuisance to Owners or their tenants or interfere with the quiet enjoyment of the Residences or the Common Area by other Owners or their invitees.

6.6 Effect of Nonpayment; Liens. Any Annual Assessment, Special Assessment, Default Assessment, or Fine that is not paid within thirty (30) days after the due date applicable thereto ("**Delinquency Date**") shall be delinquent (individually, the "**Delinquency**" and collectively, the "**Delinquencies**"). Upon the occurrence of each Delinquency, the Board of Directors, in its sole discretion, may take any or all of the following actions:

- (a) Assess a late charge for each Delinquency in an amount of five percent (5%) of the Delinquency;
- (b) Assess an interest charge from the Delinquency Date at a rate of 10% per annum;
- (c) Suspend the voting rights of the Owner during any period of Delinquency;
- (d) Accelerate all remaining Assessment installments (if any are payable in installments) so that unpaid Assessments and other Delinquencies shall be immediately due and payable;
- (e) Bring an action at law against any Owner personally obligated to pay the Delinquency;
- (f) File a statement of lien with respect to the delinquent Owner's Lot; and
- (g) Proceed with perfection and foreclosure of the liens for the Delinquency.

A Delinquency shall constitute a lien on the delinquent Owner's Lot, including the Residence and any other Improvements, and shall attach on the Delinquency Date. The Association may evidence the lien by filing a certificate of lien with the Recorder's Office. The certificate of lien, which shall be signed and acknowledged by the President, any Vice President or the Secretary or attorney of the Association, shall set forth (i) the name and address of the Association, (ii) the amount of the Delinquency, (iii) the amount of accrued interest, penalty and other amounts due, (iv) the name of the Owner of the Lot, and (v) the legal description of the Lot. At least ten (10) days prior to filing any such certificate of record, the Association shall mail a copy of the certificate to the Owner at the address of the Lot or to such other address as the Association has in its files for the Owner. At any time thirty (30) or more days after filing the certificate of lien, any such lien may be foreclosed by appropriate action at law or in the manner provided by law for the

foreclosure of mortgages or sale by a judgment creditor or in any other manner permitted by the laws of Missouri (including, without limitation, common law procedures for perfecting, establishing and foreclosing equitable liens). Each Owner of a Lot by its acceptance of a deed thereto hereby consents to such foreclosure mechanism. In the event of any such lien foreclosure and sale whether at private sale or by public execution sale, the Owner shall be liable for the amount of all unpaid (after application of sale proceeds) Delinquencies, all penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien and all reasonable attorneys' fees and expenses incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Lot at foreclosure or execution sale and to acquire and hold, lease, mortgage and convey the same. All liens for Delinquencies shall continue for a period of five (5) years from the date of attachment and no longer, unless within such time suit is commenced to collect the Delinquency against persons personally liable for such amount or foreclosure proceedings are instituted. In such cases the lien shall continue until the termination of the suit and sale of the Lot upon execution of any judgment obtained or until completion of foreclosure proceedings.

6.7 Personal Obligation. The amount of any Delinquency chargeable against any Lot shall also be a personal and individual debt of the Owner of the Lot at the time the Assessment became due. No Owner may exempt himself from liability for the Delinquency by abandonment of his Lot or by waiver of the use or enjoyment of all, or any part of, the Common Area. All successors to the fee simple title of a Lot shall be jointly and severally liable for all unpaid Delinquencies, interest, late charges, penalties, costs, expenses, and attorneys' fees (in any action filed by the Association to collect a Delinquency or Assessment, the Owner shall reimburse Association for all attorney's fees therein incurred by Association) against such Lot with the Owner who owned the Lot at the time the unpaid Delinquency first became due. Nothing contained herein shall prejudice any such successor's rights to recover from any prior Owner amounts paid by such successor. The liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Lot. The successor may rely on the statement of status of Delinquencies by, or on behalf of, the Association under Article 6.10 below. The Association may bring suit against the Owner or any successor to recover unpaid Delinquencies any penalties and interest thereon, the cost and expenses of such proceedings and all reasonable attorneys' fees and expenses in connection therewith, without foreclosing or waiving the Delinquency lien provided in this Declaration.

6.8 Priority of Lien. The lien for Delinquencies provided for in this Declaration shall be subordinate to (a) liens for real estate taxes and special government assessments and (b) Mortgages recorded prior to the due date for any such Delinquency. The lien for Delinquencies shall be superior to and prior to any homestead exemption provided now or in the future under the laws of the State of Missouri which all present and future Owners waive by taking title to Lots. Except as specifically set forth herein or provided by law, no sale or transfer of a Lot shall release it from the lien of any Delinquency. The amount of any extinguished lien for a Delinquency may, at the direction of the Board of Directors, be reallocated and assessed to all Lots as a Common Expense.

6.9 Notice to Mortgagee. Upon written notice by a Mortgagee to the Association of a Mortgage and written request for notice of unpaid Delinquencies, the Association shall be permitted to report to the Mortgagee all Delinquencies remaining unpaid for longer than sixty (60) days after the due date. Any Mortgagee holding a lien on a Lot may pay any unpaid Delinquency, together with all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Lot for the amounts paid with the same priority as the lien of the Mortgage.

6.10 Statement of Status. Upon written request of any prospective Mortgagee or purchaser of a Lot and payment of a reasonable fee established by the Board of Directors, the Board of Directors of the Association

shall issue a written statement setting forth the amount of all unpaid Delinquencies, if any, with respect to such Lot. The amount set forth on such statement from the Association shall be binding on the Association if the prospective purchaser purchases the Lot (or the prospective Mortgagee mortgages the Lot); provided, however, the Owner of the Lot during the time when such Delinquency became due and owing shall remain liable for all unpaid Delinquencies. If the Association does not issue a written statement within thirty (30) days of its receipt of the request and fee payment, the prospective purchaser (or prospective Mortgagee, as the case may be) may make an additional written request. If the Association does not issue a written statement within ten (10) days of the second request, the lien for the unpaid Delinquencies shall be released automatically upon the prospective purchaser's acquisition of the Lot (or the prospective Mortgagee's mortgage of the Lot). A statement shall be deemed issued by the Association upon deposit in the U.S. Mail or tender of delivery to the prospective purchaser.

6.11 Notification of Association's Address. The Association shall notify each Owner, at their address listed with the Association, of the Association's address, and all changes thereto, where payments shall be made, and other Association business may be conducted.

6.12 Working Capital Fund Contributions. The Developer may require the first Owner of a Lot (other than the Developer or the builder initially acquiring such Lot for purposes of constructing thereon a Residence for sale) to make a nonrefundable contribution to the working capital of the Association in an amount equal \$500.00 (a "Working Capital Fund Contribution"). The Association shall maintain all such Working Capital Fund Contributions in its general account(s) for the use and benefit of the Association in carrying out its duties hereunder, including, without limitation, paying Common Expenses or meeting unforeseen expenditures (the Working Capital Fund Contributions need not be segregated from other funds of the Association). Such Working Capital Fund Contribution shall not relieve an Owner from making payments of Assessments as they become due and is in addition thereto and nonrefundable in all events.

6.13 Pledge of Assessment Rights as Security. The Association shall have the power to pledge the right to exercise its assessment powers and rights as security for any obligations of the Association; provided, however, any such action shall require, prior to the Turnover Date, the consent of the Developer and, after the Turnover Date, a majority vote of all Members of the Association. Such power shall include the ability to make an assignment of Assessments then payable to, or which will become payable to, the Association, which assignment may be then presently effective but allows such Assessments to continue to be paid to the Association and used by it unless and until the Association shall be default on its obligation secured by the assignment.

6.14 Supplemental Developer Remedy. In addition to (but not in lieu of) the remedies of Developer and Association as herein provided (including but not limited to the right to receive equitable and injunctive relief), all Owners are deemed to recognize that violations of any portion of this Declaration will, so long as Developer owns any portion of the Property or any Expansion Property, result in damages to Developer which are difficult if not impossible to ascertain at this moment (the parties and their successors in interest to the Property acknowledge that any such violations and breaches of this Declaration will have a negative impact on values of portions of the Property still owned by the Developer at the time of such violations/breaches). Accordingly, if any Owner of any Lot shall violate or breach this Declaration (or any provision thereof) while Developer owns any portion of the Property (including any Expansion Property), and if the violating or breaching Owner shall not rectify or cure such violation or breach within two (2) days (the "Cure Period") after Developer shall give such Owner written notice generally describing the violation or breach, then in that event, the violating or breaching Owner shall pay to Developer special liquidated damages in the amount of \$25.00 for each day (or any part thereof) after the expiration of such Cure Period that the violation or breach shall continue, provided however, the maximum liquidated

damages assessable for any single uninterrupted violation or breach shall not in any event exceed \$1,000.00 during any calendar year. The parties expressly agree that the liquidated damages stated above are a reasonable advance estimate of special damages to Developer in the event of a breach or violation of this Declaration and that such liquidated damages are not intended as a penalty. In any action or proceeding instituted by the Developer for the recovery of such liquidated damages, the violating or breaching Owner shall also reimburse Developer for Developer's reasonable attorney's fees, expenses, investigative costs and costs of the action therein incurred.

ARTICLE 7

Insurance and Condemnation

7.1 Association as Attorney-in-Fact. Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any damage or other loss in connection with the Common Area which are covered by insurance written in the name (or for the benefit) of the Association or a complete or partial taking of the Common Area in condemnation. Acceptance by a grantee of a deed or other instrument of conveyance from the Developer or any other Owner conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact for such purposes. The Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver, settlement or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted hereby to the Association as attorney-in-fact.

7.2 Repair of Casualty Damaged Residences. Notwithstanding any provision of this instrument to the contrary, each Owner (rather than Developer and Association) is responsible for insuring such Owner's Lot and Residence against casualty loss and for promptly repairing same after the occurrence of any such casualty.

7.3 Condemnation. Except as provided herein, if any portion of the Common Area on which Improvements have been constructed, is taken by any condemnation or similar proceeding, the Association shall restore or replace such Improvements on the remaining land included in the Common Area. If the condemnation award is insufficient to pay the costs of restoring or replacing the taken Improvement, the Association may, pursuant to Article 6.3 above, levy, assess and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay the additional cost of restoration or replacement.

ARTICLE 8

Maintenance Services

8.1 Services Provided by the Association. The Association shall provide the following services to the Members:

(a) Lawn and Landscape Maintenance. The Association shall mow all grass in yards around each individual Residence and shall provide fertilizer, crab grass control, grub control, weed control and such other applications deemed necessary by the Board of Directors. The association will provide landscape maintenance services, including servicing the irrigation system.

(b) Snow Removal. The Association shall provide snow removal from all driveways, sidewalks and the front steps of each Residence when snow accumulates to a depth of 2 inches or

more. Ice melt or other ice preventing applications shall be provided when deemed necessary by the Board of Directors.

(c) Exterior Maintenance. The Association will provide exterior maintenance to each Residence as deemed necessary by the Board of Directors. For purposes of this paragraph "exterior maintenance" shall mean periodic repainting and the periodic repair of siding, roofs, downspouts, gutters, porches, decks, driveways, and sidewalks. "Exterior maintenance" does not include doors, storm doors, windows, screens, storm windows, doorbells, and exterior lighting or plumbing fixtures. The manner and schedule of all exterior maintenance provided by the association will be determined in the sole discretion of the Association.

8.2 Access Easement. The Association is hereby granted an access easement over each Owner's property to carry out the provisions of this Article 8.

ARTICLE 9 Review Committee and Construction Standards

9.1 Architectural Review Committee. An Architectural Review Committee (the "Review Committee"), consisting of three (3) or more persons, shall be established to exercise the powers granted by this Article 9 and elsewhere in this instrument. At all times prior to the Turnover Date, the Developer shall have the power to appoint all members of the Review Committee, who shall serve until they resign or are removed by the Developer. After the Turnover Date, the Board of Directors shall appoint the members of the Review Committee, who shall serve terms of one (1) year or until their earlier resignation or removal by the Board of Directors. All decisions of the Review Committee shall be made by a majority of its members.

9.2 Architectural Control. To preserve the harmony of the construction, location and exterior design and appearance of the Lots and the Residences and other Improvements on the Lots, (a) all Residences, buildings, walls, fences, structures and other Improvements of any kind to be constructed or located on any Lot (collectively, the "Improvements"), (b) all additions, changes and alterations to any Improvement which impacts its exterior design or appearance and (c) all changes to the topography of any Lot (collectively, the "Proposed Construction"), shall be approved, in writing, by the Review Committee before such Proposed Construction is commenced. Except as provided in Article 9.4 hereof, the Review Committee shall not approve any Proposed Construction which does not fully comply with the requirements hereof, including, without limitation, Article 9.5 below, or where the exterior design or appearance (including exterior color) of the Proposed Construction is not, in the sole discretion of the Review Committee, in harmony with the existing Residences in the Subdivision, the topography and overall design and appearance of the Subdivision, the Developer's intended design and appearance of the Subdivision or otherwise detracts from the design and appearance of the Subdivision in the sole opinion of the Review Committee. The Review Committee also shall have the power and right to designate certain areas within the Common Area as "Restricted Common Areas."

9.3 Application for Approval. The Owner shall apply, in writing, to the Review Committee for approval of all Proposed Construction. The application shall include plans, drawings, specifications and information (including all construction drawings and site plans) showing, as and if applicable, (a) the front, rear and side elevations, (b) proposed grading and drainage from the Lot, (c) floor plan with total square footage, (d) height of all Improvements, (e) exterior materials, (f) method of construction, (g) exterior color scheme, including samples, manufacturers name, and product numbers, (h) landscaping, and (i) all other information

reasonably required by the Review Committee. The Review Committee may request additional information from an Owner at any time within ninety (90) days after its last receipt of information from the Owner or his representatives. The Review Committee may establish and publish such other rules and regulations regarding approval of Proposed Construction as the Review Committee determines are reasonable. If the Review Committee does not act upon an Owner's application within ninety (90) days after submission of all information required by the Review Committee, approval of the Proposed Construction as submitted shall be deemed to have been given and the requirements of this Article 9.3 fully satisfied.

9.4 Modification of Requirements; Appeal of Review Committee Decision. Except as specifically provided herein to the contrary, by unanimous decision, the Review Committee may, for good cause shown, waive any of the requirements set forth herein, including those set forth in Article 9.5 hereof. Any waiver granted shall not be effective and may not be acted upon until eleven (11) days after the date on which the Review Committee renders its decision. An Owner submitting an application may appeal any decision of the Review Committee which denies that application for Proposed Construction. An Owner of any Lot may appeal any decision of the Review Committee which waives any of the requirements set forth herein. All appeals shall be to the full Board of Directors. All appeals to the Board of Directors shall be made in writing and submitted to the Secretary of the Association within ten (10) days after the Review Committee renders its decision which is the subject of the appeal. If the Board of Directors does not act upon an appeal within ninety (90) days of it being timely submitted, the relief requested in the appeal shall be deemed granted. In deciding an appeal, the Board of Directors can take only such actions as the Review Committee was originally empowered to take. All decisions on appeals shall be made by a majority of the Board of Directors, acting in the sole discretion of the members of the Board of Directors, and shall be final and not subject to further appeal, including to the Owners, or subject to judicial review. Pending final decision on appeal, the waiver requested shall be held in abeyance and may not be acted upon.

9.5 Construction Standards. In addition to complying with all ordinances, codes and restrictions enacted by the City which are applicable to a Lot, all Residences and other Improvements constructed on any Lot shall conform to the following:

- (a) Except for model homes, sales offices or otherwise specifically provided herein, no building other than a Residence may be constructed on any Lot. Under no circumstance, even with the approval of the Review Committee or the Board of Directors, shall any commercial, retail, or other business building be constructed on any Lot.
- (b) All Residences shall be erected or located on each Lot as shown on the Plat and any requirements of any City code or regulation. The Review Committee shall approve the orientation of the Residence on the Lot.
- (c) The finished floor area of each Residence shall be at least 1,200 square feet of total finished floor area. For purposes of calculating the foregoing minimums, the area of any attics, garages, basements, porches, and any portion of the Residence that is not enclosed and finished for all-year occupancy, shall not be included. The Review Committee may, in its sole discretion, require greater square footage for any Residence as a condition of approval of any Proposed Construction.
- (d) No Residence may exceed two (2) stories in height without approval of the Review Committee.
- (e) All exterior surfaces of any Residence shall be constructed only of high-quality siding or stucco, or other such materials as installed by the Developer and approved by the Review

Committee or a combination of the foregoing materials and shall be of a color or colors required by the Review Committee.

- (f) Any portion of a foundation protruding more than twelve inches (12") above the ground shall be painted the same color as the exterior of the Residence.
- (g) All Residences shall have vinyl casement windows, or such other materials as approved by the Review Committee.
- (h) All Residences shall be roofed with high-quality 30-year shingles in a color acceptable to the Association, in its sole discretion.
- (i) All exteriors of any Residence (except roofs) shall be painted or stained with high quality products of a color required by the Review Committee.
- (j) All sewage disposal shall be by means of subterranean sewer pipe connected to a collector (as defined in Article 1.9 above) which is then connected to the public City sewer main.
- (k) All water, gas, electricity, sewer, telephone, cable television and other utilities or services shall be located and run underground on or to each Lot.
- (l) Each Residence shall have a garage for no less than 2 vehicles and the interior walls of such garage shall be finished in a quality manner.
- (m) All driveways shall be constructed of concrete. No asphalt, rock or gravel driveways shall be permitted.
- (n) All yards "immediately adjoining" (as determined by the Review Committee) a Residence will be initially sodded with the following perennial turf grasses: blue grass, fine blade fescue or fine blade rye. Any changes to the yard immediately adjoining a Residence must be shown on a landscape plan to be submitted to the Review Committee for written approval.
- (o) No plantings of vegetables, herbs or flowers shall be made on a Lot or in the Common Area without the approval of the Review Committee (which may withhold approval in its sole discretion).
- (p) A hot tub or spa may be constructed at the rear of a Residence but within the Lot lines for personal, non-commercial use by the Owner with the Review Committee's prior approval. The Owner must construct fencing or screening necessary to screen such hot tub or spa, which must be approved by the Review Committee prior to the commencement of construction of the hot tub or spa.
- (q) No portable basketball goals shall be permitted. Permanent basketball goals may be permitted subject to prior written approval by the Review Committee as to location, appearance and design. All basketball goal backboards shall be clear in appearance. However, no basketball goal shall be located any closer to the front Lot line than the front of any Residence situated on a Lot unless the supporting poles for the goal are immediately adjacent to the driveway.
- (r) No outdoor playground structures shall be permitted on any Lot.

- (s) No fencing or screening of any type shall be erected or installed on a Lot or the Common Area unless fencing materials, placement, size and type are approved in advance and in writing by the Review Committee. The Review Committee may withhold its approval to any requested fencing in its sole and absolute discretion.
- (t) Construction of a Residence shall be fully completed within six (6) months after excavation is started.
- (u) Loud music will not be permitted on any construction site. No construction work on any Lot shall begin before 7:00 a.m. or continue after 7:00 p.m.
- (v) No construction signs are permitted identifying any mortgage lender, contractor, subcontractor, or supplier unless approved by the Review Committee.

ARTICLE 10 Use Restrictions

10.1 General. Unless the Board of Directors, acting in its sole discretion, unanimously waives the application thereof (which waiver may be granted even if contrary to any specific prohibition set forth herein), the following restrictions are hereby placed on the Property.

10.2 Residence Use Only. Except as specifically provided herein, each Residence shall be used strictly as a single-family or two-family patio home dwelling. No business shall be conducted, or carried on, in or from any Lot or Residence except (a) marketing or sales activities by the Developer and builders authorized to have model homes may be conducted from Model homes and (b) with the approval of the Review Committee, conduct of a profession or home industry which does not involve (i) employees working at the Residence who are not permanently residing therein and (ii) customers regularly visiting the Residence to conduct business. Even if the foregoing are satisfied, the Review Committee may withhold its approval if it determines, in its sole discretion, the commercial activity is not compatible with the Subdivision for any reason, such as, without limitation, a day care business which is prohibited.

10.3 Prohibited Buildings and Structures. No mobile home or trailer (with or without wheels), basement (without a Residence attached), moved house, manufactured house, tent, shack, barn, shed or other outbuilding or structure shall be constructed or located on any Lot at any time (except that tents used for temporary recreational or social purposes may be erected in the Common Area closest to a Residence with the prior written approval of the Review Committee).

10.4 Fences. No fences shall be permitted on any Lot or the Common Area without the prior written approval of the Review Committee, which approval may be withheld in the Review Committee's absolute and sole discretion. The construction methods, materials and location of all (if any) fences approved by the Review Committee shall harmonize with external design of the Residences in the Subdivision. Under no circumstance shall any fence be permitted in violation of restrictions in the Plat or any ordinance approving the Plat or any other plat affecting the Property. No fence shall be approved by the Review Committee if it exceeds five (5) feet in height. All fences approved by the Review Committee shall be constructed of wrought iron or other materials approved by the Review Committee and shall have a gate at least five (5) feet wide. All homes with fences shall pay an additional fee in the form of a Special Assessment, in addition to all other Assessments described in this Declaration, of \$ _____ per month. Such fee may be increased