

## **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GOPPERT ACRES**

**THIS DECLARATION** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, is hereby executed by Dusty and Kristina Goppert (hereinafter "Developer").

### **RECITALS:**

**WHEREAS**, Developer desires to create a planned community of home owners who are committed to establishing and preserving certain common values and amenities and in order to provide a structure for establishing and maintaining such a community, Developer has prepared and records these Covenants, Conditions and Restrictions of GOPPERT ACRES Lots 1A-1F and Tract A, a subdivision in Jackson County, Missouri.

**NOW, THEREFORE**, 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 which shall run with such land and with the title to such land and shall be binding on all persons having or acquiring any right, title or interest therein or any part thereof subject to the limitations herein provided, and shall inure to the benefit of each Owner, his or its heirs, grantees, distributees, personal representatives, successors and assigns, the Association and the Developer.

### **ARTICLE I Definitions**

The following terms, when used in this Declaration, or in any supplemental Declaration made effective against the Property according to law, and when the first letters thereof are capitalized, shall have the following meanings (except as otherwise expressly provided or unless the context otherwise requires):

**1.01 Assessable Property.** "Assessable Property" shall mean and refer to the Property, together with all permanent structural improvements thereon, except such part or parts thereof as may from time to time constitute "Nonassessable Property."

**1.02 Assessments.** The term "Assessments" shall have the meaning specified herein and shall include Annual Assessments and Special Assessments as such terms are herein defined.



**1.03 Association.** "Association" shall mean and refer to Goppert Acres Homes Association, Inc., a not-for-profit Missouri corporation, or any successor thereof charged with the duties and obligations set forth herein.

**1.04 Association Board.** "Association Board" shall mean and refer to the Board of Directors of the Association.

**1.05 Common Property.** "Common Property" shall mean and refer to the pond, also known as Tract A, and any improved or unimproved real property, together with the Structures and personal property located thereon in which the Association or the Developer owns an interest as designatee for the common use and enjoyment of the Owners, as such areas may be depicted on any recorded subdivision plat of the Property, or portion thereof as "Common Property". The Pond, a/k/a Tract A, and all other Common Property, shall be owned and maintained by The Association.

**1.06 Completed Unit.** "Completed Unit" shall mean and refer to a Living Unit upon which construction is completed and which has been or is, in fact, occupied.

**1.07 Declaration.** "Declaration" shall mean and refer to this Declaration as the same may from time to time be supplemented or amended in the manner prescribed herein.

**1.08 Developer.** "Developer" shall mean and refer to Dusty and Kristina Goppert and their successors and assigns.

**1.09 Development Guidelines.** "Development Guidelines" shall mean and refer to the rules, regulations and policy statements adopted, promulgated, revised and amended by the Developer and enforced by the Association Board pursuant to this Declaration.

**1.10 Development Period.** "Development Period" shall mean and refer to the period of time commencing upon the execution date hereof, and terminating upon the date Developer sells one hundred percent (100%) of all of the Lots in the land legally described on Exhibit "A" or to be located within the Development Plan and Plans for construction of the single family residence to be built on said Lot is approved by Developer or the Association Board.

**1.11 Development Plan.** "Development Plan" shall mean and refer to Developer's plans for the development of Goppert Acres subdivision, a community of single family residential homes in Lee's Summit, Jackson County, Missouri, which plan may be filed with the City of Lee's Summit and may from time-to-time be amended, expanded, changed, abandoned, or



implemented, and shall include each and every plat and all amendments thereto which may be filed with respect to any portion of the land within the Development Plan.

**1.12 Director.** "Director" shall mean and refer to a member of the Association Board.

**1.13 Easement Area.** "Easement Area" shall mean that real property or portion of real property described within an easement on the Plat, plats or maps filed in accordance with the Development Plan.

**1.14 Living Unit.** "Living Unit" shall mean and refer to any Structure or portion of a Structure situated upon any Lot designed and intended for use and occupancy as a residence by a single person, a family or a "family sized" group of persons.

**1.15 Lot.** "Lot" shall mean and refer to any plot or parcel of land shown on the Plat or plats or subdivision map of any part of the Property or any other lot or parcel of land constituting part of the Property.

**1.16 Member.** "Member" shall mean and refer to every person or entity holding membership in the Association, as set forth herein, whether they be Class A Voting Members or Class B Non-Voting Members.

**1.17 Nonassessable Property.** "Nonassessable Property" shall mean and refer to all land designated "Common Property" or with a similar common property designation upon the plat, any map or plats of any part of the Property.

**1.18 Non-Residential Property.** "Nonresidential Property" shall mean and refer to any Property or building or any portion of a building which has a nonresidential use and which is situated on an Assessable Property. Structures constructed with Living Units, such as swimming pools, shall be considered "residential."

**1.19 Owner.** "Owner" shall mean and refer to any person or entity holding record title to the fee interest of any Lot or Living Unit. "Owner" shall include a contract for deed seller, but shall exclude a person having an interest merely as security for the performance of an obligation.

**1.20 Plat.** "Plat" shall mean and refer to the 1<sup>st</sup> Plat for Goppert Acres, recorded on the \_\_\_\_\_ day of \_\_\_\_\_, 2020 in the office of Recorder of Deeds for Jackson County, Missouri, together with all other plats recorded in respect of the Property.



**1.21 Property.** "Property" shall mean and refer to that certain real property described more particularly in Exhibit "A" attached hereto and made a part hereof.

**1.22 Residential Area.** "Residential Area" shall mean and refer to Lots 1 through 7, Goppert Acres, a subdivision in the City of Lee's Summit, Jackson County, Missouri according to the recorded plat thereof together with Lots within Exhibit "A" which may be specifically designated as "Residential Area".

**1.23 Restriction.** "Restriction" shall mean and refer to any covenant, restriction, easement, charge, assessment, lien or other obligation created or imposed by this Declaration.

**1.24 Right of Action.** "Right of Action" shall have the meaning specified herein.

**1.25 Structure.** "Structure" shall mean and refer to:

(a) any thing or object, trees and landscaping, the placement, size, shape, color, height and quality of which upon any Lot may affect, in the opinion of the Developer or Association Board, the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch or deck, swimming pool, fence, curbing, paving, wall, hedge, sign, appurtenance, or any temporary or permanent improvement to such Lot; and

(b) any excavation, fill, ditch, diversion dam, retention basin or other thing or device which affects or alters the natural flow of waters from, through, under or across any Lot or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot.



## **ARTICLE II**

### **GOPPERT ACRES HOMES ASSOCIATION, INC.**

**2.01 Powers and Duties of the Association.** The Association is organized to operate for the promotion of the common good and general welfare of the Members and Owners and consistent therewith, to acquire, own, improve, maintain, preserve, convey and control the Common Property, to administer and to enforce all covenants, restrictions, easements and charges contained in the Declaration and all liens created herein, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers (but not intended as affirmative obligations unless so stated) of the Association, including by way of illustration and not obligation, unless so stated, or limitation:

(a) **Assessments.** The Association may levy Assessments on the Owners and enforce payment of such Assessments, all in accordance with the provisions of the Declaration set forth in Article IV.

(b) **Right of Enforcement.** The Association shall also have the power and authority from time to time in its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration and to enforce, by mandatory or prohibitive injunction or otherwise, all of the provisions hereof or to pursue its Right of Action as provided herein.

(c) **Common Property.** The Association may plan, design, acquire, improve, construct on, lease and equip the Common Property with, by way of example and not limitation or affirmative obligation, ponds, lakes, parks and other open space landscaping, playgrounds, shelter houses, and other recreational facilities (collectively, the "Common Property Improvements" which may be referred to herein with the Common Property as the Common Property). The Association may also enter into contracts, leases or rental agreements for the purpose of providing such recreational facilities as deemed necessary or desirable by the Association Board and shall maintain, repair and replace the Common Property Improvements and provide adequate comprehensive insurance for the Common Property and Common Property Improvements, all as shall be determined to be necessary by the Association Board. However, The Association is obligated to accept and take ownership of Common Property,



mainly the Pond a/k/a Tract A, designated as such as of the time of filing of these Declarations, which Developer will transfer ownership of to The Association at the time of filing these Declarations.

(d) **Easements and Rights-of-Way.** The Association may grant and convey easements and rights-of-way in, on, over or under the Common Property and the Property for the purposes of constructing, erecting, operating or maintaining thereon, therein or thereunder any similar public or quasi-public improvements or facilities as may be considered necessary for the common good of said community.

(e) **Employment of Agents.** The Association may employ the services of any person or corporation as manager (herein "Manager"), 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 may enter into contracts for such purpose.

(f) **Insurance.** The Association shall obtain and keep in force such policies of insurance and surety bonds, as are necessary to adequately insure and protect the operations thereon and of the Association and as deemed by the Association Board to be necessary and appropriate. However, the Association shall be required to maintain liability insurance in an adequate amount covering all Common Property.

(g) **Management of Improvements.** The Association shall manage and control for its Members all improvements within public right-of-ways and on the Common Property.

(h) **Landscape Maintenance.** The Association shall care for, irrigate, protect and replant shrubbery, resow grass and replace sod in the Common Property.

(i) **Maintenance of Vacant Property.** The Association may mow, care for, maintain and remove rubbish from vacant or unimproved Property (except those Lots on which construction has commenced), and do any other things necessary or desirable in the judgment of the Association Board to keep any vacant and unimproved Property neat in appearance and in good order.



(j) **Lighting.** The Association may provide such lights as the Association may deem advisable on streets and sidewalks and on Common Property, dock, gateways, entrances, or other features, and on other Common Property or public property subject to the prior written approval of the Association Board.

(k) **Snow Removal and Street Cleaning.** The Association is not responsible and does not provide for the removal of snow from sidewalks and streets and the cleaning of streets, gutters, catch basins, sidewalks and pedestrian ways, nor for the repair and maintenance of sewers, storm sewers and appurtenant drainage facilities, and noting that the streets within the subdivision are public and snow removal shall be provided by the City of Lee's Summit.

(l) **Acquisition of Real Estate.** The Association shall acquire and own title to such real estate as may be reasonably necessary to carry out the purpose of the Association and promote the health, safety, welfare and recreation of Owners; pay taxes on real estate and facilities owned by it; and pay such taxes as may be assessed against the Common Property.

Consistent with the foregoing, the Association is authorized to exercise all powers which a corporation organized under the Not-For-Profit Corporation Law of Missouri may exercise.

(m) **Taxes.** The Association shall be responsible for the payment of any taxes that may come due on the Common Property or other property owned by the Association.

## **2.02 Membership in the Association.**

(a) There shall be two classes of Membership within the Association

Class A Members shall be comprised of the Owners of Lots 1D-1F. Class A Members shall be entitled to one (1) Association Membership and (1) vote in the Association so long as the Owner remains an Owner of such Lot(s), and such Owner shall specify in writing to the Association the name of the individual who holds the Association Membership. Class A Members shall have access to the pond and other Common Areas within the Association. Class A Members shall be responsible for payment of an annual assessment for the maintenance of the Pond and other Common



Property. Class A Members shall be bound by the Development Guidelines and shall obtain approval from the Developer of any construction plans before beginning construction of a single family residence on any owned Lots. Anything in this subsection to the contrary notwithstanding, where a Lot is owned of record in any manner of joint or common ownership, the joint or common owners thereof shall share among them the rights (including voting rights) given to an Owner pursuant to this Declaration, which they shall be entitled to exercise as a whole, but not in part, in whatever manner they shall jointly determine. With respect to voting rights in particular, joint or common ownership of a Lot shall entitle the Owners thereof to a total of one (1) vote, to be exercised in whatever manner they shall jointly determine.

Class B Members shall be comprised of the Owners of Lots 1A-1B. Class B Members shall not be entitled to vote in any Association matter. Class B Members shall not have access to the pond and other Common Areas within the Association. Class B Members shall not be responsible for payment of an annual assessment for the maintenance of the Pond and other Common Property. Class B Members shall be bound by the Development Guidelines and shall obtain approval from the Developer of any construction plans before beginning construction of a single family residence on any owned Lots.

(b) A builder of a residence on a Lot, although an Owner, shall not be entitled to any vote in the Association unless and until such builder occupies the Living Unit as such builder's sole place of residence.

(c) Subject to the provisions of this Section, once an Owner has been specified as a Member, a successor Member may only be specified upon at least fifteen days' prior notice to the President of the Association.

(d) A Membership shall not be transferred, pledged or alienated in any way, except as herein expressly provided. Subject to the provisions of Section 3.02(a), an Association Membership shall automatically be transferred to a new Owner upon the transfer of the Lot to which it appertains (and then only to such transferee), whether by sale, intestate succession, testamentary disposition, foreclosure of a mortgage or other legal process transferring fee simple title to such Lot.



(e) Subject to the provisions of this Declaration and the Association's By-Laws, the Association Board may make, amend or rescind such rules and regulations as it deems advisable for any meeting of Members, Association vote, referendum or election.

(f) Each Member shall be furnished with a copy of these Declarations and Restriction, as well as a copy of the Association's Bylaws at the time of purchasing a Lot within the Association.

(g) Membership in The Association shall be mandatory for each lot owner and any successive buyer pursuant to the structure of membership described in this above section.

### **2.03 Board of Directors (Association Board).**

(a) The powers of the Association shall be vested in, exercised by, and under the authority of and the affairs of the Association in accordance with the Association Articles of Incorporation and By-Laws, shall be controlled by, a Board of Directors consisting of three (3) Class A Members (the "Association Board"). The Association 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) Directors, except for Directors appointed or elected pursuant to Section 3.07 hereof, shall be elected so that one (1) of each of the three (3) Directors shall be elected in consecutive years. Directors shall be elected for three (3) year terms of office and shall serve until successors are elected and qualified.

**2.04 Suspension of Membership and Rights of Enjoyment.** The Association Board may suspend the voting rights of Class A Members and the rights of enjoyment of any said Member or user of the Common Property and the services offered thereon who:

(a) is subject to a Right of Action by reason of having failed to take reasonable steps to remedy a violation or breach of the Declaration within the number of days specified in a written notice given by the Association Board after such violation or breach; or

(b) has allowed any Assessment levied by the Association pursuant to this Declaration to become delinquent; or



(c) has failed to pay any user fee or charge levied by the Association when due and payable; or

(d) has violated any rules and regulations adopted by the Association Board governing the use and enjoyment of the Common Property or services thereon.

Such suspension shall be for the balance of the period in which the conditions set forth in subsections (a), (b), (c) and (d) of this Section 3.04 exist.

**2.05 Termination of Membership.** No Owner shall continue to be a Class A Member after he ceases to hold a qualifying interest in any Lot. No Class A Member may avoid his obligations under this Declaration by declining to use Common Property, abandoning his Lot, or by any other act of abandonment or renunciation.

**2.06 Notice of Meetings and Referendum.** Proper notice shall be given by the Association Board of all meetings of the Association Board at least fifteen (15) days prior to the meeting date; and of all meetings of the Association Class A Members, public hearings or referendums at least thirty (30) days prior to the hearing or referendum. The methods and procedures of such notice shall be determined by the Association Board in accordance with the By-Laws of the Association.

**2.07 Developers Control of the Association.** Notwithstanding anything in this Article III or elsewhere in this Declaration to the contrary, the Developer shall maintain absolute and exclusive control over the Association and the Association Board, including appointment and removal of the president and all officers of the Association and all directors of the Association Board until one hundred percent (100%) of the Lots in the Development Plan (as it exists from time-to-time) have been sold to Owners other than builder or Developer. Until such time, only the Developer shall be entitled to cast any votes with respect to the election and removal of the Association Officers and Directors, or any other matter requiring the vote or approval of the Association Board or Members. The Developer may voluntarily (but shall not be required to) at any time relinquish all or any part of the Developer's control and rights under this Article. The land owned by the Developer shall remain exempt from assessment under the provisions of Article IV during the Development Control Period or shall not commence until the 1<sup>st</sup> day of the month following the conveyance of such Lots and Residential Units to an Owner other than Developer with the exception of a conveyance to an approved builder prior to transfer.



**2.08 Pond Dam.** Concurrently with the filing of these Declarations, title to The Pond shall be transferred to the Association, and the Association shall accept and take title to the same and shall be responsible for the maintenance, repair, and reconstruction of a certain pond dam constructed in the Common Area. In the event it is necessary to construct or maintain said pond dame, the Association shall, at its own expense, cause the repair and reconstruction of the same in conformity with City requirements.

### **ARTICLE III**

#### **Imposition of Assessments and Liens Upon Property**

**3.01 Covenants for Assessments and Creation of Liens.** The Developer and each Owner, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a Deed or other conveyance for any Lot which is Assessable Property, whether or not the covenants contained herein shall be expressed in any such Deed or other conveyance, hereby covenants and agrees that:

(a) Owner will pay to the Association all Assessments which may or shall be levied by the Association against Assessable Property owned by him in each year or any part thereof, and that he will pay to the Association the user fees and charges and all other duly authorized charges to be established as herein provided, if applicable, levied by the Association in each year and including Special Assessments levied pursuant hereto.

(b) Owner shall be personally liable for all such Assessments and user fees and charges which become due while he is the Owner of each Lot being assessed.

(c) the annual assessments provided herein shall commence as to all Lots and Units on the 1<sup>st</sup> day of the month following the conveyance of such Lot(s) by the Developer and shall be adjusted according to the number of months remaining in the calendar year.

(d) all Assessments, together with the continuing obligation to pay each assessment assessed in all future years, and all user fees and charges, together with all costs, expenses, interest and reasonable attorney's fees incurred in the collection of delinquencies, shall become, upon the filing of this Declaration, and thereafter remain a charge against and be secured by a continuing lien upon the Assessable Property of such Owner.



(e) said charge and lien shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon the Assessable Property (or the Nonassessable Property to the extent that it may later become Assessable Property) whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instruments, excepting only purchase money mortgages or deeds of trust given to finance the purchase of the Lot and liens for taxes or other public charges as are made superior by applicable law.

### **3.02 Uniform Rate of Assessment.**

(a) For the purpose of providing funds for the uses specified herein, the Association Board shall assess against the Assessable Property in each year a charge (referred to herein as "Assessment" or "Annual Assessment"), which shall be uniform with respect to all Assessable Property, as hereinafter provided, and shall be in such amounts as determined by the Association Board and into classifications, which classifications shall be based upon the character of ownership, nature of use, i.e., residential or commercial, status of occupancy and such other criteria as the Association Board shall establish. Lots owned by the Developer or builder need not be assessed until such Lots are sold to an Owner. Lots which are owned by a builder shall not be assessed.

(b) Annually, prior to the end of each fiscal year for the Association, the Association Board shall prepare an annual cash budget projecting anticipated revenues, cash receipts, cash expenditures, and net cash, surplus or deficit for the ensuing fiscal year (the "Association Budget"). The fiscal year for the Association shall be the calendar year. The Association Budget presented by the Board of Directors shall be approved at the annual meeting by a vote of at least (2/3) of the Class A Members present so long as a quorum is present at said meeting.

**3.03 Billing of Annual Assessments.** At such time or times as the Association Board may determine, the Association shall levy the Annual Assessment, The Association shall send a written bill to each Class A Owner stating the amount of the Annual Assessment imposed against each Lot which is Assessable Property owned by the Owner, the time period for the payment thereof, and the interest rate to be charged for late payments thereof. Each Annual Assessment shall be due and payable on a date established by the Association Board and shall become delinquent on a date established by the



Association Board. The Association Board may establish payment procedures to allow payment of the Annual Assessment in increments during the year the Assessment is made, provided that this privilege is extended to all Owners on an equal basis, and provided that reasonable notice is given of each payment date, of the interest to be charged for late payments, of the liens established by this declaration, and of the suspension of membership rights as a consequence of the failure to pay.

**3.04 Commencement of Assessments.** The Assessable Property shall become subject to the Assessments set forth herein on the first day of the month following the Owner moving into the house unless otherwise designated by the Developer with the exception of the Lots owned by Developer. Such Assessments shall be adjusted and prorated according to the number of months remaining in the fiscal year of the Association as such fiscal year is set forth in the Association By-Laws.

### **3.05 Late Payments.**

(a) The Association Board may from time to time establish or change the rate of interest which shall be charged for the payment after the delinquency date of any portion of an Assessment, provided that such interest rate shall not exceed the maximum interest rate permitted under Missouri law and provided that reasonable notice of such charge is given to the Members.

(b) In the event of default in the payment of any one (1) or more installments of the Annual Assessment established hereunder, the Association may declare any remaining balance of said Annual Assessment at once due and payable.

(c) In the event that a Class A Owner shall fail to fully pay the Assessment by the delinquency date thereof, such unpaid amount shall become a binding personal obligation of such Owner, and the Association shall have the right, pursuant to the provisions hereinafter provided to enforce the lien for Assessments. The Association shall have the right and duty to take all appropriate actions and steps to collect any such unpaid Assessments. Each delinquency shall constitute a separate basis for a demand or claim of lien or liens, but any number of defaults may be included within a single demand or claim of lien or liens on account of prior delinquencies and shall be deemed to include subsequent delinquencies and amounts due on account thereof. The Association may institute a suit to recover a money judgment for the same, together with interest thereon and reasonable expenses



of collection, including attorney's fees, without foreclosing or waiving the lien hereinbefore provided.

**3.06 Certificate of Payment.** Upon written demand by an Owner, the Association shall issue and furnish to such Owner, within a reasonable period of time, a written certificate stating that all Assessments, including interest and costs (if any), have been paid with respect to any specific Lot owned by said Owner as of the date of such certificate, or if all Assessments have not been paid, setting forth the amount then due and payable.

**3.07 User Fees and Charges.**

(a) In addition to the Annual Assessments, the Association Board may levy and collect charges and fees for the use of Common Property for the purpose of maintaining, refurbishing, replacing and repairing the Common Property and the Common Property Improvements, and operating services on Common Property.

(b) If any Owner or any other person obligated to pay shall fail to pay any user fee or charge when due and payable, the Association Board may immediately suspend such Owner's right of enjoyment of the Common Property or services thereon and may take whatever action it deems necessary to enforce such suspension.

**3.08 Additional Procedures.** The Association Board shall have the right to adopt procedures for the purpose of making the Assessments, user fees, and charges provided for herein and for the billing and collection of the same, provided that such procedures are not inconsistent with the provisions hereof.

**3.09 Special Assessments.**

(a) In addition to the Annual Assessments authorized herein, the Association may levy in any year a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair, or replacement of Common Property Improvements including any capital improvement upon the Common Property, or the cost of any utility deemed necessary by the Association Board to serve the Property including the necessary fixtures and personal property related thereto, or any unexpected cost or expense of the Association, as the Association Board may determine.

(b) A special Assessment shall become effective upon written



notice by the Association Board. Billing of Special Assessments shall be handled according to the procedures set out herein.

(c) Following the Development Period, Special Assessments shall not be imposed by the Association until after the Association Board first presents any such proposed Special Assessment to the Members at a meeting to be called for that purpose pursuant to Section 3.10 hereof. The Special Assessment shall require approval by a vote of two-thirds (2/3) of the Membership voting in person or by proxy at a meeting of the Members. Written notice of said special meeting shall be sent to all Members not less than thirty (30) nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

### **3.10 Quorum for any Action Authorized Under Article III Meetings Regarding Assessments.**

The first meeting called, as provided in Sections 3.02(b) or Section 3.09(b), the presence at the meeting of Members or of proxies entitled to cast seventy five percent (75%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the thirty (30) day notice requirement as set forth herein and in the Bylaws of the Association, and the required quorum at any such subsequent meeting shall still be seventy five percent (75%) of all the votes of the membership. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

## **ARTICLE IV Use of Funds**

**4.01 Purposes for which Funds May Be Used.** The Association shall apply all funds received by it pursuant to this Declaration and all other funds and property received by the Association including the accumulated funds referred to in Section 4.02, to the following;

- (a) the operating costs and expenses of the Association, including planning and implementation of community programs and Common Property Improvements;
- (b) payment of all real and personal property taxes and assessments, if any, separately levied upon or assessed against the Association or any property owned by the Association; and
- (c) payment of all premiums and charges for all policies of



insurance or surety bonds, as deemed by the Association Board to be necessary and appropriate.

**4.02 Accumulation or Funds Permitted.** The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual Assessments, or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessment in the succeeding year, but may carry forward from year to year such surplus as the Association Board may determine to be necessary or desirable for the greater financial security of the Association and the effectuation of its purposes, including accruing funds for the replacement or construction of facilities.

**4.03 Increase in Annual Assessments.** From and after January 1, 2019 the annual assessment heretofore enumerated may be increased effective January 1<sup>st</sup> of each year without a vote of the membership in an amount equal to One Hundred Fifty Percent (150%) of the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July upon motion and action by the Board of Directors. From and after January 1, 2019 the maximum annual assessment may be increased without regard to the Consumer Price Index by a vote of the members for the next succeeding year and each succeeding year thereafter provided that any such change or increase shall have an assent of seventy five percent (75%) of the votes by voting in person or proxy by a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

## **ARTICLE V**

### **Common Property**

#### **5.01 Conveyance of Common Property.**

(a) The Developer shall convey the Common Property to the Association which is obligated to accept and take title to said Common Property. The deed of conveyance may contain appropriate restrictions and assurances that such property shall be reserved for the common use and enjoyment of the Owners and prohibit the construction thereon of buildings for commercial, retail or Living Unit use.

(b) Each conveyance of Common Property for consideration to the Association by the Developer shall be subject to the approval



of a majority of the Association Board following the Development Period.

## **5.02 Use of Common Property.**

(a) Every Class A Owner, by reason of such ownership, shall have a right and easement of enjoyment in and to all Common Property, and such easement shall be appurtenant to and shall pass with every Lot upon transfer. Any guest of a Class A Member shall be entitled to a right or privilege of enjoyment of Common Property subject to such regulations as may be promulgated by the Association Board. Each such guest shall be accompanied by the Member sponsoring such guest at all times such guest is using the Common Property.

(b) All such rights, easements and privileges conferred under this Article shall, however, be subject to the right of the Association Board to:

- (i) establish, adopt, promulgate, amend and rescind reasonable rules and regulations pertaining to the use, operation and maintenance of Common Property which shall enhance the preservation of such facilities, promote the safety and convenience of the users thereof, and which shall serve to promote the best interests of the Members and the Goppert Acres community;

- (ii) determine the use or uses to which Common Property may be put; provided, however, that any designation of use which is inconsistent with the use designated by the Developer upon conveyance, shall be subject to the provisions of this Declaration;

- (iii) determine which, if any, Common Property may be used and enjoyed by, or conveyed or dedicated to the general public or a federal, state or local government body; provided, however, that Property shall not be conveyed to a public body unless, after the Development Period, the Association Board has obtained the prior approval of three fourths (3/4) of the Class A Members who are present in person or by proxy and voting at an Association meeting at which



a quorum is present or voting in a referendum called for such purpose after proper notice is given;

(iv) borrow money for the purpose of improving any Common Property including improvements thereon; provided, further, that any such mortgage shall be subject to the approval of three-fourths (3/4) of the Members who are present in person or by proxy and voting at an Association meeting at which a quorum is present or voting in a referendum called for such purpose after the proper notice is given; and

(v) apply for, accept and expend loans or grants from federal, state or local governments and to comply with any conditions required by such governments in order to obtain such loans or grants including conditions relating to the use and enjoyment of Common Property by the general public.

**5.03 Damage or Destruction of Common Property by Owner.** In the event any Common Property is damaged or destroyed by an Owner, or any of his or her guests, tenants, licensees, agents or members of their families, such Owner does hereby authorize the Association to repair such damaged areas. The amount expended for such repairs shall be a Special Assessment and lien upon the Lot of said Owner and shall be enforceable as other Assessments.

**5.04 Suspension of Rights.** The Association shall have the right to suspend the right or privilege under this Article of any Member for any period during which the Assessments or user fees and charges assessed under Article IV hereof remain delinquent, and may suspend said right or privilege in connection with the enforcement of any rules and regulations relating to Common Property in accordance with the provisions of this Article.

**5.05 Common Property as Nuisance or In Disrepair.** In the event that any condition of the Common Property is determined to be a nuisance or in disrepair in violation of any provision of the Lee's Summit Property Maintenance Code, and such disrepair or nuisance is abated pursuant to procedures otherwise provided in the Property Maintenance Code, that the costs to abate the nuisance created by the failure to maintain any Common Property shall be assessed proportionally against Lots 1D-1F and the Owners of Lots 1D-1F within the Association, a/k/a Class A Members, in an equal amount per individual lot or lot owner, pursuant to the tax bill provisions of



the Property Maintenance Code, and that the amount caused by the Finance Director to be assessed annually by tax bill shall not exceed five percent of assessed valuation per individual lot or lot owner.

**5.06 If Maintenance Of Common Property Pertaining to Storm Water Fails to Meet City Standards.** In the event it is determined that the maintenance of any storm water conveyance, retention or detention facility located on Common Property fails to meet any standard set forth in the final development plan, or final plat if no final development plan is required, and such failure is abated by the City of Lee's Summit pursuant to the procedures the division of public works, that upon completion of the work and certification by the Director of Public Works that the deficiency has been abated, the Director of Public Works shall certify all costs of such abatement, including enforcement costs and expenses of staff time incurred in the remediation of the deficiency, to the City's Director of Finance who shall cause a special tax bill therefore, or add the costs thereof to the annual real estate tax bill, at the Finance Director's option, proportionally against the individual lots 1D-1F and lot owners of lots 1D-1F within the Association, in an equal amount per individual lot or lot owner, that the amount caused by the Finance Director to be assessed annually by tax bill shall not exceed five percent (5%) of assessed valuation per individual lot or lot owner, that the tax bill from the date of its issuance shall be a first lien on the property until paid and shall be prima facie evidence of the recitals therein and of its validity and no mere clerical error or informality in the same, or in the proceedings leading up to the issuance shall be a defense thereto, that each special tax bill shall be issued by the City Clerk and delivered to the City Finance Director on or before the first day of June of each year, and that such tax bill, if not paid when due, shall bear interest at the rate of eight percent.

## **ARTICLE VI Developmental Guidelines**

### **6.01 Development Guidelines.**

(a) As contemplated by and pursuant to the provisions of this Article, the Developer or Association Board may adopt, promulgate, amend, revoke and enforce design and development guidelines, hereafter referred to as the Development Guidelines, for the purposes of establishing policies, requirements, standards, restrictions and specifications with respect to the approval and disapproval of all proposed uses and with respect to all construction or alteration of any Structure on any Lot, Easement Area or Common Property.

(b) The Developer or Association Board shall make a published



copy of its current Development Guidelines, readily available to Members and prospective Members of the Association and builders.

**6.02 Submission of Plans and Specifications.** No structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance therefore, nor shall any new use be commenced, unless plans and specifications (including a description of any proposed new use) therefor shall have been submitted to and approved in writing by the Developer or Association Board. Such plans and specifications submitted to the Developer or Association Board shall be in such form and shall contain such information as may be required by the Developer or Association Board in the Development Guidelines.

**6.03 Approval of Plans and Specifications.** The Developer or Association Board, in its discretion, is permitted to approve deviations from the Development Guidelines and from this Declaration when, in its judgment, such deviations will result in a more commonly beneficial use. Such approval must be granted in writing and when the Developer or Association Board approves and grants a deviation from this Declaration, such approved deviation shall for all purposes amend this Declaration but only to the limited extent of such specifically approved deviation. No approved deviation shall be deemed to act as a precedent in respect of any other requests for approvals of deviations.

#### **6.04 Disapproval of Plans and Specifications**

(a) The Developer or Association Board shall have the right to disapprove any plans and specifications submitted hereunder as determined by the Developer or Association Board in its sole judgment and discretion for any reason including, among others, failure of such plans or specifications to comply with this Declaration or the Development Guidelines.

(b) In any case in which the Developer or Association Board shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the Developer or Association Board shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be



prepared and submitted for approval.

**6.05 Inspection Rights.** After reasonable notice and at any reasonable time or times, any agent of the Association or the Developer or Association Board may enter upon any Lot for the purpose of inspections of the Lot and exterior of the structure to ascertain whether the use or maintenance of such Lot or the construction of any Structure thereon is in compliance with the provisions hereof. Neither the Association, nor the Developer or Association Board, nor any agent thereof shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

**6.06 Violations.** If any Structure shall be erected, placed, maintained or altered upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with the plans and specifications approved by the Developer or Association Board pursuant to this Declaration, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. Upon written notice of the violation to the Owner from the Association Board (which shall be deemed to have been delivered if sent by certified or registered mail, return receipt requested, postage paid), any such Structure so erected, placed, maintained or altered upon any Lot in violation hereof shall be removed or altered, and any such use shall be terminated, so as to extinguish such violation. If the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same within the time specified in such notice, the Association shall have the right to pursue its Right of Action as provided herein, together with all remedies whether at law or in equity and whether specified herein, and including but not limited to the remedy of injunctive relief and obtaining a monetary judgment for all costs, expenses, including reasonable attorney's fees and damages.

## **ARTICLE VII**

### **General Restrictions**

#### **7.01 Maintenance Required by Owner.**

(a) Each Class A and Class B Owner shall keep all of his Lots and all improvements thereon, in good order and repair, including, but not by way of limitation, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all improvements, all in a manner and with such frequency as is consistent with safety and good property management. The Association shall have



the right, after written notice to the Owner of the affected Lot as hereinafter provided, to remove trash or rubbish and to cut grass, weeds, and vegetation and to trim or prune any hedge or other planting that, in the opinion of the Association Board, by reason of its location or height or the manner in which it is permitted to grow, is detrimental to adjoining Lots or is unattractive in appearance. The Association shall, further, have the right to care for vacant and unimproved Property, all at the cost and expense of the Owner thereof. Such cost and expense incurred by the Association shall be paid to the Association upon demand and, if not paid within ten (10) days thereof, shall become a lien upon the Lot affected, equal in priority to the liens provided for herein.

(b) The Association Board shall give fifteen (15) days' written notice to the Owner in violation of this Restriction, setting forth the specific violation or breach of this Restriction and the action required to be taken by the Owner to remedy such violation or breach; if, at the end of such time, reasonable steps to accomplish such action have not been taken by the Owner, the Association Board may pursue its Right of Action and shall have such other remedies at law or in equity as may then exist or as provided herein.

**7.02 Land Use and Building Type.** No building shall be erected, altered, placed or permitted to remain on any Lot unless it is an approved Structure and no previously approved Structure shall be used for any purpose other than that for which it was originally approved. The Developer hereby reserves the exclusive right to use any of the Property for temporary use as an office or for model home purposes during the Development Period.

**7.03 Landscape Restrictions.** No tree or shrubbery shall be maintained in such a manner as to obstruct the view of vehicular traffic. Any lighting shall be directed at the home and in a low voltage format. Gas lights or other yard lights shall not cast light directly into nearby homes or Lots in a manner to cause a disturbance or nuisance to adjoining neighbors. Rain barrels or other water collection systems are allowed, but must be painted or stained to complement the house color scheme. Any rain barrel container in the front of a house shall be less than four (4) feet in height and shall be integrated into landscaping design. The Association Board may adopt and promulgate rules and regulations regarding the requirement of planting trees, preservation of trees and other natural resources to protect and encourage the preservation of the ecological balance of the Property. The Association Board may adopt and promulgate rules and regulations regarding vegetable gardens which shall be permitted so long as they do not take up more than



fifty percent (50%) of the backyard area, may not extend closer than ten (10) feet to a side or back property line, and are outlined by either edging or a raised garden bed.

**7.04 New Construction.** All Living Units and other Structures permitted hereby shall be new construction and no buildings shall be moved onto any Lot. Sale of Lots by Developer and construction on said Lots shall not commence until The Association is formed by filing its Articles of Incorporation with the Missouri Secretary of State and certificate of formation has been delivered to The Developer, and ownership of all Common Property currently so designated has been transferred to The Association.

**7.05 Uncompleted Structures.** Construction of a Living Unit or any other Structure shall not commence until the Developer or Association Board has approved the final plans and specification for such living Unit or any other Structure, No Living Unit or other Structure shall be permitted to stand with its exterior in an unfinished condition for a period longer than six (6) months after commencement of construction. Extensions for periods beyond six (6) months may be granted by the Developer or Association Board in their sole discretion. In the event of fire, windstorm or other damage, no Living Unit or other Structure shall be permitted to remain in a damaged condition for more than three (3) months. No living Unit or other Structure shall be occupied until completed according to the plans and specifications approved by the Developer or Association Board.

**7.06 Structures.** No temporary building, trailer, tent, garage, barn or other building, whether in the course of construction or otherwise, shall be placed upon any Lot. No detached Structure for purely ornamental purposes nor above ground swimming pools nor any permanently constructed stoves, grills or ovens may be erected on any part of any Lot without the consent of the Developer or Association Board. However, outdoor grills or ovens are allowed but must be connected or placed on a deck or patio directly off the main structure.

**7.07 Fences.** No fences or walls shall be placed on any Lot without permission of the Developer or Association Board which said permission shall not be unreasonable withheld. No fence shall be constructed having a chain link design.

**7.08 Placement of Signs on Property.** No sign billboard or other advertising device of any nature shall be placed upon any Lot, including property identification signs, except by the Developer and except as provided herein and as are approved by the Developer or Association Board. The Developer or Association Board may adopt and promulgate rules and



regulations relating to signs which may be used within the Property.

**7.09 Motorized Watercraft.** No motorized or motor-powered watercraft of any kind shall be allowed in the Pond.

**7.10 Keeping of Animals on Lots.** No animals or birds, other than customary household pets shall be kept or maintained on any Lot except as specifically authorized by the Developer or Association Board. In no event shall any such pets be kept, bred or maintained for any commercial purpose or in such a manner as to constitute a nuisance or cause unsanitary conditions. The Developer or Association Board shall require that dogs shall not be permitted outside of any Lot except on a leash and accompanied by a responsible person. No dog run shall be permitted on any Lot. The Developer or Association Board may from time to time publish and impose other regulations setting forth the type and number of animals that may be kept on any Lot. Outside animal shelters of any type whatsoever shall be located within the back yard of any Lot within two feet of the Structure thereon and, in the opinion of the Developer or Association Board, shall be compatible in all respects with such structure.

**7.11 Disposition of Trash and other Debris.** No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Lot, except building materials during the course of construction for a period not to exceed one hundred eighty (180) days (commencing from day one of the first delivery of any of such materials) unless extended by the Association Board in its sole discretion, for an approved Structure, unless such materials are screened from view in a manner approved by the Association Board. During the course of construction, it shall be the responsibility of each Owner to ensure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials, and that construction materials, trailers, shacks, and the like are kept in a neat and orderly manner. No accumulation or storage of litter of any kind shall be permitted on any Lot. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open, on any day that a pickup is to be made, at such place on the Lot so as to provide access to persons making such pickup. At all other times such containers shall be stored in such a manner that they cannot be seen from adjacent and surrounding property. All such containers shall be kept in a clean and sanitary condition. The Developer or Association Board may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on the Property.

**7.12 Parking of Motor Vehicles, Boats and Trailers.** No truck, commercial vehicle, trailer, commercial trailer house, recreational vehicle, all-



terrain vehicle, camper, motorcycle, automobile, mobile home, boat or boat trailer shall be brought upon, stored or habitually parked on any Lot in front of any Living Unit or garage, or between any residence or garage and abutting side street, or upon any street abutting any Lot. This shall not be construed to prohibit the mere temporary (a maximum of twenty-four (24) hours); (a) standing or parking of a trailer, boat, trailer house, recreation vehicle, or mobile home for short periods preparatory to take same to some other location for use; or (b) the temporary standing or parking of a truck or commercial vehicle for loading, or unloading; or (c) the parking of any operational automobile on any driveway on any Lot. The Association may permit such parking for longer than twenty-four (24) hours. No such vehicle shall be openly stored in any area other than as may be designated by the Association. However, no mechanical maintenance on any vehicle shall be permitted in front of any Living Unit or garage, or between any Living Unit or garage and an abutting side street, or upon any street abutting any Lot. While nothing contained herein shall be considered to prohibit the use of portable or temporary buildings or trailers as field offices by contractors during actual construction, the use and appearance of such a building or trailer must be specifically approved by the Association prior to it's being moved on site.

**7.13 Nuisances.** No noxious or offensive activity shall be carried on upon any portion of the Lots or Living Units, nor shall anything be done thereon that may be or become a nuisance or annoyance to any other Owners. No exterior lighting shall be directed outside the boundaries of any Lot but shall be directed so as to avoid glare and excessive light spillage onto abutting or adjacent Lots.

**7.14 Antennas, Poles and Solar Panels.** No facilities, including poles and wires for the transmission of electricity, television messages, CATV signals and the like shall be placed or maintained above the surface of the ground on any Lot and no external or outside antennas shall be permitted on any Lot or Living Unit.

No antenna or satellite dish may be erected, used or maintained outdoors and above the surface of the ground, or attached to a building or otherwise without the written approval of the Association. However, one satellite dish, one meter (39.6) inches in diameter or smaller may be installed and maintained on any residential lot so long as the location and manner of mounting is disguised to resemble the surroundings or, is, in fact, visually indistinguishable from the structures, devices or improvements otherwise allowed in the community by these Covenants as to so blend into the background of the surroundings as to cause as little attention as possible. If approved, the type of antenna and exact location on the lot or residence shall be determined by the Developer or Association Board. In approving such applications, the Developer or



Association Board may require specific forms of screening as it deems appropriate in order to effectuate, the intent of this section in order to render the installation as inoffensive as possible to other owners and residents.

Water, gas, electricity, telephone and other utilities shall be located underground on each Lot. Written plans for solar panels must first be submitted to the Developer or Association Board and must receive written approval by the Developer or Association Board prior to installation. Any solar panel installation, as a prerequisite for approval, must be located on the side and back slopes of the roof. Solar panels may not be used on the walls of the house or in yards, but may be installed on the roofs of accessory buildings such as an attached garage or storage shed with prior approval of the Developer or Association Board. The solar panel installation shall not be visible from the front elevation of the home, and must be as unobtrusive as physically possible and not exceed the roof line of the home.

**7.15 Penalties for Violation.** If the Developer or Association Board determines that provisions of this Article have been violated, the Developer or Association Board may in its discretion seek appropriate relief at law or in equity to assure that the purposes of this Article and this Declaration are fulfilled.

**7.16 Restrictions for Residential Lots.** No profession or home industry shall be conducted in or on any part of a Lot or in any improvement thereon in the Residential Areas without the specific written approval of the Association Board. The Association Board, in its discretion upon consideration of the circumstances in each case, and particularly in consideration of the effect on surrounding Property, may permit a Lot or any improvement thereon to be used in whole or in part for the conduct of a profession or home industry. No profession or home industry shall be permitted, however, unless it is considered by the Association Board to be compatible with the neighborhood. Except as provided herein, any Living Unit located on a Lot designated for residential use within the Property shall be occupied by the Owner of the Living Unit. Notwithstanding the above, however, leasing of Living Units, although discouraged, will be allowed on a temporary basis as a result of the Owner being transferred or such other similar circumstances where rental of the property will be of a temporary nature (such as deployment for military service). It is contemplated that Owners request approval for an extended rental of their Property in excess of one (1) year for exigent and unique circumstances. The Owner must register the Lessee with the Association providing such information as the Association may require and file with the Association a complete copy of the executed Lease Agreement which shall not relieve the Owner of any obligations or duties under this Declaration and shall



find the tenant applicable to all rules and regulations propounded by the Association.

**7.17 Accessory Buildings.** Attached garages and storage buildings may be permitted, but require written application and approval by the Association Board. Exterior elevations, roof pitches, and paint colors of said accessory building must match the house structure. Approved accessory buildings must be limited to 256 square feet or less (16x16). Detached garages for purposes of parking vehicles must be limited to 30 feet in width and 24 feet in depth and must comply with all Kansas City, Missouri zoning and set-back requirements. Detached garages must have concrete driveways that connect to the main driveway for the house. Materials and personal property shall be stored inside the approved accessory building and are not allowed to be stored outside or around the accessory building.

**7.18 Provisions Applicable to Lots Designated for Single-Family Residences.** Lots in Goppert Acres Lots 1A-1F and Tract A, shall be subject, in addition to the general provisions set forth herein, to the following use restrictions:

**(a) Land Use.** None of said Lots may be improved, used or occupied for other than residential purposes (except for model homes used by the Developer) and no flat or apartment house, although intended for residential purposes, may be erected or operated thereon.

**(b) Requirements.**

(i) subject to the imposition of alternate square footage requirements as may be established on selected Lots due to location and orientation the minimum square footage enclosed floor areas and other requests shall be as follows:

<b>GOPPERT ACRES FIRST PLAT</b>	<b>MINIMUM SQUARE FOOTAGE (enclosed floor area)</b>
Minimum Square Footage Requirements	Lots 1 to 7
single level above ground	1,500 square feet



one-and-one-half story	1,600 square feet 1,000 square feet on finished main level and 600 square feet on the second story
two story	1,700 square feet 950 square feet on finished main level and 750 square feet on the second story

All such residences shall have foundation plantings as may be determined by the Developer or Association Board and exterior fireplace chimneys must be masonry or wood. Exterior fireplace chimneys must be masonry, brick, stone or stucco if on the front elevation, unless otherwise approved by the Developer or Association Board.

(ii) "enclosed floor area" as used herein shall mean and include areas of the residence enclosed and finished for all-year occupancy, computed on outside measurements of the residence.

(iii) when lesser square footage requirements are permitted by the Developer or Association Board, the Developer or Association Board will permit such variance from the requirements herein in a consistent manner, and not on a spot basis, taking into consideration the use of adjoining Lots.

**(c) Building Materials.** All building materials shall be in compliance with the requirements of the Developer or Association Board and as follows:

(i) Exterior Materials Allowed: (1) wood siding; (2) standard sheet goods; (3) lap siding; (4) shake shingle or accent-type siding.

(ii) Metal Siding: Metal panels or metal siding as approved by the Developer or Association Board.

(iii) Stone/Brick: Natural stone or brick and synthetic



stone or brick veneer materials are allowed.

(iv) Stucco: conventional or acrylic stucco is allowed.

(v) Number of Exterior Materials: The number of permissible exterior materials, pursuant to Section (i) above shall be limited to a maximum of three (3) materials on the front elevation of any home (excluding trim).

If the material falls under the categories listed above and is a widely used material in the Midwest, the Developer or Association Board shall encourage or allow the use of the material and any other material not specifically listed in 7.19(c) must be approved by the Developer or Association Board prior to use.

**7.19 Windows.** All windows on all elevations must be of the same color of trim and around the window sash.

**7.20 Garage Doors.** Transparent garage doors are allowed so long as they obscure from view anything stored inside the garage. All garage doors must be painted or stained the same color as each other. Garage doors on the front elevation of the structure, that are directly facing the street, shall not exceed eight (8) feet in height.

**7.21 Color Schemes.** Color schemes must be approved by the Architectural Control Committee and a maximum of three (3) colors will be permitted on wall materials (excluding doors, windows, and flashing) and a maximum of two (2) colors permitted on trim materials (including fascia, corner boards, accent pieces and excluding doors and windows).

**7.22 Roofing.** All roofs must be uniform in color and of approved materials. Developer or Association Board applications for new roofing materials shall need a minimum of thirty (30) year composition shingle for the majority area of the roof slopes. Metal or rolled roofing is allowed. Accent areas shall consist of smaller roof areas that would typically be found above porches, shed roof, or sections above cantilevers or patio roof sections. Smaller subsections of the main roof may have flat areas that are a minimum of 1:12 pitch.

**7.23 Holiday Decorations.** Holiday decorations, including exterior lighting may be installed on the exterior of a residence or in the yard of same, subject to any rules, regulations, or applications, for improvements and types of materials to be used created by the Developer or Association Board.



## **ARTICLE VIII**

### **Construction on Lots**

#### **8.01 Construction Standards.**

(a) Commencement of construction on a Lot shall start within three hundred sixty (360) days following the recording of the deed from the Developer to the purchaser. Construction shall proceed in a timely and orderly manner to a prompt completion.

(b) No Lot is to be cleared nor shall construction commence on any Lot until a building permit therefore is granted, the Lot closing has taken place and the Developer or Association Board has approved the plans and specifications for such construction.

(c) No dumping or open burning of construction materials, waste or trash shall occur on any building Lot.

(d) Loud music will not be permitted on any construction site.

(e) No construction signs are permitted identifying the home builder; subcontractors or suppliers, unless provided for by the Developer.

(f) Erosion control shall be provided on all Lots during construction until sod and landscaping are completed . The Developer or Association Board may, at its sole discretion, require the builder to place erosion control materials such as straw bales or fencing on any portion of a Lot that appears to be in an erodible condition due to construction activities.

(g) Builders and contractors are responsible, and will be held accountable, for the actions of their workers as well as those of their subcontractors.

(h) No changes in plans during the construction period will be permitted without prior written approval of the Developer or Association Board.



(i) No exterior construction work shall begin before 6:00 a.m. or continue after 8:00 p.m.

(j) Excess excavation materials must be hauled away from the Lot and from the Property.

(k) Concrete suppliers and contractors shall clean their equipment only at locations designated by the Developer for that purpose.

(l) Builders shall clean up all trash and debris on the construction site on a regular basis. Trash and debris shall be removed from each construction site to a dumping site located off the Property. Builders and their subcontractors will be responsible for removing all construction debris and keeping the construction sites in a well-maintained appearance at all times.

## **ARTICLE IX**

### **Duration And Amendment**

**9.01 Duration.** This Declaration and the Restrictions contained herein shall run with, burden and bind the Property, shall inure to the benefit of and shall be enforceable by the Developer (during the Development Period), the Association and any Owner, their respective legal representatives, heirs, successors and assigns, and by any Resident until January 1, 2024; after which time the Declaration shall be automatically renewed for successive periods of ten (10) years unless, prior to the commencement of any such renewal period, an instrument terminating this Declaration and the Restrictions contained herein shall be executed by the proper Association officers and recorded in the appropriate Office of the Recorder of Deeds or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution to such effect approved in writing by not less than three fourths (3/4) of the total number of Voting Members, which resolution shall have been approved within six (6) months prior to January 1, 2024, or the end of any such ten (10) year extension period. Although these Declarations may be amended, The Association and these Declarations shall exist in perpetuity in order to provide for the ownership and maintenance of all Common Property now existing or acquired in the future.

#### **9.02 Amendment.**

(a) Except as hereinafter specifically provided, this Declaration may not be amended, terminated or modified in any respect except by recording an instrument executed by the proper



Association officers and authorized by the Class A Members, subject of course to the rights, if any, of any lienholders of liens on the Property to consent to or approve of such amendment, termination or modification, pursuant to a resolution to such effect approved in writing by not less than two-thirds (2/3) of the total number of Class A Members.

(b) Notwithstanding the foregoing, during the Development Period this Declaration can be abolished, amended, modified or changed in whole or in part by the Developer in order to, among other things, correct deficiencies of this Declaration as determined to exist by the Developer, and, to give effect to all of the rights, obligations and duties created or contemplated herein.

## **ARTICLE X Enforcement**

### **10.01 Right of Action.**

(a) In the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions which shall be taken by the Owner to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within the time limit specified in the written notice, then the Association may pursue its Right of Action. The term "Right of Action" as used herein, shall mean the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot as to which a violation, breach or other condition to be remedied exists, and take the actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof. Such entry or action, or both, shall not be deemed to be a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section. All costs and expenses including reasonable attorneys' fees incurred by the Association or on its behalf in enforcing such Right of Action, shall be a binding personal obligation of such Owner enforceable at law, as well as a lien on such Owner's Lot enforceable in accordance herewith. The lien provided under this Section shall not be valid against a bona



fide purchaser (or bona fide lienholder) of the Lot in question unless a notice of such lien shall have been filed in the appropriate office of the Recorder of Deeds prior to the recordation of the Deed in the said office (or lien instrument) conveying the Lot in question to such purchaser (or subjecting the same to such lien). "Right of Action" shall also mean and encompass the right to pursue all remedies herein specified, together with all remedies at law or in equity.

(b) During the Development Period, the Developer may pursue his Right of Action in such cases where in the judgment of the Developer the Association has abused its discretion in electing not to exercise its Right of Action to enforce the provisions of the Declaration and has thereby jeopardized the performance of the obligations of the Developer pursuant to the Development Plan. The Developer's Right of Action shall be subject to the following limitations:

(i) the Developer shall give written notice to the Association identifying the violation which Developer seeks to correct and the steps Developer will take to remedy the condition; and

(ii) the Developer may not commence to exercise its Right of Action less than thirty (30) days nor more than sixty (60) days after giving written notice to the Association.

**10.02 Specific Performance.** Nothing contained herein shall be deemed to affect or limit the rights of the Developer (so long as it is an Owner), the Association, the Members or the Owners, or any one of them, to enforce any of the terms, covenants or conditions of this Declaration by appropriate judicial proceedings. However, the Developer hereby declares that it is impossible to measure in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of or failure to perform any of the obligations provided by this Declaration. Therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof. In any and all such actions, whether at law or in equity, any such beneficiary hereof who is entitled to relief shall also be entitled to recover all costs and expenses, including reasonable attorney's fees, incurred in enforcing such rights.

### **10.03 Enforcement of Liens.**



(a) The Association shall have a lien for Assessments, user fees and charges (herein collectively, "Assessment" or "Assessments") and shall have a lien for the cost of exercising the Right of Action. The amount which may be recovered by the Association shall include the Assessment or costs, together with the cost of such enforcement proceedings, including reasonable attorney's fees and interest. Suits to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving the lien provided for in Section 3.01 hereof.

(b) If any demand for payment or claim of lien or liens is not paid when due, the Association Board or its duly authorized representative may thereafter elect to file and record a claim of lien on behalf of the Association against the Lot of the defaulting Owner in the appropriate Office of the Recorder of Deeds. Such claim of lien shall be executed and acknowledged by any officer of the Association and shall contain substantially the following information:

(i) the name of the delinquent Owner;

(ii) the legal description and street address of the Lot against which the claim of lien is made;

(iii) the total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs and reasonable attorney's fees (with any proper offset allowed);

(iv) that the claim of lien is made by the Association pursuant to this Declaration; and

(v) that a lien is claimed against said Lot in an amount equal to the amount stated; together with all other amounts becoming due from time to time in accordance with this Declaration.

(c) Upon such recordation of the duly executed original or copy of such a claim of lien, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such Assessment or cost was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof except



for tax liens or real property taxes and assessments on any Lot in favor of any municipal or other governmental unit and except as provided in Section 4.01 hereof.

(d) Any such lien may be foreclosed by appropriate action at law or in the manner provided by law for foreclosure of mortgages or sale by a judgment creditor or in any other manner permitted by the laws of Missouri. The Association Board is hereby authorized to appoint any attorney or any officer or director of the Association for the purpose of conducting such proceedings.

(e) The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners and shall secure payment of all sums set forth in the claim of lien, together with all sums becoming due and payable in accordance with this Declaration after the date of recordation of said claim of lien.

(f) Upon the timely curing of any default for which a notice of claim of lien was filed by the Association Board and the payment of all sums secured by the lien created by the recordation of such claim of lien, the Association Board shall (upon payment by such Owner of reasonable costs by the Owner of the Lot subject to the lien) cause an officer of the Association to file and record an appropriate release of such claim of lien in the appropriate Office of the Recorder of Deeds.

(g) No Owner may waive or otherwise escape liability for the Assessments provided for in this Declaration by nonuse of the Common Area, or any part thereof or any part of the Property, or abandonment of his Lot. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose or otherwise realize on the lien created by recordation of the claim of lien, until the expiration of thirty (30) days after a copy of said claim of lien, showing the date of recordation thereof, has been mailed to the Owner of the Lot which is described in such claim of lien.

(h) Each Owner does hereby waive to the extent legally possible, all defenses to any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, and the benefit of any exemption laws of the State of Missouri now in effect, or in effect from time to time hereafter.



**10.04 No Waiver.** The failure of the Developer, the Association, any Owner, his or its respective legal representatives, heirs, successors and assigns, or any Resident, to enforce this Declaration shall in no event be considered a waiver of the right to do so thereafter as to a similar violation or breach occurring prior or subsequent thereto.

**10.05 Additional Rules.** The Developer or Association Board, to the extent specifically provided herein, may adopt, amend, modify, promulgate and rescind or revoke reasonable rules, regulations and procedures regarding the administration, interpretation and enforcement of the provisions of this Declaration; for the Developer or Association Board in particular, this includes the right of modification, amendment, revocation or rescission of the Development Guidelines. In so adopting, amending, modifying, promulgating, rescinding, or revoking such rules, regulations and procedures, or in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Developer or Association Board shall take into consideration the best interests of the Owners of the Property to the end that the Property shall be preserved and maintained as a community of high quality, and shall seek to achieve the development of the Property in accordance with the standards and objectives set forth in the Development Plan.

## **ARTICLE XI Miscellaneous**

**11.01 No Reverter.** No Restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

**11.02 Invalidity.** The determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof, and to the extent that any term, covenant or condition contained in this Declaration is in conflict with any applicable laws, this Declaration shall be deemed to be amended so as to comply with applicable laws.

**11.03 Violation and Nuisance.** Any act or omission whereby any



provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Developer, the Association or any Owner of a Lot.

**11.04 Violation of Law.** Any violation of any federal, state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any of the Property is hereby declared to be a violation of the Declaration and subject to any and all of the enforcement procedures set forth herein.

**11.05 Remedies Cumulative.** Each remedy set forth in this Declaration shall be in addition to all remedies whether available at law or in equity and all such remedies whether or not set forth in this Declaration, shall be cumulative and not exclusive.

**11.06 Limitations.** During the Development Period, the Association may not use its resources nor take a public position in opposition to the general Development Plan or to changes thereto proposed by the Developer. Nothing in this Section shall be construed to limit the rights of Members acting as individuals or in an affiliation with other members of groups.

**11.07 No Personal Liability.** No member of the Association Board, officer of the Association, member of any committee of the Association, whether such committee is specifically described in this Declaration or hereafter created by the Association, or Manager, if any, or the Developer shall be personally liable to any Owner, member or to any other party for any damage, loss or prejudice suffered or claimed on account of any act, (including any oral representation regarding any aspect of a Lot whatsoever), omission, error, failure to act, or negligence of any such Association Board Member, officer or committee member of the Association, Manager, if any, the Developer, or any realtor representing the Developer in the sale of a Lot and, further, neither the Developer or Association Board nor any member thereof shall be liable to the Association, any Owner or to any party for any damage, loss or prejudice suffered by or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective, (b) the construction or performance of any work upon the Property, (c) the execution and filing of any estoppel certificate, whether or not the facts therein are correct or (d) any other act, action or conduct of such committee. Such limitation of liability shall apply in all cases, provided that such person has, on the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

#### **11.08 Assignability**



(a) The Association shall be empowered to assign its rights, or any part thereof, to any successor public body, authority, agency, district or not-for-profit corporation (hereinafter referred to as the "Successor Entity"), and upon such assignment the Successor Entity shall have those rights and be subject to those duties assigned thereby and shall be deemed to have agreed to be bound by the appropriate provisions hereof to the same extent as if the Successor Entity had been an original party to the Declaration. Any such assignment shall be accepted by the Successor Entity under a written agreement pursuant to which the Successor Entity expressly assumes the duties and obligations thereby assigned.

(b) If for any reason the Association shall cease to exist without having first assigned its rights hereunder to a Successor Entity, the covenants, restrictions, easements, charges and liens imposed hereunder shall nevertheless continue and any Owner may petition a court of competent jurisdiction to have a trustee appointed for the purpose of organizing a not-for-profit corporation and assigning the rights hereunder with the same force and effect, and subject to the same conditions, as provided in this Section with respect to an assignment and delegation to a Successor Entity.

(c) Any assignment or delegation of rights shall be approved by two-thirds (2/3) of the Members voting in person or by proxy at an Association meeting at which a quorum, as outlined in Section 3.10, is present in person or by proxy at a special meeting called for such purpose after proper notice given.

(d) The Developer may, at its option, assign any or all of its rights under this Declaration.

**11.09 Headings.** The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

**11.10 Gender.** Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

**11.11 Effect of Violation of Declaration on Mortgage.** No violation of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; provided,



however, that any mortgagee in possession or any purchaser at any foreclosure sale or any person in a similar position shall be bound and subject to this Declaration as fully as any other Owner of any portion of the Property.

#### **11.12 Delivery of Notice and Documents.**

(a) Any written notice or other documents addressed to the Association, the Association Board, the Developer or Association Board, or the Developer relating to or required or permitted by the Declaration may be delivered either personally or by certified or registered mail, return receipt requested. If by certified or registered mail, it shall be deemed to have been given, delivered and received upon receipt thereof by the addressee.

(b) Any written notice or other documents relating to or required or permitted by the Declaration may be delivered to an Owner or Member either personally or by mail unless other requirements are specifically made in any provision hereof. If by mail, it shall be deemed to have been given, delivered and received seventy-two (72) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed to such Owner or Member, to the address of any Lot or Living Unit owned, whether in whole or in part, by such Owner or Member, or to any other address last furnished by such Owner or Member to the Association. Each Owner or Member shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address. Any notice given or required to be sent pursuant to this Section shall be deemed to have been properly given, unless other requirements are specifically made in any provision hereof, when mailed, postage prepaid, to the last known address of the person to whom notice is to be given.

**11.13 Local Laws Not Superseded.** This Declaration shall not be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or relations of any government body, or by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases or this Declaration shall govern and control.

**11.14 City Consent before Dissolution.** The Association, which has been formed to own and maintain the Common Property shall not be dissolved without the consent of the City of Lee's Summit, and unless the maintenance responsibilities of the Association are assigned, with the consent of the City, to a person or entity with the financial, legal, and administrative ability to



perform such obligations.

**11.15 City as Third Party Beneficiary.** The City of Lee's Summit shall be a third party beneficiary of any and all provisions pertaining to the assessment of costs for maintenance of storm water conveyance, retention, or detention facilities on Common Property. The City's designation as third party beneficiary shall not be modified or amended with the written consent of the City.

**IN WITNESS WHEREOF**, the undersigned sets his hand and seal as of the above date.

By: \_\_\_\_\_  
Dusty Goppert, Developer

\_\_\_\_\_  
Kristina Goppert, Developer

STATE OF MISSOURI    )  
                                  ) ss.  
COUNTY OF JACKSON    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me personally appeared Dusty Goppert and Kristina Goppert, who, being duly sworn did say that the foregoing instrument was executed as their free act and deed.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

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

My Commission Expires:



**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF**  
**GOPPERT ACRES**

Legal Description