

Re: The following described real estate situated in Boone County, Missouri:

Lots 101 through 108, both inclusive, and Lots 201 through 239, both inclusive, of Auburn Hills Plat 1, as shown by plat recorded in Plat Book 36 at Page 35 of the Real Estate Records of Boone County, Missouri,

and

Re: Lots 601 through 618, both inclusive, and 619 through 663, both inclusive, and Lots 674, 675, 690, 729 and 730 of Auburn Hills Plat 2, as shown by plat recorded in Plat Book 36 at Page 59 of the Real Estate Records of Missouri,

and

Re: All other lots and real estate said Auburn Hills Plat 1 and Auburn Hills Plat 2, and all other lots and real estate platted by the said plats

**DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS  
OF AUBURN HILLS, A SUBDIVISION OF BOONE COUNTY, MISSOURI**

**[THIS DECLARATION OF COVENANTS CONTAINS A BINDING  
ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE  
PARTIES]**

This Declaration of Covenants, Easements and Restrictions made on 26 day of August, 2002, by **WWB DEVELOPMENT CO., LLC**, a Missouri limited liability company [mailing address: WWB Development Co., LLC, Attn: Mr. Robert A. Wolverson, 2106 Clemens Drive, Columbia, MO 65202], which such limited liability company may hereinafter be referred to as "the Developer."

WITNESSETH:

**BACKGROUND RECITALS**  
**["Recitals"]**

This Declaration is executed and recorded by the Developer in view of the following facts, matters and circumstances:

**[Note: This Declaration contains a binding arbitration provision which may be enforced by the parties.]**

The Developer is the owner of a tract of land in Boone County, Missouri, which may hereinafter be referred to as "the Parcel," and which has been platted as Auburn Hills Plat 1 as shown by the plat of Auburn Hills Plat 1, recorded in Plat Book 36 at Page 35 of the Real Estate Records of Boone County, Missouri, and which as been platted as Auburn Hills Plat 2 recorded in Plat

Book 36 at Page 59 of the Real Estate Records of Boone County, Missouri (such plats of Auburn Hills Plat 1 and Auburn Hills Plat 2 being hereinafter collectively referred to as "the Plat", with each such plat being referred to as "the Plat" and with plats for any areas hereafter annexed to the Development, and all modifications of each such plat, being hereinafter referred to as "the Plat"). The Developer intends to commit the Parcel that is, by the Plat, subdivided into Lots, streets and other improvements, and all parcels of real estate contained within the boundaries of the land platted by the Plat (all of which are referred to herein as "the Parcel"), and all streets and roads contained within the Parcel, to the provisions of this Declaration, and to the easements, restrictions, reservations and covenants provided by this Declaration.

The Developer intends to subject the land of the Parcel to certain easements, restrictions, reservations and covenants hereinafter set forth in this Declaration.

The Developer is the owner of a substantial parcel of land ("the Land" or "the Developer's Land"), which contains the Parcel. The Developer's Land is legally described as the following described real estate situated in Boone County, Missouri:

Four (4) tracts of land located in the Northwest Quarter of Section 30, Township 49 North, Range 12 West, City of Columbia, Boone County, Missouri, and more particularly described as follows:

Tracts 1, 2, 3 and 4 of the survey recorded in Book 1953 at Page 358 of the Records of Boone County, Missouri and containing 200.09 acres.

The Land contains the initial Parcel that is subjected to this Declaration, meaning all of the land contained within Auburn Hills Plat 1 and Auburn Hills Plat 2, as such Plats are hereinabove described. In addition, the Land contains substantial additional land. All of the Land that is not contained within the Auburn Hills Plat 1 and Auburn Hills Plat 2 may be referred to herein as "the Annexation Property" or "the Annexation Parcel." The Developer is the owner of the Land and is, therefore, the owner of the Parcel and the Annexation Parcel. **THE DEVELOPER MAY OR MAY NOT ANNEX PORTIONS OF THE ANNEXATION PARCEL TO THE DEVELOPMENT PROVIDED FOR HEREBY AND MAY OR MAY NOT SUBJECT PORTIONS OF THE ANNEXATION PARCEL TO THE PROVISIONS OF THIS DECLARATION AND TO THE EASEMENTS, RESTRICTIONS, RESERVATIONS AND COVENANTS PROVIDED FOR BY THIS DECLARATION, AS THE DEVELOPER, IN THE DEVELOPER'S SOLE AND ABSOLUTE DISCRETION, FINDS TO BE APPROPRIATE.**

The Developer is desirous of establishing for the benefit of the Parcel and the owners of dwellings contained therein, and for the benefit of any portion of the Annexation Parcel (and the benefit of owners of dwellings located therein) which is hereafter annexed to the Development provided for by this Declaration, and for the Developer's own benefit, and for the benefit of all future owners or occupants of the Parcel and of any portion of the Annexation Parcel hereafter annexed to the Development provided for hereby, and each part thereof, certain mutually beneficial easements, restrictions, reservations and covenants with respect to the proper use of the land and the proper maintenance thereof. The Developer, therefore, desires to place certain protective covenants, conditions, easements, restrictions, reservations, liens, charges and assessments on the real estate

contained within the Parcel, and on any portion of the real estate of the Annexation Parcel which is hereafter annexed to the Development, for the use and benefit of the Developer and the Developer's successors and assigns and for the use and benefit of the owners and occupants of the various Lots and Units contained within the Parcel and any portion of the Annexation Parcel hereafter annexed to the Development.

**THE DEVELOPER RESERVES THE RIGHT TO ANNEX OR NOT ANNEX ALL OR ANY PORTION OF THE ANNEXATION PARCEL TO THE DEVELOPMENT PROVIDED FOR HEREBY AND RESERVES THE RIGHT TO DEVELOP OR TO NOT DEVELOP ALL OR ANY PORTION OF THE ANNEXATION PARCEL AS A PART OF THE DEVELOPMENT PROVIDED FOR HEREBY. THE DEVELOPER RESERVES THE RIGHT TO DEVELOP THE ANNEXATION PARCEL IN A MANNER SIMILAR TO THE DEVELOPMENT PROVIDED FOR HEREBY, OR IN ANY OTHER MANNER IN WHICH THE DEVELOPER, IN THE DEVELOPER'S SOLE, ABSOLUTE AND UNLIMITED AND UNFETTERED DISCRETION SHALL FIND TO BE APPROPRIATE. THE DEVELOPER MAKES NO PROMISE OR REPRESENTATION, EXPRESSED OR IMPLIED, THAT ANY PORTION OF THE ANNEXATION PARCEL WILL OR WILL NOT BE ANNEXED TO THE DEVELOPMENT PROVIDED FOR HEREBY, OR WILL BE DEVELOPED IN A MANNER SIMILAR TO THE DEVELOPMENT OF THE PARCEL.**

The Land is the subject matter of a Preliminary Plat ("the Preliminary Plat"), titled "Preliminary Plat Auburn Hills." Such Preliminary Plat is dated December 6, 2001, and has been revised December 27, 2001, January 8, 2002 and January 16, 2002. The Preliminary Plat has been prepared by Mr. Jay Gebhardt, P.E., of A Civil Group, engineers of Columbia, Missouri, and has been submitted to the City of Columbia, and has been approved by the City of Columbia ("the City") as a Preliminary Plat for the Land, in accordance with the Subdivision Codes and Ordinances of the City. The Developer, presently, intends to go forward with the development of the Land, substantially in the manner described by the Preliminary Plat. However, the Preliminary Plat may or may not hereafter be altered.

Included within the Annexation Parcel is a substantial parcel of commercially zoned land, which is located within Zoning District C-P, under the Zoning Ordinances of the City of Columbia, Missouri, and which contains, approximately, between 61 and 62 acres, more or less, and which is located on the west side of the Tract, and which is located on the east side of Rangeline Street. Such commercial property is located, generally, in the northeast quadrant of the intersection of what will be Brown School Road and Rangeline Street in the City of Columbia, Missouri. Such commercial property, the C-P zoned property, may be referred to herein as "the Commercial Property."

The Land contains property that is located within a number of zoning classifications, as established by the Zoning Ordinances of the City of Columbia, Missouri ("the City"), including:

- R-1 (single family dwelling district);
- R-2 (duplex or two family dwelling district);
- R-3 (multifamily dwelling district);
- C-P (planned commercial);
- M-C (controlled industrial); and

— PUD (planned unit development), with the PUD allowing for up to ten (10) units per acre.

The Land is, therefore, located within various zoning districts.

The Commercial Property will, in all likelihood, be developed as a commercial development, and not as a residential development, although portions of same may, in the Developer's sole, absolute, unlimited and unfettered discretion be developed as a residential development. Portions of the Commercial Property may or may not be annexed to the Development provided for by this Declaration. The Developer may or may not impose upon certain portions of the Commercial Property obligations for the making of contributions by the owners thereof to the Association provided for by this Declaration. The Developer has made no determinations in these respects and makes no representations, expressly or impliedly, that it has done so.

The Developer has entered into or intends to enter into an Agreement with the City of Columbia, Missouri ("the City") for the construction of a major public road, which extends through the Parcel and the Annexation Parcel, and which is known as "Brown School Road" ("Brown School Road"). Such Agreement with the City ("the City Development Agreement") provides, among other things, that the Developer will, at the Developer's expense, construct only a portion of Brown School Road, consisting of two (2) traffic lanes, running east and west, with a total pavement width of twenty-eight feet (28'). Such City Development Agreement further requires that the Developer provide the grading, and certain other improvements, for the later addition by the City, of an additional two (2) traffic lanes for Brown School Road. Ultimately, if Brown School Road is fully constructed, it will consist of four (4) traffic lanes, divided by a median. It will consist of twenty-eight feet (28') of street (pavement width), in both directions (28' for each set of two lanes), a sixteen foot (16') wide landscaped median between each set of two (2) lanes, and a one hundred six foot (106') wide right-of-way, which has been dedicated by the Developer to the City. In addition, a ten foot (10') wide sidewalk/pedway will be located on the north side of such street, and a five foot (5') sidewalk will be located on the south side of the street. The street, when completed, will be a Major Arterial Street of the City, with substantial pavement width, as described above, which will carry substantial traffic. The Lot Owners and Unit Owners of certain Lots and Units located within the Development will own Lots and Units which abut upon such street, and they are hereby advised of the probable completion of the street, Brown School Road, in the manner hereinabove described in these Recitals.

The above provisions of these Recitals and any provisions of this Declaration notwithstanding, the Developer reserves the right to modify and amend portions of this Declaration as it applies to any portions of the Annexation Parcel which are hereafter annexed to the Development provided for by this Declaration, with such amendments to apply only to such portions of the Annexation Parcel as are annexed to the Development provided for by this Declaration. Such amendments may include (but are not limited to) amendments of those provisions of this Declaration which relate to Architectural Control (ARTICLE VII) and provisions which relate to Use Restrictions (ARTICLE XI).

**THE DEVELOPER MAY OR MAY NOT, THEREFORE, HEREAFTER ANNEX ADDITIONAL REAL ESTATE CONTAINED WITHIN THE ANNEXATION PARCEL TO**

THE DEVELOPMENT PROVIDED FOR HEREBY (THEREBY MAKING SUCH ADDITIONAL REAL ESTATE A PART OF THE DEVELOPMENT PROVIDED FOR HEREBY AND CAUSING THE OWNERS OF PORTIONS OF SUCH ADDITIONAL REAL ESTATE TO BE MEMBERS OF THE ASSOCIATION DESCRIBED BELOW), AND THE DEVELOPER MAY, IN ANNEXING SUCH REAL ESTATE TO THE DEVELOPMENT, CAUSE SUCH REAL ESTATE TO BE MADE SUBJECT TO ALL OF THE PROVISIONS OF THIS DECLARATION OR MAY AMEND THE EFFECTS OF ANY PART OF THIS DECLARATION, AS THIS DECLARATION APPLIES ONLY TO SUCH REAL ESTATE WHICH IS SO ANNEXED TO THE DEVELOPMENT. IN ADDITION, THE DEVELOPER MAY OR MAY NOT SUBJECT CERTAIN PORTIONS OF THE COMMERCIAL PROPERTY HEREINABOVE DESCRIBED TO CERTAIN PROVISIONS OR REQUIREMENTS OF THIS DECLARATION, AND MAY OR MAY NOT REQUIRE THAT OWNERS OF SUCH PORTIONS OF THE COMMERCIAL PROPERTY MAKE CONTRIBUTIONS TO THE ASSOCIATION PROVIDED FOR HEREBY. THE DEVELOPER HEREBY FURTHER ADVISES ALL POTENTIAL OWNERS OF ANY PART OR PORTION OF THE PARCEL AND OF THE ANNEXATION PARCEL OF THE CITY DEVELOPMENT AGREEMENT HEREINABOVE DESCRIBED AND OF THE PROBABLE COMPLETION OF BROWN SCHOOL ROAD PROVIDED FOR THEREBY.

Since the Land owned by the Developer contains parcels of land which are located within various zoning classifications, including C-P, R-1, R-2, R-3, PUD and M-C, it is anticipated that, if land is annexed to the Parcel and the Development provided for hereby, it may be developed in a substantially different fashion than the fashion in which Auburn Hills Plat 1 and Auburn Hills Plat 2 will be developed. Furthermore, Auburn Hills Plat 1 contains a number of Duplex Lots, or Lots intended for Duplex Residential Buildings (structures which will contain two (2) Living Units, as hereinafter defined), whereas Auburn Hills Plat 2 contains Lots, each of which is intended to contain only (1) Single Family Dwelling Building. There will, therefore, be a difference in the character of the developments of Auburn Hills Plat 1 and Auburn Hills Plat 2.

Therefore, as areas are annexed to the Development provided for by this Declaration, the provisions of this Declaration may be amended or modified, as same apply from one portion of the Land to another portion of the Land.

#### **DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS**

NOW, THEREFORE, in view of the foregoing Recitals, the Developer hereby declares that all of the real estate contained within the Parcel ("the Parcel"), as platted by the Plats of Auburn Hills Plat 1 and Auburn Hills Plat 2 hereinabove described, and any improvements now or hereafter located thereon, and all or any portions of the Annexation Parcel hereafter annexed the Development provided for hereby (which shall then become a part of the Parcel) in accordance with the following provisions of this Declaration, shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, liens, charges and assessments, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of the real estate and the Buildings now or hereafter located thereon. These easements, covenants, restrictions, conditions, liens, charges and assessments shall run with the real estate and the real property, and shall be binding on all parties having or acquiring any right, title or interest in the above described Parcel,

or any portion thereof, or any portion of the above described Annexation Parcel which is, hereafter, annexed to the Development. The provisions of this Declaration shall apply to each Lot, Building and Unit hereinafter described, and to all present and future owners thereof, and shall run with each such Lot and Unit, and shall be binding upon and shall inure to the benefit of each Lot Owner and Unit Owner thereof. The Developer hereby further declares as follows:

## ARTICLE I

### DEFINITIONS AND MISCELLANEOUS TERMS AND CONDITIONS

This instrument shall hereafter for convenience and for purposes of brevity and clarity, be defined as the "Declaration". For the purpose of brevity, certain words, phrases and terms used in this "Declaration" are defined as follows, and the following terms and conditions shall apply:

Section 1. "Association" means a not for profit corporation of the State of Missouri, to be known as "Auburn Hills Homes Association," or by a name similar thereto (as selected by the Developer, in the Developer's discretion, if such first mentioned name is not legally available). Such Association shall be organized as a not for profit corporation of the State of Missouri, which shall be established as hereinafter provided in the Declaration. All references in this Declaration to "the Association" shall mean such not for profit corporation, and its successors and assigns, which shall serve as the Association of Lot Owners and Unit Owners hereinafter described, and shall have the powers, duties, privileges, immunities and obligations conferred upon the Association by this Declaration.

Section 2. "Builder" means and refers to an individual, company or corporation who or which constructs a Building within the Development. The Developer may sell a Lot or portions thereof to a Builder, other than the Developer, for purposes of building or constructing a Building and improvements located upon such Lot. However, any such Building or improvement shall be constructed solely pursuant to the Architectural Control provisions set forth in this Declaration.

Section 3. "Building" means and refers to a separate, distinct, freestanding structure, located within the Development, which is built, constructed, designed or intended for occupancy by one or more Living Units or for one or more other uses, including business uses or commercial uses. A "Residential Building" shall mean and refer to a Building which is intended only for residential use, and for occupancy by one or more Families in one or more Living Units. Each Building shall be located upon a Lot. The boundary lines of the real estate containing a Building, shall be a Lot whether or not shown as a Lot by a Plat; provided that each Lot that is shown by a Plat, and which is intended to be occupied by a Single Family or Duplex Residential Building, shall be a "Lot," and that each Single Family Residential Building or Duplex Residential Building shall be located on a "Lot," as shown by a Plat. A Lot containing a Building, which contains more than one (1) Living Unit, may or may not be subdivided by Plat, survey or condominium declaration into Units.

Section 4. "City" shall mean and refer to the City of Columbia, Missouri, a municipal corporation of the State of Missouri. The Parcel and the Annexation Parcel lie within the corporate limits of the City and are subject to the jurisdiction of the City.

Section 5. "City Development Agreement" shall mean and refer to the Development Agreement which is now in existence or which will hereafter be placed in existence by the Developer and the City, and which is described in the foregoing Recitals. Such Development Agreement is or will be an agreement between the Developer and the City. Such Development Agreement provides (or will provide) that, ultimately, Brown School Road (for which 106' of right-of-way has been or will be provided by the Developer to the City) may be completed by the City so as to have four (4) lanes of traffic (28' of pavement width, in both directions), a sixteen foot (16') wide, landscaped median, a ten foot (10') wide sidewalk/pedway on the north side of the street, and a five foot (5') wide sidewalk on the south side of the street. Brown School Road is and will be a Major Arterial Street of the City, and all potential Owners and purchasers of any portion of the Parcel or Annexation Parcel are hereby apprised of such fact.

Section 6. "Class A Member" shall mean a Class A Member of the Association and shall mean a Unit Owner of a Unit owned by a person other than the Developer and its assignees; provided that if the Developer holds a Unit for rental or lease purposes, it shall be the "Unit Owner" with respect to such Unit, and shall be deemed to be a "Class A Member" with respect to such Unit held for rental or lease purposes. If a Unit is rented or leased by the Developer, or any assignee of any of the Developer's rights hereunder, or any Class B Member, then, immediately upon the renting or leasing thereof, the Unit Owner of such Unit (regardless of whether same is the Developer or any assignee of the Developer or the holder of any other Class B membership rights) shall become a Class A Member of the Association with respect to such Unit, and shall, with respect to such Unit, be subject to assessment as a Class A Member. Such Unit shall continue after such renting or leasing to be a Unit to which Class A membership rights and duties and obligations attach. The qualifications for Class A membership are set forth below in Article II.

Section 7. "Class B Member" shall mean a Class B Member of the Association and shall mean the Developer or any person to whom the Developer shall have assigned all or a portion of its rights as the Developer under the terms and provisions of the Declaration. Except as specifically provided in Section 12 to the contrary, with respect to Deeds of Trust, mortgages or security instruments executed by the Developer, a conveyance by the Developer by Warranty Deed, Deed of Trust or other conveyance shall not be deemed to be an assignment of any of its rights as the Developer, unless such rights are specifically mentioned therein. Such rights can otherwise be assigned only by an assignment, by the Developer, which specifically refers to the rights of the Developer under this Declaration.

Section 8. "Commercial Property" shall mean that Commercial Property hereinabove described in the foregoing Recitals, which such Commercial Property is contained within the Annexation Parcel. The Developer may or may not, in its sole, absolute and unfettered discretion annex portions of the Commercial Property to the Development provided for by this Declaration and may or may not impose requirements upon owners of portions of the Commercial Property that they make Contributions to the Association provided for by this Declaration.

Section 9. "Common Area" shall mean any real estate contained within the Plat, other than the Lots and Units, and shall also mean and include any Lots or Units (or portions thereof) which may hereafter be conveyed to the Association by the Developer or any other property owner (with the consent and acceptance of the Association's Board of Directors), and any other Common Area

or Common Lot or Common Unit or other common improvements or Common Areas shown upon any Plat, and it shall further include any land containing any entryway monuments, entryway decorations or signs, and all portions thereof, for the Development, and all entryway structures for the Development and land containing the landscaping placed at the entrance of the Development or any portions of the Development, and shall further include the following:

- The land containing entryway signs and monuments located at the entrances to the Development;
- Any Landscape Easements, Landscaping and Sign Easements and Landscaping and Sign Easements or similar Easements shown by the Plat, and any areas intended to serve as sites for entryway signs and entryway monuments for the Development; and
- Any other Common Areas shown by the Plat or any future Plat, or created by deed or conveyance;
- Any land containing any bicycle or pedestrian Trails or Paths located within the Development, which are intended for use by the Lot Owners and Unit Owners of all Lots or Units or certain Lots or Units located within the Development, and any Pedestrian Trail or Path Easements therefor;
- All easements established by any Plat or otherwise as easements for landscaping, signs, Paths and Trails hereinafter described;
- All Common Areas within Auburn Hills Plat 2, as shown by plat recorded in Plat Book 36 at Page 59 of the Real Estate Records of Boone County, Missouri, as such Common Areas are shown upon such Plat, including, but not limited to, the Common Areas shown by such Plat which are immediately adjacent to and abut upon Brown School Road, Derby Ridge Drive, and Denton Boulevard, and those strips of Common Area which run between various Lots, and which are intended to serve as Common Areas and drainageways, providing drainage for Lots, and all other Common Areas shown by such plat of every kind, nature and description whatsoever; and
- Any Common Area shown by, or denoted as a Common Area upon, any Plat;
- Any Land dedicated by the Developer or the Developer's assignees as Common Area, or conveyed to the Association as such;
- All easements which are not publicly held, and which are located throughout the Development, at any locations, and which are shown by any Plat, or which are dedicated by any grant of easement, including, but not limited to, any Drainage Easements (which are not publicly held), Scenic Easements, Trail Easements, Pedestrian Easements, Sign Easements, Landscaping Easements, Pedestrian Access Easements and other Easements of every kind, nature and description whatsoever which are not publicly held.

Section 10. "Common Elements" shall mean the Common Areas described in Section 9 above, and all structures and improvements now or hereafter erected or constructed thereon and any



other Common Areas hereafter designated as Common Area and any Lots or parcels or easements of any kind which the Developer may hereafter choose to call a Common Area or Common Element (with the consent of the Association's Board) and any other parcels or tracts which the Developer, in the Developer's discretion, may (with the consent of the Association's Board) hereafter designate as "Common Area", and all buildings, structures and other improvements located thereon. The "Common Elements" shall further include:

- Landscape and Sign Easements shown by the Plat, and signs, monuments, structures and landscaping located thereon, and any lighting or irrigation systems or other improvements located thereon;
- Any other Sign or Landscaping Easements located at any location in the Development;
- Any and all improvements located on any Common Area;
- Any Pedestrian Trail or Path Easements established by the Plat or otherwise, and all paths, trails and walks and associated improvements located therein;
- Any Trail or Path Easements established by the Plat or otherwise, and all Paths, Trails, walks and other improvements therein and thereon;
- Any other Common Areas or Common Elements established by this Declaration, or by any Plat or any grant from or declaration of the Developer, or otherwise;
- All ditches, swales and other drainageways and drainways, and drains and drainage structures of every kind, nature and description whatsoever located within any Common Area;
- Drainageways and drainways and drainage provided for by any Common Area.

Section 11. "Declaration" means this instrument.

Section 12. "Developer" shall mean and refer to WWB Investment Co., LLC, a limited liability company of the State of Missouri, and its successors, and shall further refer to any person or persons to whom such limited liability company or its successors shall assign all or any portion of its rights as the Developer under the terms of this Declaration. A conveyance by the Developer by Warranty Deed or otherwise shall not be deemed to be an assignment of any of the Developer's rights as the Developer unless such rights are specifically mentioned in such conveyance. Such rights can only be assigned by a written assignment, deed, deed of trust or other similar instrument by the Developer, which specifically refers to the rights of the Developer under this Declaration. The provisions of this Section 12 to the contrary notwithstanding, a conveyance by the Developer of any of the Property by deed of trust or mortgage, shall be deemed to carry therewith all of the rights of the Developer, as set forth in this Declaration, with respect to the property subject to the deed of trust or mortgage, including all architectural control rights attributable thereto, and all Class B voting

rights attributable thereto. In other words, a conveyance by the Developer by deed of trust or mortgage shall be deemed to include therein all rights of the Developer (and Class B memberships) with respect to the real estate described in such deed of trust or mortgage, which shall be subject to the lien of the deed of trust or mortgage.

Section 13. "Development" shall mean the Parcel (including any portions of the Annexation Real Estate hereafter annexed to the Parcel, if any), and all Buildings and improvements located thereon, and all Lots and Units therein, and all rights pertinent thereto.

Section 14. "Duplex" shall mean a Residential Building, arranged, intended and designed for occupancy by two (2) Families in two (2) separate Living Units (i.e., two separate Units). [Note: Lots 201 through 239, both inclusive, of Auburn Hills Plat 1 are intended to be "Duplex Lots," meaning that a Residential Building is intended to be located upon each of such Lots, which may contain up to two (2) Living Units; further meaning that each of such Lots may contain, and it is anticipated will contain, two (2) Units as hereinafter described.]

Section 15. "Eight Family Dwelling" or "Eightplex" shall mean a Residential Building arranged, intended and designed for occupancy by eight (8) separate Families in eight (8) separate Living Units (i.e., in eight separate Units).

Section 16. "Family" shall be deemed to mean an individual or married couple, and the children thereof, and no more than two other persons related directly to the individual or married couple by blood or marriage, occupying a single Living Unit with single kitchen facility. A Family may include not more than one additional person, not related to the family by blood or marriage; provided that such additional person may be provided with sleeping accommodations, but not with kitchen facilities in addition to those utilized by the family. The above provisions of this Section to the contrary notwithstanding, two unmarried adults, and their respective children, may occupy a Living Unit and shall be a "Family." Short term guests shall be permitted, and there shall be no prohibitions upon renting or leasing of Living Units. The above provisions of this Section to the contrary notwithstanding, and any of the provisions of this Declaration to the contrary notwithstanding, the term "Family" shall also include a living arrangement wherein not more than three (3) adult persons, not all of whom are related to each other by blood, marriage or adoption, are sharing a single Living Unit as a not for profit, cost sharing arrangement. In other words, three (3) persons living together in a single Living Unit, not all of whom are related by blood, marriage or adoption to each other, shall, in addition to a "Family", as defined above, also, for purposes of this Declaration, be deemed to be a "Family." There shall be no prohibitions upon renting or leasing of Living Units. The provisions of this Section to the contrary notwithstanding, and any of the provisions of this Declaration to the contrary notwithstanding, if the provisions of the applicable zoning ordinances, as such ordinances are now in effect or as they shall, hereafter, be enacted, modified or amended or placed in effect, define a "Family", in a more restrictive manner, then the more restrictive definitions of the applicable zoning ordinances (including those hereafter put into effect) shall apply and shall define a "Family" for all purposes of this Declaration.

Section 17. "Four Family Dwelling" or "Fourplex" shall mean a Residential Building arranged, intended and designed for occupancy by four (4) Families in four (4) separate Living Units (i.e., in four separate Units).

Section 18. "Landscaping Easements" or "Landscape Easements" or "Landscaping ESMTs" or "Landscape ESMTs" or "Sign Easements" or "Sign ESMTs" (all of such terms shall be synonymous) shall mean and refer to any Landscaping Easements, Landscaping ESMTs, Landscape Easements, Landscape ESMTs, or Sign Easements or Sign ESMTs, or Landscape and Sign Easements, or Landscape and Sign ESMTs, established by a Plat, and all land contained therein and all improvements located thereon, all of which such Easements shall be Common Elements, and shall be owned by, held by and controlled by the Association, and are established by the Plat for the benefit of the Association and for the benefit of all Lot Owners and Unit Owners. All land contained within the boundaries of any of such Easements shall be subject to the control of, and to the obligations of maintenance, repair and replacement by the Association, as hereinafter specifically described in this Declaration.

Section 19. "Limited Common Areas" means and includes those Common Areas which are reserved for the use of a certain Unit or certain Units, and the owners and occupants thereof, to the exclusion of all other Units, and the owners and occupants thereof.

Section 20. "Limited Common Elements" means and includes those Common Elements which are reserved for the use of the owners or occupants of a certain Unit or certain Units, to the exclusion of all other Units and the owners or occupants thereof.

Section 21. "Living Unit" or "Dwelling Unit" shall mean that part of a Residential Building designed and intended as a residence for a single Family. Each Residential Building may contain one or more Living Units. For example, a One Family Dwelling or Single Family Residence will contain one (1) Living Unit. A Duplex Dwelling will contain two (2) Living Units. The term "Living Unit" and the term "Unit" shall generally be synonymous for purposes of this Declaration, in that each Living Unit shall either, by itself, be a Unit, or, together with the real estate containing such Unit (if it contains only a single Living Unit, and if it is owned by the owner of the Living Unit, and if it is established as a separately identified parcel of real estate by a plat, survey or condominium declaration) be a Unit. Therefore, a Lot which contains a Single Family Dwelling shall be both a Lot and a Unit. A Single Family Dwelling or One Family Dwelling or Single Family Residence, as referred to in this Declaration, shall contain one (1) Living Unit, and the Lot containing same shall be both a Lot and a Unit, and such Dwelling and Lot shall, together, be one (1) Unit for all purposes under this Declaration.

Section 22. "Lot" shall mean each of the Lots as shown by the Plat. Each Lot is a building site for one or more Buildings, provided that each Single Family Residence Lot or Duplex Lot shall contain only one (1) Building. The provisions of this Section notwithstanding, and any provisions of this Declaration to the contrary notwithstanding, the Developer shall have the right as to any Lots owned by the Developer, without the consent of any persons whomsoever, to:

- a. Change the Lot lines;
- b. Subdivide Lots so as to create additional Lots or so as to create Units;

- c. Combine such Lots or the Units thereon so as to reduce the number of Lots or Units;
- d. Otherwise amend or change the Lot lines of such Lots;
- e. Subdivide such Lots into one or more Lots or one or more Units.

In addition, the Developer reserves the right to approve of Plats which subdivide Lots owned by others into Units or which alter the Lot lines of such Lots owned by others, or which subdivide such Lots or which provide for the creation of additional Lots.

The number of Lots may, therefore, be changed by or with the consent of the Developer.

The Developer may not, however, change the Lot lines of any Lot owned by a Lot Owner other than the Developer, or subdivide any such Lot, or alter the Lot lines of any Lot owned by a person other than the Developer, or in any manner modify or amend the Lot lines of Lots owned by persons other than the Developer, without the prior written consent of the Lot Owner thereof.

Section 23. “Lot Owner” means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Lot.

Section 24. “Multi-Family Dwelling” shall mean a Residential Building arranged, intended and designed for occupancy by a number of Families, with each Family residing in a separate Living Unit (meaning a separate Unit).

Section 25. “One Family Dwelling” or “Single Family Residence” or “Single Family Dwelling” shall mean a detached Residential Building arranged, intended and designed for occupancy by one (1) Family in one (1) Living Unit, and shall, therefore, mean and refer to a single family, detached house, of the type usually and customarily found within a customary single family, R-1 development that is developed within the city limits of the City of Columbia. Each of the Lots within Auburn Hills Plat 2, and each of Lots 101 through 108, both inclusive, of Auburn Hills Plat 1, is intended to be and shall contain only one (1) Single Family detached Residential Building, or one (1) Single Family Residence Building. Each of such Lots is, therefore, intended to contain only one (1) Living Unit, and, therefore, to contain and to be a “Unit.” Each of such Lots shall, therefore, be both a Lot and a Unit for all purposes under this Declaration.

Section 26. “Parcel” means the entirety of those parcels platted as “Auburn Hills Plat 1” by Plat recorded in Plat Book 36 at Page 35 of the Real Estate Records of Boone County, Missouri, and as “Auburn Hills Plat 2” by plat recorded in Plat Book 36 at Page 59 of the Real Estate Records of Boone County, Missouri. The initial Parcel submitted to this Declaration shall, therefore, in the aggregate, consist of those parcels platted as Auburn Hills Plat 1 and as Auburn Hills Plat 2, all land within each of such parcels being a part of the “Parcel,” and the plats of such parcels being collectively referred to as a “Plat” or “the Plat.” The word “Parcel” shall further mean any part of the “Annexation Parcel” hereinabove described in the foregoing Recitals, which is hereafter annexed by the Developer to the Development provided for by this Declaration, and is made subject to this Declaration by the Developer, pursuant to the following provisions of this Declaration dealing with

Annexation; provided, however, that the Developer makes no warranties, representations nor guarantees that any part of the Annexation Parcel will hereafter be annexed to the Development, or be subjected to this Declaration. The word "Parcel" shall not include any part of the Annexation Parcel before such part of the Annexation Parcel is annexed to the Development provided for by this Declaration (pursuant to the following provisions of this Declaration dealing with Annexation), and this Declaration shall have no effect whatsoever on any part of the Annexation Parcel not hereafter annexed to the Development provided for by this Declaration, by the Developer, pursuant to the following provisions of this Declaration dealing with Annexation. The Developer may or may not amend certain portions of this Declaration as same apply only to those portions of the Annexation Parcel hereafter annexed to the Development, in any manner or respects which the Developer finds to be appropriate. The Developer may or may not annex the Commercial Property to the Development and the Parcel and may or may not impose certain requirements upon the owners of the Commercial Property to participate in making Contributions to the Association provided for by this Declaration. The Developer shall have the sole, unlimited and unfettered discretion in determining whether any portion of the Annexation Parcel shall be annexed to the Development, and in determining the manner in which any portion of the Annexation Parcel shall be developed, either in a manner similar to the development of the Parcel or in a different manner. The Developer shall have the sole, absolute and unfettered discretion in determining whether amendments of this Declaration shall be made as to those portions of the Annexation Parcel annexed to the Parcel and the Development. The Developer may or may not, in its sole, absolute, unlimited and unfettered discretion, annex portions of the Commercial Property to the Development, or impose any requirements upon the owners of portions of the Commercial Property to participate in and make Contributions to the Association.

Section 27. "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

Section 28. "Plat" means the following:

- The plat of Auburn Hills Plat 1, recorded in Plat Book 36 at Page 35 of the Real Estate Records of Boone County, Missouri; and
- The plat of Auburn Hills Plat 2, recorded in Plat Book 36 at Page 59 of the Real Estate Records of Boone County, Missouri; and
- Any plat and each plat for any portion of the Annexation Parcel hereafter annexed to the Development; and
- Any amendments, plattings, replatting or modifications of any of such Plats or any portion of the Land which is platted by any of such Plats.

The Developer reserves the right, pursuant to Section 22 above, to amend a Plat as to any portion of the Parcel which is owned by the Developer, but not as to any Lots or portion of a Parcel owned by persons other than the Developer.

If any portion of the Annexation Parcel is hereafter annexed to the Development provided for by this Declaration, then the word "Plat" shall also mean and refer to the Plat for each part of such portion of the Annexation Parcel which subdivides same into Lots or Units, and any amendments, plattings, replatting or modifications thereof, with, again, the Developer reserving those rights as to such Plat as are described in Section 22.

If a Lot is hereafter, by Plat, subdivided into Units or parcels smaller than the entire Lot, then each such Plat which so subdivides a Lot shall be considered to be a "Plat."

No Plat of any portion of the Parcel shall hereafter be recorded by any person other than the Developer, or any assignee of the Developer's Rights under this Declaration, unless such Plat is approved by the Developer or by the Board of the Association or by its Architectural Control Committee, whoever or whichever holds the Architectural Control Powers, and the powers to grant Architectural Control approval, in accordance with ARTICLE VII of this Declaration, at the time when the Plat is recorded. Plats which are not prepared by the Developer or assignees of the Developer's rights as the Developer must, therefore, be approved in accordance with the Architectural Control provisions of this Declaration.

Section 29. "Property" means all the land, property and space comprising the Parcel, and all improvements and structures erected, constructed or contained therein or thereon, including any Building or Buildings, and all other buildings, and structures placed therein, and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Lot Owners and Unit Owners.

Section 30. "Record" means to record in the Office of the Recorder of Deeds of Boone County, Missouri, wherein the Property is located.

Section 31. "Residential Building" shall mean and refer to a Building arranged, intended and designed for occupancy by one or more Families in one or more separate Living Units. Each Residential Building shall, therefore, contain one or more Living Units. A One Family Dwelling will be a Residential Building intended for occupancy by one (1) Family in one (1) Living Unit and shall be Unit.

Section 32. "Singular, Plural or Gender." Whenever the context so requires, the use of the plural shall include the singular and the singular the plural, and the use of any gender shall be deemed to include all genders.

Section 33. "Trails" or "Paths" shall mean and refer to pedestrian and/or bicycle paths or trails shown upon any Plat. "Trail Easements" or "Path Easements" or "Pedestrian Easements" shall mean and refer to any easements provided for by the Plat for any Pedestrian and/or Bicycle Path or Trail. All Pedestrian and/or Bicycle Paths or Trails, and all Paths and Trails, and the Easements therefor, shall be Common Elements of the Association, and shall be held by the Association for the use of all Units Owners, and all Paths, Trails and other improvements located within any Path, Trail or Easement therefor, shall be Common Elements of the Association, for use by all Unit Owners.

Section 34. "Unit" shall mean and refer to each Living Unit located within each Lot, and, if a legally defined parcel of real estate (i.e., a Lot, condominium unit, Unit or other parcel of real estate) that contains such Living Unit contains only such Living Unit (i.e., it contains a single Living Unit), then "Unit" shall also include that parcel of real estate containing such Living Unit which is owned by the owner of such Unit (meaning that the "Unit" shall then be the Living Unit and such parcel). Therefore, each Living Unit shall either be, by itself, a Unit, or shall be a part of a Unit, together with the parcel of real estate containing same, if the parcel of real estate containing such Living Unit (only one Living Unit) is defined by Plat or condominium declaration or survey as a Lot, or as another separate, legally defined parcel of real estate [example: a Unit or condominium Unit]. Every Living Unit within the Development shall, therefore, either be, by itself, a "Unit," or shall, if located within a legally defined parcel of real estate that contains a single Living Unit, be a part of a "Unit" consisting of such Living Unit and such parcel. Certain Lots may contain only one Living Unit and shall, therefore, be both a Lot and a Unit. Other Lots may contain more than one Living Unit, and will, therefore, contain more than one Unit. For instance, a Lot containing a Duplex Residential Building would have two (2) Living Units and would, therefore, contain two (2) Units. A Lot containing a Fourplex Residential Building would contain four (4) Living Units, and would, therefore, contain four (4) Units. A Lot containing an Eightplex Residential Building would, therefore, contain eight (8) Living Units and would, therefore, contain eight (8) Units. Certain Lots which contain more than one (1) Living Unit may be (but need not be) subdivided by a Plat, survey or condominium declaration into Units, each of which contains a single Living Unit. That is to say that the real estate within the Lot may be (but need not be) subdivided by Plat, survey or condominium declaration into Units, with each Unit containing only one (1) Living Unit, and with each such Unit that contains a single Living Unit, together with such Living Unit, being a Unit. Other Lots containing several Living Units (i.e. several Units) may not be so subdivided, and will contain that number of Units which equals the number of Living Units located within the Lot. A Unit may, therefore, be legally defined by a Plat, survey or condominium declaration as a portion of the Parcel, which contains one (1) Living Unit. Whether or not so legally defined by the Plat, each Living Unit shall, by itself, constitute, or shall be a part of, a Unit. Each:

- Residential condominium unit located within the Development shall be a "Unit";
- Living Unit located within the Development shall be a "Unit", or a part of a Unit (if the parcel of real estate containing same (i.e., the parcel, which contains only one (1) Living Unit) is defined as a separate parcel of real estate by a Plat, survey or condominium declaration; provided that each such parcel of real estate shall contain only one (1) Living Unit);
- Portion of a Lot which contains a single Living Unit, and which has been identified by a plat or survey or condominium declaration (which such plat or survey or declaration subdivides such Lot into smaller parcels, each of which contains a single Living Unit), shall be a "Unit". [For example, if a plat or survey subdivides a Lot containing a Duplex into two separate portions, each of which contains one of the Living Units of such Duplex, then each such portion of such Lot which contains a Living Unit shall be a Unit, and the Living Unit contained within such portion of such Lot shall be a part of such Unit];

— Lot which contains one (1) Single Family Residential Building, meaning a Single Family Residential Dwelling (which such Lot contains only one Living Unit), shall be both a Lot and a Unit.

As provided for by the above described definition of "Unit," a Lot which contains a Duplex Dwelling shall contain two (2) Units, as each Living Unit located within the Development shall be a Unit, and if such Lot is subdivided into two (2) parcels, each of which contains a single Living Unit, each such parcel shall be a Unit and the Living Unit located therein shall be a part of the Unit containing same. A Lot which contains a Triplex Dwelling structure shall contain three (3) Living Units, and shall contain three (3) Units.

[NOTE: IF A LOT CONTAINS ONLY ONE LIVING UNIT, THEN THAT LOT SHALL BE BOTH A LOT AND A UNIT. IF A LOT CONTAINS MORE THAN ONE LIVING UNIT, THEN THAT LOT SHALL BE DEEMED TO CONTAIN A NUMBER OF UNITS EQUAL TO THE NUMBER OF LIVING UNITS LOCATED WITHIN THE LOT. IF THAT LOT IS SUBDIVIDED INTO UNITS (EACH OF WHICH CONTAINS ONE LIVING UNIT), BY PLAT, SURVEY OR CONDOMINIUM DECLARATION, THEN THE UNIT OWNER OF EACH UNIT SHALL BE A UNIT OWNER, AND SHALL BE A CLASS A MEMBER OF THE ASSOCIATION. IF THE LIVING UNITS LOCATED WITHIN A LOT ARE NOT OWNED BY SEPARATE OWNERS OF SUCH LIVING UNITS (i.e. THE LOT OWNER OWNS ALL OF THE LIVING UNITS), THEN THAT LOT OWNER OF SUCH LOT SHALL BE THE UNIT OWNER OF EACH OF THE UNITS LOCATED WITHIN THE LOT, AND SHALL BE A CLASS A MEMBER OF THE ASSOCIATION AS TO EACH OF THE UNITS LOCATED WITHIN THE LOT. IF THE LIVING UNITS WITHIN A LOT ARE OWNED, INDIVIDUALLY BY THE INDIVIDUAL UNIT OWNERS, THEN EACH LIVING UNIT OWNER SHALL BE A UNIT OWNER, AND SHALL BE A CLASS A MEMBER OF THE ASSOCIATION.]

If a Lot, which contains more than one (1) Living Unit, is not subdivided by survey, Plat or condominium declaration, into separate parcels of real estate, each of which contains a single Living Unit, then the owner of each Living Unit located on such Lot shall be a "Unit Owner" for all purposes under this Declaration, and the Unit Owners of all such Living Units on such Lot shall be deemed to own, in the aggregate, all of the real estate of the Lot and all improvements on the Lot, together with their respective "Units." All provisions of this ARTICLE and any other provisions of this Declaration to the contrary notwithstanding, each such Unit Owner's Unit shall consist of the Living Unit(s) which he or she owns, together with his or her ownership interest in the real estate of the Lot and all improvements located on the Lot. If more than one such Unit Owner owns Living Units within such Lot, then the ownership in the Lot shall, for all purposes under this Declaration, and any of the provisions of this Declaration to the contrary notwithstanding, be deemed to be equally apportioned among each of the Living Units, with an equal, undivided (as a tenant in common) ownership interest in the Lot being deemed to be attached to each Unit. Therefore, if a lien for assessments attaches in accordance with ARTICLE VI of this Declaration, it shall attach to the Living Unit (which will be the "Unit"), together with the Unit Owner's ownership interest in the real estate of the Lot and all other improvements located on the Lot, as described in this paragraph. The provisions of this paragraph shall have no application to a Lot which contains only one (1) Living Unit, and which is, by definition, a "Lot" and a "Unit", and shall have no application to Lots which are subdivided into separate parcels of real estate, each of which contains a separate Living Unit, in



which event each Unit shall consist of the Living Unit located within the legally defined parcel that contains such Unit, together with such parcel. If a Unit Owner owns all of the Living Units within a Lot, which has not been subdivided by Plat, condominium declaration or survey, into separate, legally defined parcels of real estate, each of which contains a Living Unit, then, in such event, such "Unit Owner's" ownership interest in each Living Unit shall, for all purposes under this Declaration, be deemed to include the Living Unit and all (and not less than all) of the Lot which contains the Unit. Therefore, if such Unit Owner defaults in the payment of assessments in accordance with ARTICLE VI of this Declaration, the lien for unpaid assessments shall attach, not just to the Living Unit attributable to the unpaid assessment, but rather shall attach to the entire Lot and all Living Units and Units therein.

The number of "Units" located within a Lot shall be determined by the actual number of Living Units which are located within such Lot when the Building placed within such Lot has been completed and is ready for occupancy. For example, if a Lot may contain a Duplex Residential Building, but a Building is placed on such Lot which contains only one (1) Living Unit, then such Lot shall be both a Lot and a Unit, and only one (1) Unit shall be attributed to and shall attach to such Lot, even though the Lot was platted, and zoned, and intended for possible use for a Duplex Residential Building.

Since each of Lots 201 through 239, both inclusive, of Auburn Hills Plat 1, may contain a Duplex Residential Structure, if a Duplex Residential Structure is placed on each of such Lots, then each of such Lots shall be deemed to contain and shall contain two (2) Living Units and two (2) Units.

Since each of Lots 101 through 108, both inclusive, of Auburn Hills Plat 1, and each of the Lots within Auburn Hills Plat 2, is intended to contain and shall contain only one (1) Single Family Residential Building, each of such Lots shall be both a "Lot" and a "Unit," as only one (1) Living Unit may be placed within each of such Lots.

Section 35. "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit. As hereinabove indicated in Section 34, a Lot Owner may also be a Unit Owner [as such Lot may also be a Unit], because such Lot contains only one Living Unit. In other cases, a Lot may contain several Units, and the Owners of each of such Units shall be a Unit Owner. In cases where Lots are not subdivided by a plat, survey or condominium declaration into separate Units, the Lot Owner of each of such Lots shall be the Unit Owner of all Units located within such Lot. For example, if a Lot contains a Duplex Dwelling, and the Lot Owner of such Lot owns both Living Units of such Duplex, then the Lot Owner shall be the Lot Owner of the Lot and shall be a Unit Owner of two (2) Units.

## ARTICLE II

### MEMBERSHIP IN THE ASSOCIATION

The Association shall have two (2) classes of Members. The Association shall have both Class A Members and Class B Members. The terms and conditions applicable to such Memberships are, generally, as follows:

Section 1. Class A Members. Every Unit Owner of every Unit located within the Development (other than the Developer, the Developer's assignees of its Developer's Rights, a Builder or another Class B Member) shall automatically be a Class A Member of the Association, shall be subject to the jurisdiction of the Association, shall be subject to assessments levied by the Association under the following provisions of the Declaration, and shall be entitled to all rights and privileges of Class A membership in the Association. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation as members of the Association. There shall be one (1) Class A membership in the Association appurtenant to the ownership of any Unit which is subject to assessment by the Association. Class A membership in the Association shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment by the Association. Ownership of a Unit shall be the sole qualification for Class A membership in the Association. Class A membership in the Association shall be automatic, and shall not be discretionary. Class A membership shall automatically attach to ownership of a Unit, and ownership of a Unit shall subject the Unit Owner thereof to all duties and obligations of Class A membership, and to assessments levied by the Association. Class A membership in the Association cannot, under any circumstances, be partitioned or separated from ownership of a Unit subject to the jurisdiction of the Association. Any covenant or agreement to the contrary shall be null and void. No Unit Owner shall execute any deed, lease, mortgage or other instrument affecting title to his Unit, without including therein both his interest in the Unit and his corresponding membership interest in the Association, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, lease, mortgage or instrument purporting to affect the one without including also the other, shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

Section 2. Class B Members. The Developer, and those to which it assigns all or any part of its rights as the Developer under the terms of the Declaration, shall be the sole Class B Members of the Association. The Developer, and those to which it assigns all or any portion of its rights as the Developer under the terms of the Declaration shall become Class A Members upon and following the termination of Class B Memberships as hereinafter provided in the Declaration, for each Unit in which they hold the interest required for Class A Membership by this ARTICLE II. The Developer, and such assignees, shall, before termination of Class B Memberships, also be a Class A Member for each Unit held by the Developer or such assignees for rental or lease purposes [or which is occupied as a residence], and which is subject to Initial or Annual Assessments under the provisions of ARTICLE VI of this Declaration. The Developer may assign all or any part of the Developer's rights as the Developer hereunder, and all or part of the Developer's Class B voting rights. However, such assignment shall be made only by warranty deeds, deeds, deeds of trust or specific instruments of assignment, properly recorded, which specifically refer to the rights to be assigned; provided, however, that the provisions of Section 12 of ARTICLE I with respect to conveyance by deeds of trust or mortgage shall be in full force and effect. Any such assignment shall not be deemed to be made by any deeds, assignments or other instruments of conveyance, executed by the Developer, which do not specifically refer to the Developer's rights as the Developer, or the Developer's Class B voting rights. The Developer may assign all or part of the Developer's rights as Developer, and all or part of the Developer's Class B voting rights, if the Developer, in the Developer's discretion elects to do so, to Builders and other developers erecting improvements upon the real estate contained within the Plat. If the Developer does make such an assignment, then the Developer or Builder to which such an assignment is made shall hold those numbers of Class B

Memberships or voting rights specifically assigned, and shall lose one (1) Class B vote and one (1) Class B membership for each Unit subsequently rented or leased, or made available for rental or leasing, or conveyed by such developer or Builder, as to which such an assignment was made. If the Developer conveys a Lot or land within the Parcel to a Builder or other developer, without specifically assigning to such Builder or Developer the Developer's Class B votes and Class B Memberships attributable to such Lot or the parcel of land so conveyed to the Builder or such developer, then such Builder or developer shall be neither a Class A Member nor a Class B Member of the Association as to such Lot or parcel; provided, however, that Class A Memberships in the Association shall attach to each Unit located within the Lot or parcel of land conveyed to such Builder or developer, when Class A Memberships are to attach to each such Unit in accordance with the provisions of ARTICLE III of this Declaration, or when the Unit is to be subject to Initial Assessments and (thereafter) to Annual Assessments in accordance with the provisions of ARTICLE VI of this Declaration.

Section 3. Subject to Assessments. Each Unit which becomes subject to the Initial Assessment provided for by ARTICLE VI of this Declaration, and which is thereafter subject to Annual Assessments in accordance with the provisions of such ARTICLE VI, shall be a Unit to which a Class A Membership in the Association has attached, and the Unit Owner of such Unit (including, but not limited to, the Developer, a Builder, or another Class B Member of the Association or the Developer's assignee, if the Developer, such Builder, another Class B Member of the Developer's assignee continues to own the Unit) shall be a Class A Member of the Association, as to such Unit, and shall hold one (1) Class A Membership in the Association with respect to such Unit.

Section 4. Multifamily Residential Buildings. If a Residential Building contains more than one (1) Living Unit, and the Living Units therein are not identified as being a part of a separate, identifiable Unit by a plat, survey or condominium declaration applicable to such Building, then the owner of such Building, and of each Living Unit located therein, shall be a Unit Owner as to each Unit located within such Building, with each such Living Unit being a Unit. When each such Unit becomes subject to the Initial Assessment and, thereafter, to the Annual Assessments provided for by ARTICLE VI of this Declaration, the owner of all such Living Units (i.e., the owner of all such Units) shall be a Class A Member of the Association for each Unit (i.e., for each Living Unit) located within such Building, and shall be subject to all duties and obligations as such.

### **ARTICLE III VOTING RIGHTS**

The Association shall have two classes of voting memberships, and shall have two (2) classes of memberships, same being as follows:

Class A. Class A Members shall have one (1) vote at all meetings of the Association for each Unit in which they hold the interest required for Class A membership by ARTICLE II of the Declaration. When more than one (1) person holds such an interest in any Unit, the vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

**Class B.** The Developer, and those to which the Developer assigns all or any portion of the Developer's rights as the Developer under the terms of this Declaration shall have the sole Class B memberships and Class B votes, and shall hold the following numbers of Class B memberships and Class B votes:

a. Initially. Initially, the Developer and the Developer's assignees of any portion of the Developer's rights shall have, in the aggregate, one hundred fifty-four (154) Class B memberships and Class B votes, which such Class B memberships and Class B votes are allocated, with one (1) Class B membership and Class B vote being allocated to each Lot within Auburn Hills Plat 2, and to each of Lots 101 through 108 of Auburn Hills Plat 1, and with two (2) Class B memberships and Class B votes being allocated to each of Lots 201 through 239 of Auburn Hills Plat 1; the said initial Class B memberships and Class B votes being allocated as follows:

i. To Lots Within Auburn Hills Plat 1. Auburn Hills Plat 1 contains eight (8) Lots, Lots 101 through 108, both inclusive, which are intended to contain and shall contain only one (1) Single Family Residential Building, and one (1) Unit and one (1) Class B membership and one (1) Class B vote is, therefore, allocated to each of the said Lots 101 through 108, both inclusive, of Auburn Hills Plat 1. Each of Lots 201 through 239, both inclusive, of Auburn Hills Plat 1, is intended to contain and may contain one (1) Duplex Residential Building, and two (2) Class B memberships and two (2) Class B votes are, therefore, allocated to each of the said Lots 201 through 239, both inclusive, there being one (1) Class B membership and Class B vote allocated to each Unit which may be located within each of the said Lots 201 through 239, both inclusive. Therefore:

– Seventy-eight (78) Class B memberships and Class B votes (two per Lot) are allocated to Lots 201 through 239, both inclusive, of Auburn Hills Plat 1; and

– One (1) Class B membership and Class B vote, for a total of eight (8) Class B memberships and Class B votes, are allocated to Lots 101 through 108, both inclusive, of Auburn Hills Plat 1.

ii. Auburn Hills Plat 2. Auburn Hills Plat 2 contains sixty-eight (68) Lots, each of which is intended to contain only one (1) One Family Dwelling, or one (1) Unit (each of such Lots constituting both a Lot and a Unit). Therefore, sixty-eight (68) Class B memberships and Class B votes (one per Lot) are allocated to the Lots in Auburn Hills Plat 2; there being one (1) Class B membership and Class B vote for each such Lot in Auburn Hills Plat 2.

There are, therefore, an aggregate of one hundred fifty-four (154) Class B votes and Class B memberships at the outset, as follows:

– Eight (8) Class B memberships and Class B votes are attributable to Lots 101 through 108, both inclusive, of Auburn Hills Plat 1 (one per Lot);

– Thirty-nine (39) Class B memberships and Class B votes are allocated to Lots 201 through 239, both inclusive, of Auburn Hills Plat 1 (there being two per Lot);

– Sixty-eight (68) Class B memberships and Class B votes are allocated to the Lots in Auburn Hills Plat 2 (there being one per Lot).

b. Additional Class B Memberships as Parcels are Annexed to Development.

If any portions of the Annexation Parcel are, hereafter, annexed to the Development provided for hereby, then the number of Class B votes shall be increased by the number of Living Units (i.e., the number of Units) intended to be placed within such portion of the Annexation Parcel which is annexed to the Development and is subjected to the provisions of this Declaration, as follows:

– If a Lot is intended to be a Lot that contains one (1) Single Family Residential Building, then one (1) Class B membership and Class B vote shall be allocated to such Lot;

– If a Lot is intended to contain a Duplex Residential Building, then two (2) Class B memberships and Class B votes shall be allocated to such Lot;

– If a Lot is intended to contain a triplex, fourplex or multifamily Residential Building, then there shall be allocated to such Lot a number of Class B memberships and Class B votes which equals the number of Living Units intended to be contained within the Lot.

c. Termination of Class B Memberships and Class B Votes for each Lot.

If the Developer sells or conveys a Lot to a Builder, or any other Lot Owner other than the Developer and other than the Developer's assignee of the Developer's Class B memberships or Class B voting rights attributable to such Lot, then the (all) Class B membership(s) and Class B voting rights attributable to such Lot shall cease and terminate. However, if the Lot is conveyed to a Builder, then (a) Class A membership(s) shall not attach to the Unit(s) located or to be located within such Lot until a Unit within such Lot is sold, conveyed, rented, leased or otherwise disposed of by the Builder, or is available for renting or leasing, or it is occupied as a residence, at which time (a) Class A membership(s) shall automatically attach to each Unit within that Lot.

d. Ultimate Termination. In any event, all Class B voting rights and Class B memberships in the Association shall cease and terminate upon the happening of the earliest of the following events to occur:

i. When all Class B memberships as to all existing Units then contained within the Parcel and the Development have terminated, and more than thirty-six (36) months have expired without any portion (or further portions) of the Annexation Parcel being annexed to the Parcel and the Development, or when all Class B Memberships as to all then existing Units then contained within the Parcel have expired and no portions of the Annexation Parcel remain to be annexed to the Development, as the case may be; or

ii. On January 1, 2030; or

iii. The Developer so determines at an earlier date by recording, in the real estate records of Boone County, a written instrument evidencing such determination on the Developer's behalf.

e. Developer May, Temporarily or Permanently, Not Exercise Developer's Class B Voting Rights. The Developer may or may not, in the Developer's sole and absolute discretion, choose to not cast the Developer's Class B votes or to not exercise any of the Developer's rights as the Developer, as provided for by this Declaration. Such choice shall not constitute a waiver of the Developer's rights to cast such Class B votes or to assert such Developer's rights in the future. For example, the Developer may attempt, on a probationary basis, to not cast the Developer's Class B votes, so as to allow the Class A Members of the Association to assume management of the Association during a probationary period, and the Developer may then, later, again assert all of the Developer's rights to cast the Developer's Class B votes and to reassert the Developer's control of the management of the Association. A failure of the Developer to cast the Developer's Class B votes, or a choice by the Developer to not cast the Developer's Class B votes, shall not constitute, in any manner or respects, a waiver or relinquishment of the Developer's Architectural Control Powers provided for by this Declaration.

f. Ultimate Termination/Class A Memberships. From and after the earliest of those events described in subparagraph d above to occur, all Class B memberships and Class B voting rights in the Association shall be terminated, and the Developer and any of the Developer's assignees of the Developer's rights as the Developer under the terms of this Declaration shall be deemed to be Class A Members, entitled to one (1) vote for each Unit in which they hold an interest required for Class A membership under the terms of ARTICLE II of the Declaration. Prior to the occurrence of the earliest of such events to occur the Developer shall hold a Class A membership and Class A voting right in the Association as to each Unit then owned by the Developer to which a Class B voting right does not attach.

g. Attachment of Class A Membership. Subject to the provisions of subparagraph c above, when the Class B membership attributable to a Unit is terminated in accordance with the above provisions of this ARTICLE III, then a Class A membership shall automatically attach to such Unit, and such Unit shall be subject to the Initial Assessment provided for by ARTICLE VI of this Declaration and, thereafter, to the Annual Assessment provided for by such ARTICLE VI, and the Unit Owner of such Unit shall be a Class A Member in the Association, holding one (1) Class A membership in the Association, with respect to such Unit.

h. Number of Class A Memberships. The ultimate number of Class A memberships allocated to a Lot shall be determined by the number of Living Units which are actually located within such Lot when the Residential Building placed upon such Lot has been completed and is ready for occupancy. The number of Class A memberships attributable to a Lot shall be equal to the number of Living Units (i.e., the number of Units) located within the Lot when the Residential Building placed upon such Lot has been completed and is ready for occupancy. Therefore, even though a Lot is eligible to contain two (2) Living Units (i.e., a Duplex Residential Building), if a Building is placed on such Lot which contains only one (1) Living Unit (i.e., a Single Family Residential Building is placed on such Lot), then only one (1) Unit shall be located upon or within such Lot, and such Lot shall constitute both a Lot and a Unit, and only one (1) Class A membership and Class A vote shall be attributable to such Lot.

**ARTICLE IV**  
**LOTS AND UNITS**

All Lots shall be legally described by the identifying number pertaining to such Lot, as shown on the Plat. If any Lots are subdivided by a Plat, survey or by a condominium declaration into Units, then each Unit shall be legally described by the identifying number, letter or other designation pertaining to such Lot or Unit, as shown on the Plat or the condominium declaration. Every deed, lease, mortgage or other instrument may legally describe a Lot or Unit by its identifying number as shown on the Plat or condominium declaration, and every such description shall be deemed good and sufficient for the purposes. As hereinabove indicated, certain Lots, which contain only one (1) Living Unit, shall also be a Unit. Any description of a Unit shall be deemed to include and convey, transfer, encumber or otherwise affect the Owner's corresponding membership in the Association, though the same is not expressly mentioned or described therein. Ownership of a Unit and of the Owner's corresponding membership in the Association shall not be separated. No Lot which is intended to contain only one (1) Unit (i.e. one Living Unit) shall, by deed, plat, court decree or otherwise be subdivided, or in any other manner separated into tracts or parcels smaller than the whole Lot; provided, however, that the Developer reserves the right to subdivide Lots, to amend the Plat and to otherwise change Lot lines as to land and Lots owned by the Developer. Any Lot which is intended to contain more than one (1) Unit may be (but need not be) subdivided by Plat, survey or condominium declaration into that number of Units which equates to the number of Living Units located or to be located within the Lot, with each such Unit to contain one (1) Living Unit. No Lot or Unit owned by any person other than the Developer shall, by deed, plat, court decree, survey, condominium declaration or otherwise, be subdivided, or in any other manner, separated into tracts, parcels, portions or Units smaller than the whole Lot or Unit; provided, however, that Lot Owners of Lots containing or intended to contain more than one Living Unit may cause (but need not cause) such Lot to be subdivided into Units by a Plat, survey or condominium declaration; provided, however, that the number of Units located within such Lot shall equate to the number of Living Units located within such Lot, and that each Unit shall be, or shall contain, one Living Unit. Nothing contained herein, however, shall prevent partition of a Lot or Unit as between co-owners thereof, if such right of partition shall otherwise be available, but such partition shall not be in kind. The provisions of this ARTICLE IV to the contrary notwithstanding, and any of the provisions of this Declaration to the contrary notwithstanding, the Developer reserves (as to Lots, Units, tracts and parcels owned by the Developer) the right to amend the Plat and any Plat, in any respects, by changing Lot lines, subdividing Lots, subdividing Lots into Units, amending Lot lines, moving Lot lines, increasing the number of Lots, increasing the number of Units, reducing the number of Lots, reducing the number of Units, combining Lots, combining Units, creating Units, or subdividing Units or otherwise providing for amendments of the Plat as to portions of the land owned by the Developer. There shall be no restrictions upon the Developer's making any such revisions or amendments in the Plat or any plat, as to Lots or land owned by the Developer.

The Developer shall further have the right to join with Lot Owners or Unit Owners of Lots or Units not owned by the Developer, in amending the Plat as to Lots and/or Units owned by such Lot Owners or such Unit Owners, or so as to alter Lot lines, or Unit lines, with respect to Lots or Units owned by Owners other than the Developer, or with respect to Lots and/or Units owned by the Developer and owned by Owners other than the Developer.

The above provisions of this ARTICLE IV notwithstanding, the party holding the Architectural Control powers under ARTICLE VII of this Declaration shall further have the right to consent to modifications or amendments of any Plat and to the subdivision of Lots or Units, or to the combination of Lots and Units, or to the alteration of the boundaries of Lots or Units; in the same manner and respect as is provided for the exercise of other Architectural Control powers under ARTICLE VII of this Declaration.

The provisions of this ARTICLE IV and of this Declaration notwithstanding, each Living Unit shall, for all purposes under this Declaration, constitute a "Unit," whether or not separately identified and described by a Plat or Condominium Declaration. For example, each Lot which contains a Duplex Dwelling Building shall contain two (2) Living Units, and shall contain two (2) Units, and shall constitute two (2) Units. Each Lot which is intended to contain and/or which contains a One Family Dwelling/Single Family Residence shall constitute both a Lot and a Unit for all purposes, and all references to a "Unit" in this Declaration shall include any such Lot. Living Units shall be Units, whether or not identified as such by legal Plat or Condominium Declaration. Lots which contain more than one (1) Living Unit may be subdivided by Plat, survey or Condominium Declaration into Units, each of which shall contain one (1) Living Unit.

Any provisions of this Declaration to the contrary notwithstanding, no Plat shall be recorded for any parcel of land located within the Parcel, unless such Plat is first approved by the Developer, the Association's Board of Directors, or its Architectural Control Committee, whoever or whichever holds the Architectural Control Powers under ARTICLE VII of this Declaration. All Plats must, therefore, be approved in accordance with the Architectural Control Powers of ARTICLE VII of this Declaration.

The above provisions of this ARTICLE IV notwithstanding, and any provisions of this Declaration to the contrary notwithstanding, no Condominium Declaration or survey recorded which causes any parcel of land contained within the Parcel to be subdivided into Units or Units and Common Areas, or parcels smaller than the entire Parcel, unless such Condominium Declaration or survey is first approved by the Developer, the Board of Directors of the Association, or its Architectural Control Committee, whoever or whichever holds the Architectural Control Powers under ARTICLE VII of this Declaration. Condominium Declarations or such survey shall, therefore, be subject to approval in the same manner in which Plans and Specifications are to be approved under ARTICLE VII of this Declaration.

## **ARTICLE V**

### **THE ASSOCIATION**

**Section 1. Formation.** The Association shall be formed for the purposes of owning, and providing maintenance for any Common Areas and Common Elements, and for the further purposes of acting as an association of the Lot Owners and Unit Owners and residents of the Development, and for the further purposes of enforcing any of the provisions of this Declaration which are to be enforced by the Association. The Developer shall cause the Association to be formed, by causing same to be incorporated in accordance with the general not-for-profit corporation law of the State of Missouri, upon the conveyance of the first Lot or Unit within the Development to a person or persons other than the Developer, or any of its assignees of Class B memberships in the Association.



Upon the formation of such Association, every Unit Owner then holding or thereafter acquiring an interest in a Unit required for Class A membership under the terms of ARTICLE II of this Declaration, shall automatically become a Class A Member in the Association. Such membership in the Association shall be required, and shall be automatic. Once the Association is formed, every Unit Owner then owning a Unit, and any Unit Owner thereafter acquiring a Unit, shall automatically become a member of the Association. Membership shall not be voluntary. Membership shall be mandatory. When the Association is formed, every Unit Owner then holding or thereafter acquiring an interest in a Unit required for Class A membership shall automatically become a Class A Member in the Association, and the Developer and the Developer's assignees shall hold those Class B membership rights hereinafter provided for by the Declaration. A Unit Owner's Class A membership shall terminate upon the sale or other disposition by such Unit Owner of his Unit Ownership at which time the new Unit Owner shall automatically become a Class A Member of the Association. As hereinabove noted in ARTICLE IV of this Declaration, all references herein to a "Unit" shall mean and refer to each Living Unit and the property containing or constituting same. Lots which are intended to contain and/or which actually contain only one (1) Single Family Residence, shall be both a "Lot" and a "Unit," and the Lot Owner of any such Lot shall also be a Lot Owner and a Unit Owner for all purposes under this Declaration.

Section 2. Articles of Incorporation and Bylaws. The corporation shall have as its Articles of Incorporation and Bylaws such Articles and Bylaws as are attached hereto as Exhibit A and Exhibit B respectively. Such exhibits are incorporated herein by reference.

Section 3. Administration. The Development shall be administered by the Association, which, in turn, shall be managed by a Board of Directors elected and constituted as hereinafter provided in this ARTICLE V. The Board of Directors shall have general responsibility to administer the Development, approve the annual budget of the Association, provide for the collection of monthly or other assessments from Members, and arrange and direct or contract for the management of the Development, and otherwise administer with respect to any matter generally pertaining to enhancing, maintaining, benefitting and promoting the Development.

Section 4. Board of Directors. During such time as there are Class B voting rights in existence, the Board of Directors shall consist of three (3), five (5), seven (7) or nine (9) directors (or any other odd number of directors), a majority of whom (who need not be Unit Owners) shall be elected by the Class B Members of the Association, and the remainder of whom shall be (a) natural person(s) who own(s) (an) Ownership Interest(s) in (a) Unit(s) (other than the Developer, a Builder or Class B Member) elected by the Class A Members of the Association. The members of the Board of Directors elected by the Class B Members need not be Unit Owners and need not own an ownership interest in any Units. Directors elected by Class A Members must be natural persons and must hold ownership interests in a Unit or Units. Directors elected by Class A Members must not be the Developer, and must not include any officer or employee, shareholder, member, partner or director of the Developer, and may not include those to whom the Developer has assigned all or any portion of the Developer's rights as the Developer, or any officers, employees or members of such assignees.

After Class B voting rights have ceased to exist, the Board of Directors shall consist of three (3), five (5), seven (7) or nine (9) [or any other odd number of directors] natural persons (as

determined by the Board of Directors of the Association immediately prior to each annual meeting of the Members of the Association), who must be owners of ownership interests in Units. After Class B voting rights have ceased to exist, all members of the Board of Directors shall be elected by the members of the Association. The Directors shall be elected in that manner, and for those terms, specified by the Bylaws, except as hereinabove provided to the contrary.

Section 5. General Powers and Duties of the Association. The Association, for the benefit of all Unit Owners and their lessees, shall provide for, and shall acquire and shall pay out of the Maintenance Fund hereinafter provided for, the following:

(a) All maintenance, repairs, replacements, servicing and upkeep for the Common Areas and Common Elements and any "Landscaping ESMTs" (i.e., "Landscaping Easements"), and "Sign ESMTs" (i.e., "Sign Easements"), and any "Landscape and Sign ESMTs" (i.e., "Landscape and Sign Easements"), and any landscaping, signs, monuments, lighting, light fixtures, irrigation systems and other improvements located thereon, and any Pedestrian and Trail and Path Easements, and any paths, trails, walks or walkway therein; and

(b) All maintenance, replacements, servicing and upkeep for any Trails, Paths, walkways, Bicycle Paths or other improvements located within any Trail Easements, Path Easements or Pedestrian Easements established by any Plat, and the construction, reconstruction, maintenance, repair and replacement of Trails, Paths, bikeways and similar improvements thereon; and

(c) All maintenance, repairs, replacements, servicing and upkeep of every kind, nature and description whatsoever for all other Common Areas and Common Elements, and any Landscaping Easements, Sign Easements or similar easements provided for by the Plat or otherwise, and all improvements located thereon; and

(d) The establishment of reasonable rules and regulations governing the Common Areas and the Common Elements; and

(e) Water, sewer, waste removal, electricity and telephone and other necessary utility service for the Common Elements and Common Area; and

(f) Weed removal for, weed cutting for, and all other maintenance and repairs, servicing and upkeep for any lakes, ponds or other water impoundments constituting any part of the Common Elements, and maintenance, repairs, replacements, improvement and upkeep for the shorelines thereof, and the dams therefor, and the spillways therefor and every part and component thereof; and

(g) A policy or policies insuring the Association, and its members, and its Board of Directors against any liability to any persons, including Unit Owners or their invitees or tenants, instant to the ownership and/or use of the Common Area or Common Element in such limits as the Association's Board of Directors shall, in its sole and absolute discretion, from time to time, determine appropriate. The annual limits of coverage shall be reviewed at periodic intervals by the Association's Board of Directors. Such insurance shall be payable to the Association in trust for the benefit of the Association and the Unit Owners. The Association shall also obtain Worker's

Compensation Insurance to the extent necessary to comply with any applicable laws and statutes of the State of Missouri; and

(h) Upon ten (10) days notice to the manager or the Association's Board of Directors, and upon the payment of a reasonable fee set by the corporation's Board of Directors, the furnishing to any Unit Owner a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing for such owner; and

(i) When the Association's Board of Directors, in its sole and absolute discretion, deems it advisable to do so, the retaining of the services of such accountants, attorneys, employees and other persons as the Association's Board of Directors shall, in its sole and absolute discretion, deem necessary in order to discharge the Association's duties. The designation and removal of personnel necessary for the maintenance, repair and replacement of the Common Elements shall be made by the Association's Board of Directors; and

(j) The cutting of grass and weeds within the Common Areas and all Landscaping Easement areas and other easement areas established for the benefit of the Association, and providing for the mowing, irrigating, fertilizing, maintaining, improving and replacing of all lawns, landscaping and improvements within the Common Areas and Common Elements and of all real estate contained within the Common Areas and the Common Elements and any Landscaping Easements, and any Sign Easements, and any Pedestrian Access Easements, Path Easements, Trail Easements or Pedestrian Easements (and the walkways and bikeways and other improvements therein and thereon) and any other easements established for the benefit of the Association, and all lawns, trees, shrubs, signs, monuments, entry-way structures and other improvements located thereon, and for the improvement, maintenance, repair, construction and reconstruction of all such Common Areas and Common Elements and Landscape Easements, Trail Easements, Path Easements and similar Easements; and

(k) The providing of electrical service for any lighting located within or constituting any part of the Common Areas or Common Elements; and

(l) Maintenance, repair, replacement, servicing and upkeep of any signs, monuments or other structures or improvements located within any Common Area, or constituting any part of the Common Elements; and

(m) The establishing of reasonable rules and regulations governing the Common Area so as to protect the privacy of all Unit Owners, in the use and enjoyment of their Units.

(n) The providing for the payment of taxes and assessments, general and special, levied against or by reason of the Common Areas and Common Elements;

(o) The obtaining, providing and paying for any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or other items which the Association is required to secure or pay for pursuant to the terms of this Declaration, or the Association's Bylaws, or by law, or which in the Association's opinion shall be necessary or proper

for the maintenance and operation of the Development as a first class development, or for the enforcement of any restrictions set forth in the Declaration.

(p) In the discretion of its Board of Directors, providing for the maintenance and repair of any portion of any Unit or of any Building or improvement located on any Unit or of any utility line located inside a Unit, if such maintenance or repair is reasonably necessary, to protect the Association or the Common Elements, or the Development, or any part, portion or aspect of the value of the Property or the Parcel, or any part thereof, or any other portion of a Building or any other Building, or of a Unit, when the Unit Owner or Owners of said Unit have failed or refused to perform said maintenance or repairs within a reasonable time after written notice of the necessity of said maintenance or repairs has been delivered by the Association's Board of Directors; provided, however, that no such written notice shall be required in case of an emergency; and provided further, however, that the Board of Directors shall levy a special individual Unit assessment against the Unit and Unit Owners or Owners for the cost of the maintenance or repairs, which shall constitute a lien upon the Unit and its improvements, in addition to the lien hereinafter provided for ordinary assessments;

(q) Enforcing those standards for maintenance, repair, replacement and upkeep hereinafter set forth in this Declaration;

(r) Enforcing any of the provisions of this Declaration;

(s) Enforcing those restrictions hereinafter set forth in this Declaration, including those restrictions on use;

(t) Enforcing any provisions dealing with Architectural Control which it is required to enforce in accordance with the following provisions of this Declaration;

(u) Providing for the improvement of, the modification of, the maintenance, repairs, replacements, servicing and upkeep of every kind, nature and description whatsoever of, and the enhancement of, the Common Elements of the Association, including but not limited to, and any walkways, walks, sidewalk or pedestrian walks to be installed in any Pedestrian Access Easement or Pedestrian Easements, and for providing for the improvement of, the enhancement of, addition to, and the maintenance, repairs, replacements, servicing and upkeep of every kind, nature and description whatsoever for trees, shrubs and landscaping located within any Landscape Easements, and signs, monuments, entryway structures, irrigation systems and other improvements located within any Landscape Easements or Sign Easements or similar easements;

(v) Establishing, building, installing, maintaining, repairing, replacing, improving or modifying drainageways, drainways and drains and drainage structures, of every kind, nature and description whatsoever, which are located within the Common Areas or which constitute Common Elements, or which are located within Drainage Easements (whether or not publicly held), including, but not limited to, ditches, creeks, swales and other drainages and drainways of every kind, nature and description whatsoever.

Section 6. Entry Into Units. The Association, or its agents, or its Directors, may enter any Unit when necessary in connection with any lawn maintenance, or any other maintenance or construction or reconstruction for which the Association is responsible, or which it is authorized or empowered to perform. It, or its agents or directors may likewise enter any Buildings and/or Living Units contained on or constituting any Lot or Unit, and any lawn contained on any Lot or Unit, or any improvement contained or constituting any Lot, Unit or Living Unit for maintenance, repairs, construction or painting, if same is necessary in connection with any maintenance or construction for which the Association is responsible or which it is authorized to perform. Such entry shall be made with as little inconvenience to the Lot Owners or Unit Owners or Living Unit Owners (or occupants) as practicable, and any damage caused thereby shall be repaired by the Association, at the expense of the Maintenance Fund established as hereinafter provided for.

Section 7. Limitation Upon Power of Association and Board of Directors. The powers of the Association and its Board of Directors as hereinabove set forth shall be limited in that they shall have no authority to acquire and pay for out of the Maintenance Fund any capital additions and improvements (other than for the purpose of replacing or restoring portions of the Common Elements, or improvements on Lots destroyed or damaged payable out of the insurance proceeds actually received, subject to all of the provisions of the Declaration) having a total cost in excess of Ten Thousand Dollars (\$10,000.00), nor shall the Association or its Board of Directors authorize any structural alterations, capital additions to, or capital improvements to the Common Elements requiring an expenditure in excess of Ten Thousand Dollars (\$10,000.00), without in each case obtaining the prior approval of a majority of the Class A Members and of the Class B Members and obtaining the written approval or waiver of any mortgagee holding any deed of trust on at least three (3) Units, provided any such mortgagee notifies the Association's Board of Directors of its ownership and desire to have the right to so approve.

Section 8. Rules and Regulations. A majority of the Association's Board of Directors may adopt and amend administrative rules and regulations and such reasonable rules and regulations as it may deem advisable for the use, operation, maintenance, conservation and beautification of the Common Elements and Common Areas, and for the health, comfort, safety and general welfare of the Lot Owners and occupants of Buildings located on the Lots, and for the general appearance of the Development.

Section 9. Active Business. Nothing hereinabove contained shall be construed to give the Association or its Board of Directors authority to conduct an active business for profit on behalf of the Unit Owners or any of them.

## **ARTICLE VI**

### **MAINTENANCE FUND**

The Developer, for each Unit contained within the Parcel hereby covenants, and each Unit Owner of each Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any deed or other conveyance, is deemed to covenant and agree, to contribute and/or pay to the Association assessments determined in accordance with the following provisions of this ARTICLE VI.

Section 1. Creation of a Lien and Personal Obligation for Assessments. The Developer, for each Unit contained within the Property, on behalf of the Developer and for all present and future Owners of each such Unit, hereby agrees, and each Owner of each Unit within the Property by acceptance of a deed therefor, whether or not it shall be so expressed in any deed, or other conveyance, shall be deemed to covenant and agree to pay to the Association, or the duly authorized officers, representatives or agents of the Association: (1) the Initial Assessment hereinafter described; and (2) Annual Assessments and charges hereinafter described; (3) special assessments for capital improvements hereinafter described; (4) special assessments for tax bills or public improvements hereinafter described; (5) any special assessments hereinafter described; (6) those special assessments for contingencies and shortages hereinafter described; (7) those special assessments for replacement or non-periodic maintenance hereinafter described; (8) those special Unit assessments hereinafter described; (9) all other assessments and charges and levies provided for by this Declaration; and (10) those special assessments levied by way of a fine or other imposition in accordance with Section 26 of ARTICLE XI of this Declaration; (11) any and all other special assessments and charges of any kind or nature whatsoever provided for by this Declaration. All such sums and assessments shall be fixed, established and collected from time to time as provided in this Declaration. All such Initial Assessments, Annual Assessments and special assessments, and other sums and assessments, together with interest thereon and costs of collection thereof as may be hereinafter provided for, shall be a charge on the Units, and each of the Units, and shall be a continuing lien upon the Unit and each of the Units against which each such assessment or charge is made. Each such assessment or charge shall also be the joint and several personal obligation of the person or persons who were the Owners of the Unit at the time when the assessment fell due. The personal obligation shall not pass to such Owner's successors in title unless expressly assumed by them.

Each Living Unit shall, for purposes of determining Assessments and liability to Assessments, be a Unit. Each Lot which contains or is intended to contain only one (1) Single Family Residence shall, therefore, be both a Lot and a Unit, and shall be subject to all assessments imposed upon Units by this ARTICLE VI.

Section 2. Purpose of Assessments. The assessments levied by the Association shall constitute a Maintenance Fund, and shall be used exclusively by the Association to discharge its duties and obligations as provided for by the Declaration, and for the purpose of promoting the recreation, health, safety and welfare of the Unit Owners and residents of the Development, and in particular for the enforcement of these covenants and all terms hereof, and all restrictions set forth in this Declaration and for the improvement, maintenance and beautification of, and the providing of maintenance, repairs, services and facilities for, the Common Area and Common Elements, and the services and the facilities related to the use and enjoyment of the Common Area and Common Elements, and of any improvements situated upon the Common Area and of Common Elements, and to discharge such other duties and obligations as shall be conferred upon the Association by the terms and conditions of this Declaration, including but not limited to the payment of taxes and insurance on the Common Area and Common Elements, repairs to, maintenance of, replacement of and additions to and improvements of the Common Area and Common Elements, and for the cost of labor, equipment, materials, management and supervision required for the Common Area and Common Elements and for performance by the Association of its duties hereunder.

Section 3. Maintenance Fund. The Initial Assessments, Annual Assessments or charges, and special assessments established and collected under the terms of this ARTICLE VI shall constitute a fund to be known as the "Maintenance Fund".

Section 4. Initial Assessment and Annual Assessment:

A. Initial Assessment. At the time of the conveyance of each Unit within the Development by the Developer or any of the Developer's assignees or any other Class B Member, or a Builder to a Unit Owner other than the Developer, the Developer's assignees or any other Class B Member of the Association or a Builder, the conveying party (i.e. the Developer, other Class B Member, the Developer's assignee or the Builder) shall collect (and shall be obligated to collect) from the new Unit Owner and to remit to the Association (whether or not so collected) an Initial Assessment, to be immediately remitted to the Association, in the following sums:

- One Hundred Dollars (\$100.00) per Unit for each Unit which constitutes a Lot that contains or is intended to contain one (1) Single Family Residence (and which, therefore, is a Unit, as described in this Declaration) [therefore, each Lot within Auburn Hills Plat 2, and each of Lots 101 through 108, both inclusive, of Auburn Hills Plat 1, each of which such Lots is intended to contain one Single Family Residence shall be subject to an Initial Assessment of \$100 per Lot, meaning \$100 per Unit];

- Seventy-five Dollars (\$75.00) per Unit for each Unit located within a Lot which contains a Duplex Residential Building [therefore, if a Duplex Residential Building is placed upon one of Lots 201 through 239, both inclusive, of Auburn Hills Plat 1, each of which such Lots is intended to one (1) Duplex Residential Building, then an Initial Assessment of Seventy-five Dollars (\$75.00) per Unit shall attach to each Unit located within such Lot];

- For Lots which are intended to contain Triplex, Fourplex, Eightplex or Multi-Family Residential Buildings, or for Units located within any such Lot, such amount, per Lot or Unit or intended Unit, as the Board of Directors of the Association, in its sole, absolute, unlimited and unfettered discretion, shall determine.

The Initial Assessment for each Unit located within a Lot (or the Initial Assessment for a Lot if it is also a Unit) shall be due and owing, and shall be paid, by the Unit Owner (or Lot Owner, if the Unit constitutes a Lot, as the case may be), upon the occurrence of the first to occur of the following events:

- i. The Unit (or the Lot which constitutes a Unit) is first conveyed by the Developer, or the Developer's assignee of the Developer's rights as Developer, or another Class B Member of the Association, or a Builder, to a Unit Owner or Lot Owner other than: (i) the Developer, or (ii) an Assignee of the Developer's Rights as Developer, or (iii) another Class B Member of the Association, or (iv) a Builder; or

- ii. The Unit is first leased or rented, or used as a residence, to any person or party, or it is made available for lease or rental, by any party, even if the Unit is then owned by the

Developer, or an assignee of the Developer's Rights as the Developer, or another Class B Member of the Association, or a Builder; or

iii. The Unit is located within a Lot which is not subdivided by condominium declaration, Plat or survey into separate, individual parcels of real estate or condominium units, each of which contains a single Living Unit, and the Lot containing the Unit is conveyed to a party other than the Developer, the Developer's assignee of the Developer's Rights, another Class B Member or a Builder, or the first Unit within such Lot is first rented or leased or is made available for renting or leasing, or is first occupied as a residence; meaning that all Units within such a Lot shall be subject to the Initial Assessment when the first Unit within such Lot is first rented, leased or is made available for renting or leasing, or is occupied as a Residence.

The above provisions notwithstanding, Units owned by the Developer, or the Developer's assignees of the Developer's rights as the Developer, or another Class B Member of the Association, or a Builder, shall not be subject to Initial Assessment until either:

- The Unit or the Lot containing the Unit is conveyed to a Unit Owner other than the Developer, or a Developer's assignee of the Developer's Rights as the Developer, or another Class B Member of the Association, or a Builder; or

- The Unit is rented or leased or is made available for renting or leasing, or is occupied as a residence; or

- The Unit is located within a Lot which has not been subdivided by condominium declaration, plat or survey, into individual Units, and the first Unit located within such Lot has been rented, leased or made available for renting or leasing, or is occupied as a residence.

When a Unit becomes subject to the Initial Assessment, the Unit Owner of such Unit shall be obligated to immediately remit the Initial Assessment to the Association. When a Unit becomes subject to Initial Assessment, both the Unit Owner of such Unit, and the party who conveyed the Unit to the Unit Owner, shall be jointly and severally liable and responsible and obligated to the Association to make payment of the Initial Assessment to the Association; provided that the Developer, the Developer's assignees of the Developer's rights as the Developer, and Class B Members of the Association, shall not be liable or obligated to pay Initial Assessments for a Unit conveyed by it or them to a Builder, but rather the Builder, and the persons to whom the Builder subsequently conveys the Unit (if the Builder subsequently conveys the Unit), shall be jointly and severally liable and responsible, with the Unit Owners of the Units, to the Association, to pay the Initial Assessments.

Such Initial Assessment shall be one-time assessments, and shall be paid only at the time provided for the payment of such Assessments, by the above provisions of this subsection A. No Unit owned by the Developer, any other Class B Member, an assignee of the Developer or a Builder, shall be subject to an Initial Assessment, unless it is rented, or lead, or is made available for renting or leasing or is occupied as a Residence. If a Unit is conveyed by the Developer, a Class B Member, an assignee of the Developer or a Builder, to a person other than the Developer, the Builder, another Class B Member or the Developer's assignee, then the Unit shall, thereby, become subject to the



Initial Assessment, and the grantor of such conveyance shall, at the time of such conveyance, be required to collect the Initial Assessment (made payable to the Association) and to immediately remit such Assessment to the Association, and shall be personally responsible (together with the grantee) for paying such Initial Assessment if such conveying party fails to collect such Initial Assessment from the grantee.

The above provisions notwithstanding, if a Unit, which is owned by the Developer, a Class B Member, an assignee of the Developer or a Builder, is held for rental or lease purposes, or is used as a residence, then the above provisions of this subsection A notwithstanding, such Unit shall become subject to the Initial Assessment, and such Assessment must be paid, when the Unit is first made available for rental or lease purposes, or is first used as a residence. If a Unit is located within a Building which contains a number of Units, then each of the Units within that Building shall become subject to the Initial Assessment (and such Assessment must be paid) when the first Unit within such Building is rented or leased, or made available for rental or lease purposes, or is first occupied as a residence.

If a Lot is divided into separate Units, and each of such Units is intended for sale to a separate Unit Owner, then each Unit shall individually become subject to the Initial Assessment when such Unit is sold or conveyed to a Unit Owner other than the Developer, a Builder, another Class B Member, or the Developer's assignee, or it is first rented or leased, or is made available for renting or leasing, or it is occupied as a residence, and it shall not, prior thereto, be subject to the Initial Assessment.

The duty of each Developer, Developer's assignee, Class B Member or Builder to collect the Initial Assessment shall be absolute, and if the Initial Assessment is not collected, then the Developer, the Developer's assignee, the Class B Member or Builder shall be obligated to personally remit the Initial Assessment to the Association.

Initial Assessments shall not be prorated, irrespective of the time of year when the Initial Assessment becomes due.

B. Initial Annual Assessment. Each Unit shall first become subject to an Annual Assessment on January 1 of that calendar year which next begins following the date when such Unit is subjected to the Initial Assessment pursuant to subsection A above. Even if a Unit is subject to Initial Assessment in December of a calendar year, such Unit shall, nevertheless, be subject to the Annual Assessment for the next succeeding calendar year, as of January 1 of such next succeeding calendar year. The first Annual Assessment shall be as follows:

- One Hundred Dollars (\$100.00) for each Unit which constitutes a Single Family Dwelling Lot (i.e., \$100 for each Lot which contains or is intended to contain only a Single Family Residence – each such Lot also being a Unit – the Assessment on such Unit being \$100) [therefore, the Initial Annual Assessments for Lots (which are also Units) within Auburn Hills Plat 2, and each of Lots 101 through 108 of Auburn Hills Plat 1, shall be \$100 per Lot/\$100 per Unit];

- Seventy-five Dollars (\$75.00) per Unit (i.e., \$75 per Living Unit) for each Unit located within a Lot which contains two (2) Living Units (i.e., \$75 per Living Unit for each Unit

of a Duplex Dwelling Residential Building located on a Lot) [meaning that each Unit located within one of Lots 201 through 239 of Auburn Hills Plat 1, which contains a Duplex Residential Building shall be subject to a \$75 Annual Assessment, until the Assessment is changed in accordance with the following provisions of this ARTICLE];

— For each Unit within Lots containing Triplex, Fourplex, Eightplex or Multi-Family Dwelling Residential Buildings, that amount established by the Board of Directors of the Association, in its sole, absolute, unlimited and unfettered discretion, at the time when the Units become subject to the Initial Assessment; provided only that the determinations in these respects shall be reasonable, and shall represent reasonable attempts by the Board to determine a fair allocation of costs of maintenance, repair, replacement, servicing and upkeep of Common Areas and Common Elements, and of the operations of the Association, to the occupants of Living Units located within such Lots.

Each Living Unit shall, therefore, constitute a "Unit" for all purposes of determining Assessments under this ARTICLE VI. If a Lot contains more than one (1) Living Unit, and such Lot has not been subdivided by Plat or Condominium Declaration into Units, then the Annual Assessment for each Unit located within such Lot (i.e., each Living Unit located within such Lot) shall be that sum per Unit established in accordance with the foregoing provisions of this subsection B. If Lot contains one (1) Single Family Residence, then the Initial Annual Assessment for such Lot (such Lot also being a Unit) shall be in the sum of One Hundred Dollars (\$100.00) per Lot (i.e., \$100 per Unit). If the Lot contains a Duplex structure, then the Initial Annual Assessment for such Lot shall be One Hundred Fifty Dollars (\$150.00), being Seventy-five Dollars (\$75.00) per Living Unit (i.e., \$75 per Unit).

Annual Assessments shall begin to be due and owing as of January 1 of the first calendar year which next begins after the first Unit within the Development becomes subject to the Initial Assessment provided for by subsection A above, regardless of the date within such calendar year when the first Unit becomes subject to such Initial Assessment.

Once a Unit is subject to the Initial Assessment described in subsection A above, then such Unit shall, as of January 1 of the calendar year which next begins after the Unit became subject to the Initial Assessment; and for each calendar year thereafter, in perpetuity, be subject to Annual Assessments.

The above provisions of this subsection B notwithstanding, **NO UNIT OWNED BY THE DEVELOPER, OR ANOTHER CLASS B MEMBER, OR A BUILDER OR THE DEVELOPER'S ASSIGNEE, SHALL BE SUBJECT TO ANNUAL ASSESSMENTS;** provided, however, that if a Unit is owned by the Developer, another Class B Member, an assignee of the Developer's rights or a Builder, and is held for rental or lease purposes, or is rented or leased, or is occupied as a residence or used as a residence, then such Unit and all other Units located within the Lot containing such Unit shall (unless the Lot is subdivided by a Plat, survey or Condominium Declaration into Unit), immediately, as of the date when it is first made available for rental or lease purposes, or is occupied or used as a residence, become subject to the Initial Assessment described in subsection A above, and, thereafter, as of the January 1 of the next succeeding calendar year and each subsequent calendar year, be subject to Annual Assessments provided for by this subsection B.

C. Subsequent Annual Assessments. On or before December 31 of that calendar year which next begins after the first Unit located within the Development has become subject to the Initial Annual Assessment in the amount specified in subsection B of this Section 4, and on or before December 31 of each subsequent calendar year, the Board of Directors of the Association shall meet and shall estimate the total amount necessary to pay the cost of wages, materials, insurance, repairs, services, supplies, utilities, and performance of any duties and any other work and services which will be required of the Association prior to December 31 of the next calendar year, and for the rendering of all services and the performance of all powers and duties of the Association, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall, as soon as practicable, notify each Unit Owner, in writing, as to the amount of such estimate with reasonable itemization thereof. Said "Estimated Cash Requirement" shall become the Total Annual Assessment ("Total Annual Assessment") for the coming calendar year, for all Units located within the Development which are subject to Annual Assessments as of January 1 of such year, and shall be assessed to the Unit Owners of such Units. Such "Estimated Cash Requirements" (such Total Annual Assessment) shall be apportioned among all Units which constitute Lots containing Single Family Residences, and Units contained within Lots which contain more than one (1) Unit, on the basis of "Units of Participation," as follows:

- Each Lot, which also constitutes a Unit (meaning a Lot which contains only one Living Unit, meaning one Single Family Residential Building), shall be assigned one (1) Unit of Participation;

- Each Unit located within a Lot which contains two (2) Living Units (i.e., each Unit of a Duplex Dwelling Residential Building) shall be assigned 0.75 Units of Participation, meaning that each Unit of a Duplex Dwelling within a Lot shall have 0.75 Units assigned thereto, for a total of 1.5 Units of Participation for each Lot which contains a Duplex Dwelling Residential Building;

- If a Lot contains more than two (2) Units (i.e., more than two Living Units) [example: a Lot that is intended to contain a Fourplex Dwelling Residential Building], then each Unit within such Lot shall have that number of Units of Participation as is assigned thereto by the Board of Directors of the Association at the time when the Lot that is to contain such Units first becomes subject to Annual Assessments, with the Board to have the sole, absolute, unlimited and unfettered discretion to assign Units of Participation to each such Unit; provided, however, that its determinations in these respects must be reasonable, and not arbitrary and capricious, and must be based upon a reasonable determination by the Board as to the fair, allocated share of the costs of maintenance, repair, replacement, servicing and upkeep of the Common Areas and Common Elements, and of the costs of operation of the Association, which should be borne by the Unit Owners of each of such Units.

Annual Assessments for each Unit shall be determined by multiplying the total sum of the Estimated Cash Requirements/the Total Annual Assessment by the "Sharing Ratio" attributable to such Unit. The "Sharing Ratio" for each Unit which is subject to Annual Assessment as of January 1 of that calendar year for which the Annual Assessment is charged, shall be a fraction (expressed as a percentage), the numerator of which shall be the number of Units of Participation attributable to the Unit in question, and the denominator of which shall be the total number of Units of Participation

attributable to all Units which are subject to Annual Assessments as of January 1 of the applicable calendar year.

If a Lot contains more than one (1) Unit, then the following shall be in effect:

a. If the Lot is divided by Plat or Condominium Declaration into separately identifiable Units, then each Unit shall become subject to Annual Assessment when such Unit is conveyed to a Unit Owner other than the Developer, another Class B Member, a Builder or the Developer's assignee, as the case may be, or when the Unit is first rented or leased or occupied as a residence, or made available for renting or leasing, as the case may be;

b. If a Lot is not subdivided into separate Units by Condominium Declaration or Plat, then all Living Units (i.e., all Units) located within such Lot shall become subject to Annual Assessment when the first Unit located within such Lot is rented, leased or occupied as a residence, or is made available for renting, leasing or occupancy as a residence, or the Lot is conveyed to a person other than the Developer, another Class B Member, a Builder, or the Developer's assignees, as the case may be.

The intention is that each Unit shall become subject to Annual Assessment as of January 1 of that calendar year which next follows the date when the Unit becomes subject to the Initial Assessment.

Units shall not be subject to both an Initial Assessment and an Annual Assessment in the same calendar year. If a Unit is subject to an Initial Assessment in a calendar year, then it shall be subject to its first Annual Assessment on January 1 of the next calendar year, even though the Unit become subject to the Initial Assessment in December of a calendar year.

If all Units within a Lot are owned by a single Lot Owner, then such Lot Owner shall be the Unit Owner of such Units, and shall be obligated to pay and shall be subject to the obligation to pay the Annual Assessments for all Units located within such Lot. If various Unit Owners own the various Units within a Lot, then the individual Unit Owners shall be the Units Owners and subject to, and shall be obligated to pay, the Annual Assessments, on their respective Units, as established in accordance with the provisions of this subsection C of this Section 4.

Section 5. Contingencies and Shortages. The Board of Directors shall build up and maintain such reasonable reserves for contingencies and replacements as the Board of Directors, in its sole and absolute discretion, shall from time to time deem appropriate. Extraordinary expenditures and replacements, not originally included in the annual "Estimated Cash Requirement" hereinabove described in Section 4, which may become necessary during the year, shall be charged first against such reserve. If the "Estimated Cash Requirement" established pursuant to Section 4 proves inadequate for any reason, then the sum of the deficiency (or the sum by which the Estimated Cash Requirement is inadequate) shall be shared equally by the Unit Owners of all Units which are subject to Annual Assessments as of the date the shortage is incurred, and all Units to which Class A memberships have previously attached or which have previously paid Initial Assessments, whether or not then subject to Annual Assessments, and each Unit Owner's share of any deficiency shall constitute a special assessment against such Unit Owner and his Unit. Assessments for

contingencies and shortages shall be shared in accordance with each Unit Owner's "Sharing Ratio," with the Sharing Ratio for each Unit to be a fraction (expressed as a percentage), the numerator of which shall be the number of Units of Participation attributable to such Unit (as such Units of Participation are set forth in Section 4C above), and the denominator of which shall be the total number of Units of Participation attributable to all Units which are subject to the Assessment.

Section 6. Failure to Agree. In the event the Board of Directors fails to set an Annual Assessment for any calendar year, then the Annual Assessment for all Units subject to assessment for such year shall be the greater of the sum of the Annual Assessment in effect for the prior calendar year, or the sum of:

- One Hundred Dollars (\$100.00) for each Unit which constitutes a Single Family Residence Lot; and

- Seventy-five Dollars (\$75.00) per Unit (i.e., for each Living Unit), for each Unit located within a Lot which contains two (2) Units (i.e., two Living Units); and

- That amount established by the Developer at the annexation of the Lots containing such Units for each Living Unit located within a Lot that contains more than two (2) Living Units, as established by the Developer in accordance with the provisions of subsection B of Section 4 of this ARTICLE.

Section 7. Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy in any assessment year, a special assessment against all Units, as determined by the Board, which are subject to assessment as of the end of such year, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, or unexpected repair or replacement of a capital improvement upon the Common Area or Common Element, or otherwise determined to be for the mutual or common benefit of all Unit Owners or the Development, and any necessary fixtures and personal property related thereto; provided that any such assessment shall have the assent of a majority of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than ten (10) days nor more than forty (40) days in advance of the meeting setting forth the purpose of the meeting. Such Special Assessment shall be allocated amongst Units in accordance with their Sharing Ratios stated in Section 5 above.

Section 8. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment against all Units, as determined by the Board, which are subject to assessment as of the end of such year, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, or unexpected repair or replacement of a capital improvement upon the Common Area, including any private street [i.e. a street not publicly maintained], and any necessary fixtures and personal property related thereto; provided that any such assessment shall have the assent of a majority of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than ten (10) days nor more than forty (40) days in advance of the meeting setting forth the

purpose of the meeting. Such Special Assessment shall be shared in accordance with the Sharing Ratios of each Unit, as set forth in Section 5 above.

Section 9. Special Unit Assessment. If a Unit Owner or Lot Owner fails to satisfy any maintenance obligations imposed upon him by this Declaration, by providing for the maintenance, repairs and replacements of the improvements, lawns and landscaping located within the boundary lines of his Unit or Lot, as required by this Declaration, and if the Association's Board of Directors, in its sole and absolute discretion, deems the performance of such maintenance, repair or replacement to be necessary to protect the Association, or the Common Elements, or any Lot or Unit or any portion of a Building located within any Lot, or any of the values of all or any part of the Property, and if the Lot Owner or Unit Owner has failed or refused to perform said maintenance, repair or replacement within a reasonable time after written notice of the necessity for same has been delivered by the Association's Board of Directors (provided, however, that no such written notice shall be required in the case of an emergency), then the Association's Board of Directors shall be permitted (but shall not be required) to cause the maintenance, repair or replacement to be performed (including, but not limited to, grass cutting, irrigation, landscaping, gardening, snow removal, painting, cleaning, tuck pointing, maintenance, decorating, repair or replacement); provided, however, that the costs of same shall be charged to the Lot Owner or Unit Owner obligated for the performance of such maintenance, repair or replacement, and that such cost shall become a special assessment against such Lot or Unit which shall be due and owing by the Lot Owner or Unit Owner in time to permit timely payment of the costs of the work. Special assessments provided for by this Section 9 shall be added to, and become a part of the assessments to which the Lot or Unit is subject, and shall constitute a lien upon the Lot or Unit, and shall be enforceable in that manner provided for in this ARTICLE VI.

Section 10. Special Tax Bills for Public Improvements. The Association shall pay any special tax bill or benefit assessment of any public body for any public improvement which abuts or run along any of the Common Area, or which, in the discretion of the Association's Board, is found to benefit the entire Development, or a substantial number of the Units, as opposed to Lot Owners or Unit Owners of only specific Lots or a limited number of the Units. The entire cost of any such tax bill or assessment shall, automatically, upon levy thereof by the public body or authority, automatically become a Special Assessment against all Units, and shall be divided among the Units in accordance with their Sharing Ratio as hereinabove described in this ARTICLE VI. The entire sum of such Special Assessments shall be used by the Association to pay the assessment or tax bill levied by the public body or authority. Such Special Assessment shall be due and owing by each Unit Owner in time to permit timely payment of the tax bill or assessment. Special Assessments provided for by this Section 10 shall be enforceable in that manner hereinafter provided for in this ARTICLE VI for enforcement of all assessments. Special Assessments provided for by this Section 10 shall attach to all Units, whether owned by Class A or Class B Members or other members, or Builders. Any Assessments levied by any public body for the maintenance, repair, widening, resurfacing, rebuilding, improvement or upkeep of any street, road or parkway shall constitute an assessment against the Owners of all Units in accordance with this Section 10, and shall be paid by the Owners of all Units, as opposed to the Owners of only the abutting Units.

Section 11. Special Assessment for Replacement or Non-periodic Maintenance. In the event a necessity for a replacement of or for any capital improvement located within a Common Area, or

any portion of the Common Elements (or any non-publicly maintained street or road, whether or not a Common Area or Common Element), should occur, and in the further event the sum of the annual assessments then on hand shall be insufficient to cover the costs of such repair or replacement, together with the sum of other costs to be paid therefrom, or shall not have established a sufficient reserve for such repair or replacement (a requirement that such reserve be established, although possibly advisable, shall not be implied here from), then the entire sum of the costs of such repair or replacement, or of any non-periodic maintenance or repair of any kind or nature whatsoever shall be apportioned among all Units then subject to Annual Assessments, in accordance with their Sharing Ratios as hereinabove described in this ARTICLE VI and that portion of such costs apportioned to each such Unit shall constitute a special assessment against each such Unit. Such Special Assessment shall be used by the Association to pay the costs of such repair, replacement or non-periodic maintenance or repair, and shall be due and owing by each Unit Owner, upon demand by the Association's Board of Directors, in time to permit timely payment of the costs of such replacement, maintenance or repair. Special Assessments provided for in this Section 11 shall be enforceable in that manner hereinafter provided for in this ARTICLE VI for the enforcement of all assessments. The sum of such Special Assessment shall be established by the Association's Board of Directors in its sole, absolute, unmitigated and unencumbered discretion.

Section 12. Uniform Rate of Assessment/Sharing Ratios. In all cases, those Assessments hereinabove provided for by this ARTICLE VI shall be allocated amongst Units in accordance with their Sharing Ratios as hereinabove described in this ARTICLE VI, with the exception of the Initial Assessments, and those "Special Unit Assessments" described above.

Section 13. Alteration of Number of Lots and Units. It is understood that the Developer reserves the right (as to land owned by the Developer, and with the consent of the owners thereof, as to land owned by persons other than the Developer) to amend the Plat by changing the number of Lots and Units, by subdividing Lots and Units, and by changing the boundary lines of Lots and Units. Any Lots or Units owned by the Association shall be considered a Common Area or a Common Element, and not a Lot or Unit, and shall not be subject to assessment.

Section 14. Shortages. In the event the Annual Assessments to be paid to the Association shall, in any year, be insufficient to enable the Association and its Board of Directors to perform the Association's duties and obligations under this Declaration, then the excess of the costs incurred by the Association in performing its duties and obligations, over and above the sum of the annual assessments paid to the Association in such calendar year, shall constitute a Special Assessment against all Units subject to assessment at the end of such calendar year. Such Special Assessment shall be apportioned among all such Units, then subject to Annual Assessment, in accordance with their Sharing Ratios as hereinabove described in this ARTICLE VI, and the amount of the Assessment apportioned as to each such Unit shall be payable at such time or times as the Association's Board of Directors, in its discretion, shall specify. Such assessments shall bear interest, and shall be enforceable in the manner provided for the enforcement of assessments by this ARTICLE VI, and shall constitute a lien against all Units in the manner provided for other assessments by this ARTICLE VI.

Section 15. Enforcement of Assessments. All assessments provided for by this ARTICLE VI shall be delinquent if not paid within fifteen (15) days of the due date thereof. Each such

assessment (or any installment thereon) not paid within fifteen (15) days of the due date thereof, shall bear interest from the date when due, at a rate of interest which is two percent (2%) per annum above the "Prime Interest Rate"; provided, however, that such rate of interest shall never be less than nine percent (9%) per annum, nor be more than eighteen percent (18%) per annum. All references to the "Prime Interest Rate" shall mean that rate of interest published as the "Prime Rate" or as "Prime" or as the "Prime Interest Rate" in the Money Rates column of *The Wall Street Journal*. The rate of interest shall be adjusted, up or down, with each adjustment of the Prime Interest Rate as so published in such Money Rates column, so as to be equal to a rate of interest two percent (2%) per annum above the Prime Interest Rate, as from time to time published in such Money Rates column; provided, however, that the rate of interest shall never be less than nine percent (9%) per annum nor more than eighteen percent (18%) per annum. All Assessments provided for by this ARTICLE VI shall constitute the joint and several obligations of the Unit Owners obligated to pay same, and shall constitute liens against their individual Units, and the Buildings and improvements located thereon and/or containing the Unit(s) or making up such Unit(s), and the property constituting such Unit(s). All costs of collection of Assessments, including reasonable attorney's fees, shall be added to and shall constitute a part of such Assessments, together with interest thereon as described above, and shall be chargeable and collectable as a part of the Assessments. The Board of Directors of the Association may enforce Assessments as follows:

(1) All Assessments provided for by this Declaration shall constitute the personal obligations of the Unit Owners who own those Units which are charged with said Assessment. If more than one person owns a Unit, then such obligation shall be the joint and several obligation of all such persons who own said Unit. In addition, such Assessment shall constitute a lien against a Unit Owners' Unit and all improvements located thereon, including any Residence located thereon, if not paid in a timely manner. If a Lot contains more than one (1) Unit, and such Lot has not been subdivided into Units by Plat or Condominium Declaration, then the entire Lot, and each Unit thereon, and the Building and any improvements located thereon, shall be subject to such lien for the Assessments attributable to each and all Units located within such Lot.

(2) In addition to any lien arising from an unpaid Assessment (and the accumulated and accrued interest thereon), all costs incurred by the Association in collecting said Assessment from said Unit Owner(s), including the Association's attorneys fees, court cost, and other litigation expenses, shall be added to and shall likewise constitute a part of the Assessment which constitutes a lien against said Unit. Said costs of collection also shall be chargeable to and collectible personally from any Unit Owner who fails to pay same in a timely manner.

(3) The Association, acting through its Board of Directors, may collect said Assessment by a lawsuit against the Unit Owner(s). Alternatively, or in addition, the Association may foreclose its lien against the Unit which is charged with the Assessment lien, and recover as a part of such action all interest, costs, and attorneys fees of such foreclosure action or such lawsuit, or both.

(4) No Unit Owner may waive or otherwise avoid liability for the Assessments provided for in this Declaration because of the non-use of a Unit or the non-use of the Common Area. Ownership of a Unit shall be all that is necessary to become liable for the payment of an Assessment under this Declaration.



(5) The lien to secure the payment of an Assessment shall be in favor of the Association and the Board of Directors of the Association shall have the discretion as to whether or not to enforce said lien, and as to the manner of such enforcement.

(6) Any lien against a Unit may be foreclosed upon in the same manner as a mortgage against real property, and pursuant to the procedures and requirements of Section 443.190 through 443.235 of the Revised Statutes of Missouri (including any substitute or successor statute). Any lien against a Unit may be foreclosed in like manner as a mortgage or deed of trust of real property (with full power of sale) as provided in Sections 443.190 through 443.235 of the Revised Statutes of Missouri and any amendatory or successor statutes thereto. If any such foreclosure does not result in full payment of the Assessment, then the Unit Owner shall remain obligated for the deficiency, together with interest thereon as described above and costs of collection thereof, including attorneys fees.

(7) The Association may elect to refrain from foreclosing upon any Assessment lien, and instead may bring suit against the Unit Owner(s) for the collection of same without waiving or affecting the Association's right to assert said lien against the Unit and without affecting the priority, status, or enforceability of said lien.

(8) The Association shall not be deemed to have waived any right to collect an Assessment by proceeding in a particular manner, i.e., the election by the Association to collect an unpaid Assessment by foreclosing on the Assessment lien which attaches to a Unit shall not preclude the Association from thereafter filing suit against the Unit Owner(s) to enforce said lien, or vice versa.

Section 16. Notice and Priority of Lien in Favor of Association. The lien which secures payment of an unpaid Assessment or Assessments described in this Declaration shall have such priority as is accorded to said lien based on the date when the Association records notice of said lien in the office of the Recorder of Deeds of Boone County, Missouri. The lien in favor of the Association shall be inferior to any mortgage or deed of trust placed of record against a Unit prior to the date of recordation of such lien notice in the office of the Recorder of Deeds of Boone County. The lien in favor of the Association shall arise and constitute a lien against a Unit from and after the date of such recordation. The Association may record such lien notice in the office of the of Deeds of Boone County, Missouri, at any time subsequent to the date when an Assessment becomes delinquent. No prior written notice to a Owner shall be required to be given by the Association before the recordation of such notice in the office of the Recorder of Deeds of Boone County, Missouri. A notice of lien recorded by the Association in substantially the following form shall be all that is required in order to give notice to the public and to any other person interested in the Unit as to the existence of the Association's lien against the Unit in question, to wit:

"Notice of Lien in Favor of Auburn Hills Homes Association"

Take notice that Auburn Hills Homes Association (the "Association"), is entitled to a lien to secure the payment of one or more unpaid and delinquent Assessments against the following real property located in Auburn Hills Subdivision, a subdivision in Boone County, Missouri, to-wit:

[HERE INSERT LEGAL DESCRIPTION OF UNIT TO WHICH LIEN ATTACHES.]

The lien to which the Association is entitled exists to secure payment of one or more Assessments under the "Declaration of Covenants, Easements, and Restrictions of Auburn Hills," a subdivision of Boone County, Missouri, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2002, and filed for record in Book \_\_\_\_ at Page \_\_\_\_\_ of the Boone County Records, as amended ("the Declaration"). The approximate amount of the Assessment which remains unpaid (and therefore the amount of the lien in favor of the Association) is \$ \_\_\_\_\_. However, the amount of this lien will increase by the amount of accrued interest in any costs incurred by the Association in enforcing this lien against the above-referenced property or in collecting said Assessment, including the Association's attorneys fees, all as set forth in the Declaration.

If further information is required concerning this lien or this notice, please contact [HERE INSERT NAME, ADDRESS, AND TELEPHONE NUMBER OF PRESIDENT, VICE PRESIDENT, SECRETARY OR TREASURER OF ASSOCIATION].

IN WITNESS WHEREOF, Auburn Hills Homes Association has caused this notice to be executed by its President, Vice President, Secretary or Treasurer, as its duly authorized officer on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

AUBURN HILLS HOMES ASSOCIATION

By: \_\_\_\_\_,  
\_\_\_\_\_, its \_\_\_\_\_

State of Missouri     )  
                                  ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, who, upon his/her oath and being duly sworn did state and affirm that he/she is the President, Vice President, Secretary or Treasurer of Auburn Hills Homes Association, that the facts set forth above are true to the best of his/her knowledge and belief, and that this notice has been executed on behalf of Auburn Hills Homes Association, pursuant to the authority vested in the above-named officer of said Association by the Board of Directors thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal at my office in \_\_\_\_\_, the day and year first above written.

\_\_\_\_\_, Notary Public  
 \_\_\_\_\_ County, Missouri  
 My commission expires: \_\_\_\_\_

Section 17. Release of Assessment Liens. Any Assessment lien in favor of the Association, upon the payment thereof may be released by the Association. In this regard, any document executed by the President of the Association (or by the Vice President of the Association, in the absence of the President) and acting pursuant to the authority vested in them by the Board of Directors of the Association, shall be valid and binding upon the Association. Any lien recorded by the Association may be released by the President (or Vice President, in the President's absence) of the Association by executing and recording a release of lien form in substantially as follows:

"Release of Lien in Favor of Auburn Hills Homes Association"

Take notice that the Assessment lien in favor of Auburn Hills Homes Association (the "Association") which was the subject of a notice recorded in the office of the Recorder of Deeds of Boone County, Missouri on \_\_\_\_\_ (date) in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the records of Boone County, Missouri, has been paid in full, satisfied, and is hereby released. This release applies to said notice of lien dated and recorded as set forth above only, and to no other lien in favor of the Association.

IN WITNESS WHEREOF, the Association, acting by and through its duly authorized officer, has executed this release of lien on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

AUBURN HILLS HOMES ASSOCIATION

By: \_\_\_\_\_, its \_\_\_\_\_

State of Missouri     )  
                                   ) ss.  
 County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared before me \_\_\_\_\_, who, upon his/her oath and being duly sworn did state and affirm that he/she is the President, Vice President, Secretary or Treasurer of Auburn Hills Homes Association of Boone County, that the facts set forth above are true to the best of his/her knowledge and belief, and that this notice has been

executed on behalf of Auburn Hills Homes Association, pursuant to the authority vested in the above-named officer of said Association by the Board of Directors thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal at my office in \_\_\_\_\_, the day and year first above written.

\_\_\_\_\_, Notary Public  
 \_\_\_\_\_ County, Missouri  
 My commission expires: \_\_\_\_\_

Section 18. Relation of Assessment Lien to Other Liens and Encumbrances. An Assessment lien in favor of the Association shall be subordinate to the lien of any mortgage or deed of trust which is placed against any Unit and filed of record in the office of the Recorder of Deeds of Boone County, Missouri, at any time prior to the effective date of the Assessment lien. Said Assessment lien shall be superior to the lien of any mortgage or deed of trust filed of record against any Unit subsequent to the date of the recordation of notice of such Assessment lien by the Association. Furthermore:

(1) If a mortgage or deed of trust which is superior in priority to an Assessment lien is foreclosed upon, then such foreclosure sale shall pass title to the Unit free from the lien attributable to the Assessment lien. Unit Owner(s)' personal obligation to pay in full any and all Assessments due and payable at any time prior to the date of such foreclosures sale. Any purchaser of the Unit at such foreclosure sale shall acquire title to said Unit free of the Assessment lien which was inferior in priority to the lien of said deed of the trust or mortgage foreclosed upon. However, any Assessments due from and after the date of such foreclosure sale shall be payable by said purchaser in the same manner as any other Unit Owner in the Development, and any purchaser at any such foreclosure sale shall acquire title to said Unit subject to the terms and conditions of this Declaration.

(2) If any deed of trust or mortgage which is inferior to an Assessment lien is foreclosed upon, then any sale of the Unit at such foreclosure sale shall be subject to the Assessment lien which has not been paid and such lien shall remain an encumbrance on said Unit until said Assessment lien is paid in full.

Section 19. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Area and Elements; (c) the streets and roads; (d) all property to which a Class A membership has not attached; (e) all property owned by the Developer or a Class B member, or a Builder or the Developer's assignee, until sold, rented, leased or occupied as a residence; provided, however, that no property used or held for residential purposes shall be exempt from assessment.

**Section 20. Commercial Property.** The Developer may or may not, in its sole, absolute, unlimited and unfettered discretion, impose certain requirements upon the Commercial Property or portions of the Commercial Property, which require that the owners of such property or portions thereof make contributions to the Association. Any such requirement that is so imposed by the Developer upon the Commercial Property or any portion of the Commercial Property, shall be deemed to be a requirement which imposes upon the Commercial Property, or portion thereof, an obligation to pay to the Association Annual Assessments, in the sums established by the Developer or in sums established in the manner specified by the Developer. Such Annual Assessments shall be and become Annual Assessments which are payable to the Association, and which shall bear interest in accordance with, and which shall be enforceable in the manner provided for by this ARTICLE VI. In exchange for requiring that owners of the Commercial Property or portions thereof contribute Annual Assessments to the Association, the Developer may, in the Developer's sole, absolute, unlimited and unfettered discretion, assign a certain number of Class A Memberships to the owners of the Commercial Property or portions thereof. Such assignments of Memberships to the Commercial Property or portions thereof must, however, be fair and reasonable, and must not be such as would cause the owners of the Commercial Property to control the Association or to be able to elect a majority of the Board of Directors of the Association. The number of Class A Membership assigned to the Commercial Property or portions thereof must not, in the aggregate, confer upon the owners of the Commercial Property or portions thereof rights to elect more than one-third of the members of the Board of Directors of the Association. **THE DEVELOPER SHALL HAVE NO OBLIGATION WHATSOEVER TO IMPOSE ANY OBLIGATIONS ON THE COMMERCIAL PROPERTY OR THE OWNERS THEREOF, OR ANY PORTIONS THEREOF, OR THE OWNERS OF SUCH PORTIONS, OBLIGATIONS TO PAY ASSESSMENTS TO THE ASSOCIATION, OR TO GRANT ANY CLASS A MEMBERSHIPS IN THE ASSOCIATION TO OWNERS OF THE COMMERCIAL PROPERTY OR ANY PORTION THEREOF. ALL DETERMINATIONS MADE BY THE DEVELOPER IN ACCORDANCE WITH THIS SECTION 20 SHALL BE BINDING UPON ALL UNIT OWNERS, AND UPON ALL LOT OWNERS, AND UPON ALL PROPERTY OWNERS AND PARTIES, AND MAY BE MADE BY THE DEVELOPER, IN THE DEVELOPER'S SOLE, ABSOLUTE, UNLIMITED AND UNFETTERED DISCRETION.**

**Section 21. Multiple Living Units on Lot Owned by Same Unit Owner.** If a Lot contains more than one (1) Living Unit (i.e., two or more Living Units), and such Lot is not subdivided by condominium declaration, Plat or survey, into separate, legally defined parcels of real estate, each of which contains one of the separate Living Units located on the Lot, and if a single owner owns all of the Living Units within such Lot, then such owner shall be a "Unit Owner" of each of the Living Units located on the Lot (each of which such Living Units shall, by definition under this Declaration, be a "Unit"). However, all Assessments attributable to all Living Units on such Lot (Initial Assessments, Annual Assessments, Special Assessments and other Assessments) shall not be separately allocated to the individual Units on the Lot, but rather shall be aggregated, together, and shall constitute a single Assessment on the entire Lot and all Units therein equal to the total of the Assessments owed with respect to all Units on the Lot. Such total Assessment shall be the Assessment for all such Units, and for each of such Units, and for the Lot as an entirety. Therefore, the Unit Owner of the Units located on such Lot shall not be heard to claim that he has paid the Assessments attributable to any specific Unit, and that he is not in default of his obligations to pay the Assessment on the remaining Units. The lien for the Assessments with respect to each and all

Living Units on such Lot (jointly and severally) shall attach to the entirety of the Lot and all (and each) Unit and Living Unit located on such Lot and within such Lot. If a lien for unpaid Assessments is enforced (even though arguably attributable to only a single Unit within the Lot), then the entire Lot, and all of the Units and Living Units located within such Lot, shall be subject to such lien, and may be sold to enforce the Assessment.

## **ARTICLE VII**

### **ARCHITECTURAL CONTROL**

**[NOTE: THE PROVISIONS OF THIS ARTICLE VII MAY BE AMENDED, AS SUCH PROVISIONS APPLY TO ADDITIONAL PARCELS OR PORTIONS OF THE ANNEXATION REAL ESTATE HEREAFTER ANNEXED TO THE DEVELOPMENT PROVIDED FOR HEREBY. THE PROVISIONS OF THIS ARTICLE VII SHALL APPLY TO ALL LOTS WHICH ARE INITIALLY A PART OF THE PARCEL, AS SHOWN BY THE PLAT OF THE PARCEL HEREINABOVE DESCRIBED IN THIS DECLARATION. HOWEVER, THE PROVISIONS OF THIS ARTICLE VII MAY HEREAFTER BE AMENDED, AS THEY APPLY TO ADDITIONAL AREAS OF REAL ESTATE WITHIN THE ANNEXATION REAL ESTATE HEREAFTER ANNEXED TO THE DEVELOPMENT. THE DEVELOPER, THEREFORE, RESERVES THE RIGHT TO AMEND THE PROVISIONS OF THIS ARTICLE VII, AS SAME APPLY TO PORTIONS OF THE ANNEXATION REAL ESTATE HEREAFTER ANNEXED TO THE DEVELOPMENT.]**

**Section 1. General/Requirements for Approval of Plans and Specifications Before Start of Any Building, House or Any Improvement or Structure or Any Changes in Same.** So long as Class B voting rights are in existence, and for so long thereafter as the Developer or the Developer's assignees of any of the Developer's rights as Developer hereunder owns any Lot or Unit then contained within the Development, and for a period of twelve (12) months after the Developer ceases to own any Lot or Unit then contained within the Development, no Building, house, dwelling, residence, ancillary building, fence, wall, driveway, parking area or other structure or improvement shall be commenced, erected or maintained within any Lot or Unit or within the Common Area, other than those placed thereon by the Developer, or the Developer's assignees, and those, the Plans and Specifications of which have been approved by the Developer or the Developer's assignees, and so long as Class B voting rights exist, and for so long thereafter as the Developer or the Developer's assignees of the Developer's rights as Developer hereunder owns any Lot or Unit then contained within the Development, and for a period of one (1) calendar year (12 months) after the Developer or the Developer's assignees of the Developer's rights as the Developer ceases to own any Lot or Unit then contained within the Development, no exterior addition to, or change to or alteration of (including, but not limited to, changes in materials, or changes in exterior surfaces, or changes in color) any Building, house, dwelling, residence, ancillary building, driveway, parking area, fence, wall structure or improvement located in any Lot or Unit shall be made until the Plans and Specifications for same have been approved by the Developer or the Developer's assignee. All such Plans and Specifications must show the nature, kind, color, shape, height, materials and the location of the Building or structure or improvement, or the intended addition to, or change in same. All such Plans and Specifications must be submitted to and approved in writing as to harmony with the Development of the of external design and with respect to location and relation to surrounding structures and topography by the Developer or the Developer's assignees of the Developer's rights

as Developer hereunder. All Architectural Control powers shall be vested in the Developer and the Developer's assignees of the Developer's rights as Developer until Class B voting rights have terminated, and until, thereafter, the Developer and such assignees cease to own any Lot or Unit then contained within the Development, and for a period of one (1) year thereafter, whether or not Class B voting rights are then in existence. After the Developer's Architectural Control powers have terminated in accordance with the above provisions of this ARTICLE VII, and, from that point forward (and thereafter) no Building, house, dwelling, residence, ancillary building, fence, wall or other structure or driveway or any improvement shall be commenced or erected within any Lot or Unit located in any Lot or Unit, or within the Common Area, and no exterior addition to or change to (including, but not limited to, changes of building materials, materials, surfaces or color) or alteration shall be made on any structure, driveway, fence, wall, Building, house, dwelling, residence, ancillary building or improvement located within a Lot or Unit or within the Common Area or any Common Element until the Plans and Specifications showing the nature, kind, shape, height, color, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Control Committee composed of two (2) or more representatives appointed by the Board. In the event the Developer, or said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said Plans and Specifications have been submitted to it, approval will not be required and this ARTICLE VII will be deemed to have been fully complied with. In no event shall the Board of Directors of the Association, or its Architectural Control Committee approve any exterior addition to, or change to or alteration on any structure or Building or improvement located within a Lot or Unit, or within the Common Areas, or the erection of any structure or improvement within the Lots or the Common Areas unless same is deemed to be in the best interest of the Association and the Development, and is deemed to be in harmony as to external design and location in relation to surrounding structures and topography, and is deemed to be of the same quality as the then existing structures located within, adjacent or neighboring the Lots or Units. As hereinabove indicated, so long as Class B voting rights exists, and for so long thereafter as the Developer owns any Lot or Unit then located within the Development, no Building, house, dwelling, residence, ancillary building, fence, wall, driveway or other structure or improvement shall be commenced, erected or maintained within a Lot or Unit or within the Common Areas, and no changes shall be made with respect to any such Building, house, dwelling, residence, ancillary building, fence, driveway, wall or other improvement or structure, other than those placed thereon, by the Developer or his assignees, and those, the Plans and Specifications for which have been previously approved by the Developer.

Section 2. Developer's Discretion is Absolute. THE DEVELOPER'S RIGHT TO APPROVE PLANS AND SPECIFICATIONS SHALL BE ABSOLUTE. NO REQUIREMENT THAT THE DEVELOPER BE REASONABLE IN APPROVING, OR IN REFUSING TO APPROVE, PLANS OR SPECIFICATIONS SHALL BE DEEMED TO BE EXPRESSED OR IMPLIED. THE DEVELOPER, IN APPROVING SUCH PLANS AND SPECIFICATIONS, SHALL APPROVE SAME ONLY IF THE DEVELOPER, IN THE DEVELOPER'S SOLE, ABSOLUTE AND UNMITIGATED DISCRETION DEEMS SAME TO BE IN THE BEST INTEREST OF THE DEVELOPMENT, AND ONLY IF THE DEVELOPER, IN THE DEVELOPER'S SOLE, ABSOLUTE AND UNMITIGATED AND UNLIMITED DISCRETION FINDS THAT THE PLANS AND SPECIFICATIONS SHOW A STRUCTURE (AND EXTERIOR

FINISHING AND COLOR THEREFOR, AND A LOCATION THEREFOR), WHICH WOULD BE IN HARMONY WITH RESPECT TO SURROUNDING STRUCTURES AND TOPOGRAPHY, AND WHICH WOULD BE IN KEEPING WITH THE DEVELOPER'S PLANS AND THEME (IF ANY) FOR THE DEVELOPMENT. THE DEVELOPER SHALL HAVE THE RIGHT TO REFUSE TO APPROVE PLANS, DRAWINGS OR SPECIFICATIONS FOR ANY PROPOSED DWELLING, BUILDING, STRUCTURE OR IMPROVEMENT, OR ALTERATION OR CHANGE, WHICH THE DEVELOPER, IN THE DEVELOPER'S SOLE, ABSOLUTE AND UNMITIGATED DISCRETION FINDS NOT TO BE ATTRACTIVE, OR NOT TO BE OF HIGH QUALITY, OR NOT TO BE IN KEEPING WITH SURROUNDING STRUCTURES AND TOPOGRAPHY, OR NOT TO BE COMPATIBLE WITH THE EXISTING AND PLANNED STRUCTURES AND DEVELOPMENT WITHIN THE DEVELOPMENT, OR NOT TO BE IN KEEPING WITH THE DEVELOPER'S THEME FOR THE DEVELOPMENT, OR WHICH THE DEVELOPER, IN THE DEVELOPER'S SOLE, ABSOLUTE, UNLIMITED AND UNMITIGATED DISCRETION FINDS WOULD NOT BE IN KEEPING WITH, OR WOULD DETRACT FROM, THE GENERAL CHARACTER OF THE DEVELOPMENT FOR ANY REASON. CERTAIN DEVELOPMENT STANDARDS ARE ESTABLISHED BY SECTION 1 AND THE FOLLOWING SECTIONS OF THIS ARTICLE VII. EVEN THOUGH PLANS AND SPECIFICATIONS PRESENTED TO THE DEVELOPER COMPLY WITH SECTION 1 AND THE FOLLOWING SECTIONS OF THIS ARTICLE VII, THE DEVELOPER MAY, NEVERTHELESS, IN THE DEVELOPER'S SOLE, ABSOLUTE, UNLIMITED, UNMITIGATED AND UNFETTERED DISCRETION (FOR ANY REASON THE DEVELOPER FINDS TO BE APPROPRIATE, WHETHER REASONABLE OR UNREASONABLE AND WHETHER WITH OR WITHOUT CAUSE) REFUSE TO APPROVE THE PLANS AND SPECIFICATIONS. THE DEVELOPER, IN APPROVING PLANS AND SPECIFICATIONS, ACTS ONLY FOR THE DEVELOPER'S BENEFIT AS THE DEVELOPER AND FOR NO OTHER PERSON'S BENEFIT.

Section 3. Further Description of Plans and Specifications. All Plans and Specifications must be submitted, in duplicate, and shall show the nature, kind, shape, height and exterior building materials (and the colors, textures and manufacturers of such exterior building materials) of and for the Building, house, dwelling, residence, ancillary building, structure or improvement (including material types, kinds, specifications and colors for the roof, exterior walls and all other exterior surfaces), and the location of same on the Lot [i.e., a house or Building on Lot Plot Plan, drawn to scale] and the front, side and rear elevations of any Building and the floor plan of any Building, and the roof structure, slope, type and design for the Building (and all coverings for such roof structure, including the manufacturers of same, or the types thereof, and the colors thereof and textures thereof). In addition, each of the Plans and Specifications must be accompanied by a landscaping plan for the Lot containing or intended to contain the Building, house, dwelling, residence, ancillary building, structure or improvement, which such landscaping plan shall be a part of the Plans and Specifications. In addition, the Plans and Specifications shall include such additional information as the Developer or the Board of Directors, as the case may be, shall reasonably require for purposes of determining whether the Plans and Specifications submitted to it should be approved. The Developer or the Board of Directors, or its Architectural Control Committee, as the case may be, shall be entitled to retain one (1) complete copy of the Plans and Specifications following approval, so as to enable the Developer, or the Association's Board of Directors, or its Architectural Control Committee, to monitor compliance with the Plans and Specifications approved by it.



Section 4. Developer's Discretion/Discretion of Board or Architectural Control Committee Absolute. Determinations made by the Developer shall be made by the Developer, in the Developer's sole, absolute, unlimited, unmitigated and unfettered discretion, and no requirements of reasonableness on the part of the Developer shall be expressed or implied or shall be deemed to be expressed or implied. All determinations made by the Developer shall be binding and absolute. The Developer shall be and is hereby excused from any liability or responsibility to anyone, under any circumstances whatsoever, for any determinations made by the Developer with respect to approval of, or failure to approve, any plans, drawings or specifications submitted for approval. All rights of the Developer exercised by the Developer pursuant to this ARTICLE VII, are exercised for the Developer's benefit alone, and are exercised by the Developer solely in the Developer's capacity as the Developer and for the Developer's benefit, and shall not be deemed to be exercised by the Developer for the benefit of the Owners of any of the Lots or Units. If the Developer approves plans, drawings, and specifications, then the Developer shall have no liability or responsibility of any kind or nature whatsoever to the Owners of any other Lots or Units with respect to plans, drawings and specifications so approved by the Developer. The Developer exercises the Developer's rights of Architectural Control solely for the Developer's benefit as a Developer, and not for the benefit of anyone else. The above provisions of this ARTICLE VII notwithstanding, all Architectural Control decisions made by the Board of the Association or its Architectural Control Committee (as opposed to the Developer) must be sound and reasonable, and must not be arbitrary or capricious, and must have a sound basis in fact. If the Board or such committee rejects plans or specifications, reasonable grounds for such rejection must exist. In the event the Developer or the Board of Directors of the Association, or its Architectural Control Committee, or its designee, fails to approve or disapprove any plans, drawings or specifications submitted to it within thirty (30) days after such plans, drawings or specifications have been submitted to it, or in any event if no suit to enjoin the construction (or to require removal of same) of a substantial Building, or of a substantial addition thereto, has been commenced prior to or within one (1) year following completion thereof, then approval of the Developer, or the Board of Directors of the Association, or its Architectural Control Committee will not be required. The Developer shall the power and authority, in its discretion, to waive, modify, amend or not enforce any of the Architectural Control requirements of this ARTICLE VII as to any Building, or structure, if the Developer, in its sole, absolute, unlimited and unfettered discretion finds it appropriate to do so.

Section 5. Burden of Proof. THE BUILDER, LOT OWNER OR OTHER PERSON WHO HAS SOUGHT OR WHO SEEKS APPROVAL OF PLANS AND SPECIFICATIONS PURSUANT TO THESE ARCHITECTURAL CONTROL PROVISIONS SHALL HAVE THE BURDEN OF PROOF TO PROVE THAT TWO (2) COPIES OF THE PLANS AND SPECIFICATIONS WERE SUBMITTED TO THE DEVELOPER OR THE BOARD OF DIRECTORS OF THE ASSOCIATION OR ITS ARCHITECTURAL CONTROL COMMITTEE, AS THE CASE MAY BE. DOCUMENTARY PROOF SHALL BE REQUIRED. SUCH DOCUMENTARY PROOF SHALL CONSIST EITHER OF:

A. A RECEIPT SIGNED IN THE NAME OF THE DEVELOPER BY THE DEVELOPER'S PRESIDENT OR MANAGING OFFICER (SO LONG AS THE DEVELOPER HOLDS THE ARCHITECTURAL CONTROL POWERS), OR BY AN OFFICER OF THE ASSOCIATION'S BOARD OF DIRECTORS, OR A MEMBER OF ITS ARCHITECTURAL

CONTROL COMMITTEE (IF THE BOARD OF DIRECTORS THEN HOLDS THE ARCHITECTURAL CONTROL POWERS); OR

B. A CERTIFIED MAIL OR REGISTERED MAIL RECEIPT, AND AN AFFIDAVIT OF THE PARTY REQUESTING APPROVAL OF THE PLANS AND SPECIFICATIONS (RENDERED UNDER OATH), EVIDENCING THE FACT THAT THE PLANS AND SPECIFICATIONS WERE PLACED IN THE UNITED STATES MAIL, IN A CORRECTLY ADDRESSED AND STAMPED ENVELOPE, WITH CORRECT POSTAGE AFFIXED THERETO, ADDRESSED TO THE DEVELOPER (IF THE DEVELOPER HOLDS THE ARCHITECTURAL CONTROL POWERS) AS FOLLOWS:

WWB DEVELOPMENT CO., LLC  
ATTN: MR. ROBERT WOLVERTON  
2106 CLEMENS DRIVE  
COLUMBIA, MO 65202

OR THE THEN PRESIDENT OF THE ASSOCIATION'S BOARD OF DIRECTORS IF THE BOARD OF DIRECTORS HOLDS THE ARCHITECTURAL CONTROL POWERS.

THE THIRTY (30) DAY TIME PERIOD HEREINABOVE DESCRIBED SHALL NOT START UNTIL TWO COPIES OF THE PLANS, DRAWINGS AND SPECIFICATIONS AND THE LANDSCAPING PLAN HAVE BEEN SUBMITTED TO THE DEVELOPER (IF THE DEVELOPER HOLDS THE ARCHITECTURAL CONTROL POWERS) OR THE BOARD OF DIRECTORS OR ITS ARCHITECTURAL CONTROL COMMITTEE.

Section 6. Minimum Building Standards. In any event, so long as this Declaration is in full force and effect, the minimum Building Standards and Architectural Control Standards and Landscaping Requirements and Standards, set forth in all of the following Sections of this ARTICLE VII, must be complied with and shall be in full force and effect and shall apply, unless expressly waived, in writing, by the Developer (for so long as the Developer holds the Architectural Control powers under this ARTICLE VII) or by the Association's Board of Directors or its Architectural Control Committee, for good cause shown. The Developer, or the Association's Board of Directors or its Architectural Control Committee, whoever holds the Architectural Control powers, may (but need not) waive the requirements of any of the following Sections of this ARTICLE VII, in whole or in part, or may modify same, for good cause shown. **THE DEVELOPER OR THE DEVELOPER'S ASSIGNEES OF THE DEVELOPER'S RIGHTS AS THE DEVELOPER HEREUNDER MAY, IN ANNEXING ANY PORTION OF THE ANNEXATION PARCEL TO THE DEVELOPMENT AND THE PARCEL, WAIVE, AMEND, CHANGE, ALTER OR MODIFY ANY OF THE PROVISIONS OF THIS ARTICLE VII, INCLUDING, BUT NOT LIMITED TO, THOSE OF THE FOLLOWING SECTIONS OF THIS ARTICLE VII, AS TO THAT PORTION OF THE ANNEXATION PARCEL (OR ANY PART OF SUCH PORTION OF THE ANNEXATION PARCEL) WHICH IS SO ANNEXED TO THE PARCEL AND THE DEVELOPMENT. NO REPRESENTATION OR AGREEMENT OR GUARANTEE IS MADE OR INTENDED TO BE MADE BY THE DEVELOPER THAT ANY PARTICULAR DEVELOPMENT SCHEME WILL BE FOLLOWED AS TO ANY PORTION OF THE PARCEL OR THE ANNEXATION PARCEL, OR THAT ANY**

**PORTION OF THE PARCEL OR THE ANNEXATION PARCEL WILL BE DEVELOPED IN ANY SPECIFIC MANNER.**

Section 7. Setbacks. No portion of a Building located on any Lot or Unit shall be located within any setback lines or Building setback lines, provided for by the Plat.

Section 8. Theme or Required Plans. The Developer may, or may not, elect to have a development theme for the Development, or for various portions thereof. There shall be no requirement that the Developer have a development theme, or that the Developer maintain any development theme which the Developer may elect to have for any portion of the Development. If, however, the Developer does elect to have a development theme, for any portion of the Development, then the Developer shall be entitled to require that all plans and specifications submitted to it for its approval, demonstrate that the Buildings, structures and improvements to be constructed and installed in connection therewith, will comply with the Developer's desired development theme. The Developer shall have the right (but not the obligation), to require that Lot Owners or Unit Owners select plans and specifications, or exterior finish materials, colors or styles from choices therefor presented by the Developer, or the Developer's architect.

Section 9. Exterior Finish Materials/Roof Design. The entire surfaces of all exterior walls for the Building, shall be covered with materials approved in accordance with the Architectural Control Provisions of this ARTICLE VII. All exterior finish materials, including those placed on the fronts, sides, rears and roofs of each Building located within the Parcel, and including the shingles and roofing materials and gutter and downspouts materials for each Building, must be approved, in advance of use, by the Developer, so long as the Developer holds the Architectural Control Powers and, thereafter, by the Association's Board of Directors or its Architectural Control Committee. Therefore, the Plans and Specifications submitted to the Developer, or the Board of Directors of the Association or its Architectural Control Committee shall show and describe (in addition to the other items hereinafter described):

- i. All exterior finish materials, and the colors, types, tones and shades thereof, and the locations of same;
- ii. The type of roof, including the slope or pitch thereof, and the materials to be placed thereon.

The Developer, the Board of Directors of the Association or its Architectural Control Committee (whoever then holds the Architectural Control authority under this ARTICLE VII) shall, therefore, have advance approval of all original and replacement exterior finishes and materials, and the finishes and materials, once approved, must be used and if same are thereafter replaced must be replaced with substantially similar finishes in materials, of substantially the same quality, texture, shade, tone and color.

The provisions of this Section 9 shall apply not to just to original materials, but to replacement materials, including replacement roofs, roofing materials, exterior siding, exterior window types and all other exterior finish materials.

In addition, the Developer, or the Board of Directors of the Association or the Architectural Control Committee, whichever then holds the Architectural Control powers, shall also have the approval of the type of roof, including the slope or pitch thereof and the materials to be placed thereon.

The design of all roofs, including the pitch and slope of each roof, must be approved (prior to use, construction or installation) in accordance with the Architectural Control Provisions of Section 1 above.

A. Roof Pitch. Until altered by the Developer for any portion of the Annexation Parcel hereafter annexed to the Development and the Parcel, any roof on a Residential Building must have a minimum 6:12 roof pitch; although such requirement may be waived by the Developer, the Board of Directors of the Association or its Architectural Control Committee, whoever or whichever then holds the Architectural Control Powers under this ARTICLE VII, for good cause shown. No alteration shall be made of any roof on a Residential Building which would cause it to have a roof pitch other than that required by this paragraph A.

The roof pitch requirements may be altered for various portions of the Annexation Parcel.

B. Roof Colors. Until otherwise determined by the Developer for any portion of the Annexation Parcel hereafter annexed to the Development, the colors of shingles and roof covers on roofs of Residential Buildings must be weathered wood, charcoal, dark gray or black. No red, green, white or any other colored roof may be installed without prior approval in accordance with the Architectural Control requirements set forth in this ARTICLE VII.

Section 10. Units Used for One Family Dwelling Purposes. Each Unit shall be used solely as a residence for one (1) Family, and uses normally ancillary thereto. No Residential Building or Lot intended to contain Residential Buildings shall be used for any purposes other than residential purposes, and no Unit shall be used for any purpose other than as a residence for a single Family, which shall use such Unit only for residential purposes. No Living Unit shall be used for any purpose other than residential purposes, or for any purpose other than as a residential purposes, or for any purpose other than as a residence by a single Family.

A. Buildings Within Auburn Hills Plat 2 and Lots 101 Through 108. Both Inclusive, of Auburn Hills Plat 1. Each of the Lots within Auburn Hills Plat 2, and each of Lots 101 through 107, both inclusive, of Auburn Hills Plat 1, shall be used solely as the site for the placement thereon of one (1) Single Family Dwelling Building. None of such Lots shall be used for any other purpose whatsoever. Each Lot shall be used for and solely for the site of one (1) Single Family Dwelling Building, and such Building shall be used solely as a residence and dwelling for one (1) Family. None of such Lots shall be used for any purpose other than Residential Purposes.

B. Lots 201 Through 239. Both Inclusive, of Auburn Hills Plat 1. Each of Lots 201 through 239, both inclusive, of Auburn Hills Plat 1, is intended to contain and may contain a Duplex Residential Building, and each of such Lots may contain up to (and no more than) two (2) Living Units or two (2) Units. Each of said Lots may, therefore, contain one (1) Single Family

Residential Building or one (1) Duplex Residential Building, and may contain up to two (2) Living Units. Each of the Units (Living Units) located within each of said Lots must be used solely as a residence for a single Family, which shall use such Living Unit only for residential purposes, and for no other purposes.

Section 11. Minimum Size of Units and Buildings.

A. As to Buildings Located Within Lots 101 through 108, Both Inclusive, of Auburn Hills Plat 1, and as to Buildings Located Within Any of the Lots Within Auburn Hills Plat 2 and Elsewhere. Each of the Lots within Auburn Hills Plat 2, and each of Lots 101 through 108, both inclusive, of Auburn Hills Plat 1, is intended to contain and shall contain only one (1) Single Family Residential Building. Each Single Family Residential Building which is placed on any of said Lots, or, unless the Developer determines otherwise, which is placed on any Lot in any portion of the Parcel or the Annexation Parcel hereafter annexed to the Development, must meet the following minimum size requirements set forth in this paragraph A of this Section 11. No Single Family Residential Building (i.e., no One Family Dwelling) shall be placed upon any Lot within Auburn Hills Plat 2, or within any of Lots 101 through 108, both inclusive, of Auburn Hills Plat 1, or elsewhere within the Development (unless the Developer determines otherwise), unless such Single Family Residential Building (i.e., such One Family Dwelling) complies with the following minimum size requirements.

a. No one story, ranch style Building, built on a slab or on a crawl space, or on a non-walkout basement, shall be permitted on any Lot unless the Enclosed Floor Area of the ground floor thereof (the main floor thereof), exclusive of open porches, patios, garages and any non-walkout basement space, contains not less than one thousand four hundred square feet (1,400 sq. ft.) of finished floor space.

b. No ranch style, one story, One Family Dwelling shall be built on a walkout basement (a basement from which one may "walk out" onto the immediately adjacent surface of the ground) on any Lot, unless the Enclosed Floor Area of the ground floor thereof (the main floor thereof), exclusive of open porches, patios and garages, and exclusive of the said walkout basement, contains not less than one thousand four hundred square feet (1,400 sq. ft.) of finished floor space.

c. No one and one-half story, or two story, One Family Dwelling shall be permitted upon any Lot, unless the Enclosed Floor Area thereof, exclusive of open porches, patios and garages (and also exclusive of any basement or walkout basement), shall contain not less than one thousand six hundred square feet (1,600 sq. ft.) of finished floor space, and the Enclosed Floor Area of the ground floor of such Building (the main floor of such Building) shall contain not less than one thousand square feet (1,000 sq. ft.) [exclusive of such porches, patios and garages and basement space] of finished floor space on the main level.

d. No trilevel, or multilevel (more than two levels), One Family Dwelling shall be permitted on any Lot unless the main floor of such Building and the levels above such main floor contain not less than one thousand seven hundred square feet (1,700 sq. ft.) of Enclosed Floor Area of finished floor space (excluding any basement space or walkout basement space - that is to

say that such basement space or walkout basement space may not be included within such Enclosed Floor Area), exclusive of open porches, patios, garages and basements space.

B. Duplexes Upon Lots 201 through 239, Both Inclusive, of Auburn Hills Plat 1 or Elsewhere. Each of Lots 201 through 239, both inclusive, of Auburn Hills Plat 1, may contain a Duplex Residential Building. If a One Family Dwelling (i.e., a Single Family Residential Building) is placed upon any of such Lots, then the square footage requirements set forth in paragraph A of this Section 11 shall apply. If, however, a Duplex Residential Building is placed on one of such Lots 201 through 239, both inclusive, or at any other location within the Parcel [unless the Developer determines otherwise], then such Duplex Residential Building must comply with the following minimum size requirements:

No Duplex Building shall be permitted on any of such Lots, or (unless the Developer determines otherwise) elsewhere within the Parcel, unless the aggregate of the Enclosed Floor Area of the ground floor of the two (2) Living Units (i.e., the main floors of such two Units), together with all floors (i.e., stories) above the main floor (example: the second floor, etc.) of the two (2) Units, exclusive of open porches, patios and garages, and exclusive of any walkout or non-walkout basement space, contain not less than two thousand four hundred square feet (2,400 sq. ft.) of finished floor space. The two thousand four hundred square feet (2,400 sq. ft.) of finished floor space may be divided, in any way, between the two (2) Living Units of the Duplex, and the main floor and various above grade floors of the Duplex. For example, one thousand two hundred square feet (1,200 sq. ft.) may be placed in each Unit, or one thousand four hundred square feet (1,400 sq. ft.) may be placed in one (1) Unit and one thousand square feet (1,000 sq. ft.) may be placed in the other Unit of the Duplex Residential Building. Any combinations of square footages of Enclosed Floor Area for a Duplex shall be permitted; provided that the aggregate square footage of the Enclosed Floor Area may not be less than two thousand four hundred square feet (2,400 sq. ft.). The minimum size requirements provided for by this paragraph B shall be construed, and enforced and interpreted in accordance with paragraph E of this Section 11, as such paragraph E appears below.

C. Minimum Sizes of Units and Buildings in Other Plats or in Any Part of the Annexation Parcel. No minimum size requirements for Buildings or Units which are located within any portion of the Annexation Parcel are imposed, or shall be deemed to have been imposed by this Declaration. The Developer may or may not, as the Developer sees fit, while the Developer holds Architectural Control Powers, elect to impose, or to not impose the above stated minimum size requirements or other minimum size requirements for Units or Buildings located within any portion of the Annexation Parcel which is hereafter annexed to the Development and the Parcel.

D. Waiver of Minimum Size Requirements. The Developer or the Developer's assignee of the Developer's Rights as the Developer, or the Board of Directors of the Association or its Architectural Control Committee, whoever or whichever holds the Architectural Control Powers in accordance with this ARTICLE VII, may waive the minimum size requirements set forth in this Section 11 or set forth as to any portion of the Annexation Parcel, if the Developer, such assignee, such Board or its Architectural Control Committee (whoever or whichever then holds

Architectural Control Powers), in its sole, absolute, unlimited and unfettered discretion finds it appropriate to do so. No requirement that the Developer, the Developer's assignees of the Developer's rights as the Developer, or the Board of Directors of the Association or its Architectural Control Committee strictly require that Buildings conform to the minimum size requirements provided for by this Section 11 or provided for as to any portion of the Annexation Parcel, shall be deemed to be expressed or implied. On the other hand, the Developer, the Developer's assignees of the Developer's Rights as the Developer, the Board of Directors of the Association or its Architectural Control Committee, whoever or whichever holds the Architectural Control Powers under this ARTICLE VII, shall be permitted to strictly enforce and to require strict compliance with the minimum size requirements provided for by this Section 11 or provided for any part of the Annexation Parcel hereafter annexed to the Development. The minimum size requirements imposed by this Section 11 are imposed solely for the benefit of the Developer, and the Developer's assignees of the Developer's Rights as the Developer, and not for the benefit of any Lot Owner or Unit Owner or other person or party whomsoever.

E. Interpretation of Minimum Size Requirement/ "Enclosed Floor Area". All required minimum square footage areas described in paragraphs A and B of this Section 11, and all minimum size requirements imposed as to any portion of the Annexation hereafter annexed to the Development, shall be deemed to mean to and to refer to "Enclosed Floor Area" of finished floor space within a Building, as determined from the outside measurements of the Building, or the Unit or Living Unit, as the case may be. "Enclosed Floor Area" shall be computed on the basis of outside measurements of the Building, or of that part of the Building containing the Unit or the Living Unit, as the case may be. However, such outside measurements shall not include any garages, carports, porches (whether or not enclosed), screened in porches, sun porches, patios, attics, decks (whether or not enclosed) or finished or unfinished space or basement, cellar or walk out basement space. "Enclosed Floor Area" shall mean and shall be deemed to mean only those portions of the space within a Building or Living Unit which are intended for living, sleeping, eating or cooking, on a year round basis, and shall also include (and shall further include) the reasonable areas included within reasonable, normal, ancillary bathrooms, utility areas, pantries, laundry space and other similar, reasonable accessory floor space; provided that all such accessory floor space must be finished and intended for year round use. Any finished or unfinished space in a "basement" (including a walk out basement) or "cellar" shall not be included within Enclosed Floor Area. If there are any disputes or disagreements "Enclosed Floor Area," or as to whether or not a Building or Unit includes the necessary Enclosed Floor Area, then such disputes shall be conclusively resolved by the Developer, or the Board of Directors of the Association, or its Architectural Control Committee, whoever then holds the Architectural Control authority pursuant to this ARTICLE VII, and all such decisions shall be binding upon all parties.

Section 12. Hard Surfaced Driveways. The Plans and Specifications submitted to the Developer (so long as the Developer holds Architectural Control rights and thereafter to the Board of Directors of the Association) must show the locations of all drives, driveways, walkways and parking areas, and must show (accurately) the materials with which the driveways and walkways will be surfaced. The surface materials of driveways and walkways shall, therefore, be subject to Architectural Control in the manner provided for by the above provisions of this ARTICLE VII. The Developer, so long as the Developer holds Architectural Control powers, shall have the complete discretion and authority as to the types of driveway paving materials which may be used, and all such

paving materials shall be subject to the Developer's approval. All driveways and parking areas located within each Lot must be hard surfaced, in any event, with the types of materials approved by the Developer, so long as the Developer holds Architectural Control powers, and thereafter by the Association's Board of Directors. Approved materials may (in the discretion of the party holding Architectural Control powers) be either concrete or asphalt (or equivalent materials as determined by the party holding the Architectural Control powers, on a case by case basis). All materials for drives, driveways and parking areas must be approved by the Developer, so long as Class B voting rights exist, and for so long thereafter as the Developer owns any Lot within the Development, and, thereafter, by the Board of Directors of the Association or its Architectural Control Committee, in accordance with ARTICLE VII of this Declaration.

Section 13. Pools, Hot Tubs, Retaining Walls and Accessory Improvements. All pools, hot tubs, retaining walls and other accessory improvements, as well as decks, walkways, patios and other constructed improvements, must be submitted for approval by the Developer (so long as the Developer holds the Architectural Control powers and thereafter to the Board of Directors or its Architectural Control Committee) as to location, size, compatibility with adjoining properties and harmony with the Development before construction.

Section 14. Fences, Walls and Privacy Screens. Fences of any kind are not permitted unless expressly approved by the Developer (so long as the Developer holds the Architectural Control powers) or (thereafter) by the Association's Board of Directors or its Architectural Control Committee. Fences may be approved or disapproved by the Developer or the Board of Directors of the Association (whichever holds Architectural Control powers) for whatever reason they find to be appropriate. Fences will be approved and disapproved on a case-by-case basis and must be approved prior to installation. The design, the quality and the materials and location of all fences must be approved in advance in accordance with the Architectural Control Provisions set forth in this ARTICLE VII. No chain link fences or dog pens are permitted. Fencing on corner Lots shall and must be installed at least twenty-four feet (24') from the curb of the adjacent street. In order to create a more pleasing streetscape, greater side yard setbacks may be required by the Developer or by the party then holding the authority under the Architectural Control provisions set forth in this ARTICLE VII. No inherent right or implicit right or any right to install a fence shall be deemed to be in effect or shall be expressed or implied. Whether or not fences are approved rests solely in the discretion of the Developer, the Association's Board of Directors or its Architectural Control Committee, whoever or whichever holds the Architectural Control Powers pursuant to this ARTICLE VII.

Section 15. Erosion Control. Before commencement of construction of any Building located upon a Lot reasonable Erosion Control (which must, in any event, comply with all applicable lawful requirements and must, at least, consist of a straw berm or other type of Erosion Control approved by the Developer, in advance of the start of construction) must be installed across the entire length of any side of the Lot which abuts a street or any other Lot or a stream or drainageway. The Lot Owner and the Lot Owner's Contractor shall have the obligation to use reasonable means to prevent the erosion of soil onto adjacent property or any public street or street or drainageway. The Lot Owner and the Lot Owner's Contractor shall have the absolute obligation to comply with all applicable requirements of the Codes and Ordinances of the City, or of any other governmental authority having jurisdiction over the Development, with respect to erosion control, and shall



indemnify, defend, save and hold harmless the Developer, the Board of Directors of the Association and all other persons, of and from all damages, costs, expenses, liabilities and responsibilities which arise out of any failure to so comply with such Codes and Ordinances.

Section 16. Accessory Buildings, Out Buildings and Other Improvements. No additional and/or accessory structures or improvements of any kind or nature whatsoever [including but not limited to:

- Dog houses;
- Pet houses;
- Exterior storage sheds;
- Additional driveways, walkways, parking areas;
- Garages;
- Sheds or storage areas whether temporary or permanent in character;
- Ponds;
- Swimming pools;
- Outdoor hot tubs;
- Wading pools;
- Walls, fences or similar structures;
- Buildings;
- Monuments;
- Exterior decorative structures;
- Lawn ornaments (other than temporary Christmas or Easter displays or similar displays which are of short term, temporary duration),
- Sheds;
- Posts, poles;
- Storage boxes;
- Barns;

- Stables;
- Garages;
- Pools and similar improvements;
- Trampolines and similar devices or equipment and similar improvements, temporary or permanent; or
- Tennis courts or similar items;

temporary or permanent in nature, shall be erected, installed, kept or placed on any Lot or Unit in addition to the basic Building, garage, patios, walks, decks, driveways, porches and other improvements originally placed by the Developer or Builder and/or any reasonable similar replacement therefor, without the approval of the Developer or the Board of Directors of the Association, whichever then holds Architectural Control powers under this ARTICLE VII.

Section 17. Basketball Goals. All basketball goals must be consistent with standard designs and materials therefor approved by the Developer, so long as the Developer holds Architectural Control powers under this ARTICLE VII, and thereafter by the Association's Board of Directors. All backboards must be clear or painted white and all poles must be neutral in color. Outdoor basketball goals shall be located only at such locations as shall be approved, in advance, by the Developer so long as the Developer holds Architectural Control powers under this ARTICLE VII, and thereafter by the Association's Board of Directors or its Architectural Control Committee. The approving party shall have the right to make, alter and revoke reasonable rules regarding the hours of use of basketball goals and all such rules shall be binding upon all of the Lots and the Owners. Basketball goals may not be attached to a Building, nor installed within a street right-of-way. Movable basketball goals may not be placed within a street right-of-way.

Section 18. Play Structures. All swings, swing sets, sandboxes, trampolines and other recreational or play structures of every kind, nature and description whatsoever (other than basketball goals) must be located behind the line consisting of the back most wall of the Building extended to the side lot lines.

Section 19. Pools and Hot Tubs. All pools and hot tubs shall be wholly screened from the ground view of the public and all other Lots. All pools and hot tubs must be kept cleaned and must be maintained in good operating condition. The provisions of this Section 19 notwithstanding, the Plans and Specifications and landscaping plan for any pool or hot tub must be approved in accordance with the Architectural Control requirements of this ARTICLE VII. Only in ground swimming pools shall be allowed. All swimming pools and hot tubs must be approved in advance, in accordance with the Architectural Control requirements of this ARTICLE VII. Aboveground swimming pools shall not be permitted.

Section 20. Additions and Modifications. No exterior addition to or change to (including but not limited to changes of building materials, roofing materials, surface materials, finish materials, other exterior materials or exterior colors) or alterations or additions shall be made on any structure

or Building or any driveway, walkway, fence, wall or other structure or improvement of any kind or nature whatsoever located within a Lot until the Plans and Specifications showing the nature, kind, shape, height, color, materials, type and location of same shall have been submitted to and approved in writing as to harm in the external design and location and relation to existing structures and surrounding structures and topography by the Developer, so long as the Developer holds Architectural Control powers under this ARTICLE VII, and thereafter by the Association's Board of Directors, or its Architectural Control Committee.

Section 21. Exterior Wiring, Antennas or Installation of Satellite Receiver Dishes or Similar Improvements/Air Conditioners, Heat Pumps, Etc. No exterior wiring or antennas or satellite receiving dishes or similar improvements or equipment of any kind or nature whatsoever, nor anything having an appearance similar thereto, shall be permitted on the exterior portion of any Building situated upon any Lot, nor be placed upon any Lot, except as may be erected by the Developer or as shall be approved in advance in accordance with the above Architectural Control provisions of this ARTICLE VII, either by the Developer so long as the Developer holds Architectural Control powers and thereafter by the Association's Board of Directors. No air conditioning, heat pumps or other types of installation shall be installed or permitted which appear on the exterior of any Building or which protrude through the walls, roof or window area of any Building on any Lot or Unit, or which are located on any Lot or Unit, except as may be installed by the Developer or the Builder in the original construction or as may be subsequently approved in accordance with the Architectural Control provisions set forth in ARTICLE VII of this Declaration.

Preemption by Federal Regulations and Federal Law. It is understood that federal regulations of the Federal Communications Commission, and other federal law, to some extent, have preempted and may hereafter preempt the rights of Associations to approve or disapprove of certain satellite receiving dishes, or broadcast receiver dishes, or television receiving dishes. The intention is that the Developer, the Association's Board of Directors, or its Architectural Control Committee, shall have and retain all authority under this ARTICLE VII (to the maximum extent lawfully permitted) which is permitted by applicable federal law and regulation, but that such authority shall automatically be modified to conform with federal law or regulation, or any other applicable law or regulation. To the extent that the party holding the Architectural Control powers and authority may control the type, location, or placement of satellite receiver dishes, television receiver dishes or antennas, or antennas designed to receive a direct broadcast satellite signal or service ("DBS"), the party holding the Architectural Control powers shall have the right and authority, reasonably (and acting in good faith) to specify the locations for, and the types of, and the color of and screening for, such satellite receiver dishes or antennas. All satellite dishes and antennas, whether broadcast or receiving, other than those which are governed by rules of the Federal Communications Commission or any similar governmental authority, shall be subject to all of the Architectural Control provisions of this ARTICLE VII. All DBS dishes and antennas, and other satellite dishes, which are governed by rules and regulations of the FCC or any other governmental authority, shall be subject to such reasonable restrictions as the party holding the Architectural Control powers under this ARTICLE VII may lawfully impose, in accordance with applicable FCC regulations or other applicable law. Unless applicable law otherwise provides, the location of any satellite dish or antenna, or satellite receiver dish, including DBS, must be approved, in advance of installation, by the party holding the Architectural Control powers under this ARTICLE VII, and such satellite receivers, satellite receiver dishes and DBSes may not be installed on the front of a Building.

Section 22. Sodding and Landscaping Requirements. Unless waived by the approving party, as a part of all Plans and Specifications, and as a part of the required submission for the approval of the Plans and Specifications, the Builder or Lot Owner must provide to the party holding Architectural Control powers, a Landscaping Plan, and no Building or structure, or alteration of same, shall be commenced until the Landscaping Plan therefor has been approved in accordance with the requirements of this ARTICLE VII. In addition, as a part of the construction of the first dwelling/Building to be installed on each Lot, sodding and landscaping must be installed on such Lot, in accordance with the approved Landscaping Plan and, in any event, in accordance with the any minimum landscaping requirements and/or sodding requirements imposed by the Developer, if the Developer imposes any such minimum sodding, seeding or landscaping requirements. All sodding and seeding and landscaping must, in any event, be installed and completed by the Lot Owner within thirty (30) days of the date of the issuance of the occupancy permit for, or the initial occupancy of (whichever first occurs) the Building or the first Unit or Living Unit located within the Building, unless such occupancy permit is issued or such initial occupancy occurs during the months of November, December, and January or February, in which event the sodding and landscaping must be completed and installed by the first day of the next immediately succeeding month of May; provided, however, that sodding and landscaping completion may be further delayed if such further delay is reasonably and necessarily required because of adverse weather or ground conditions. All sodding and landscaping must be installed in a good and workmanlike manner. In the event:

- i. The sodding, seeding or landscaping is not installed in accordance with the above requirements; or
- ii. The sodding, seeding or landscaping which is installed is not installed in a good and workmanlike manner; or
- iii. The sodding, seeding or landscaping which is installed does not comport with the minimum sodding and landscaping requirements imposed by the Developer; or
- iv. The sodding, seeding or landscaping which is installed does not comport with any required and approved landscaping plans; or
- v. Any of the sodding, seeding or landscaping is not completed as soon as reasonably practicable, and, in any event, within the time period specified above,

then the Association or Developer shall be permitted to enter upon the Lot or Unit (and shall have a full and complete easement and right of entry upon the Lot or Unit) in order to install the sodding, seeding or landscaping, or to complete the installation of the sodding, seeding or landscaping or to remedy any defects in same. The Association's or Developer's discretion to enter upon the Lot or Unit and to install or to not install the sodding, seeding or landscaping shall be absolute. The Association or Developer shall be under no obligation to install the sodding, seeding or landscaping. If the Association or Developer chooses to install the sodding, seeding or landscaping, then the Association or Developer and its employees, agents, contractors (and their employees) or designees shall have the total, complete and absolute, unlimited and unmitigated right, license and easement to enter upon the Lot or Unit (and all parts thereof), at any time and location of its choosing to install or remedy the sodding, seeding or landscaping and shall have the total, complete and absolute and

unlimited discretion in the selection of the sodding, seeding or landscaping materials to be installed. If the Association or Developer installs or causes to be installed or completed any part of the sodding, seeding or landscaping, then the Lot or Unit upon which the sodding, seeding or landscaping is so installed, and the Lot Owners or Unit Owners of such Lot or Unit shall be subject to a Special Lot or Unit Assessment, and such Special Lot or Unit Assessment shall be charged to such Lot Owner or Unit Owner of the Lot or Unit. Such Assessment shall be in the sum of all costs incurred by the Association or Developer for the installation of the sodding and landscaping; plus twenty percent (20%) for the Association's or Developer's costs, expenses and inconvenience incurred in arranging for the installation of the sodding or landscaping. Such Assessment shall be due from the Lot Owner or Unit Owner, on demand, without delay. Such assessment shall constitute and shall be deemed to be a Special Lot or Unit Assessment against the Lot or Unit, which has been charged in accordance with the provisions of ARTICLE VI of this Declaration. Such Special Lot or Unit Assessment shall be immediately due and payable, and if not paid, shall bear interest from the date of demand until paid at the rate of ten percent (10%) per annum. Such Special Lot or Unit Assessment and the sum thereof, together with interest, and all costs of collection and enforcement thereof (including but not limited to attorney's fees), shall constitute a lien upon the Lot or Unit, which shall be collectible and enforceable as described in ARTICLE VI hereof, and, in addition the Lot Owners shall be (jointly and severally if more than one) liable and responsible for payment of such sum.

#### MINIMUM LANDSCAPING

All provisions of this Section 22 notwithstanding, until otherwise determined by the Developer for any portion of the Annexation Parcel hereafter annexed to the Development and the Parcel, the following additional, specific landscaping requirements shall apply to each Single Residential Building placed within the Parcel and the Development and to each Duplex Residential Building placed within the Parcel and the Development (unless and until the following minimum landscaping requirements are altered or amended by the Developer as to any portion of the Annexation Parcel which is hereafter annexed to the Development):

A. Trees for Single Family Residential Buildings and Duplex Residential Buildings. No fewer than two (2) deciduous or evergreen trees, with a minimum caliper of one and one-half inch (1 1/2"), shall be placed in the front yard of each Single Family Residential Building and each Duplex Residential Building.

B. Shrubs. No fewer than four (4) shrubs shall be planted in a shrub bed, located near the front wall of:

- Each Single Family Residential Building; and
- Each Duplex Residential Building.

C. Sodding and Seeding Requirements. The entire front yard of each Single Family Residential Building, and of each Duplex Residential Building, must be sodded. The remainder of the yard may be planted with seed and straw, or hydromulch. If seed is used, then the ground must be covered with both seed and straw, or with hydromulch. These provisions notwith-

standing, the front yard of each corner lot must be sodded, with the entire front yard being sodded to the street, in the front of the Building, and to the street which runs along the side yard of the Building, with the entire front of the said front yard being so sodded [meaning that the sod line must extend back from the front street, to the front of the Building, and for the side yard of the Building, from the front street to the line represented by the front of the Building extended to the side street line).

Section 23. Drainage. It shall be the responsibility of the party seeking approval of the Plans and Specifications, and the party constructing any Building or improvement on any Lot, to comply with the requirements of ARTICLE XVIII of this Declaration. Neither the Developer, nor the Association's Board of Directors, nor its Architectural Control Committee, whoever holds the Architectural Control powers, shall have any liability or responsibility to see to it that a Building or house is set on any Lot so as to provide for reasonable surface water drainage for such Lot or adjacent Lots. Such responsibility shall rest solely with the Lot Owner or Unit Owner of the Lot or Unit upon which the Building, structure or improvement is placed. If the Developer provides a drainage or grading plan, then same must be complied with. Lot Owners and Builders are encouraged to divert drainage to the street and to adjacent, designated green space or Common Area, wherever possible. No landscaping or berm shall be permitted which impede or divert storm water drainage in any way. Gutters, downspouts or any means of transporting water may not be extended into the rear, front or side building setback requirements, as established by any Plat, or as established by the applicable codes and ordinances of the City of Columbia.

Section 24. Commercial Property. The Developer shall have the right, but not the obligation, to impose upon the Commercial Property, or any portion thereof, the requirements of this ARTICLE VII, including the requirements for approval of Plans and Specifications for Buildings, structures, parking lots and other improvements to be placed on the Commercial Property or any part thereof. The Developer may or may not, therefore, in the Developer's sole and absolute discretion, elect to control the Commercial Property through the Architectural Control provisions of this ARTICLE VII, or any other Architectural Control provisions of its choice.

Section 25. Mailboxes. Mailboxes and vertical posts must be approved by the Developer, or the Association's Board of Directors or its Architectural Control Committee, whoever or whichever holds the Architectural Control Powers under this Declaration, in advance of (i.e., prior to) installation. A standardized design for mailboxes and vertical posts for mailboxes may be approved, in advance, by the Developer, the Board of Directors of the Association or its Architectural Control Committee, whoever or whichever then holds the Architectural Control Powers, and will be provided upon request.

Section 26. Boats, Campers, Recreational Vehicles and Motor Homes. All boats, campers, recreational vehicles, motor homes and trailers of any sort must be parked inside a garage or must be screened in by a structure which has been approved, in advance of its installation or construction by the Developer, the Board of Directors of the Association or its Architectural Control Committee, whoever or whichever then holds the Architectural Control Powers under this ARTICLE VII.

Section 27. Vehicles Which Are Not Regularly Used. Motor vehicles which are not used, regularly, and generally at least once during each twenty-four (24) hour period, must be parked in

a garage. Inoperative vehicles must be stored or kept within a garage at all times. Boats, campers, recreational vehicles, motor homes and trailers may not be parked outside of a garage or such a screened in structure, and may not be parked on a public street in front of any Residential Building, house or dwelling.

Section 28. Parking in Street. No motor vehicles, boats, motor homes, mobile homes or trailers of any kind may be parked in the street, in front of a Building, home or residence, for any continuous period of more than twenty-four (24) hours. Inoperative vehicles, vehicles which are being repaired, vehicles which are under repair, and any vehicles which are not used with very substantial frequency, shall not be kept, stored or parked in any driveway or on any street within the Development.

Section 29. Sheds and Detached Structures. No sheds, detached garages or other detached structures, of any kind, shall be allowed, unless approved in advance by the Developer, the Board of Directors of the Association or its Architectural Control Committee, whoever or whichever then holds the Architectural Control Powers pursuant to this ARTICLE VII. Doghouses must be approved, in advance of installation, by such party whoever or whichever then holds the Architectural Control Powers pursuant to this Declaration.

Section 30. Landscaping or Berms. No landscaping or berms shall be permitted which impede or divert storm water drainage in any way.

Section 31. Conversion of Garage to Habitable Space. Garages may not be converted to habitable space or living space for pets or humans or animals, without the prior consent of the plans and specifications therefor, which such prior consent must be granted by the Developer, the Board of Directors of the Association or its Architectural Control Committee, whoever or whichever holds the Architectural Control Powers under this ARTICLE VII.

Section 32. Two Car Garages For Single Family Residential Buildings/One Car Garages For Duplex. Until otherwise determined by the Developer for any portion of the Annexation Parcel hereafter annexed to the Development, each Single Family Residential Building placed within the Parcel must have an attached two (2) car garage, which contains parking spaces for at least two (2) normal size passenger vehicles, and each Living Unit for each Duplex Residential Building placed within the Development must have at least an attached one (1) car garage, which contains a parking space for one (1) normal sized passenger vehicles. The space within such garages shall not be included within any minimum square footage requirements which are established by this Declaration. Garages may not be converted to habitation for humans, pets or animals. Garages shall not be converted to storage space, to the extent that such conversion would reasonably prevent the use of the garage for the parking of vehicles (i.e., two vehicles for Single Family Residential Dwellings and one vehicle per Living Unit for each Duplex Residential Building). Duplex Residential Buildings may, therefore, have two (2) single car garages per Building, there being one (1) such garage for each Unit.

Section 33. Exterior Finish Materials. Until otherwise determined by the Developer for any portion of the Annexation Parcel hereafter annexed to the Development, all Residential Buildings (Duplexes, Single Family Dwellings or other Residential Buildings) placed on any Lot or parcel

within the Parcel must have a minimum of fifty percent (50%) of the front elevation thereof constructed with, or covered by, brick, stone, stucco or EIFS, all of which must be approved, in advance of installation, by the Developer, the Board of Directors of the Association or its Architectural Control Committee, whoever or whichever then holds the Architectural Control Powers pursuant to this ARTICLE VII. All exterior colors, exterior finishes, exterior finish materials, and the type and quality and texture thereof (and all colors thereof) must be approved, in advance, by the Developer, the Board of Directors of the Association, or its Architectural Control Committee, whoever or whichever then holds the Architectural Control Powers under this ARTICLE VII. No changes shall be made in any exterior finish materials, exterior covering materials, or the color, type, quality or texture thereof, until such change is approved, in advance of the making of the change, in accordance with the provisions of this ARTICLE VII, by the Developer, the Board of Directors of the Association, or its Architectural Control Committee, whoever or whichever then holds the Architectural Control Powers pursuant to this ARTICLE VII.

Section 34. Swimming Pools. Only in ground swimming pools shall be allowed. All swimming pools, and similar improvements, must be approved, in advance of installation, in accordance with the provisions of this ARTICLE VII, by the Developer, the Board of Directors of the Association, or its Architectural Control Committee, whoever or whichever then holds the Architectural Control Powers pursuant to this ARTICLE VII.

## **ARTICLE VIII**

### **MAINTENANCE**

Section 1. General Maintenance by Association. The Association shall provide for all maintenance, repairs, replacements, servicing and upkeep for the Common Areas and Common Elements, and shall, in addition, provide for all maintenance, repairs and replacements for, and upkeep and snow removal for, all streets, roads and drives located within the Development which, for any reason, are not publicly maintained (regardless of the identities of the Owners thereof), and which serve more than one Unit. The Association shall provide for all mowing, fertilization, irrigation, maintenance, repair, replacement and upkeep of all lawns and landscaping and plantings located within Common Areas and Common Elements, and shall provide for all maintenance, repair, replacement, servicing and upkeep of any kind or nature whatsoever required for the maintenance, repair, replacement, servicing and upkeep of the Common Areas and Common Elements. The Association shall pay all taxes upon the Common Areas and Common Elements, and shall provide adequate liability insurance, and fire and casualty insurance, for the Common Areas and Common Elements. The Association shall further provide for all maintenance, repairs, replacements, servicing and upkeep for:

- Any signs, structures, monuments, berms, lawns, trees, shrubs and other landscaping materials placed within, and any irrigation systems and lighting systems and other improvements placed within, any Landscaping Easement or Sign Easements, established by the Plat or by the Developer;

- Any entryway structure, signs or monuments or similar signs for the Development, including the landscaping therefor and the lighting thereof and all other parts and components thereof;



- Any sidewalks, trails, paths or walkways placed within any Pedestrian Access Easement or Pedestrian Path or Trail Easement located within the Development;
- Any sidewalks, trails, paths or walkways which serve a number of Units, and which are not publicly owned;
- At the option of the Association's Board of Directors (and at the expense of the Unit Owners), any drainage easements, drainways or drainage structures which serve more than one Lot or Unit or several Lots or Units or a number of Lots or Units; and
- All other maintenance, repairs, replacements, servicing and upkeep for all other Common Areas and Common Elements of every kind, nature and description whatsoever.

Section 2. Maintenance, Repairs and Replacements by Lot Owners and Unit Owners. Each Lot Owner of a Lot not divided into Units by Plat or Condominium Declaration shall maintain, repair and replace his Lot, and the Building located thereon, and all Buildings and improvements located thereon, and all lawns and landscaping contained thereon, and all improvements located thereon, and all parts thereof, so as to keep same at all times in a clean, neat, safe, attractive and aesthetically pleasing condition, free from all junk and debris and any conditions of unsightliness. Each Unit Owner of each Unit shall maintain, repair and replace his Unit [and Unit Owners of Units within a Lot shall maintain, repair and replace all portions of that Lot owned by them in common or held for their common benefit, and all improvements thereon], and all improvements located thereon, and all improvements constituting same, and all lawns and landscaping contained therein, and all improvements located thereon and therein, and all parts thereof, so as to keep same at all times in a clean, neat, safe, attractive and aesthetically pleasing condition, free from all junk and debris, and any conditions of unsightliness.

Section 3. Standards of Maintenance, Repair and Replacement. The Association shall maintain all Common Areas and Common Elements, and each Lot Owner and Unit Owner shall maintain, repair and replace his Lot and Unit, and all portions thereof, and all Buildings and improvements located thereon, so as to maintain same in a clean, safe, neat and attractive condition, according to maximum reasonable standards of cleanliness, safety, neatness, attractiveness, aesthetics and beauty, so as to maintain the Development in as clean, safe, neat, attractive and aesthetically pleasing condition as is reasonably practicable. In the event of any dispute over the standards of maintenance, including the standards of cleanliness, safety, neatness, attractiveness, aesthetics and beauty, such dispute shall be resolved by the Association's Board of Directors, and such determination by the Association's Board of Directors shall be binding upon all parties. It is the intention of the Developer, and of all parties, that the Development, and all improvements located therein, be maintained as a Development of the highest order, and that maximum reasonable standards of cleanliness, safety, neatness, beauty, attractiveness and aesthetics be maintained, and that the Development be free of any conditions of unsightliness, including (by way of example only but not by way of limitation), the following: chipped, flaking or discolored paint; dead or dying lawns, trees, shrubs, vegetation or the like; discolored roofs or roofs requiring patching or maintenance; loose, rusted or discolored gutters or downspouts; walkways, driveways, sidewalks or parking areas requiring patching or resurfacing; brick surfaces in need of cleaning or tuck pointing; or other conditions of any kind or nature whatsoever, without limitation, which would reasonably

be construed by reasonable people as not in keeping with reasonable maximum standards of cleanliness, safety, neatness, beauty, attractiveness or aesthetics.

**Section 4. Special Assessment.** In the event any Owner of any Lot or Unit fails to perform any repair, replacement or maintenance specifically imposed upon such Owner by this Declaration, including the provisions of this ARTICLE VIII, and in the further event the Association's Board of Directors, in its sole, absolute and unmitigated discretion determines that the conditions require maintenance, repair, replacement or servicing for the purposes of protecting the interests of any Lot Owner or Unit Owner, or any other Lot Owners or Unit Owners, or the public safety, or the safety of residents in or visitors to the Development, or to prevent or avoid damage to or destruction of any part, portion or aspect of the value of the Property or of any Lot or Lots or Units, or of the Development or any part thereof the Association's Board of Directors shall have the right, but not the obligation, through its directors, agents and employees, and after approval of a majority of the Board of Directors (no approval by members of the Association shall be required) to enter without permission upon, or within said Lot or Unit, and any portions of the Lot or Unit, and any Building or Buildings thereon, and any Living Units or Units contained therein, and to maintain, repair, replace or service the same. The costs of maintenance, repair, replacement or servicing shall constitute a special Lot assessment or Unit assessment against the Lot Owner or Unit Owner responsible for the maintenance, repair, replacement or servicing, and such Lot Owner's Lot or Unit, and all Buildings and improvements located thereon, and shall become a part of the assessment to which such Lot or Unit is subject, and shall constitute a lien, and be enforceable and collectible in the manner hereinabove described in ARTICLE VI of this Declaration for enforcing assessments.

## **ARTICLE IX**

### **GRANTS AND RESERVATIONS OF EASEMENTS**

**Section 1. Easements for Repair, Maintenance and Restoration.** The Association, its directors, employees and agents, shall have a right of access and an easement to, over and through all of the Properties, including each Lot and Unit and the Buildings and structures and Living Units located thereon, for ingress and egress and all other purposes which enable the Association to perform its obligations, rights and duties with respect to maintenance, repair, restoration and/or servicing of the Common Elements and Common Areas and any improvements located on Lots or Units which the Association is, under ARTICLE VIII hereof, entitled to maintain for any reason whatsoever; provided that the exercise of this easement as it affects the individual Lots or Units shall be at reasonable times and with reasonable notice to the individual Lot Owners or Unit Owners in the absence of an emergency requiring immediate attention.

**Section 2. Other Easements.** All other easements, as shown by the Plat, whether public or private, shall exist as shown by the Plat.

**Section 3. Street Easements.** All real estate located within the boundary lines of any areas shown on the Plat as streets, roads or drives serving more than one Lot or Unit, and which are not by the Plat publicly dedicated, are imposed with an easement, which shall run in favor of all Lots and Units served by the streets, roads and drives, and the present and future owners thereof. Such easements shall run with, and shall benefit, each of the Lots and Units served thereby, and the Owners thereof. Such easements shall be permanent and irrevocable. Such easements shall apply

only to those portions of any real estate contained within the boundary lines of any streets, roads or drives as shown on the Plat, which are not, by the Plat, dedicated to the public, or not otherwise publicly dedicated. Such easements shall be in effect as to all real estate contained within the boundary lines of any street, road or drive shown on the Plat, or otherwise located within the Development, which serves more than one Lot or Unit, and which, for any reason, is not publicly dedicated. Such easements shall be permanent and irrevocable. The terms of such easements are such that the Owners of all Lots or Units served by the street, road or drive, and their guests, renters, lessees and invitees shall have the right to use the real estate contained within the boundary lines of the street, road or drive for roadway purposes only, solely for purposes of obtaining access to, and egress from, each of their Lots and Units, and the Buildings and improvements located thereon. The Developer reserves the right to dedicate any streets, roads or drives shown on any Plat to public use forever.

Section 4. Pedestrian Access Easements. Any "Pedestrian Access Easement" or "Pedestrian Easement" or "Trail Easement" or "Path Easement," or any similar Easement established by any Plat, or otherwise, and the sidewalk, walkway, trail, pathway or other improvement placed thereon, and all landscaping and other improvements placed thereon, shall be Common Elements of the Association, intended for the use and benefit of all Lots and Units and the owners and occupants thereof. The intention is that all Pedestrian Easements, Trail Easements, Path Easements, or similar Easements, and all Pedestrian Access Easements and similar Easements, shall be for the establishment of pedestrian and bicycle sidewalks, walkways, paths or trails, to be used for jogging, walking and bicycling (using nonmotorized bicycles). A perpetual, irrevocable easement for the construction, reconstruction, maintenance, repair, replacement, use, keeping, upkeep, improvement and modification of sidewalks, walkways, paths and trails within each such Easement shall exist, and is hereby established, and each Lot subject to any such Easement (under the terms of the Plat or otherwise) shall be and it is hereby burdened with such an Easement, which shall run with the Lot, and shall bind the Developer and the Developer's successors in ownership of the Lot, and which shall inure to the benefit of the Association and the Lot Owners and Unit Owners of each and all of the Lots and Units located within the Development, the terms of such Easement being as follows:

- a. The Easement shall be perpetual and irrevocable, and shall run with the land;
- b. The Easement shall permit the Developer and the Association, and each of them, to build, construct, maintain, repair, improve, keep and place a sidewalk, walkway, trail or pathway, of its choosing, at any location within the Easement;
- c. The Easement, and the sidewalk, walkway, pathway or other improvements located therein, and the landscaping therefore, shall be owned by the Association, and shall be maintained, repaired, replaced and improved by the Association as a Common Element, and shall be kept by the Association for the benefit of all Lot Owners and Unit Owners, and their tenants and lessees and the members of their families, and their guests and invitees;
- d. The Easement, and the sidewalk, walkway, path or trail located thereon shall be accessible to each of the Lot Owners and Unit Owners, and the members of their families, and their tenants and renters and the members of their families, and their guests and invitees, for reasonable use for reasonable walking, jogging and nonmotorized bicycling purposes;

e. The Easement, and the walk, walkway, sidewalk and other improvements located thereon shall, therefore, be accessible to Lot Owners and Unit Owners of all Lots and Units, and their renters and tenants and the members of their families, and their guests and invitees, for such purposes.

Section 5. Landscaping Easements and Sign Easements. The Plat may provide for one or more "Landscape ESMTs" or "Landscape and Sign ESMTs" or "Landscaping Easements" or "Landscape Easements" or "Sign Easements" or "Landscaping and Sign Easements." Such easements may hereinafter be referred to as "Landscaping Easements" or "Landscape Easements." All areas shown by the Plat as being subject to any such Easement, or otherwise established as being subject to any such Easement, shall be subject to (and are hereby imposed with) an easement, which may be referred to herein as a "Landscaping Easement," and the terms and conditions of which shall be as follows:

A. Permanent Easement. The Landscaping Easement shall be irrevocable and permanent and may not be revoked or amended in any manner whatsoever.

B. Imposition of Easement. Each portion of the Lots and Units imposed by the Plat or any document with a Landscaping Easement is hereby imposed with a Landscaping Easement, as defined in this Section 5, which shall run with each of the said Lots and Units and which shall bind each of the Lot Owners and Unit Owners thereof, and their heirs, personal representatives, legal representatives, successors and assigns and all future owners. The said Landscaping Easement shall run with the land/real estate of each of the said Lots and Units.

C. Running With Land/Easement in Favor of Association and Developer. The Landscaping Easement shall run in favor of, and shall accrue to the benefit of the Developer and the Developer's successors as the Developer, and shall also run in favor of and shall accrue to the benefit of the Association. The Developer and the Association shall have the right, jointly and severally, to enforce the easement as to the Landscaping Easements and shall be jointly benefitted by such Landscaping Easements. The Landscaping Easement shall, therefore, run in favor of the Developer and the Developer's successors as the Developer, and the Association and the Association's successors. The rights of the Developer as to the Landscaping Easements shall terminate when the Developer's rights as "the Developer" under the Declaration have terminated; provided, however, that the rights of the Association as to the Landscaping Easement shall thereafter continue in full force and effect in perpetuity.

D. Purpose of Easement. The purpose of the Landscaping Easement shall be to permit the Developer and the Association, and each of them, and their contractors, employees and designees, to enter upon the real estate imposed with such Landscaping Easements for purposes of doing the following:

a. Grading the real estate so as to install berms and other scenic improvements;

b. Planting, installing, replacing, irrigating, fertilizing, mowing, trimming, replacing and maintaining trees, shrubs, ground cover, plantings and other landscaping materials (selected by it in its sole discretion) of all types and kind;

c. Otherwise improving or dealing with or maintaining the visual aspects of the real estate subjected to the Landscaping Easement;

d. Installing, maintaining, repairing and replacing reasonable entryway signs, monuments, decorative structures, fences or similar improvements;

e. Installing, maintaining, repairing and replacing irrigation systems and similar improvements;

f. Installing, maintaining, repairing and replacing signs and monuments and entryway structures.

E. Installation of Improvements Within Easement. Signs, monuments, berms, trees, shrubs, plantings and other landscaping materials, and (at the option of the Developer and/or the Association) irrigation systems and lighting systems will be installed within the Landscaping Easements by the Developer or by the Developer's contractors or designees or by the Association or its Board of Directors or their designees. An easement for the location and maintenance thereof, and for the keeping, maintenance, replacement and repair thereof, shall be and it is hereby established, in perpetuity.

F. Lot Owners and Unit Owners Barred. The Lot Owners and Unit Owners of the Lots and Units imposed with the Landscaping Easements are hereby barred from doing any of the following (and shall not do any of the following) as to the Land located within the boundaries of any Landscaping Easement or any plantings, trees, shrubs or other growing materials, signs, structures, walls, fences or monuments located within the boundaries of a Landscaping Easement:

a. From grading the land;

b. From in any manner altering the levels or characteristics or appearance of the land;

c. From digging or excavating upon the land or grading the land;

d. From removing any improvements, structures, trees, shrubs, plantings or other landscaping materials or signs, structures, walls, fences or monuments installed upon the land by the Developer or the Association;

e. From and any manner altering the appearance of the trees, shrubs, plantings or landscaping materials or monuments or signs installed upon the easement real estate by the Developer or the Association at anytime;

f. From installing or altering any improvements, or structures within the real estate subject to the landscaping easement;

g. From placing any fences, walls or similar structures within the real estate subject to the easement;

h. From placing any improvements within the real estate subject to the easement;

i. From engaging in any planting or gardening within the real estate subject to the easement, and from placing any trees, shrubs, or other plants or growing materials within the real estate subject to the easement, or altering the appearance of items within the real estate;

provided, however, that if construction of a sidewalk is required, and the sidewalk must be placed within the boundaries of the Landscaping Easement, then the Lot Owner shall be obligated to construct a sidewalk at the Lot Owner's sole expense, and shall have access to the land subject to the Landscaping Easement for purpose of constructing the sidewalk, and shall pay all costs and expenses of constructing the sidewalk; provided that same must be constructed in a reasonable, good, safe and workmanlike manner, and with minimal damage to any landscaping, and that any damage caused to any landscaping by the construction of the sidewalk must be repaired by the Lot Owner or Unit Owner.

G. Maintenance. Unless the Association (pursuant to subsection I below) chooses to delegate to the Lot Owners and Unit Owners the responsibility for all or part of the maintenance, repair, replacement, keeping and upkeep of the lawns, plantings, trees, shrubs and other landscaping materials growing within the Landscaping Easements, the Association shall, at its expense:

- Mow (so as to keep same weed-free and in good appearance);
- Fertilize, irrigate and otherwise maintain;
- Trim;
- Otherwise maintain, repair and replace, so as to keep same in good appearance,

all grass, ground cover, mulch, lawn, trees, shrubs and other landscaping materials and growing materials located within the Landscaping Easements, and shall keep and maintain in good repair and condition any signs, monuments, sprinkler systems, irrigation systems, lighting systems or similar systems and all other improvements located within the Landscaping Easements. The Association shall, therefore, have the responsibility, at the expense of the Association, to maintain, repair and replace all landscaping, and similar items and improvements located within the Landscaping Easements as a part of the Common Elements.

H. Common Elements. The Landscaping Easements and all lawns, trees, shrubs, ground cover, mulch, landscaping, berms, irrigation systems, sprinkler systems, signs, monuments, entryway structures and other improvements located therein, now or in the future, shall be a part of the Common Elements and shall be maintained, repaired and replaced as such.

I. Delegation to Lot Owners or Unit Owners. The above provisions notwithstanding, the Association may elect to delegate to the Lot Owners or Unit Owners of Lots or Units containing Landscaping Easements or subject to Landscaping Easements (which such delegation may at any time be revoked by the Board) the duty or responsibility to perform all or any part of the following (and if such delegation occurs, and it may occur in the sole discretion of the Association's Board of Directors, then the Lot Owners or Unit Owners shall have the absolute obligation to perform the following at their separate expense):

1. The responsibility to water and irrigate the trees, shrubs and other growing materials placed upon all or any part of the Landscaping Easements so as to maintain same in good condition;

2. The responsibility to mow or trim in a reasonable manner and take all other steps reasonably required to maintain lawns or landscaping materials growing within the Landscaping Easements or any portion thereof in good condition;

3. The responsibility to mow all grass growing within all or any part of the Landscaping Easement so as to maintain same in a weed-free condition and in good repair and condition and in a sightly condition;

4. The responsibility to fertilize and irrigate grass, and other plantings and to replace grass or other plantings should same die or otherwise require replacement;

5. The responsibility to remove all trash and debris from the real estate subject to the Landscaping Easement and to keep it free of trash and debris;

6. All other responsibilities to keep and maintain the improvements within the Landscaping Easement in good condition.

The Association's Board of Directors may delegate certain or all of such responsibilities to certain or all of the Lot Owners or Unit Owners under the provisions of this subsection I at any time which the Association or its Board of Directors may find to be appropriate, in its discretion. The discretion of the Association's Board of Directors in this respect shall be absolute. If any such delegation occurs then the Lot Owners or Unit Owners to whom the responsibilities are delegated shall have the absolute responsibility, enforceable by the Association and each of the other Lot Owners or Unit Owners, to perform their respective duties or obligations so delegated to them by the Association in such manner as to maintain the Landscaping Easements and all improvements, lawns, trees, shrubs and landscaping growing therein in a clean, safe, neat and attractive condition at all times. Any responsibility delegated to the Lot Owners or Unit Owners must be discharged by the Lot Owners or Unit Owners, at their sole, separate expense. The responsibilities for maintenance, repair, replacement and upkeep of the Landscaping Easements and items therein may be delegated, in whole

or in part, by the Association's Board of Directors [for example, only the responsibility to mow may be delegated]. Any delegation once made can be revoked by the Association's Board of Directors at any time of its choice. The discretions of the Association's Board of Directors in these respects shall be absolute.

Section 6. Sign Easement. The Plat may identify certain "Sign Easements" or "Sign ESMTs." Any portion of a Lot or Unit shown by a Plat as being subject to a "Sign ESMT" or "Sign Easement" shall be and it is hereby subjected to a "Sign Easement" as established by this Section 6. Such Sign Easement shall be and the same are hereby declared and established, and shall be perpetual easements, running with the Lots and Units imposed thereby by the Plat, and shall run with the land of such Lots and shall be binding upon all present and future Lot Owners or Unit Owners of such Lots or Units. All Sign Easements shall run in favor of the Developer and the Association, jointly and severally. The Developer or the Association shall have exclusive access to and egress from the land subject to the Sign Easements, and even though the land subject to such Easements is owned by an individual Lot Owner, access to the area subject to the Sign Easements is nevertheless to rest exclusively with the Developer, the Association and the Association's Board of Directors and their respective contractors, employees and designees. The Developer and the Association or its Board of Directors or their respective contractors or designees may enter upon the land subject to the Sign Easements at any time and may construct and install thereon, and keep, maintain, repair, use and replace thereon, and at all times maintain thereon, entryway signs, decorative plantings, monuments and other structures (and artificial lighting therefor) which serve as entryway signs for or monuments for or markers for or decorative entrances for the Development. All Sign Easements and all signs, monuments, trees, shrubs, landscaping, irrigation systems, lighting systems and other improvements installed within Sign Easements by the Developer or by the Association shall be Common Elements and shall be maintained, repaired, kept and replaced by the Association at the expense of the Association. Sign Easements shall be permanent and irrevocable and shall at all times run with the land and shall be binding upon all present and future Lot Owners of the land subjected thereto and shall run in favor of the Association and the Developer. Under no circumstances shall the Lot Owner enter upon the land subject to the Sign Easement or in any manner or respects whatsoever remove, take down or alter any sign or structure or improvement located therein or attempt to in any manner whatsoever place plantings within, or otherwise alter the appearance of the land subject to the Sign Easement or any signs, monuments, structures or other items located therein.

Section 7. Easements Over Common Areas and Common Elements. All Common Areas and Common Elements which are intended for the mutual use of all Units shall be imposed with a perpetual, irrevocable, permanent easement, running with the Common Areas and Common Elements, which shall inure to the benefit of the Association and each Lot Owner and Unit Owner and the occupants of each Lot and Unit, and the members of their families, and their tenants, and their guests and invitees, such that the Association and its contractors and designees may enter upon the Common Areas and Common Elements at all times for purposes of maintaining, repairing, replacing, building, rebuilding and servicing same and placing any improvements thereon which are approved by the Association's Board of Directors; and the Lot Owners and Unit Owners and the occupants of the Lots and Units and the members of their families, guests and personal invitees may freely enter upon the Common Area and Common Elements and make use of same for their intended purposes.



**ARTICLE X**  
**COMMON AREAS**

Section 1. Members' Easements of Enjoyment. Every member in the Association, and the members of their families, and their designees and delegates and renters and lessees, shall have the right of ingress and egress and an easement of enjoyment in and to the Common Area and the Common Elements and the facilities, improvements and recreational facilities located thereon, and such easements shall be appurtenant to and shall pass with the title to every assessed Lot.

Section 2. Delegation of Use. Any member may delegate his right of enjoyment to the Common Area, Common Elements and facilities to the members of his immediate family or his tenants, or contract purchasers, who reside on the property.

Section 3. Title to Common Areas. The title to certain of the Common Areas may be retained by the Developer until completion of the Development contemplated by the Developer. Even though title to such Common Areas and Common Elements may not be vested in the Association, same shall nevertheless be deemed to be Common Areas and Common Elements, whether or not conveyed to the Association, and shall be maintained by the Association from the Maintenance Fund.

Section 4. Members' Easements of Enjoyment. Every Unit Owner (i.e. "Member") and their guests, renters and invitees and lessees and the lessees of Developer shall have a right of ingress and egress and easement of enjoyment in and to the Common Area and Common Elements and the facilities, improvements and recreational facilities located thereon and such easement shall be appurtenant to and shall pass with the title to every assessed Unit; provided, however, that those areas hereinafter designated as "Limited Common Areas" or "Limited Common Elements" shall be reserved for the use of the applicable Lot, Lots or Units, and the Owners or occupants thereof, to the exclusion of all other Lots and Units and the Owners or occupants thereof. Said right of ingress and egress and easement of enjoyment shall exist whether or not the Developer has conveyed title to the Common Area to the Association and shall be subject to the following provisions:

(a) The right of the Association to limit the number of guests of members, using facilities on the Common Areas, and to provide that all or certain portions of the Lots or Units shall be for the exclusive use of the Lot Owners or Unit Owners of certain of the Lots or Units located on the Lots; provided that such action shall appear to be reasonably necessary to protect the privacy of the Lot Owners or Unit Owners in the use and enjoyment of their Lots or Units, and that it shall not affect those easements provided by ARTICLE IX.

(b) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(c) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property;

(d) The right of the Association to suspend the voting rights and right to use of the recreational facilities by a Member for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations;

(e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board of Directors, provided, however, should the property sought to be transferred be subject to the lien of any mortgage or deed of trust, no such transfer shall be made without first obtaining the written consent of the mortgagee or the beneficial owner of said deed of trust thereto. No such dedication or transfer shall be effective unless an instrument signed by members entitled to cast sixty-five percent (65%) of the votes of the Class A membership and sixty-five percent (65%) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than ten (10) days nor more than forty (40) days in advance; and unless (in the event the portion of the Common Area to be dedicated or transferred is, for any reason, immediately adjacent to and abutting upon the boundary lines of a Lot or Unit or contained within a Lot or Unit) the Lot Owners or Unit Owners of such Lot or Unit have agreed to such transfer;

(f) The right of the Developer and of the Association through its Board of Directors to create, grant and convey easements upon, across and over the Common Areas to public utilities or public bodies or public governments for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephones, electric lines and a community master television antenna system or cable T. V. system;

(g) The right of the Association to publish rules and conditions to regulate and control the Members' use and enjoyment of the Common Area.

Section 5. Designation of Common Areas. The Developer reserves the right to designate any part of the real estate located within the Development, now or in the future, as Common Area. No requirement that the Developer designate Common Areas shall be deemed to be expressed or implied.

## **ARTICLE XI**

### **USE RESTRICTIONS**

[NOTE: THE PROVISIONS OF THIS ARTICLE XI SHALL APPLY TO ALL LOTS INITIALLY SUBJECT TO THIS DECLARATION, AS HEREINABOVE DESCRIBED IN THIS DECLARATION. HOWEVER, THE PROVISIONS OF THIS ARTICLE XI MAY HEREAFTER BE AMENDED, AS THEY APPLY TO ADDITIONAL AREAS OF REAL ESTATE WITHIN THE ANNEXATION REAL ESTATE HEREAFTER ANNEXED TO THE DEVELOPMENT. THE DEVELOPER, THEREFORE, RESERVES THE RIGHT TO AMEND THE PROVISIONS OF THIS ARTICLE XI, AS SAME APPLY TO PORTIONS OF THE ANNEXATION REAL ESTATE HEREAFTER ANNEXED TO THE DEVELOPMENT.]

The Lots, Units and the Buildings and structures and dwellings located thereon, and the Living Units located thereon, shall be subject to the following provisions and restrictions:

Section 1. One Family Dwelling Purposes. Each Living Unit located within a Building upon a Lot shall be used solely for as a residence for a single family. For purposes of this restriction upon use, a "family" shall mean a "family", as hereinabove defined in subparagraph (g) of Section 1 of ARTICLE VII of this Declaration. There shall be no prohibitions upon renting or leasing of Living Units or dwellings. No such prohibitions shall be either expressed or implied.

Section 2. No Roomers or Boards. Except to the extent provided in Section 1, it is hereby provided that no boarders or roomers shall be permitted in any Living Unit or Unit, in addition to the Family occupying each Living Unit. Renting or leasing of Living Units, for single family dwelling purposes, is, however, permitted. Short term guests are permitted.

Section 3. Home Occupation. The restriction above to use of any Living Unit as a single family residence shall not prohibit the conduct of a "home occupation" upon said Living Unit as defined herein. Home occupation means any occupation or profession carried on by members of the immediate Family residing on the premises, in connection with which there is not used any sign or display that will indicate from the exterior that the Building or Living Unit is being utilized in whole or in part for any purpose other than that of a single family residence dwelling; in connection with which there is no commodity sold upon the premises, and no person is employed other than a member of the immediate family residing on the premises, and no mechanical or electrical equipment is used except such as is permissible for and is customarily found in purely domestic or household premises for the family residing therein; and in connection with which no noise (of any kind or nature whatsoever), and no disturbance (of any kind or nature whatsoever), and no odor or fumes or vapors or dust or air borne particles (of any kind or nature whatsoever) are generated; and in connection with which no tools or equipment are used except such as are permissible for and are customarily found in purely domestic or household premises for the family residing therein; and in connection with which no traffic is generated; and in connection with which no item of goods, material or equipment is stored in the premises. A professional person may use his residence for infrequent consultation, or emergency treatment, or performance of his profession. Permitted home occupations shall not include barber shops, beauty shops, shoe or hat repair shops, tailoring shops or any type of pick up station or similar commercial activities but the recitation of these particular exclusions shall not be deemed to constitute authorization for the conducting of other businesses or enterprises which are precluded by the previous language of this paragraph or by other sections of the Declaration, Articles or Bylaws. Nothing herein shall be construed to permit home occupations not permitted by applicable zoning laws. No daycare facilities, daycare centers, preschool centers, nursery schools, child placement centers, child education centers, child experiment stations or child development institutions, or similar facilities, shall be permitted, and daycare of children for hire shall not be permitted. No halfway house, residential care facility, group home, recovery house or similar facility may be placed on, or operated within, any Lot. No Lot or Living Unit or Unit, or any part thereof, shall be used for a professional or commercial purpose except as permitted by this Section 3.

Section 4. Additional Structures. No additional and/or accessory structures, improvements of any kind or nature whatsoever, walls, fences or buildings of any nature whatsoever, or sheds,

posts, poles, storage sheds, dog houses, storage boxes, barns, stables, garages or similar items of any nature whatsoever shall be erected upon any Lot or Unit, in addition to the basic Building, garage, patios, walks, decks, porches or other improvements originally provided by the Developer or Builder, or any reasonably similar replacement thereof, or addition thereto, without the approval of the Developer, so long as the Developer holds those Architectural Control powers provided for by ARTICLE VII, and thereafter by the Association's Board of Directors or its Architectural Control Committee.

Section 5. Parking. No uncovered parking spaces on the Parcel or within the Development, or within any Lot or Unit, shall be used for the parking of any trailer, truck, boat, camper, mobile home, motor home or anything other than operative automobiles, which are in good condition and repair, and which are used with very substantial, regular frequency. Any vehicle parked within the Development must be a vehicle which is in good condition, and is in good operating condition, and which is used with very substantial regular frequency. It is the intention of the parties that inoperative automobiles, or other vehicles, not be placed within the Development, and not be stored within the Development. Automobiles not used with substantial regular frequency (generally, at least once every 24 hours) shall not be placed within uncovered parking spaces within the Development. The word "trailer" shall include trailer coach, house trailer, mobile home, automobile trailer, campcar, camper, recreational vehicle or any other vehicle whether or not self-propelled, constructed or existing in such a manner as would permit the use and occupancy thereof for human habitation, for storage, or the conveyance of machinery, tools or equipment, whether resting on wheels, jacks, tires or other foundation and used or so constructed that it is or may be mounted on wheels or other similar transporting device and used as a conveyance on streets and highways. The word "truck" shall include and mean every type of motor vehicle other than automobiles and vans and pick-up trucks and other similar utility vehicles used regularly as passenger vehicles by persons occupying the Units. No covering or walling in of uncovered parking spaces shall be permitted except as specifically approved in accordance with the architectural control provisions set forth in ARTICLE VII hereof. Provided, however, that this Section shall not apply so as to interfere with normal construction methods in the construction and development of any part of the Development or the property or the Parcel, or of additional Buildings thereon. Notwithstanding anything to the contrary hereinabove set forth, the Association may, if the Association's Board of Directors elects to do so, place upon the Common Area appropriate parking for recreational vehicles, campers, boats, mobile homes and other recreational vehicles; provided, however, that same shall be so constructed and placed as to not in any respects interfere with the use or enjoyment of any of the Lots, or with the appearance of the Lots, and such parking shall be constructed in such a manner as to be harmonious with the surroundings. The above provisions of this Section 5 to the contrary notwithstanding, occupants of Living Units within a Lot shall be permitted to park within the boundary lines of such Lot, and within the parking spaces provided for within such Lot, for reasonable periods of time reasonable periods of time (not to exceed 24 hours, and not to exceed 4 such periods of 24 hours within any calendar month), a trailer, truck, camper, mobile home or motor home so as to permit the reasonable loading and unloading of such trailer, truck, camper, mobile home or motor home. Such vehicle shall be parked within the Development solely for reasonable loading and unloading, and for no other purposes. All present and future Lot Owners and Unit Owners and occupants and Living Unit Owners and Living Unit occupants shall be deemed to have agreed by accepting deeds for their Lots or Units, or entering into leases therefor, that the provisions of this Section 5 shall apply not only to the Lots and Units, but also to any public streets which abut

upon any of the Lots or Units. All Lot Owners and Unit Owners, agree, on behalf of themselves and their successors, and all present and future Owners and occupants of Lots and Units, to be bound by the restrictions set forth in this Section 5 as to all public streets and portions thereof, and the provisions of this Section 5 shall be as enforceable as to the public streets, as would be the case with respect to the Lots and Units, as the public streets shall be used only for parking of vehicles permitted to be parked within the Development in accordance with this Section 5.

Section 6. Nuisances. No illegal, noxious, noisy or offensive activities shall be carried on upon the Lot or Unit or upon the Common Areas nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No illegal, noxious or offensive activity shall be carried out upon or within any Lot or Unit, nor shall anything (including, but not limited to activities generating odor, noise or unsightly appearances) be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood, or which would substantially interfere with use and enjoyment of neighboring Lots or Units, or the values of neighboring Lots or Units.

Section 7. Signs. No signs of any kind shall be displayed to the public view within the Development, or on any Lot or Unit, or within the Properties except those:

- (a) On the Common Areas and approved in advance by the Directors;
- (b) Regarding and regulating the use of the Common Areas and approved in advance by the Directors;
- (c) Used by the Developer or Builder to advertise the Lots or Units for sale or to identify the financing and/or the construction agents during the construction and sales period;
- (d) One professional sign used to advertise a Lot or a Unit therein for sale or rent; provided that same shall only state that the Lot or Unit is for sale or rent, together with the name and telephone number of the Lot Owner or Unit Owner or his agent;
- (e) Traffic signs or directional signs, or signs imposing traffic rules or regulations located on the Common Areas, and approved in advance by the Directors.

Nothing contained in this Section 7 shall, however, be construed to permit signs within the Properties or the Development, or within the boundary lines of the Lots or Units, not otherwise permitted by the applicable sign ordinances of any governmental authority having jurisdiction over the Development then in effect.

Section 8. Debris Free. All Lots and Units must be kept and free of debris, and shall be maintained in a sightly and sanitary condition.

Section 9. Exterior Wiring, Antennas or Installation or Satellite Receiver Dishes or Similar Improvements. No exterior wiring or antennas, or satellite receiver dishes or similar improvements or equipment, shall be permitted on the exterior portion of any Building or improvement situated upon any Lot except as may be erected by the Developer, or as shall be approved in advance in or

shall be permitted, accordance with the Architectural Control provisions set forth in ARTICLE VII hereof. No air conditioning or other types of installation shall be installed or permitted which appears on the exterior of any Building or which protrudes through the walls, roof or window area of any Building on any Lot or Unit except as may be installed by the Developer or the Builder in the original construction, or as may subsequently be approved in accordance with the architectural control provisions set forth in ARTICLE VII hereof. Satellite receiver dishes, radio receiver antennas, radio antennas, antennas and similar devices shall be subject to the provisions of this Section 9, modified pursuant to Section 22 of ARTICLE VII of this Declaration, and shall, to the extent lawful, be subject to the Architectural Control Provisions of such ARTICLE VII.

Section 10. Livestock, Poultry and Pets. No animals, swine, livestock, poultry or pets, of any kind, nature or description whatsoever, shall be raised, bred or kept upon or in any portion of the Properties or the Parcel, except as follows:

(a) Up to two (2) dogs and/or cats or other normal household pets per household may be kept in and upon any Unit or Living Unit subject to the following provisions of this Section 10. No pit bulls, Rottweilers, Dobermans or other recognized vicious breeds of any kind are permitted. No vicious dogs or dogs exhibiting vicious propensities shall be permitted. No exotic or dangerous animals shall be kept. No animals other than dogs, cats and other normal household pets shall be kept.

(b) No vicious animals are permitted. No exotic or dangerous animals shall be kept.

(c) No pets shall be allowed to run lose on portions of the Property other than the Lot or Unit or Living Unit within which same are kept.

(d) No pets shall be allowed to disturb others by barking, noise or other activities, or by disagreeable odors.

(e) No pets shall be allowed to run lose within any portion of the Development; provided, however, that pets may be chained or allowed to run within any Lot or Unit owned by the Owner of such pet, if such Lot or Unit is sufficiently fenced to enclose such pets. The provisions of this subsection (e) notwithstanding, however, pets may not be allowed to remain outdoors after dark and must be, after dark, housed within the Living Unit of the Owner of the pet.

(f) No pets shall be allowed to disturb others in any manner whatsoever, or to damage or harm persons or property in any manner whatsoever.

(g) It is understood that the enjoyment of the Properties by all Owners and residents thereof, and the success of this Development, might be jeopardized by violations of these conditions; accordingly, the Directors may by majority vote and after two (2) complaints require that any certain pets be removed from the Properties and the Owner of the Lot or Unit within which such pet is kept shall have a period of thirty (30) days to comply with such decision of the Directors.

(h) The Owner of a Lot or Unit which has a pet kept in or upon it - and not residents or the Owners of any other part of the Properties - shall bear all risks which result from the presence of the pet. Accordingly, such Owner shall be absolutely responsible for adherence by the pet to these conditions and be absolutely liable for any and all injury and damage done by such pet to persons or property, and due care or absence of negligence, or absence of demonstration by the pet of propensities or tendencies to perform certain acts, shall not constitute a defense.

(i) No dog pens or pens for pets shall be permitted within the Development except as approved in advance in accordance with the Architectural Control provisions set forth in ARTICLE VII hereof. "Dog pens" and pens shall include pens with improved or non-improved floors, with fences on top and/or around (with or without enclosed shelters) which are used to encage animals.

(j) No dog houses or other pet housing shall be allowed within the Development, except those approved in advance in accordance with the architectural control provisions set forth in ARTICLE VII hereof.

(k) Although pets may run in daylight hours, in fenced enclosures approved pursuant to the Architectural Control provisions, pets shall not, after sunset and before sunrise, be kept, housed or allowed to run outside the Building (i.e., the Living Unit) of the Owner.

Section 11. Trash, Storage, Disposal. All trash, rubbish, garbage and other materials being thrown away or disposed of by Lot Owners, Unit Owners or residents or Living Unit occupants on the premises must be placed or contained in one or more trash cans or containers purchased by the respective Lot Owners or Living Unit Owners or residents, which cans or containers shall be fly tight, rodent proof, non-flammable, reasonably waterproof and which shall be covered. These cans or containers are to be stored in concealed locations on and within Living Units, and may be placed in open locations only for a period of not in excess of eight (8) continuous hours in any week, so as to facilitate collection. The outdoor placement of or storage of boats, canoes, trailers, materials, equipment or other items on any outside portion of a Lot or Building located thereon shall be prohibited, with the provision that the placement of such functional items as patio and outdoor living equipment within private patios, courtyards, private lawn areas or porches or decks shall be permitted, and that the use of children's bicycles and play equipment and other items approved by the Directors of the Association (but not the storage of same) in such a manner as not to unreasonably interfere with the enjoyment of the Lots, Units and Common Areas by other Owners and residents, shall be exempt from this provision. Because of the hazards of fire, storage of highly flammable or explosive matter is prohibited on any portion of the Properties. Provided, however, this section shall not apply so as to interfere with normal construction methods in the construction and development of any portion of the Properties.

Section 12. Temporary Structures. No structure of a temporary character, shack, shed, tent, dog house, locker, stable, barn, garage or other out building shall be used on any Lot or Unit, on a temporary or permanent basis, unless included in the plans and specifications of the Building as constructed by the Developer or Builder or unless approved under the provisions of the Declaration relating to Architectural Control, or unless used by the Developer in normal construction methods.

Provided, however, that this section shall not apply so as to interfere with normal construction methods in the construction and development of any part of the Properties.

Section 13. Open Fires. No open fires shall be permitted on the individual Lot or Unit premises, with the exception of outdoor grill-type fires used for the preparation of food to be consumed on the premises.

Section 14. Storage Tanks. No above or below ground tank for the storage of fuel may be maintained on any Lot or Unit above the surface of the ground without prior approval in accordance with the Architectural Control Provisions of ARTICLE VII of this Declaration.

Section 15. Automotive Repair Prohibited. No automotive repair or rebuilding or any other form of automotive manufacture, whether for hire or otherwise, shall occur on any Lot, Unit or Common Area hereby restricted; provided, however, that Lot Owners, Unit Owners or occupants shall be permitted to perform ordinary periodic maintenance upon their motor vehicles within enclosed garages upon their respective Lots or Units.

Section 16. Two, Three and Four Wheeled Recreation Vehicles. Motorcycles, mopeds, powered scooters, or powered tricycles, or motor bikes, or two, three or four wheeled recreational vehicles may not be run within the Development, either on streets, roads, or Common Areas or Common Elements; provided, however, that they may be used solely to go to and from work or one's job or to school, and for other normal transportation. No such vehicles shall be used within the Development for purposes of recreation. All such vehicles must have a suitable muffler, so as to provide for quiet operation. In the event of three (3) complaints, the Association's Board of Directors may require that any such vehicle be removed from the Development. This restriction shall apply to Lots, Units, Common Areas, and all public streets abutting upon the Lots and Units, and it is hereby agreed, on behalf of all Lot Owners, Unit Owners and Living Unit Owners and occupants of the Properties that it shall so apply. The provisions of this Section 15 shall also apply to all streets and roads and public streets within the Development or the Parcel, or abutting upon Lots within the Parcel, and all Unit Owners, by accepting a deed for their Unit, agree that it shall so apply, and all occupants of Units agree that it shall so apply.

Section 17. Noxious or Offensive Activities. No illegal, noxious or offensive activities shall be carried on upon any Lot or Unit, or Living Unit, nor shall anything (including but not limited to activities generating odors, noise or unsightly appearances) be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which would substantially interfere with use and enjoyment of neighboring Lots, Units or Living Units, or with the values of such Lots, Units or Living Units.

Section 18. Trash, Storage, Disposal. No Lot or Unit or portion thereof shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste.

Section 19. House Trailers. No house trailer shall be kept or maintained on any Lot for any purposes. No house trailer or mobile home or motor home, or recreational vehicle, or other vehicle of any kind or nature whatsoever, shall be used for human habitation.



Section 20. Outside Improvements, Lawn Ornaments, Vegetable Gardens, Etc. Nothing shall be placed or located within:

- The front yard of any Lot or Unit; or
- The side yard of any corner Lot or Unit,

other than reasonable sidewalks, reasonable driveways, and normal, reasonable grass, ground cover, trees, shrubs, flowers and other normal, reasonable landscaping materials. All driveway, parking spaces and parking areas shall be subject to approval by the Architectural Control Committee, and shall not be installed without the prior written approval of the Architectural Control Committee. It is specifically intended that paving of any portions of Lots or Units, other than for normal, reasonable driveways, shall be prohibited, and specifically that paving of Lots or Units in order to provide exterior parking pads (other than normal driveways) shall be prohibited. No:

a. Statues, monuments, or lawn ornaments shall be permitted; other than that normal temporary displays, such as Christmas and Easter displays, shall be permitted on a short term basis (no more than 60 days) of very short duration (no more than 60 days);

b. No vegetables or grains (including, but not limited to, tomatoes, corn, or other vegetables or cereal grains) shall be planted in any front yard or side yard;

Front yards and side yards shall be restricted to normal sidewalks, normal driveways, unusual and customary grass, trees, shrubs, flowers and other landscaping materials.

Section 21. Fences. No fences shall be permitted, except as approved in accordance with ARTICLE VII of this Declaration.

Section 22. Fire Wood. No fire wood shall be stock piled or stored:

- a. In the front yard of any Lot or Unit;
- b. In the side yard of any Lot or Unit which faces a street;
- c. Within any portion of a Lot or Unit located in front of the plane of the front wall of the Building located on the Lot, as such plane is extended to the side Lot lines of the Lot or Unit;
- d. On any driveway of any Lot or Unit;
- e. On any place on a Lot or Unit which is in plain view of a street.

Section 23. Exterior Storage. Exterior storage of boats, canoes, tricycles, bicycles, other similar vehicles, lawn mowers, tractors, any equipment of any kind or nature whatsoever (other than permanently installed swings or other playground equipment - which can only be located in a rear yard, in any event) is specifically prohibited. The outdoor placement of or storage of boats, canoes,

trailers, materials, equipment or any other items on the outside portion of any Building shall be prohibited; with the provision that the placement of such functional items as patio and outdoor living equipment shall be permitted, and that the use of children's bicycles and play equipment (but not the storage of same) shall be permitted.

Section 24. Additional and Accessory Structures or Improvements, Fences, Pools and Other Ancillary Structures. No additional and/or accessory structure, improvement or fence of any kind or nature whatsoever, nor any tennis court, stable, barn, dog house, dog pen, animal house, animal pen, garage, storage shed of any kind or nature whatsoever, nor any pool, pond, swimming pool, outdoor hot tub, wall, fence or building of any nature whatsoever, nor any shed, post, pole, storage shed, dog house, storage box, garage or any similar item of any nature whatsoever shall be erected upon any Lot or Unit, in addition to the basic Building, garage, patios, walks, decks, porches and similar improvements, or any reasonably similar replacement thereof, shall be placed or erected upon any Lot or Unit without the Architectural Control approval in accordance with ARTICLE VII of this Declaration.

Section 25. Additional Provisions Dealing with Maintenance. All portions of Lots and Units, and Buildings thereon, including all lawns, landscaping, and all Buildings, structures and improvements situated on the Lots shall be maintained in a highly clean, neat, safe, sanitary, debris-free, weed and pest free, attractive and aesthetically pleasing condition, in good repair and condition, free and clear of all unsightly conditions including, but not limited to, weed infestation or growth, dead and dying lawns or vegetation, chipped and peeling paint, brickwork requiring tuckpointing, faded paint, roofs requiring repair, maintenance or replacement, and lawns requiring watering, mowing, weeding, fertilization or replacement. In the event any Lot Owner or Unit Owner shall fail or refuse to maintain his property in as clean, safe, neat, attractive and aesthetically pleasing a condition as is reasonably possible, or if such standards are disputed by the Lot Owner or Unit Owner, the Association's Board of Directors (if it elects to do so), by majority vote, may notify the Lot Owner or Unit Owner of a deficiency and same shall be corrected by the Lot Owner or Unit Owner within fifteen (15) days of the date of notice. If the Lot Owner or Unit Owner fails to correct the deficiency within the time provided, the Association, through its Board of Directors, may correct the deficiency as provided elsewhere in this Declaration, and the costs of correcting same shall be the sole responsibility of the Lot Owner or Unit Owner. While the Developer recognizes that "beauty is in the eyes of the beholder", it is the intention of this Declaration that this Development and the Lots and Units therein be maintained in a conservative, meticulous manner, with complete regard to traditional values and aesthetics.

Section 26. Mowing and Trimming and Lawn and Landscaping Irrigation. All Lots and Units must be mowed, trimmed and maintained by the individual Lot Owners and Unit Owners, regardless of whether or not a Building has been constructed thereon. All lawns, trees, shrubs and other landscaping material located within each Lot must be kept in a properly mowed, trimmed, fertilized, weed free and properly irrigated condition, free of weeds, weed infestation, and dead or dying lawns, trees, shrubs and other landscaping materials.

Section 27. Enforcement. In addition to any rights and remedies provided to the Association, or the Developer, or any Lot Owner or Unit Owner by this Declaration or by law for the enforcement of any of the uses and restrictions established by this Declaration, and in addition to any other rights

and remedies provided for in this Declaration, the Board of Directors of the Association shall, in the event of a violation of any of the restrictions established by this Declaration, including those set forth in this ARTICLE XI, in its sole, absolute and unmitigated discretion, have the following additional rights, powers and authorities:

(a) To deny to any Lots or Units or Living Units or any Owners which are in violation of the use restrictions or which are being used in violation of such use restrictions, any maintenance or other services which the Association might otherwise be required to provide;

(b) To impose upon the Lot, Unit or Living Unit (and the Owners thereof), being used in violation of any of the use restrictions, a special assessment (by way of a fine), in such amount as the Association's Board of Directors, in its sole, absolute and unmitigated discretion shall deem appropriate, not to exceed Two Hundred Dollars (\$200.00) per month during the continuance of the violation. Such fine shall constitute a special Lot, Unit or Living Unit assessment upon the Lot, Unit or Living Unit (and the Owners thereof) subjected to the assessment. Such special assessment shall be payable to the Association, upon demand, and shall be added to (and become a part of), the other assessments to which the Lot, Unit or Living Unit (and the Owner thereof) is subject, and shall be enforceable in the same manner as is provided for the enforcement of other assessments under ARTICLE VI of this Declaration;

(c) To deny to the applicable Lot, Unit or Living Unit, and the Owners, occupants, guests and invitees thereof, access to the Lot, Unit or Living Unit.

(d) To enter upon the Lot or Unit or Living Unit and to abate the violation or remove it.

With the exception of those situations involving a legitimate emergency, posing a danger to the safety of the properties or any portion thereof, or any of the residents thereof, or any guests or invitees therein, the Association's Board of Directors shall not, in the event of a violation or apparent violation of the use restrictions hereinabove set forth in this ARTICLE XI, seek to utilize any of those powers or remedies conferred upon it by subsections (a) through (d) of this Section 26, without first giving written notice of intention to do so to the Owners or occupants (in the event the occupants are different than the Owners) of the applicable Lot, Unit or Living Unit. Such written notice shall specify the violation or apparent violation of the use restrictions hereinabove set forth in this ARTICLE XI, and shall notify the said Owners or occupants of the intention of the Association's Board of Directors to resort to one or more of the powers, authorities and remedies conferred upon it by such subsections (a) through (d). Such notice shall further give such Owners or occupants notice of the time and place at which such Owners or occupants may appear before a meeting of the Association's Board of Directors. At such meeting such Owners or occupants, and any other interested persons, shall be permitted to present such evidence and/or arguments, both for and against the violation or apparent violation of the use restrictions hereinabove set forth in this ARTICLE XI, as shall appear to be reasonably relevant to the issue as to whether the apparent violation exists or has occurred. Evidence presented to the Board may be taken under oath, or not under oath, as the Board, in its discretion, sees fit. Parties (including the Owners) appearing before the Board, shall be entitled to have an attorney represent them, should they desire to do so; provided that all costs and expenses incurred in connection with such attorney's representation shall be paid

by the party utilizing the attorney's services. Formal rules of evidence shall not apply, but the Board shall utilize its best efforts to hear only such evidence, as would appear to be reasonably competent, and as would appear to be reasonably relevant to the issue as to whether the violation or apparent violation of the use restrictions hereinabove set forth has occurred, or is occurring. At the conclusion of the presentation of evidence to the Board, the Owners or occupants of the applicable Lot, Unit or Living Unit, and all other interested parties shall be permitted to present such arguments or statements to the Board as they shall deem proper and appropriate. Following the presentation of the evidence, and such statements or arguments, the Board shall make a determination as to whether the violation or apparent violation exists, or has occurred, and shall determine the fines to be imposed, or the other remedies to be utilized by the Board in attempting to terminate or remedy the violation or apparent violation. All decisions of the Board, in this regard, shall be by majority vote of those members of the Board who are present and voting. Presence of a majority of the Board of Directors shall constitute a quorum for all purposes under this Section 26. As soon as practicable following the decision by the Board, the Board shall notify the Owners or occupants of the applicable Lot, Unit or Living Unit of its decision, in writing and (in the event, the decision is that the breach or violation of the use restrictions has occurred, or is occurring), such writing shall further state the sum of the fine or fines to be imposed, and/or a description of the other remedies or powers to be exercised by the Board in an attempt to eliminate the breach or violation. The occupants or owners of the applicable Lot, Unit or Living Unit shall have five (5) days, from the date of delivery of such written notice to the Lot, Unit or Living Unit, to remedy or eliminate the breach or violation. In the event the breach or violation is not remedied during such five (5) day period, then the action of the Board of Directors, commencing on the sixth (6th) day following the delivery of such notice, shall be in full force and effect, and the fines or other remedies described in the written notice from the Board of its decision (or other remedies described in such decision) shall be in full force and affect, and shall be applied or imposed, beginning with the said sixth (6th) day. Where a Lot, Unit or Living Unit is occupied by a person or persons other than the Owners, the Board of Directors, where it is reasonably practicable to do so, shall notify both the occupants and the Owners of a hearing before the Board of Directors, of the type hereinabove described, and of the Board's decision and intentions, as hereinabove described.

The Developer for each Lot and Unit and Living Unit located within the Property, hereby covenants, on behalf of the Developer and the Developer's successors, and each Owner of any Lot or Unit or Living Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any deed or other conveyance, is deemed to covenant and agree to the provisions of this Section 26, and to the rights, powers, remedies and authorities imposed within the Association's Board of Directors by this Section 26, and to waive any right to recourse against, or damages from, or claims or complaints against, the Association's Board of Directors, or the Association, or any members of such Board of Directors or such Association, which may arise out of any exercise by the Association or its Board of Directors of the rights, remedies, powers and authorities provided by this Section 26. In addition, should the Association, or its Board of Directors, by reason of a violation of the restrictions set forth in this ARTICLE XI, seek from any Court any temporary restraining order, restraining order, injunction, temporary injunction, preliminary injunction or similar relief, all requirements, of any kind or nature whatsoever, that the Association, or its Board of Directors post an injunction bond, or a bond, or a surety bond, or any type of bond of any kind or nature whatsoever, shall be and the same are hereby waived by each Lot Owner and Unit Owner, and by the Developer (on behalf of themselves and on behalf of their successors, and each and all successors in ownership to any Lot

or Unit or Living Unit). The Developer for each Lot and Unit located within the Property hereby covenants, on behalf of the Developer and the Developer's successors, and each Owner of any Lot or Unit or Living Unit by acceptance of a Deed therefor shall be deemed to covenant and agree, that the Association shall, upon presentation to a Court having appropriate jurisdiction of a petition seeking a temporary restraining order against a violation or threatened violation of the use restrictions hereinabove set forth, be fully entitled to receive such temporary restraining order, *ex parte*, without the necessity for the posting of any bond, injunction bond, surety bond or other type of bond of any kind or nature whatsoever. The Developer, on behalf of the Developer and the Developer's successors in ownership of any portion of the properties, and each Owner of any Lot or Unit or Living Unit by acceptance of a Deed therefor, recognize that strict compliance with the use restrictions hereinabove set forth in this ARTICLE XI is of the utmost importance to the protection of the Properties, and the value thereof, and that a breach or threatened breach of said use restrictions would cause substantial damage to the Properties, and the Lot Owners and Unit Owners, and the occupants of the Properties, and would constitute a substantial threat to proper enjoyment of the Lots and Units and Living Units by the Owners and/or occupants thereof. Strict performance of, and observation of, and compliance with, the use restrictions hereinabove set forth in this ARTICLE XI is, therefore, of the essence.

Section 28. No For Rent Signs. No "For Rent" signs or any signs which imply rental activity shall be permitted within the Development for any Single Family Residential Building located within the Development.

Section 29. Storage Tanks. No storage tanks for gas, gasoline or other petroleum products shall be permitted to be located within the Development.

Section 30. Fires and Fireworks. No open fires or fireworks shall be permitted within the Development, or within any Lot or Parcel, other than as permitted by Section 13 of this ARTICLE XI.

Section 31. Trampolines. No exterior trampolines, jumping jacks or similar structures or devices shall be placed at any location within the Development, on the exterior of any Building located on the Development.

Section 32. Seasonal Decorations. Seasonal decorations, such as Christmas decorations, Thanksgiving decorations, or Easter decorations, shall not remain on a Building or Dwelling or Lot or Unit for any period greater than sixty (60) days.

Section 33. No Parking on Turf. No vehicles of any kind (including, but not limited to motor vehicles) may be parked on turf areas or ground areas. Parking is permitted on paved surfaces or City streets.

Section 34. Parking on Streets. No boats, campers, recreational vehicles, motor homes or trailers of any sort may be parked on any Street, or may be parked at any location within the Parcel other than within an enclosed garage or screened structure which has been approved, in advance, by the party holding the Architectural Control Powers under ARTICLE VII of this Declaration. No vehicles that are not regularly used may be parked, other than within an enclosed garage. A vehicle

that is not used regularly, generally at least once within each twenty-four (24) hour period, must be parked in a garage. Inoperative vehicles must be stored within a garage at all times. No vehicles, boats or trailers of any kind, and no motor vehicles of any kind, may be parked in a street in front of a building or dwelling, or at any location within the Development for a continuous period of more than twenty-four (24) hours.

Section 35. Above Ground Swimming Pools. No above ground pools or above ground swimming pools (other than hot tubs, which are fully screen from view and which are approved in accordance with the Architectural Control Powers of ARTICLE VII of this Declaration) shall be placed within the Development.

Section 36. Garages. Garages may not be converted to habitable space for pets or humans, but rather shall be retained solely for parking of vehicles.

## **ARTICLE XII**

### **GENERAL PROVISIONS**

Section 1. Enforcement. The Developer, or the Developer's assignee of the Developer's rights as Developer hereunder, or the Association, or any Lot Owner or Unit Owner, or any Owner of any Lot or Unit, shall have the right to enforce, by any proceedings, at law or in equity, any covenants, restrictions or charges now or hereafter imposed by the provisions of this Declaration. Failure by the Developer, the Developer's assignee, the Association or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed to be a waiver of the right to do so thereafter.

Section 2. Attorney's Fees. If any party shall seek to enforce against any other party any of the provisions of this Declaration, by legal or equitable proceedings, then the prevailing party in such proceedings shall receive from the other party to such proceedings, in addition to such other rights and remedies to which such prevailing party shall otherwise be entitled, such prevailing party's reasonable costs, expenses and attorney's fees incurred in connection with such proceedings, and in the preparation for such proceedings, and shall be entitled to judgment for such attorney's fees, costs and expenses.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 4. Amendment. The covenants, conditions, restrictions, easements, charges and liens of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, and by the Owner of each Lot and Unit subject to this Declaration, and by the Developer, and their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument signed by not less than sixty percent (60%) of the Unit Owners has been recorded, which instrument provides for amending or terminating this Declaration, in whole or in part. During the first twenty (20) year period of this Declaration, it may be amended in whole or in part only by an instrument signed by

the Owners of not less than sixty percent (60%) of the Units. Any amendment so made may not reduce the Developer's Class B voting rights or any of its development rights or Architectural Control rights, and may not otherwise adversely affect the Developer's rights hereunder unless the Developer specifically consents to said amendment. Any amendment made in accordance with this Section 4 shall be binding upon all Lot Owners and Unit Owners. All amendments to this Declaration shall be recorded in Boone County, Missouri.

Section 5. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 6. Language Variation. The use of pronouns or of singular or plural as used herein shall be deemed to be changed as necessary to conform to actual facts.

Section 7. Titles and Captions. The titles or captions of the various provisions of this Declaration are not part of the covenants hereof, but are merely labels to assist in locating paragraphs and provisions herein.

### **ARTICLE XIII** **ANNEXATION**

[THE FOLLOWING PROVISIONS OF THIS ARTICLE XIII TO THE CONTRARY NOTWITHSTANDING, AND ANY OF THE PROVISIONS OF THIS DECLARATION TO THE CONTRARY NOTWITHSTANDING, AS THE DEVELOPER ANNEXES PARCELS OF REAL ESTATE TO THE DEVELOPMENT, THE DEVELOPER MAY AMEND THE EFFECTS OF VARIOUS PARTS OF THIS DECLARATION, AS SAME APPLY TO VARIOUS AREAS OF REAL ESTATE WHICH ARE HEREAFTER ANNEXED TO THE DEVELOPMENT. IN OTHER WORDS, CERTAIN PORTIONS OF THIS DECLARATION MAY OR MAY NOT APPLY TO AREAS OF THE REAL ESTATE HEREAFTER ANNEXED TO THE DEVELOPMENT. CERTAIN PORTIONS OF THIS DECLARATION MAY BE MODIFIED OR AMENDED, AS THEY APPLY TO VARIOUS PORTIONS OF THE REAL ESTATE. FURTHERMORE, THE DEVELOPER HAS NO OBLIGATION TO ANNEX ANY OF THE ANNEXATION REAL ESTATE TO THIS DEVELOPMENT, OR TO DEVELOPER IT IN ANY PARTICULAR FASHION.]

The Developer may bring additional Parcels of real estate under the jurisdiction of the Association, and may make same a part of the Development, without the consent of any Lot Owner or Unit Owner or any Lot Owners or Unit Owners or anyone else; provided, however, that the following terms and conditions shall be satisfied:

(a) Any such additional Parcel made subject to the jurisdiction of this Association must be located either within the Annexation Parcel, or must be a part of the Annexation Parcel, or must be located either adjacent to, or within reasonable proximity to, that Parcel which is initially subject to this Declaration, or the Annexation Parcel.

(b) Any additional Parcel brought under the jurisdiction of the Association or made a part of the Development shall be so brought under the jurisdiction of the Association and shall be made a part of the Development, either by a recorded Supplementary Declaration, or by an Annexation Declaration, or by a recital on the Plat of the Parcel, which shall provide that the additional Parcel is made subject to this Declaration. The Parcel shall, by such Supplementary Declaration, such Annexation Declaration, or by such a recital on the Plat, be deemed to have been made subject to the assessments by the Association, and to this Declaration, and to have been made subject to the Association, and to all covenants, conditions, restrictions, liens, charges and assessments provided for by this Declaration, and all terms, provisions and conditions contained in this Declaration, including any future modifications thereof. The Owners of all Lots and Units contained within such additional Parcels shall be Lot Owners and Unit Owners, and all such Unit Owners shall be Class A members of the Association, if they meet the terms and conditions hereinabove set forth for such Class A membership, and shall be entitled to all rights and privileges of Class A membership. Such additional Parcels shall be deemed to be a part of the Development. All Owners of Units contained within such Parcel shall automatically be members of the Association, and shall be subject to assessment by the Association. All portions of any Parcels annexed to the Development shall be subject to all terms, covenants, conditions, reservations, easements, restrictions, assessments, liens and charges established by this Declaration, and to all duties established by this Declaration.

(c) The provisions of this Declaration and of this ARTICLE XIII to the contrary notwithstanding, the provisions of this Declaration shall not apply to any Real Estate, until such Real Estate is annexed to the Development in accordance with the provisions of this ARTICLE XIII. The Developer shall have no duty or obligation (either expressed or implied) to annex any real estate to the Development.

(d) All Unit and Lot Owners obtaining ownership interests in any Unit or Lot shall be deemed to have automatically consented to annexation to the Development by the Developer of any additional real estate which the Developer, in its sole, absolute and unmitigated discretion, shall elect to annex to the Development.

(e) The provisions of various ARTICLES of this Declaration, as they apply to any portions of the Real Estate hereafter annexed to the Development, may be amended, or may be eliminated, in their entirety. In other words, all or portions of such ARTICLES may or may not apply to real estate hereafter annexed to the Development, or may be amended in their application to real estate hereafter annexed to the Development. Nevertheless, the Lot Owners and Unit Owners of Lots and Units located within those portions of any Real Estate annexed to the Development as to which provisions of this Declaration are modified shall be Lot Owners and Unit Owners for all purposes of this Declaration, and such Unit Owners shall be Class A Members of the Association to the extent that they fulfill the requirements for Class A Members in the Association.

The Developer may, pursuant to its annexation powers reserved to it by this ARTICLE XIII, annex (or not annex, as the Developer, in the Developer's sole, absolute, unlimited, unmitigated and unfettered discretion finds to be appropriate) to the Development provided for by this Declaration (and subject to this Declaration) all or any portion of the Annexation Parcel, including all or any portion of the Commercial Property. If the Developer annexes to the Development provided for by



this Declaration any portion of the Commercial Property, then same may be annexed to this Declaration and the Development, by the Developer, using such form of annexation declaration or plat recital, or similar document, as the Developer finds to be appropriate. Any such document may (but need not):

- i. Require that owners of the Commercial Property or any portion thereof make Contributions to the Association, which shall become Annual Assessments, in the manner described in ARTICLE VI of this Declaration, and which shall bear interest and be enforceable in the manner described in ARTICLE VI of this Declaration;
- ii. Assign to the owners of the Commercial Property or portions thereof a certain number of Class A Memberships in the Association; provided, however, that such assignment must be reasonable and must not confer upon the owners of the Commercial property and the various portions thereof, in the aggregate, the power and authority to elect more than one-third (1/3) of the members of the Board of Directors of the Association;
- iii. Impose upon the Commercial Property any Architectural Control restrictions or powers (including or not including, as the Developer sees fit, those set forth in ARTICLE VII of this Declaration), as the Developer finds to be appropriate;
- iv. Establish such use restrictions upon the Commercial Property or portions thereof as the Developer in the Developer's discretion might find to be appropriate, which such use restrictions may be substantially different than those established by ARTICLE XI of this Declaration;
- v. Confer or not confer upon the Board of Directors of the Association the power and authority to enforce such use restrictions as are imposed upon the Commercial Property or portions thereof, as the Developer, in the Developer's discretion, shall find to be appropriate;
- vi. Confer or not confer upon the Board of Directors of the Association such powers and authorities over the Commercial Property or various portions thereof, including powers and authorities to enforce Architectural Control powers or use restrictions, as the Developer, in the Developer's sole and absolute discretion, shall find to be appropriate.

#### **ARTICLE XIV** **MASTER ASSOCIATION**

It is contemplated that the Association may well be a Master Association for that entire real estate and Parcel which will ultimately constitute the Development, even though various portions of the Development may also be subject to the jurisdiction of other, similar associations, or Condominium Associations. In other words, residents within the Development may be members of the Association provided for hereby, and another association or other associations, including, for instance, a Condominium Association, or Homeowner's Association, applicable to their particular condominium, village or portion of the Development. It is contemplated that the Development may contain a number of separate, subdevelopments, or villages. For instance, there may be condominiums within the Development. There may also be other subdivisions within the

Development, which are subject to the jurisdiction of the Association provided for hereby, and to another homeowner's association.

If the Association provided for hereby is, by virtue of a Declaration applicable to an individual portion of the Development, given specific duties as to such individual portion of the Development, then the entire cost of the performance of such duties applicable only to such individual portion of the Development shall be assessed against the Owners of Units located within such portion. If it is determined that the Association provided for hereby, will perform maintenance, repairs and replacements as to Buildings or improvements located within a given portion of the Development, then the Owners of Units located within such portion shall be responsible for all costs of such maintenance, repairs and replacements. The Association provided for hereby may provide services to various subdevelopments within the Development, provided that all costs of the performance of same shall be assessed solely against the Owners of the Units benefitted thereby.

#### ARTICLE XV

##### LIMITATION UPON COMMON AREAS AND COMMON ELEMENTS

It is possible (although such may or may not be the case) that, hereafter, various "villages" or condominiums or individual subdevelopments will be located within the Development which will be subject to this Declaration. Such individual villages, condominiums, or subdevelopments, may be subject to Declarations (somewhat similar to this Declaration), which are applicable only to such individual villages, condominiums or subdevelopments. Such Declarations ("Declarations") may provide for the creation of Units (which shall be Units of this Development) [for instance a Declaration might establish condominium Units in accordance with the condominium property statutes of the State of Missouri] and Common Elements or Common Areas. Although such Common Areas and Common Elements might otherwise, by virtue of the provisions of this Declaration, appear to be Common Areas or Common Elements of the Development provided for hereby (as hereinabove described in this Declaration), same shall, nevertheless, not be a Common Area or Common Element of this Development, and shall not be owned by the Association. Unless it is specifically provided to the contrary by any Declaration which is applicable only to a portion of the real estate subject to this Declaration [i.e. an individual Condominium Declaration, or individual Declaration for a separate condominium, village or subdevelopment] that the Common Areas or Common Elements subject thereto shall be Common Areas and Common Elements, to be owned and controlled by the Association provided for hereby, such Common Areas and Common Elements shall not be deemed to be Common Areas and Common Elements to be owned, controlled or maintained by the Association provided for hereby, but rather shall be solely Common Areas and Common Elements of the individual condominium, village or subdevelopment, to be owned and/or utilized solely by the Owners of Units located therein. If a condominium is created on any Lot, the Units of that condominium shall be Units of the Development provided for hereby, and the Unit Owners thereof shall be Unit Owners for purposes of this Declaration, and shall be Class A Members of the Association provided for by this Declaration. However, the Common Elements of such condominium shall not be Common Areas or Common Elements of this Development, and shall not be owned by, or maintained, repaired or replaced by the Association provided for by this Declaration. Rather, such Common Areas and Common Elements shall be solely Common Areas and Common Elements for the individual condominium, and the Unit Owners thereof.

**ARTICLE XVI**  
**CONDOMINIUM DECLARATIONS AND DECLARATIONS OF COVENANTS**

A Developer or Builder of a specific area or portion of the Development shall be permitted to adopt, approve and record, as to such area, a separate condominium declaration or declaration of covenants ("Subdeclaration") shall be applicable solely to the Living Units, Units and Lots specifically subject thereto. Such Subdeclarations may amend, as between and among the Owners of the individual Units or Living Units subject thereto only, their respective obligations for providing for maintenance, repair, replacement, servicing and upkeep within the Lots, Units or Living Units subject to such Subdeclarations. Such Subdeclarations shall be binding as between and among the Owners of the Units, Living Units or Lots subject thereto, but such Subdeclarations shall have no effect whatsoever upon the relationship between such Owners and the Association provided for hereby, and the Owners of other Units located within the Development. Each of the Unit Owners, Lot Owners or Living Unit Owners subject to such a Subdeclaration shall continue to have all of their rights and privileges as members of the Association and as Unit Owners as provided for by this Declaration, and shall continue to have all of their obligations to the Association and the Owners of other Lots and Units, as such obligations are set forth in this Declaration, to cause to be performed, or to pay for all items of maintenance, repair, replacement, servicing, upkeep, insurance and taxes which they are obligated to provide or to pay for in accordance with the provisions of this Declaration, and to pay any assessments which they are obligated to pay in accordance with the provisions of this Declaration. If a Condominium or Homeowners Association is established as to a specific portion of the real estate which eventually becomes subject to this Declaration, then the Common Elements or Common Areas of such Condominium or area subject to such Condominium or Homeowners Association shall be deemed to be owned by a single Lot Owner for purposes of this Declaration (i.e. by the Condominium or the Condominium Association or the applicable Homeowners Association) and such Lot Owner (which shall be the Condominium, or the Condominium Association or the Homeowners Association) shall owe to the Association provided for by this Declaration, and all other Lot Owners and Unit Owners within the Development, the duties to perform all maintenance, repairs, replacements, servicing and upkeep as to the Common Areas and Common Elements subject to such Condominium Declaration or such Homeowners Association which are imposed upon the Lot Owners and Unit Owners by this Declaration. [Example: If a Condominium is created within the Development, then the Condominium Association, and the Unit Owners, as a portion of the Condominium, shall owe to the Association provided for by this Declaration, and other Lot Owners and Unit Owners within the Development, the duties to provide for all maintenance, repairs, replacements, servicing and upkeep of the Common Elements of the Condominium, which are imposed by this Declaration, in accordance with the standards established by this Declaration, in order that the Common Elements of the Condominium may be maintained in accordance with the standards established by this Declaration. All Unit Owners of Units within such Condominium shall be Class A Members of the Association provided for by this Declaration, and shall be Unit Owners for purposes of this Declaration. The Common Elements of such Condominium shall not, however, be Common Areas or Common Elements for purposes of this Declaration, and shall be owned and controlled solely by the Unit Owners of Units within such Condominium. Further example: A village or subdevelopment within the Development provided for by this Declaration may be created. Such village or subdevelopment may consist of "zero lot line" Units, and Common Area, which is to be owned, maintained and controlled by an Association created by the Subdeclaration for such village

or subdevelopment. Although the Unit Owners of such Units shall be Unit Owners for purposes of this Declaration, and shall be Class A Members of the Association, the Common Areas and Common Elements described in the Subdeclaration for such village or subdevelopment shall not be Common Areas or Common Elements of the Development provided for by this Declaration, and shall not be owned, or maintained, by the Association provided for by this Declaration. Rather, such Common Areas and Common Elements shall be owned in the manner provided for by the Subdeclaration for such village or subdevelopment, and shall be maintained, repaired and replaced in the manner provided for by such Subdeclaration.] Any Subdeclarations or Condominium Declarations to the contrary notwithstanding, all Unit Owners of Units must maintain their Units in accordance with the standards established by this Declaration, and all Common Areas and Common Elements within the applicable condominium or subdevelopment must be maintained in accordance with the standards established by this Declaration.

Any provisions of this ARTICLE XVI to the contrary notwithstanding, any Condominium Declarations, Plats or surveys which subdivide a Lot or parcel of the Parcel into Units smaller than the entire Lot, or parcel, must be approved, in advance of the recording thereof, by the party which then holds the Architectural Control approval powers under ARTICLE VII of this Declaration; meaning the Developer, the Board of Directors of the Association or its Architectural Control Committee.

## ARTICLE XVII ZERO LOT LINE UNITS

It is possible (although by no means certain) that various Lots hereafter placed within the Development provided for by this Declaration may be intended for a "Zero Lot Line" development, and that separate so-called "Subdeclarations" as to such Lots will not be recorded. If such, hereafter, proves to be the case, then the following provisions shall be in effect, BUT THE FOLLOWING PROVISIONS SHALL BE OF NO EFFECT WHATSOEVER AS TO ANY LOTS OR PORTIONS OF THIS DEVELOPMENT WHICH ARE HEREAFTER MADE SUBJECT TO INDIVIDUAL CONDOMINIUM DECLARATIONS, OR DECLARATIONS OF COVENANTS, OR OTHER SO-CALLED "SUBDECLARATIONS", [THE FOLLOWING PROVISIONS OF THIS ARTICLE XVII SHALL APPLY TO AREAS DESIGNATED AS "ZERO LOT LINE" DEVELOPMENTS IN ACCORDANCE WITH SECTION 3 OF THIS ARTICLE XVII]:

Section 1. Lots Subject to ARTICLE XVII. The following provisions of this ARTICLE XVII shall be in full force and effect as to those Lots committed to "Zero Lot Line" Development in accordance with Section 3 below, which contain more than one (1) Unit, and to the individual Owners of Units within such Lots, and to the Units located within such Lots:

### Section 2. Maintenance.

A. Lawn Maintenance. If the Lot has been subdivided into Units, and if the lawns within such Lot are clearly divisible into lawns for the separate Units (same having been divided into separate lawns by fences, hedges or similar items which delineate separate lawns), then the Unit Owner of each Unit located within such Lot shall provide for all lawn mowing, fertilization, irrigation and replacement for, and all gardening for, and all landscaping, upkeep, maintenance,

repair and replacement for the lawns, trees, shrubs, landscaping and vegetation located within the boundary lines of their separate Units. If the Lot has not been subdivided into Units, or if it has been so subdivided but the lawns within such Lot are not clearly divided into lawns for separate Units by fences, hedges or similar items, then the Owners of all Units located within such Lot shall be required to jointly and equally (at their equal expense) provide for all lawn mowing, lawn fertilization, lawn irrigation and general maintenance, repair, replacement and upkeep for all trees, shrubs, landscaping and vegetation for all lawns, trees, shrubs, landscaping and similar items located within the boundary lines of the Lot; provided, however, that if the Lot is subdivided into Units the Owners of each separate Unit shall be required to provide for any necessary replacement for any lawns, trees, shrubs and landscaping within the boundary lines of their separate Units; and provided further, however, that if the Lot has not been subdivided into Units the Owners of all Units located within the boundary lines of such Lot shall further be required to equally and jointly provide for all necessary repairs and replacements for all lawns, trees, shrubs and landscaping and similar items located within the boundary lines of the Lot. In any event, the Owners of all Units located within the boundary lines of the Lot shall be required to equally and jointly (at their equal expense) provide for all lawn mowing, lawn fertilization, lawn irrigation, lawn maintenance, repair and replacement, and for all landscaping and gardening for, and for all maintenance, repair, replacement and upkeep of trees, shrubs, landscaping and similar items located within any Common Areas situated within the boundary lines of the Lot.

B. Common Areas and Common Elements. If the Lot has not been subdivided into Units, then all portions and aspects of the Lot on the exteriors of the exterior walls and exterior Building surfaces (excluding the exterior walls and exterior Building surfaces) for Buildings and structures situated within the boundary lines of the Lot (those Buildings and structures which house Living Units) shall, for all intents and purposes, be deemed to be Common Areas and Common Elements (provided that same shall be limited Common Areas and limited Common Elements reserved to the sole and exclusive use of the Units situated within the boundary lines of the Lot and the Owners and occupants of such Units and the guests and invitees thereof). If the Lot has been subdivided into Units, then any portion of the Lot not occupied by the Units shall be deemed to be a Common Area or Common Element (including any Common Unit); again provided, however, that same shall be a limited Common Area or limited Common Element intended for the sole and exclusive use of the Units situated within the boundary lines of the Lot, and the Owners of such Unit, and the occupants of such Units, and their guests and invitees. Except as otherwise stated to the contrary in subsection (a) above, the Unit Owners of all Units located within the Lot shall jointly and equally (at their equal expense) provide for all insurance (including liability insurance, and fire and casualty insurance, and other necessary insurance of any kind or type) for, and for all maintenance, repairs and replacements, without limitation (including but not limited to, the irrigation of all lawns, trees, shrubbery and the like, providing snow removal for and maintenance for, and repair and replacement of all driveways, walkways, sidewalks and parking areas, and the maintenance, repair, replacement, painting, cleaning, tuckpointing, replacement and upkeep) for all Common Areas and Common Elements located within the Lot, and all improvements making up same or situated thereon.

C. Maintenance to be Performed by Unit Owners of Units Located Within a Building Within a Lot. The Unit Owners of all Living Units located within a Building (Example: Unit Owners of both Units situated within a duplex structure, or Unit Owners of all Units situated

within a structure which contains a number of townhouse Units or garden apartment Units) situated within the boundary line of a Lot shall be required to jointly and equally, at their equal expense, provide for all cosmetic maintenance (including painting, cleaning and tuckpointing) for all exterior walls, exterior privacy fences, and other exterior surfaces for, or attached to the Building, including those exterior surfaces which cover or are applicable only to a single Unit; provided, however, that if the roofs and roof structures of such Building are clearly divisible by party walls or other structures into separate roofs which cover the individual Living Units, then the individual Unit Owners shall be required to provide for all maintenance, repair and replacement for the roofs and roof structures, and gutters and downspouts, serving and/or covering their individual Living Units. If the roof and roof structures for the Building are not clearly divided by walls or other structures into separate roofs, covering the individual Living Units, then the individual Unit Owners of all Living Units located within the Building shall be required to jointly and equally provide for all maintenance, repair and replacement of all parts of the roof and roof structure for such Building, including those covering only one (1) Living Unit, and for the maintenance, repair and replacement of all gutters and downspouts located upon such Building, regardless of whether the portion of the roof, gutter or downspout requiring service, maintenance, repair or replacement serves only one Living Unit. All Unit Owners of Living Units situated within the Building shall be required to contribute their equal portion of all costs and expenses to be paid by them in accordance with the foregoing provisions of this subsection C at such times as will permit timely payment for all work.

D. Roofs, Roof Structures, Gutters and Downspouts for a Building. If the roof or roof structures for a Building, within a Lot, which contains more than one (1) Unit is clearly divided by walls or other structures into individual roofs, covering the individual Living Units, then the Unit Owners of each Living Unit located within the Building shall be required to provide for all maintenance, repair, replacement and servicing for their individual roofs and roof structures, and all gutters and downspouts serving their individual Living Units. If the roof or roof structure for the Building is not clearly divided by the walls or other structures into individual roofs, covering the individual Units, then the Unit Owners of all Living Units located within the Building shall be required to jointly, and equally, at their equal expense, provide for all maintenance, repair, replacement and servicing of all parts of the roof and roof structure for such Building, including those covering only a single Living Unit, and for all maintenance, repair, replacement and servicing for all gutters and downspouts located upon such Building, including those which service only one (1) Living Unit. The individual Unit Owners shall be required to contribute to all costs to be paid by them in accordance with the foregoing provisions of this subsection D at such times as will permit timely payment for all work.

E. Privacy Fences, Porches, Walkways, Driveways, Sidewalks or Other Improvements Common to More than One Unit. In the event a privacy fence, porch, walkway, driveway, sidewalk, utility line, parking area or other improvement located within the Lot (or located on the outside of the Lot, but designated for the exclusive use of Units located within the Lot), which serves several of the Units located within the boundary lines of such Lot (but less than all of the Units located within the boundary lines of such Lot) then, the above provisions of this Section 1 to the contrary notwithstanding, the Owners of such Units as are served thereby shall be required, jointly and equally, at their equal expense, to provide for all maintenance, repair and replacement for such privacy fence, porch, walkway, driveway, sidewalk, utility line or similar improvement. They shall be required to so contribute in time to allow timely payment.

F. Utility Lines. In the event a sewer line, water line or utility line serving a single Unit requires maintenance, repair or replacement, then the Unit Owner of such Unit shall be required to provide for all such maintenance, repair or replacement, regardless of whether such utility line is located within the boundary lines of his Unit or the Common Area or Common Elements. In the event a sewer line, water line or utility line serving more than one (1) Unit requires maintenance, repair or replacement, then the Unit Owners of the Units served thereby shall be required to jointly, and equally, at their equal expense, provide for all such maintenance, repair or replacement for such utility line, and, in the event they are unable to agree, then the Association shall provide such maintenance, repair or replacement, but the cost of such maintenance, repair or replacement shall be paid for equally by the Unit Owners of Units serviced thereby, and the Association shall have, for such purposes, a right and easement to enter into the Lots and Units for purposes of performing the necessary maintenance, repair or replacement.

G. Right to Reimbursement. Should the Owner of any Unit pay the entire cost of any maintenance, repair, replacement, upkeep, servicing or other item which is, under the foregoing terms of this Section 2 to be shared by the Owners of more than one (1) Unit located within the boundary lines of a Lot, then such Owner shall be entitled, upon demand, to immediate reimbursement from the other Owners of their pro rata portion of the costs and expenses of such maintenance, repair, replacement or upkeep. The Owner entitled to reimbursement shall further receive interest upon the sum of the reimbursement to which he is entitled, from the date of demand, at that rate of interest which is the greater of ten percent (10%) per annum, or the highest interest rate then being charged by Boone County National Bank, on consumer loans, to standard risk, individual borrowers on the date of the demand. Should the Owner entitled to reimbursement enforce his rights to reimbursement by legal proceedings, then he shall, in addition to the sum of the reimbursement and interest thereon, be entitled to recover all of his reasonable costs, expenses and attorney's fees incurred in enforcing his right to the reimbursement.

H. Other Maintenance or Replacements of Improvements on Units. Except, and to the extent that maintenance obligations are collectively imposed upon the Owner of Units located within the boundary lines of the Lot, or collectively upon certain of the said Owners, by the above provisions of this Section 2, maintenance, repairs, replacements and upkeep of all portions of the premises purchased by Unit Owners shall be the responsibility of such Owners, including, but without limitation, the following: lawn mowing, lawn irrigation, lawn fertilization, lawn replacement and landscaping maintenance, repairs and replacements for the entire premises, except to the extent that the obligations for these items are imposed collectively upon all or certain of the Unit owners by the above provisions of this Section 2; replacement of all trees, shrubs, grass, lawns and plantings located within the boundary lines of a Unit with respect to a Lot which has been subdivided into Units; repair and maintenance of all structural portions of the Unit (both interior and exterior), and of all structural portions of walls, surfaces, privacy fences and all structural portions of all walls, surfaces, privacy fences, porches and patios (as hereinabove indicated cosmetic maintenance only for exterior surfaces shall, for those Buildings which contain more than one Unit, be collectively performed by all Owners of all Units located within such Building); repair, maintenance, replacement and snow removal for drives, driveways, walks and walkways located within the boundary lines of the Unit, or which service only one Unit; repair, maintenance and replacement of all utility lines which serve only the one Unit (whether located within the boundary lines of the Unit or Common Area); repair, maintenance and replacement of all glass surfaces,

screens, decks, doors, heating or air conditioning equipment (whether located within the Unit or the Common Areas), structural elements, or structural elements of exterior walls; repair, maintenance and replacement (other than cosmetic maintenance) for all exterior fences within the boundary lines of the Unit; repair, maintenance and replacement of all doors, gates and gate hardware, private patios and decks, window and window hardware and glass surfaces; repair and replacement of all parts of the roof and roof structure and gutters and downspouts for the Unit (except that, as hereinabove indicated, if a roof for a Building containing more than one Unit is not clearly divisible into separate parts, then such roof and all gutters and downspouts for such Building shall be collectively maintained by all Unit Owners of Units located within such Building). Although the Owners of Living Units located within a Building may be required to provide for the painting, cleaning and tuckpointing and other cosmetic maintenance of exterior walls, surfaces and privacy fences for the Living Units or Units, each individual Unit Owner in such Building shall, nevertheless, be responsible for the maintenance of the structural integrity of, and for all maintenance other than purely cosmetic maintenance for the exterior walls, surfaces and privacy fences for his Living Unit, and for all other structural elements of his Living Unit, including floors, foundations, ceilings and walls, and for all maintenance, repair and replacement of all windows and window hardware, glass surfaces, doors and door hardware, screens, screen doors, gates and gate hardware, heating and air conditioning equipment, private patios, decks and privacy fences. If a Lot is divided into Units, even though the Unit Owners within such Lot, collectively, may be required, by the foregoing provisions of this Section 2 to provide for certain lawn mowing, fertilization and irrigation, and for all landscaping, each individual Unit Owner shall be required to provide for all replacements for all lawns, trees, shrubs and other landscaping located within the boundary lines of his Unit which shall be required to maintain his individual Unit in a neat and attractive condition, and free of any dead or dying lawn areas, trees, shrubs or other landscaping materials. Maintenance of all portions of the premises, and all aspects thereof, purchased by the Unit Owners, not specifically imposed collectively upon the owners of several Units located within the boundary lines of a Lot by the foregoing provisions of this Section 2 shall be the responsibility of the individual Unit Owners.

I. All Repairs to be Collectively Performed Are to be Deemed to be Performed by the Association. The Association has certain rights and easements to enter upon the individual Lots and Units for purposes of performing any maintenance, repairs and replacements which are to be performed by it. For purposes of construing the easements in the Association provided for by this Declaration, and for purposes of providing easements over the individual Units and Lots so that the maintenance, repairs and replacements hereinabove described in this Section 2 may be performed, all maintenance, repairs and replacements which are to be collectively performed by the Owners of more than one Unit (i.e. either by the Association or by Owners of all Units located within a Lot, or by Owners of certain Units located within a Lot) shall, for purposes of construing the easements only, be deemed to be repairs, maintenance and replacements to be performed by the Association.

J. Standards of Maintenance and Repair. The individual Unit Owners, and the Unit Owners of certain Units, collectively (where collective maintenance obligations are imposed by the above provisions of this Declaration), shall be obligated to the Association, and to each other, and to all other Unit Owners and Lot Owners within the Development, to cause those obligations imposed upon them by the above provisions of this Section 2 to be performed so as to fully comply with those standards of maintenance, repair and replacements hereinabove provided for in this Declaration.



K. Special Assessments. In the event an Owner or Owners of any Unit or Units located within a Lot fail to perform any repair, replacement or maintenance specifically imposed upon them by the above provisions of this Section 2, or by any of the other provisions of this Declaration, and in the further event the Association's Board of Directors, in its sole, absolute and unmitigated discretion determines that the conditions require maintenance, repair, replacement or service for the purposes of protecting the interests of any Unit Owners, or any other Units, or any other Unit Owners, or for the public safety, or for the safety of residents in or visitors to the Properties or any portion thereof, or to prevent or avoid damage to or destruction of any part, portion or aspect of the value of the Properties or any part thereof, or of any Unit or Units, then the Association shall have the right, but not the obligation, through its Directors, agents and employees, and after approval of a majority of the Board of Directors (no approval by the Members of the Association shall be required), to enter without permission upon or within said Unit or Units and the Lot, and any portion of the Lot or Lots within which same are located, and into the Building or Buildings thereon, and to maintain, repair, replace or service the same. The cost of such maintenance, repair, replacement or service shall constitute a special Unit assessment against each of the Units responsible for performance of the maintenance, repair or replacement, and shall become a part of the Annual Assessment of the Association to which each such Unit or Units are subject and shall constitute a lien against the Unit or Units and the real estate making up same, and shall draw interest, and shall be collectible and enforceable in that manner provided for other assessments by this Declaration.

L. Other Agreements. The Unit Owners of all Units situated within the boundary lines of a Lot shall be permitted, between and among themselves, by a properly recorded Condominium Declaration under the provisions of Chapter 448 of the Revised Statutes of Missouri, or any successors thereto or amendments thereto, or by way of properly recorded Declaration of Covenants (which constitute covenants running with the land), to enter into agreements between and among themselves concerning the performance of all or portions of the maintenance, repairs and replacements for the Units and within the Lot which differ (either substantially or insubstantially) from the foregoing provisions of this Section 2, or from any of the other provisions of this Declaration dealing with maintenance within the Lot; provided, however, that the Unit Owners shall, nevertheless, be obligated to the Association, and to the Owners of all other Units and Lots within the Development, to cause all of those maintenance, repairs, replacements and items of upkeep hereinabove described to be performed, and so as to cause same to be performed in full conformity with the standards of maintenance and repair provided for by this Declaration. Any such instrument or document, to which all of the Owners of Units located within a Lot shall agree, shall constitute covenants running with the land, and shall be binding upon such Owners and their successors, but shall alter only the duties and obligations between and among the Unit Owners (insofar as such duties and obligations are imposed by the foregoing provisions of this Section 2 or to this Declaration), and shall not, in any respects, alter, lessen, mitigate, change or amend the duties and obligations of the Unit Owners, and each of them, to the Association and the Owners of other Units (Owners of Units located on other Lots) for the performance of maintenance, repairs and replacements, as such duties and obligations are hereinabove described in this Section 2 or at other locations in this Declaration.

Section 3. Zero Lot Lines. Certain of the Lots contained within the Development will be Lots intended to contain Buildings intended for occupancy by two (2) or more families in two (2)

or more separate Living Units. It is anticipated that certain of such Lots may be subdivided into Units by a separate Plat for such Lots so as to provide a means for conveying to individual Unit Owners the individual Living Units contained within the Building situated on such Lots. It is anticipated that certain Builders or Owners so building Buildings on such Lots, may find that the provisions provided for by this ARTICLE XVII should be applicable to such Lots. The intention of the Developer in inserting this ARTICLE XVII, and this Section 3, is to provide a vehicle to such Owners and/or Builders (including the Developer) which will provide for an easier method of administering matters with respect to such Lots and the individual Units contained therein. Such Owners and Builders (including the Developer) shall be permitted to take advantage of this ARTICLE XVII, by noting in the plat or survey which subdivides the Lot into Units, or by a separate document recorded in the real estate records, that the Lot is committed to a "Zero Lot Line Development." The designation on any such plat or survey or document that the Development upon the applicable Lot is a "Zero Lot Line Development", shall be deemed to automatically submit the Lot, and the Units and Living Units located thereon, and all Buildings and improvements located thereon, and the Unit Owners of such Units, Living Units, Buildings and improvements, to the provisions of this ARTICLE XVII, which shall become covenants running with the land, and shall run with and bind the real estate, and the Owners thereof, and their successor and successors. There shall be no requirement that any Lots be so subdivided, or that any Lots be committed to a "Zero Lot Line Development", in accordance with the provisions of this ARTICLE XVII. The provisions of this ARTICLE XVII are purely elective and optional. Any Lots which are subdivided into Units, or which contain more than one Unit or Living Unit, and which are not designated as "Zero Lot Line Developments", shall be deemed to be fully subject to the provisions of this Declaration, and to any applicable Condominium Declaration or Subdeclaration.

Section 4. Party Wall. Each wall which is built as a part of the original construction of a Building within a Zero Lot Line Development, and which is placed on the dividing lines between Units on the Lot shall constitute a party wall, and shall be subject to the following provisions:

A. General Rules and Law to Apply. Each wall or fence which is built as a part of the original construction of a home upon the Properties and placed on the dividing line between Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this ARTICLE, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

B. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or fence and the foundations and footings therefor shall be shared by the Owners who make use of same in proportion to such use.

C. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by a fire or other casualty, any Owner who has used the wall may restore it, and if other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

D. Weatherproofing. Notwithstanding any other provision of this ARTICLE, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against the elements.

E. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this ARTICLE shall be appurtenant to the land and shall pass to such Owner's successor in title.

F. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this ARTICLE, such dispute shall, and must be submitted to and determined by a Board of three (3) arbitrators, which shall arbitrate such dispute, and decide same, in the manner provided for by Chapter 435 of the Revised Statutes of Missouri, known as the Uniform Arbitration Act. Such three (3) arbitrators shall be selected as follows: the party desiring to have the matter in dispute submitted to arbitration shall give the other party written notice of such desire and shall name one of the arbitrators in such notice. Within ten (10) days after the receipt of such notice, the other party shall name a second arbitrator, and in case of failure to do so, the party who has already named an arbitrator, may have the second arbitrator selected or appointed by a judge of the Boone County Circuit Court, State of Missouri, and two (2) arbitrators so appointed in either manner shall select and appoint a third arbitrator and in the event the two (2) arbitrators so appointed shall fail to appoint a third arbitrator within ten (10) days after the naming of the second arbitrator, either party may have the third arbitrator selected or appointed by one of said judges, and the three (3) arbitrators so appointed shall thereupon proceed to determine the matter in question, disagreement or difference, and the decision of any two (2) of them shall be final, conclusive and binding upon all parties. In all cases of arbitration, the parties hereto shall each pay the expense of his own attorney's and witnesses' fees, and all other expenses of such arbitration shall be divided equally between the parties. All procedures with respect to such arbitration shall be conducted in the manner provided for by Chapter 435 of the Revised Statutes of Missouri, which Chapter shall be deemed to be in full force and effect, in its entirety, as to disputes to be decided in accordance with this Section 4.

Section 5. Utility Lines. No Zero Lot Line Unit Owner shall be deemed the exclusive Owner of any pipes, wires, conduits or other utility lines contained on his Unit which serves more than his Unit, such items being considered owned in common by such Unit Owner and the Owners of other Units served by the same. Each Unit Owner shall have an easement and reasonable right of access to, over and through the other Unit on the Lot for the purpose of maintenance, repair, restoration or servicing of any utility lines serving his Unit, provided that the exercise of this easement shall be at reasonable times with reasonable notice to adjacent Owner. Each Unit Owner agrees to refrain from negligently or willfully interrupting any utility service to an adjacent Unit on the Lot. The cost of reasonable repair and maintenance of the said utility lines, including sewer lines running from the Unit to the public sewer main, shall be shared equally by the Owners who make use of the said utility lines without prejudice, however, to the right of any such Owner to seek a larger contribution from any other Owner under rule of law regarding liability for negligence or willful acts or omissions.

Section 6. Insurance. Each Owner of a Unit, by acceptance of a deed therefor, whether it is or is not expressed in any such deed of conveyance, covenants and agrees to carry, maintain and timely pay the premium on a policy of insurance on the Building and improvements located on and within his Zero Lot Line Unit, protecting such Building and improvements against damage or

destruction by fire, windstorm, and all other hazards customarily covered under standard extended coverage "all risk" insurance policies in Missouri, for at least the full replacement cost of the Building and improvements located on and within the Unit and Lot, and to exhibit proof to all Owners of all Living Units in the Building that such insurance is in effect upon demand, and, in any event, within the first thirty (30) days of each calendar year. If possible, all Owners of all Living Units within the Building shall be named as additional insureds on the applicable policy. All of the Units on a Lot shall be insured by the same insurance company unless it is impossible or unless it is mutually agreed by all parties and lenders holding security interests that separate insurance companies may provide coverage. In the event that different insurance companies provide coverage of such coverage on Units on any Lot, then each Owner shall be required to provide written confirmation of such coverage upon request to the adjoining Unit Owners and lenders. In the event that a Unit Owner fails to pay his proportionate part of the premium for insurance or fails to pay a premium on his insurance, then after written request, the other Unit Owners on the Lot may pay such insurance premium and shall have the right to be reimbursed on demand from the Owner failing to pay and shall have the right to seek recovery in a Court of Law or equity together with costs of recovery and reasonable attorney's fees. All Unit Owners must maintain in effect general public liability insurance on the premises with limits of liability (including fire legal liability insurance) of at least \$1,000,000 for injury to or death of one or more persons and for property damages.

Section 7. Damage or Destruction. In the event of damage to or destruction of a Unit or improvement on a Unit due to fire or other casualty, the Owner shall repair, rebuild and restore the same to a condition substantially as good as prior to the damage or destruction within a reasonable time from the date that the damage or destruction occurs, and the Owner agrees that all insurance proceeds payable for said damage shall be used to repair, rebuild and restore said Building or improvements so damaged. In the event an Owner fails or refuses to repair, rebuild or restore such Building or improvement as provided herein, the Owners of the remaining undamaged Units on the Lot may compel such repair, rebuilding or restoration to the same condition as prior to the damage by an action at law or equity to enforce this provision and shall have their costs and reasonable attorney's fees in such action. All Owners and mortgages of Units on a Lot in which a Unit is damaged or destroyed may, however, mutually agree upon repair, rebuilding and restoration of the damages or destroyed Unit and upon distribution of any insurance proceeds payable for said damage or destruction. All mortgagees and holders of deeds of trust, in the absence of agreement to the contrary, by all Unit Owners, agree that insurance proceeds shall be used to repair, rebuild and restore, as described above.

Section 8. Maintenance, Repairs, Replacements, Servicing and Upkeep. The Unit Owners of the Units located within a Lot committed to a Zero Lot Line Development in accordance with this ARTICLE XVII shall have, as to each other (and shall be obligated to each other), and shall have as to the Association (and shall be obligated to the Association), and shall have as to Owners of all other Units located in all other Lots (and shall owe to all such other Unit Owners) those duties for all maintenance, repairs, servicing and upkeep conferred upon them by the provisions of this Declaration, and the Owners of each Unit within a Lot committed to a Zero Lot Line Development shall be deemed to have covenanted between and among themselves to perform the maintenance, repairs, servicing and upkeep required of them by this Declaration, and to share the cost of same, in that manner provided for by this ARTICLE XVII.

Section 9. Arbitration. In the event of any dispute arising between Owners on the same Lot committed to a Zero Lot Line Development, such dispute shall be submitted to, and decided by arbitration, in the following manner: such dispute shall, and must be submitted to and determined by a Board of three (3) arbitrators, which shall arbitrate such dispute, and decide same, in the manner provided for by Chapter 435 of the Revised Statutes of Missouri, known as the Uniform Arbitration Act. Such three (3) arbitrators shall be selected as follows: the party desiring to have the matter in dispute submitted to arbitration shall give the other party written notice of such desire and shall name one of the arbitrators in such notice. Within ten (10) days after the receipt of such notice, the other party who has already named an arbitrator, may have the second arbitrator selected or appointed by a judge of the Boone County Circuit Court, State of Missouri, and two (2) arbitrators so appointed in either manner shall select and appoint a third arbitrator and in the event the two (2) arbitrators so appointed shall fail to appoint a third arbitrator within ten (10) days after the naming of the second arbitrator, either party may have the third arbitrator selected or appointed by one of said judges, and the three (3) arbitrators so appointed shall thereupon proceed to determine the matter in question, disagreement or difference, and the decision of any two (2) of them shall be final, conclusive and binding upon all parties. All procedures with respect to such arbitration shall be conducted in the manner provided for by Chapter 435 of the Revised Statutes of Missouri, which Chapter shall be deemed to be in full force and effect, in its entirety, as to disputes to be decided in accordance with this Section 9.

Section 10. Approval by Architectural Control Authority. The provisions of this ARTICLE XVII to the contrary notwithstanding, no Zero Lot Development, Building or structure shall be permitted to be located within the Development, unless approved, in advance, by the Developer, the Board of Directors of the Association, or its Architectural Control Committee, whoever or whichever then holds the Architectural Control approval powers under ARTICLE VII of this Declaration.

### **ARTICLE XVIII** **DRAINAGE EASEMENTS AND DRAINAGE**

Section 1. Drainage Easements. There are references to "Drainage Easements" on the Plat, and Drainage Easements, as shown by the Plat, are hereby established in favor of the City, or any other governmental authority having jurisdiction over the Development, and to the extent not utilized, enforced or maintained by such governmental authority, then (and also, in any event) in favor of the Association. It is intended that the land subject to Drainage Easements, if not utilized for Drainage Easement purposes by the City, or the Association, shall nevertheless be subject to the following requirements:

(a) The land shall be used for reasonable surface water drainage and passage of surface water and storm water;

(b) If any creek, ditch, swale, depression or other normal drainway or drainageway now or hereafter exists within the boundaries of such easements, then same shall not be blocked, or altered without the prior written approval by the Developer so long as the Developer holds Architectural Control powers and thereafter by the Association's Board of Directors or its Architectural Control Committee;

(c) Normal drainage of surface water and storm water over the land subjected to such easements shall not be blocked or interfered with;

(d) The land subject to the Drainage Easements shall be subject to an easement, which authorizes the installation of such drainways, drainageways, swales, ditches or other drainage improvements as is reasonably required to drain the Lots and Units and streets and improvements reasonably drained thereby;

(e) The Developer (or the Board of Directors or Architectural Control Committee, if it then holds architectural control powers) may require, in the Developer's discretion or its discretion, that the Plans and Specifications to be submitted, show and demonstrate the provisions which will be made in order to drain water including storm water and surface water, over, across and within the Drainage Easement (including surface water and storm water passing from other Lots real estate); provided, however, that the Developer, or the Board of Directors or Architectural Control Committee, shall have no liability, obligation or responsibility, under any circumstances whatsoever, for any damages, costs or expenses which arise or allegedly arise as a result of improper drainage caused by the erection of any Buildings or structures or other improvements, or the alteration of the lay of the land, in accordance with any Plans and Specifications approved by the Developer, the Board of Directors or the Architectural Control Committee;

(f) Lot Owners and Units Owners shall be required to diligently cooperate with each other (using the utmost good faith) in order to make reasonable accommodation for drainage of surface water over the land within Drainage Easements, and in order to reasonably share drainage needs;

(g) Where it is reasonable and appropriate, a Lot Owner or Unit Owner of a Lot or Unit imposed with a Drainage Easement must make reasonable accommodations for the drainage of water, and may (if it is reasonable to do so) install or improve ditches, drainways or underground drainage structures (subject, however, to the overriding right of the City or any other governmental authority having jurisdiction over the Development, the public entity to utilize the land subject to the Drainage Easement as a Drainage Easement in such manner as it finds to be appropriate for the drainage of water);

(h) If there is a dispute among Lot Owners or Unit Owners over the utilization of a drainway, or Drainage Easement, or land subject to a Drainage Easement, for drainage purposes, then such dispute may, in the discretion of the Board of Directors of the Association, be resolved by the Association's Board of Directors, and all determinations made by the Board of Directors in this respect shall be binding upon all parties, provided only that such determinations are made reasonably and in good faith;

(i) If there is a substantial swale, drainageway, ditch, creek, drainage structure or similar drainway, which runs within a Drainage Easement, and which is, for any reason, not maintained by the City or any other governmental authority having jurisdiction over the Development, or is not improved by the City or such governmental authority, as required to achieve reasonable drainage of the Lots or Units served thereby, then such drainageway, ditch, creek, swale, drainage structure or similar drainway, to the extent same is not publicly maintained or improved or

replaced by the governmental authority, may, in the discretion of the Association's Board, be maintained, repaired, replaced, altered or improved by the Association, as a Common Element of the Development. Any such substantial swale, drainway, creek, drainageway, ditch or other drainage structure or improvement may, in any event, be maintained, repaired, replaced, altered or improved by the Association or its Board, through the use of the Maintenance Fund, in such Board's discretion. The Association or its Board may also enter into agreements with the City or any other governmental authority having jurisdiction over the Development, or anyone else for sharing of costs of maintenance, repair, replacement, improvement or upgrading of any such drainage or drainway in the Development;

(j) Drainageways, creeks, ditches and drainage structures which serve a substantial number of Lots or Units, as opposed to only a limited number of Lots or Units, shall be considered to be improvements which can be made, maintained, repaired, replaced or improved by the Association, through the use of Special Assessments, as described in Section 7 of ARTICLE VI of this Declaration, so that if a substantial number of Lots or Units are drained by or are served by a substantial drainage, drainway, drainage structure or similar improvement, then the Association and its Board of Directors, in the discretion of the Board, shall have the authority to provide funds for the maintenance, repair, replacement, enhancement, upgrading or improvement of same;

(k) The Association's Board of Directors may, on behalf of the Association and/or the Lot Owners and/or Unit Owners, either individually or in concert with others (including, but not limited to, the City, or any other governmental agency or government), make agreements to extend, alter or improve any drainway, drainageway, ditch, creek, swale or similar drainway, as reasonably required to provide drainage, and pay the cost of same from the Maintenance Fund, or may charge the cost of same as a special assessment against the Lots and Units served thereby;

(l) The Association's Board of Directors may impose Special Assessments upon all Lots and Units, or certain portions thereof, for purposes of improving, repairing or altering the drainageway within any Drainage Easement, if the Association, in its discretion, finds it appropriate that the drainageway be so improved, altered or repaired, and may assess such Special Assessment against all Lots and Units, or against those Lots and Units which the Association's Board of Directors finds to be the Lots or Units that will be benefitted by the improvement, and any such Special Assessment shall become an Assessment, which shall be deemed to have been established pursuant to, and which shall be enforceable in accordance with the provisions of, and which shall bear interest in accordance with the provisions of, ARTICLE VI of this Declaration, and which shall be an Assessment for all purposes under ARTICLE VI of this Declaration;

(m) The Association's Board of Directors may establish such rules and regulations with respect to any Drainage Easement or drainageway which the Association's Board of Directors finds to be proper and appropriate;

(n) If the City elects to improve any drainageway or drainage, then all costs expended by the City, and which are charged to any Lots or Units, may be apportioned and shall be apportioned by the Board of Directors of the Association among the Lots and Units benefitted by (or which the Association's Board of Directors deems to be benefitted by) the improvement, and all such

costs so assessed to each Lot or Unit shall be a Special Assessment and an Assessment which is established and enforceable in accordance with the provisions of ARTICLE VI of this Declaration.

Section 2. Drainage/Surface Water Drainage and Groundwater. Each Lot Owner and Unit Owner of each Lot and Unit must proceed, reasonably, in dealing with drainage of and across, such Lot and Unit, and in dealing with surface water to be drained from and across, such Lot Owner's Lot and Unit. No Lot Owner or Unit Owner shall unreasonably block, interfere with or obstruct the flow of surface water from other Lots and Units, streets and property, across such Lot Owner's Lot or such Unit Owner's Unit. Reasonableness in dealing with groundwater and surface water is required.

Section 3. Responsibility for Drainage. It shall be the responsibility of the Lot Owner and Unit Owner of each Lot and Unit to provide for adequate drainage from such Lot Owner's/Unit Owner's house/dwelling/Building. Neither the Developer, nor any Architectural Control Committee, nor the Association nor its Board, shall have any liability, obligation or responsibility, under the Architectural Control provisions of this Declaration, or otherwise, to assure a Lot Owner or Unit Owner, or any Lot Owner or Unit Owner of any other Lot or Unit, of adequate or appropriate drainage of groundwater, surface water or storm water. The responsibility to provide for adequate drainage shall be the responsibility of the Lot Owner and Unit Owner and his or her Building, and the Builders of all Dwellings, and shall not be the responsibility of the Developer of the Association or its Board of Directors. Nevertheless, all Lot Owners and Unit Owners must proceed reasonably, and in good faith, and must design their Buildings and structures, in accordance with sound design, building and construction practices, so as to provide for adequate drainage thereof, and also so as to not unreasonably obstruct or interfere with drainage of surface water/groundwater from other Lots or through natural drainage ways. The erection of dams or berms to prevent the reasonable flow of groundwater/surface water shall be prohibited.

Section 4. Storm Water Detention Facilities. If any storm water detention facilities are located within any Common Area, then such facilities shall be Common Elements of the Association, and shall be maintained, repaired, replaced and operated by the Association as a part of the Common Elements, and all costs of maintenance, repair, replacement, upkeep and operation of such facility shall be paid by the Association, and shall be paid by the Association from the Maintenance Fund.

Section 5. Regional Storm Water Detention Facilities. If any storm water detention facility is installed within the Development, but is installed within a Common Area established by a Sub-Declaration, as described in ARTICLE XIV of this Declaration, or within a Common Area established by a Sub-Declaration, as described in ARTICLE XV of this Declaration, then, the provisions of this ARTICLE notwithstanding, the Association shall have no duty or obligation to maintain such facility, unless the Board of Directors of the Association, in the exercise of its discretion, elects to assume the obligation to maintain such facility, because of a reasonable conclusion on its part that the maintenance of such facility serves the interests of a substantial number of Lots and Units within the Development, other than the Lots and Units which are subject to such Sub-Declaration and only such Sub-Declaration.

Section 6. Discretion in Board of Association. Since storm water is a matter of substantial concern, the Board of the Association shall have substantial authority and discretion, and is hereby



given substantial authority and discretion, to take all actions which it, on its part, finds to be reasonably necessary to deal with storm water concerns (including storm water detention concerns) which relate to or affect a substantial number of Lots and/or Units within the Development, or the public safety, health and welfare of a substantial number of Lot Owners and Unit Owners, including, but not limited to:

- a. Entering into agreements with the City to deal with storm water concerns or to provide storm water detention facilities or to improve or provide drainageways for storm water or to enhance drainageways for storm water;
- b. Establishing, maintaining, repairing, altering, improving or replacing drainageways located at any location within the Development;
- c. Imposing restrictions on Lot Owners or Unit Owners, in order to provide for the adequate drainage and disposal of or detention of ground water, surface water or storm water;
- d. Imposing reasonable requirements on Unit Owners or Lot Owners with respect to ground water, surface water or storm water or the passage or draining or detention of same.

The Board of the Association may elect to pay all costs of taking any such actions from the Maintenance Fund, or, alternatively, to impose Special Assessments for such costs on all Lots and Units or only on the Lots or Units which are directly affected by any actions which the Board finds to be appropriate.

Section 7. Public Requirements. If the City shall, hereafter, impose upon the Association or the Lot Owners or Unit Owners of a substantial number of Lots or Units, obligations for installation, maintenance, repair, replacement, servicing, upkeep or enhancement of any storm water or ground water drainageway or passageway, or detention facility, then the Association's Board of Directors may, if it in its reasonable discretion finds it appropriate to do so, determine that all costs associated with such actions shall be absorbed by the Owners of all Lots and Units, by way of a Special Assessment for capital improvements, as described in Section 7 of ARTICLE VI of this Declaration. Alternatively, the Association's Board of Directors may elect to levy a Special Assessment against only the Lot Owners or Unit Owners of those Lots and Units which are directly affected by the actions required by the City.

Section 8. Landscaping and Berms. No landscaping or berms shall be installed in such manner as to impede or divert, in any fashion whatsoever, storm water drainage.

Section 9. Gutters and Downspouts. Gutters, downspouts or any means of transporting storm water may not be extended into the rear, front or side building setback requirements as established by the Plat or by any applicable City of Columbia ordinance.

Section 10. Minimum Floor Elevations. The Developer, the Board of Directors of the Association or its Architectural Control Committee, whoever or whichever then holds the Architectural Control Powers under ARTICLE VII of this Declaration, may or may not, as such party finds it appropriate, recommend floor elevations for Buildings to be placed on each Lot within the

Parcel. For example, the following language (or similar language) may appear on a drawing, sketch, plat or survey of a Lot:

"The minimum recommended floor elevation for the Building to be placed on this Lot is \_\_\_\_\_. This elevation is given to help prevent future flooding problems, for the Building located on the Lot and other Buildings located within the Development. This will not prevent leakage due to improper construction, landscaping or drainage on this or surrounding properties.

The recommended drainage structure for this Lot is shown. The Buyer shall hold the Seller harmless in the event a different drainage structure is used for this Lot or if the recommended drainage is altered in any way, or the Building placed on the Lot is not installed at the minimum recommended floor elevation for this Lot."

If a minimum floor elevation is recommended then, such recommendation notwithstanding, the responsibility for properly building the Building, and for placing the Building at the appropriate level, and for providing appropriate drainage to and from the Building, and for the drainage of surface water and ground water to and from the Building and from adjacent properties, shall rest entirely with the Lot Owner and the Lot Owner's Builder, and not with the Developer, the Board of the Association, or its Architectural Control Committee, even if such Developer, Board or Architectural Control Committee shall have made recommendations as to minimum floor elevations, as described above.

Section 11. No Responsibility of Developer. The Developer shall have no liability or responsibility for drainage or ensuring proper drainage to and from Buildings, Residences, dwellings or structures, even though it may make recommendations as to same. All such responsibilities shall lie solely with the Builder and the Lot Owners.

Section 12. Reasonableness. It shall be the obligation of each Lot Owner and each Unit Owner to act in a wholly reasonable fashion in dealing with ground water, storm water, surface water and drainage issues. No Lot Owner or Unit Owner shall take any unreasonable actions which would, in any manner or respects, adversely affect drainage of ground water, storm water or surface water, or any adjacent Lot or Unit.

Section 13. Standing Water. Each Lot Owner or Unit Owner shall take all actions which are reasonably required to prevent the presence thereon of any standing or pooled water for any substantial period of time.

Section 14. Common Areas Between Lots. The Plat of Auburn Hills Plat 2, and other Plats for various portions of the Annexation Parcel which may hereafter be annexed to the Development, provide(s) for certain strips of Common Area between the rears of certain of the Lots. For example, those Lots which front upon Carolina Drive and Buxton Lane have strips of Common Area at the rear of such Lots. Such Common Area is to be owned and controlled by the Association. Such Common Area is intended, generally, to provide for drainage of Lots and Buildings located in the Development. Under no circumstances whatsoever shall a Lot Owner or Unit Owner alter such Common Area or any Drainage, drainway or drainage structure located thereon, or in any manner

or respects interfere with the drainage of ground water, surface water or storm water over such Common Area, or take any actions which would adversely affect drainage of storm water, ground water or surface water through the Common Area, or place any Building, improvements, trash, debris, landscaping, growing materials or other materials of any kind or nature whatsoever within such Common Area.

**ARTICLE XIX**  
**DISPUTE RESOLUTION/LIMITATION ON LITIGATION/MEDIATION AND**  
**ARBITRATION**

If there is at any time a dispute between and among any Lot Owner(s), Unit Owner(s), any Builder(s), the Developer and/or the Association, its Board of Directors, or any member of such Board of Directors or any officer of the Association, or any manager or management company employed by the Association or its Board of Directors, or between or among any of such persons or parties, or between or among any parties or persons bound by the Declaration, which such disputes concern the application of this Declaration, any of the provisions of this Declaration or performance in accordance with any of the provisions of this Declaration, or any of the terms, covenants, conditions, provisions or restrictions of this Declaration, or enforcement of any of same or the application of any of same, or the management of running by the Association or its Board of Directors, or the fairness or propriety thereof [but excluding actions for the enforcement of Assessments or for the enforcement of liens, or charges or Assessments levied in accordance with the provisions of ARTICLE VI of this Declaration], then all such disputes shall be resolved solely in accordance with the provisions of this ARTICLE XIX.

The Developer, on behalf of the Developer and all present and future Lot Owners and Unit Owners, and the Association, hereby agrees that the following provisions of this ARTICLE XIX shall furnish and provide the sole provisions and remedies for the resolution of all such disputes [excluding, however, actions for the enforcement of Assessments or for payment of Assessments, or enforcement of the liens for such Assessments], and agrees that if any such disputes shall ever arise, the following provisions shall be in effect:

**Section 1. Mediation.** The disputing parties shall mutually agree upon a mediator who shall be disinterested, but who shall have reasonable competence and experience in the area of the issues involved in such dispute. If the parties are unable to agree upon such a mediator then such mediator shall be selected as hereinafter described in this Section 1. The mediator shall not have the right to enforce a settlement upon the parties, but instead the parties shall use the mediator to try to crystallize and clarify their respective positions and to participate in mediation discussions which, hopefully, will lead to a resolution of the dispute. In order to invoke this portion of this Agreement and to obtain the mediation of the dispute [and submitting the dispute to mediation shall be mandatory and not discretionary], the disputing parties shall proceed in the following manner:

a. Either such party who is not satisfied with an impasse concerning any issue shall be entitled to require that the pending dispute between the parties be submitted to mediation pursuant to the provisions of this Section 1;

b. A party may invoke the provisions of this Section 1 by sending written notice to the other parties, demanding mediation of a particular dispute. Said notice shall be dated and shall be given in the manner provided for by this Agreement (and if such party is known to be represented by such attorney such notice shall also be given to such attorney). Such notice shall specify the issue or issues to be made the subject of the mediation proceeding.

c. Upon receipt of the notice the parties shall seek to mutually agree upon a mediator who is acceptable to both parties and who has no financial or personal interest in the issues in dispute or in any of the parties and who is not related to any of the parties and who has no financial or personal interest in the outcome of the mediation proceedings. If the parties cannot agree upon such a mediator then such mediator shall be selected by that person who then directs, heads or supervises the Dispute Resolution Service or Alternative Dispute Resolution Service, or any similar service or department of the University of Missouri - Columbia School of Law (by whatever name that service is then known), or of any dispute resolution service then offered by the University of Missouri - Columbia School of Law (hereafter referred to as the "Law School Dispute Resolution Service"), but if such mediator cannot be so selected, then such mediator shall be selected by the office of the American Arbitration Association having jurisdiction over Columbia, Boone County, Missouri ("the AAA"), in accordance with the rules of the AAA then applicable to mediation and arbitration of commercial disputes. All costs and expenses incurred in obtaining the mediator, and all fees to be paid to the mediator, and all reasonable expenses incurred in connection with the mediation (excluding the attorneys' fees and individual expenses of the disputing parties) shall be equally shared by the disputing parties. However, each party shall pay such party's own lawyer or attorney and all expenses personally incurred by such party.

d. As soon after the selection of the mediator as is reasonably possible the parties (and their attorneys, if any), and any other persons whom they request to be present, shall meet with the mediator and shall fully and frankly discuss with the mediator the nature and extent of the controversy or controversies between the parties. Thereafter the parties and the mediator shall bargain in good faith to seek to resolve said disputes in a manner which is acceptable to all parties and reasonable under the circumstances.

e. The mediation shall occur in Boone County, Missouri, unless the disputing Parties agree to mediation elsewhere.

**Section 2. Arbitration.** If the disputing parties are unable, through the mediation process described in Section 1 above, to reach an agreement between themselves on a particular dispute (and only after mediation efforts as described in Section 1 above have failed - such mediation shall be mandatory and not optional) any party to such dispute may demand the arbitration of that dispute by referring the dispute to binding **ARBITRATION**. Such arbitration shall be mandatory and shall be conducted in the following manner:

a. The provisions of this Section 2 shall be applicable to all disputes which are subject to this ARTICLE, and shall be required as to all disputes whatsoever.

b. Either of the Parties on either side of the dispute may demand arbitration by written notice to the other parties on the other side of the dispute. Such written notice ("the Notice of Arbitration" or "the Notice" or "the Demand"), shall specify:

(a) The issues to be arbitrated, which shall be specifically described;

(b) If the matter in dispute is greater than One Hundred Fifty Thousand Dollars (\$150,000), then the identity of an Arbitrator selected by the party serving the Notice ("the First Arbitrator"). [Note: If the matter in dispute is greater than \$150,000, then the party serving the notice must specify the identity of a First Arbitrator in such Notice. If the matter in dispute is \$150,000 or less, then the party serving the Notice may or may not identify a First Arbitrator in the Notice. If the matter in dispute is \$150,000 or less, and the party serving the Notice does not, in such Notice, identify a First Arbitrator, and the parties do not agree upon an Arbitrator, then arbitration shall occur in the manner described in paragraph 9 of this Section 2 of this ARTICLE XIX, as such paragraph 9 appears below; provided that all other provisions of this ARTICLE XIX shall remain in effect; meaning that arbitration shall proceed in accordance with this ARTICLE XIX, but shall be conducted as described in paragraph g. below, before a single Arbitrator.]

(c) A specific statement of the position taken by the party serving the notice as to the issues to be arbitrated;

(d) The contentions as to the facts which support such position; and

(e) A specific description of all documents relating to the issues to be arbitrated upon which the party serving the notice of arbitration intends to rely;

(f) The identification (names, addresses and telephone numbers) of the witnesses whom the parties serving the Notice or Demand of Arbitration expects to call as witnesses.

Such notice of arbitration may be referred to herein as "the Notice of Arbitration" or "the Notice" or "the Demand".

Any provisions of this ARTICLE notwithstanding, if the sole remedy being sought is an injunction, a restraining order, enforcement of a lien, specific performance or other equitable remedy, then the amount in dispute shall be deemed to be less than One Hundred Fifty Thousand Dollars (\$150,000.00), and all such disputes shall be resolved before a single Arbitrator.

c. Within fifteen (15) days following the receipt of the Demand the party upon whom the Demand is served shall serve upon the party who served the Demand a response to the Demand ("the Response"). If the amount in dispute or the matter in dispute, or the damages sought or which might be sought, is (are) One Hundred Fifty Thousand Dollars (\$150,000) or less, and if the party serving the Notice of Arbitration has, therein, identified a First Arbitrator, then the party serving the Response may either agree to Arbitration before the First Arbitrator, or may, in the Response, object to the First Arbitrator, in which event the Arbitrator shall be selected by agreement of the parties and, in the absence of such agreement, in accordance with paragraphs f and g below. If the amount in dispute or the matter in dispute, or the damages sought, or which might be sought is (are) greater than One Hundred Fifty Thousand Dollars (\$150,000), then the party serving the Response shall, in the Response, identify an Arbitrator selected by the party serving the Response ("the Second Arbitrator"), and if the party serving the Response fails, in the Response, to identify a Second Arbitrator, or no Response is served, then arbitration shall proceed before the First

Arbitrator identified in the Notice of Arbitration, but shall otherwise proceed in accordance with the provisions of the rules set forth in Section 2 of this ARTICLE XIX. In the Response, the party serving the Response shall further set forth, specifically and in detail: (a) a description of any additional issues, if any, to be arbitrated in addition to those specified in the Demand; (b) a specific statement of the position of the party serving the Response upon the issues to be arbitrated as described in the Demand and as described in the Response; and (c) the contentions of fact which purportedly support such positions; and (d) a specific description of any documents to be relied upon by the party serving the Response; and (e) the identification (including names, addresses and telephone numbers) of the witnesses to be called by the party serving the Response. As noted in above in this paragraph c, if the matter in dispute is in excess of One Hundred Fifty Thousand Dollars (\$150,000), then the party serving the Response may (but need not), in the Response, indicate that the party serving the Response either agrees to arbitration by the First Arbitrator (in which event the Dispute shall be arbitrated by such First Arbitrator, as a Single Arbitrator, any of the provisions of this Section 2 of this ARTICLE XIX notwithstanding), or may identify a Second Arbitrator.

d. Within fifteen (15) days following receipt of the Response the party upon whom the Response is served may serve a reply to such Response, if such party elects to do so, but no such reply shall be required.

e. The Demand for Arbitration and the Response shall frame the issues to be arbitrated, and the issues shall be limited to those specified in the Demand and the Response. However, with approval of the Arbitrator or Arbitrators, the Demand for Arbitration and the Response may be amended, and same shall be allowed to be amended for reasonable cause. The Arbitrator(s) shall permit amendment with reasonable cause, unless the amendment would cause substantial prejudice to the other party. The Arbitrator(s) shall specifically permit amendments, when justice would reasonably require that such amendments be permitted, if facts which were unknown become known, or witnesses are later identified or documents are later discovered or identified, or if it is otherwise reasonable that a demand or response be amended.

f. Any provisions of this Section 2 of this ARTICLE XIX to the contrary notwithstanding, if in the Notice of Arbitration, the party serving such notice identifies a First Arbitrator, and:

(i) The amount in dispute, or the matter in dispute, or the damages sought or which might be sought is (are) One Hundred Fifty Thousand Dollars (\$150,000) or less, and there is no Response to the Notice of Arbitration, or such Response fails to contain an objection to the First Arbitrator; or

(ii) The amount in dispute or the matter in dispute, or the damages sought or which might be sought, is (are) greater than One Hundred Fifty Thousand Dollars (\$150,000), and no Response is made, or the party making such Response fails to identify a Second Arbitrator,

then, in either such event, arbitration shall proceed before the First Arbitrator identified in the Notice of Arbitration, in accordance with the provisions of this Section 2 of this ARTICLE XIX. Furthermore, the parties can agree upon a single Arbitrator, who will arbitrate the dispute, regardless

of the amount of the dispute, in which event arbitration shall proceed before such agreed upon Arbitrator in accordance with the rules set forth in this Section 2 of this ARTICLE XIX. Furthermore, the parties can agree to amend any of the rules provided for by this Section 2 of this ARTICLE XIX.

g. If the sum in dispute or the matter in dispute, or the damages claimed or sought are One Hundred Fifty Thousand Dollars (\$150,000.00) or an amount less than One Hundred Fifty Thousand Dollars (\$150,000.00), then the Arbitration shall, and must, be conducted before a Single Arbitrator. If the Parties agree upon such Single Arbitrator, or the party serving the Response fails to object to the First Arbitrator, if any First Arbitrator is identified in the Notice of Arbitration, then Arbitration shall proceed before the agreed upon Arbitrator, or the First Arbitrator, as the case may be, and such Arbitration shall proceed in accordance with the provisions of the rules hereinafter provided for in this Section 2 of this ARTICLE XIX, except to the extent that the parties shall otherwise agree. If the amount in dispute, or the matter in dispute, or the damages claimed or sought, are One Hundred Fifty Thousand Dollars (\$150,000), or a lesser amount, and either:

(a) The party serving the Notice of Arbitration fails to specify, in such Notice, the First Arbitrator, and the parties are unable to agree upon an Arbitrator; or

(b) A First Arbitrator is identified in the Notice of Arbitration and the party serving the Response to such Notice objects to the First Arbitrator, and the parties are unable to agree upon an Arbitrator,

then, in such event, Arbitration shall proceed and be conducted, through the auspices of the Law School Dispute Resolution Service, before an Arbitrator selected by the head of, the director of, or the supervising official of such Law School Dispute Resolution Service, or if Arbitration cannot be conducted before such Law School Dispute Resolution Service, then such Arbitration shall be conducted through the AAA, through the auspices of the AAA office having jurisdiction over Columbia, Boone County, Missouri, and shall be conducted pursuant to the rules and regulations for resolution or arbitration of commercial disputes of the AAA, as such rules shall then be in effect (provided that such rules shall, to the extent inconsistent with the provisions of this Section 2 of this ARTICLE XIX be modified to comport with the provisions of this Section 2 of this ARTICLE XIX). If such Arbitration proceeds before the AAA, then such Arbitration shall be conducted pursuant to any rules of the AAA for arbitration of smaller commercial disputes, on an expedited basis. If the Arbitration is to be conducted before the AAA, then the Arbitrator shall be selected by the AAA, in accordance with the rules of the AAA for the arbitration of commercial disputes; provided, however, that to the extent rules of the AAA for arbitration of small commercial disputes on an expedited basis, the dispute shall be arbitrated in accordance with such rules, on an expedited basis; provided that all such rules shall be modified, to the extent inconsistent with the provisions of any of the rules of arbitration set forth in this Section 2, so as to be consistent with the provisions of the rules set forth in this Section 2 of this ARTICLE VIII.

h. If the matter in dispute or amount in dispute is greater than One Hundred Fifty Thousand Dollars (\$150,000.00), or the damages sought are greater than One Hundred Fifty

Thousand Dollars (\$150,000.00), and if the party upon whom the Demand is served fails to identify a Second Arbitrator in the Response, or no Response is made, then the Arbitrator shall be the First Arbitrator and Arbitration shall proceed before a Single Arbitrator, the First Arbitrator, in accordance with the rules specified in this Section 2 of this ARTICLE XIX.

i. If the matter in dispute or amount in dispute is greater than One Hundred Fifty Thousand Dollars (\$150,000.00), or the damages sought are greater than One Hundred Fifty Thousand Dollars (\$150,000.00), and if the party upon whom the demand is served identifies a Second Arbitrator in the Response, and if, within ten (10) days following selection of the Second Arbitrator in the manner hereinabove described in this Section 2 of this ARTICLE XIX, the parties are unable to agree upon either:

– A Single Arbitrator before whom the Arbitration shall be conducted;

or

– The identity of a Third Arbitrator, who shall sit with the First Arbitrator and the Second Arbitrator as a panel of Arbitrators,

then the First Arbitrator and the Second Arbitrator shall meet, and shall select within a period of twenty (20) days following the service of the Response as described in paragraph c above, a Third Arbitrator. If the Two Arbitrators selected in the manner described above fail to select a Third Arbitrator within such time period, then the Third Arbitrator shall be selected by the AAA, and by its office having jurisdiction over Columbia, Boone County, Missouri, and shall be selected in that manner provided for the selection of such Arbitrator by the then effective rules for arbitration of complex commercial disputes before the AAA. In such event, the arbitration shall be conducted before the AAA. Such rules of the AAA shall, however, to the extent inconsistent with the provisions of this Section 2 of this ARTICLE XIX, be modified to comport with the provisions of this Section 2 of this ARTICLE XIX.

j. If there is a Single Arbitrator, then all determinations shall be made by the Arbitrator. If there are three (3) Arbitrators, then all decisions shall be made by their Majority Vote.

k. If a Single Arbitrator is selected or is to be used, then such Arbitrator shall be an Arbitrator to which the matter described in the Demand and Response and any Reply to the Response shall be submitted at a hearing, to be held as soon as practicable after the Arbitrator has been selected, and the Demand and Response and any Reply to the Response have been submitted. A decision of such Single Arbitrator shall be binding upon the parties. If three (3) Arbitrators are selected, then such Arbitrators shall constitute a panel of Arbitrators, to which the matter described in the Demand and the Response and any reply to the Response shall be submitted at a hearing, to be held as soon as practicable after the Arbitrators have been selected. A decision of a majority of such panel shall be binding upon the disputing parties. The disputing parties may (but need not) be represented at the hearing of (the) Arbitrator(s) by counsel; provided, however, that the parties shall be responsible for paying all of their attorney's fees incurred in such representation, unless the Arbitrator(s) find the position of a party to be unreasonable or to have been asserted in bad faith, in which event the Arbitrator(s) may award the other party reasonable attorneys fees. Each party shall be responsible for paying the fee of the Arbitrator selected by such party. The parties shall share,



equally, all fees of any Single Arbitrator, and all fees of the AAA, and all fees of any Third Arbitrator (if three Arbitrators are used) and any other expenses of the Arbitration (other than fees for their individual lawyers and expenses associated with presenting each party's case); except to the extent the Arbitrator(s) determine(s), reasonably, that it is equitable that the losing party pay the fees of the Third Arbitrator and any of the other expenses of the Arbitration, because the position of the losing party is found to be substantially without merit or to not be based on substantial facts, or is found to have been unreasonably asserted or to have been asserted in bad faith.

1. Any provisions of this Section 2 of this ARTICLE XIX notwithstanding, and except to the extent the disputing parties shall otherwise agree, any Arbitrator selected in the manner described above (including an Arbitrator selected by the AAA) must, by virtue of training, education or experience, have some reasonable degree of knowledge, experience or expertise in the area of the issues to be arbitrated; provided, however, that regardless of such expertise, any:

- (a) Licensed attorney at law in the State of Missouri; or
- (b) Present or retired professor of law, assistant or associate professor of law or instructor of law; or
- (c) Recognized Member of a panel of arbitrators of the AAA or similar alternative dispute resolution organization; or
- (d) Any Arbitrator designated to serve as such by the AAA; or
- (e) Person who regularly practices as an Arbitrator, or mediator; or
- (f) Retired state court or federal court judge or magistrate,

shall be a qualified Arbitrator.

m. The Arbitration shall occur in accordance with the rules set forth in this Section 2 of this ARTICLE XIX; provided, however, that if the Arbitration is to be conducted before or by the AAA, then the Arbitration shall proceed in accordance with the rules for arbitration of commercial disputes of the AAA then in effect; provided, however, that such rules of the AAA, to the extent inconsistent with any of the provisions of the rules set forth in this Section 2 of this ARTICLE XIX, shall be modified to comport with the provisions of the rules set forth in this Section 2 of this ARTICLE XIX. The rules set forth in this Section 2 of this ARTICLE XIX shall govern over any inconsistent rules of the AAA. The Arbitrator(s) shall have control of all proceedings, and shall specify and provide for reasonable procedures for discovery, including requirements for production of documents, further identification of witnesses and documents, the interviewing and deposing of witnesses, and other reasonable pre-hearing discovery procedures. The Arbitrator(s) shall have full and complete authority to dispose of the issues, by proceedings equivalent to motions for summary judgment, if controlling law would provide for such disposition. The Arbitrator(s) shall have full and complete authority to establish reasonable dates and times for hearings, and to extend the dates and times for hearings which would otherwise be specified by law, and to establish reasonable rules for all proceedings. While formal Rules of Evidence shall not be

in place, all evidence must be reasonably competent and material. Any decision must be supported by substantial and competent evidence. The Arbitrator(s) shall have the authority to authorize that testimony be provided, by witnesses, either personally, or by deposition, or (if the Arbitrator(s) finds it appropriate) by sworn affidavit.

n. Awards shall include the Arbitrator(s) written, reasoned opinion. Resolution of the dispute shall be based solely upon the applicable law governing the claims and defenses pleaded, and the Arbitrator(s) may not invoke any basis (including, but not limited to, notions of "justice" or "just cause"), other than controlling law. Where the provisions for this Agreement are applicable or are in dispute, such provisions must be fairly and reasonably construed, in accordance with applicable law, and must be applied, and this Agreement must be followed. The Arbitrator(s) may not provide for any relief or remedy, other than that which could be granted by a court of competent jurisdiction. Any decision of the Arbitrator(s) must be supported by substantial and competent evidence. The provisions of this paragraph notwithstanding, the following provisions shall also be in effect:

(a) Arbitration proceedings under this Agreement may be consolidated with arbitration proceedings pending between other Parties if the arbitration proceedings involve common issues of law or fact. Consolidation will be by the order of the Arbitrator(s) in any of the pending cases, or if the Arbitrator(s) fail(s) to make such an order, any Party may apply to any court of competent jurisdiction for an order, and the other Parties to this Agreement consent to such an order.

(b) A Party, without inconsistency with this Agreement, seek from a court any interim or provisional relief (such as a temporary restraining order) that may be necessary to protect the rights or property of that Party, pending the establishment of the Arbitration or pending the Arbitrator's(s') determinations of the merits of the dispute, controversy or claim. For example, courts of competent jurisdiction may enter temporary restraining orders or preliminary injunctions to preserve the status quo, pending the outcome of the Arbitration.

(c) The Arbitrator(s) shall have authority to issue temporary restraining orders, preliminary injunctions, and other temporary and preliminary orders, and to issue preliminary and other equitable relief, and to grant equitable relief of any kind or nature whatsoever.

(d) The Arbitrator(s) shall have the authority to award any remedy or relief that any court of competent jurisdiction could order or grant, including, without limitation, specific performance of any obligation created under this Agreement, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process, except that the Arbitrator(s) shall not have authority to award punitive damages or any other amount for the purposes of imposing a penalty as opposed to compensating for actual damages suffered or loss incurred. The award shall be in writing, signed by the Arbitrator(s), and shall include a statement regarding the disposition of any claim.

o. The exclusive location for any arbitration proceedings shall be in Boone County, Missouri, unless the Parties agree otherwise.

p. All decrees or judgments of the Arbitrator(s) shall be enforceable by the Circuit Court of Boone County, Missouri, which has jurisdiction over Columbia, Boone County, Missouri.

q. All proceedings with respect to the Arbitration shall be conducted in Columbia, Boone County, Missouri.

r. Under no circumstances will any action for malicious prosecution or abuse of process, action or cause of action, claim or suit lie or be based upon, or be brought by reason of an arbitration result which favors either party. Arbitration is encouraged. Therefore, the parties waive all rights to bring claims for malicious prosecution, abuse of process or any similar claims, which might otherwise arise out of a demand for arbitration or the results of arbitration.


s. In the alternative to the arbitration procedures hereinabove described in this Section 2 of this ARTICLE XIX, the Parties may agree to conduct the arbitration before the AAA, through its offices having jurisdiction over Columbia, Boone County, Missouri, using the then current rules for arbitration of commercial disputes, in which event arbitration shall be conducted in accordance with the then current rules for arbitration of commercial disputes of the AAA.

t. The decision of the Arbitrator(s) shall be binding upon the parties; provided, however, that appeal may be had in accordance with the provisions of Chapter 435 RSMo., the Uniform Arbitration Act as it is in effect in the State of Missouri, and as it is from time to time amended, with such appeal to be to the Circuit Court of Boone County, Missouri, which has jurisdiction over Columbia, Boone County, Missouri.

IN WITNESS WHEREOF, WWB Development Co., LLC, a limited liability company of the State of Missouri, the above named Developer and the owner of the Parcel, has caused this Declaration to be executed in its name and on its behalf by Robert A. Wolverton, its Manager, on the day and year hereinabove first set forth.

**THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.**

**WWB DEVELOPMENT CO., LLC**

By:   
Robert A. Wolverton, its Manager

Exhibits:

Exhibit A - Articles of Incorporation

Exhibit B - Bylaws

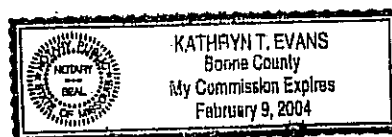
Approval & Subordination of Deed of Trust

STATE OF MISSOURI     )  
                                   ) SS  
 COUNTY OF BOONE     )

On this 26<sup>th</sup> day of August, 2002, before me, the undersigned, a notary public in and for the State of Missouri and County of Boone, at my office in Columbia, Missouri, personally appeared Robert A. Wolverton, to me personally known, who being by me first duly sworn did state and acknowledge that WWB Development Co., LLC is a limited liability company of the State of Missouri; that he is the manager of such limited liability company; that as such he executed the foregoing document in the name of and on behalf of the said limited liability company; and that the foregoing documents constitutes the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto affixed my hand and notarial seal at my office in Columbia, Missouri on the day and year hereinabove first written.

Kathryn T. Evans  
Kathryn T. Evans, Notary Public  
Boone County, State of Missouri  
 My commission expires Feb 9, 2004.



**APPROVAL AND SUBORDINATION BY HOLDER OF FIRST MORTGAGE  
TO DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS OF  
AUBURN HILLS, AND TO PLATS FOR AUBURN HILLS, AND MODIFICATION OF  
DEED OF TRUST**

THIS APPROVAL AND SUBORDINATION, AND THIS MODIFICATION OF DEED OF TRUST, is attached to the "Declaration of Covenants, Easements and Restrictions of Auburn Hills, a Subdivision of Boone County, Missouri," dated the 26 day of August, 2002 ("the Declaration"), which such Declaration was executed by WWB Development Co., LLC, a Missouri limited liability company, as the Developer (the said WWB Development Co., LLC being referred to herein as "the Developer"). This document is executed by the said Developer and by First National Bank and Trust Company, a banking corporation organized under the laws of the United States, with its principal place of business located in Columbia, Boone County, Missouri ("the Bank").

**RECITALS**

The Bank is the holder of one or more deeds of trust recorded in the Records of Boone County, Missouri as follows:

Deed of Trust recorded October 2, 2001 in Book 1791 at Page 247 of the Real Estate Records of Boone County, Missouri.

The said Deed of Trust or Deeds of Trust, whether or not more than one, shall be hereinafter referred to (collectively if more than one) as "the Deed of Trust."

The Bank desires to facilitate the development of the Developer's Land, which is described in the Background Recitals of the foregoing Declaration, including the initial Parcel of such Land which is initially subjected to the foregoing Declaration (i.e., those portions of the Developer's Land platted as Auburn Hills Plat 1 and Auburn Hills Plat 2 by the Plats of Auburn Hills Plats 1 and 2, as described in the foregoing Declaration), and any portions of the Annexation Parcel hereafter annexed to the Development provided for by the Declaration.

The Bank, therefore, is willing to enter into an agreement with the Developer pursuant to which the lien of the Deed of Trust shall, as to Auburn Hills Plat 1 and Auburn Hills Plat 2 (and all Land contained therein), and as to each portion of the Annexation Parcel hereafter annexed to the Development and subjected to the Declaration pursuant to the provisions dealing with Annexation set forth in the Declaration, shall be subordinated to the Declaration, and all of its terms, covenants, conditions and provisions, and to each of the Plats of Auburn Hills Plat 1 and Auburn Hills Plat 2 and any other Plat hereafter recorded as to any portion of the Annexation Parcel which is subjected to the Declaration, the same as though the said Declaration and each of the said Plats have been recorded prior to the recording of the Deed of Trust.

NOW, THEREFORE, in view of the foregoing Recitals, and in order to facilitate the Development and sale of the Developer's Land, and for good and valuable consideration to the Bank paid and delivered, the receipt and sufficiency of which are by the Bank hereby acknowledged and

confessed, the Bank hereby states, covenants, declares and agrees that the Declaration, and each of the Plats of Auburn Hills Plat 1 and Auburn Hills Plat 2, and each Plat for any portion of the Annexation Parcel hereafter annexed to the Development provided for by the Declaration, and subjected to the Declaration, are hereby approved, and that the Deed of Trust shall, as to all of Auburn Hills Plat 1 and Auburn Hills Plat 2 (and the Land and all Lots contained therein), and as to any portion of the Annexation Parcel hereafter annexed to the Development and subjected to the Declaration, in accordance with those provisions of the Declaration dealing with Annexation, be subject to, and shall be subordinated to (and the Deed of Trust is hereby made subject to and subordinated to) the Declaration (and all of its terms, covenants, conditions and provisions) and each of such Plats, the same as though the said Declaration and each of the said Plats (both existing and future) had, as to all Land subject thereto, been recorded prior to the recording of the Deed of Trust.

In order to induce the Bank to execute this Agreement, the undersigned Developer, acting by and through its undersigned Manager, who warrants and represents to the Bank hereby that he is lawfully authorized to enter into this Agreement on behalf of such Developer, agrees with the Bank, which is the beneficial holder under the Deed of Trust, that the Deed of Trust (and each Deed of Trust hereinabove described, if more than one, all being collectively referred to herein as "the Deed of Trust") shall be and it is (they are) hereby amended and supplemented, in order to subject to the lien of thereof (in addition to, and as a part of the Property and Premises which are the subject matter of the Deed of Trust) the following additional property, rights, titles and interests, which shall be deemed to be a part of, and shall run with, all of the Land and real estate and property which is at any time subject to the Deed of Trust [with the following description to be treated as if appearing immediately following the legal description of all Land specifically described in the Deed of Trust]:

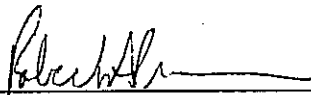
"Together with all Class B memberships now in existence or hereafter coming into existence, and all rights to Class B memberships, and all Class B voting rights now in existence or hereafter coming into existence, attributable to the real estate hereinabove described, or any parts thereof, now or hereafter held by party of the First Part, WWB Development Co., LLC (Grantor), with respect to Auburn Hills Homes Association, a not-for-profit corporation of the State of Missouri, the Association named in and provided for by the Declaration of Covenants, Easements and Restrictions of Auburn Hills, executed by WWB, as the Developer, and dated the 26 day of August, 2002, and recorded in the Real Estate Records of Boone County, Missouri ("the Declaration"), and together with all rights of the Developer, as described in the Declaration, of every kind, nature or description whatsoever, without limitation, including but not limited to Class B memberships and Class B voting rights and all Architectural Control rights, powers and authorities vested in the Developer by the Declaration, with respect to all real estate described in and conveyed by and which is the subject matter of this Deed of Trust; and further together with all rights of the Developer with respect to the presently existing or hereafter created Class B memberships and Class B voting rights in the Association described in the Declaration, which are attributable to any and all Lots and other parcels of real estate conveyed in or which are the subject matter of this Deed of Trust (and all portions thereof and subdivisions thereof), and including all presently existing or hereafter created rights as the Developer, as described in the Declaration, and any modifications or amendments thereof, and further including but not limited

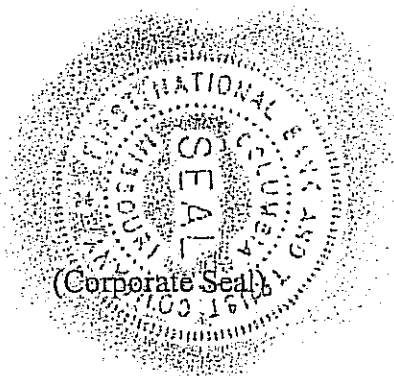
to all rights to elect directors of the Association and all Architectural Control Rights provided for by the Declaration, and all Class B memberships provided for by the Declaration; all such memberships, rights, Class B votes, Class B voting rights, Class B memberships and rights as the Developer and all such Architectural Control authority being hereby assigned to the Party of the Second Part identified in this Deed of Trust, the Trustee, in trust, for the purposes herein expressed, all of same to be deemed to constitute a part of the real estate described in this Deed of Trust, and to run with the said real estate, and all of which may be sold by the Trustee (the Party of the Second Part of this Deed of Trust), together with, and as an attachment to and as a right, title and interest accruing to, the real estate."

It is the intention of the Developer and of the undersigned Bank that the Deed of Trust shall be hereby modified in order to include, as a part of the subject matter of the property that is subjected to the Deed of Trust and the lien thereof, in addition to the land and real estate described in such Deed of Trust, all of the Developer's Class B memberships, Class B voting rights, Architectural Control Powers and other rights as the Developer, all as hereinabove described, in order that, if there is a default under the Deed of Trust and a conveyance of the Property pursuant to the Deed of Trust, or a conveyance in lieu of foreclosure, the purchaser at foreclosure, or the grantee of the deed in lieu of foreclosure, and their successors and assigns, shall become, and shall stand in the lieu, place and stead, of the "Developer" under the Declaration, and shall have all rights, privileges, powers and authorities conferred upon the Developer by the Declaration, as to all Land which is the subject matter of such foreclosure and sale at foreclosure or which is the subject matter of such deed in lieu of foreclosure.

IN WITNESS WHEREOF, WWB Development Co., LLC, the above-named Developer and the Grantor under the above described Deed(s) of Trust, and the above named Bank, have executed this document effective this 26 day of August, 2002, with the said WWB Development Co., LLC executing this document acting by and through its Manager, Mr. Robert A. Wolverton, who warrants and represents hereby that he is lawfully authorized to execute this document in the name of and on behalf of the said Developer and that this document represents the binding act, contract and deed of the said Developer.

**DEVELOPER:**  
**WWB Development Co., LLC**

By:   
 Robert A. Wolverton, its Manager



**BANK:**  
**First National Bank and Trust Company**

By: Steve Tanzey  
Steve Tanzey  
 its SR. VICE PRESIDENT

ATTEST:

Cherie Crust  
Cherie Crust  
 its \_\_\_\_\_ secretary

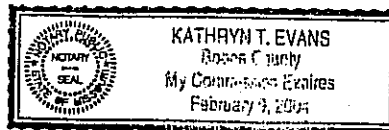
STATE OF MISSOURI     )  
                                       ) SS  
 COUNTY OF BOONE     )

On this 26<sup>th</sup> day of August, 2002, before me, the undersigned, a notary public in and for the State of Missouri and County of Boone, at my office in Columbia, Missouri, personally appeared Robert A. Wolverton, to me personally known, who being by me first duly sworn did state and acknowledge that WWB Development Co., LLC is a limited liability company of the State of Missouri; that he is the manager of such limited liability company; that as such he executed the foregoing document in the name of and on behalf of the said limited liability company; and that the foregoing documents constitutes the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto affixed my hand and notarial seal at my office in Columbia, Missouri on the day and year hereinabove first written.

Kathryn T. Evans  
Kathryn T. Evans, Notary Public  
Boone County, State of Missouri  
 My commission expires Feb 9, 2004

STATE OF MISSOURI     )  
                                       ) SS.  
 COUNTY OF Boone     )



On this 27<sup>th</sup> day of August, 2002, before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared Steve Tanzey, to me personally known, who being by me first duly sworn, did state and acknowledge that he or she was Sr Vice Pres. of First National Bank and Trust Company, a banking corporation, that as such he or she had executed the foregoing document in his or her said capacity, and that he or she had executed the foregoing document in the name of and on behalf of



such Bank by authority granted to him or her by such Bank's shareholders and Board of Directors; and that the foregoing document was executed as the free act and deed of said Bank.

IN TESTIMONY WHEREOF, I have hereunto affixed my hand and notarial seal on the day and year hereinabove first written.

Janice M. Payne  
Janice M. Payne, Notary Public  
Copier County, State of Missouri  
 My commission expires: 11-8-02.

JANICE M. PAYNE  
 Notary Public - Notary Seal  
 State of Missouri  
 County of Copier  
 My Commission Expires 11/08/2002

**ARTICLES OF INCORPORATION**  
**AUBURN HILLS HOMES ASSOCIATION,**  
**A GENERAL NOT-FOR-PROFIT CORPORATION**

HONORABLE MATT BLUNT  
 SECRETARY OF STATE  
 STATE OF MISSOURI  
 JEFFERSON CITY, MISSOURI 65101

We, the undersigned,

<u>Name</u>	<u>Street</u>	<u>City, State &amp; Zip Code</u>
Robert A. Wolverton	2106 Clemens Drive	Columbia, MO 65202
Robert L. Walters	2704 Vail Drive	Columbia, MO 65203
Lawrence Bulgin	301 Vieux Carre Court	Columbia, MO 65203

being natural persons of the age of eighteen (18) years or more and citizens of the United States, for the purpose of forming a corporation under the "General Not-For-Profit Corporation Law" of the State of Missouri, do hereby adopt the following Articles of Incorporation:

1. Name. The name of the corporation is: AUBURN HILLS HOMES ASSOCIATION.
2. Mutual Benefit Corporation. The corporation is a mutual benefit corporation.
3. Registered Office and Agent. The address of its initial Registered Office in the State of Missouri is: 2106 Clemens Drive, Columbia, Missouri 65202, and the name of its initial Registered Agent at said address is: Robert A. Wolverton.
4. First Board of Directors. The first Board of Directors shall be three (3) in number, which shall serve until the first annual meeting of the Corporation, their names and addresses being as follows:

<u>Name</u>	<u>Street</u>	<u>City, State &amp; Zip Code</u>
Robert A. Wolverton	2106 Clemens Drive	Columbia, MO 65202
Robert L. Walters	2704 Vail Drive	Columbia, MO 65203
Lawrence Bulgin	301 Vieux Carre Court	Columbia, MO 65203

5. Members of Corporation. The Corporation will have members as more fully defined and described in that document titled "Declaration of Covenants, Conditions, Reservations, Easements and Restrictions of Auburn Hills" a development within Boone County, Missouri, which

has been recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the real estate records of Boone County, Missouri. As more fully defined and described in such Declaration ("the Declaration") the Corporation shall have two classes of members, Class A members and Class B members as follows:

A. Class A Members. Class A Members shall be the Owners of those Units within Auburn Hills ("the Development"), as described in the Declaration, which are owned by persons other than the Developer or another Class B Member of the Corporation; [provided that if the Developer holds a Unit for rental or lease purposes or uses same for residential purposes then the Developer shall also be a Class A Member with respect to such Unit held for rental or lease purposes or used for residential purposes. If a Unit is rented or leased by the Developer or any assignee of the Developer's rights or any Class B Member, or is used for residential purposes, then, immediately, a Class A membership shall attach to such Unit and the Unit Owner of such Unit shall be a Class A Member. The qualifications of Class A membership are more fully set forth and described in the Declaration].

B. Class B Member. The Class B Member of the Corporation shall be WWB Development Co., LLC, a limited liability company of the State of Missouri, and its successors and assigns, who are referred to in the Declaration as "the Developer" ("the Developer"). [The Developer shall be the sole Class B Member. The said WWB Development Co., LLC, and any person to whom it assigns all or any portions of its rights as the Developer, shall be the sole Class B Members, all as more fully described in the Declaration.]

The characteristics, qualifications, rights, limitations and obligations attaching to each of such class of members shall be those more fully described in the Declaration, which provides, generally, as follows:

Class A Members shall have one (1) vote at all meetings of the Corporation for each Unit in which they hold the interest required for Class A Membership as described in the Declaration. When more than one person in any Unit holds an interest in any Unit, the vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit. The Class B Members (at the outset the only Class B Member shall be the Developer) shall, initially, in the aggregate, be entitled to seventy-eight (78) Class B votes, which such number of votes shall be decreased as Units are sold or rented or leased or occupied as a residence, and shall be increased as land is annexed to the Development. If land is annexed to the Development, then the number of Class B votes shall be increased by that number which is equal to the number of Living Units intended to occupy the land so annexed to the Development..

There is one Class B membership and one Class B vote attributable to each Unit located or to be located within the Development.

Until Class B voting rights end, in the manner described in the Declaration, the Board of Directors shall consist of three (3), five (5), seven (7) or nine (9) [or any other odd number] of Directors, as provided for by the Declaration.

The members of the first Board of Directors are named herein, and shall serve until the first annual meeting of the members of the Association and, thereafter, until their successors are duly

elected and qualified. Until Class B voting rights end all directors shall be elected annually at each annual meeting of the members.

So long as Class B voting rights are in existence, a majority of the Board of Directors shall consist of natural persons (who need not be Unit Owners) elected by the Class B Members, with the remaining Director or Directors, as the case may be, to be (a) natural person(s) holding (an) ownership interest(s) in one or more Units (other than the Developer and those to which the Developer has assigned all or any portions of the Developer's rights as the Developer) elected by the Class A Members of the Association.

After Class B voting rights have ceased to exist, the number of Directors shall consist of three (3), five (5), seven (7) or nine (9) [or some other odd number] natural persons, as established by the Board of Directors, annually, who shall be holders of ownership interests in Units, elected by the members of the corporation, in the manner specified in the Bylaws.

The Directors shall otherwise be elected in that manner, and for those terms specified in the Bylaws of the Corporation as same are from time to time in existence.

6. Purposes. The purpose or purposes for which the Corporation is organized are:

a. To act as a Homeowners Association for Lot Owners and Unit Owners Homeowners of a Development located in Boone County, Missouri, known as "Auburn Hills," and platted by various plats of "Auburn Hills";

b. To have those purposes, and to discharge those functions, provided for the "Association" by the "Declaration of Covenants, Conditions, Reservations, Easements and Restrictions of Auburn Hills" hereinabove described ("the Declaration");

c. To serve as the Association named in the Declaration;

d. To serve as the Association for the Lot Owners, Unit Owners and Homeowners and occupants in the Development described in the Declaration;

e. To fulfill all duties and obligations to the Owners of Lots, Units and occupants located within the Development, which are imposed upon the Corporation formed hereby (hereinafter referred to as "the Association") by the Declaration;

f. To act as a Homeowners Association for all Lot Owners, Unit Owners and occupants located within the Development;

g. To levy, assess, collect, use and administer assessments against the members of the Association as described in the Declaration and to expend same as described in the Declaration;

h. To enforce those covenants, restrictions and requirements as to use and occupancy provided for by the Declaration, and to enforce all provisions of the Declaration;

- i. To provide for all maintenance, services, repairs, upkeep and operations and other services which are to be performed by the Association pursuant to the Declaration;
- j. To establish rules and regulations for the government and administration of the Association, and the Development;
- k. In no event to carry on or conduct an active business for profit, or to in any manner engage in lobbying or political activities of any kind or nature whatsoever, and in no event to support political activities or political candidates of any kind or nature whatsoever;
- l. To have all of the common law and statutory powers of a Missouri corporation which is not for profit, and which are not in conflict with the terms of these Articles of Incorporation or the Declaration;
- m. To have all of the powers and duties set forth in Chapter 355 of the Revised Statutes of Missouri;
- n. To hold all funds resulting from the collection of assessments from the Lot Owners of Lots located within the Development, and all funds collected by way of assessments paid by the members of this Corporation, and to hold such funds, in trust, for the benefit of the Owners of Lots and Units located within the Development, and to use such funds in accordance with the Declaration;
- o. To levy, assess, collect, use and administer assessments against its members for use by the Corporation in discharging its duties as hereinabove described;
- p. To provide facilities for the social and cultural pursuits of the residents of the Development;
- q. To encourage and provide facilities for the athletic, recreational, social and cultural pursuits of residents of the Development;
- r. To carry on any and all pursuits and activities consistent with the purposes of the Corporation as hereinabove described.;
- s. To own, manage, operate and maintain the Common Areas and Common Elements of the Development.

7. Bylaws. The Board of Directors of the Corporation shall adopt Bylaws, rules and regulations for the government of the Corporation, which may be changed from time to time. The power to make, alter, amend or repeal the Bylaws for the regulation and management of the affairs of the Corporation shall be vested in the Board of Directors and members of the Corporation as set forth in the Bylaws of the Corporation and as set forth in the Declaration.

8. Members and Voting Rights. The voting rights and powers of the members of the Corporation shall be as established by the Declaration, which is hereby incorporated herein by reference the same as though fully set forth herein.

9. Declaration. The Declaration is incorporated herein by reference the same as though fully set out herein. Unless it is plainly evident from the context that a different meaning is intended, all terms used herein shall have the same meaning as they are defined to have in the Declaration

10. No Benefit to Private Persons. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members, Directors, officers or other private persons except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered.

11. Restriction on Activity. No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation not affecting the Development, and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

12. Dissolution. If the Corporation shall be voluntarily or involuntarily dissolved pursuant to the laws of the State of Missouri, the assets of the Corporation in the process of dissolution shall be applied and distributed as follows:

a. All liabilities and obligations of the Corporation shall be paid, satisfied and discharged, or adequate provisions shall be made therefor;

b. Assets held by the Corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

c. Assets held with a charitable, religious, eleemosynary, benevolent, educational or similar use, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, trusts, societies or other organizations engaged in a charitable, religious, eleemosynary, benevolent, educational or similar activity pursuant to a plan of distribution adopted as provided by the laws of the State of Missouri dealing with not-for-profit corporations;

d. Any remaining assets shall be distributed, in equal shares, to the Owners of all Units located within the Development, with Common Areas and Common Elements being conveyed to all Unit Owners as equal tenants in common; provided, however, that the Attorney General of the State of Missouri shall be notified of the intention to so distribute such assets, in writing, at least thirty (30) days prior to such distribution.

13. Management of Affairs of Corporation. Except to the extent otherwise specifically provided to the contrary by these Articles of Incorporation, the Declaration, or the By-Laws of the Corporation, the management and administration of the Corporation and its business and affairs, shall be vested in the Corporation's Board of Directors.

14. Perpetual Duration. The period of duration of the Corporation is: perpetual.

IN WITNESS WHEREOF, we have hereunto affixed our signatures on this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Robert A. Wolverton

\_\_\_\_\_  
Robert L. Walters

\_\_\_\_\_  
Lawrence Bulgin

STATE OF MISSOURI     )  
                                  )SS.  
COUNTY OF BOONE     )

I, \_\_\_\_\_, a Notary Public, do hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2002, personally appeared before me Robert A. Wolverton, Robert L. Walters and Lawrence Bulgin, to me personally known, who being first duly sworn by me severally acknowledged that they signed as their free act and deed the foregoing document in the respective capacities therein set forth and declared that the statements contained therein are true, to their best knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year first above written.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_ County, State of Missouri  
My commission expires: \_\_\_\_\_.

**BYLAWS**  
**OF**  
**AUBURN HILLS HOMES ASSOCIATION**

**ARTICLE I**  
**Name and Location**

The name of the corporation is Auburn Hills Homes Association, hereafter referred to as "the Association". The principal office of the corporation shall be located in Boone County, Missouri, or at such other place as the Association's Board of Directors shall from time to time designate.

**ARTICLE II**  
**Definitions**

The following terms shall have the following meanings when used in these Bylaws:

Section 1. General Definitions. "Declaration" means the "Declaration of Covenants, Conditions, Reservations, Easements and Restrictions of Auburn Hills," made by WWB Development Co., LLC, a Missouri limited liability company ("the Developer"), and recorded in the Real Estate Records of Boone County, Missouri.

Section 2. Other Definitions. Unless it is plainly evident from the context that a different meaning is intended, all other terms used herein shall have the same meaning as they are defined to have in the Declaration.

**ARTICLE III**  
**Membership in the Association**

Every Unit Owner of a Unit (as described in the Declaration) owned by a party other than the Developer and the Developer's assignees shall be a Class A Member of the Association, shall be subject to the jurisdiction of the Association, shall be subject to assessments levied by the Association under the provisions of the Declaration, and shall be entitled to all rights and provisions of Class A membership in the Association. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation as members of the Association. There shall be one (1) Class A membership in the Association appurtenant to the ownership of any Unit which is subject to assessment by the Association. Class A membership in the Association shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment by the Association. Ownership of a Unit shall be the sole qualification for Class A membership in the Association. Class A membership in the Association cannot, under any circumstances, be partitioned or separated from ownership of a Unit subject to the jurisdiction of the Association. Any covenant or agreement to the contrary shall be null and void. No Unit Owner shall execute any deed, lease, mortgage or other instrument affecting title to his Unit ownership without including therein both his interest in the Unit and his corresponding membership in the Association,



it being the intention hereof to prevent any severance of such combined ownership. Any such deed, lease, mortgage or instrument purporting to affect the one without including also the other, shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein. The Developer, or those to which it assigns all or any part of its rights as the Developer under the terms of the Declaration shall be the sole Class B Members, and shall become Class A Members upon and following the termination of Class B memberships as hereinafter provided, for each Unit in which they hold the interest required for Class A membership by this ARTICLE III. The Developer shall also be a Class A member before termination of Class B memberships for all Units held for rental or lease purposes.

#### **ARTICLE IV** **Voting Rights**

The Association shall have two (2) classes of voting memberships, Class A and Class B. The qualifications for Class A membership and Class B membership, and the identities of the Class A and Class B members, and the nature and extent of the voting rights of Class A and Class Members shall be as specified in the Declaration.

#### **ARTICLE V** **Membership Meetings**

Section 1. Place of Meetings. Meetings of the membership shall be held at the principal office or place of business of the corporation, or at such other suitable place convenient to the membership as may be designated by the Board of Directors.

Section 2. Annual Meetings. The first annual meeting of the members of the Association shall be held at a reasonably convenient location within Boone County, Missouri selected by the Board, within 180 days following the first day of the first calendar year which next begins after the conveyance of the first Unit contained within the Development to a person other than a Class B Member of the Association. Thereafter, the annual meetings of the members of the Association shall be held within the first 180 days following the close of each calendar year, at such times as the Board of Directors shall determine appropriate.

Section 3. Special Meetings. Special meetings of the membership may be called at any time for the purpose of considering matters which, by the terms of the Declaration, or by the terms of the Association's Articles of Incorporation, or by the terms of these Bylaws, require the approval of some or all of the members, or for any other reasonable purpose. Said meeting shall be called by a written notice, authorized by a majority of the Board of Directors, or upon a petition signed by twenty percent (20%) of the Class A or all of the Class B Members (if there are Class B Members) of the Association having been presented to the Association's Secretary. The notice of any special meeting shall state the time and place of such meeting and the purposes thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of four-fifths (4/5) of the members of each class present, either in person or by proxy.

Section 4. Notice of Meetings. Except when otherwise provided by the Declaration and except when notice is waived as hereinafter provided, written or printed notice of any annual or special meeting of the members shall be sent by the Secretary of the corporation to all members by mailing the same, postage prepaid, at least ten (10) days and not more than forty (40) days prior to the meeting, addressed to the members at their respective addresses as recorded upon the membership books of the Association. Notice may also be accomplished by service of same upon the member at his Unit or last known address. Notice by either such method shall be considered as notice served. Any notice shall state the place, day and hour of the meeting and the purpose or purposes for which it is called. No notice of any annual or special meeting of the members is required if all members file with the records of the meeting written waivers of such notice. In the absence or disability of the Secretary, notice as provided for in this Section may be sent out by any such officer as may be designated by the Board of Directors.

Section 5. Waiver of Notice. Any member may waive notice of any membership meeting, either in writing or by telegram, signed by the member whether such member attends the meeting or not. The presence of a member at any membership meeting shall be deemed to constitute a waiver by the member of notice to the meeting unless such member attends for the express purpose of objecting to the transaction of business at the meeting.

Section 6. Quorum. The presence of twenty percent (20%) of the members of the Association of each class, either in person or by proxy, shall constitute a quorum for the transacting of business at all meetings of the members, unless a greater quorum is required for the transaction of the particular business by the Declaration. Unless otherwise specified by these Bylaws or the Declaration, or by the Association's Articles of Incorporation, or by law, decisions at membership meetings shall be by the majority vote of the members present at each class. If a quorum is not present, a majority of the members of each class present can adjourn the meeting to another date and time not less than forty-eight (48) hours from the time the original meeting was called, unless otherwise required by the Declaration at which time the quorum requirement shall be reduced by one-half (1/2). No notice of such date and time shall be required. If a quorum is not present at the second such meeting, then a majority of the members of each class then present can adjourn such meeting to another date and time not less than forty-eight (48) hours from the time the second or continued meeting was called, unless otherwise required by the Declaration, at which time the quorum requirement shall again be reduced by a further one-half (1/2) of the required quorum at the first continuance of the meeting. No notice of such date and time of such further continued meeting shall be required.

Section 7. Proxies. A member may appoint any other member or the Developer or the manager or managing agent of the Association, if any, as his proxy. In no case may any member, (except the Developer or the manager or managing agent, if any) cast more than one (1) vote by proxy. Any proxy must be filed with the Secretary of the Association before the appointed time of each meeting. Unless limited by its terms, any proxy shall continue until revoked by a written notice of revocation filed with the Secretary of the Association or by the death of the member.

Section 8. Meetings, Convened, How. Every meeting of the members, for whatever purpose, shall be convened and chaired by the Association's President, if he be present, otherwise by the Vice President, or in his absence or refusal to act by persons selected by the Board of Directors.

Section 9. Order of Business. The order of business at all annual meetings of the members shall be as follows:

- a. Roll call and certification of proxies.
- b. Proof of notice of meeting or waiver of notice.
- c. Reading of minutes of preceding meeting.
- d. Reports of officers, if any.
- e. Reports of committees, if any.
- f. Election of inspectors in election.
- g. Election of directors.
- h. Unfinished business.
- i. New business.

In the case of special meetings, items (a) through (d) shall be applicable and thereafter the agenda shall consist of the items specified in the notice of the meetings.

## ARTICLE VI

### Directors

Section 1. Number and Classification. Until Class B voting rights have expired, the Board of Directors of the Association shall consist of three (3), five (5), seven (7) or nine (9) [or any other odd number] Directors as shall from time to time annually be determined by the Board. During such time as there are Class B voting rights in existence, a majority of such Directors (i.e., two of three Directors, or three of five Directors, etc., as the case may be), shall be natural persons elected by the Class B Members (who need not be Unit Owners), with the remaining Directors to be natural persons, who are Owners of (an) ownership interest(s) in (a) Unit(s) (other than the Developer, and those to which it has assigned all or any portions of its rights as the Developer) elected by the Class A Members of the Association. After all Class B voting rights have ceased to exist, the Board of Directors shall consist of three (3), five (5), seven (7) or nine (9) [or any other odd number] natural persons (as determined by the Board from time to time), who must be Owners of ownership interests in Units, elected by the members of the Association. Until Class B voting rights are terminated, all Directors shall be elected at the annual meeting of the Association's members and shall serve for one (1) year and until their respective successors are duly elected and qualified. Prior to the first annual meeting of the members of the Association which is to be held after termination of Class B voting rights, the then Board of Directors shall determine the number of persons who shall constitute the Board of Directors for the coming year. At the first annual meeting of the members of the Association which is held after termination of Class B voting rights, all Directors shall be elected. All Directors elected after Class B voting rights have terminated must be natural persons, who are Unit Owners of Units, or who hold ownership interests in Units. At the first annual meeting of the members of the Association which is held after the termination of Class B voting rights, Directors shall be elected for the following terms:

One-third (1/3) of the Directors shall be elected to serve a term of office of three (3) years. One-third (1/3) of the number of Directors to be elected shall serve a term of office of two (2) years. The remaining Director(s) shall serve a term of office of just one (1) year. If the number of Directors is not divisible by 3, then the number shall

be divided up or down to the nearest whole number. For example, if the number of Directors is five (5), two (2) officers shall be elected for three (3) years, two (2) for two (2) years, and one (1) for one (1) year. The term of office of the Director(s) receiving the greatest number of votes shall be fixed at three (3) years, and the term of office of the Directors(s) receiving the second greatest number of votes shall be fixed at two (2) years; and the term of office of the remaining Directors shall be fixed at one (1) years.

Thereafter, at the expiration of each term of office of each respective Director, such Director's successor shall be elected to serve a term of three (3) years. Directors shall, in all events, hold office until their successors have been duly elected and have held their first annual meeting, and until such occurrence, shall possess all of the powers, authorities, duties, discretions and immunities of Directors, which is to say that a sitting Board of Directors shall serve until a new Board has been duly elected and has held its first meeting. There shall be no cumulative voting on Directors. In the event of a tie vote, the election to the office of Director shall be determined by lot or as the then-serving president of the Association shall otherwise determine, in the exercise of his or her reasonable discretion. If there is a tie vote, then the terms of offices of the Directors shall be determined by lot or as the then-serving president of the Association, in his or her sole and absolute discretion, shall determine appropriate. There shall be a single ballot or vote upon all Directors to be elected.

Section 2. Nominating Procedure. The Board of Directors may, in its sole and absolute discretion, constitute a "Nominating Committee," and may place names in nomination to fill the office of Directors. However, whether or not the Board so nominates persons to stand for election as members of the Board of Directors, persons to stand for election as members of the Board of Directors shall or may be nominated from the floor at the annual meeting of the members.

Section 3. Vacancies. The Board shall fill vacancies in its membership occurring between elections. A Board member, who is absent without sufficient cause (such sufficient cause being determined within the sole and absolute discretion of the remaining members of the Board by the majority vote thereof) from three (3) consecutive meetings of the Board may, at the option of the remaining members of the Board, be considered to have resigned, and such vacancies shall be filled by the unanimous vote of the remaining members of the Board; provided, however, that before such option is exercised by the Board, such member shall be given at least eight (8) days written notice that the exercising of such option is an issue to be placed before the Board so that such Board member shall have ample opportunity to appear before the Board to explain his absence from the meetings of the Board. For purposes of determining whether or not to exercise such option, the size of the Board of Directors shall be deemed to be reduced by one. Vacancies in positions on the Board filled by the vote of Class B Members shall be filled by the remaining Directors elected by Class B Members.

Section 4. Management. The management of the Corporation's business, funds, assets, deposits, properties and affairs shall be vested in the Board of Directors. The Board of Directors shall, however, if it in its sole and absolute discretion deems it advisable to do so, employ for the Association, a professional manager, management firm or managing agent, at a rate of compensation to be established by the Board of Directors to perform such duties and services as the Board of

Directors shall authorize, including, but not necessarily limited to those duties and services specified in the Declaration. The employment of such a manager, management firm or managing agent shall be upon such terms and conditions as the Association's Board of Directors shall, in its sole and absolute discretion, elect. Notwithstanding anything to the contrary hereinabove set forth in this Section 4, the Association or its Board of Directors shall not delegate any of its responsibilities for a term extending beyond the termination of Class B voting rights, prior to the conclusion of Class B voting rights, and shall not, prior to the termination of such Class B voting rights, employ any professional manager, managing agent or management firm for a term extending beyond the termination of Class B voting rights. Any management agreement shall be terminable by the Association on six (6) months notice.

Section 5. Term of Office. The term of office of Directors shall be as specified in Section 1 of this ARTICLE VI; provided, however, that so long as there are Class B voting rights in the Association, all Directors shall be elected at each annual meeting of the members, meaning that such Directors shall term of one (1) year only.

Section 6. Termination of Directorship. The term of any Director who becomes more than thirty (30) days delinquent in the payment of any assessments due under the Declaration, or any share of the common expenses, and/or carrying charges shall be automatically terminated and the remaining Directors shall appoint his successor as provided in Section 3 of this Article.

Section 7. Compensation. Directors, as such, shall not receive any stated compensation or salaries for their services as Directors.

Section 8. Organization Meeting. The first meeting of the newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors are elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a majority of the whole Board of Directors shall be present.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least one (1) such meeting shall be held during each calendar year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least six (6) days prior to the day named for such meeting.

Section 10. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of any Director.

Section 11. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of notice by him of the time, place and purpose thereof. If all Directors are present at

any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 12. Quorum. At all meetings of the Board of Directors a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 13. Action Without Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors.

Section 14. Fidelity Bonds and Officers and Directors Insurance. The Board of Directors shall, if it in its discretion deems it appropriate to do so, require that all officers and employees of the Association handling or responsible for corporate or trust funds shall furnish adequate fidelity bonds and may purchase Officers and Directors Liability Insurance, the cost of which shall be paid for from the Maintenance Fund or the assessments of members. The premiums on such bonds and insurance shall be paid by the Association.

Section 15. Powers and Duties. The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law, or by the Declaration or by these By-Laws, directed to be exercised and done by the members of the Association or by the Unit Owners. The property, funds and affairs of the Association shall be controlled and managed by the Board of Directors, which shall exercise all powers of the Association not reserved by these Bylaws or by the Declaration or Articles of Incorporation to the members of the Association or the Unit Owners. The Association's Board of Directors shall have the authority to employ, discharge and determine the compensation of such management personnel, management firm, managing agent, professional management and employees as in its opinion are needed to do the work of the Association; provided, however, that so long as Class B voting rights are in existence the Directors shall not delegate responsibilities, or employ managing agents or a management firm, except within those limitations specified by Section 4 of this Article.

## ARTICLE VII

### Officers

Section 1. Number. The officers of the Board and the Association shall consist of a President, a Vice-President, a Secretary and a Treasurer. The Board of Directors may, if it in its sole and absolute discretion determines appropriate, also choose and appoint one or more additional Vice Presidents and one or more Assistant Secretaries and Assistant Treasurers, and such additional officers and agents, if any, as it may deem necessary from time to time. Any person may fill more than one of the offices; provided, however, that no person may be both the president and the secretary. The Board may, for example, elect a single person as being the vice president, and the

secretary. Such officers shall be selected by the Board of Directors at the organizational meeting of the Board of Directors following the annual meeting of the members of the Association. The President and Vice-President must be members of the Board of Directors. The Secretary and/or Treasurer and any Assistant Secretaries or Assistant Treasurers need not be members of the Board of Directors if the Board of Directors determines such to be the case.

Section 2. Term. The officers shall hold office at the pleasure of the Board of Directors, for a period of one (1) year from the date of their respective elections, and until their successors are duly elected and qualified.

Section 3. Vacancies. A vacancy in any office for any reason shall be filled by the Board of Directors at any meeting for the unexpired portion of the term.

## **ARTICLE VIII**

### **Duties of Officers**

Section 1. General Powers. The officers shall have such power and authority in the control and management of the property and business of the Association as is usual and proper in the case of, and incident to, such corporate officers, except insofar as such power and authority is limited by these By-Laws, or by resolution of the Board of Directors.

Section 2. President. The President shall be the principal officer of the Association, and shall, in general, control and manage the property and affairs of the Association. He shall preside at all meetings of the Board of Directors and shall perform such other duties as may be prescribed by the Board of Directors from time to time. He shall sign all notes, agreements, conveyances or other instruments in writing made and entered into for or on behalf of the Association. He shall have all the general powers and duties which are usually vested in the office of President of a corporation, including but not limited to the power to appoint committees from time to time among the membership of the Association as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Association.

Section 3. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent and unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

Section 4. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the members of the Association; he shall have custody of the seal of the Association; he shall have charge of the membership transfer books and of such other books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary.

Section 5. Treasurer. The Treasurer shall have responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all

moneys and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors.

Section 6. Assistant Secretaries. The Assistant Secretaries, in order of succession, shall perform all of the duties of the Secretary in the event of the death, disability or absence of the Secretary, and such other duties, if any, as may be prescribed by the Board of Directors.

Section 7. Assistant Treasurers. The Assistant Treasurers shall, as to the funds entrusted to them, perform all of the duties of the Treasurers.

Section 8. Compensation of Officers. No officer shall receive any salary or other compensation for services rendered to the Association in his capacity as an officer of the Association. No remuneration shall be paid to any officer for services performed by him for the Association in any other capacity unless a resolution authorizing such remuneration shall have been adopted by the Board of Directors before the services are undertaken.

## ARTICLE IX

### Liability and Indemnification Of Officers and Directors

Section 1. Liability and Indemnification of Officers and Directors. The Association shall indemnify (to the maximum extent permitted by the law of Missouri) every officer and director of the Association, against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including the settlement of any such suit or proceeding if approved by the then Board of Directors of the Association) to which he may be made a party by reason of being or having been an officer or director of the Association whether or not such person is an officer or director at the time such expenses are incurred. The officers and directors of the Association shall not be liable to the members of the Association for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The officers and directors of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association or the Development (except to the extent that such officers or directors may also be Owners of Units) and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right of indemnification provided for herein shall not be exclusive of any other rights to which any officer or director of the Association, or former officer or directors of the Association may be entitled.

Section 2. Common or Interested Directors. The Directors shall exercise their powers and duties in good faith and with a view of the interests of the Association. No contract or other transaction between the Association and one or more of its Directors, or between the Association and any corporation, firm or association (including the Developer) in which one or more of the Directors of the Association are Directors or officers or are pecuniarily or otherwise interested, is either void or voidable because such Director or Directors are present at the meeting of the Board of Directors or any committee therefor which authorizes or approves the contract or transaction, or because of



his or their votes as counted for such purpose, if any of the conditions specified in any of the following subparagraphs exist:

a. The fact of the common directorate or interest is disclosed or known to the Board of Directors or a majority thereof or is noted in the minutes, and the Board authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or

b. The fact of the common directorate or interest is disclosed or known to the members, or a majority thereof, and they approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or

c. The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Common or interested Directors may be counted in determining the presence of a quorum at any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction, and may vote thereafter to authorize any contract or transaction with like force and effect as if he were not such Director or officer of such other corporation or not so interested.

## ARTICLE X Management

Section 1. Management. The Association, by and through its Board of Directors, shall enforce the provisions of the Declaration and of these Bylaws, and shall perform all duties and obligations conferred upon the Association by the Declaration, and shall have all powers, privileges, powers and discretions conferred upon the Association by the Declaration, and shall pay out of the Maintenance Fund, established by the Declaration, for those articles, items, duties and services to be supplied and performed by the Association through the use of such funds under the terms of the Declaration.

Section 2. Manager or Managing Agent. The Association, by and through its Board of Directors, may delegate any of its duties, powers or functions to a manager or managing agent, provided that such delegation shall be revocable upon no more than six (6) months written notice. The Association, and its officers, and its Board of Directors shall not be liable for any omission or improper exercise by the manager or managing agent of any such duty, power or function so delegated. Notwithstanding anything to the contrary set forth in this Section 2, so long as Class B voting rights are in existence, the Association shall not employ any professional manager, for a term extending beyond the termination of Class B voting rights, and shall not delegate any of its responsibilities for a term extending beyond the termination of Class B voting rights.

Section 3. Duties to Maintain. The Association, shall have the duty and obligation to perform the repairs and maintenance imposed upon the Association and/or the Board of Managers by the Declaration. Each Unit Owner shall have the duty and obligation to perform the maintenance upon his, her or their Unit imposed upon him, her or them by the Declaration, and shall be required

to perform with respect to each Unit, all maintenance not specifically imposed by the Declaration upon the Association and/or the Board of Managers. The Unit Owners upon whom collective obligations of maintenance, repair and replacement are imposed by the Declaration, shall have the duty and obligation, to the Association and all other Unit Owners, to perform or to cause to be performed the maintenance, repairs and servicing described in the Declaration.

Section 4. Access at Reasonable Times. For the purposes of discharging its duties and responsibilities as provided by these By-Laws and the Declaration, or in the event of a bona fide emergency involving illness or potential danger to life or property, the Association, through its duly authorized agents, Directors or employees, shall have the right, after reasonable efforts to give notice to the Unit Owner, to enter into any Unit or any Apartment at any hour considered to be reasonable under the circumstances.

Section 5. Limitation of Liability. The Association, and its Directors, and its officers, shall not be liable for any failure of water supply or other services to be obtained by the Association or paid for out of the Maintenance Fund established by the Declaration, or for injury or damage to person or property caused by the elements or by the Owner of any Unit, or any other person, or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to the Owner or occupant of any Unit for loss or damage by theft or otherwise of articles which may be stored upon any of the Common Elements. No diminution or abatement of maintenance fund assessments as provided for by the Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements, or the Units or the buildings located thereon, or from any action taken by the Association to comply with any law or ordinance or with the order or directive of any municipal or other governmental authority. The directors, officers and the employees of the Association, and the Association itself (except to the extent of the cost of procuring same), shall not be liable for any failure by the Association to provide or perform any management, maintenance, repairs, servicing, upkeep or other services, or to procure any insurance, required by the Declaration.

## ARTICLE XI

### Assessments

This ARTICLE XI of these Bylaws shall be identical in form and content to Article 6 of the Declaration, which such Article is incorporated herein by reference.

## ARTICLE XII

### Financial Management

Section 1. Fiscal Year. The fiscal year of the Association shall begin on the 1st day of January of each year. The commencement date of the fiscal year herein established shall be subject to change by the Board of Directors should corporate practice subsequently dictate.

Section 2. Books and Accounts. Books and accounts for all funds collected by the Association shall be kept under the direction of the Treasurer, in accordance with good bookkeeping principals consistently applied. The same shall include books with detailed accounts, in

chronological order, of receipts and of the expenditures affecting the funds collected and the administration of such funds.

Section 3. Auditing. Upon request by a majority of the Board of Directors of the Association, any Treasurer or Assistant Treasurer of the Association, whether present or past, shall submit his or her books and records for audit by an independent Certified Public Accountant, retained by the Association at its expense, whose report shall be prepared and certified in accordance with generally accepted auditing principles. In lieu of any such audit by an independent Certified Public Accountant, the Association's Board of Directors may appoint an "audit committee." Such audit committee shall consist of one (1) director and two (2) Class A members of the Association, who are not a members of the Board of Directors. If an audit committee is used, then the books and records shall be audited by such audit committee, which shall report to the Association's Board of Directors and its members.

Section 4. Inspection of Books. The books and accounts of the Association, or of the Treasurer or any Assistant Treasurer thereof, and vouchers accrediting the entries made thereupon, shall be available for examination by the members of the Association, and/or their duly authorized agents or attorneys during normal business hours and for purposes reasonably related to their interests as members.

Section 5. Execution of Corporate Documents. With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Association by either the President or Vice President and by the Secretary, and all checks shall be executed on behalf of the Association by such officers, agents or other persons as are from time to time so authorized by the Board of Directors.

Section 6. Seal. The Board of Directors may, if it in its discretion deems it appropriate, provide a corporate seal containing the name of the Association, which seal shall be in the charge of the Secretary. If so directed by the Board of Directors, a duplicate seal may be kept and used by the Treasurer or any assistant secretary or assistant Treasurer.

## ARTICLE XIII

### Insurance

The Association's Board of Directors shall have the duty to obtain and maintain fire and casualty insurance to the extent reasonably available on any reasonably insurable improvements owned by the Association. The Association's Board of Directors, in its discretion, shall obtain, at the expense of the Association:

- a. Such other fire and casualty insurance and physical damage insurance as it finds to be appropriate;
- b. Such public liability insurance coverages and liability insurance coverages (in such amounts and for such limits) as it finds to be appropriate;

c. Worker's compensation insurance coverages shall be maintained to the extent required by law, and may, if not required by law, nevertheless be maintained if the Directors, in their discretion, find it to be appropriate that such insurance be maintained in effect;

d. Officers' and Directors' Liability Insurance Coverage, covering the Officers and Directors of the Association, to the extent the Board shall find to be appropriate;

e. Such other insurance coverages as the Board finds to be appropriate in its discretion.

The Association's Board of Directors shall have the authority (but not the obligation) to enforce requirements imposed by the Declaration upon Unit Owners that Unit Owners obtain any insurance coverages.

#### **ARTICLE XIV** **Amendment**

Those provisions of these By-Laws which also appear in the Declaration may be amended only in that manner provided for the amendment of the Declaration by the Declaration. The remaining provisions of these By-Laws may be amended by the affirmative vote of a majority of the members of each class present at any meeting of the members at which a quorum is present, and which is duly called for that purpose. Amendments may be proposed by the Board of Directors or by a petition signed by members representing at least twenty percent (20%) of the voting members of a single class of members. A description of any proposed amendment of these By-Laws or the Declaration shall accompany the notice of any regular or special meeting at which such proposed amendment is to be voted upon.

#### **ARTICLE XV** **Conflict With The Declaration**

Section 1. Conflict. In the event any of the provisions of these By-Laws, or any provision of an amended version of these By-Laws, conflicts with the terms and provisions of the Declaration in any way whatsoever, these By-Laws shall be deemed to be subordinate and subject to all provisions of the Declaration. All of the terms hereof except where clearly repugnant to the context, shall have the same meaning as in the Declaration. In the event of any conflict between these By-Laws and the Declaration, the provisions of the Declaration shall control.

Section 2. Severability. In the event any provision or provisions of these By-Laws shall be determined to be invalid, void or unenforceable, such determination shall not render invalid, void or unenforceable any other provisions hereof which can be given effect.

Section 3. Waiver. No restriction, condition, obligation or provision of these By-Laws or the Declaration shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 4. Captions. The captions contained in these By-Laws are for convenience only and are a part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws.

Section 5. Gender, Etc. Whenever in these By-Laws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

Adopted as the By-Laws of AUBURN HILLS HOMES ASSOCIATION, a not-for-profit corporation of the State of Missouri, effective the \_\_\_\_ day of \_\_\_\_\_, 2002 (same being attached to the Declaration, as the first By-Laws of the Association).

**MEMBERS OF THE FIRST BOARD OF  
DIRECTORS OF THE ASSOCIATION:**

\_\_\_\_\_  
Robert A. Wolverton

\_\_\_\_\_  
Robert L. Walters

\_\_\_\_\_  
Lawrence Bulgin

**SECRETARY OF THE ASSOCIATION:**

\_\_\_\_\_  
Robert A. Wolverton