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STATE OF MISSOURI  
COUNTY OF JACKSON SS  
CERTIFY INSTRUMENT RECEIVED

**DECLARATION OF  
AMENDED AND RESTATED  
PROTECTIVE COVENANTS**

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THIS DECLARATION OF AMENDED AND RESTATED PROTECTIVE COVENANTS is made this 11 day of November, 1998, by LAKEWOOD DEVELOPMENT, L.P., a Missouri limited partnership ("Declarant").

**RECITALS**

A. Declarant is the owner of that certain real property in the County of Jackson, State of Missouri, described in Exhibit A attached hereto and by reference made a part hereof (hereinafter the "Property").

B. The Property has been made subject to those certain Protective Covenants Mixed Use Development which were dated September 20, 1996, and recorded April 15, 1998, with the Director of Records for Jackson County, Missouri as Document No. 98-126317 (the "Original Covenants").

C. As a result of various changes to the Declarant's General Plan for the Improvement and Development of the Property (the "Development Plan"), Declarant desires to amend and restate the Original Covenants as more specifically set forth herein and desires to subject the Property to the conditions, covenants and restrictions herein set forth upon and subject to which all of the Property shall be held, and improved and conveyed.

D. The real property described on Exhibit B, attached hereto and by reference made a part hereof (the "Neighboring Property"), was subjected to the lien and effect of the Original Covenants and is the Declarant's intent not to amend the Original Covenants as they affect the Neighboring Property but to leave them in full force and effect in respect thereof.

**NOW, THEREFORE**, Declarant hereby declares that the Property shall be held, sold, used and conveyed subject to the following covenants, restrictions, easements, charges and liens which shall run with such land and with the title to such land and shall be binding on all persons having or acquiring any right, title or interest therein, or in any part thereof, subject to the limitations herein provided, and shall inure to the benefit of each Owner, its heirs, grantees, distributees, personal representatives and assigns, the Association and the Declarant. Declarant further declares that the Original Covenants are hereby amended to provide that the Property is released from the lien and effect thereof as of the date of the recording of this Declaration and that the effect, terms, covenants and Agreements of the Original Covenants shall continue in full force and effect as to the Neighboring Property.

## ARTICLE I

GENERAL PROVISIONS

**1.01 Additional Property - Annexation.** Declarant may from time to time cause separate and additional declarations and agreements to be filed subjecting adjacent properties to restrictions similar to or different from those imposed upon the Property by this Declaration. Declarant may also amend this Declaration to subject such adjacent properties to the scheme and effect of this Declaration.

**1.02 Definitions.**

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

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

(c) **Association** - "Association" shall mean and refer to the Executive Center Community Association, Inc., a not-for-profit Missouri corporation, or any successor thereof, charged with the duties and obligations set forth herein.

(d) **Association Board** - "Association Board" shall mean and refer to the Board of Directors of the Association.

(e) **Common Property** - "Common Property" shall mean and refer to Tract "C" Common Detention Area, Minor Plat for Executive Lakes Center Lots 3-A and 3-B, a replat of Lot 3, Executive Lakes Center, a subdivision in Lee's Summit, Missouri and Tract "E" Common Detention Area, as shown on the proposed Final Plat, Executive Lakes Center Lots 3-B and 4 through 10, a replat of "Executive Lakes Center Lots 3-A and 3-B" minor subdivision in Lee's Summit, Jackson County, Missouri ("Executive Lakes Final Plat"), and the retention basins or ponds existing from time to time thereon.

(f) **Declarant** - "Declarant" shall mean the undersigned, its successors and assigns.

(g) **Development Guidelines** - "Development Guidelines" shall mean and refer to the rules, regulations and policy statements adopted, promulgated, revised and amended by the Declarant.

(h) **Development Period** - "Development Period" shall mean and refer to the period of time commencing upon the execution date hereof, and terminating upon the occurrence of the earlier of: (a) the date Declarant ends the Development Period or (b) the

date Declarant sells one-hundred percent (100%) of all of the Lots in all of the parcels of land located or to be located within the Development Plan.

(i) Development Plan - "Development Plan" shall mean and refer to Declarant's plans for the development of the Property which, as of the date hereof, contemplates commercial retail uses and which plans may from time to time be amended, expanded, changed, abandoned or implemented and include each and every plat, and all amendments thereto, which may be filed with respect to any portion of the land within the Development Plan.

(j) Director - "Director" shall mean and refer to a member of the Association Board.

(k) Grantee - "Grantee" shall mean those parties acquiring an interest in the Property as Owner, Lessee, Occupant, Tenant, Lender, or their heirs, successors or assigns.

(l) Improvements - "Improvements" shall mean and include, but not be limited to, buildings, outbuildings, roads, driveways, parking areas, fences, screening walls, retaining walls, loading areas and facilities, signs, utilities, lawns, hedges, mass plantings, landscaping, water lines, sewers, electrical and gas distribution facilities, and all structures of any type or kind, the construction and use of which has been approved in writing by the Declarant. Detailed site, utility, landscaping and construction plans shall be submitted by each Grantee and approved in writing by the Declarant in accordance with Declarant's Development Guidelines.

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

(n) Member - "Member" shall mean and refer to every person or entity holding membership in the Association, as set forth herein.

(o) Nonassessable Property - "Nonassessable Property" shall mean and refer to all land designated "Common Property" or "Tract" or with a similar common property designation upon the Plat, any map or plats of any part of the Property together with all land owned by the Declarant.

(p) Occupant - Other parties owning, holding or occupying sites in the Property.

(q) Owner - An owner of any portion of the Property.

(r) Plat - Any plat, administrative filing, lot split or survey filed or recorded with respect to the Property.

(s) Property shall mean certain real property in the City of Lee's Summit, Missouri ("City"), described in Exhibit A attached hereto and by reference made a part hereof, and is synonymous with the above-defined term "Property".

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

(u) Site - "Site" shall mean a lot, or portion thereof, under one ownership, on which Improvements are approved to be, or have been constructed,

## ARTICLE II

### COMMUNITY ASSOCIATION

#### 2.01 Powers and Duties of the Association.

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

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

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

(c) Common Property. The Association may plan, design, acquire, improve, construct on, and equip the Common Property with, by way of example and not limitation or affirmative obligation, the detention or retention area improvements (collectively, the "Common Property improvements" which may be referred to herein with the Common Property as the Common Property).

(d) Easements and Rights-of-Way. The Association may grant and convey easements and rights-of-way in, on, over or under the Common Property and the Property for the purposes of constructing, erecting, operating or maintaining thereon, therein or

thereunder any similar public or quasi-public improvements or facilities as may be considered necessary for the common good of said community.

(e) Employment of Agents. The Association may employ the services of any person or corporation as manager (herein, "Manager"), together with other employees, to, as may be directed and delegated by the Association Board, manage, conduct and perform the business, obligations and duties of the Association and may enter into contracts for such purpose.

(f) Insurance. The Association shall obtain and keep in force such policies of insurance and surety bonds, as are necessary to adequately insure and protect the Common Property and the operations thereon and of the Association and as deemed by the Association Board to be necessary and appropriate.

(g) Management of Improvements. The Association shall manage and control for its Members all improvements on the Common Property.

## 2.02 Membership in the Association.

(a) Each Owner (notwithstanding the number of Lots owned) shall be entitled to one (1) Association Membership and one (1) vote in the Association so long as the Owner remains an Owner of such Lot(s). Anything in this subsection to the contrary notwithstanding, where a Lot is owned of record in any manner of joint or common ownership, the joint or common Owners thereof shall share among them the rights (including voting rights) given to an Owner pursuant to this Declaration, which they shall be entitled to exercise their one (1) vote as a whole, but not in part, in whatever manner they shall jointly determine. With respect to voting rights in particular, joint or common ownership of a Lot shall entitle the Owners thereof to a total of one (1) vote, to be exercised in whatever manner they shall jointly determine.

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

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

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

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

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

(a) The powers of the Association shall be vested in, exercised by, and under the authority of, the Association in accordance with the Association Articles of Incorporation and By-Laws, shall be controlled by, a Board of Directors consisting of three (3) persons who, during the Development Period need not be Members but, after the Development Period, shall be Members or representatives of Members (the "Association Board"). The Association Board, by a majority vote, shall exercise for and on behalf of the Association all powers, duties and authority vested in or delegated to the Association.

(b) Directors shall be elected so that one (1) Director and two (2) Directors shall be elected respectively in alternating years. Directors shall be elected for two (2) year terms of office and shall serve until successors are elected and qualified.

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

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

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

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

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

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

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

**2.07 Declarant's Control of the Association.** Notwithstanding anything in this Declaration to the contrary, the Declarant shall maintain absolute and exclusive control over the Association and, the Association Board, including appointment and removal of the president and

all officers of the Association, all directors of the Association Board until one hundred percent (100%) of the Lots in the Development Plan (as it exists from time to time) have been sold to Owners other than builders. Until such time, only the Declarant shall be entitled to cast any votes with respect to the election and removal of the Association officers and, directors, or any other matter requiring the vote or approval of the Association Board or Members. The Declarant may voluntarily (but shall not be required to) at any time relinquish all or any part of the Declarant's control and rights under this Article. Until the Declarant causes the Association to be formed, the Declarant may exercise each or all of the rights, duties or obligations which are set forth herein with the same force and effect as though exercised by the Association. All of which action shall be ratified by the Association when formed.

### ARTICLE III

#### IMPOSITION OF ASSESSMENTS AND LIENS UPON PROPERTY

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

- (a) it will pay to the Association all Assessments which may or shall be levied by the Association against Assessable Property owned by it in each year or any part thereof, and that it will pay to the Association the user fees and charges and all other duly authorized charges to be established as herein provided, if applicable, levied by the Association in each year and including Special Assessments levied pursuant hereto;
- (b) it shall be personally liable for all such Assessments and user fees and charges which become due while it is the Owner of each Lot being assessed;
- (c) all Assessments, together with the continuing obligation to pay each Assessment assessed in all future years, and all user fees and charges, together with all costs, expenses, interest and reasonable attorneys fees incurred in the collection of delinquencies, shall become, upon the filing of this Declaration, and thereafter remain a charge against and be secured by a continuing lien upon the Assessable Property of such Owner; and
- (d) said charge and lien shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon the Assessable Property (or the Nonassessable Property to the extent that it may later become Assessable Property) whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instruments, excepting only purchase money mortgages or deeds of trust given to finance the purchase of the Lot and liens for taxes or other public charges as are made superior by applicable law.

**3.02 Rate of Assessment.**

(a) For the purpose of providing funds for the uses specified herein, the Association Board shall assess against the Assessable Property in each year a charge (referred to herein as "Assessment" or "Annual Assessment"), which shall be uniform with respect to all Assessable Property within each classification of Assessable Property, as hereinafter provided, and shall be in such amounts as determined by the Association Board. The Association may divide all Assessable Property into classifications, which classifications shall be based upon the character of ownership, nature of use, status of occupancy, Lot size, exterior dimensions, architectural detail, maintenance and security requirements and such other criteria as the Association Board may deem pertinent. Lots owned by the Declarant need not be assessed until such Lots are sold to a builder or Owner. Lots which are owned by a builder shall be assessed at a rate to be determined by the Association Board.

(b) That portion of the Annual Assessments attributable to the cost and expense of the maintenance, repair and replacement of the Common Area improvements will be apportioned among Lots based on the following calculation:

(i) The Owner of Lot 7, Executive Lakes Final Plat, shall be assessed and pay fifty percent (50%) of the cost and expense of maintenance, repair and replacement of the Detention Pond on Tract "E"; and

(ii) The Owners of Lots 3-B and 4 through 6 and 8 through 10, Executive Lakes Final Plat shall each pay a "proportionate share" of the costs attributable to the maintenance, repair and replacement of the Detention Pond on Tract "C" and a "proportionate share" of fifty percent (50%) of the cost of the maintenance, repair and replacement of the Detention Pond on Tract "E". The "proportionate share" shall be calculated based on the ratio of the square footage that each Lot bears to the total square footage of Lots 3-B and 4 through 10 combined.

(c) The City may the impose on all or a portion of the Property a requirement that the Declarant or any one or more of the Owners of the Property contribute to the cost of the preparation of plans and specifications for and of the installation of traffic signals and related appurtenances at the intersection of Lakewood Way and Bowlin Road and at the on and off ramps on to Bowlin Road from Highway I-470 (the "Public Improvements"). To the extent that the City requires that Declarant as the Developer or Owner of any or all of the Property or to the extent that the Declarant agrees to be responsible for the cost of such Public Improvements, then the Association will assume and pay such obligation (the "Public Improvements Obligation") and will assess each Lot on a proportionate basis to provide for the payment of the costs thereof. The Public Improvement Obligation will be assessed and calculated based on the ratio of the square footage that each Lot bears to the total square footage of Lots 3-B and 4 through 10.



(d) Not later than ninety (90) days prior to the end of each fiscal year for the Association, the Association Board shall prepare an annual cash budget projecting anticipated revenues, cash receipts, cash expenditures, reserves for maintenance, repair and replacement of Common Property and net cash, surplus or deficit for the ensuing fiscal year (the "Association Budget"). The fiscal year for the Association shall be the calendar year. The proposed Association Budget will automatically be approved unless two-thirds (2/3) of the Members vote not to approve such Association Budget. Upon approval of the Association Budget, the Association Board will determine the manner in which Assessments are to be made. The rate of Assessment for an individual Lot can change as the character of ownership, nature of use and the status of occupancy of said Lot changes, which therefore changes the classification of Assessable Property for such Lot. The applicable Assessment for such a Lot shall be prorated according to the rate required for each type of ownership.

**3.03 Billing of Annual Assessments.** At such time or times as the Association Board may determine, the Association shall levy the Annual Assessment. The Association shall send a written bill to each Owner stating the amount of the Annual Assessment imposed against each Lot which is Assessable Property owned by the Owner, the time period for payment thereof, and the interest rate to be charged for late payments thereof. Each Annual Assessment shall be due and payable on a date established by the Association Board and shall become delinquent on a date established by the Association Board. The Association Board may establish payment procedures to allow payment of the Annual Assessment in increments during the year the Assessment is made, provided that this privilege is extended to all Owners on an equal basis, and provided that reasonable notice is given of each payment date, of the interest to be charged for late payments, of the liens established by this Declaration, and of the suspension of membership rights as a consequence of the failure to pay.

**3.04 Commencement of Assessments.** The Assessable Property shall become subject to the Assessments set forth herein on the date designated by the Declarant. Such Assessments shall be adjusted and prorated according to the number of days remaining in the fiscal year of the Association as such fiscal year is set forth in the Association By-Laws.

**3.05 Late Payments.**

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

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

(c) In the event that an Owner shall fail to fully pay the Assessment by the delinquency date thereof, such unpaid amount shall become a binding personal obligation

of such Owner, and the Association shall have the right, pursuant to the provisions hereinafter provided to enforce the lien for Assessments. The Association shall have the right and duty to take all appropriate actions and steps to collect any such unpaid Assessments. Each delinquency shall constitute a separate basis for a demand or claim of lien or liens, but any number of defaults may be included within a single demand or claim of lien or liens on account of prior delinquencies and shall be deemed to include subsequent delinquencies and amounts due on account thereof. The Association may institute a suit to recover a money judgment for the same, together with interest thereon and reasonable expenses of collection, including attorneys fees, without foreclosing or waiving the lien hereinbefore provided.

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

**3.07 User Fees and Charges.**

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

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

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

**3.09 Special Assessments.**

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

(b) A Special Assessment shall become effective upon written notice by the Association Board. Billing of Special Assessments shall be handled according to the procedures set out herein.

(c) Following the Development Period, Special Assessments shall not be imposed by the Association until after the Association Board first presents any such proposed Special Assessment to the Members at a meeting to be called for that purpose. The Special Assessment shall be deemed to be approved by the Members unless two-thirds (2/3) of the Members vote not to approve such Special Assessment.

#### ARTICLE IV

##### USE OF FUNDS

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

(a) the operating costs and expenses of the Association, including the maintenance, repair and replacement of Common Property Improvements and the cost of the Public Improvements Obligation;

(b) payment of all real and personal property taxes and assessments, if any, separately levied upon or assessed against the Association or any property owned by the Association; and

(c) payment of all premiums and charges for all policies of insurance or surety bonds, as deemed by the Association Board to be necessary and appropriate.

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

**4.03 Posting of Bond.** The Association, acting through the Association Board, may require that all persons or entities who handle the Association funds or monies, which funds and monies shall be deposited in federally insured banks or savings and loans, post bonds sufficient in amount to indemnify the Association from any loss.

**4.04 Mortgaging of Common Property.** Except as set forth in this Section, and subject to the approval of any holder of an existing lien on the Common Property (the "Development Loan Lien"), the Association may mortgage any Common Property to which it has clear title; provided, however, that any such mortgage shall be subject to the approval of

two-thirds (2/3) of the Members who are present in person or by proxy and voting in a duly constituted Association election or meeting. The Association shall not mortgage any Common Property to the Declarant, or to any other entity or person to secure any conveyance, loan or advance made to the Association by the Declarant. The Declarant shall not take any action, the result of which may subject any Common Property to a judgment lien or otherwise jeopardize any Common Property, to satisfy a debt of the Declarant.

## ARTICLE V

### COMMON PROPERTY

**5.01 Conveyance of Common Property.** The Declarant shall convey the Common Property to the Association and, from time to time, may convey to the Association such certain other property as the Declarant may determine in accordance with the Development Plan for the common use and enjoyment of the Owners. The deed of conveyance may contain appropriate restrictions and assurances that such property shall be reserved for the common use and enjoyment of the Owners and prohibit the construction thereon of buildings for commercial or retail use.

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

(a) Every Owner, by reason of such ownership, shall have a right and easement of enjoyment in and to all Common Property, and such easement shall be appurtenant to and shall pass with every Lot upon transfer.

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

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

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

(iii) determine which, if any, Common Property may be used and enjoyed by, or conveyed or dedicated to the general public or a federal, state or local government body; provided, however, that Property shall not be conveyed to a public body unless, after the Development Period, the Association Board has obtained the prior approval of two-thirds (2/3) of the Members who are present in person or by proxy and voting at an Association meeting at which a quorum is present or voting in a referendum called for such purpose after proper notice is given;

(iv) levy user fees and charges and to charge reasonable admissions or other charges or fees for the use of any recreational facility;

(v) borrow money for the purpose of acquiring, mortgaging, developing or improving any Common Property including improvements thereon; provided, further, that any such mortgage shall be subject to the approval of two-thirds (2/3) of the Members who are present in person or by proxy and voting at an Association meeting at which a quorum is present or voting in a referendum called for such purpose after the proper notice is given; and

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

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

## ARTICLE VI

### REGULATION OF USES AND OPERATIONS

#### **6.01 Proscribed Uses.**

Any operation or uses which cannot or do not meet the following standards are prohibited:

- (a) Any use which has not been approved in writing by Declarant.
- (b) No use, and no construction with respect thereto, shall be commenced unless plans and specifications (including a description of any proposed use) therefor shall have been submitted to and approved in writing by the Declarant.
- (c) No lewd, lascivious, or offensive activities in violation of the City's ordinances applicable to the Property.
- (d) Activities which have the effect of increasing the fire insurance rating as determined by the applicable rating and fire prevention bureau of the State of Missouri for adjoining or adjacent building sites; activities which shall be illegal; activities which shall be in contravention of duly published and validated ordinances relating to health and safety.

**6.02 Subdivision.** The Property shall not be subdivided without prior written consent of Declarant.

**6.03 Agreement Not to Apply for Rezoning.** Each Grantee, by acquiring his interest in the Property, agrees that he will not bring any action or suit, to change the zoning of any portion of the Property, except with the written approval of the Declarant, its successors or assigns. No owner of any portion of the Property shall object to, or otherwise support any opposition to, any request for rezoning of any other portion of the Property, unless such request rezoning has been approved in writing by the Declarant. All Grantees hereby acknowledge that they accept the Property with the understanding that various portions of the Property will be utilized for retail, residential and commercial purposes as generally described in the Development Plan, and including, but not limited to, businesses involving the sale and consumption of liquor. By taking title to any portion of the Property, each Grantee specifically consents to such use of any other portion of the Property.

**6.04 Declarant's Rights to Rezone.** The Declarant shall have the right to rezone and obtain special use permits for certain uses required on the land. Each Grantee shall not object to such action and shall evidence its support thereof when requested by Declarant.

**6.05 Maintenance of Site.** Each Grantee shall at all times keep its Improvements and appurtenances in a safe, clean, wholesome condition and comply in all respects with all government, health, fire and police requirements and regulations, and shall remove at its own expense any rubbish of any character whatsoever which may accumulate on its site, and shall not allow any material to be stored on the site which may be hazardous to the property of occupants or Declarant, and shall not store or dispose any waste below the surface of the ground without first gaining the written consent of the Declarant. If Grantee fails to comply with any or all of the aforesaid specifications and/or requirements, then and only then, the Declarant shall have the right, privilege and license to enter upon the premises and make any and all corrections or improvements that may be necessary to meet such standards, all at such Grantee's sole cost and expense.

**6.06 Easements.** The Declarant does hereby grant and convey to the City, and to its designees, their successors and assigns, the perpetual right and easement to utilize the easement area reserved or granted by the Declarant for construction, operation and maintenance of underground electric and communication cables, service connection cubicles, transformer vault, wires, stubs, roads, water mains, sewer mains, natural gas mains and other fixtures under and upon the designated easement area. The "easement area" shall mean that portion of the Property described within an easement on any Plat and from time to time by recorded instrument, reserved for the easement purposes set forth in such instrument. Declarant reserves for itself and its agents, successors and assigns, the right at all times to enter upon all parts of the easement areas or any Site within the Property for any of the purposes for which said easements or right-of-ways are reserved. The Declarant may convey an easement area to the public authority or utility company or if such conveyance is required by the public authority or utility company as a prerequisite to installing the utility facility within the easement area or where such conveyance is required by the public authority or utility company as a prerequisite to accepting ownership of the utility facility for operation and maintenance. Each Grantee shall grant such easements across its site as may be required or requested by either the City or the Declarant in order to provide easements for the purposes hereinabove stated in order to facilitate the development of the Property pursuant to Declarant's Development Plan.

## ARTICLE VII

### REGULATION OF IMPROVEMENTS

**7.01 Setbacks.** Minimum Setback Lines and Standards are to be in accordance with the City requirements, the Development Plan and as shown on any plat of any portion of the Property.

**7.02 Completion of Construction.** Once the use and the plans and specifications have been approved in writing by the Declarant as provided in Article VIII hereof, construction pursuant thereto shall promptly commence and shall be diligently prosecuted through to completion. After construction of the Improvements, the Grantee shall diligently prosecute the work thereon, to the end that the Improvements shall not remain in partly finished condition any longer than reasonably necessary for completion thereof. The Grantee shall at all times keep public and private streets contiguous to said Site or lot free from any dirt, mud, garbage, trash or other debris which might be occasioned by construction of Improvements. In no event shall commencement of the construction of the Improvements be commenced later than six (6) months from the date of the written approval unless Declarant shall extend the time in writing.

**7.03 Excavation.** No clearing or excavation shall be made except in connection with construction of an Improvement, and upon completion thereof exposed openings shall be backfilled and distributed ground shall be graded and leveled.

**7.04 Landscaping.**

(a) Every Site on which a building shall have been placed shall be landscaped according to plans therefor approved as specified herein and maintained thereafter in a slightly and well-kept condition in accordance with the Development Guidelines and the Property development criteria handbook.

(b) The Grantee or Occupant of any Site shall landscape and maintain all areas between the property lines and the building. The area between paved streets and the building setback lines shall be used exclusively for landscaping except for walks and driveways bisecting the required landscape area.

(c) Landscaping as approved by Declarant shall be installed within ninety (90) days of occupancy or completion of the Improvements, whichever occurs first.

(d) The Grantee shall at all times keep the landscaping in good order and condition. Should the Grantee fail to remedy any deficiency in the maintenance of the landscaping within thirty (30) days after proper notification, Declarant hereby expressly reserves the right, privilege, and license to make any and all corrections or improvements in landscape maintenance at the expense of the Grantee.

(e) No trees standing at the time Grantee acquires any Site may be cut down or otherwise removed without written approval of Declarant.

**7.05 Signs.** Plans and specifications for the construction, installation or alteration of all outdoor signs including traffic or directional signs shall be first submitted to and have the written approval of Declarant.

**7.06 Parking Areas.**

(a) Adequate offstreet parking shall be provided to accommodate all parking needs for employees, visitor and Grantee vehicles on the Site. If parking requirements increase as a result of a change in use or number of employees, additional offstreet parking shall be provided to satisfy the intent of these provisions. Parking areas shall be landscaped and approved in writing by the Declarant.

(b) All driveways and parking areas shall be curbed and have a dust-free surface of asphalt, or concrete.

**7.07 Storage and Loading Areas.**

(a) Unless specifically approved by Declarant in writing, no materials, supplies or equipment, including but not limited to trash and garbage receptacles, shall be stored in any area on a site except inside a closed building, or behind a visual barrier thereby screening such areas from view of adjoining properties and/or a street.

(b) Loading docks shall be located on the side, rear yards or as approved by the Declarant.

**7.08 Building Regulations.**

Any building erected on a site shall conform to the following construction practices:

(a) All construction activities and the Improvements shall be in strict conformance with the plans approved by Declarant.

(b) The ratio of building coverage to the total site area will be subject to the approval of Declarant.

Without limiting the generality of any of the foregoing, the following use restrictions shall be maintained and enforced with respect to the Property:

(a) Temporary Improvements - No temporary buildings or other Improvements of a temporary nature, including trailers, basements or incomplete buildings shall be permitted on the Property. Temporary Improvements used solely in connection with the construction of permanent approved Improvements may be permitted provided they are removed immediately after completion of such construction.

(b) Antennas and Satellite Dishes - No antenna, satellite dish or broadcast equipment for transmission or reception of television signals or



any other form of electromagnetic radiation shall be erected, used or maintained on the Property outside any building whether attached to an Improvement or otherwise, without the prior approval of the Declarant, unless this restriction is preempted by applicable State, Federal or local law or ordinance.

(c) Utility Service - Except as may be approved in writing by the Declarant, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be constructed, placed or maintained anywhere in or upon the Property unless the same shall be contained in conduits or cables constructed, placed and maintained underground or concealed in, under or on buildings or other approved improvements, provided electrical transformers may be permitted if properly screened and approved by the Declarant. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone services incident to the construction of approved improvements. All utility services shall be connected to utility providers serving the Property. No on-site water wells will be permitted. No on-site septic systems will be permitted except as may be required for pre-treatment of wastewater as prescribed by the City. Notwithstanding the foregoing, the Property is and will continue to be serviced by above ground utility lines and poles which have been placed by the utility providers serving the Property and will remain above ground until such utility providers elect, at their expense, to place below ground such above ground utility services.

(d) Service Screening, Storage Areas - Garbage and refuse containers shall be concealed and contained within buildings, or shall be concealed by means of a screening wall of material similar to and compatible with that of the building or as approved by Declarant. These elements shall be integral with the concept of the building plan, be designed so as not to attract attention, and shall be located in the most inconspicuous manner possible. Unless specifically approved by the Declarant in writing, no materials, supplies or equipment shall be stored on the Property except inside a closed building, or behind a visual barrier thereby screening such areas so that they are not visible from neighboring sites, streets or property.

(e) Streets, Drives, Curbs and Walks - Streets, drives, curbs and walks shall be constructed or altered in accordance with plans and specifications submitted to and approved in writing by the Declarant and in conformance with the City's standards.

(f) Storage Tanks - No storage tanks, including but not limited to those used for storage of water or propane gas, shall be permitted on the Property unless approved by the Declarant in writing.

(g) Mail Boxes - No mail boxes shall be permitted on the Property except as approved by the Declarant in writing.

(h) Air Conditioning Equipment - Approval of air conditioning equipment which is visible on the exterior of any improvement shall be based upon adequacy of screening and landscaping of such equipment. Approval must be obtained by the Declarant in writing.

(i) Exterior Materials and Colors - The Declarant shall have the sole right to approve or disapprove materials and colors.

(j) Repair of Buildings - No building or other improvement shall be permitted to fall into disrepair and each improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with specifications established by the Declarant. Grantee hereby grants to Declarant the right to make any necessary alterations, repairs or maintenance approved by the Declarant to carry out the intent of this provision and Grantee further agrees to reimburse Declarant for any expenses actually incurred in carrying out the foregoing if Grantee fails to do so himself within a reasonable period of time.

## ARTICLE VIII

### APPROVAL OF PLANS

**8.01 Submittal of Plans Prerequisite to Construction.** Before commencing any construction or alteration of, or addition to, any Improvements, including any buildings, enclosures, fences, loading docks, parking facilities, storage yards, or any other structures or permanent Improvements, or landscaping, on or to any site, Grantee shall first submit plans and specifications describing all Improvements and the uses thereof to the Declarant for its review and for its written approval, as hereinafter provided.

**8.02 Contents of Plans, Generally.** No Improvement shall be erected, placed, altered, maintained or permitted on any Site or lot until plans and specifications showing plot layout and all exterior elevations, with materials and colors therefore and structural design, signs and landscaping, shall have been submitted to and approved in writing by Declarant.

Such plans and specifications shall be submitted in writing over the signature of the Grantee or his authorized agent.

**8.03 Basis of Approval of Plans.** Approval shall be based, among other things, on adequacy of Site dimensions; storm drainage considerations, conformity and harmony of external design with neighboring structures, improvements, operations and uses; relation of topography, grade and finished ground elevation of the Site being improved to that of neighboring sites; proper facing of main elevation with respect to nearby streets; and conformity of the plans and specifications to the purpose and general plan and intention of these covenants and the

Development Plan. The Declarant shall not arbitrarily or unreasonably withhold its approval of such plans and specifications and uses.

**8.04 Review Period.** Declarant shall either to approve or disapprove such plans and specifications within the time set forth in the Development Guidelines and as set forth in the design criteria handbook.

**8.05 Declarant Not Liable For Damages In Review Process.** Neither Declarant nor its successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any owner or lessee of land affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans. Every person who submits plans to Declarant for approval agrees, by submission of such plans, and every Grantee of any of said property agrees, by acquiring title thereto or interest therein, that he will not bring any action, proceeding or suit against Declarant to recover any such damages.

Declarant and Grantee recognize that the zoning regulations and the building codes adopted and amended by the City are the minimum standards for development sites within the Property and construction of improvements upon any site in the Property. These covenants do not relieve Grantee from any obligation imposed by any statute, order, ordinance, regulation or directive of any government with jurisdiction. Where covenants and local standards conflict, the more restrictive shall apply.

If any Improvement shall be erected, place, maintained or altered upon any site or should any new use be commenced on any site, otherwise then in strict accordance with plans and specifications approved by the Declarant pursuant to this Declaration, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Declaration and without the approval required herein. Declarant shall have the right to see all remedies, whether at law or in equity, including, but not limited to, the remedy of injunctive relief and obtaining a monetary judgment for all costs, expenses, including reasonable attorneys' fees and damages.

## **ARTICLE IX**

### **ENFORCEMENT**

**9.01 Declaration for Mutual Benefit of All Sites.** All restrictions, conditions, covenants and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every Site; shall create mutual, equitable servitudes upon each Site in favor of every other Site; shall create reciprocal rights and obligations between the respective Grantees of all Sites and privity of contract and estate between all Grantees of said Sites, their heirs, successors and assigns; and shall as to the Grantee of each site, his heirs, successors and assigns, operate as covenants running with the land, for the benefit of all of the Property.

**9.02 Right of Action.**

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

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

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

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

**9.03 Specific Performance.** Nothing contained herein shall be deemed to affect or limit the rights of the Declarant (so long as it is an Owner), the Association, the Members or the Owners, or any one of them, to enforce any of the terms, covenants or conditions of this Declaration by appropriate judicial proceedings. However, the Declarant hereby declares that it

is impossible to measure in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by this Declaration. Therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof. In any and all such actions, whether at law or in equity, any such beneficiary hereof who is entitled to relief shall also be entitled to recover all costs and expenses, including reasonable attorneys fees, incurred in enforcing such rights.

#### **9.04 Enforcement of Liens.**

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

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

- (i) the name of the delinquent Owner;
- (ii) the legal description and street address of the Lot against which the claim of lien is made;
- (iii) the total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs and reasonable attorney's fees (with any proper offset allowed);
- (iv) that the claim of lien is made by the Association pursuant to this Declaration; and
- (v) that a lien is claimed against said Lot in an amount equal to the amount stated; together with all other amounts becoming due from time to time in accordance with this Declaration.

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

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

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

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

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

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

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

**9.06 Additional Rules.** The Declarant during the Development Period, and thereafter, the Association Board, by a majority vote, to the extent specifically provided herein, may adopt, amend, modify, promulgate and rescind or revoke reasonable rules, regulations and procedures regarding the administration, interpretation and enforcement of the provisions of this Declaration; this includes the right of modification, amendment, revocation or rescission of the Development Guidelines. In so adopting, amending, modifying, promulgating, rescinding or revoking such rules, regulations and procedures, or in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interests of the Owners of the Property to the end that the Property shall be preserved and

maintained as a community of high quality, and shall seek to achieve the development of the Property in accordance with the standards and objectives set forth in the Development Plan.

**9.07 Successor Declarant.** Anything herein mentioned to the contrary notwithstanding, should the Declarant lose or divest itself of a substantial legal or equitable interest in the remaining unsold Property:

(a) All of the Declarant's rights, powers, duties and obligations under this Declaration (except as to those possessed by each Owner, so long as the Declarant remains as Owner) shall pass with such interest in the real property to a new Owner of part or all of such interest in the Property ("New Declarant").

(b) Neither the New Declarant, the Association, the Members nor the Owners shall assume any liability arising from the Declarant's exercise of its rights and powers under this Declaration or its performance of, or failure to perform, its duties and obligations hereunder before the loss or divestiture of the Declarant's rights, powers, duties and obligations hereunder. The foregoing sentence shall not be construed so as to relieve a New Declarant, wholly or partially, of the obligation to make advances to the Association pursuant to this Declaration on grounds that any cash deficit of the Association is attributed to the previous action or inaction of the Declarant.

**9.08 Attorneys' Fees.** In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provision hereof, the losing party or parties, except Declarant, shall pay the attorneys' fees of the prevailing party or parties, in such amount as may be fixed by the Court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

**9.09 Inspection.** Declarant may from time to time at any reasonable hour or hours, enter and inspect any Property subject to these restrictions to ascertain compliance therewith.

**9.10 Failure to Enforce Not a Waiver of Rights.** The failure of Declarant to enforce any covenant herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other restriction.

## ARTICLE X

### TERM MODIFICATION

#### AND ASSIGNMENTS OF DECLARANT'S RIGHTS AND DUTIES

**10.01 Term.** This Declaration, every provision hereof and every covenant, condition and restriction contained herein shall continue in full force and effect for a period of twenty (20) years from the date hereof and unless sooner terminated by written agreement of all of the owners of the Property, the Declaration shall be automatically renewed for successive periods of ten (10) years unless, prior to the commencement of any such renewal period, an instrument terminating this Declaration and the Restrictions contained herein shall be executed by the

Declarant or by the owners of seventy-five (75) percent of the Lots within the Property and recorded in the appropriate office of Recorder of Deeds for Jackson County, Missouri.

**10.02 Modification.** This Declaration, or any provision hereof, or any covenant, condition or restriction contained herein, may be extended, modified or amended, as to the whole of said property or any portion thereof, with the written consent of the Declarant.

For so long as the Declarant owns any of the Property, including Property which may be encumbered in the future by this Declaration, the Declarant has the right to amend and modify this Declaration in any respect or change it in whole or in part in order to, among other things, correct deficiencies as Declarant may determine.

**10.03 No Personal Liability.** No member of the Association Board, officer of the Association, member of any committee of the Association, whether such committee is specifically described in this Declaration or hereafter created by the Association, or Manager, if any, or the Declarant shall be personally liable to any Owner, Member or to any other party for any damage, loss or prejudice suffered or claimed on account of any act, (including any oral representation regarding any aspect of a Lot whatsoever), omission, error, failure to act, or negligence of any such Association Board Member, officer or committee member of the Association, Manager, if any, the Declarant, or any real estate agents or realtor representing the Declarant in the sale of a Lot and, further, no member thereof shall be liable to the Association, any Owner or to any other party for any damage, loss or prejudice suffered by or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective, (b) the construction or performance of any work upon the Property, (c) the execution and filing of any estoppel certificate, whether or not the facts therein are correct, or (d) any other act, action or conduct of such committee. Such limitation of liability shall apply in all cases, provided that such person has, on the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

**10.04 Assignability.**

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

(b) If for any reason the Association shall cease to exist without having first assigned its rights hereunder to a Successor Entity, the covenants, restrictions, easements, charges and liens imposed hereunder shall nevertheless continue and any Owner may petition a court of competent jurisdiction to have a trustee appointed for the purpose of organizing a not-for-profit corporation and assigning the rights hereunder with the same



force and effect, and subject to the same conditions, as provided in this Section with respect to an assignment and delegation to a Successor Entity.

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

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

#### 10.05 Miscellaneous.

(a) The determination by a court that any provision hereof is invalid for any reason shall not effect the validity of any other provision hereof.

(b) Any act of omission or by any provision of this Declaration as violated in whole or in part is hereby declared to be a nuisance may be enjoined or abated, whether or not the relief is sought for negative or affirmative action, by the Declarant.

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

(d) Neither the Declarant nor any successors shall be personally liable to any owner, Grantee or any other party for damage, loss or prejudice suffered or claimed on account of any act, omission, error, failure to act, negligence of the Declarant or any of its agents, employees or representatives. Declarant shall not be liable to any person or entity for any damage, loss or prejudice suffered by or claimed on the account of the approval or disapproval of any plans, drawings or specifications, whether or not defective; the construction or performance of any work upon any of the Property; the execution and filing of any estoppel certificate; or any other act, action or conduct.

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

IN WITNESS WHEREOF, the undersigned has hereunto set its hand as of the day and year first above written.

**LAKEWOOD DEVELOPMENT, L.P., a  
Missouri limited partnership**

By: Four Bar Co., a Colorado corporation,  
General Partner

By: W. Dean Goodman, pres  
W. Dean Goodman  
President

STATE OF MISSOURI                    )  
  ) ss.  
COUNTY OF JACKSON                )

On this 11th day of November, 1998, before me personally appeared W. Dean Goodman, to me personally known, who being by me duly sworn did say that he is the President of Four Bar Co., a Colorado corporation, General Partner of Lakewood Development, L.P., a Missouri limited partnership, and that said instrument was signed in behalf of said partnership and acknowledged to me that he executed the same as the free act and deed of said partnership.

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

Shirley M. Edwards  
NOTARY PUBLIC

My Commission Expires:

**SHIRLEY M. EDWARDS**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
[SEAL] Jackson County  
My Commission Expires: July 7, 2002

**EXHIBIT "A"**

**Lot 3B, Tract C and Lot 3A, EXECUTIVE LAKES CENTER, Lots 3-A & 3-B, a  
subdivision in Lee's Summit, Jackson County, Missouri.**

13310P1692

EXHIBIT "B"

Originally platted as Lot 2, EXECUTIVE LAKES CENTER, a subdivision in Lee's Summit, Jackson County, Missouri.

OFFICE OF THE CLERK  
JACKSON COUNTY, MISSOURI  
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