



Legislation Text

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**File #: 210671, Version: 1**

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ORDINANCE NO. 210671

Approving the plat of Wittmer Lots on Olive, an addition in Jackson County, Missouri, on approximately 0.353 acres generally located between Park Avenue on the west and Olive Street on the east, and Elma Street to the north, creating 5 lots and 3 tracts for the purpose of creating a 5 lot single family subdivision; accepting various easements; authorizing the Director of City Planning and Development to execute and/or accept certain agreements; and directing the City Clerk to record this ordinance and attached documents. (CLD-FnPlat-2021-00021)

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the plat of Wittmer Lots on Olive, a subdivision in Jackson County, Missouri, a true and correct copy of which is attached hereto and incorporated herein by reference, is hereby approved.

Section 2. That the plat granting and reserving unto Kansas City an easement and license or right to locate, construct, operate and maintain facilities including, but not limited to, water, gas, sewerage, telephone, cable TV, surface drainage, underground conduits, pad mounted transformers, service pedestals, any and all of them upon, over, under and along the strips of land outlined and designated on the plat by the words utility easement or U/E be and the same are hereby accepted and where other easements are outlined and designated on the plat for a particular purpose, be and the same are hereby accepted for the purpose as therein set out.

Section 3. That the Director of City Planning and Development is hereby authorized to execute a Covenant to Maintain Storm Water Detention Facilities Agreement, to be in a form substantially as that attached hereto as Exhibit A and incorporated herein by reference.


Section 4. That the Director of City Planning and Development is hereby authorized to execute and/or

accept any and all agreements necessary to clear the title of any right of way, utility easements or other public property dedicated on the plat.

Section 5. That the City Clerk is hereby directed to record copies of this ordinance, together with the documents described herein and all other relevant documents, when the Developer has met all of the requirements for the plat to be released for recording, in the Office of the Recorder of Deeds of Jackson County, Missouri.


Section 6. That the Council finds that the City Plan Commission has duly recommended its approval of this plat on July 20, 2021.

Approved as to form and legality:

  
Euard Alegre  
Assistant City Attorney

This is to certify that General Taxes for 2021, and all prior years, as well as special assessments for local improvements currently due if any, on property described have been paid.

City Treasurer, Kansas City, MO

By   
Dated, August 3, 2022



Authenticated as Passed

  
Quintana, Mayor

Marilyn Sanders, City Clerk

AUG 19 2021

Date Passed

To certify that General Taxes for 2021, and all prior years, as well as special assessments for local improvements currently due if any, on property described have been paid.

RECORDER'S CERTIFICATION  
JACKSON COUNTY, MISSOURI

08/17/2022 12:41 PM

NON-STANDARD FEE: EXEMPT FEE: \$24.00 3 PGS



INSTRUMENT NUMBER / BOOK & PAGE

2022E0077064

Book: Page:

Diana Smith, Recorder of Deeds

Jackson County  
Recorder of Deeds  
**Exempt Document**

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Diana Smith  
Recorder of Deeds

415 E. 12th Street, Room 104  
Kansas City, MO 64106

112 W. Lexington, Suite 30  
Independence, MO 64050

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RECORDER'S CERTIFICATION  
JACKSON COUNTY, MISSOURI

08/17/2022 12:41 PM

NON-STANDARD FEE: \$25.00 FEE: \$75.00 20 PGS



INSTRUMENT NUMBER / BOOK & PAGE

2022E0077066

Book: Page:

Diana Smith, Recorder of Deeds

Jackson County  
Recorder of Deeds  
**Non-Standard Document**

This document has been recorded and you have been charged  
the non-standard fee pursuant to RSMo 59.310.3.  
This certificate has been added to your document in  
compliance with the laws of the State of Missouri.



Diana Smith  
Recorder of Deeds

415 E. 12th Street, Room 104  
Kansas City, MO 64106

112 W. Lexington, Suite 30  
Independence, MO 64050

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**DECLARATION OF RESTRICTIONS, COVENANTS, AND HOME ASSOCIATION'S DECLARATION FOR PENDLETON HEIGHTS**

This Declaration is made this 2<sup>nd</sup> day May 2022 by PH Homes, LLC, a Missouri limited liability company; hereafter called "Developer."

**ARTICLE I**  
**STATEMENT OF INTENT**

Developer owns the real estate known as "Pendleton Heights", situated in Jackson County, Missouri and as shown on the plat of land known as Pendleton Heights, composed of lots and tracts, and legally described on Exhibit "A" attached to this Declaration. Said plat dedicates to the public all of the streets and roads show on said plat for use by the public.

Developer desires to provide for the preservation of values in the development of said property for residential purposes and for the maintenance of facilities, and therefore, desires to subject the above-described property to covenants, restrictions, easements, charges, and liens hereinafter set forth which are for the benefit of said property. For this purpose, the real estate above described shall become associated and or affiliated with Pendleton Heights Homeowners Association, Inc., a Missouri not-for-profit corporation.

Developer desires to create a single-family residential community on the property to be known as Pendleton Heights.

The Developer has filed a Plat of Pendleton Heights with the Recorder of Deeds of Jackson County, Missouri. The plat delineates the lot and common areas contained within the legal description of property.

The Developer intends by this Declaration to provide for the preservation and enhancement of the property values, amenities, and opportunities in the community in order to contribute to the personal and general health, safety, and welfare of the residents, and also to provide for the maintenance of the land and improvements, all for the benefit of the property and each owner.

The Developer further intends by this Declaration to create an association which will maintain, administer, and enforce this Declaration and to collect and spend the assessments and charges created by this Declaration. The association will be incorporated under the laws of the State of Missouri as a not-for-profit corporation and will be named Pendleton Heights Homeowners Association, Inc.

## GRANTING STATEMENTS

The Developer hereby declares that the land described in Exhibit "A" shall be held, sold, used, and conveyed subject to the following covenants, restrictions, easements, charges, and liens, all of which are for the purpose of promoting the common good and general welfare of the residents and owner of the Property, for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property. These covenants, restrictions, easements, charges, and liens shall run with the land and with the title to the Property and will bind all parties now having or later acquiring any right, title, or interest in the Property, and, subject to limitations provided in this Declaration, shall benefit each owner, his and/or her heirs, grantees, distributees, personal representatives, successors and assigns, the Association, and the Developer.

The Developer hereby delegates and assigns to the Association, upon its formation, the power of owning, maintaining, and administering the community properties and facilities, administering, and enforcing the covenants and restrictions, collecting, and spending the assessments and charges created by this Declaration, and promoting the recreation, health, safety, and welfare of the residents.

THEREFORE, the Developer desires that the real estate above described shall be held, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth.

### ARTICLE II DEFINITIONS

For the purposes of these Restrictions, the following words shall be defined as follows:

- (1) "Association" shall mean and refer to Pendleton Heights Homeowners Association, Inc.
- (2) The "Property" shall refer to all such existing properties as are subject to this Declaration and any addition to the residential community known as Pendleton Heights which Developer or its successor may in its discretion include.
- (3) "Common Properties" shall mean and refer to all real property and improvements in all phases of development of Pendleton Heights to be held in the name of Developer or its successors and or the Association and dedicated in writing by the Developer to the common use and enjoyment of all the lot owners and residents of the Properties.

- (4) "Lot" shall mean and refer to any separately divided parcel, except any common property, as may be shown by the Plat of Pendleton Heights.
- (5) "Dwelling" or "Residence" shall mean and refer to any portion of a building situated upon a lot designed and intended for use and occupancy as a residence by a single family.
- (6) "Lot Owner" shall mean and refer to the record owner whether one or more persons or entities of the fee simple title to any Lot situated upon the Properties but shall not mean or refer to the mortgagee unless such mortgagee has acquired title pursuant to foreclosure or any proceeding instead of foreclosure.
- (7) "Member" shall mean and refer to all those Lot Owners who are members of the Association.
- (8) "Street" shall mean the roads and rights of way therefor as shown on the Plat of Pendleton Heights, subject to easements for utilities and held by the Developer or the Association for the use of the Members and Lot Owners, their families, and guests, and of public officials while acting in such capacity.
- (9) "Front Property Line" shall mean the property line of any Lot abutting the right of way line of any street.
- (10) "Outbuilding" shall mean an enclosed, covered structure not directly attached to the residence to which it is appurtenant.
- (11) "Developer" shall mean and refer PH Homes, LLC, a Missouri limited liability Company, its successors and/or assigns, , except that no successor or assignee of the Developer shall have any rights or obligations of the Developer hereunder unless they are specifically assigned and assumed in the instrument of succession or assignment, or unless they pass by operation of law. The rights and obligations set forth herein of the Developer shall cease when one hundred percent (100%) of the Lots are sold (the "Development Period").
- (12) "Board" means the Board of Directors of the Association.
- (13) "Declaration" means this Declaration and all its amendments.
- (14) "Development Plan" means the total general scheme of intended uses of land in the Properties approved by the County of Jackson, Missouri.

- (15) "Governing Documents" means the Articles of Incorporation of the Association, this Declaration, Supplementary Declarations, and the Association By-Laws, as such documents may be amended.
- (16) "Owned" means the recorded holder of the fee simple title to a Lot, whether one or more persons.
- (17) "Property" or "Properties" means all real property which is subject to the Declaration.
- (18) "Quorum of Members" means the representation by presence of proxy of Members who hold fifty one percent (51 %) of the outstanding votes of each voting class.

ARTICLE III  
USE OF LOTS

Section 1. Residential Use.

Only one single family dwelling may be constructed upon any Lot conveyed for residential purposes. Inside storage only shall be provided for motor homes, trailers, boats, and other recreational vehicles, tractors, and mowers. There will be no outside storage of such items. There shall be no businesses which are incompatible with the residential character of Pendleton Heights subdivision such as car, boat, or vehicle sales; car, boat or other types of vehicle repair or other similar activities upon any Lot or Dwelling constructed thereon. Isolated sales and services will be allowed such as annual garage sales and the like. Any allowed home-based business shall minimize customer traffic and employee parking. The Developer, or its designees may, however, maintain sales offices on any Lot and in any residence constructed.

Section 2. Lot Area.

Only one single family Dwelling may be constructed upon any Lot conveyed for residential purposes.

Section 3. Setback Lines.

No Dwelling or structure or any part thereof, including garages and porches, shall be erected on any Lot closer that setbacks required by the City of Kansas City, Missouri. Each structure on a Lot shall present a good frontage to each street which it abuts or is adjacent. Developer shall have the sole right under these Declarations and Restrictions to review and approve the placement of all structures on any Lot.



Section 4. Dwelling size.

No Dwelling shall be constructed on any Lot unless it meets the following area requirements:

- (a) Ranch Style dwellings (one story) shall have a ground floor area of not less than 900 square feet on the ground floor excluding however any basement area, whether finished or not.
- (b) One and one-half story dwellings shall have a ground floor area of not less than 500 square feet and an overall area of not less than 1100 square feet, excluding however any basement area, whether finished or not.
- (c) Two story dwellings shall have an overall area of not less than 1100 square feet, excluding however any basement area, whether finished or not.

Variances from the above restrictions shall be subject to written approval from the Developer, and then subject to written approval from the Association once the Developer turns over control of the Association to its members. However, in the event of a rebuild, reconstruction, or any substantial or complete change to Dwelling, these restrictions, or the specific variances approved by the Developer and/or the Association, shall be enforced.

Section 5. Approval of Plans and Roofing Materials.

Construction shall not commence on any Dwelling and other improvements unless and until plot plans, architecture of structure, and building and elevations specifications, as well as details of fencing, landscaping have been first approved in writing by the Developer and or its designee or assignee. All Dwellings and other improvements shall have roofs made of asphalt composition.

Section 6. Variances and Encroachments.

Notwithstanding anything herein to the contrary, the Developer shall have the right to permit reasonable modifications of the square footage requirements, not to exceed 10% as to Dwellings constructed; and setback requirements, not to exceed ten feet, unless such variance would be prohibited by governmental regulations. Any such modification or variance permitted shall be evidenced in writing or as a plan approval and shall be executed by the Developer, or the Association after it succeeds to the rights of the Developer.

Section 7. Out-buildings and Temporary Dwellings.

No structure of a temporary nature and no trailer, mobile home or basement, or other such structures, improvements or uses shall allowed on a Lot without the express written consent of the Developer or thereafter, by the Association. At no time shall any out-building authorized hereby be used as a permanent or temporary residence without the written approval of the Developer. No residence shall be moved from another location to any Lot herein residence without the written approval of the Developer.

#### Section 8. Trash and Nuisances.

No trash, garbage, ashes, junk, junk cars, or other refuse or debris shall be thrown, dumped, or placed on any Lot, on the streets, or the Common Properties, or be permitted to accumulate or remain on any Lot. Weeds and plants shall be kept seasonably mowed and dead or unsightly growth removed on improved lots.

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

It is understood that Developer shall retain the right to keep and maintain such materials and equipment they deem to be reasonably necessary to further development of this and any adjacent property owned by Developer or its successors.

#### Section 9. Animals.

Any and all domestic dogs, cats, or other household pets allowed to be maintained pursuant to law shall be kept or allowed to stay in the rear portion of any Lot and shall not be a menace to the neighborhood. Other than domestic dogs, cats, or other household pets, no other animals shall be maintained on any Lot or within a residence constructed thereon.

#### Section 10. Driveways and yards.

All driveways shall be hard surfaced with a concrete or asphaltic surface (with a substantial base) and of such construction so as to be equal or better in appearance than the general road system serving the Lots. The initial application of grass on a Lot shall be sod or seed on all soil surfaces not paved.

#### Section 11. Fences.

All fencing or fences, and the location thereof installed during the construction of a residence or installed anytime thereafter must first be approved in writing by the Developer. Other than (a) privacy fencing which may be installed immediately around patios, pools, decks and hot tubs, (b) existing fencing which may remain and (c) fencing installed by a Lot

Owner along the interior perimeter and boundary of that portion of the Trail System in the rear yard or side yard portion of a lot, which shall be constructed of materials approved in writing by the Developer, all other fencing, such as side yard fencing or rear yard fencing not abutting the Trail System, shall consist of the same materials, color and style as fencing used by the Developer for the overall subdivision boundary fencing and entry fencing. No privacy fences shall be allowed along property lines. Lot Owners shall keep all fencing on Lots (other than Common Property fencing which shall be the responsibility of the Association) well maintained and painted. All fencing shall nonetheless be subject to the Developers written approval. The support structures of any fence authorized shall face toward the interior of the Lot. No chain link fences will be authorized.

#### Section 12. Utilities.

All utilities from Developer's source into building sites shall be underground.

#### Section 13. Lawns and Landscaping.

All portions of yards on a Lot shall be sodded and maintained in a trim and growing condition and shall at all times be maintained in a trim and well cut/mowed condition, free from weeds, brush, and thistles. Any lot overgrown in excess of twelve inches of height shall be in violation of these provisions, and the Developer and/or the Association shall be authorized to mow and otherwise cut such Owner's Lot so as to be compliant, and the Owner shall pay the costs incurred for the same. Failure to so pay such sum shall authorize the filing of a lien on such Lot for such sum. No bare earth shall remain which, in time could create a bare ground appearance or water run off and /or dust problems. As a part of and the completion of any residential structure constructed upon a Lot by a Lot Owner, such Lot Owner shall install in good healthy condition, not less than \$1,000.00 of landscaping along the frontage of the residence and not less than 6 trees of 2" caliper or greater, not less than 50% of which shall be located within the front yard of the Lot. The installation of such landscaping and trees shall be completed not later than the completion of the residential structure, provided however, that if completion of the residential structure does not occur within a planting season for landscaping and trees, such landscaping and trees shall be planted within the next growing season for such items. Such landscaping and trees shall be maintained in healthy condition and shall be replaced as required.

### ARTICLE IV EXTERIOR MAINTENANCE BY ASSOCIATION

#### Section 1. Maintenance generally.

- (a) Pendleton Heights shall represent a development wherein the

Association maintains the Common Properties.

(b) Maintenance, cutting and the overall care of the grass/lawn portions of Lots wherein a Lot owner is occupying the Dwelling located upon the Lot as his/her principal residence is the obligation of the Lot Owner.

ARTICLE V  
COMMON PROPERTIES AND ACCESS EASEMENT

Section 1. Use

Subject to the provisions of Section 4 of this Article, every member of the Association shall have a right and easement of enjoyment in and to the Common Properties, and any easements, if granted, shall be appurtenant to and shall pass with the title to every Lot. In this connection, all Lot owners of Pendleton Heights shall have full access and enjoyment to all Common Properties (including the trails) within the entire subdivision know as Pendleton Heights developed by the Developer.

Section 2. Title to Streets

All streets and roads in Pendleton Heights are public streets, reserved to the use and enjoyment of Lot Owners, their guests, and invitees. The Association, at its sole cost and expense will maintain subdivision monuments and the easements within which they are located as well as all street islands, subdivision monument signs or markers and all plantings or other improvements located within Pendleton Heights as a Common Property.

Section 3. Title to Common Property

The Developer may retain the legal title to the Common Properties until such time as in the sole discretion of the Developer, the Association is able to maintain the same. Any conveyance of title to the Common Properties to the Association shall only be in writing and be subject to all easements, restrictions, and reservations of record.

Section 4. Extent of Members' Easements

The right and easements of enjoyment created hereby as to the Common Properties shall be subject to the right of the Developer and of the Association to assign or convey sewage, water, drainage, and other utility easements over, through or under all or any part of the Common Properties, including riding trails.

Section 5. Developers and/or Associations Access Easement.

For purposes of allowing the Developer or the Association access to all portions of Lots in order to allow for Association services described herein, each Lot Owner does hereby grant to the Developer or the Association an irrevocable access easement for such purposes.

#### Section 6. Storm Water System.

The Developer shall construct upon Tract A a storm water handling system ("Storm Water System" or "Basin") as shown on and legally described on the plat attached hereto as Exhibit A. The Storm Water System shall be a Common Property and shall consist of a storm water handling feature of Pendleton Heights.

A copy of the Drainage Report for the Storm Water System/Basin is attached hereto as Exhibit B.

The Association shall be responsible maintenance and repairs for the Storm Water System/Basin including but not limited to the following:

- Mowing.
- Keeping the outlet structures clear of debris, leaves, or any other obstruction so to allow the outlet structures to continue to operate and discharge water as designed. This includes the standpipe.
- Keeping debris and trash out of the basin.
- Preventing erosion into and within the basin which may reduce its volume. If silt builds up, removing the silt and re-establishing the vegetation.
- Making sure the pipes which will collect the runoff from the roofs do not get plugged and continue to drain into the basin.

### ARTICLE VI MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

#### Section 1. Membership

Except as provided herein, every person or entity who is a record owner of a fee or undivided fee interest in any Lot, including the Developer, shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for performance of an obligation shall not be a member.

#### Section 2. Voting Rights

The Developer shall be entitled to have and maintain one vote for each and every Lot within the subdivision of Pendleton Heights (whether or not the Developer owns such lots)

until such time as the Developer owns no lots within all of the plats of the subdivision of Pendleton Heights, or the Developer turns the Association over to the Lot Owners. Thereafter Lot Owners shall be entitled to one vote per Lot in all proceedings in which action shall be taken by members of the Association.

A Lot Owner comprised of two or more persons, or other legal entities, or any other combination thereof, shall be cast in the manner provided for in the Articles of Incorporation of the Association, or as the several constituents may determine, but in no event shall all such constituents cast more than one vote per Lot for each Lot owned by them.

### Section 3. Organization.

The Association. The Association will be a nonprofit, nonstock corporation organized and existing under the laws of the State of Missouri and charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as they may be amended, except that no Governing Documents may for any reason be amended or otherwise changed or interpreted inconsistent with this Declaration.

Exercise of Vote. The vote for any membership which is held by more than one person may be exercised by any one of them, unless an objection is made by one of the holders prior to the completion of a vote, in which case the vote for such membership will not be counted. If fewer than twenty-five percent of all Class A votes are cast in an election for any elective office, the Board may declare the results of such election invalid and may elect a Member to fill such office.

### Section 4. Board of Directors of the Association

a. The powers of the Association shall be vested in, exercised by, and under the authority of, and the affairs of the Association shall be controlled by, a Board of Directors consisting of three (3) persons who need not be Members. The Board, by a majority vote, shall exercise for and on behalf of the Association all powers, duties and authority vested in or delegated to the Association.

b. The Developer shall have the absolute right to elect the Board until conversion of Class B shares to Class A shares as described above. Thereafter, Directors shall be elected at the first annual meeting of Members following the Development Period, and terms shall be staggered, so that one (1) Directors and two (2) Directors shall be elected respectively in alternating years. At the first annual meeting of Members, and at each annual meeting of Members thereafter, Directors shall be elected for two (2) year terms of office and shall serve until successors are elected and qualified.

c. In any elections of the members of the Association Board, every Member entitled to a vote at such elections shall have the right to cumulate his or her votes and give one (1) candidate, or divide among any number of the candidates, a number of votes equal to the number of Directors to be elected multiplied by the number of votes with such Member is otherwise entitled to cast. The candidates receiving the highest number of votes, up to the number of the Directors to be elected, shall be deemed elected.

## ARTICLE VII

### POWERS AND DUTIES OF THE ASSOCIATION

The Association shall have the following powers and duties:

a. To provide for the care and maintenance of all Common Areas owned by the Association.

b. To levy assessments on the Owners of Lots and to enforce payment of such assessments, all in accordance with the provisions of this Declaration.

c. To employ, at its discretion, the services of any person or corporation as manager (herein, "Managed"). Together with other employees, to , as may be directed and delegated by the Association Board, manage, conduct, and perform the business, obligations, and duties of the Association and to enter into contracts for such purpose; provided, however, that no management contract shall exceed a term of one (1) year and such contract shall be cancelable for good cause shown by either party upon thirty (30) days written notice. Such employees shall have the right of ingress and egress over such portions of the Properties as is reasonably necessary for the purpose of performing such business, duties, and obligations.

d. To maintain insurance or surety bonds, as deemed by the Association Board to be necessary and appropriate, including but not limited to:

(i) fire and appropriate extended coverage and other physical loss and damage insurance on all improvements located in or upon the Common Areas;

(ii) comprehensive liability insurance insuring the Board and Members, including the Developer, against liability to, and claims of, the public, Members or the Board and Association; except that the coverage in favor of the Developer shall not extend to the Developers capacity as a developer, and

(iii) such other insurance, including workmen's compensation insurance, to the extent necessary to comply with any applicable law and then-current insurance practices, and

indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary, appropriate or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the managements or possession of any Association funds or property.

e. To grant and convey to any third-party easements and rights of way in, on, over or under the Common Areas.

f. At the discretion of the Board, contract for trash and waste removal.

g. At its discretion to do all other things not inconsistent with this Declaration that the Board may from time to time determine to be either necessary or desirable for the Association, for its Members or for the protection, care or development of the Common Areas and the Property.

#### ARTICLE VIII

#### METHOD OF PROVIDING FUNDS

Section 1. For the purpose of providing funds to enable the Association to perform the duties and to discharge the obligations imposed upon it, all of the Properties shall be subject to an annual general fund assessment to be paid to the Association by Owners on such terms that a majority of a Quorum of the Members shall determine. Such assessment shall be prorated as follow:

A. 100% of the prorata share for each Lot, whether occupied or not until 50% of the Lots are sold.

B. After 50% of the Lots are sold:

a. 100% on each Lot; and

b. 10% on each unoccupied platted Lot owned by the Developer.

Section 2. The amount of the general fund assessment provided for in Section 1 of this Article may be increased by an amount not to exceed 25% in any given year from the prior year (excepting the first years assessment which shall not be restricted) by majority vote of a Quorum of Members in attendance in person or by proxy at such meeting at any general meeting or at a special meeting of Members; PROVIDED that at least ten days' notice in writing shall be given and such notice set out the reason, the purpose, and the need for the additional assessment.

Section 3. For the purpose of providing a special fund assessment to be used and to enable the Association to repair, replace, construct, and extend its facility and property, each Assessable Unit may be specially assessed by the Association at an annual rate in an amount not exceeding the amount fixed for the annual general fund assessment as provided in



Section 1 above for the year that such special assessment is approved. The amount of the special fund assessment against each Assessable Unit shall be in the same proration as required in Section 1 above. Such assessment may be made by the Board, subject to approval at a regular annual meeting or a special called meeting of all Class A Members entitled to vote. A majority of a Quorum of Class A Members present or by proxy at such meeting shall be required to approve such an assessment.

Notice of any meeting for the approval of an assessment or for one or more special fund assessments shall be given as provided in Article I no more than 30 days nor less than 10 days prior to the meeting. The notice shall set forth the purpose for which the sums derived from the assessment or assessments are to be used, together with the estimate cost of the proposed project or projects, and the proposed time and method of payment. The sums paid to the Association on account of such special assessment shall be set aside and used for the specific purpose for which the special fund assessment is made, unless otherwise authorized by the Members of the Association at a meeting duly called as herein provided.

Section 4. The assessments made pursuant to Section 1, 2, and 3 above shall be on a calendar year basis and shall be paid on January 1 of each year. The annual payment shall be in default if not paid on or before the fifteenth day of January of each year. Any assessment not paid when dues shall be subject to a late charge of Thirty Dollars (\$30.00) per month, which late charge may be increased from time to time by the Board.

#### Section 5. User Fees and Charges.

In addition to the general and special fund assessments, the Board may levy and collect charges and fees for the use of the Common Areas for the purpose of maintaining Common Areas, operating services on Common Areas, regulating the use of Common Areas and the services offered thereon, and for providing utility services. In addition, the Association may levy and collect any costs incurred in bringing an Owner or his Lot into compliance with the provisions of this Declaration.

#### Section 6. Developer Advances.

a. On an annual calendar year basis, the Board shall prepare the Association Budget which shall include a cash budget projecting anticipated cash receipts, cash expenditures and net cash surplus or deficit of the ensuing calendar year.

b. The Developer may, but shall not be obligated, to make cash advances to the Association to eliminate any projected net cash requirements of the Association which occur during the course of any calendar year. Such cash advance may be considered borrowing of the Association. The option of the Developer to make advance to the Association pursuant to this shall continue only during the Development Period.

## ARTICLE IX

### LIMITATION ON EXPENDITURES

Section 1. General Funds. The Association shall at no time expend more money within any one year for maintenance of Common Areas than the total amount of the general fund assessment for that particular year plus any surplus which it may have on hand from previous assessments, nor shall the Association enter into any contract binding the general fund assessments of any future year to pay for any such obligations.

Section 2. Special Funds. The limitations imposed upon general funds shall not apply to special fund assessments.

Section 3. Surplus Funds. The Association may create as part of the general fund assessment a surplus to reserve fund to be carried forward from year to year as determined by the Board as necessary and/or desirable for the greater financial security of the Association and effectuation of its purposes.

## ARTICLE X ASSESSMENTS

### Section 1. Creation of the Lien and Personal Obligation of Assessments

The Lot owner of each Lot by acceptance of a deed therefor agrees to pay to the Association such assessments or charges for special assessments as may be fixed, established, and constructed from time to time as hereinafter provided. The monthly, annual, and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land/ Lot and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Lot Owner of such property at the time when the assessment became due. Any and all assessments authorized by this Declaration may be assessed only after such time as a Lot is owned and occupied by the Lot Owner as his/her personal residence.

### Section 2. Purpose of Assessments

The assessments levied by the Developer, or the Association shall be used exclusively for the purpose of promoting the health, safety and welfare and enjoyment of the residents in the Properties and particularly for the maintenance, the care and preservation of the Common Properties and Areas, payment of taxes and insurance thereon, subdivision markers and signage and any other general maintenance and care for the general upkeep of

the common area herein described.

### Section 3. Base Assessments.

The initial annual assessment dues shall be \$600.00 per Lot per year. The initial annual assessment can be paid in fully annually no later than January 15 of each calendar year, or the Lot Owner can notify the Developer and/or the Association in writing that the Lot Owner will pay the annual assessment over the course of the year with monthly payments in the sum of \$50.00 per month must be paid no later than the 15<sup>th</sup> day of each month. Dues thereafter may be increased or otherwise changed as established at any time and from time to time by the Developer or the Association. The base assessment will be established in an amount which will cover the cost of the items of work covered by this Declaration plus the cost of administration to the Association.

### Section 4. Special Assessments for Capital Improvements or Additional Maintenance.

In addition to the base assessments authorized by Section 3 hereof, the Developer or the Association may levy a special assessment for the purpose of deferring in whole or in part, the reasonable costs of any necessary construction or reconstruction, unexpected repair or replacement of a described capital improvement upon Common Properties such as to maintain and operate the same in a first class condition, including the necessary fixtures and personal property related thereto, or for purposes of providing additional maintenance activities as authorized herein; provided, that any such assessment shall have the consent of Developer, so long as the Developer owns any lot(s) within Pendleton Heights, and thereafter, the assent of two-thirds of the votes of members voting in person or by proxy at any meeting duly called and properly held for this purpose, prior written notice of which shall be sent to all members pursuant to the bylaws of the Association.

### Section 5. Amount of Annual Assessments.

Subject to the limitations of Article VII, Section 3 hereof, the Association may establish annual assessments as needed for current maintenance costs and needs of the Association. The annual assessments shall be established at any meeting of the Association duly called for this purpose with written notice to all members at least thirty days in advance, said notice setting forth the purpose of the meeting. Further the assessments shall be established only by two-thirds of the votes of those members who are voting in person or by proxy at the meeting.

### Section 6. Date of Commencement of Assessments.

The assessments provided for herein for the Lots described within this Declaration

shall commence on the date Developer conveys a Lot to a Lot Owner or its builder. The first assessments shall be made for the balance of the calendar month and shall become due and payable on the day fixed for commencement. The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment. All monthly assessments levied shall be paid before the 7th day of the month. If not so paid, a late charge will be charged in the sum of \$10.00 to cover the costs of billing and accounting if the assessment is paid within the month immediately following the month for which it is due. Any Lot Owner who fails to pay assessment dues for two consecutive months shall pay a late charge will be charged interest at the rate of 18% per annum until paid in full as well as any cost incurred for collection, including court costs and reasonable attorney's fees.

#### Section 7. Other Association Matters.

The Lots described within this Declaration shall be governed by that Declaration of Restrictions, Covenants, and Home Associations Declaration of Pendleton Heights as to the quorum requirements, effect of non-payment of assessments, the board of the Association and all other administrative details as to the operations of the Association and the collection of assessments not inconsistent with this instrument.

### ARTICLE XI

#### APPROVAL OF PLANS AND MATERIALS, REQUIREMENT TO CONSTRUCT WITHIN ONE YEAR AND DEVELOPER OPTION

#### Section 1. Review by Developer.

No building, fence, hedge, privacy enclosure wall, retaining wall, driveway, sign, swimming pool, tank, hot tub, greenhouse, freestanding mailbox, lawn sprinkler system, above or below ground pool, gazebo or structure of any kind (collectively called "Structures") shall be commenced, erected or maintained on the Property, nor shall any addition to (including awnings) or change or alteration therein (including exterior color or design) be made, until the plans and specifications, in duplicate, showing the nature, kind, shape, height, materials, top of foundation elevation, lot grading and review of overall compliance with the subdivisions grading and drainage plan, color, location of the structure on the Lot have been submitted to and approved in writing by the Developer. The Developer may consider applications for approval of plans, specifications, etc., upon the basis of conformity with this Declaration and shall be guided by the extent to which the proposed Structure, addition or alteration will ensure conformity and harmony in exterior design and appearance of surrounding structures within close proximity and in keeping with the overall theme of the subdivision. No Structure shall be erected, placed, altered, or permitted to remain on any Lot nearer to any street than the minimum building setback line for the Lot as shown on the Plat, or approved in writing by the Developer and/or his

nominee, designee, or assignee.

The Developer's plan approval authority, all as described within this Declaration may be assigned in whole or in part to the Association only by a written instrument executed by the Developer and filed of record describing the nature and extent of such review approval assignment.

Section 2. Required Materials.

In addition to the other requirements for materials elsewhere herein described, exterior materials shall be of wood, masonry or acrylic stucco finish, windows shall be constructed of thermopane clad materials (Low E Glass Preferred).

Section 3. Subsequent materials.

Following the initial construction of all Dwellings on all Lots and also following the date in which the Developer no longer owns a Lot, then and in that event, any building products which may come into general usage for dwelling construction in this area after the date of these restrictions shall be acceptable if approved in writing by the Developer, or it's successor, such as the Association.

Section 4. Lot Owner Maintenance.

Each Lot Owner shall maintain their Dwelling in a good, clean, and above average condition, including, but not limited to not allowing paint to become peeling, cracking, or blistering, concrete surfaces shall not become overly cracked, heaved, or scattered and the overall appearance of the Dwelling of an Owner shall be maintained consistent with the appearances of other Dwellings within Pendleton Heights.

Section 5. Prohibited Improvements. Above Ground LP Gas Tanks Prohibited.

There shall not be erected or maintained upon any Lot or Dwelling constructed upon a Lot any clothesline apparatus, radio, television or other forms of aerals or antenna devices (except satellite dishes not in excess of 19 1/2 inches in width may be installed in the rear of a Dwelling not within sight of the street front on a Dwelling), basketball goals will be allowed if mounted on permanent poles, portable facilities, on upon the garage or dwelling. No LP / Propane gas tanks shall be used upon a Lot.

ARTICLE XII  
GENERAL PROVISIONS

### Section 1. Duration and Modification

The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or by the Lot owner of any land subject to this Declaration, 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 said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Lot owners of two-thirds of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part; provided, however, that no such agreement to change shall be effective unless written notice of the proposed Agreement is sent to every Lot owner at least sixty (60) days in advance of any action taken.

The Developer reserves the right to modify all or any portion of this Declaration as to any Lot or other tract of land described within the plat of Pendleton Heights, whether or not the Developer then presently owns such Lot or land, so long as such modification is desirable or necessary, in the sole discretion of the Developer, to further implement the development plan and theme of Pendleton Heights. This right of Developer to modify this Declaration shall cease at such time as the Developer maintains 10% or less of the votes for lots of the plat(s) of the subdivision Pendleton Heights.

### Section 2. Notices

Any notice required to be sent to any Member or Lot owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as Member or Lot owner on the records of the Association at the time of such mailing.

### Section 3. Enforcement

Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages or both and against the land to enforce any lien created by these covenants and failure by the Association or any Lot owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

### Section 4. Severability

In the event any one of these covenants or restrictions are held invalid by a Judgment or court order, this shall in no way effect any other provision which shall remain in full force and effect.



RECORDER'S CERTIFICATION  
JACKSON COUNTY, MISSOURI

08/17/2022 12:41 PM

NON-STANDARD FEE: \$25.00 FEE: \$39.00 4 PGS



INSTRUMENT NUMBER / BOOK & PAGE

2022E0077067

Book: Page:

Diana Smith, Recorder of Deeds

Jackson County  
Recorder of Deeds  
**Non-Standard Document**

This document has been recorded and you have been charged the non-standard fee pursuant to RSMo 59.310.3. This certificate has been added to your document in compliance with the laws of the State of Missouri.



Diana Smith  
Recorder of Deeds

415 E. 12th Street, Room 104  
Kansas City, MO 64106

112 W. Lexington, Suite 30  
Independence, MO 64050

This page has been recorded as a permanent part of your document. Please do not remove.



**COVENANT TO MAINTAIN STORM WATER DETENTION FACILITY  
PLAT OF WITTMER LOTS ON OLIVE, A REPLAT OF LOT 2 AND ALL OF LOTS 3  
& 4 MARTY'S WOODLAND ADDITION**

**THIS COVENANT** made and entered into this 21 day of April, 2022 by and between Kansas City, Missouri, a constitutionally chartered Municipal corporation (**City**), and of Wittmer Management, LLC, a Kansas limited liability company registered as a foreign limited liability company in Missouri (**Owner**).

WHEREAS, Owner has an interest in certain real estate generally located at 401 Park Avenue and 408 Olive Street in Kansas City, of Jackson County, Missouri, (**Property**) more specifically described in Exhibit "A" attached here to and incorporated herein by reference; and

WHEREAS, Owner intends to cause the Property to be platted as Plat of Wittmer Lots on Olive, A Replat of Lot 2 and All of Lots 3 & 4 Marty's Woodland Addition, (**Plat**), in accordance with Chapter ~~66~~<sup>88</sup> Code of Ordinances of the City of Kansas City, Missouri; and

WHEREAS, Owner intends to subdivide the Property and create pursuant to the Plat Lots of 1, 2, 3, 4, 5 and Tracts of A, B, and C as shown on Exhibit "B" attached hereto.

WHEREAS, the improvement proposed by Owner on the Property warrant storm water control to serve Lots of 1, 2, 3, 4, 5 and require preservation and maintenance of storm water detention facilities, located on Tract of A within the Plat, in order to ensure continuous and perpetual operation and effectiveness in controlling storm water runoff rates, volumes, and quality; and

WHEREAS, the City and Owner agree that it is in the public interest to detain storm water for the benefit of the Property and surrounding areas; and

WHEREAS, the provisions for the maintenance of the storm water detention facility is necessary to serve the development;

NOW, THEREFORE, Owner and City, for and in consideration of the benefits to themselves, their assigns and future grantees do hereby agree as follows:

**Sec. 1. Owner at its sole cost shall:**

- a. Be responsible for the perpetual preservation, maintenance, repair and replacement, if necessary of the storm water detention facilities and appurtenances (Facilities) within the storm water detention facilities located on of Tract A.
- b. Maintain the pipes, structures, grounds, and appurtenances for the Facilities located on Tract A.
- c. Keep the pipes, structures and appurtenances open and free of silt and vegetation.
- d. Keep the pipes, structures and appurtenances in good working condition or replace same if necessary.
- e. Mow the grass area within Tract A.

- f. Maintain the grades within Tract A pursuant to the approved plan on file in the office of the Director of City Planning & Development and identified as File No 2021-085.
- g. Obtain all necessary improvement and repair permits prior to performing any work on the Facilities.

**Sec. 2.** City is granted the right, but is not obligated to enter upon Tract A in order to maintain the Facilities including the pipes, structures, grounds, and appurtenances if Owner fails to maintain same. In the event that the City does provide maintenance for the facilities, then City may:

- a. Charge the costs for such maintenance against Owner, and/or the owner of Tract A, and/or the owners of Lots 1, 2, 3, 4, 5 served by the Facility on Tract A;
- b. Assess a lien on either the Tract A or on the Lots 1, 2, 3, 4, 5 or both served by the Facility on Tract A;
- c. Maintain suit against Owner, and/or the owner of Tract A and/or the owners of Lots 1, 2, 3, 4, 5 served by the Facility on Tract A for all cost incurred by the City for such maintenance.

Unless necessitated by a threat to life and/or safety, City shall notify Owner and/or the then-current owners of Tract A and Lots 1, 2, 3, 4, 5 not less than thirty (30) days before it begins maintenance of the Facilities.

**Sec. 3.** Owner and/or the owner of Tract A shall not use, nor attempt to use, in any manner which would interfere with the operation of the Facilities, in such manner as would interfere with the proper, safe, and continuous maintenance and use thereof, and, in particular, shall not build, thereon or thereover, any structure which may interfere, or cause to interfere, with the maintenance and use thereof.

**Sec. 4.** This covenant shall run with the land legally described in Exhibit "A." Owner shall remain liable under the terms of this Covenant unless and until Owner assigns its rights and obligations to a third party and such assignment is accepted by the City.

**Sec. 5.** To the extent allowed by law, in the event of a default under a loan agreement by a third party who is assigned the rights and obligations in accordance with the terms of this Covenant, the City will agree to an assignment from the defaulting third party to the secured lender.

**Sec. 6.** Notices. All notices required by this Covenant shall be in writing sent by regular United States mail, postage prepaid, commercial overnight courier or facsimile and addressed as hereinafter specified. Each party shall have the right to specify that notice be addressed to any other address by giving the other party ten (10) days notice thereof. Unless a party to this Agreement has given ten (10) days notice of a change of person and address for purposes of notice under this Agreement to the other party in writing, notices shall be directed to the following:

Notices to the City:  
Director of City Planning & Development  
City Hall, 414 East 12th Street  
Kansas City, Missouri 64106  
Fax number: (816) 513-2548

Notices to Owner shall be addressed to:  
Wittmer Management, LLC  
Limited Liability Company  
546 Olive Street  
Kansas City, MO 64124  
Adam Wittmer  
Telephone: (913) 486-2742  
Facsimile: (913)

**Sec. 7.** This Agreement shall not be amended, modified, canceled or abrogated without the prior written consent of the City.

**Sec. 8.** Invalidation of any part or parts of this Covenant by judgment or other court action shall in no way affect any of the other provisions, which shall remain in full force and effect.

**Sec. 9.** This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri.

**Sec. 10.** Upon the effective date of this Covenant, the City shall file this Covenant in the Office for recording real estate documents in Jackson, Missouri, and shall be binding on Owner, its successors, assigns and transferees.

**Sec. 11.** Owner shall jointly and severally release, hold harmless, indemnify and defend City and its agents, officers and employees from any and all responsibility, liability, loss, damage or expense resulting to Owner or to any person or property caused by or incidental as to the design, function, construction, maintenance or failure to maintain the Facility.

ATTESTATION BY CITY CLERK:

[Signature]  
City Clerk

KANSAS CITY, MISSOURI

By: [Signature]  
Director of City Planning and Development

Approved as to form:

[Signature]  
Assistant City Attorney

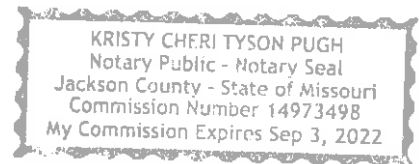
STATE OF MISSOURI     )  
  ) SS  
COUNTY OF Jackson )

BE IT REMEMBERED that on this 21 day of April, 2022, before me, the undersigned, a notary public in and for the county and state aforesaid, came Jeffrey S. Williams, Director of City Planning and Development, of Kansas City, Missouri, a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, and Maureen Sanders, City Clerk of Kansas City, Missouri, who are personally known to me to be the same persons who executed, as officials, the within instrument on behalf of Kansas City, Missouri, and such persons duly acknowledge the execution of the same to be the act and deed of said Kansas City, Missouri.

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

[Signature]  
Notary Public

My Commission Expires: Sept 3, 2022





# EXHIBIT A - LEGAL DESCRIPTION

## SUBDIVISION BOUNDARY DESCRIPTION

A Tract of land being The West 67.50' of the East half of Lot 2 and all of Lots 3 & 4, MARTY'S WOODLAND ADDITION, a subdivision in Kansas City, Jackson County, Missouri, said Tract more particularly described as follows:

(Note: The bearings in this description are based on the West Right-of-Way line of Olive Street having a bearing of South 02° 23' 49" West as determined by Global Positioning System observations and referenced to the Missouri State Plane Coordinate System, West Zone, NAD83.)

Beginning at the intersection of the West Right-of-Way line of Olive Street as per condemnation number 38040 recorded May 21, 1887, and the South Right-of-Way line of Elma Street as per condemnation number 23085 recorded June 30, 1903, Thence South 02° 23' 49" West, 132.00 feet on the West Right-of-Way line of Olive street to its intersection with the South line of Lot 2 MARTY'S WOODLAND ADDITION;

Thence North 87° 16' 02" West, 67.50 feet, on the South line of said Lot 2;

Thence North 02° 43' 58" East, 49.00 feet, to the North line of said Lot 2;

Thence North 87° 16' 02" West, 78.25 feet, on the said North line of Lot 2 to its intersection with the East Right-of-Way of Park Avenue;

Thence North 02° 23' 49" East, 83.00 feet, on said East Right-of-Way line to its intersection with the South Right-of-Way line of Elma Street;

Thence South 87° 16' 02" East, 145.47 feet to the POINT OF BEGINNING. Said Tract containing 15,374 square feet or 0.3529 acres.

