

17 → Janet → CALL to PIV.

ORIGINAL

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE
VILLAS AT HIGHGROVE

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THIS DECLARATION is made as of the 22nd day of July, 1999,
by JMB Mill Creek L.L.C. ("JMB"), a Missouri limited liability company, and WHITTAKER
CONSTRUCTION, INCORPORATED, a Missouri corporation ("Declarant").

WITNESSETH:

WHEREAS, JMB owns all of that certain tract of land in the County of
St. Charles, Missouri, as such tract of land is more particularly described on Exhibit A
attached hereto and incorporated herein by reference (the "Property");

WHEREAS, Declarant has contracted to purchase the Property pursuant to that
certain Contract for Sale dated August 31, 1998, as amended; and

WHEREAS, JMB and the Declarant intend, by recordation of this Declaration, to
subject the Property to the terms and provisions of this Declaration.

NOW, THEREFORE, JMB and the Declarant hereby declare that the Subdivision
and any parts thereof, shall be held, sold and conveyed subject to the following
easements, restrictions, covenants, and conditions, which are for the purpose of
protecting the value and desirability of, and which shall run with, the Subdivision and
be binding on all parties having any right, title or interest in and to the Subdivision or
any part thereof and shall inure to the benefit of each owner thereof and their
respective heirs, legatees, personal representatives, successors and assigns.

STATE OF MISSOURI
COUNTY OF ST. CHARLES
RECORD OF DEEDS
FILED FOR RECORD

ARTICLE I
DEFINITIONS

AUG - 2 1999

1. "Assessment Year" shall be the calendar year.
2. "Association" shall mean and refer to the Villas at Highgrove Homeowners Association, its successors and assigns.
3. "City" shall mean and refer to the City of O'Fallon, Missouri, a municipal corporation duly organized pursuant to the laws of the State of Missouri.
4. "Common Ground" or "Common Area" shall mean and refer to those areas of land within the Subdivision which are now or hereafter conveyed to the Association, together with the improvements thereon, which are intended to be devoted to the common use and enjoyment of all Owners. Such Common Ground shall include, by

By Barbara Hall
Time 11:21 AM

way of example and not by way of limitation, the areas identified as Common Ground as designated on the Plat and all other area described on the Plat as "Common Ground" or "Common Area". Common Ground shall not include those areas designated as "Master Common Ground" on (i) the Plat, or (ii) any deed of conveyance to the Master Association designating the property conveyed thereunder as Master Common Ground.

5. "Declarant" shall mean and refer to Declarant and to its successors and assigns, if such successors and assigns should acquire more than one undeveloped Lot from Declarant for the purpose of development and the deed of conveyance designates the grantee as a Declarant.

6. "Directors" or "Board of Directors" shall mean and refer to the Board of Directors of the Association, provided, if the Association is formed as a Limited Liability Company, then the same shall mean and refer to the Board of Managers of the Association.

7. "Dwelling" or "Dwellings" shall mean and refer to the residential dwellings, including, without limitation, single-family homes, cluster homes, townhouses, and/or villas constructed or to be constructed upon the respective Lots.

8. "Estates" shall mean and refer to the property encompassed by the Estates at Highgrove as recorded in Plat Book 36, Page 101-103 of the St. Charles County Recorder of Deeds' Office.

9. "Lot" or "Lots" shall mean and refer to the separately designated and numbered lots shown on the Plat, each of which contain or shall contain a single Dwelling, or the separately designated and numbered lots indicated on any supplemental plat of property subjected to this Declaration from time to time.

10. "Master Association" shall mean the Villas at Highgrove and Estates at Highgrove Master Homeowners Association, a Missouri nonprofit corporation, its successors, and assigns.

11. "Master Common Ground" shall mean (i) all areas labeled "Master Common Ground" (if any) on the Subdivision Plat (as hereinafter defined) and improvements therein, as more fully set forth in the Master Declaration, or (ii) any area described in a deed of conveyance to the Master Association as Master Common Ground.

12. "Master Declaration" shall mean the Master Declaration of Covenants, Conditions and Restrictions for the Villas at Highgrove and Estates at Highgrove Master Homeowners Association, as recorded in Book 2286, Page 1065 of the St. Charles County Recorder of Deeds' office, as the same may be amended from time to time.

13. "Owner" or "Owners" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

14. "Plat" shall mean and refer to the plat of the Villas at Highgrove, recorded in Plat Book 36, Page 104-105 of the Office of Recorder of Deeds for the County of St. Charles, Missouri, a copy of which is being recorded simultaneously with this Declaration and is incorporated herein by reference, and which plat reflects, among other matters, the Lots, the Common Ground and certain utility easements. "Plat" shall also mean and refer to any additional subdivided property made subject to this Declaration from time to time by amendment in the manner provided herein.

15. "Subdivision" shall mean and refer to the Property, as shown on the Plat, together with such additional parcels of real estate which may be subjected to this Declaration from time to time by amendment in the manner provided herein.

16. "Village" shall mean and refer to the Estates and the Subdivision respectively.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is the Subdivision, as shown on the Plat.

2. Additions to Existing Property. The Declarant may cause additional property or properties to be made subject to this Declaration and become part of the Subdivision by executing and recording an amendment to this Declaration, all without the consent of any Owner, mortgagee or holder of any deed of trust encumbering the Subdivision. The property or properties thus added may include areas and facilities which are to constitute a portion of the Common Ground. An amendment to this Declaration which adds Common Ground to the Subdivision may contain special covenants and restrictions as to such Common Ground.

ARTICLE III PROPERTY RIGHTS

1. Common Ground.
A. Obligations of the Association. The Association, subject to the rights and obligations of the Owners set forth in this Declaration, as it may be amended

and/or supplemented from time to time, shall have the right to and shall be responsible for, the exclusive management and control of the Common Ground and improvements thereon, together with the fixtures, equipment, and other personal property of the Association related thereto.

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B. Owners' Easements and Rights of Enjoyment. Subject to the terms and provisions of this Declaration: each Owner, and such Owner's family, guests and invitees shall have a nonexclusive, perpetual right and easement of ingress, egress, use and enjoyment over, across, upon, in and to the Common Ground, which easement shall include, without limitation, the right of access to and from, and use of, the Common Ground and the right to use utility, water, sewer, drainage and ponding easements therein. Such right and easement shall be appurtenant to and shall pass with the title to each Lot that is part of the Subdivision, shall not be severable therefrom, and shall be subject to the following provisions:

- (i) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Ground;
- (ii) the restriction that any Owner's voting rights and right of such Owner, his family, guests and invitees to use the Common Ground, Master Common Ground and any improvements or recreational facilities therein shall be automatically suspended for any period during which any assessment against such Owner's Lot remains unpaid after payment is due; and the right to suspend the same for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations;
- (iii) the right of the Association to dedicate all or any part of the Common Ground to any public agency, authority, or utility for such purposes and subject to such conditions as may be deemed advisable by the Association;
- (iv) the right of each other Owner and such Owner's family, guest and invitees, to the open, unimpeded and unobstructed use of the Common Ground, as provided in and restricted by this Article;
- (v) the restriction that no Owner or member of such Owner's family or any guest or invitee of any Owner or such Owner's family, shall operate, drive, ride, store or otherwise place any motorized vehicles on, in, or about any part of the Common Ground, including, but not limited to, cars, go-carts, trailers, recreational vehicles (RVs), sleds, snow mobiles, recreational motor vehicles, trucks, vans, all-terrain vehicles (ATVs), motorcycles, motorized

bicycles, motortricycles, dirt bikes, minibikes, tractors, truck-tractors, campers, and house trailers;

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- (vi) the restriction that no Owner or member of such Owner's family or any guest or invitee of any Owner or such Owner's family shall swim in or ice skate upon any lakes or ponds in the Common Ground or operate, drive, ride, store, or otherwise place any watercraft (motorized, self propelled, propelled or drawn by human, wind, sail, water, fuel, or otherwise), including, without limitation, boats, vessels, motorboats, sailboats, sailboards, canoes, rafts, jet skis, and kayaks, on, in, or about any part of the Common Ground;
- (vii) the easements, uses, limitations, conditions, reservations and restrictions hereinafter provided in this Declaration; and
- (viii) the right of the Directors, on behalf of the Association, to negotiate with any public agency for the conveyance of all or any part of the Common Ground, for any public purpose, and to execute such instruments as may be necessary for such purpose, subject to the proceeds of any such conveyance being held by the Association in trust for the Owners.

Under no circumstances whatsoever shall any Owner have a right or easement of view or sight over any part of the Common Ground, Master Common Ground, or any other Lot and to the extent any may be implied or created by this Declaration or by operation of law, then the same is expressly disclaimed. Each Owner and such Owner's family, guests and invitees shall use and exercise their easement rights over the Common Ground in a reasonable manner so as not to endanger or harm others, create a nuisance for others, or cause any obstruction or impediment to the use of the easements created by this Declaration by others authorized to use them.

2. Right to Encroach

In addition to the foregoing right and easement with respect to the Common Ground, each Owner and each Owner's family, guests and invitees shall have the right of portions of the Dwelling constructed on a Lot in the Subdivision and the fixtures belonging to such Dwelling to encroach on any adjacent Lot, such portions of the Dwelling to include, as illustration, but not as a limitation, walls, foundations, wing walls, eaves, sills, gutters, downspouts, bay windows, decks, patios, porches and air conditioners.

3. Association Right to Grant Easements and Easement Over Lots.

The Association shall have the right to grant permits, licenses, and easements over the Common Ground for utilities, roads, and other purposes necessary for the proper operation of the Subdivision.

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A perpetual, nonexclusive easement is hereby established in favor of the Association, its employees, agents, contractors, successors and assigns for a reasonable right of entry on any Lot to perform repairs or to do other work reasonably necessary for the proper maintenance of the Common Ground and/or to perform any of the powers, rights and duties available to or imposed upon the Association by this Declaration and/or the Bylaws of the Association, including, without limitation, enforcing the covenants and restrictions imposed by this Declaration. Any such entry may be without notice to any such Owner and neither the Association, its Board, officers, agents, contractors, or employees shall be liable for trespass by exercising any such easement or right reserved hereunder.

Each Lot and Dwelling shall be subject to a perpetual easement in gross in favor of the Association, its successors and assigns, for ingress and egress to perform its obligations and duties as required by this Declaration. Should it be necessary or desirable, in the sole opinion of the Board of the Association, to enter a Dwelling or Lot to maintain, service, improve, repair, or replace any improvements, landscaping, or equipment, then the employees, agents and contractors and their respective agents, subcontractors, and employees shall be entitled to enter in, upon or about the Dwelling and Lot for such purpose. The Association shall specifically have the authority to enter any Dwelling or Lot for the fulfillment of its obligations and duties required herein, including, without limitation, repairing, maintaining, servicing, improving, or replacing the roof, gutters, siding or exterior brick, drives, porches, patios and sidewalks thereof or any pipes or wiring therein that serve more than one Dwelling or Lot. Under no circumstances shall the Association be responsible for maintaining, servicing, improving, or replacing any equipment or improvements within or about any Dwelling that serve only that Dwelling, including, without limitation, the air conditioning, heating, plumbing, hot water heaters, wiring and electrical systems thereof. The responsibility for maintaining, repairing and replacing any equipment or improvements within or about any Dwelling that serve only that Dwelling shall be the sole responsibility of the particular Owner receiving the sole service of such equipment or improvement. To the extent that any such equipment or improvements are covered by an insurance policy maintained by the Association, the relevant Owner(s) shall be responsible for the payment of the deductible amount under said policy and the Association shall apply the policy's proceeds to any repair or replacement.

4. Conveyance of Title.

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Subject to the provisions of this Declaration, title to the Common Ground shall be conveyed to the Association no later than the date by which all Directors are elected by Owners. Upon termination of the Declaration, title to the Common Ground shall vest in the then Owners as tenants in common. The rights of such tenants shall only be exercisable appurtenant to and in conjunction with their Lot ownership and any conveyance or change of Lot ownership shall convey ownership in the Common Ground, as no interest in the Common Ground shall be conveyed by any such tenant except in conjunction with the sale of such tenant's Lot.

5. Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Subdivision Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area shown on the Subdivision Plat and all improvements in it shall be maintained continuously by the Association, except for those improvements for which a public authority or utility company is responsible.

6. Temporary Construction Easement. Until the last Lot is sold and conveyed to an Owner other than the Declarant, the Common Ground, Master Common Ground and each Lot shall be subject to an easement allowing Declarant, its employees, agents, contractors and subcontractors to enter upon and over the same for the purpose of grading and construction on the Common Ground, Master Common Ground and Lots.

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

2. Votes. All Owners, including Declarant with respect to unsold Lots, shall be entitled to one vote in the Association for each Lot owned by such Owner and in no event shall more than one vote in the Association be cast with respect to any Lot. If any Owner consists of more than one person, the voting rights of such Owner shall be exercised as if the Owner consists of only one person because only one vote is associated with each Lot.

3. Proxies. At all meetings of the Association, any member may vote in person or by proxy. All proxies shall be in writing, signed by the giver of the proxy, state

that the giver of the proxy is appointing the proxy holder to vote for the proxy giver at a designated meeting or meetings, and be filed with the Directors of the Association. Every proxy shall be revocable and shall automatically cease upon the conveyance by the giver of the proxy of such proxy giver's Lot.

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4. Association Meetings. Meetings of Owners shall be held at a location within the Subdivision or at such other place in St. Charles County, Missouri, as may be specified in the written notice of the meeting. The first annual meeting of the Owners shall be called by the Directors at such time as the Directors deem appropriate, but in any event no later than sixty (60) days after Declarant sells the last Lot in the Subdivision owned by Declarant to an Owner, and thereafter the annual meeting of the Owners shall be held on the same day of each year on the anniversary date of the first annual meeting called by the Directors at the same hour or at such other date or hour specified in the written notice of such meeting. Special meetings of the Owners may be called by the President of the Association, a majority of the Directors, or by Owners having at least one-third (1/3) of the votes in the Association. Written notice of the place, day and time of the annual meeting and all special meetings shall be delivered not less than five days before such meetings to all Owners and Directors, if such Directors are not Owners and to those institutional holders of a first mortgage or first deed of trust on any Lot that have requested such notice by written notification to the Directors no fewer than ten days prior to any such meeting. Any Owner or holder of a first mortgage or first deed of trust shall have the right to designate a representative to attend all annual and special meetings. If sent by mail, notice shall be deemed delivered when deposited in the United States mail, with postage thereon prepaid, addressed to the person or entity entitled to notice at his or her last known address.

5. Quorum. A quorum of Owners for any meeting shall consist of Owners having one-tenth (1/10) of the votes in the Association, whether present in person or by written proxy submitted to the Directors at or before the meeting. Unless otherwise provided herein, the decision of a majority of a quorum shall be valid as the act of the Association. If a quorum is not present at any meeting, another meeting shall be called as provided above, and business may be conducted at said second meeting if at least one-tenth (1/10) of the Owners attend in person or by proxy.

ARTICLE V BOARD OF DIRECTORS

1. Number and Term. The Board of Directors of the Association shall, except as otherwise provided herein, consist of three (3) persons, and each Director shall hold office for a term of one year and, in any event, until his successor shall be elected (or appointed, as the case may be) and qualified. Each Director shall be elected or appointed as follows:

(a) The first Board of Directors shall consist of individuals appointed by JMB who shall serve and whose terms as Directors shall automatically expire upon acquisition of the Property by Declarant; Declarant shall replace the JMB-appointed directors and the successors appointed by Declarant shall serve and their term shall continue until new Directors are elected and appointed and qualified pursuant to subsection (b) of this Section 1 below;

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(b) At the point in time at which fifty percent (50%) of the Lot are owned by Owners other than Declarant, then within ninety (90) days of such date (or at such earlier time as Declarant may elect) the Directors shall call a special election for the Association through which one Director shall be elected by a majority vote of a quorum of Owners and the remaining two Directors shall be appointed by Declarant. The Directors elected and appointed pursuant to this subsection (b) shall serve as Directors until new Directors are elected and appointed and qualified pursuant to subsection (c) of this Section 1 below;

(c) At the point in time at which ninety-five percent (95%) of the Lots are owned by Owners other than Declarant, then within one hundred eighty (180) days of such date (or at such earlier time as Declarant may elect) the Directors shall call a special election of the Association through which two Directors shall be elected by a majority vote of a quorum of Owners and the remaining Director shall be appointed by Declarant. The Directors elected and appointed pursuant to this subsection (c) shall serve as Directors until new Directors are elected and qualified pursuant to subsection (d) of this Section 1 below;

(d) At the point in time at which one hundred percent (100%) of the Lots are owned by Owners other than Declarant, then within thirty (30) days of such date (or at such earlier time as Declarant may elect) the Directors shall call a meeting of the Association (be it a special meeting or the first annual meeting) at which all three Directors shall be elected by a majority vote of a quorum of Owners.

Notwithstanding any provision contained herein to the contrary, Declarant shall have the sole right and authority to remove, replace and/or fill the vacancy of any Director appointed by Declarant.

2. Election of Directors by Mail. Notwithstanding any provision of this Declaration to the contrary, elections of persons to the Board of Directors may be conducted by mail. In order to conduct an election by mail, the Board shall send a notice for each Lot to the Owner(s) of such Lot, addressed to the address of the Owner(s) then on file with the Association, notifying the Owner(s) of the election and requesting nominations for the Board of Directors. The notice shall specify that nominations will be received for a period of three (3) weeks from the date set forth on the notice. Any Owner wishing to submit a nomination of an individual shall notify the

Board of Directors in writing of the name of the nominee; the nominee shall consent to such nomination in writing on the letter containing such nomination and the nominee shall also sign the letter setting forth the nomination of the nominee. After receiving nominations, the Board shall prepare a ballot containing the names of all nominations validly submitted to the Board in accordance with the requirements hereof within the time limit established in the notice. The ballot shall have typed upon it the address of the Board to which the ballot must be returned and the date by which the ballot must be received by the Board in order to constitute a valid vote. The date by which ballots must be received shall be such date as the Board of Directors, in its sole discretion, selects, provided, in no event shall such date be sooner than ten (10) days or later than twenty (20) days after the mailing of the ballots to the Owner(s). The Board shall mail one ballot for each Lot to the Owner(s) of such Lot, addressed to the address of the Owner(s) then on file with the Association. Together with each ballot, the Board shall send an envelope, upon the outside of which is typed the name of the Owner(s) to whom the ballot is sent. After voting for the nominees by marking the ballot, the Owner shall place the ballot within the envelope accompanying the ballot and shall sign the outside of the envelope next to the typewritten name of the Owner(s). This envelope must then be placed in an envelope addressed to the Board of Directors at the address set forth on the ballot and be personally delivered to such address or delivered to such address after being deposited in the United States Mail, postage prepaid, within the required time limit. All ballots received within the required time limit, properly marked and sealed within the accompanying signed envelopes, shall be counted by the Board and results shall be announced to the Owner(s) by the Board mailing notice within seven (7) days after the deadline for receiving ballots to all Owner(s) at the addresses of the Owner(s) then on file with the Association.

3. Qualifications. Except for Directors appointed by the Declarant, Directors shall be elected from among the Owners, shall be Owners, and shall reside in the Subdivision. Except as otherwise provided herein, if a Director shall cease to meet such qualifications during his term, he shall immediately cease to be a Director and his place on the Board shall be deemed vacant.

4. Vacancies. Except as provided for in Article V, Section 1 hereof, any vacancy occurring in the Board shall be filled by the remaining Directors, with the successor elected by the Owners at the next annual meeting or at a special meeting of Owners called for such purpose or by mail as set forth in Section 2 above.

5. Meetings. An annual meeting of the Directors shall be held immediately following the annual meeting of Owners and at the same place. Special meetings of the Directors shall be held upon call by a majority of the Directors on not less than forty-eight (48) hours' notice in writing to each Director, delivered personally or by mail or telegram. Any Director may waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action of the Board without a meeting.

6. **Removal.** Except for the Directors appointed by Declarant, any Director may be removed from office by Owners having two-thirds of the votes in the Association.

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7. **Quorum.** A majority of the number of Directors fixed by this Declaration as the full Board of Directors shall constitute a quorum for the transaction of business and the act of a majority of the Directors at a meeting at which a quorum is present shall be the act of the Directors, provided notwithstanding the foregoing, so long as the Declarant is appointing any Directors, the presence of at least one Declarant-appointed director shall be required to have a quorum. In the absence of a quorum, a majority of the Directors present at a meeting, or the Director, if there be only one present, may successively adjourn the meeting from time to time, not to exceed thirty days in the aggregate, until a quorum is obtained, and no notice other than an announcement at the meeting need be given of such adjournment.

8. **Actions without Meetings.** Any action which is required to or may be taken at a meeting of the Board of Directors may be taken without a meeting if consents in writing, setting forth the actions so taken, are signed by all of the Directors of the Board of Directors. The consents shall have the same force and effect as the unanimous vote at a meeting duly held.

9. **Compensation.** Directors shall receive no compensation for their services, unless expressly provided for in resolutions duly adopted by the Owners.

10. **Powers and Duties.** The Subdivision and affairs of the Association shall be managed by the Board of Directors of the Association. The Board of Directors shall have and is vested with all powers and authorities, except as may be expressly limited by law or this Declaration, to supervise, control, direct and manage the Subdivision, affairs and activities of the Association, to determine the policies of the Association, to do or cause to be done any and all lawful things for and on behalf of the Association, to exercise or cause to be exercised any and all of its powers, privileges or franchises, and to seek the effectuation of its objects and purposes. Without limiting the generality of the foregoing, the Board of Directors may:

- (a) administer the affairs of the Association and of the Subdivision;
- (b) engage, if deemed necessary or appropriate, the services of a professional managing agent who shall manage and operate the Subdivision for all of the Owners, upon such terms and for such compensation and with such authority as the Board may approve;
- (c) formulate policies for the maintenance, management, operation, repair and replacement of the Subdivision and improvements and

obtain such services that provide for the public health, safety and welfare of the Subdivision as the Directors may consider advisable;

- (d) adopt and enforce administrative rules and regulations governing the maintenance, management, operation, repair and replacement of the Subdivision and improvements, and to amend such rules and regulations from time to time;
- (e) provide for the maintenance, management, operation, repair and replacement of the Subdivision and improvements, including, without limitation, mowing, landscaping, planting, seeding, pruning and care of shrubbery, removal of plants, maintenance, repair and replacement of street lights located within or adjacent to street right of ways (unless such maintenance, repair and replacement shall be performed by a municipal entity), and maintenance, repair and replacement of improvements located within the Common Ground;
- (f) provide for payments for all maintenance, management, operation, repair and replacement of the Subdivision and improvements and also the collection and payment of any assessment pursuant to this Declaration or the Master Declaration, and to approve payment vouchers or to delegate such approval to the officers or the managing agent;
- (g) provide for the designation, hiring and removal of employees and other personnel, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Subdivision and improvements, and to delegate any such powers to a managing agent (and any such employees or other personnel that may be the employees of said managing agent);
- (h) consider and approve or reject any and all plans and specifications (except those of Declarant) for alterations to and construction of Dwellings and improvements on the Lots;
- (i) estimate the amount of the annual budget, and to provide the manner of assessing and collecting from the Owners their respective shares of such common expenses, as hereinafter provided;
- (j) collect funds owing to the Association from persons or entities other than Owners who, by provision of this Declaration, are entitled to use the Common Ground and who are obligated to

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share in expense for the improvement and maintenance of the
Common Ground;

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- (k) grant easements and rights-of-way over the Common Ground to such utility companies or public agencies or others as the Directors shall deem necessary or appropriate and to make rules and regulations, not inconsistent with the law and this Declaration, for the use and operation of the Common Ground and in every and all respects governing the operation, funding and usage thereof;
- (l) receive, hold, convey, dispose and administer, in trust, for any purpose mentioned in the Declaration, any gift, grant, conveyance or donation of money or real or personal property;
- (m) make all contracts and incur all liabilities necessary, related or incidental to exercise the Board's power and duties hereunder;
- (n) dedicate any private streets, drives, walkways or rights-of-way, or portions thereof to appropriate agencies and to vacate or abandon easements in accordance with applicable legal procedures;
- (o) comply with such instructions of Owners having a majority of a quorum of votes in the Association, as expressed in a resolution duly adopted at any annual or special meeting of the Owners, that the Directors deem to be beneficial to the Subdivision;
- (p) obtain, in the Board's discretion, adequate liability and hazard insurance on the Common Ground, as well as insurance protecting the Directors from any and all claims for damages arising out of any decision, act, or failure to act, of the Directors acting in their capacity as Directors;
- (q) exercise all other necessary or appropriate powers and duties commonly exercised by a Board of Directors and all powers and duties of the Directors as stated in the Declaration;
- (r) purchase a fidelity bond for any person or persons handling funds belonging to the Association or Owners;
- (s) enforce the Declaration, and any and all restrictions governing the Subdivision and to take any and all necessary steps to secure the enforcement and compliance of the same; and
- (t) exercise any and all other powers or acts as are authorized by the Declaration.

11. Records. The Directors shall cause to be kept detailed and accurate records in chronological order of the receipts and expenditures affecting the Subdivision, specifying and itemizing the common expenses incurred. Such records and the vouchers authorizing the payments of such expenses shall be available for examination by the Owners, and by the holders of a first mortgage or first deed of trust on any Lot, at convenient hours on weekdays. Payment vouchers may be approved in such manner as the Directors may determine.

ARTICLE VI ASSESSMENTS

1. Creation of the Subdivision Lien. Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay (i) to the Association: (1) regular assessments and charges (including, without limitation, assessments for the improvement, betterment, upkeep, maintenance, repair and replacement of Common Ground, Master Common Ground [if delegated by the Master Association], and improvements therein) ("Assessments"), and (2) special assessments ("Special Assessments") for capital improvements, such assessments to be established and collected as hereinafter provided, and (ii) to the Master Association: (1) regular master assessments and charges (including, without limitation, master assessments for the improvement, betterment, upkeep, maintenance, repair and replacement of Master Common Ground, and improvements therein ("Master Assessments"), and (2) master special assessments ("Master Special Assessments") for capital improvements, such Master Assessments and Master Special Assessments to be established and collected as provided in the Master Declaration.

The Assessments, Special Assessments, Master Assessments, and Master Special Assessment together with interest, costs, and attorneys' fees, shall be a charge on each Lot and improvements thereon and shall be, upon levying of the same by the Association and/or Master Association, as the case may be, a continuing lien upon the Lot against which the Assessment, Special Assessment, Master Assessment, and Master Special Assessment is made. Each such Assessment, Special Assessment, Master Assessment, or Master Special Assessment together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the same became due. Notwithstanding the foregoing, no Assessments, Special Assessments, Master Assessments, or Master Special Assessments shall be charged against Lots owned by Declarant and Declarant shall have no obligation to pay Assessments, Special Assessments, Master Assessments, or Master Special Assessments relating to Lots owned by Declarant at any time.

2. Purpose of Assessment. The Assessments levied by the Association and Master Association shall be used exclusively to promote the health, safety, and welfare

of the residents of the Subdivision, for the improvement, betterment, maintenance, upkeep, repair and replacement of the Subdivision, the Master Common Ground, and Common Ground, any recreational facilities constructed by Declarant or the Association for use by the Owners and otherwise to fulfill and perform the rights, duties, obligations and functions pursuant to this Declaration.

3. Establishment of Budget and Assessments.

A. Unless the Directors otherwise decide, the fiscal year of the Association shall be a calendar year. On or before the end of each Assessment Year, the Directors shall cause to be prepared an estimated annual budget for the next Assessment Year. Such budget shall take into account the estimated expenses and cash requirements for the Assessment Year, including, without limitation, salaries, wages, payroll taxes, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power, water and other common utilities, management fees, expenses associated with Common Ground and other common expenses (as distinguished from individual mortgage payments, real estate taxes and individual telephone, electricity, gas, and other individual utility expenses billed or charged to the separate Owners on an individual or separate basis rather than a common basis) and, if the Master Board elects (in its sole discretion) for the Association to levy and collect the Master Assessments and/or Master Special Assessments the amount determined by the Board of Directors of the Master Association to be necessary for any expenses associated with or necessary or desirable for the operation of the Master Association (including, without limitation, any of the foregoing types of expenses) and the maintenance, betterment, upkeep, improvement, repair or replacement of the Master Common Ground and any improvements located therein. The annual budget may provide for a reserve for contingencies for the Assessment Year and a reserve for replacements, in reasonable amounts as determined by the Directors. To the extent that the Assessments and other cash income collected from the Owners during the preceding years shall have been more or less than the actual expenditures for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account.

B. Until commencement of the first Assessment Year after Declarant has transferred control of the Subdivision pursuant to Article V, Section 1 hereof, the Owners of each Lot shall pay, on or before the 1st day of each Assessment Year, as such Lot's respective annual Assessment, such Lot's share of the estimated annual budget for each Assessment Year as estimated and determined by the Declarant and approved by the Directors.

C. Upon commencement of the first Assessment Year after Declarant has transferred control of the Subdivision pursuant to Article V, Section 1 hereof, the Directors shall prepare the annual Budget and shall fix the Assessment,

provided that the Assessment may be increased by more than ten percent (10%) in any given Assessment Year only by approval by Owners having at least two-thirds (2/3) of a quorum of the votes in the Association at an Association meeting and by a vote in accordance with the voting procedures set forth herein.

Copies of the estimated annual budget shall be furnished by the Directors to the Owners not later than thirty (30) days prior to the beginning of such Assessment Year. Any institutional holder of a first mortgage or first deed of trust on any Lot shall receive at no cost, if it so requests in writing, said statement from the Directors. On or before the first day of each succeeding Assessment Year, and without further notice, the Owners of each Lot shall pay, as the respective annual Assessment for such Lot, such Lot's share of the expenses for such Assessment Year as shown by the annual budget. In the event that the Directors shall not approve an estimated annual budget or shall fail to determine new Assessments for any Assessment Year, or shall be delayed in doing so, the Owners shall continue to pay each year the annual Assessment as last determined. All Owners shall pay the annual Assessments to the managing agent or as may be otherwise directed by the Directors.

D. The Directors shall cause to be kept a separate account for each Lot showing the respective Assessments charged to and paid by the Owners of such Lot, and the status of such account from time to time. Upon ten (10) days written notice to the Directors, and the payment of a reasonable fee therefor, any Owner or holder of a first mortgage or first deed of trust on any Lot shall be furnished a statement of the respective account for such Lot setting forth the amount of any unpaid Assessments that may be due and owing.

E. In the event that during the course of any Assessment Year, it shall appear to the Directors that the monthly Assessments, determined in accordance with the estimated annual budget for such Assessment Year, are insufficient or inadequate to cover the estimated common expenses for the remainder of such Assessment Year, then the Board shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of such year. Copies of such supplemental budget shall be made available to each Owner and, notwithstanding any provision hereof to the contrary, any additional Assessment necessary to cover such deficiency shall be levied in a fair and equitable manner within the sole discretion of the Directors.

4. Special Assessments for Capital Improvements. In addition to the Assessments authorized above, the Association may levy, in any Assessment Year, a Special Assessment applicable to that Assessment Year only, for the purpose of defraying in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Ground during that year including fixtures and personal property related thereto, provided that Special Assessments shall be approved by a vote of Owners having at least two-thirds (2/3) of a quorum of the votes of the Association at a meeting at which a quorum is present.

5. Uniform Rate. Assessments and Special Assessments must be fixed at a uniform rate for all Lots within the Subdivision, provided, however, the Board may, in the Board's discretion, set different rates for Assessments and Special Assessments with respect to the maintenance, repair, or replacement of items that are nonuniform in size, such as patios or decks.

6. Commencement of Annual Assessments. Each Owner shall pay his first annual Assessment upon the closing of the purchase of his Lot, adjusted according to the number of months remaining in the Assessment Year. Thereafter, annual Assessments shall be paid as provided herein. In addition to the foregoing, each Owner purchasing a Lot from the Declarant shall pay an initial set-up fee to be deposited with the Association which shall be in such amount as the Declarant shall determine but which shall be uniform for all Lot Owners.

7. Non-payment of Assessments. Any Assessment, Special Assessment, Master Assessment, or Master Special Assessment not paid within thirty (30) days after the date levied shall bear interest from the date levied at the lesser of (i) the rate of ten percent (10%) per annum, or (ii) the maximum rate per annum allowed by law. The Association, its Directors, the Master Association, and its Directors shall have the authority to exercise and enforce any and all rights and remedies as provided in this Declaration or the Master Declaration, as applicable, or as otherwise available at law or in equity, including, but not limited to, the right to foreclose the lien against the defaulting Owner's Lot in like manner as a mortgage on real estate or a power of sale under Chapter 443, R.S.Mo. In addition to the foregoing, any Owner's voting rights and the right of such Owner, his family, guests and invitees to use the improvements and recreational facilities in the Master Common Ground shall be automatically suspended for any period during which any assessment against such Owner's Lot remains unpaid after the date the same is due. No Owner may waive or otherwise escape liability for the Assessments, Special Assessments, Master Assessment, and Master Special Assessment established herein by non-use or abandonment of such Owner's Lot, Master Common Ground, or the Common Ground. Notwithstanding that the Master Association may elect, in its sole discretion, to cause the Association to bear the expense and risk of collecting Master Assessments and Master Special Assessments, the Master Association may, at its sole option, elect to enforce any rights or remedies provided to the Association in this Declaration, the Master Association in the Master Declaration, or at law or in equity to collect unpaid assessments levied by or on behalf of the Master Association against any Owner who is delinquent or against the Association itself, including, but not limited to, the right to foreclose the lien against the defaulting Owner's Lot or the Common Ground in like manner as a mortgage on real estate or a power of sale under Chapter 443, R.S.Mo.

8. Unexpended Assessments and Special Assessments. All funds paid from time to time by Owners for Assessments and Special Assessments, from time to time on

hand and unexpended shall be deemed to be owned equally and in common by the Owners.

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9. Subordination of the Lien to Mortgages. The liens of the Assessments, Special Assessments, Master Assessments, or Master Special Assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust encumbering the Lot. Sale or transfer of any Lot shall not affect the liens for Assessments, Special Assessments, Master Assessments, or Master Special Assessments; however, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments, Special Assessments, Master Assessments, or Master Special Assessments as to payments which became due prior to such sale or transfer but shall not relieve the Owner of such Lot at the time of the levying of such Assessment, Special Assessment, Master Assessment, or Master Special Assessment, as the case may be, of personal liability therefor. No sale or transfer shall relieve such Lot from liability for any Assessments, Special Assessments, Master Assessments, or Master Special Assessments thereafter becoming due or from the lien thereof.

ARTICLE VII COVENANTS AND RESTRICTIONS

1. Creation of General Covenants and Restrictions. Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to the following terms, provisions, covenants and restrictions which run with the land and are perpetual and appurtenant to the Lots:

(a) No Lot shall be used for any business or commercial purpose, and each Lot shall be used solely for residential purposes except (i) for use pursuant to home occupations not in violation of any zoning ordinances affecting the Subdivision, and (ii) Lots or portions of Lots may be used by Declarant for temporary offices, display or model homes and/or entrance monuments, provided however, that in no event shall any Lot be conveyed or transferred in any manner to a civic, religious, charitable or fraternal organization, or any person or persons other than for the exclusive use of an individual family.

(b) No building or garage shall be located closer than the permitted setback requirements established by the zoning and subdivision regulations applicable for the Subdivision within which the building or garage is located.

(c) Except as otherwise provided herein, each Owner shall maintain his Lot and Dwelling in compliance with all applicable zoning ordinances and subdivision regulations of the City within which the Subdivision is located. To the extent that the City or any other governmental authority shall require permits for the erection of any improvements upon a Lot, including, without limitation,

fences, decks or other structures or improvements, the Owner of such Lot shall be responsible for obtaining the same.

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(d) Subject to any applicable municipal ordinances or regulations of the City with respect to any Lot lying therein, no Owner, except Declarant with respect to Lots owned by Declarant, shall cause any construction on a Lot without first submitting the plans and specifications for such construction to the Directors and obtaining approval for such construction from two-thirds (2/3) of the Directors. In the event the Directors fail to approve or disapprove the plans and specifications within thirty (30) days after their submission to the Directors, the plans and specifications shall be deemed approved.

(e) The exterior walls of all Dwellings shall be constructed of wood or wood products, clay, brick, rock, stone, or vinyl siding, in an attractive manner and of good workmanship, provided however, that if the exterior walls of any Dwelling are constructed of wood or wood products, the same shall be painted or stained.

(f) No Dwelling, Lot or any portion thereof shall be used for any noxious or offensive activity nor for any purpose prohibited by law or ordinance or which may become an annoyance or nuisance, in the judgment of the Directors, to other Owners or inhabitants of Lots.

(g) No trash, rubbish, garbage, trashcan or other receptacle therefor, other than those receptacles approved by the Association, shall be placed on any Lot outside of a Dwelling.

(h) No tank, bottle or container of fuel shall be erected, placed or permitted above the surface level of any Lot.

(i) Each Owner shall, as necessary, repair, maintain, replace, or clear at his sole expense each and every gas, sewage, and water lateral line on or servicing only his Dwelling or Lot.

(j) No structure of a temporary character, trailer, mobile home, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a temporary or permanent residence.

(k) No signage of any kind shall be displayed to the public view on any Lot, except (i) one sign of not more than five square feet advertising the Lot for sale or rent, (ii) one sign of not more than one square foot warning people of dangerous animals located in the home or on the Lot, and (iii) one sign not exceeding one square foot notifying people of the presence of an alarm or home security system located in the home located on the Lot; provided, however, there shall be no restrictions on the number or type of signage used by Declarant to

advertise the Subdivision, Declarant's business, or any other development of Declarant's in St. Charles County.

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(l) The Association shall be responsible for and shall undertake and maintain the landscaping, planting, laying of sod, and seeding of each Lot. Any Owner may undertake landscaping, laying of sod, seeding, or planting on any unpaved portion of such Owner's Lot; provided, however, that if, in the reasonable judgment of the Board of Directors, the landscaping, planting, seeding or laying of sod or other similar actions performed by an Owner increases the cost to the Association of maintenance of any of the Lot, the Board of Directors may assess a special maintenance charge hereunder for the additional costs of such maintenance and such special maintenance charge shall be a lien against such Owner's Lot and such Owner personally, as set forth in Article VI of this Declaration pertaining to general and special assessments. The Board of Directors may, by a majority vote of those voting thereon, establish and set aside such portions of any Common Ground as the Board shall deem appropriate for the establishment of community gardens, and the Board shall promulgate the rules and conditions under which such community gardens may be used by the Owners. No landscaping, gardening, planting, laying of sod, seeding, grading, paving, or changing of terrain or construction of any structure, building or other improvements shall be undertaken, constructed, erected, performed, done, dug or installed by any Owner within any Lot except as approved by a majority of the Directors of the Association. In the event the Directors fail to approve or disapprove any of the foregoing within thirty (30) days after submission of the same to the Directors for their approval, the same shall be deemed disapproved.

(m) No Owner shall perform any act upon such Owner's Lot or within such Owner's Dwelling or permit any act to be performed in contravention of, and each Owner shall comply with, and cause such Owner's family, guests, tenants, invitees to comply with, the provisions of this Declaration, the Bylaws, the Articles of Incorporation of the Association, the Master Declaration, the Bylaws and Articles of Incorporation of the Master Association as any of the same may be amended from time to time.

(n) Fences that receive the prior written approval of the Board of Directors may be erected on any Lot provided such fences are built of wood, wrought iron or PVC (In colors and style approved by the Board of Directors) and of a height of no greater than six feet (6'). Under no circumstances shall chain link fences be allowed upon any Lot in the Subdivision. No fence, wall, hedge or shrub planting higher than three feet (3') above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points thirty feet (30') from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten feet (10') from the intersection of a street

property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

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(o) Each Dwelling must include at least a two-car garage, which must be attached to the Dwelling unless otherwise approved by the Directors. No more than one storage building or other outbuilding shall be permitted on any Lot and then only if the exterior material of such storage building or outbuilding coordinates with the exterior of the Dwelling and is approved by the Board of Directors.

(p) No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except dogs, cats or other household pets which may be kept, provided they are not kept, bred or maintained for any commercial purposes and provided that such household pets do not exceed three (3) in number per Dwelling on any Lot at any one time. Each Owner shall comply with all ordinances, zoning and subdivision regulations of the City within which the applicable Village is located relating to the supervision, control, responsibility, and maintenance of animals and/or pets in residential areas.

(q) Vehicles and watercraft, whether motorized, self-propelled, propelled or drawn by human, wind, sail, water, fuel or otherwise, including, but not limited to, boats, vessels, motorboats, sailboats, sailboards, rafts, canoes, kayaks, jet skis, boat trailers, recreational vehicles (RVs), sleds, recreational motor vehicles, trucks or vans containing business identification (unrelated to the manufacturer of such truck or van or retail auto dealership that sold or leased the van or truck) or commercial messages on their exterior, all-terrain vehicles (ATVs), motorcycles, motorized bicycles, motortricycles, dirt bikes, minibikes, tractors, truck-tractors, trailers, campers, and house trailers shall not be parked, placed or stored outside of any Dwelling, provided, this shall not prohibit the parking on the driveway located on the Lot of no more than two (2) passenger automobiles, licensed to the Owner of the Dwelling or a full-time resident thereof that are in operating condition.

(r) No owner, except Declarant, shall alter or change any watercourse or finished grade without the express, written approval of the Directors.

(s) No firearms, pellet or B.B. guns shall be discharged in the Subdivision.

(t) Satellite dishes shall not be installed, constructed or maintained on any Lot or on the exterior of any Dwelling or other improvement on any Lot without the prior written approval of the Board of the type, model, size, design, location, landscaping, appearance and other components thereof and related

equipment therefor. Any satellite dish approved by the Board shall be installed in accordance with, and maintained in the condition described in, the plans and specifications approved by the Board therefor. Under no circumstances shall television or radio antennas be permitted on any Lot or the exterior of any Dwelling or other improvement on any Lot.

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(u) No Owner shall do anything that would increase the rate of insurance on such Owner's Dwelling, the improvements thereon, or on any other Dwelling or improvement. Each Owner shall be responsible for obtaining and maintaining insurance on the personal property owned by such Owner within such Owner's Lot.

ARTICLE VIII PARTY WALLS

Each wall, including common garage walls and common fences, which is built as a part of the original construction of a Dwelling and placed on the dividing line between Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

1. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners thereof.
2. If a party wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time) other than by an act of an adjoining Owner, or the agent, invitee or family of such Owner, it shall be the obligation of the Owners to rebuild or repair same at their joint and equal expense.
3. If a party wall is destroyed or damaged through the act of an Owner, or the agent, invitee, or family of an Owner, it shall be the obligation of such Owner to rebuild or repair same at the sole cost of such Owner.
4. To the extent that any of the foregoing are covered by an insurance policy carried by the Association, the relevant Owner or Owners shall be responsible for the payment of the deductible amount under that policy, and the Association shall apply the policy's proceeds to any repair or replacement.
5. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successor in title.

**ARTICLE IX
INSURANCE: DAMAGE OR DESTRUCTION**

Each Dwelling and other improvements located in the Subdivision shall be insured against loss or damage by fire and other hazards as are covered under standard fire and casualty coverage insurance policies. The Board of Directors shall from time to time establish rules and regulations governing the obtaining and maintenance of such insurance either by the Owners or by the Board of Directors, as the Board of Directors shall determine in its sole discretion, and each Owner shall comply with such rules and regulations. In all events, the obtaining and maintenance of such insurance shall be governed by the following:

1. Each Dwelling and other improvements located in the Subdivision shall at all times be insured in an amount equal to the full replacement cost thereof.

2. Regardless of how such insurance is purchased or by whom, the Association hereunder shall at all times be named as an additional insured, and a copy of each policy, including any renewal or additional policy, shall be delivered to the Board of Directors.

3. Each policy shall provide that the insurer waives any right of subrogation against the Board of Directors hereunder, their respective employees, agents or contractors, and any other party.

4. Each policy shall provide that the same shall not be canceled, terminated, or amended with thirty (30) days prior written notice to the Board of Directors hereunder.

In case of fire or other casualty covered by such insurance, the insurance proceeds shall be applied to reconstruction or repair of the improvements. The affected Dwelling and Improvements shall be restored to substantially the same condition in which the same existed prior to the fire or other casualty, with the same vertical and horizontal dimensions as before.

If an Owner fails to obtain and maintain insurance in compliance with these provisions, the Board of Directors shall have the right, following written demand upon such Owner to provide insurance in compliance herewith and failure of such Owner to obtain such insurance within ten (10) days of such written demand, to obtain and maintain such insurance for the Dwelling and improvements of such Owner.

If the Board of Directors hereunder shall determine that such insurance shall be obtained and maintained by it in the case of a specific Dwelling, as hereinabove authorized, or if the Board of Directors shall determine that such insurance shall be obtained and maintained by it for each Dwelling and Improvements in the Subdivision, the cost of the premiums for such insurance shall be assessed against each Lot and

shall be added to the Assessment to which such Lot is subject under Article VI hereof, and, as a part of such Assessment, the same shall constitute an obligation of the Owner and shall be a lien on the Lot to which assessed and the same shall become due and payable in all respects as provided in Article VI hereof, provided that the limitations in the amount of the annual Assessment as set out in said Article VI shall not apply to the assessment for insurance premiums as authorized in this Article. The Board of Directors, when establishing the assessment for such insurance premiums, may utilize the estimated premium charges for such insurance but shall, thereafter, make such adjustments as are necessary to reflect the actual premium charge.

ARTICLE X EXTERIOR MAINTENANCE

Subject to the terms of this Declaration and the obligations and restrictions imposed upon Owners, the Association shall be responsible for maintenance to each Lot and the Common Ground. In addition, the Association shall be responsible for exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, including patios, decks, walls, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include driveway repair or maintenance, glass surfaces of exterior doors, garage doors, and windows.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, the Owner's family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Owner is subject. An Owner shall not have the right to paint, repair, maintain, or otherwise cover the exterior portion of the Lot except the glass portions of any door or window.

ARTICLE XI RESERVATION OF EXPENDITURES

The Declarant reserves the right to receive and retain any money consideration which may be refunded or allowed on account of any sums previously expended, deposited, placed in escrow, or subsequently provided by it for utility facilities or services, streets, subdivision fees or for any other purpose of any nature or description with respect to any of the Properties, regardless of when such expenditure is incurred.

ARTICLE XII MASTER DECLARATION

Each Lot and each Owner shall be subject to, and shall be entitled to the benefits and privileges provided by, the Master Declaration.

**ARTICLE XIII
GENERAL PROVISIONS**

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The Directors or any Owner shall have the right to enforce by any proceeding at law or in equity, any of the covenants, conditions, restrictions and provisions hereof, either to restrain or enjoin a violation or threatened violation or to recover damages. Failure or forbearance by the Directors or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The covenants and restrictions of this Declaration shall run with and bind the land subject hereto for a term of fifty (50) years from the date of recordation of this Declaration, after which the said covenants and restrictions shall be automatically extended for successive periods of twenty (20) years each, unless an instrument signed by the then owners of seventy-five percent (75%) of the Lots has been recorded, agreeing to terminate this Declaration as of the end of any such period. No such agreement of termination shall be effective unless made and recorded one (1) year in advance of the effective date of such change, and unless written notice of the proposed agreement of termination has been sent to every Owner at least ninety (90) days in advance of any action taken.

So long as the Directors are those appointed by Declarant, this Declaration may only be amended by instrument signed by all three Directors, and recorded in the Office of the Recorder of Deeds of St. Charles County, Missouri. Upon the election of Directors by the Owners as set forth in Article V, any modification, amendment or change in the terms of this Declaration may be made by instrument approved by vote or agreement of a majority of the votes of Owners in the Association voting upon such amendment, signed by the Directors, and recorded in the Office of the Recorder of Deeds of St. Charles County, Missouri.

Any notice required to be sent 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 on the records as the record owner of the Lot at the time of such mailing.

Invalidation of any of these covenants and restrictions by final judgment or decree shall in no way affect any other provision hereof, each of which shall remain in full force and effect. In the event of any conflict between any of the terms, conditions or provisions of this Declaration and any of the terms, conditions or provisions of the Articles of Incorporation of the Association and/or the Bylaws, the terms, conditions and provisions of this Declaration shall control.

STATE OF MISSOURI)
) SS
COUNTY OF ST. CHARLES)

On this 22nd day of July, 1999, before me appeared Brad Goss, who being by me duly sworn, did say that he is the Executive Vice President/General Counsel of Whittaker Construction, Incorporated, a Missouri corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation, by authority of its Board of Directors; and said Brad Goss acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County of St. Charles and State of Missouri the day and year first above written.

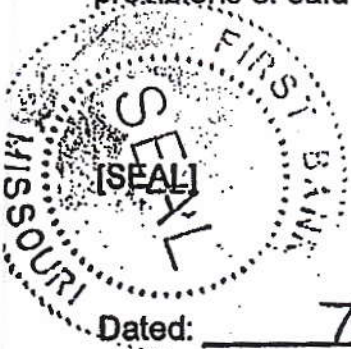
My commission expires: 10-23-99

Helena Sue Maudsland
Notary Public



CONSENT OF MORTGAGEE BOOK 2287 PAGE 581

The undersigned, FIRST BANK, organized and incorporated under the laws of the State of Missouri, being the holder of the Deed of Trust, recorded in Book 2174, Page 1918, in the Office of the Recorder of Deeds for the County of St. Charles, Missouri, on the real estate forming the subject matter of the foregoing Declaration, hereby consents to the recording of said Declaration and to the Plat recorded in Plat Book 36, Page 104-105 of the Office of the Recorder of Deeds for the County of St. Charles, Missouri and agrees that its said Deed of Trust shall be subject to the provisions of said Declaration and the exhibits appended thereto.



FIRST BANK

Charles A. Cafazza

Charles A. Cafazza, Vice President

Dated: 7-28-99

STATE OF MISSOURI)
) SS.
COUNTY OF St. Louis)

On this 28th day of July, 1999, before me personally appeared Charles A Cafazza, to me personally known, who, being by me duly sworn, did state that he is the Vice President of FIRST BANK organized under the laws of the State of Missouri and that the seal affixed to the foregoing instrument is the corporate seal of the corporation and that said instrument was signed and sealed on behalf of said corporation, by authority of its Board of Directors and said Charles A. Cafazza acknowledges said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County of St. Louis and State of Missouri the day and year first above written.

Minnette M. Davis

Notary Public

My Commission Expires: Dec. 28, 2001

MINNETTE M. DAVIS
Notary Public - Notary Seal
STATE OF MISSOURI
St. Louis County
My Commission Expires: Dec. 28, 2001

A TRACT OF LAND BEING PART OF FRACTIONAL SECTION 17, TOWNSHIP 47 NORTH, RANGE 3 EAST, ST. CHARLES COUNTY, MISSOURI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN A DEED TO CENTRAL ELECTRIC POWER COOPERATIVE RECORDED IN DEED BOOK 732 PAGE 1085, AND DEED BOOK 445, PAGE 671; SAID POINT ALSO BEING ON THE WEST LINE OF MISSOURI STATE HIGHWAY "M", 60 FEET WIDE; THENCE, WITH THE WEST LINE OF SAID HIGHWAY "M", SOUTH 01° 21' 42" WEST, A DISTANCE OF 514.13 FEET, TO AN ANGLE POINT; THENCE, DEPARTING THE SAID WEST LINE OF HIGHWAY M WITH THE FOLLOWING COURSES AND DISTANCES: NORTH 88° 38' 18" WEST, A DISTANCE OF 30.00 FEET, SOUTH 43° 43' 47" WEST, A DISTANCE OF 112.15 FEET, SOUTH 69° 06' 39" WEST, A DISTANCE OF 52.78 FEET, NORTH 85° 30' 30" WEST, A DISTANCE OF 97.19 FEET, NORTH 60° 07' 38" WEST, A DISTANCE OF 52.78 FEET, NORTH 34° 44' 46" WEST, A DISTANCE OF 96.48 FEET, NORTH 10° 00' 41" WEST, A DISTANCE OF 50.38 FEET, SOUTH 15° 10' 25" WEST, A DISTANCE OF 18.00 FEET, SOUTH 25° 38' 15" WEST, A DISTANCE OF 45.43 FEET, SOUTH 32° 18' 53" WEST, A DISTANCE OF 45.43 FEET, SOUTH 38° 59' 31" WEST, A DISTANCE OF 45.43 FEET, SOUTH 48° 17' 45" WEST, A DISTANCE OF 81.06 FEET, SOUTH 57° 35' 59" WEST, A DISTANCE OF 45.43 FEET, SOUTH 64° 16' 37" WEST, A DISTANCE OF 45.43 FEET, SOUTH 70° 57' 15" WEST, A DISTANCE OF 45.43 FEET, SOUTH 77° 37' 53" WEST, A DISTANCE OF 45.43 FEET, SOUTH 83° 12' 15" WEST, A DISTANCE OF 39.71 FEET, SOUTH 83° 58' 51" WEST, A DISTANCE OF 280.00 FEET, SOUTH 84° 05' 12" WEST, A DISTANCE OF 36.73 FEET, SOUTH 88° 43' 34" WEST, A DISTANCE OF 46.36 FEET, NORTH 83° 59' 28" WEST, A DISTANCE OF 46.36 FEET, NORTH 76° 42' 30" WEST, A DISTANCE OF 46.36 FEET, SOUTH 89° 50' 09" WEST, A DISTANCE OF 41.21 FEET, NORTH 10° 09' 08" EAST, A DISTANCE OF 35.93 FEET, NORTH 24° 12' 57" EAST, A DISTANCE OF 94.21 FEET TO A POINT OF NON-TANGENT CURVATURE TO THE RIGHT HAVING A RADIUS OF 250.00 FEET, AN ARC DISTANCE OF 37.90 AND A CHORD WHICH BEARS NORTH 61° 28' 28" WEST 37.86 FEET, THENCE, NORTH 57° 05' 54" WEST A DISTANCE OF 41.71 FEET TO A POINT OF CURVATURE TO THE LEFT HAVING A RADIUS OF 25.00 FEET AND AN ARC DISTANCE OF 39.27 FEET TO A POINT; THENCE, NORTH 57° 05' 54" WEST A DISTANCE OF 50.00 FEET, NORTH 32° 54' 06" EAST A DISTANCE OF 182.67 FEET TO A POINT OF CURVATURE TO THE LEFT HAVING A RADIUS OF 25.00 FEET AND AN ARC DISTANCE OF 39.27 FEET TO A POINT; THENCE, NORTH 32° 54' 06" EAST A DISTANCE OF 50.00 FEET, NORTH 57° 05' 54" WEST A DISTANCE OF 2.68 FEET TO A POINT OF CURVATURE TO THE LEFT HAVING A RADIUS OF 25.00 FEET AND AN ARC DISTANCE OF 35.17 FEET TO A POINT OF REVERSE CURVATURE HAVING A RADIUS OF 175.00 FEET AND AN ARC DISTANCE OF 70.95 FEET TO A POINT; THENCE, NORTH 65° 31' 32" EAST A DISTANCE OF 317.86 FEET TO A POINT OF CURVATURE TO THE RIGHT HAVING A RADIUS OF 175.00 FEET AND AN ARC DISTANCE OF 50.96 FEET TO A POINT; THENCE, NORTH 82° 12' 42" EAST A DISTANCE OF 95.97 FEET TO A POINT OF CURVATURE TO THE LEFT HAVING A RADIUS OF 25.00 FEET AND AN ARC DISTANCE OF 37.67 FEET TO A POINT; THENCE, NORTH 87° 33' 10" EAST A DISTANCE OF 50.02 FEET TO A POINT OF NON-TANGENT CURVATURE TO THE LEFT HAVING A RADIUS OF 25.00 FEET, AN ARC DISTANCE OF 36.64 FEET AND A CHORD WHICH BEARS SOUTH 46° 06' 27" EAST 33.45 FEET TO A POINT OF REVERSE CURVATURE HAVING A RADIUS OF 525.00 FEET AND AN ARC DISTANCE OF 21.12 FEET TO A POINT; THENCE, SOUTH 85° 47' 22" EAST A DISTANCE OF 7.93 FEET, NORTH 04° 12' 38" EAST A DISTANCE OF 122.03 FEET, SOUTH 88° 44' 00" EAST A DISTANCE OF 64.55 FEET TO THE SOUTHWEST CORNER OF THE AFOREMENTION CENTRAL ELECTRIC POWER TRACT; THENCE, WITH THE SOUTH LINE OF SAID CENTRAL ELECTRIC POWER TRACT 471.45 FEET TO THE POINT OF BEGINNING AND CONTAINING IN ALL 15.5143 ACRES, MORE OR LESS.