
(Space above reserved for Recorder of Deeds certification)

Title of Document: Cobey Creek Villas Association Declaration

Date of Document: March ____, 2021

Grantor(s): JCM Development, LLC

Grantee(s): JCM Development, LLC

Grantee(s) Mailing Address(es): JCM Development, LLC
1314 S.W. Market Street
Lee's Summit, MO 64082

Legal Description: Lots 140 through 159, Cobey Creek – 1st Plat Lots 1 thru 30,
Lots 140 thru 159 & Tracts D, E, G & H, a subdivision in the
City of Lee's Summit, Jackson County, Missouri.

Reference Book and Page(s): N/A

After recording return to:

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

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

COBEY CREEK
VILLAS ASSOCIATION DECLARATION

THIS DECLARATION is made as of the ____ day of March, 2021, by JCM DEVELOPMENT, LLC, a Missouri limited liability company ("**Developer**").

WITNESSETH:

WHEREAS, Developer has executed and filed with the Director of Records of Jackson County, Missouri, a plat which includes the following described lots (the "**Villa Lots**"):

Lots 140 through 159, Cobey Creek – 1st Plat Lots 1 thru 30, Lots 140 thru 159 & Tracts D, E, G & H, a subdivision in the City of Lee's Summit, Jackson County, Missouri.

WHEREAS, the Villa Lots are already subject to certain recorded declarations for the Covey Creek area and are obligated to pay assessments to Cobey Creek Master Homes Association, Inc.; and

WHEREAS, Developer, as the present owner and developer of the Villa Lots, desires to create and maintain a supplemental association for the purpose of providing the Villa Lots with certain additional services;

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 Villa Lots to the covenants, charges, assessments and easements hereinafter set forth.

ARTICLE I
DEFINITIONS

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

(a) "**Assessment**" means each monthly assessment, special assessment, and other amount levied by the Association against a Villa Lot or otherwise payable by an Owner of a Villa Lot to the Association in accordance with this Declaration.

(b) "**Association**" means Cobey Creek Villas Association, Inc., a Missouri non-profit corporation, to be formed for the purpose of serving as the association for purposes of this Declaration.

(c) "**Board**" means the Board of Directors of the Association.

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

(e) "**Developer**" means JCM Development, LLC, a Missouri limited liability company, and its successors and assigns.

(f) **“Exempt Villa Lot”** means (i) any Villa Lot owned by the Developer or by a homebuilder entity prior to the commencement of occupancy of a residence thereon as a residence, and (ii) any Villa Lot owned by any other party prior to the issuance of a certificate of occupancy (temporary or permanent) for the residence on such Villa Lot.

(g) **“Master Association”** means Cobey Creek Master Homes Association, Inc., which will be formed as a Missouri non-profit corporation, for the purpose of serving as the master homes association for the overall area known as “Cobey Creek”, which area includes the Villa Area.

(h) **“Master Association Declaration”** means the Cobey Creek Master Homes Association Declaration to be recorded with the Recording Office, as may be amended from time to time.

(i) **“Owner”** means the record owner(s) of title to any Villa Lot, including the Developer.

(j) **“Recording Office”** means the Office of the Director of Records 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.

(k) **“Turnover Date”** means the earlier of: (i) the date as of which 95% of all of the Villa Lots in the Villa Area (as then contemplated by the Developer) have been sold by the Developer and 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.

(l) **“Villa Area”** means, collectively, all of the Villa Lots, and all additional property (if any) which hereafter may be made subject to this Declaration in the manner provided herein.

(m) **“Villa Lot”** means each of Lots 140 through 159 of Cobey Creek – 1st Plat, and any other lot that may be designated in writing as being a Villa Lot by the Developer in the future.

ARTICLE II ASSOCIATION MEMBERSHIP AND BOARD

Until the Turnover Date, the 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 Villa 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.

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

Where voting rights exist based on Villa Lot ownership, each member shall have one vote for each Villa Lot for which he or she is the Owner; provided, however, that when more than one person is an Owner of any particular Villa Lot, all such persons shall be members, and the one vote for such Villa 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 Villa Lot.

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 Association under this Declaration, the voting rights of such member shall be suspended until such assessment has been paid in full.

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 Association.

The Board initially shall be the persons named as the initial directors pursuant to the provisions of the Articles of Incorporation of the Association, or such other person or persons as may from time to time be substituted by the Developer. As soon as possible after the Turnover Date, the Developer shall appoint replacement directors from among the Owners or, at the discretion of the Developer, the Association shall hold a meeting of its members and the Owners shall elect directors to replace all of those directors earlier designated by the Developer. Notwithstanding the foregoing, the Developer shall have the right at any time to waive its right to designate one or more directors or to vote in an election of directors.

To the fullest extent permitted by law, the Association shall indemnify each officer and director of the Association, each member of any committee, and the Developer (to the extent a claim may be brought against the Developer by reason of its appointment, removal or control over, or failure to control, any such other persons) (each, an “**Indemnified Party**”) against all expenses and liabilities, including, without limitation, reasonable 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 Association or member of any 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 III POWERS AND DUTIES OF THE 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 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 maintain public liability, worker's compensation, fidelity, property coverage, director and officer liability, indemnification and other insurance with respect to the activities of the Association;

(b) 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;

(c) 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 Association and its members, and the sharing of the expenses associated therewith;

(d) 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 Association;

(e) 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 the implementation of provisions set forth in this Declaration; and

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

3.2 In addition to the duties required by other portions of this Declaration and by law, the Association shall have the following duties and obligations with respect to providing services to all Owners (subject to the Association having adequate funds to pay the costs thereof):

(a) The Association shall provide lawn care, consisting of mowing, edging, fertilizing, and weed control of grass areas only on all Villa Lots, shall provide mulching of landscape beds once each year, and shall trim trees along the street on the Villa Lots, but such mandatory services shall not include the replanting or reseedling of sod or grass, the replacement of trees, the trimming of trees not located along the streets, the care or replacement of bushes, shrubbery, gardens or flowers, the care or replacement of foundation plantings, or the care of any areas which have been enclosed by an Owner with fencing or hedging or otherwise made inaccessible to the Association (all of which excluded items shall be the responsibility of the applicable Owner).

(b) The Association shall provide and pay for the costs of spring start-up, winterization, and repair and maintenance of lawn sprinkler systems (excluding control panels) on the Villa Lots that have been sodded, except that the Association shall not be obligated to repair or replace any control panels or any part of the system lying in any flower or shrub bed or for any damage caused by the negligence or willful misconduct of the Owner or the Owner's guests or contractors, and the Association shall not pay for any water or electricity used by the system (all of which excluded items shall be the responsibility of the applicable Owner). An Owner, at the Owner's expense, may expand

the irrigation system only with the written consent of the Association as to the plan of expansion and using the Association's approved irrigation contractor.

(c) The Association shall provide snow (but not ice) clearing for the driveways, front sidewalks from the driveways to the front porch and front porches (only a direct path to the door) on the Villa Lots, as soon as possible when the accumulation reaches two (2) inches or more and the snow has stopped. The Association shall not be required to apply any salt, sand or chemical treatments to any such surfaces.

3.3 The Board, in its discretion, may cause the Association to provide other services for the Villa 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 Association, and shall have the right (but not the obligation) to establish, maintain and expend reserve funds for the services to be provided by the Association. Neither the Developer, the Master 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 shall have the right to charge the Association a reasonable management fee for administration and operation of the Association or, in the alternative, to cause the Association to engage a property management firm to administer and operate the Association. In addition, prior to the Turnover Date, the Developer shall have the right to loan funds to the Association to cover operating shortfalls, to be later repaid by the Association.

ARTICLE IV MONTHLY ASSESSMENTS

4.1 For the purpose of providing funds to enable the Association to exercise the powers, render the services and perform the duties provided for herein, all Villa Lots in the Villa Area (other than Exempt Villa Lots) shall be subject to a monthly assessment to be paid to the Association by the respective Owners thereof as provided in this Article IV. The amount of such monthly assessment per assessable Villa Lot shall be fixed periodically by the Board, subject to Section 4.2 below, and, until further action of the Board, shall be \$85.00 per month. At the option of the Board, the monthly assessments may be billed and collected on a quarterly basis in advance.

4.2 The rate of monthly assessment upon each assessable Villa Lot in the Villa Area may be increased as to and for each calendar year:

(a) For each of years 2022 through 2025, by the Board from time to time, without a vote of the members, by up to 20% over the rate of monthly assessment in effect for the preceding calendar year; or

(b) After year 2025, by the Board from time to time, without a vote of the members, by up to 10% over the rate of monthly assessment in effect for the preceding calendar year.

Notwithstanding the foregoing limits on annual assessments, the Board, without a vote of the members, shall always have the power to set, and shall set, the rate of monthly assessment at an amount that will permit the Association to perform its duties as specified in Section 3.2 of Article III above.

4.3 The monthly assessments provided for herein shall be based upon the calendar month (commencing in 2021) and shall be due and payable on the first day of each month; provided, however, that the first monthly assessment for each Villa Lot shall be due and payable only upon the Villa Lot ceasing to be an Exempt Villa Lot, and shall be prorated as of the date thereof. Notwithstanding any other provision of this Declaration to the contrary, no Villa Lot shall be entitled to receive any services to be provided by and through the Association until such time as the first monthly assessment has been paid with respect to such Villa Lot.

ARTICLE V SPECIAL ASSESSMENTS

5.1 In addition to the monthly assessments provided for herein, the Board shall levy from time to time special assessments against each and every Villa Lot (other than Exempt Villa Lots) in an equal amount that is sufficient, when aggregated with any funds voluntarily contributed or loaned by the Developer to the Association, to enable the 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 Association available therefor, or (II) to pay the costs of any emergency expenditures deemed necessary by the Board.

5.2 If any Owner (other than the Developer) commences a lawsuit or files a counterclaim or crossclaim against the Association, the Board of Directors, or any committee, or any individual director, officer or committee member of the Association, and such Owner fails to prevail in such lawsuit, counterclaim or crossclaim, the Association, Board of Directors, 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 reasonable attorneys' fees and court costs. Such recovery right shall constitute a special assessment against the Owner and the Owner's Villa Lot.

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

ARTICLE VI DELINQUENT ASSESSMENTS

6.1 Each Assessment regarding a Villa Lot shall be a charge against the Owner and shall become automatically a lien in favor of the Association on the Villa 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 Villa Lot in full within 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 Villa Lot. Should the 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 Villa Lot. Each Assessment, together with late fees, interest thereon and collection costs, shall also be the personal obligation of the Owner(s) of the Villa Lot, jointly and severally, at the time when the Assessment became due.

6.2 Payment of a delinquent Assessment with respect to a Villa Lot may be enforced by judicial proceedings against the Owner personally and/or against the Villa Lot, including, without limitation, through lien foreclosure proceedings similar to a foreclosure under a deed of trust lien in any court having jurisdiction of suits for the enforcement of such liens. The 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 Association shall be entitled to collect from the Owner of the Villa 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 Villa 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.

6.3 Such liens shall continue for a period of five 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.

6.4 To the extent permitted by law, the Association may cease to provide any or all of the services to be provided by or through the Association with respect to any Villa Lot during any period that the Villa 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 declining any services provided through the Association.

6.5 No claim of the 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.

6.6 Assessments shall run with the land, are necessary to continue the care, repair and maintenance of the Villa Lots, 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.

6.7 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 Association under this Declaration, (i) this Declaration is intended to secure future advances from the Association to or for the benefit of each Owner and its Villa Lot and future obligations of each Owner and its Villa Lot to the Association under this Declaration, and (ii) the maximum total principal amount secured by this Declaration with respect to any Villa Lot at any time shall not exceed \$5,000.00. 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 Association to protect the Association's security. Notwithstanding any other provision of this Declaration to the contrary, the 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 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 Association by the Developer. The Association shall not have the power to enter into any contract which binds the Association to pay for any obligation out of the Assessments for any future year. The Developer may (but shall have no obligation to) contribute or loan any funds to the Association.

ARTICLE VIII MASTER ASSOCIATION

In addition to being a member of the Association and being bound by this Declaration, each Owner will also be a member of the Master Association and will be bound by, and the Owner's Villa Lot will be subject to, the Master Association Declaration, as recorded with the Recording Office. Owners will be responsible for paying dues and assessments to the Master Association, as set forth in the Master Association Declaration, as well as to the Association, as set forth in this Declaration.

ARTICLE IX NOTICES

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

9.2 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 Villa Lot or (ii) sent by electronic mail to the Owner at the electronic mail address last provided by the Owner to the Association. Notice to one co-Owner shall constitute notice to all co-Owners.

ARTICLE X EXTENSION OF VILLA AREA

The Developer shall have, and expressly reserves, the right (but not the obligation), from time to time, to add 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.

ARTICLE XI AMENDMENT AND TERMINATION

11.1 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 both (a) the Owners of at least 60% of the Villa Lots within the Villa Area as then constituted and (b) if prior to the Turnover Date, the Developer. Notwithstanding the foregoing, no amendment adopted under this Section 10.1 may remove, revoke or modify any right or privilege of Developer under this Declaration at any time without the prior written consent of Developer.

11.2 Anything set forth in Section 11.1 of this Article to the contrary notwithstanding, 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 Villa Area or any part of the Villa Area or any Villa Lot in the Villa Area, 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 Villa Area, (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 Villa Area 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 Association.

11.3 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 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 XII ASSIGNMENT

12.1 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.

12.2 The 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 XIII COVENANTS RUNNING WITH THE LAND

13.1 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 Villa Lots. By accepting a deed to any of the Villa Lots, each future grantee of any of the Villa Lots shall be deemed to have personally consented and agreed to the provisions of this Declaration as applied to the Villa Lot owned by such Owner. The provisions of this Declaration shall not benefit nor be enforceable by any creditor of the Association (other than the Developer) in such capacity as a creditor.

13.2 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.

13.3 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 XIV GOVERNING LAW AND SEVERABILITY

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

14.2 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:

JCM DEVELOPMENT, LLC

By: _____
Chris Jeffries, Authorized Agent

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this _____ day of March, 2021, before me, _____, a Notary Public in and for said State, personally appeared **Chris Jeffries**, to me personally known, who being by me duly sworn (or affirmed), did say that such individual is an authorized agent of JCM DEVELOPMENT, LLC, a Missouri limited liability company, and that said instrument was signed and delivered in behalf of said limited liability company and said person acknowledged said instrument to be the free act and deed of said limited liability company.

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:

Notary Public in and for said County and State

[SEAL]

Print Name: _____