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*(Space above reserved for Recorder of Deeds certification)*

***Title of Document:*** Osage Declaration of Restrictions, Assessments, Covenants and Easements

***Date of Document:*** \_\_\_\_\_, 2020

***Grantor(s):*** Clayton Properties Group, Inc.

***Grantee(s):*** Clayton Properties Group, Inc.

***Grantee(s) Mailing Address(es):*** 120 SE 30th Street  
Lee's Summit, MO 64082

***Legal Description:*** Lots 1 through 41, and Tracts A through H, OSAGE FIRST PLAT (Lots 1 Thru 41 Inclusive and Tracts A, B, C, D, E, F, G, & H), a subdivision in the City of Lee's Summit, Jackson County, Missouri.

***Reference Book and Page(s):***

***After recording return to:***

***Woodworth Law Firm, LLC  
Stanley N. Woodworth, Esq.  
7111 West 151<sup>st</sup> Street, Suite 362  
Overland Park, KS 66223***

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*(If there is not sufficient space on this page for the information required, state the page reference where it is contained within the document.)*

**OSAGE DECLARATION OF  
RESTRICTIONS, ASSESSMENTS, COVENANTS AND EASEMENTS**

THIS DECLARATION is made as of the \_\_\_\_ day of \_\_\_\_\_, 2020, by CLAYTON PROPERTIES GROUP, INC., a Tennessee corporation (“Developer”).

WITNESSETH:

WHEREAS, Developer has executed and filed with the Recorder of Deeds of Jackson County, Missouri, a plat of the subdivision known as “Osage”, which plat includes the following described lots and tracts:

Lots 1 through 41, and Tracts A through H, OSAGE FIRST PLAT  
(Lots 1 Thru 41 Inclusive and Tracts A, B, C, D, E, F, G, & H), a  
subdivision in the City of Lee’s Summit, Jackson County, Missouri.

WHEREAS, Developer, as the present owner and developer of the above-described real property, desires to create and maintain a residential neighborhood and a homes association for the purpose of enhancing and protecting the value, desirability, attractiveness and maintenance of the property within the subdivision;

NOW, THEREFORE, in consideration of the premises contained herein, Developer, for itself and for its successors and assigns, and for its future grantees, hereby subjects all of the above-described lots and tracts to the restrictions, charges, assessments, covenants and easements hereinafter set forth,

**ARTICLE I  
DEFINITIONS**

For purposes of this Declaration, the following definitions shall apply:

(a) “Assessment” means each annual assessment, special assessment, initiation assessment, monetary fine, late fee, interest, lien fee and other amount levied by the Homes Association against a Lot or otherwise payable by an Owner of a Lot to the Homes Association in accordance with this Declaration or the Bylaws of the Homes Association.

(b) “Attached Homes” means the attached residences that are or will be constructed on the Twin Product Lots and the Townhome Lots.

(c) “Board” means the Board of Directors of the Homes Association.

(d) “Certificate of Substantial Completion” means a certificate executed, acknowledged and recorded by the Developer with the Recording Office stating that all of the Lots in the Subdivision (as then contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are substantially completed; provided, however, that the Developer may execute and record a Certificate of Substantial Completion or similar instrument in lieu thereof in Developer’s absolute discretion at any earlier time and for any limited purpose hereunder. The execution or recording of a

Certificate of Substantial Completion shall not, by itself, constitute an assignment of any of the Developer 's rights to the Homes Association or any other person or entity.

(e) "City" means the City of Lee's Summit, Missouri.

(f) "Common Areas" means (i) Tracts A through H of Osage First Plat, and all improvements located therein, (ii) the Pool Area, (iii) any entrances, monuments, berms, and other similar ornamental areas and related utilities, lights, sprinkler systems, trees and landscaping constructed or installed by or for the Developer or the Homes Association at or near the entrance of any street or along any street, and any easements related thereto, in the Subdivision, (iv) all platted landscape easements and all other easements that may be granted to the Developer and/or the Homes Association, for the use, benefit and enjoyment of all Owners within the Subdivision, all other similar areas and places, together with all improvements thereon and thereto, the use, benefit or enjoyment of which is intended for all of the Owners within the Subdivision, and (vi) the Perimeter Fencing.

(g) "Declaration" means this instrument, as the same may be amended, supplemented or modified from time to time.

(h) "Design Review Committee" has the meaning set forth in Section 9.1.

(i) "Developer" means Clayton Properties Group, Inc., a Tennessee corporation, and its successors and assigns.

(j) "Homes Association" means the Missouri non-profit corporation to be formed by or for the Developer for the purpose of serving as the homes association for the Subdivision.

(k) "Honey Lots" means Lots 26 through 41 of Osage First Plat, and any other Lots that the Developer may designate in writing in the future as being Honey Lots.

(l) "Lot" means any lot as shown as a separate lot on any recorded plat of all or part of the Subdivision; provided, however, that if an Owner, other than the Developer, owns adjacent lots (or parts thereof) upon which only one residence has been, is being, or will be erected, then (i) for purposes of determining the amount of periodic and special assessments due with respect thereto from time to time, such adjacent property under common ownership shall constitute such whole or partial number of Lots as may be specified in writing by the Developer, and (ii) for all other purposes hereunder, such adjacent property under common ownership shall be deemed to constitute only one "Lot." There are three types of Lots, namely Honey Lots, Twin Product Lots, and Townhome Lots.

(m) "Owner" means the record owner(s) of title to any Lot, including the Developer.

(n) "Perimeter Fencing" means the fencing to be installed by the Developer on Tracts K and M, as required by the Developer's agreement with the adjacent landowner.

(o) “Pool Area” has the meaning set forth in **Article VIII** below.

(p) “Recording Office” means the Office of the Recorder of Deeds of Jackson County, Missouri, or such other governmental office in which deeds, deeds of trust, and other instruments relating to real property in Jackson County, Missouri are to be recorded to give public notice thereof.

(q) “Subdivision” means collectively all of the above Lots in Osage First Plat, all Common Areas, and all additional property (if any) which hereafter may be made subject to this Declaration in the manner provided herein.

(r) “Townhome Lots” means any area of land upon which one of three or more residential units in a building is located or is to be located, on Lots 1 through 15 of Osage First Plat and any other Lots that the Developer may designate in writing in the future as being for Townhome Lots.

(s) “Turnover Date” means the earlier of: (i) the date as of which all of the Lots in the Subdivision (as then contemplated by the Developer) have been sold by the Developer to Owners other than builders and all of the residences have been constructed thereon, or (ii) the date the Developer, in its absolute discretion, selects as the Turnover Date for all or any specific portion of this Declaration.

(t) “Twin Product Lots” means any area of land (being approximately one-half of a lot) upon which one of the two attached residential units in a building is located or is to be located, on Lots 16 through 25 of Osage First Plat, and any other Lots that the Developer may designate in writing in the future as being for Twin Product Lots.

## **ARTICLE II HOMES ASSOCIATION MEMBERSHIP**

2.1 Until the Turnover Date, the Homes Association shall have two classes of membership, namely Class A and Class B. The Developer shall be the sole Class A member. Each Owner of a Lot, including the Developer as an Owner, shall be a Class B member. Until the Turnover Date, all voting rights shall be held by the Class A member. Notwithstanding anything in this Declaration to the contrary, Developer shall have and maintain absolute and exclusive control of the Homes Association and the Design Review Committee until the Turnover Date. Until the Turnover Date, (a) Developer will be entitled to cast controlling votes with respect to the election and removal of all officers and directors of the Homes Association and members of the Design Review Committee and with respect to any other matter requiring the vote or approval of members of the Homes Association or the Design Review Committee as set forth herein or in the Homes Association’s Articles of Incorporation or Bylaws, (b) Developer may perform the duties, assume the obligations, levy and collect Assessments, and otherwise exercise the powers herein given to the Homes Association, in the same way and manner as though all of such powers and duties were hereby given directly to the Developer, and (c) the Developer may, by appropriate agreement made expressly for that purpose, assign or convey to the Homes Association any or all of the rights, reservations and privileges herein provided, and upon such assignment or conveyance being made, the Homes Association shall exercise and assume such rights. The Homes Association

contemplated by the terms of this Declaration shall not assume any of the rights herein provided for without the consent of Developer and its written relinquishment of such rights.

2.2 After the Turnover Date, there shall be only one class of membership which shall consist of the Owners of the Lots in the Subdivision, and every such Owner shall be a member.

2.3 Where voting rights exist based on Lot ownership, each member shall have one vote for each Lot for which he is the Owner; provided, however, that when more than one person is an Owner of any particular Lot, all such persons shall be members, and the one vote for such Lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one vote be cast with respect to such Lot.

2.4 To the extent permitted by law, during any period in which a member is in default in the payment of any Assessment levied by the Homes Association under this Declaration, the voting rights of such member shall be suspended until such assessment has been paid in full,

2.5 Subject to the foregoing, the Board shall be the sole judge of the qualifications of each Owner to vote and to participate in its meetings and proceedings of the Homes Association.

### **ARTICLE III POWERS AND DUTIES OF THE HOMES ASSOCIATION**

3.1 In addition to the powers granted by other portions of this Declaration or by law but subject to all of the limitations set forth in this Declaration, the Homes Association shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by the Board to carry out and effectuate the purposes of this Declaration, including, without limitation:

(a) To enforce, in the Homes Association's name, any and all building, use or other restrictions, obligations, agreements, reservations or assessments which have been or hereafter may be imposed upon any of the Lots or other part of the Subdivision; provided, however, that this right of enforcement shall not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the Developer, the Homes Association or other parties having the right to make such waivers, changes, releases or modifications under the terms of the deeds, declarations or plats in which such restrictions, obligations, agreements and reservations are set forth or otherwise by law. The expense and cost of any such enforcement proceedings by the Homes Association shall be paid out of the general funds of the Homes Association, except as herein provided. Nothing herein contained shall be deemed or construed to prevent the Developer or any Owner from enforcing any building, use or other restrictions in its or his own name.

(b) To own, lease and otherwise deal with real property and personal property.

(c) To acquire and own title to or interests in, to exercise control over, and to improve and maintain the Common Areas, subject to the rights of any governmental authority, utility or any other similar person or entity therein or thereto.

(d) To maintain public liability, worker's compensation, fidelity, property coverage, director and officer liability, indemnification and other insurance with respect to the activities of the Homes Association, the Common Areas and the property within the Subdivision.

(e) To levy the assessments and other charges which are provided for in this Declaration and to take all steps necessary or appropriate to collect such assessments and related charges.

(f) To enter into and perform agreements from time to time with the Developer and other parties regarding the performance of services and matters benefiting both the Developer or other parties and the Homes Association and its members, and the sharing of the expenses associated therewith.

(g) To enter into and perform agreements with the Developer, other developers, other homes associations and other parties relating to the joint use, operation and maintenance of any recreational facilities and other similar common areas, whether in or outside the Subdivision, and the sharing of expenses associated therewith.

(h) To have employees and otherwise engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the Homes Association, including, without limitation, keeping of books and records, operating and maintaining Common Areas, and planning and coordination of activities.

(i) To engage the services of a security guard or security patrol service.

(j) To provide for the collection and disposal of rubbish and garbage; to pick up and remove loose material, trash and rubbish of all kinds in the Subdivision; and to do any other things necessary or desirable in the judgment of the Board to keep any property in the Subdivision neat in appearance and in good order.

(k) To exercise any architectural, aesthetic or other control and authority given and assigned to the Homes Association in this Declaration or in any other deed, declaration or plat relating to all or any part of the Subdivision.

(l) In accordance with applicable law, to adopt reasonable rules, regulations, restrictions, policies, guidelines, and procedures, including, without limitation, the establishment and imposition of monetary fines, regarding (i) the use of the Common Areas and the personal conduct of the members and their guests thereon, (ii) the implementation of provisions set forth in this Declaration or in any other applicable recorded declaration or document applicable to the Subdivision (or any part thereof), (iii) the establishment and enforcement of construction and design criteria and aesthetic standards, or (iv) the regulation of behavior which violates this Declaration or any other applicable recorded declaration or document applicable to the Subdivision (or any part thereof) or which adversely affects the use and enjoyment of other properties or the Common Areas.

(m) To exercise such other powers as may be set forth in the Articles of Incorporation or Bylaws of the Homes Association.

3.2 In addition to the duties required by other portions of this Declaration and by law, the Homes Association shall have the following duties and obligations with respect to providing services to all Owners within the Subdivision:

(a) To the extent not provided as a service by any governmental authority, the Homes Association shall have the option (but not the obligation) to provide for the normal collection and disposal of rubbish and garbage for each residence one day per week (which day, if possible, shall be the same for all residences). The Homes Association, however, shall not be obligated to provide or pay for any recycling services, except where required by law.

(b) The Homes Association shall at all times, at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all Common Areas, subject to any control thereover maintained by any governmental authority, utility or other similar person or entity.

(c) The Homes Association shall satisfy its obligations with respect to any Pool Area, as set forth in **Article VIII** below.

(d) The Homes Association shall satisfy its obligations under any agreements with property owners or other associations with respect to the maintenance of areas that jointly benefit adjacent or nearby properties and the Subdivision.

3.3 The Board, in its discretion, may cause the Homes Association to provide other services for the Lots that are not part of the required services described above. The Board shall have the right to determine the scope and timing of the required and discretionary services to be provided by the Homes Association, and shall have the right (but not the obligation) to establish, maintain and expend reserve funds for the improvements on the Common Areas and the services to be provided by the Homes Association. Neither the Developer, the Homes Association nor any of their officers, directors, managers, representatives or agents shall be liable to any Owner or other party for any failure to establish or maintain any such reserves or if any such reserves are inadequate.

3.4 Prior to the Turnover Date, Developer may, at its discretion, make cash advances to the Homes Association to meet its net operating cash requirements. The Developer may also, at its discretion, require that such advances be considered borrowings of the Homes Association and further require the Homes Association to evidence such borrowings by executing promissory notes, bearing interest at a rate satisfactory to Developer. Prior to the Turnover Date, Developer shall have the right to charge the Homes Association a reasonable management fee for administration and operation of the Homes Association or, in the alternative, to cause the Homes Association to engage a property management firm to administer and operate the Homes Association.

3.5 To the fullest extent permitted by law, the Homes Association shall indemnify each officer and director of the Homes Association, each member of the Design Review Committee,

and the Developer (to the extent a claim may be brought against the Developer by reason of its appointment, removal of or control over, or failure to control, any such other persons) (each, an “**Indemnified Party**”) against all expenses and liabilities, including, without limitation, attorneys’ fees, and settlement costs, reasonably incurred by or imposed upon the Indemnified Party in connection with any action or proceeding, or any settlement thereof, to which the Indemnified Party may be a party or in which the Indemnified Party may become involved by reason of serving or having served in such capacity (or, in the case of the Developer, by reason of having appointed, removed or controlled or failed to control any officer or director of the Homes Association or member of the Design Review Committee), provided the Indemnified Party did not act, fail to act or refuse to act with fraudulent or criminal intent in the performance of the Indemnified Party’s duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which any Indemnified Party may be entitled at law or otherwise.

#### **ARTICLE IV ANNUAL ASSESSMENTS**

4.1 For the purpose of providing funds to enable the Homes Association to exercise the powers, render the services and perform the duties provided for herein, all Lots in the Subdivision (other than Lots then owned by the Developer and Lots then owned by a home builder entity or another party prior to the initial occupancy of the residence thereon as a residence, or, if earlier, the closing of the home purchase by the home buyer) shall be subject to an annual assessment to be paid to the Homes Association by the respective Owners thereof as provided in this **Article IV**. The amount of such annual assessment per assessable Lot shall be fixed periodically by the Board, subject to Section 4.2 below, and, until further action of the Board, shall be \$ \_\_\_\_\_ per year.

4.2 The rate of annual assessment upon each assessable Lot in the Subdivision may be increased as to and for each calendar year, by the Board from time to time, without a vote of the members, by up to 20% over the rate of annual assessment in effect for the preceding calendar year. Notwithstanding the foregoing limit on annual assessments, the Board, without a vote of the members, shall always have the power to set, and shall set, the rate of annual assessment at an amount that will permit the Homes Association to perform its duties as specified in Section 3.2 of **Article III** above.

4.3 The annual assessments provided for herein shall be based upon the calendar year (commencing in 2021) and shall be due and payable on January 1st of each year; provided, however, that (i) the first annual assessment for each Lot shall be due and payable only upon commencement of occupancy of the residence on the Lot as a residence (or, if earlier, the closing of the home purchase by the home buyer) and shall be prorated as of the date thereof. If the effective date of any increase in the rate of assessment is other than January 1st, a proper portion (as determined by the Board) of the amount of such increase for the remainder of such year shall be due and payable on such effective date. Notwithstanding any other provision of this Declaration to the contrary, no Lot or its Owner shall be entitled to receive any services or to use any Common Areas to be provided by and through the Homes Association until such time as the first annual assessment has been paid with respect to such Lot.



## **ARTICLE V SPECIAL ASSESSMENTS**

5.1 In addition to the annual assessments provided for herein, the Board:

(a) shall have the authority to levy from time to time a special assessment against any Lot and its Owner to the extent (i) a monetary fine has been assessed by the Homes Association against the Owner or (ii) the Homes Association expends any money (for services, materials, and legal fees and expenses) to correct or eliminate (by enforcement, self-help or otherwise) any breach by such Owner of any agreement, obligation, reservation or restriction contained in any deed, declaration or plat covering such Lot (including, without limitation, to maintain or repair such Lot or any improvement thereon); and

(b) shall levy from time to time special assessments against each and every Lot then subject to annual assessments under **Article IV** in an equal amount that is sufficient, when aggregated, to enable the Homes Association (i) to perform its duties, as specified in Section 3.2 of **Article III** above, that require any expenditure during any period in an amount in excess of the general and applicable reserve funds of the Homes Association available therefor, (ii) to pay the costs of any emergency expenditures deemed necessary by the Board and (iii) to pay the costs of any capital expenditures for repairs, replacements, and additions to the Common Areas.

5.2 In the event an Owner fails properly to maintain, repair, repaint, or replace any improvements on the Owner's Lot, the Homes Association, acting through the Board and after giving adequate notice to the Owner of the need for the maintenance, repair, repainting, or replacement, may enter onto the Lot and perform such maintenance, repair, repainting, or replacement. The Homes Association's costs thereof, plus a reasonable overhead and supervisory fee, shall be payable by the Owner of the Lot and shall be a special assessment against the Owner and the Owner's Lot.

5.3 If any Owner (other than the Developer) commences a lawsuit or files a counterclaim or crossclaim against the Homes Association, the Board of Directors, the Design Review Committee, or any other committee, or any individual director, officer or committee member of the Homes Association, and such Owner fails to prevail in such lawsuit, counterclaim or crossclaim, the Homes Association, Board of Directors, the Design Review Committee, other committee, or individual director, officer or committee member sued by such Owner shall be entitled to recover from such Owner all litigation expenses incurred in defending such lawsuit, counterclaim or crossclaim, including, without limitation, reasonable attorney's fees and court costs. Such recovery right shall constitute a special assessment against the Owner and the Owner's Lot.

5.4 Each special assessment shall be due and payable by the Owner of the Lot upon the Homes Association giving written notice of the special assessment to the Owner of the Lot, shall be a lien on the Lot until paid in full, and shall be enforceable as provided in this Declaration.

## **ARTICLE VI DELINQUENT ASSESSMENTS**

6.1 Each Assessment regarding a Lot shall be a charge against the Owner and shall become automatically a lien in favor of the Homes Association on the Lot against which it is levied as soon as the Assessment becomes due. Should any Owner fail to pay any Assessment with respect to the Owner's Lot in full within thirty (30) days after the due date thereof, then such Assessment shall be delinquent, the Owner shall be charged a late fee of the greater of \$25.00 or 5% of the unpaid amount, and the unpaid amount shall bear interest at the rate of 10% per annum, compounded monthly (or, if lower, the maximum rate permitted by law) from the delinquency date until paid, which late fee and interest shall become part of the delinquent Assessment and the lien on the Lot. Should the Homes Association engage the services of an attorney to collect any Assessment hereunder, all costs of collecting such Assessment, including, without limitation, court costs and reasonable attorneys' fees, shall, to the extent permitted by applicable law, be added to the amount of the Assessment being collected and the lien on the Lot. Each Assessment, together with late fees, interest thereon and collection costs, shall also be the personal obligation of the Owner(s) of the Lot, jointly and severally, at the time when the Assessment became due.

6.2 All liens on any Lot for Assessments provided for herein shall be inferior and subordinate to the lien of any valid purchase money first deed of trust now existing or which may hereafter be placed upon such Lot, as provided below. A foreclosure sale or deed in lieu of foreclosure thereunder shall automatically extinguish the lien hereunder for such Assessments to the extent applicable to periods prior to the earlier of (i) the entry of the order allowing such foreclosure or (if no order is required) the holding of the foreclosure sale, or (ii) the execution of a deed in lieu thereof, but shall not release such Lot from liability for any Assessment applicable to periods thereafter. If the Owner or any creditor of the Owner (other than the applicable first deed of trust lender) subsequently redeems the Lot from the foreclosure sale, the lien hereunder shall automatically be reinstated retroactively in full.

6.3 Payment of a delinquent Assessment with respect to a Lot may be enforced by judicial proceedings against the Owner personally and/or against the Lot, including, without limitation, through lien foreclosure proceedings similar to a foreclosure under a mortgage, or deed of trust lien in any court having jurisdiction of suits for the enforcement of such liens. The Homes Association may file certificates of nonpayment of Assessments in the Recording Office, and/or the office of the Clerk of the Circuit Court for Jackson County, Missouri, whenever any Assessment is delinquent, in order to give public notice of the delinquency. For each certificate so filed, the Homes Association shall be entitled to collect from the Owner of the Lot described therein a fee of \$200.00, which fee shall be added to the amount of the delinquent Assessment and the lien on the Lot and which fee amount may be increased by the Board from time to time to reflect cumulative increases in an appropriate consumer price index (as selected by the Board) after December 31, 2022.

6.4 Such liens shall continue for a period of five (5) years from the date of delinquency and no longer, unless within such period a lawsuit shall have been instituted for collection of the Assessment, in which case the lien shall continue until payment in full or termination of the lawsuit and sale of the property under the execution of judgment establishing the same.

6.5 To the extent permitted by law, the Homes Association may cease to provide any or all of the services (including, without limitation, use of Common Areas and trash services) to be provided by or through the Homes Association with respect to any Lot during any period that the Lot is delinquent on the payment of an Assessment due under this Declaration, and no such cessation of use privileges or services shall result in a reduction of any amount due from or in any credit or restitution due to the Owner before, during or after such cessation. No Owner may waive or otherwise avoid liability for any Assessment by not using any Common Areas or by declining any services provided through the Homes Association.

6.6 No claim of the Homes Association for Assessments and charges shall be subject to setoffs or counterclaims made by any Owner. To the extent permitted by law, each Owner hereby waives the benefit of any redemption, homestead and exemption laws now or hereafter in effect, with respect to the liens created pursuant to this Declaration.

6.7 Assessments shall run with the land, are necessary to continue the care, repair and maintenance of Lots, the Common Areas, and the Subdivision, and are necessary for the continued provision of services. Accordingly, Assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.

6.8 To the extent Section 443.055 of the Missouri Revised Statutes (as may be amended or replaced from time to time) applies to the obligations of the Owners to pay amounts to the Homes Association under this Declaration, (i) this Declaration is intended to secure future advances from the Homes Association to or for the benefit of each Owner and its Lot and future obligations of each Owner and its Lot to the Homes Association under this Declaration, and (ii) the maximum total principal amount secured by this Declaration with respect to any Lot at any time shall not exceed \$10,000.00. This limitation of amount does not include interest, late fees or other fees or charges validly made pursuant to this Declaration. Also, this limitation does not apply to any advances made by the Homes Association to protect the Homes Association's security. Notwithstanding any other provision of this Declaration to the contrary, the Homes Association (acting through decision of its Board) shall have the right to amend this Declaration from time to time to increase the dollar limitation set forth above.

## **ARTICLE VII LIMITATION ON EXPENDITURES**

Except for matters contemplated in Section 3.2 of **Article III** above, the Homes Association shall at no time expend more money within any one year than the total amount of the Assessments for that particular year, plus any surplus and applicable reserves which it may have on hand from prior years, plus any funds voluntarily contributed or loaned to the Homes Association by the Developer or otherwise loaned to the Homes Association by another party. The Homes Association shall not have the power to enter into any contract which binds the Homes Association to pay for any obligation out of the Assessments for any future year, except for (i) contracts for utilities, maintenance or similar services or matters to be performed for or received by the Homes Association or its members in subsequent years, (ii) matters contemplated in Section 3.2 of **Article III** above, and (iii) the obligation to repay any loans made to the Homes Association. The Developer may (but shall have no obligation to) contribute or loan any funds to the Homes Association.

## ARTICLE VIII COMMON AREAS

8.1 The Developer shall have the right (but is not obligated) to construct and erect a swimming pool, parking lot, clubhouse, cabana, playground, and/or other recreational facilities (“**Pool Area**”) in a place within the Subdivision and to make such facilities available for use by residents of the Subdivision. The size, location, nature and extent of the improvements and landscaping of the Pool Area, and all other aspects of the Common Areas that are provided by the Developer, shall be determined by the Developer in its absolute discretion.

8.2 If the Pool Area is so constructed and made available for use by residents of the Subdivision, the following shall apply:

(a) Before or soon after substantial completion and opening for use (as determined by the Developer), the Developer shall convey, without charge and free and clear of all deeds of trust, security interests, and mechanic’s liens, title to the Pool Area (or the completed portion thereof) to the Homes Association. Such title transfer shall be by special warranty deed. The Developer shall not be required to provide the Homes Association with any title insurance policy for the Pool Area. The Homes Association shall cause adequate property and liability insurance to be continuously maintained on the Pool Area and, so long as Developer owns any Lots in the Subdivision, cause the Developer to be named as an additional insured on such insurance coverage.

(b) The Homes Association shall pay (i) all operating expenses (as defined below) and (ii) all post construction capital expenditures (as defined below) relating to the Pool Area. The Homes Association shall pay the amounts due from it under this subsection out of the Assessments collected from the Owners of the Lots in accordance with this Declaration.

(c) For purposes hereof, the “operating expenses” of the Pool Area generally has the meaning attributed thereto under generally accepted accounting principles, consistently applied, but shall not include (i) any costs of the Developer of acquiring, developing, improving, constructing or erecting the Pool Area or the site on which such facilities are located, (ii) any depreciation or amortization of the costs described in clause (i) above, or (iii) any financing or debt service expenses related to the costs described in clause (i) above.

(d) For purposes hereof, “post construction capital expenditures” means any expenditures to be made or incurred after the initial completion (as specified by the Developer) of the Pool Area for equipment, furniture, or other capital assets, including the expansion, addition or replacement of any equipment or facilities, and any other expenditures that would be capitalized under generally accepted accounting principles, consistently applied. All post construction capital expenditures shall be made by and at the discretion of the Homes Association.

**(e) By acceptance of a deed to a Lot, all Owners acknowledge and accept the inherent risks and hazards (whether foreseeable or not) associated with use of a**

swimming pool and any diving board and/or slide and any playground and other equipment that may be installed as part of the Common Areas. The Developer and the Homes Association and their respective officers, directors, managers, representatives and agents shall have no liability or responsibility to any Owner or other party with respect to such inherent risks and hazards. To the maximum extent permitted by law, each Owner, for himself, the members of his family, his guests and invitees, shall be deemed to have released and agreed never to make a claim against the Developer or the Homes Association or any of their respective officers, directors, managers, representatives or agents for any personal injury or death that may be suffered or incurred by any of such releasing parties in connection with use of the Common Areas, and each of them shall be deemed to have waived any and all claims and causes of action that any of them may ever have against any of such released parties with respect thereto.

(f) By acceptance of a deed to a Lot, all Owners acknowledge and accept the inherent risks and hazards (whether foreseeable or not) associated with any lakes, ponds, creeks, or stormwater detention facilities that are part of the Common Areas. The Developer and the Homes Association and their respective officers, directors, managers, representatives and agents shall have no liability or responsibility to any Owner or other party with respect to such inherent risks and hazards. To the maximum extent permitted by law, each Owner, for himself, the members of his family, his guests, his tenants and invitees, shall be deemed to have released and agreed never to make a claim against the Developer, the Homes Association and/or any of their respective officers, directors, managers, representatives, or agents for any personal injury or death that may be suffered or incurred by any of such releasing parties in connection with use of any lakes, ponds, creeks, or stormwater detention areas, and each of them shall be deemed to have waived any and all claims and causes of action that any of them may ever have against any of such released parties with respect thereto.

(g) The following shall apply to any lake, pond, creek, or stormwater detention area that is part of the Common Area:

(1) Fishing is allowed only by residents.

(2) All persons under the age of eighteen (18) must be accompanied by an adult at all times while near or around any lake, pond, creek, or stormwater detention area.

(3) There shall be no cleaning of fish at any lake, pond, creek, or stormwater detention area, or in any other Common Area.

(4) No boating, swimming or wading shall be allowed in any lake, pond, creek, or stormwater detention area.

(5) No docks or other structures shall be built into or over any lake, pond, creek, or stormwater detention area other than by the Developer or the Homes Association.

8.3 Subject to Section 8.2 above and Section 8.5 below, the Developer covenants and agrees to convey, by special warranty deed, all of its rights, title and interest in the Common Areas (except any part thereof that is solely a landscape easement or is within any Lot or outside of the Subdivision) to the Homes Association, without any charge to the Homes Association, at such time(s) as the Developer, in its absolute discretion, may determine, but in all events not later than one month after the Developer has recorded the Certificate of Substantial Completion. Such transfer shall be free and clear of all deeds of trust, security interests and mechanic's liens. Developer shall not be required to provide the Homes Association with any title insurance policy for any of the Common Areas. Any transfer of title to the Common Areas by the Developer shall not require the consent of the Homes Association and shall not constitute an assignment by the Developer of any of its rights, as the developer of the Subdivision, pursuant to this Declaration or any other instrument, contract or declaration.

8.4 Notwithstanding the actual date of transfer of title, the Homes Association shall at all times, from and after the date of its formation and at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all Common Areas (except any part thereof that is within any Lot and has not been landscaped or otherwise improved by the Developer or the Homes Association, but including the Perimeter Fencing), subject to any control thereover maintained by any governmental authority, utility or similar person or entity, In insuring the Common Areas, the Homes Association shall cause the Developer to be named as an additional insured on the insurance coverage until the recording of the Certificate of Substantial Completion,

8.5 Each of the Developer and the Homes Association, in its discretion, shall have the right to reconfigure and/or replat all or any part of the Subdivision then owned by it, including, without limitation, to make part of a Common Area tract a part of a Lot, and vice versa. In addition, each of the Developer and the Homes Association shall have the right to transfer to the City (but only with the City's consent) title to or easements over all or any part of the Common Areas so that they become public areas maintained by the City.

8.6 Prior to the filing of the Certificate of Substantial Completion, Developer and the project marketing company shall have the right to use any building that is part of the Common Areas for office, sales and storage purposes without payment of rent or utility reimbursement (other than telephone and internet) by the Developer or the project marketing company to the Homes Association.

## **ARTICLE IX DESIGN CONTROL**

9.1 The Homes Association shall have a Design Review Committee (the "**Design Review Committee**") consisting of one to three (1 to 3) persons appointed (and removed) from time to time (a) by Developer in its sole discretion (with no requirement of Lot ownership or other criteria) until the Turnover Date, and (b) by the Board after the Turnover Date.

9.2 The Design Review Committee shall meet as necessary to consider applications with respect to any matters that require the approval of the Design Review Committee and any other matters within the authority of the Design Review Committee as provided in this Declaration. A majority of the members of the Design Review Committee shall constitute a quorum for the transaction of business at a meeting and every act or decision made by a majority of the members present at a meeting at which a quorum is present shall be regarded as the act or decision of the Design Review Committee.

9.3 No building or other structure; fence or wall; driveway, walkway, patio or deck; exterior lighting, sign, apparatus or fixture; swimming pool or other recreational facility or playground equipment; landscaping; alteration of grade or drainage; or changes, alterations or additions to the exterior portions of any of the foregoing (including color changes), either temporary or permanent (collectively referred to as “**Improvements**”), shall be constructed, erected, installed, placed, undertaken or maintained in or upon any part of the Subdivision except in compliance with plans and specification thereof which have been submitted to and prior approved in writing by the Design Review Committee. Notwithstanding the foregoing, the Developer is exempt from the foregoing submittal and approval requirements.

Replacements of any exterior portions of any Improvements because of age, deterioration, casualty loss or other reason, shall be of the same design, material and color as the original Improvement unless plans and specifications thereof have been submitted to and prior approved in writing by the Design Review Committee.

Until the Turnover Date, any and all Improvements or replacements erected, installed, placed, undertaken or maintained by the Developer shall be deemed approved by the Design Review Committee.

9.4 In connection with the approval or disapproval of plans and specifications, the Design Review Committee shall consider appearance; quality of design and workmanship; harmony of design, materials and colors in relation to surrounding structures and landscape and the Subdivision as a whole; and location and finished grade elevations with respect to surrounding topography. The Design Review Committee may reject plans and specifications, without citing specifics, for the following reasons, among others: (a) insufficient information to adequately evaluate the design or its intent; (b) poor overall design quality; (c) incompatible design elements; (d) inappropriate design concept or design treatment; or (e) a design or intended use found to have an adverse effect on the character of the Subdivision or its residents. In recognition of the fact that the overall impact of Improvements involves issues of taste and judgment which cannot be completely reduced to Design Standards, the Design Review Committee shall also have the right, in its sole discretion, to reject plans and specifications conforming to the Design Standards if the Design Review Committee believes that the overall aesthetic impact of any proposed Improvement, addition, alteration or change is detrimental to the Subdivision.

9.5 All submissions to the Design Review Committee are to be made within the time periods to be established from time to time by the Design Review Committee. The initial review of each such submission by the Design Review Committee will be carried out within thirty (30) working days from the date of each complete submission, and notification of recommendations, approval or disapproval will be provided in writing, by mail, via the internet, or through the Homes

Association's website, to the Owner within that time. Submission to the City for building permits or site plan approval should not be made until final plans have been approved by the Design Review Committee.

9.6 After the Turnover Date, any applicant or other person who is dissatisfied with a decision of the Design Review Committee shall have the right to appeal such decision to the Board provided such appeal is filed in writing with a member of the Board within seven days after the date the Design Review Committee renders its written decision. In making its decisions, the Board may consider any and all aspects and factors that the individual members of the Board, in their absolute discretion, determine to be appropriate to establish and maintain the quality, character and aesthetics of the Subdivision, including, without limitation, the building plans, specifications, exterior color scheme, exterior materials, location, elevation, lot grading plans, landscaping plans and use of any proposed exterior structure. Any decision rendered by the Board on appeal of a decision of the Design Review Committee shall be final and conclusively binding on all parties and shall be deemed to be the decision of the Design Review Committee for all purposes under this Declaration. The Board from time to time may adopt, amend and revoke rules and regulations respecting appeals of decisions of the Design Review Committee, including, without limitation, requiring payment of a reasonable fee by the appealing party.

9.7 Building plans and specifications shall include the following:

(a) A site plan which shows the location of the residence on the Lot; the location of driveways, walkways, patios, decks, walls, fences, and other structures; the top of foundation elevations; the existing grades and the proposed final grading of the Lot; and the size and location of all large trees with trunks which are six inches or larger in diameter (measured six inches (6") above ground level) located within twenty-five feet (25') of the residence or on other parts of the Lot which will be disturbed by construction. The survey shall clearly indicate which large trees will be saved and which shall be removed.

(b) A complete set of final construction plans which include floor plans; exterior elevations for all sides showing finish grades; roof plans; and exterior material selections. Floor plans and front elevations shall be drawn at a scale of  $\frac{1}{4}" = 1'$ . Side and rear elevations and roof plan shall be drawn at  $\frac{1}{4}" = 1'$  or  $\frac{1}{8}" = 1'$ .

(c) A final color plan with color chips for all exterior surfaces including roofs, walls, shutters, trim and flatwork (if other than untinted concrete).

(d) A final landscape plan.

(e) Such other plans and specifications as may be required by the Design Review Committee.

Two (2) hard copy sets of all plans and specifications shall be submitted to the Design Review Committee for review. Once approved, one set shall be signed by the Design Review Committee (or representative thereof) and returned and one set shall be kept by the Design Review Committee for record. In lieu of submitting hard copy sets, one (1) set of all plans and specifications may be submitted to the Design Review Committee for review via the Homes Association's website (in which case approval, denial, or any comments will be provided by the Design Review Committee



via the website). Design Review Committee may require an electronic PDF of all plans and specifications.

9.8 The Design Review Committee's interests in reviewing site and building designs is to assure that a high quality of compatible development is consistently achieved. In order to meet special situations that may not be foreseen, it may be desirable from time to time for the Design Review Committee to allow variances of certain requirements. Any variance granted is considered not to be precedent setting because the decision is being made in the context of the specific project in question with the welfare of the appropriate area and overall Subdivision in mind. All approvals and consents of the Design Review Committee shall be in writing, and oral approvals or consents shall be of no force or effect.

9.9 Design Review Committee Authority and Limits of Liability:

(a) The Design Review Committee may delegate the plan review responsibilities to one or more of its members or to architectural consultants it retains. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Design Review Committee.

(b) The Design Review Committee shall have the right, at its discretion, to collect fees from applicants to reimburse the Homes Association for direct expenses incurred in reviewing such plans and specifications. Such expenses may include the cost of services rendered by professional architects, landscape architects or engineers, and associated costs of postage, photocopies, etc.

(c) By its approval of plans and specifications, the Design Review Committee shall not be deemed to have approved the same for engineering design or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the Developer nor any member thereof, the Design Review Committee nor any member thereof, nor the Homes Association nor any member, officer or director thereof, assumes any liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications. None of said persons or entities shall be liable to any Owner or other person or entity for any damage, loss, cost or prejudice suffered or claimed on account of (i) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, or (iii) the development or manner of development of any property within the Subdivision. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be a representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations, including zoning ordinances and building codes.

(d) Any member or authorized consultant of the Design Review Committee, Developer or its representatives, or any authorized officer, director, employee or agent of the Homes Association may at any reasonable time, after reasonable notice to the Owner, enter upon any Lot without being deemed guilty of trespass in order to inspect

Improvements constructed or being constructed on such Lot to ascertain that such Improvements have been or are being built in compliance with the plans and specifications approved by the Design Review Committee, the Design Standards and this Declaration. The Design Review Committee shall cause such an inspection to be undertaken within a reasonable time (not to exceed 60 days) after a request therefore from any Owner as to his Lot, which request shall contain an affirmative statement by such Owner of his good faith belief that he is in compliance with the approved plans and specifications, the Design Standards and the provisions hereof. If such inspection reveals that the Improvements located on such Lot have been completed in compliance with the requirements of the Design Review Committee, the Design Standards and the provisions hereof, the Design Review Committee shall provide to such Owner a notice of such approval in recordable form which, when recorded with the Recording Office, shall be conclusive evidence of compliance with the requirements of the Design Review Committee, the Design Standards and the provisions hereof as to the Improvements described in such recorded notice.

(e) The Homes Association may promulgate such rules and regulations as it deems to be appropriate and as are not in conflict with this Declaration in order to enforce compliance with the Design Standards. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE HOMES ASSOCIATION MAY FIX A FINE OF UP TO \$10,000 FOR FAILURE TO OBTAIN ANY REQUIRED APPROVAL FROM THE DESIGN REVIEW COMMITTEE OR TO COMPLY WITH ANY SUCH APPROVAL. The assessment of any such fine shall not limit any other rights or remedies that the Homes Association may have with respect to the applicable Improvements.

9.10 The Owner shall cause all pertinent requirements of public agencies to be complied with in the construction of Improvements on the Owner's Lot, and all plans must be approved by the appropriate departments of the City. Without limiting the foregoing, the design of any fence crossing a drainage area must be reviewed and approved by the Director of Public Works of the City to assure that the fence does not restrict water flow. Each Owner must verify code requirements at the time of purchase or construction, as applicable. Although based in part on local zoning and Subdivision regulations, the Design Standards may be more restrictive as to land use restrictions, site development standards, landscape requirements or other matters. In every case in which the Design Standards or approvals given by the Design Review Committee are at variance with public agency requirements, the more restrictive standards, approvals, or regulations shall govern.

## **ARTICLE X CONSTRUCTION, USE, AND OCCUPANCY RESTRICTIONS**

10.1 All Lots and Owners shall be subject to the following construction, use, and occupancy restrictions:

(a) **Residential Use.** Each Lot may be improved, used or occupied only for one single-family private residence and for no other use or purpose. The Board shall have the right to determine whenever an extended family or roommate situation becomes a burden on the neighbors of the Subdivision and is not within the "single family" use intended by this Declaration. No trailer, garage, outbuilding or any structure of a temporary character

shall at any time be used for human habitation, temporarily or permanently. Except as otherwise provided herein, no building or structure of any sort shall be placed, erected or used for business, professional, trade or commercial purposes on any Lot; provided, however, that this restriction shall not prevent an Owner from maintaining an office area in his residence in accordance with applicable ordinances of the City. Maintaining such a home office shall not permit advertising said office location (on or off site) or visitation by customers or clients at the residence. Use of any Lot for commercial day care (child or adult) purposes is specifically prohibited. Nothing herein shall restrict the Developer or others authorized by the Developer from erecting and using temporary buildings or any residence or clubhouse for office, model, sales or storage purposes during the period of construction of Improvements and sale of Lots within the Subdivision. The construction of stand-alone sheds is strictly prohibited.

(b) **Leasing.** Each Owner who desires to rent any part of a residence must comply with all licensing and other requirements of the City. In addition, no residence or part thereof shall be rented or used for transient or hotel purposes, which are defined as: (i) rental of less than six (6) months duration or under which occupants are provided customary hotel services such as room service for food and beverages, maid service, and similar services; or (ii) rental to roomers or boarders, (i.e., rental to one or more persons of a portion of a residence only). No lease may be of less than an entire residence. Each lease shall be in writing, shall require that the tenant and other occupants acknowledge the existence of this Declaration and agree to comply with all provisions of this Declaration, shall provide that the lease shall be subject in all respects to the provisions of this Declaration and to the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the tenant to comply with the terms of this Declaration or such rules and regulations shall be a default under the lease. In the event a tenant fails to comply with the terms of this Declaration or such rules and regulations, the Owner shall, if so directed by the Board and to the extent permitted by law, terminate the lease and evict the tenant. Prior to the commencement of the term of a lease, the Owner shall notify the Board, in writing, of the name or names of the tenant or tenants and the time during which the lease term shall be in effect. Notwithstanding the existence of a lease, the Owner shall remain liable for all obligations under this Declaration with respect to the Lot and the improvements thereon and the use thereof and the Common Areas, and the Owner shall cause the rented property to be maintained to the same general condition and standards as then prevailing for the Owner-occupied residences in the Subdivision.

(c) **Residence Requirements.** No residence shall be constructed on a Lot without meeting the following requirements:

(1) It shall have not less than the following square footage:

(A) For Honey Lots: 1,000 sq. ft. ranch with attached two car garage, or 1,000 sq. ft. two story with attached two car garage, or 1,000 sq. ft. one and one-half story with attached two car garage. No split level plans are allowed.

(B) For Twin Product Lots: 1,000 sq. ft. ranch with attached two car garage, or 1,000 sq. ft. two story with attached two car garage, or 1,000 sq. ft. or a one-half story with attached two car garage. No split level plans are allowed.

(C) For Townhomes Lots: 1,000 sq. ft. ranch with attached two car garage, or 1,000 sq. ft. two story with attached two car garage, or 1,000 sq. ft. one and one-half story with attached two car garage. No split level plans are allowed.

(2) Roof construction standards shall be maintained as follows: 30-year or better architectural composite shingles in color "Weatherwood" or as otherwise approved by the Design Review Committee.

(3) Exterior walls must be covered in wood siding, masonry stucco, stucco, stone, stone veneer, brick, or any combination thereof, and painted or colored surfaces must be painted in accordance with Design Review Committee approved colors.

(4) Garage doors must be steel faced and not wood.

(5) Windows must be vinyl, vinyl clad, or aluminum clad in white, tan, brown, or black.

(6) Driveways must taper to no more than two cars wide at the street.

(7) Outside air conditioning units must be mounted above the ground on a bracket on the side or rear of the home.

(8) Except as otherwise permitted by the Design Review Committee in writing, all residences shall have a house number place or house numbers in the style(s) approved by the Design Review Committee.

(9) Within sixty (60) days after the issuance of any permanent or temporary certificate of occupancy for the residence, all lawns, including all areas between the residence and any adjacent street, regardless of the existence and location of any fence, monument, boundary wall, berm, sidewalk or right-of-way line, shall be fully sodded and shall remain fully sodded at all times thereafter; provided, however, that the Owner of a Lot may leave a portion of the Lot as a natural area with the express written permission of the Design Review Committee. No lawn on a Lot shall be planted with zoysia or buffalo grass.

(10) Within sixty (60) days after the issuance of any permanent or temporary certificate of occupancy for the residence, the Owner thereof shall landscape the Lot to the same standards as that generally prevailing throughout the Subdivision (as determined by the Design Review Committee). All landscaping shall be installed in accordance with the landscaping plans approved by the Design

Review Committee and shall be maintained by the Owner in good condition at all times.

(11) The Design Review Committee shall have the right (but not the obligation) to require the builder to install one (1) or more street trees on each Lot. Subject to any requirements of the City, the type(s) and location(s) of tree(s) and timing of planting shall be selected by the Design Review Committee in its absolute discretion.

(d) **Maintenance.** Each Owner shall properly maintain his Lot and the residence and other Improvements thereon in good condition and repair and in a neat, clean, orderly and attractive condition at all times. Trees, shrubs and lawns shall be maintained in good condition and attractive appearance at all times. Lawn grass shall be uniformly mowed and shall not be permitted to reach a height of more than four inches (4"). Each Owner shall properly water, maintain and replace all trees and landscaping on the Owner's Lot and adjacent public rights-of-way. Each residence exterior shall be repainted by the Owner every ten (10) years or less (as determined by the Design Review Committee as needed). Any exterior color change must be approved in advance by the Design Review Committee .

(e) **Utility and Drainage Easements.** Within the easements reserved in the Subdivision for the installation and maintenance of utilities and drainage facilities, no grading, planting, structure or other material shall be placed or maintained which may 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. Easement areas on Lots, and all Improvements thereon, shall be maintained continuously by the Owners, except for those improvements for which a public authority or utility company is responsible.

(f) **Alteration of Common Areas and Right-of-Way Amenities.** No Owner shall improve, destroy or otherwise alter any Common Areas or right-of-way amenities without prior written consent of the Homes Association.

(g) **Fences and Walls.**

(i) The following shall apply to Honey Lots and Twin Product Lots. Black wrought iron style fences no greater than four feet in height may be permitted. All fencing and walls (including, without limitation, the composition and location thereof) shall be subject to the approval of the Design Review Committee and the City. Only black wrought iron style fences, with iron stile, stone or brick pillars, are permitted (exceptions will be considered in height where requirements by the City related to accommodating swimming pools conflict with this restriction). Privacy screens of other material may be permitted by the Design Review Committee around patios so long as the Design Review Committee determines that the materials and design are in harmony with the house but in no instance shall such screens penetrate the building set back lines. No chain link, wire, wood panel or

stockade fencing shall be permitted. Retaining walls shall be made of natural materials approved by the Design Review Committee.

(ii) The following shall apply to Townhome Lots. No fences (other than underground electronic pet fences) or patio or boundary walls shall be permitted on any Townhome Lot. Underground electronic pet fences may be allowed with the express written consent of the Design Review Committee. The Association shall not be responsible for repairing or replacing any underground electric pet fence that may be allowed to be installed for a Townhome Lot.

(h) **Flagpoles, Mailboxes, Doghouses, Yard Ornaments, Lawn Furniture, Recreational and Play Structures.** No freestanding flagpole, mailbox, doghouse, sculpture, fountain or other yard ornament, permanent lawn furniture or recreational or play structures may be installed, placed or maintained on the exterior of any building or on any Lot without the prior written approval of the Design Review Committee. Free standing sheds are not allowed. (Outdoor furniture placed on decks or patios is exempt from approval requirements.) Except where specifically authorized in writing by the Design Review Committee, all outside doghouses or recreational or play structures (other than basketball goals) shall be located behind the back building line of the house. Outside doghouses shall have materials and colors that are compatible with the residence.

(i) **Artificial Flowers and Trees.** No artificial flowers, trees, or other vegetation shall be permitted on the exterior of any residence or in the yard, except as may be approved by the Design Review Committee. Sculptures, bird baths, bird feeders, fountains, yard art, and similar decorative objects are allowed on the exterior of the residence or in the yard only with the specific written approval of the Design Review Committee.

(j) **Tennis & Pickleball Courts, Swimming Pools and Hot Tubs.** No tennis court, pickleball court, sport court, or above-ground swimming pool shall be installed or maintained on any Lot, *provided, however*, that above-ground hot tubs may be installed and maintained with prior written approval by the Design Review Committee. No in-ground swimming pool or related improvements, facilities or equipment shall be installed or maintained upon any Lot unless the location, design, materials, colors, and landscaping are approved in writing by the Design Review Committee. All pools shall be fenced and all hot tubs shall be fenced or otherwise adequately screened, all in accordance with the provisions of this Declaration. All pools and hot tubs shall be kept clean and maintained in operable condition at all times.

(k) **Signs.** No permanent or temporary sign of any kind shall be displayed to public view in any manner in the Subdivision without the prior approval of the Homes Association, except: (a) one sign for each Lot, not exceeding 1,000 square inches in area, advertising the Lot for sale; (b) street markers, traffic signs and other signs displayed by government agencies or utilities on designated easements and rights-of-way; (c) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; (d) signs not exceeding six (6) square feet in area promoting candidates or issues but limited to only forty-five (45) days before and two (2) days after the day of election and only one

sign per candidate or issue; and (e) one garage sale sign not exceeding 1,000 square inches in area is permitted on the Lot when the sale is being held, provided such signs are removed within twenty-four (24) hours after the close of the sale. No signs offering a residence for lease shall be permitted in the Subdivision. For newly constructed homes offered for sale, only one realty sign (which may include a rider identifying the builder), and not also a separate sign for the builder, may be used if a realty company is involved. Nothing in this section shall be construed to prohibit the erection of Subdivision entrance structures, identity signs, directional signs, advertising signs and informational signs by Developer, its grantees, assignees, or licensees in such size and design and at such places as it or they may determine. No sign shall be placed or maintained on any Common Area without the approval of the Board. If any sign other than those described above shall be displayed in the Subdivision, the representatives or agents of the Developer or the Homes Association shall have the right to remove such sign. For purposes hereof, a "sign" includes any mark, symbol, word or drawing intended to communicate to a viewer.

Without limiting the foregoing, no sign shall be permitted which (A) describes the condition of the residence or the Lot, (B) describes, maligns, or refers to the reputation, character or building practices of the Developer, any builder, any realtor, or any other Owner, or (C) discourages or otherwise impacts or attempts to impact a party's decision to acquire a Lot or residence in the Subdivision. In the event of a violation of the foregoing provisions, the Developer and/or the Homes Association shall be entitled to remove any such offending sign, and in so doing, shall not be subjected to any liability for trespass, violation of constitutional or other rights, or otherwise. If these limitations on the use of signs, or any part thereof, are determined to be unlawful, the Board shall have the right to regulate the use of signs in a manner not in violation of law.

(l) **Basketball Goals.** No exterior basketball goals shall be erected or maintained on any Lot without the prior written consent of the Design Review Committee. Basketball goals shall be permanently installed and shall have transparent backboards and black posts. Basketball hoops and goals attached to a building are specifically prohibited. There shall be only one basketball goal per Lot. The Board shall have the right to establish reasonable rules regarding the hours of use of basketball goals and any such rules shall be binding upon all of the Lots and the Owners.

(m) **Animals.** No animal of any kind, including livestock, poultry and poisonous reptiles, shall be kept on any Lot, except that dogs, cats and other commonly accepted household pets of a number and type permitted by ordinances and regulations of the City, as the same may be amended from time to time (other than any dog included within the definition of "vicious dogs" pursuant to City ordinances and regulations), may be kept, provided they are not kept or bred for any commercial purpose and do not constitute a nuisance to residents of the Subdivision. In no event, however, shall more than three dogs or cats, or combination thereof, be kept on any Lot. All permitted pets shall be kept within a residence or fenced area, or on a leash attended by a responsible person at all times. In the event an otherwise permitted animal, in the discretion of the Board, constitutes a nuisance or endangers the safety or welfare of any resident of the Subdivision, such animal shall be removed from the Subdivision by the owner thereof. In the event the owner fails or refuses to remove the animal, the Homes Association may cause the animal to be

removed. Owners shall immediately clean up after their pets on all streets, Common Areas and Lots owned by others.

(n) **Offensive Activities, Nuisances, Dumping.** No noxious or offensive activity shall be carried on with respect to any Lot, nor shall any trash, ashes, brush, debris or other refuse be thrown, placed or dumped upon any Lot or Common Areas, nor shall anything be done which may be or become an annoyance or a nuisance to residents of the Subdivision or any part thereof.

(o) **Trash Storage.** No trash, refuse, or garbage can or receptacle shall be placed on any Lot outside a residence, except after sundown of the day before or upon the day of regularly scheduled trash collection and except for grass bags placed in the back or side yard pending regularly scheduled trash collection.

(p) **Solar Collectors and Windmills.** No solar panels, windmills or similar devices may be installed without the prior written approval of the Design Review Committee. Should any part or all of the restriction set forth in the preceding sentence be unenforceable because it violates a statute or any provision of the United States Constitution or the Missouri Constitution, the Design Review Committee shall have the right to establish rules and regulations regarding the location, size, and other aesthetic aspects of solar panels, windmills and similar devices so as to reasonably control the impact of such solar panels, windmills and similar devices on the Subdivision, and all parts thereof, and any such rules and regulations shall be binding upon all of the Lots.

(q) **Antennas, Satellite Dishes.** No exterior radio, television, short wave, citizens' band or other antenna of any kind, including satellite dishes or other devices for the reception or transmission of radio, microwave or similar signals, shall be placed or maintained on any Lot without the prior written approval of the Design Review Committee. Approval of such devices shall be based on criteria such as location, size, signal strength, aesthetic appearance, landscaping, screening and other legally permissible considerations so as to reasonably control the impact of such devices on the Subdivision and all parts thereof. All such devices shall be installed in accordance with and shall comply in all respects with City requirements. Notwithstanding any provision in this Declaration to the contrary, small satellite dishes (maximum twenty inches (20") in diameter) may be installed, with the prior written consent of the Design Review Committee, so as not to be readily visible from the street.

(r) **Garage Sales.** No garage sales, sample sales or similar activities shall be held within the Subdivision without the prior written consent of the Homes Association.

(s) **Sound Devices.** No exterior speaker, horn, whistle, siren, bell or other sound device, except intercoms, devices used exclusively for security purposes and stereo speakers used in accordance with any rules specified by the Homes Association shall be located, installed or maintained upon any Lot.

(t) **Exterior Lights.** No outside lights shall be mounted higher than twenty feet (20') off the ground unless otherwise required by city code and no free standing exterior



lights shall be located more than ten feet above ground level. Except for holiday lights, all exterior lighting shall be white and not colored. All landscape lighting must be approved in writing by the Design Review Committee.

(u) **Utility Lines.** All residential utility transmission lines shall be underground.

(v) **Connections to Sanitary Sewers.** No water from any roof or downspout, basement or garage drain or any surface drainage shall be placed in or connected to any sanitary sewer line.

(w) **Fuel Storage Tanks.** No outside or underground tank for the storage of fuel or other liquids (other than small propane tanks for BBQ grills) shall be installed, placed or maintained on any Lot.

(x) **Vehicles and Equipment.** No automobile, truck, motorcycle, motorbike, van, bus, motor home, recreational vehicle, camper, boat, trailer or other vehicle, and no lawn mower or other motorized or wheeled outdoor equipment or apparatus shall be left, maintained, repaired, serviced or stored on any Lot, except in an enclosed building. Overnight parking of motor vehicles or trailers of any type or character in public streets, Common Areas or vacant lots is prohibited. Trucks or commercial vehicles with gross vehicle weight of 12,000 pounds or over are prohibited except during such time as such truck is actually being used for the specific purpose for which it is designed. Nothing in this section, however, shall be so construed as to prohibit the regular parking of not more than two licensed and operative automobiles of any type (including pick-up trucks) in a reasonable state of repair and preservation or the temporary parking of recreational vehicles for the purpose of loading or unloading (maximum of two (2) nights every fourteen (14) days) on any paved driveway on any Lot.

(y) **Garage Doors.** All garage doors shall remain closed at all times except when necessary for entry or exit, or when a resident is in the yard or driveway.

(z) **Clotheslines.** No exterior clothesline or clothesline pole shall be erected or maintained on any Lot.

(aa) **Holiday Decorations.** No exterior holiday banners and/or holiday decorations (including decorative lights) shall be installed, placed or maintained on any Lot except for the period beginning November 1<sup>st</sup> through January 31<sup>st</sup>.

(bb) **Awnings, Equipment, Fixtures.** No awning, or any unsightly equipment or fixture shall be installed, placed or maintained on the exterior of any structure or on any Lot, nor shall any air conditioning equipment or unsightly projection be attached to or placed in front of any residence without the prior written consent of the Design Review Committee.

(cc) **Casualty Damage.** In the event of vandalism, fire, windstorm or other damage, no residence or other Improvement shall be permitted by the Owner to remain in

damaged condition for longer than three months (except with the specific written consent of the Design Review Committee).

(dd) **Driveways.** All driveways and sidewalks shall be concrete, patterned concrete, bomanite, interlocking pavers, brick or other permanent stone finishes. Crushed gravel, asphalt and natural driveways and sidewalks are prohibited. No driveway shall be constructed in a manor as to permit access to a street across a rear property line.

(ee) **View Obstruction.** No Owner has any right to an unobstructed view beyond the boundaries of the Owner's Lot. No Owner shall be entitled to prevent the construction or location of any building, structure, trees, landscaping or other item on any other part of the Subdivision, where otherwise permitted by this Declaration, because such structure, trees, landscaping or other item obstructs any view from the affected Lot.

(ff) **No Mining Activities.** No portion of the Property shall be used, at any time, for mining, boring, quarrying, drilling, refining or other operations involving, or related to, the extraction or exploitation of any subsurface natural resource of any kind. The prohibitions of this provision may not, under any circumstances, be waived or amended by the Design Review Committee, the Board of Directors, the Owners or Members.

**10.2 CONSTRUCTION PERIOD REQUIREMENTS.** During construction periods on any Lot, the Owner and all parties involved in such construction shall be responsible for maintaining the Lot in a clean and orderly manner; for controlling erosion and runoff while the site is in a disturbed condition; and for insuring that mud and debris tracked onto public streets is promptly removed. Adequate erosion and silt control procedures shall be followed by the Owner, at its expense, including the use of barricades, temporary construction fence, straw bales or silt fence, to protect adjacent Lots, Common Areas and adjacent property.

(a) All final grading of each Lot shall be in accordance with any master grading plan approved by the City and any specific site grading plan for the Lot approved by or for the Design Review Committee. No landscaping, berms, fences or other structures shall be installed or maintained that impede the flow of surface water. Water from sump pumps shall be drained away from adjacent residences (actual and future). No changes in the final grading of any Lot shall be made without the prior written approval of the Design Review Committee and, if necessary, the City. The Developer shall have no liability or responsibility to any builder, Owner or other party for the failure of a builder or Owner to final grade or maintain any Lot in accordance with the master grading plan or any approved lot grading plan or for the Developer not requiring a lot grading plan or compliance therewith or for the quality or composition of any soil or subsurface material. The Developer does not represent or guarantee to any Owner or other person that any grading plan for the Lots which the Developer or any engineer or other party may approve or supply shall be sufficient or adequate or that the Lots will drain properly or to any Owner's or other person's satisfaction.

(b) During the construction of the residence and improvements on such Lot, the Owner, at its expense, shall install and properly maintain, until the Lot is completely

sodded, hay bales, fencing and such other erosion and silt control devices as are necessary to prevent stormwater runoff from the Lot depositing silt or other debris onto adjacent Lots, Common Areas and streets. In connection therewith, the Owner shall comply with all Federal, state and local governmental laws, regulations and requirements, with all applicable permits, and with all requirements imposed by the Design Review Committee, including, without limitation, preparation of inspection reports, and the Owner shall be responsible for any and all governmental fines and assessments that may be levied or assessed as a result of a failure of the Owner to so comply.

(c) Approval of plans or specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty that such plans or specifications comply with good engineering/architectural practices or any governmental requirements.

(d) Each Owner acknowledges that neither the sale of a Lot by the Developer to a particular builder nor the inclusion of a particular builder on a list of builders building in the area or on a list of approved builders constitutes a representation, endorsement or guaranty by the Developer or any real estate broker/salesperson of the financial stability, qualifications, work or any other matter relating to such builder. Neither the Developer nor any real estate broker/salesperson guarantees or warrants the obligations or construction by any builder.

(e) Unless specifically approved by the Design Review Committee, no residence shall be occupied until it is fully completed, except for exterior painting and minor details.

**10.3 COMPLIANCE WITH CITY REQUIREMENTS.** Notwithstanding any provision of this Declaration to the contrary, all property within the Subdivision shall be used only in compliance with federal, state and city requirements. In every case in which any provision of this Declaration is at variance with such requirements, the more restrictive provision shall govern and control. The provisions of this Declaration shall be valid and enforceable even if such provisions are more restrictive than the City's ordinances or other applicable laws. The parties entitled to enforce this Declaration shall also have the right to enforce, in a private civil action under this Declaration, all City ordinances and other laws that are applicable to the Subdivision, even if the City or other applicable governmental authority chooses not to enforce the same. All such City ordinances and other applicable laws that are in effect from time to time shall be automatically incorporated into this Declaration by this reference.

**10.4 CORRECTION OF VIOLATIONS.** Each of the Developer and the Homes Association or its authorized agents may enter any Lot on which a violation of the Declaration exists and may correct such violation at the expense of the Owner of such Lot. Such expenses and such fines as may be imposed by the rules and regulations adopted by the Homes Association, shall be deemed a special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of **Article VI**. All remedies described in this Declaration and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, tenant, occupant or other party of any provision of this Declaration.

#### **10.5 COVENANTS RUNNING WITH LAND; ENFORCEMENT; WAIVERS.**

The agreements, restrictions, reservations and other provisions herein set forth are, and shall be, covenants running with the land and shall be binding upon all subsequent grantees of all parts of the Subdivision. The Developer, and its successors, assigns and grantees, and all parties claiming by, through or under them, shall conform to and observe such agreements, restrictions, reservations and other provisions; provided, however, that neither the Developer, the Design Review Committee, the Homes Association nor any other person or entity shall be obligated to enforce any such agreements, restrictions, reservations or other provisions. By accepting a deed to any of the Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the agreements, restrictions and reservations set forth herein as applied to the Lot owned by such Owner.

Each of the Developer and the Homes Association and each Owner shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of, or to enforce the observance of, the agreements, restrictions, reservations and other provisions set forth in this Declaration, in addition to pursuing an action at law for damages. To the maximum extent permitted by law, if the Developer or the Homes Association files such court action and is successful in obtaining a judgment or consent decree in such court action or otherwise obtaining compliance by the breaching party, the Developer and/or Homes Association shall be entitled to receive from the breaching party, as part of the judgment or decree or any dismissal or settlement, the actual legal fees, costs and expenses incurred by the Developer and/or Homes Association with respect to such action.

To the extent permitted by law, the Board may also enforce all of the foregoing agreements, restrictions, reservations and other provisions of this Declaration by establishing, levying and collecting reasonable monetary fines for violation thereof.

Whenever the Developer or the Board determines that a violation of this Declaration has occurred and is continuing with respect to a Lot, the Developer and the Homes Association may (but is not obligated to) enter the Lot to correct the violation, and, in addition or in lieu thereof, may file with the Recording Office a certificate setting forth public notice of the nature of the breach and the Lot involved.

No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of this Declaration shall impair any of such rights or remedies; nor shall any such delay or failure be construed as a waiver of that or any other violation.

In addition to the specific provisions of this Declaration that allow the Developer, the Design Review Committee or the Homes Association to make certain decisions or give permission for certain matters, the Developer, the Design Review Committee, or the Homes Association (acting through the Board) may, under special situations or circumstances as determined by it, allow variances or waivers of the requirements or terms set forth in this Declaration. Any such variation or waiver so granted by the Developer, the Design Review Committee, or the Homes Association shall not constitute a waiver of such requirement or term in any other situation or under any other circumstances.

No waiver of any violation shall be effective unless in writing and signed and delivered by the person or entity entitled to give such waiver, and no such waiver shall extend to or affect any other violation or situation, whether or not similar to the waived violation. No waiver by one person or entity shall affect any rights or remedies that any other person or entity may have; provided, however, that a duly authorized, executed and delivered waiver by the Homes Association, acting upon a decision of the Board, respecting a specific violation or potential violation of this Declaration with respect to a specific Lot shall constitute and be deemed as a waiver by all other persons and entities (other than the Developer) of such violation or potential violation.

In accordance with applicable law, the Homes Association may adopt reasonable rules, regulations, restrictions, policies, guidelines, and procedures, including, without limitation, the establishment and imposition of monetary fines, regarding (i) the use of the Common Areas and the personal conduct of the members and their guests thereon, (ii) the implementation of provisions set forth in this Declaration or in any other applicable recorded declaration or document applicable to the Subdivision (or any part thereof), (iii) the establishment and enforcement of construction and design criteria and aesthetic standards, or (iv) the regulation of behavior which violates this Declaration or any other applicable recorded declaration or document applicable to the Subdivision (or any part thereof) or which adversely affects the use and enjoyment of other properties or the Common Areas.

## **ARTICLE XI EASEMENTS**

11.1 The Developer shall have and does hereby reserve for itself and its successors and assigns and the Homes Association and its successors and assigns an easement over and through (i) all Common Areas for the purpose of developing, improving, and maintaining the Common Areas, and (ii) all unimproved portions of each Lot in the Subdivision for the purpose of performing the powers and duties of the Homes Association, including, without limitation, maintaining the Common Areas. The Developer shall have the right to execute and record, at any time, an easement with respect to specific areas utilized as provided above. The Developer and the Homes Association, through its authorized representative(s), may at any reasonable time enter any Lot, without being deemed guilty of trespass, for the purpose of inspecting the Lot and any improvements thereon to ascertain any compliance or noncompliance with the requirements and terms of this Declaration and/or any plans approved hereunder. The Developer and the builder of the residence on the Lot shall have reasonable access to each Lot for the purpose of inspecting and maintaining erosion control devices until final stabilization of the full Lot is achieved by sodding and landscaping. No Owner shall prevent or inhibit the Developer's or the builder's reasonable access for such purpose, and no Owner shall remove or damage any erosion control devices installed by the Developer or the builder. Each Owner shall notify the builder and the Developer of any damage to such erosion control devices.

11.2 The Developer shall have and does hereby reserve for itself and its successors and assigns and the Homes Association and its successors and assigns an easement over and through all unimproved portions of each Lot in the Subdivision for the purpose of (i) installing, operating, maintaining, repairing and replacing an irrigation system for the Common Areas and (ii) performing the powers and duties of the Homes Association and maintaining any Common Areas.

The Developer shall have the right to execute and record, at any time, an easement with respect to specific areas utilized as provided above.

11.3 In the event any easement rights granted in this Article are exercised with respect to any Lot, the party so exercising such easement rights shall exercise the same in a reasonable manner so as to minimize all adverse effects on the Owners and shall promptly repair any damages to such Lot resulting from the exercise of such easement rights and restore the Lot to as near the original condition as possible.

11.4 A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their respective duties.

## **ARTICLE XII**

### **ADDITIONAL PROVISIONS FOR ATTACHED HOMES**

12.1 Party Walls and Related Matters. The following shall apply to the Attached Homes:

(a) The boundary line between the two attached residential units on adjoining Attached Homes will be the center line of the wall dividing the two units (the “**Wall**”), notwithstanding the fact that the boundary line shown upon any Plat or survey creating such Lots may not be located precisely upon said center line of the Wall. The Owner of each such Lot from time to time shall have the full rights of ownership, use and occupancy of the residence located primarily upon such Lot and the Owner of one unit shall not have any right, title or interest in any part of the unit located primarily upon the other Lot.

(b) Subject to the provisions of subsections (e) and (f) below, the Owners of the Attached Homes from time to time shall, at their sole cost and expense, make all repairs and perform all maintenance required upon the surface and non-structural elements of the portion of the Wall which serves as an interior wall of the living unit owned by such Owner; provided, however, that if and to the extent that any such repairs or maintenance are necessitated by reason of the negligence or wrongful act of one Owner or such Owner’s tenants, agents, employees, guests or invitees, then, subject to the provisions of subsection (f) below, such repairs or maintenance shall be made and performed at the sole cost and expense of the Owner whose (or whose tenant’s, agent’s, employee’s, guest’s or invitee’s) negligence or wrongful act necessitated such repairs or maintenance.

(c) Subject to the provisions of subsections (e) and (f) below, the Owners of the Attached Homes from time to time shall make or cause to be made all repairs and maintenance to all utilities to the extent common to both units, including, but not limited to, water, electrical and other applicable utilities and to the structural elements of the Wall, with the cost of such repairs or maintenance to be paid one-half (1/2) by the Owner of each unit; provided, however, that if and to the extent that any such repairs or maintenance are necessitated by reason of the negligence or wrongful act of one Owner or such Owner’s tenants, agents, employees, guests or invitees, then, subject to the provisions of subsection (f) below, such repairs or maintenance shall be made and performed at the sole cost and expense of the Owner whose (or whose tenant’s, agent’s, employee’s, guest’s or invitee’s)

negligence or wrongful act necessitated such repairs or maintenance. If an Owner shall refuse or fail to pay its share of such costs, the other Owner may pay such amount and be entitled to a lien against the other Owner's unit as provided in subsection (i) below. Residents of each Attached Home shall not park on their neighbors' side of any shared driveway. Driveway maintenance shall be at the expense of the owner of the Attached Home.

(d) Any and all repairs and maintenance which either Owner or both Owners jointly shall be required to perform hereunder or shall elect to perform shall be done in a good and workmanlike manner and in full compliance with all laws, ordinances, statutes, rules and regulations of any federal, state, county or local government or governmental agency or authority. Any such repairs and maintenance, once commenced, shall thereafter be diligently pursued to completion. Each Owner shall have a reciprocal easement across the other Owner's Lot to allow reasonable access for the purpose of making inspections and performing any maintenance or repairs. Such easement rights shall be exercised in such a manner as to avoid, to the extent reasonably practicable, unnecessary interference with the use and occupancy of the other Owner's unit.

(e) Each Owner shall keep and maintain insurance coverage with respect to the portion of the building owned by such Owner and with respect to the Wall, insuring the improvements against damage or destruction by fire, lightning, wind, hail, explosion, vandalism and other hazards generally covered in the area under standard special form coverage homeowner's property insurance, in an amount equal to not less than full replacement cost. If requested by the Homes Association, the Homes Association shall be named as an additional insured on such insurance coverage and shall be provided, upon request, with a certificate of insurance evidencing such property coverage. Such insurance shall contain provisions whereby the insurer consents to the mutual waiver of liability contained in subsection (f) below. In the event of any fire or other casualty with respect to the building or any portion thereof, the building or such portion shall be repaired or restored by the Owners according to a uniform architectural plan and finish approved by the Design Review Committee. The cost of such repair and restoration shall be apportioned to each Owner according to the actual cost of repair and restoration of such Owner's unit.

(f) Notwithstanding anything to the contrary herein, each Owner of an Attached Home hereby releases the other Owner(s), its tenants, agents, employees, guests or invitees from all liability for damage due to any act or neglect of the other Owner, its tenants, agents, employees, guests or invitees (except as herein provided) occurring to the building which is or might be incident to or the result of a fire or any other casualty which is or would be covered by the casualty insurance policy described in subsection (e) above or which is covered by any other insurance actually maintained by the Owner or its tenants or other occupants; provided, however, that the releases herein contained shall not apply to any loss or damage occasioned by the willful act or omission of any Owner or its respective tenants, guests or invitees.

(g) No Owner shall have the right, except with the prior written consent of the other Owner, to (A) make any alterations or additions to the Wall or any part thereof, except non-structural interior alterations made within the living unit in the building, or (B) take

any action which will adversely affect the structural integrity or sound transmission prevention qualities of the Wall. To the extent any Owner shall make any alterations or additions to the Wall, (i) such Owner shall, at its sole cost and expense, keep and maintain such alterations or additions in good condition and repair, and (ii) in the event of any fire or other casualty, the restoration and repair of such alterations or additions shall be at the sole cost and expense of such Owner.

(h) The exterior of the building of Attached Homes shall be decorated and maintained with a uniform color(s) and uniform roofing and other materials, all of which shall be agreed upon by the two or more Owners and approved by the Design Review Committee. The expense of maintaining, repairing and replacing the roof, gutters and other exterior portions of the unit shall be borne by the Owner of such part of the building. Should there be a disagreement as to the necessity, time, manner or extent of repainting the exterior of the building or the repair, maintenance or replacement of any exterior part of the building, the Design Review Committee shall resolve the dispute and if any Owner shall fail or refuse to pay its share of such expense, the other Owner(s) may have the work done and be entitled to a lien against the defaulting Owner's Lot as provided for in subsection (i) below.

(i) Should an Owner fail or refuse to pay any costs or expenses as provided in this Section, the non-defaulting Owner(s) shall be entitled to a lien on the Lot of the Owner so failing or refusing to pay to the extent of such costs or expenses. Payment of such costs or expenses may be enforced as a lien on such Lot through proceedings in any court in Jackson County, Missouri, having jurisdiction of suits for the enforcement of such liens. Such non-defaulting Owner(s) may also file a certificate of nonpayment of such costs and expenses against the defaulting Owner's Lot in the Recording Office. Such liens shall continue for a period of five years from the date of nonpayment of the costs or expenses, unless suit shall have been instituted for collection of the costs or expenses, in which case the lien shall continue until payment in full or termination of the suit against the defaulting party.

(j) No vehicle from one Attached Home shall park on the driveway of another Attached Home or on a common driveway so as to block access to another Attached Home (without the consent of the occupants of that other Attached Home). No vehicle shall be left on any driveway shared by any Attached Homes so as to block the entry or exit of vehicles from another Attached Home.

(k) To the extent not inconsistent with the provisions of this Section, the laws of the State of Missouri regarding party walls shall be applicable with respect to each Wall.

## **ARTICLE XIII**

### **NOTICES**

13.1 The Homes Association shall designate from time to time the place where payment of Assessments shall be made and other business in connection with the Homes Association may be transacted.



13.2 All notices required or permitted under this Declaration shall be deemed given if (i) deposited in the United States Mail, postage prepaid, and addressed to the Owner at the address of the Lot or (ii) sent by electronic mail to the Owner at the electronic mail address last provided by the Owner to the Homes Association. Notice to one co-Owner shall constitute notice to all co-Owners.

#### **ARTICLE XIV EXTENSION OF SUBDIVISION**

14.1 The Developer shall have, and expressly reserves, the right (but not the obligation), from time to time, to add to the existing Subdivision and to the operation of the provisions of this Declaration other adjacent or nearby lands (without reference to any tract, street, park or right-of-way) by executing, acknowledging and recording in the Recording Office a written instrument subjecting such additional property to all of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof; provided, however, that such declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable, as solely determined by the Developer in its absolute discretion.

#### **ARTICLE XV AMENDMENT AND TERMINATION**

15.1 This Declaration may be terminated, amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by (a) the Owners of at least 60% of the Lots within the Subdivision as then constituted and (b) if prior to the recording of the Certificate of Substantial Completion, the Developer. After recording of the Certificate of Substantial Completion or with the Developer's written consent, this Declaration also may be terminated, amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written instrument executed by the Homes Association after the proposed amendment, modification or termination has been first approved by the affirmative vote of 75% or more of the full number of directors on the Board of the Homes Association and then approved by the members of the Homes Association at a duly held meeting of the members of the Homes Association (called in whole or in part for that purpose) by the affirmative vote of Owners owning at least 60% of the Lots. Notwithstanding the foregoing, (i) no amendment adopted under this Section 15.1 may remove, revoke or modify any right or privilege of Developer under this Declaration at any time without the prior written consent of Developer, and (ii) the written consent of the City shall be required for the termination of this Declaration in its entirety. If such consent of the City is requested, it shall be made in writing to the City clerk. The City shall have 60 days, after receipt of the request, to rule on the request.

15.2 Anything set forth in Section 15.1 of this Article to the contrary notwithstanding, except the provision relating to the City's consent, the Developer shall have the absolute, unilateral right, power and authority to modify, revise, amend or change any of the terms and provisions of this Declaration, as from time to time amended or supplemented, by executing, acknowledging and recording in the Recording Office a written instrument for such purpose, if (i) any of the Veteran's Administration, the Federal Housing Administration, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, or any successor or similar agencies

thereto shall require such action as a condition precedent to the approval by such agency of the Subdivision or any part of the Subdivision or any Lot in the Subdivision, for federally-approved mortgage financing purposes under applicable programs, laws and regulations, (ii) the City requires such action as a condition to approval by the City of some matter relating to the development of the Subdivision, (iii) the amendment is necessary to cause this Declaration to comply with any applicable law, (iv) in the opinion of the Developer, a typographical or factual error or omission needs to be corrected, (v) such action is appropriate, in Developer's discretion, in connection with a replat of all or any part of the Subdivision or (vi) until December 31, 2025, to make any other amendment the Developer may determine to be appropriate. No such amendment by the Developer shall require the consent of any Owner or the Homes Association.

15.3 If the rule against perpetuities or any rule against restraints on alienation or similar restriction is applicable to any right, restriction or other provision of this Declaration, such right, restriction or other provision shall terminate (if not earlier terminated) upon lapse of twenty (20) years after the death of the last survivor of the individual(s) signing this Declaration on behalf of the Developer and the now-living descendants of the individual(s) signing this Declaration on behalf of the Developer as of the date of such execution.

## **ARTICLE XVI ASSIGNMENT**

16.1 The Developer shall have the right and authority, by written agreement made expressly for that purpose, to assign, convey, transfer and set over to any person(s) or entity all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Developer, and upon such assignment the assignee shall then for any or all such purposes be the Developer hereunder with respect to the rights, benefits, powers, reservations, privileges, duties and responsibilities so assigned. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

16.2 The Homes Association shall have no right, without the written consent of the Developer, to assign, convey, or transfer all or any part of its rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

## **ARTICLE XVII COVENANTS RUNNING WITH THE LAND**

17.1 All provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon and inure to the benefit of all subsequent grantees of all parts of the Subdivision. By accepting a deed to any of the Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the provisions of this Declaration as applied to the Lot owned by such Owner. The provisions of this Declaration shall not benefit nor be enforceable by any creditor of the Homes Association (other than the Developer) in such capacity as a creditor.

17.2 No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of or default under this Declaration shall impair any of such rights or

remedies; nor shall any such delay or failure be construed as a waiver of that or any other violation or default.

17.3 No waiver of any violation or default shall be effective unless in writing and signed and delivered by the person or entity entitled to give such waiver, and no such waiver shall extend to or affect any other violation or situation, whether or not similar to the waived violation. No waiver by one person or entity shall affect any rights or remedies that any other person or entity may have.

## **ARTICLE XVIII GOVERNING LAW AND SEVERABILITY**

18.1 This Declaration shall be governed by and construed in accordance with the laws of Missouri.

18.2 Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgment or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions or parts.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed the day and year first above written.

**THE DEVELOPER:**

CLAYTON PROPERTIES GROUP, INC.

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

Name:\_\_\_\_\_

Title:\_\_\_\_\_

STATE OF MISSOURI                     )  
  ) ss.  
COUNTY OF JACKSON                 )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn (or affirmed), did say that such individual is an \_\_\_\_\_ of CLAYTON PROPERTIES GROUP, INC., a Tennessee corporation, and that said instrument was signed and delivered in behalf of said corporation by authority of its Board of Directors and said person 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 at my office in said county and state on the day and year last above written.

My Commission Expires:

\_\_\_\_\_  
Signature of Notary Public in and for  
said County and State

Print Name:\_\_\_\_\_

\_\_\_\_\_  
[SEAL]