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

See **Exhibit A** hereto

**DECLARATION OF COVENANTS, CONDITIONS, RESERVATIONS, EASEMENTS AND RESTRICTIONS OF VISTAS AT OLD HAWTHORNE, A PLANNED UNIT DEVELOPMENT**

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

**THIS DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS** is made on this _____ day of _____, 2007, by **Welek Construction Company,** a corporation of the State of Missouri, which is hereinafter referred to as "the Developer" [the Developer's mailing address is: Welek Construction Company, 3212 Country Woods Road, Columbia, MO 65203].

WITNESSETH:

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

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

The Developer is the owner of a parcel of land situated in Columbia, Boone County, Missouri, which is described on **Exhibit A** which is annexed hereto and is hereby incorporated herein by reference. Such parcel may be referred to herein as "the Parcel".

The Parcel has been subdivided into streets and lots by a "Final Plat" of "Vistas at Old Hawthorne Plat 1-A", which has been recorded in Plat Book 41 at Page 45 of the Real Estate Records of Boone County, Missouri.

The Developer is also the owner of an additional parcel of land located adjacent to the Parcel, which is legally described on **Exhibit B**, which is annexed hereto and is hereby incorporated herein by reference, and which may be referred to herein as "the Annexation Parcel".

The Developer intends to commit the Parcel, meaning the land described on **Exhibit A** hereto which has been subdivided into lots and streets and common areas by the Plat of "Vistas at Old Hawthorne Plat 1-A" hereinabove described, and all Lots, Units and parcels of real estate contained within the boundaries of such Parcel, and all streets and roads contained within such Parcel, to certain easements, restrictions, reservations and covenants which are hereinafter provided for by this Declaration.

In addition to the Parcel hereinabove described in these Recitals, the Developer also owns additional land in the vicinity of the Parcel, which is hereinafter referred to as "the Annexation

Parcel", and which is legally described on **Exhibit B**, which is annexed hereto and is hereby incorporated herein by reference.

**THE DEVELOPER MAY OR MAY NOT, AS THE DEVELOPER SEES FIT IN THE DEVELOPER'S SOLE, ABSOLUTE AND UNLIMITED DISCRETION, ANNEX ALL OR ANY PARTS OF THE ANNEXATION PARCEL TO THE DEVELOPMENT PROVIDED FOR BY THIS DECLARATION. THE DEVELOPER MAY OR MAY NOT DEVELOP THE ANNEXATION PARCEL IN THE SAME FASHION IN WHICH THE DEVELOPER IS DEVELOPING THE PARCEL.** The Developer makes no representations, warranties or guarantees to any Unit Owner or perspective purchaser of any Unit or Lot that the Developer will or will not annex portions of the Annexation Parcel to the Development provided for by this Declaration. The Developer has the discretion but not the obligation to annex various portions of the Annexation Parcel to the Development provided for hereby. If the Developer does annex portions of the Annexation Parcel to the Development provided for by this Declaration, then such portions of the Annexation Parcel will be developed in a manner comparable to the development of the Parcel provided for by this Declaration. **Any portions of the Annexation Parcel which are not annexed to the Development provided for by this Declaration may be developed in a manner different than the development of the Parcel.**

The Developer, therefore, desiring and intending that the several owners, mortgagees, occupants and other persons hereafter acquiring any interest in the Parcel (and any portions of the Annexation Parcel which are annexed to the Development provided for hereby), or any improvements located thereon, shall at all times enjoy the benefit of, and shall hold their interests subject to the rights, easements, privileges, covenants, assessments and restrictions hereinafter set forth (all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspects of the Property, and are established for the purposes of enhancing and protecting the values, desirability and attractiveness of the Property), executes and records this Declaration accordingly.

**NOTICE TO LOT OWNER/UNIT OWNERS IN VISTAS AT OLD HAWTHORNE/UNITS IN VISTAS AT OLD HAWTHORNE WILL BE SUBJECT TO TWO SETS OF DECLARATIONS OF COVENANTS AND TO ASSESSMENTS AND RESTRICTIONS PROVIDED FOR BY TWO DECLARATIONS: VISTAS AT OLD HAWTHORNE, THE DEVELOPMENT PROVIDED FOR BY THIS DECLARATION, AND THE PARCEL WHICH CONSTITUTES SUCH DEVELOPMENT, ARE A PART OF A LARGE DEVELOPMENT KNOWN AS THE "COMMUNITY OF OLD HAWTHORNE". ALL OF THE LAND OF THE COMMUNITY OF OLD HAWTHORNE, INCLUDING THE LAND OF THE DEVELOPMENT PROVIDED FOR BY THIS DECLARATION, AND THE PARCEL WHICH IS THE SUBJECT MATTER OF THIS DECLARATION, IS SUBJECT TO A SEPARATE SET OF COVENANTS, CONDITIONS AND RESTRICTIONS, WHICH APPEAR IN A "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COMMUNITY OF OLD HAWTHORNE", RECORDED IN BOOK 3022 AT PAGE 63 OF THE REAL ESTATE RECORDS OF BOONE COUNTY, MISSOURI. SUCH DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COMMUNITY OF OLD HAWTHORNE IS REFERRED TO IN THIS DECLARATION AS THE "OLD HAWTHORNE DECLARATION" OR THE "COMMUNITY OF OLD HAWTHORNE DECLARATION". THE COMMUNITY OF OLD HAWTHORNE DECLARATION IMPOSES SUBSTANTIAL RESTRICTIONS AND OBLIGATIONS UPON THE UNITS WHICH ARE PROVIDED FOR BY THIS DECLARATION, AND IMPOSES THE OBLIGATION FOR PAYMENT OF ASSESSMENTS, AS DESCRIBED IN THE OLD HAWTHORNE DECLARATION, AND THE OBLIGATION FOR MANDATORY CLUB MEMBERSHIP AS DEFINED IN ARTICLE XVI OF THE OLD HAWTHORNE DECLARATION.**

**PURCHASERS OF UNITS OR PROSPECTIVE PURCHASERS OF UNITS OR LOTS WITHIN THE DEVELOPMENT PROVIDED FOR HEREBY ARE HEREBY GIVEN NOTICE OF THE FACT THAT THEY WILL BE SUBJECT TO THE EASEMENTS, COVENANTS, CONDITIONS AND PROVISIONS SET FORTH IN THIS DECLARATION AND THE EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS OF THE OLD HAWTHORNE DECLARATION, AND THAT ASSESSMENTS WILL BE DUE TO THE ASSOCIATION PROVIDED FOR BY THIS DECLARATION AND AS ALSO REQUIRED BY THE OLD HAWTHORNE DECLARATION.**

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

## 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 of real estate ("the Parcel"), described on **Exhibit A**, which is annexed hereto and is hereby incorporated herein by reference, and which is platted by, and is the subject matter of, the Plat of "Vistas at Old Hawthorne Plat 1-A", and any part of that adjacent real estate described on **Exhibit B** which is annexed hereto and is hereby incorporated herein by reference, and which is referred to herein as "the Annexation Parcel", that is hereafter annexed to the Development provided for by this Declaration pursuant to the following provisions of this Declaration dealing with annexation, and the Lots and Units now or hereafter contained within the Parcel, and any portion of the Annexation Parcel which is so annexed to the Development provided for hereby, and any Buildings or improvements now or hereafter located thereon, 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, and Dwellings and Units 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), and on all parties having or acquiring any right, title or interest in any portion of the Annexation Parcel, if any, which is annexed to the Development provided for hereby. 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 purposes 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 "Vistas at Old Hawthorne Homes Association," or by a similar name, as the Developer in the Developer's discretion shall find to be appropriate. For example, if such name is determined not

to be available, then such Association shall bear a name similar thereto (as is determined to be available by the Secretary of State of the State of Missouri) and as shall be determined appropriate by the Developer in the Developer's discretion. 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. "Annexation Parcel" means that parcel of land, located adjacent to the Parcel, which is described on **Exhibit B** to this Declaration and which is also owned by the Developer, and which the Developer may or may not annex to the Development provided for by this Declaration and may or may not subject to the jurisdiction of the Association and to the provisions of this Declaration, as the Developer in the Developer's sole discretion finds to be appropriate. **The Developer may or may not annex various portions of the Annexation Parcel to the Development provided for by this Declaration as the Developer, in the Developer's sole and absolute discretion finds to be appropriate. The Developer provides no warranties, representations, assurances or guarantees that any portions of the Annexation Parcel will be annexed to the Development provided for by this Declaration. Any portions of the Annexation Parcel which are annexed to the Development provided for by this Declaration must be developed in a manner comparable to the development of the Parcel. Portions of the Annexation Parcel which are not annexed to the Development provided for hereby may be developed in an entirely different manner.**

Section 3. "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 Lots to a Builder, other than the Developer, for purposes of building or constructing a Building and improvements located upon such Lot(s). However, any such Building or improvement shall be constructed solely pursuant to the Architectural Control provisions set forth in this Declaration.

Section 4. "Building" or "Residential 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. In most cases, the Buildings will contain two (2) Living Units, and will occupy two (2) Lots [example: Lots 101-A and 101B of Vistas at Old Hawthorne Plat 1-A, as shown by Plat recorded in Plat Book 41 at Page 45 of the Real Estate Records of Boone County, Missouri will, in combination, contain one (1) Building, which will contain two (2) Living Units, with one of such Living Units being located on Lot 101-A and the other being located on Lot 101B, and with the lot line which separates such two Lots running between the two (2) Living Units, meaning through the center of the common wall or party wall which separates the two (2) Living Units - and in most cases such situation will exist as to each and all Lots and Buildings]. In certain limited cases a Lot may contain a Building which contains a single Living Unit, meaning a single family dwelling. In certain other limited cases a Lot may contain a Building which contains two (2) Living Units, in which case such Lot will be subdivided or resubdivided into separate Lots or Units by a resubdivision Plat. In certain limited cases Lots may be resubdivided by a resubdivision plat, so as to create a lot line which runs through the common or party wall for the Living Units located on the Lots. In certain limited cases, a Building continuing one (1) Living Unit [meaning a Single Family House] may be built on two (2) Lots across the lot line

in which case such Lots will contain one (1) Unit. Each Lot will contain either an entire Building, which contains a single Living Unit, or that part of a Building which contains one Living Unit, or will contain part of a Single Family Dwelling [which will be one (1) Unit]. Each Lot is intended for conveyance to a separate "Unit Owner" as hereinafter defined, but portions of such Lot will nevertheless constitute Common Area as hereinafter defined.

Section 5. "City" shall mean and refer to the City of Columbia, Missouri, a municipal corporation of the State of Missouri. The Parcel lies within the corporate limits of the City and is subject to the jurisdiction of the City.

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 and a Builder; provided that if the Developer or a Class B Member or a Builder 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 or a Builder, 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 and any person to whom the Developer shall have assign all or a portion of its rights as the Developer under the terms and provisions of the Declaration. Except as specifically provided in Section 11 of this ARTICLE I, 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. "Common Area" shall mean any real estate contained within the Plat, other than the Units, and shall also mean any Common Area or Common Lot or Common Unit, or any other Common Improvements or Common Areas shown upon any Plat, and it shall further include that portion of the Land which includes any Private Street Drive, and any entryway monuments, entryway decorations, entryway signs, entryway structures or portions thereof for the Development, and all Land containing same. Common Areas shall further include the following:

**i. ALL OF THE LAND WITHIN EACH LOT ON THE OUTSIDE OF (MEANING TO THE EXTERIOR OF) THE FOLLOWING [SUCH LAND WHICH INCLUDES THE FOLLOWING TO BE A PART OF A "UNIT"]:**

- **THAT PART OF THE BUILDING WHICH IS LOCATED ON SUCH LOT, MEANING THAT PART OF THE BUILDING WHICH CONTAINS THE LIVING UNIT LOCATED ON SUCH LOT; AND**

- **ALL PRIVATE PORCHES, PATIOS, PORTICOS, COURTYARDS AND SIMILAR PRIVACY AREAS ACCESSED FROM, OR INTENDED FOR THE USE OF, THE LIVING UNIT LOCATED ON SUCH LOT, AND THE UNIT OWNER AND OCCUPANTS THEREOF [BLACK, WROUGHT IRON FENCES, WHICH MAY BE PERMITTED UNDER THE ARCHITECTURAL CONTROL POWERS OF THIS DECLARATION FOR PURPOSES OF ENCLOSING ALL OR CERTAIN PORTIONS OF THE BACK YARDS FOR LIVING UNITS SHALL NOT BE CONSIDERED TO BE "PRIVACY FENCES" AND THE AREAS LOCATED THEREIN SHALL NOT BE CONSIDERED TO BE "PRIVACY AREAS" FOR PURPOSES OF THIS SECTION, BUT SHALL BE COMMON AREAS, ALTHOUGH LIMITED COMMON AREAS]; AND**

- **ANY PRIVATE GARAGE LOCATED ON SUCH LOT**

**[WITH ALL OTHER PORTIONS OF THE LAND LOCATED ON SUCH LOT WHICH DOES NOT CONTAIN SUCH ITEMS TO BE, AND TO BE TREATED AS, AND FOR ALL INTENTS AND PURPOSES TO CONCLUSIVELY BE DEEMED TO BE "COMMON AREA," SUBJECT TO ALL OF THE RESTRICTIONS, BURDENS, DUTIES AND OBLIGATIONS IMPOSED UPON COMMON AREA BY THIS DECLARATION]; AND**

ii Those Lots shown by the Plat which bear a "C" designation following the Lot number, such as, by way of example only and not by way of limitation, Lots 101C, 102C, 103C, 104C, 105C, 106C, 107C, 108C, 109C, 110C, 111C, 112C and 113C, and Lots 114C through 120C, both inclusive, all as shown by the Plat of "Vistas at Old Hawthorne Plat 1-A", and any other numbered Lots, wherein the number is followed by a "C" designation shown by the Plat of Vistas at Old Hawthorne Plat 1-A and any other Plat of all or any portion of the Development, all of which such Lots wherein the Lot number is followed by a "C" designation shall be Common Areas to be owned, held and controlled by the Association; and

iii. All Lots which bear a "C" designation followed by a number, such as, by way of example only and not by way of limitation, Lot C1 and C2 as shown by the Plat of Vistas at Old Hawthorne Plat 1-A, and any other Lots shown by such Plat or any other Plat for the Development, wherein a "C" designation is followed by a number; and

iv. Any Lot or parcel or tract contained within the Parcel or any portion of the Annexation Parcel annexed to the Development, which contains a swimming pool, changing building, or any other amenities for the Unit Owners of Units within the Development, it being intended that there may be a swimming pool, shelter house, and other amenities within the Development; and

v. Any land or easements affecting land containing entryway signs and monuments located at the entrances of the Development; and

vi. Any cul-de-sac bulbs, or islands in any street, which contain landscaping or other similar improvements; and

vii. The Land containing any private streets, driveways or drives which serve more than one Unit/Living Unit [example: if there are private streets, drives or alleys, as opposed to public streets, drives or alleys, which serve more than one Unit or Living Unit, then such streets, drives or driveways shall be deemed to be located within "Common Area", and shall be a part of the Common Elements, meaning that any private street, driveway or alleyway which serves more than one Living Unit shall be a part of the Common Areas and Common Elements]; and

viii. Any Land containing entryway signs and monuments located at the entrances to the Development;

ix. 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

x. Any other Common Areas shown by the Plat or any future Plat, or created by deed or conveyance;

xi. Any land within street islands or medians;

xii. Any land which is subject to any Drainage Easements, Stormwater Easements, or Stormwater Facilities hereinafter described, which serve more than one Lot or more than one Unit;

xiii. All Easements established by this Declaration or any Plat or otherwise as easements for landscaping, signs, Paths or Trails hereinafter described, or for stormwater purposes or drainage purposes, or sewer or utility purposes, all as hereinafter described in this Declaration or as provided for by any Plat;

xiv. Any Common Areas shown by or denoted as a Common Area upon any Plat;

xv. Any Land hereafter dedicated by the Developer or the Developer's assignees as Common Area, or conveyed to the Association as such;

xvi. 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 this Declaration or 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, Utility Easements, Utility Line Easements, and other Easements of every kind, nature and description whatsoever which are not publicly held.

As hereinabove stated in this Section 8, and regardless of how titled or owned, all areas of the Land within each Lot, which are located outside of (on the exterior or exterior surfaces of) the following:

– Exterior walls of the Building placed on such Lot, meaning all parts of the Building which contains the Living Unit located on such Lot; and

– Any private garages or carports placed on such Lot which are intended for the use by the Unit Owner of the Living Unit located on such Lot; and

– All areas located within the boundaries of the exterior surfaces of any private patio, courtyard, porch or privacy fenced area located on such Lot which is intended for use by the Living Unit located on such Lot, and the Unit Owner and the occupants thereof [provided that areas located within black wrought iron fences which are permitted under ARTICLE VIII of this Declaration to be installed for purposes of enclosing portions of the back yards for various Living Units shall not be considered to be "privacy fenced areas", but shall remain Common Areas],

shall be Common Area, it being intended that all Land located within each Lot, other than the Land containing that part of the Building which is located on such Lot (meaning that part of the Building which contains the Living Unit located on such Lot), and the garage or carport for the Living Unit located on such Lot, and any privacy areas (courtyards, patios, porches, porticos or areas located within the boundaries of a privacy fence for the Living Unit located on such Lot) shall, for all intents and purposes be, and be treated as "Common Area," whether or not owned by the Unit Owner or conveyed to the Association; meaning that it shall be Common Area even though titled in the name of the Lot Owner/Unit Owner and even though the Lot Owner or Unit Owner pays taxes thereon. All such Land shall be subject to a perpetual, irrevocable easement, running with the Lot, which binds the Unit Owner/Lot Owner of the Lot, and all present and future Unit Owners/Lot Owners of each Lot, and which runs in favor of the Association, the terms of which such easement shall be such that, whether or not the said portions of the Lot (i.e., those portions located outside the boundaries of the exterior walls of that part of the Building located on the Lot, the private courtyards, patios, garages, etc.) is titled in the name of the Unit Owner/Lot Owner or the Association, such areas of said Lots shall nevertheless be conclusively treated as, and shall conclusively be Common Area, and shall, for all intents and purposes, be Common Area. The foregoing provisions of this Section notwithstanding, however, all of the Land within each Lot which would otherwise be "Common Area," shall be "Limited Common Area," in that access thereto and egress therefrom, and use thereof, shall be limited to the Unit Owner/Lot Owner of the Unit located on such Lot and the members of such Owner's family, and such Owner's guests and invitees, except to the extent that same contains any driveway or walkway required for obtaining access to or egress from adjacent Unit(s) (with any such driveway or walkway being a Limited Common Area for both or all such Units); provided, however, that same shall also be subject to an easement in the Association, in order that the Association shall have unlimited access thereto and egress therefrom in order to perform all lawn and landscaping and driveway and walkway maintenance, repairs, replacements, snow removal and other duties which are imposed upon the Association with respect to Common Areas of the Development by the following provisions of this Declaration.

**THEREFORE, EVEN THOUGH THE LOTS ARE NOT SUBDIVIDED INTO UNITS (THAT PORTION OF THE LOT CONTAINING THE LIVING UNIT) AND COMMON AREA, ALL PARTS OF THE LAND LOCATED WITHIN THE LOT, ON THE EXTERIOR OF THE EXTERIOR WALLS OF THAT PART OF THE BUILDING LOCATED ON SUCH LOT, AND ANY GARAGES OR CARPORTS LOCATED ON SUCH LOT WHICH ARE INTENDED FOR USE BY THE UNIT OWNER(S) OF THE LIVING UNIT LOCATED ON SUCH LOT, AND ANY PRIVACY AREAS, SUCH AS COURTYARDS, PORCHES, PORTICOS, PATIOS AND OTHER PRIVACY AREAS ARE AND SHALL BE TREATED AS AND SHALL BE COMMON AREAS, ALTHOUGH SAME SHALL, AS HEREINABOVE DESCRIBED IN THIS SECTION, BE "LIMITED COMMON AREA."**

**ALL OF SAME SHALL OTHERWISE BE COMMON AREA AND SHALL BE SUBJECT TO ALL OF THE RESTRICTIONS AND CHARACTERISTICS OF COMMON AREA AS DESCRIBED IN THIS DECLARATION.**

Section 9. "Common Elements" shall mean the Common Areas described in Section 8 above, and all driveways, walkways, Stormwater Facilities, structures, other improvements, trees, shrubs, lawns and other landscaping items and materials located thereon, and any swimming pool, shelter house, changing rooms, and other amenities of any kind or nature whatsoever located thereon, and any other improvements of any kind or nature whatsoever now or hereafter placed, erected or constructed thereon, with "the Common Elements" to further include:

i. Any swimming pool, changing area, changing rooms, shelter house and other amenities of any kind or nature whatsoever at any time located within the Development; and

ii. Any private streets, drives, driveways or alleyways which serve more than one Living Unit, and all appurtenances thereto; and

iii. 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;

iv. Any entryway structures, monuments, landscaping or other entryway improvements for the Development;

v. Any Sign or Landscaping Easements located at any location in the Development;

vi. Any landscaped street islands or medians, and the landscaping therefor;

vii. Any and all improvements located on any Common Area;

viii. Any Pedestrian Trail or Path Easements established by the Plat or this Declaration or otherwise, and all paths, trails and walks and associated improvements located therein;

ix. Any other Common Areas or Common Elements established by this Declaration (including the provisions of Section 8 above), or by any Plat or any grant from or declaration of the Developer, or otherwise;

x. All ditches, swales, drains, drainageways and drainways, and drainage structures, and flowages for stormwater and Stormwater Facilities of every kind, nature and description whatsoever, which serve more than one Lot or Unit or more than one Living Unit;

xi. Drainageways and drainways and drainage provided for by any Common Area;

xii. Any utility lines, sewer lines or similar installations or facilities located within a Lot, or within the boundaries of a Unit, which serve more than one Unit;

xiii. Any Stormwater Facilities located at any location within the Development provided for by this Declaration;

xiv. All drives, walkways, walks, lawns, trees, shrubs and plantings located within any of the Common Areas described in Section 8 above;

xv. Any sewer lines, water lines or similar facilities or improvements located within any Common Area, as described in Section 8 above, other than those which are publicly owned, but which serve more than one Unit or Living Unit;

xvi. Stormwater drains located within any Common Area or within the boundaries of any Lot or Unit, which serve more than one Lot or Unit;

xvii. Irrigation systems for all lawns and landscaping located throughout the Development, including within the Lots and Units (other than within any private courtyards or other privacy areas), and all parts and components of such systems.

Section 10. "Declaration" means this instrument.

Section 11. "Developer" shall mean "Welek Construction Company", a Missouri corporation, and shall further refer to any person or persons to whom such corporation, 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 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 12. "Development" shall mean the Parcel and all Buildings and improvements located thereon, and all Lots and Units therein, and all rights pertinent thereto. If any portion of the Annexation Parcel is annexed to the Development provided for by this Declaration then all references to the "Development" shall include such portion of the Annexation Parcel which is so annexed and all Buildings and improvements located thereon, and all Lots and Units therein, and all rights pertinent thereto. A portion of the Annexation Parcel shall be treated as a part of the "Development" only when annexed to the Development provided for by this Declaration, and shall

otherwise not be subject to the provisions of this Declaration. No warranties or representations or guarantees are made or given that any portion of the Annexation Parcel will be annexed to the Development or will be made a part of the Development. The Developer shall have the complete discretion without the consent or approval of any Unit Owner or any persons to annex portions of the Annexation Parcel to the Development.

Section 13. "Family" or "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" or "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" or "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 14. "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 15. "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. The Common Areas located within each Lot, as such Common Areas are described in Section 8 of this ARTICLE I, are Limited Common Areas reserved to the exclusive use of the Lot Owner/Unit Owner of the Lot and of the

Living Unit located within such Lot, and the tenants thereof and the family members thereof, and the guests and invitees thereof, to the exclusion of all other Lots/Units and Lot Owners/Unit Owners and occupants of all other Lots and Units; provided, however that any driveway, walkway, sidewalk or similar improvement located within any Lot which is required for purposes of obtaining vehicular or pedestrian access to or egress from an adjacent Lot/Unit shall be a Limited Common Area/Limited Common Element reserved for the use and benefit of the Unit Owners/Lot Owners of both of the adjacent Lots/Units, and the tenants and occupants thereof and their family members, guests and invitees. Any area located within any privacy fence, private courtyard, private patio or similar private area for any Living Unit which might otherwise be considered to be Common Area shall be Limited Common Area (and all improvements located thereon shall be Limited Common Elements) reserved for the exclusive use of the Unit Owner of the Living Unit intended to be served thereby, and their tenants and family members and guests and invitees.

Section 16. "Limited Common Elements" means and includes the Limited Common Areas and all improvements therein 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 17. "Living Unit" or "Dwelling Unit" shall mean that part of a Building designed and intended as a residence for a single Family. In most cases, the various pairs of Lots [with the pair meaning an "A" Lot and a "B" Lot] will contain, together, a single Building, with each of such Lots containing a single Living Unit. For example, Lots 101-A and101B of Vistas at Old Hawthorne Plat 1-A will, in combination, likely contain a single Building, with the lot line between such Lots dividing one Living Unit from the other Living Unit in the Building. The Building on such Lots will contain two (2) Living Units, with one Living Unit being on the A Lot and the other Living Unit being on the B Lot, and the lot line between the A and B Lot running through the common wall or party wall between the two Living Units. Each of such Lots will, therefore, contain a single Unit as described in this Declaration. In some cases, a Lot may, by itself, contain a complete Building, which contains one or more Living Units. If a Lot contains a Building which contains a single Living Unit then that Living Unit will be a part of a "Unit" as defined in this Declaration. If a Lot, by itself, contains a Building which contains two (2) Living Units, then such Lot will, by resubdivision plat, be resubdivided into Units, and/or Units and Common Area, with each such Unit constituting a Unit as defined in this Declaration. If two (2) Lots contain a single Living Unit, meaning a Single Family House, those Lots will contain, in combination, one (1) Living Unit, and one (1) "Unit". In most cases each Building will contain two (2) Living Units, with each Living Unit constituting a portion of a Unit. In some cases a Building may contain a single Living Unit, in which case such Building will constitute a part of one "Unit". In most cases, that part of each Building which includes therein a single Living Unit will be located on one of the Lots, meaning that each Lot will contain a Building or part of a Building which contains a single Living Unit. For all purposes under this Declaration, a "Living Unit" will be a part of a "Unit". The term "Unit" means:

a. Each single Living Unit;

b. All parts and components (interior and exterior) of that Building or that part of the Building which includes such Living Unit;

c. All garages and carports for such Living Unit;

d. All private porches, patios, porticos, courtyards and similar privacy areas for such Living Unit [but not including portions of the back yards of Units which are fenced pursuant to the Architectural Control provisions of ARTICLE VIII of this Declaration, and which shall remain Common Area]; and

e. All of that part of the land located within the Lot that contains the Living Unit, which contains the items and improvements described in subparagraphs a through d above, with the remainder of the land of the Lot to be Common Area, but it shall be Limited Common Area devoted to the Living Unit.

All of such items described in a through e above (including that part of the Building which includes the Living Unit, and all structural components of such part of the Building, and the roof for such part of the Building and the exterior walls for such part of the Building, and all systems within and serving the Living Unit located within such part of the Building, and all of that part of the Land within the Lot which contains such items), shall be a "Unit."

Section 18. "Lot" shall mean each of the Platted Lots, located within the Parcel, as shown by the Plat of Vistas at Old Hawthorne Plat 1-A, and by any modification, amendment or replat of any of such Lots as shown by such Plats or of any portion of the Parcel shown by such Plats. "Lot" shall also mean each Platted Lot located within any portion of the Annexation Parcel which is annexed to the Development, as shown by the Plat of such portion of the Annexation Parcel, and by any modification, amendment or replat of any of such Lots as shown by such Plat, or any portion of the Annexation Parcel shown by such Plat. It is intended that a "Lot" shall be the location of a Living Unit. Each of the Lots will contain either:

– An entire Building, which contains a single Living Unit (example: a single family Dwelling/single family detached house) or two (2) Living Units [and any Lot which does contain two (2) Living Units shall be deemed to contain two (2) Units as defined in this Declaration, the intention being that such Lot will then be resubdivided into separate Lots or Units, each of which contains a single Living Unit]; or

– A part of a Building, which contains a single Living Unit; or

– A part of a Living Unit if a Single Family Dwelling is built across lot lines, on two (2) Lots.

In the vast majority of the cases, a Building will occupy two (2) Lots, with such Lots bearing number designations as an "A" Lot or a "B" Lot [example: Lots 101-A and 101B, and Lots 102A and 102B], with each of such A Lot and such B Lot containing a part of a Building which contains a single Living Unit. Therefore, in most cases, the majority of the cases, each Lot will contain a single "Unit", with the term "Unit" being generally described in Section 17 above and being more fully described in Section 31 below, and with all areas of the Land of each Lot located outside of the Unit on such Lot to be treated as "Common Area", even though titled in the name of the Lot Owner/Unit Owner of such Lot, although it shall be Limited Common Area. In certain limited instances a Lot may contain the entirety of a Building which contains a single Living Unit, meaning that a Lot may contain a single family dwelling/detached house, in which case the term "Unit" will

be as generally described in Section 17 above and will be more fully described in Section 31 below, and all areas of the Land on such Lot located outside of the Unit on such Lot will be treated as and will be deemed to be "Common Area", even though titled in the name of the Lot Owner/Unit Owner of such Lot, although it shall be Limited Common Area. In very limited situations a Lot may contain two (2) Living Units, but the intention would then be to resubdivide such Lot into Units or separate Lots, with each containing a single Living Unit, and in any event all portions of the Lot located outside the boundaries of the "Unit(s)", as generally described in Section 17 above and as more fully described in Section 31 below shall be deemed to be and shall be treated as "Common Area", even though titled in the name of a Lot Owner/Unit Owner. In other cases, two (2) Lots may contain one (1) Living Unit and only one (1) Unit.

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 Lot 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, and/or Common Area.

In addition, the Developer reserves the right to approve of all Plats which subdivide Lots owned by others into Units and Common Area 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 Developer may not, however, change the Lot Lines or Unit Lines or boundaries of any Lot or Unit owned by a Lot Owner or Unit Owner other than the Developer, or subdivide any such Lot or Unit, or alter the Lot Lines or Unit Lines of any Lot or Unit owned by a person other than the Developer, or in any manner modify or amend the Lot Lines or Unit Lines of Lots or Units owned by persons other than the Developer, without the prior written consent of the Lot Owner or Unit Owner thereof.

The location and description of each Lot shall be fixed by the Plat (provided that the Plat may be amended in the manner hereinabove described in this Section).

If a Building is placed on two (2) Lots [example: an A Lot and a B Lot] and is built across the lot line of such Lots, and:

- Such Building contains only a single Living Unit, meaning that such Building constitutes a single family home; or

- The Building contains two (2) Living Units, but the lot line does not run through the center of the common or party wall between the two (2) Living Units,

then, if the Building contains only a single Living Unit, meaning that it is a single family house, then the entirety of such Lots shall constitute a single "Lot" for all purposes under this Declaration, and the Living Unit located within such Building shall constitute a part of a single "Unit", as generally defined in Section 17 above and as more fully described in Section 31 below, and all portions of the Lots (now being treated as a single Lot) located outside of the boundaries of the Unit as defined, generally, in Section 17 above and more specifically defined in Section 31 below, shall conclusively be deemed to be and be treated as "Common Area" even though titled in the name of the Lot Owner/Unit Owner, although it shall be Limited Common Area. If the Building on such Lots contains two (2) Living Units, then, in such event, the Lots which contain such Building shall be resubdivided into new Lots by a resubdivision plat which causes the lot line between such Lots to run through the common wall/party wall which subdivides the two (2) Living Units from each other, and it is contemplated that there will be modifications/ amendments or replattings of Lots in order to accommodate the locations of the common wall/party wall/subdivision line between the Living Units in Buildings.

The above provisions notwithstanding if, for any reason, a Building containing two (2) Living Units is located entirely within the boundaries of a single Lot, then such Lot shall be resubdivided into (and if not resubdivided into shall be conclusively deemed to be and treated as having been resubdivided into) two (2) Lots or Units.

In all cases, all portions of a Lot located outside the boundaries of any Unit or Units located on such Lot, as generally defined in Section 17 above and as more fully described in Section 31 below, shall be conclusively deemed to be and conclusively treated as "Common Area", for all purposes under this Declaration, as such "Common Area" is defined in Section 8 above; provided, however, that such Common Areas will be Limited Common Areas as defined in Section 15 above.

All references herein to a "Lot" shall mean only a platted portion of the Parcel which is intended to contain a Building or part of a Building, and shall not include the Lots shown by the Plats with "C" designations, which are not intended to contain Buildings but rather are Common Areas and Common Elements. For example, Lots C1 and C2 as shown by the Plat of Vistas at Old Hawthorne Plat 1-A, shall be Common Areas, not "Lots". All numbered Lots with a "C" following the number, as opposed to an "A" or "B" designation (examples: Lots 101C, 102C, 103C, etc., as shown by the Plat of Vistas at Old Hawthorne Plat 1-A) shall also not be "Lots" but rather shall be Common Areas for purposes of this Declaration.

Section 19. "Lot Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Lot. Once a Building has been completed on a Lot, and the Living Unit/Unit within such Lot is a Unit to which a Class A Membership will attach, as hereinafter described in this Declaration, the "Lot" will contain both a "Unit" and Common Area, all as described in this Declaration, and from that point forward, the "Lot Owner" of the Lot will be a "Unit Owner" of the Unit located within such Lot, and the terms "Unit Owner" and "Lot Owner" shall then be synonymous.

Section 20. **"OLD HAWTHORNE DECLARATION"/"THE COMMUNITY OF OLD HAWTHORNE DECLARATION". THE PARCEL IS LOCATED WITHIN A SUBSTANTIAL REAL ESTATE DEVELOPMENT KNOWN AS "THE COMMUNITY OF OLD HAWTHORNE". THE ENTIRETY OF THE LARGE TRACT OF LAND WHICH CONSTITUTES OR WILL CONSTITUTE "THE COMMUNITY OF OLD HAWTHORNE", OF WHICH THE PARCEL IS A PART, IS SUBJECT TO COVENANTS, CONDITIONS AND RESTRICTIONS WHICH ARE SET FORTH IN A "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COMMUNITY OF OLD HAWTHORNE", WHICH IS RECORDED IN BOOK 3022 AT PAGE 63 OF THE REAL ESTATE RECORDS OF BOONE COUNTY, MISSOURI. SUCH DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COMMUNITY OF OLD HAWTHORNE, AND ALL OF THE EASEMENTS, COVENANTS AND RESTRICTIONS AND PROVISIONS OF SUCH DECLARATION, ARE REFERRED TO HEREIN, COLLECTIVELY, AS "THE OLD HAWTHORNE DECLARATION", OR THE "COMMUNITY OF OLD HAWTHORNE DECLARATION". THE PARCEL, AND EACH OF THE LOTS AND UNITS, IS, IN ADDITION TO THE PROVISIONS OF THIS DECLARATION, SUBJECT TO ALL OF THE COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS AS SET FORTH IN THE OLD HAWTHORNE DECLARATION, AND EACH OF THE UNIT OWNERS OF THE UNITS PROVIDED FOR BY THIS DECLARATION SHALL BE A "UNIT OWNER" OF A "UNIT" OF OLD HAWTHORNE, AS PROVIDED FOR BY THE OLD HAWTHORNE DECLARATION, AND SHALL BE SUBJECT TO ALL OF THE OBLIGATIONS IMPOSED BY THE OLD HAWTHORNE DECLARATION UPON UNIT OWNERS, INCLUDING THOSE FOR THE PAYMENT OF ASSESSMENTS AND THE OBLIGATIONS FOR MANDATORY CLUB MEMBERSHIP, IN THE CLUB AT OLD HAWTHORNE, AS IMPOSED BY THE OLD HAWTHORNE DECLARATION.**

Section 21. "Parcel" means the entirety of the Parcel described on **Exhibit A** hereto, which means the entirety of the Parcel platted as "Vistas at Old Hawthorne Plat 1-A". If any portion of the Annexation Parcel described on **Exhibit B** hereto is annexed to the Development and is made subject to this Declaration and to the jurisdiction of the Association, then all references to the "Parcel" shall further mean and include any portion of the Annexation Parcel which is so annexed to the Development.

Section 22. "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

Section 23. "Plat" means the Plat of Vistas at Old Hawthorne Plat 1-A, recorded in Plat Book 41 at Page 45 of the Real Estate Records of Boone County, Missouri, and any modifications or amendments of the said Plat, and any plat of any portions of the Annexation Parcel which is annexed to the Development, and any modifications or amendments of any of such Plats, and any replats of any Lot or Lots, or Unit or Units, shown by any such Plat.

Section 24. "Private Street" or "Private Drive" (such terms shall be synonymous) shall mean any private street, drive or driveway, which provides access to and egress from more than one Living Unit, and all parts and components of same, including any lighting for same and any sidewalks or walkways running alongside same, all of which shall be "Common Elements" of the Development, with the Association to also provide all snow and ice removal and cleaning therefor, but with any repair or resurfacing of same to be provided by the Unit Owner of the Units served thereby. The provisions of this Section notwithstanding, if a private drive or driveway serves only a single Living Unit, then the Unit Owner of such Unit shall be obligated to provide for all repairs and resurfacing

of same, other than snow and ice removal and cleaning therefor, which such snow and ice removal shall be provided by the Association. If a drive or driveway serves two (2) Living Units or several Living Units, then, while the Association shall provide snow and ice removal therefor and cleaning therefore, the Unit Owners of such Living Units shall be required to provide for all resurfacings and repairs of such Private Drive, at their cost and expense, and shall equally share all costs of resurfacing and repairs of such drive.

Section 25. "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 26. "Record" means to record in the Office of the Recorder of Deeds of Boone County, Missouri, wherein the Property is located.

Section 27. "Residential Building" shall mean and refer to a Building containing one or two (2) Living Units, each of which shall be occupied by one (1) Family, for use by such Family as a residence and only as a residence, with each such Living Unit to be used only as a residence. Each Building located within the Development is intended to be a "Residential Building", in that each Building will contain one (1) or two (2) Living Units. Each of such Living Units will be used solely as a residence for a single Family as defined in this Declaration, which shall use the Living Unit solely for residential purposes. Therefore each Building will be a Residential Building.

Section 28. "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 29. "Stormwater Facility" shall mean and refer to each of the following, which is located within the Development, at any location whatsoever, and whether located within any Lot, Unit or Common Area:

a. Any stormwater detention basin, wet or dry;

b. Any stormwater impoundment;

c. Any stormwater retention or detention facility;

d. Any ditch, swale, pipe, conduit, wet or dry stream or creek, drain, drainageway, French drain, or other stormwater flowage component, device or facility of any kind or nature whatsoever, other than the individual gutters, downspouts and downspout outlets for the individual Living Units (which shall be a part of the Unit and must be maintained and repaired and replaced by the Unit Owner of the Living Unit).

All such "Stormwater Facilities" which serve more than one Lot or Unit, wherever located, shall be Common Elements, and perpetual, irrevocable Easements for the continued location, maintenance,

repair, replacement, use and upkeep of same (where placed by the original Builder of any Building, or where it exists as a part of the natural characteristics of the land itself) shall be and it is hereby established. Such Easement shall run in favor of the Association and each of the Unit Owners/Lot Owners of each Lot/Unit benefitted by or drained by such Facility, or utilizing the Facility. The Association shall maintain, repair and replace all such Stormwater Facilities, as Common Elements, whether same are located within the boundaries of any Common Area or within the boundaries of any Unit/Lot. No Unit Owner and no Lot Owner shall interfere with the drainage of stormwater or groundwater through any Stormwater Facility.

Section 30. "Trails" or "Paths" shall mean and refer to any pedestrian and/or bicycle paths or trails shown by any Plat, or placed at any location within the Development for the common use and enjoyment of the Unit Owners of the various Units located within the Development. All pedestrian and/or bicycle paths or trails and all paths and trails, and all 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 31. "Unit" shall mean and refer to a portion of a Lot which contains or is to contain that part of a Building which contains a single Living Unit, and shall also mean and include the following:

a. That part of the Building which contains the single Living Unit located within the Building, and all components, interior and exterior, structural and non-structural of such part of the Building, and all systems within and serving such part of the Building (meaning a single Living Unit) and all equipment of such systems, wherever located, and whether located within the boundaries of the Unit or Common Area. [Therefore, if a Building contains a single Living Unit, the entire Building shall be a part of the Unit. If a Building contains two Living Units, then the two separate parts of that Building, each of which contains a single Living Unit, will be a part of a "Unit", there being one Unit for each Living Unit];

b. Private patios for the Living Unit; and

c. Private courtyards for the Living Unit; and

d. Areas included within any privacy fence attached to a Living Unit [but backyards fenced with approved fences shall remain Common Area]; and

e. Similar privacy areas for the Living Unit; and

f. Any private garage or carport for the Living Unit;

g. All of those parts of the Land within the Lot which contains the Living Unit, which contains (meaning those parts of the land which contain) items a through f, and only such parts of the Land within the Lot,

with all other portions of the Land of the Lot, other than the Land within the Lot containing such items a through f above, to be and to be conclusively deemed to be Common Area (whether or not designated on any Plat as Common Area, and whether or not conveyed to or titled in the name of Unit Owner or the Association) and with same conclusively being deemed to be Common Area, as defined in Section 8 of this ARTICLE I, and with same to be subject to a perpetual, irrevocable easement in the Association, running with the Land of the Lot and with the Land of all other Lots and Units, for the benefit of the Association and the Unit Owners of each and all other Units, the terms of which such easement shall be such that even if the Land is owned by the Lot Owner/Unit Owner, same shall nevertheless be and be treated as Common Area and shall be subject to all of the restrictions, covenants, provisions, duties and obligations imposed upon or provided for Common Area by this Declaration, and with all landscaping thereon, driveways thereon, parking areas thereon, walkways thereon, and other improvements located thereon (other than light fixtures controlled by switches or controls within the Living Unit) to be Common Elements. The foregoing provisions of this Section to the contrary notwithstanding, and any other provisions of this Declaration to the contrary notwithstanding, all taxes on all of the Land and improvements within each Lot shall be paid by the Lot Owner/Unit Owner.

Section 32. "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit as a "Unit" is defined in Section 31 above. A "Unit Owner" may also be a "Lot Owner," as the Unit Owner may own both a Unit and a Lot, although all parts of a Unit Owner's Lot located outside the boundaries of the Unit Owner's Unit as defined in Section 31 above shall be "Common Area," even though owned by Unit Owner/Lot Owner and even though titled in the name of the Unit Owner/Lot Owner, and the Unit Owner/Lot Owner shall have no rights thereto (as all rights with respect to same shall be vested within the Association as if same was Common Area), although the Unit Owner shall pay the real estate taxes thereon.

Once a "Unit," as defined in Section 31 above, becomes subject to a Class A Membership and to Assessment as hereinafter described in this Declaration, the Lot Owner of the Lot which contains the Unit shall be, and shall be deemed to be, and from that point forward shall be a "Unit Owner." It is therefore intended to refer to the Owner of each Lot (or of each part of a Lot which contains a single Living Unit) as "Unit Owners" for all purposes under this Declaration. In most cases, a "Lot Owner" will own a Lot that contains a single Living Unit, meaning a single Unit, and such "Lot Owner" will be a "Unit Owner". In all cases the owner of each Living Unit located within the Development shall be a "Unit Owner".

## ARTICLE II
## MEMBERSHIP IN THE ASSOCIATION

Every Unit Owner of a Unit which has been conveyed or rented by the Developer or its assignees, or successors in ownership, or which is used as a residence, 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. Class A membership in the Association shall not be optional. There shall be one (1) Class A membership attributable to each Unit. 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. 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. 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 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 its assignees, and successors, shall, before the termination of Class B memberships, also be Class A members for each Unit held for rental or lease purposes and for each Unit owned by them which is occupied as a residence; any Units being held for rental or lease purposes or occupied as residences being automatically deemed to be Class A Units, which are subject to assessment under the following provisions of this Declaration. Except as hereinabove specifically provided to the contrary in Section 11 of ARTICLE I of this Declaration with respect to Deeds of Trust, mortgages and security instruments executed by the Developer, rights of the Developer shall not otherwise be deemed to be assigned by any Warranty Deeds or other conveyances made or given by the Developer, unless such rights are specifically mentioned therein. Rights of the Developer, including Class B voting rights, can otherwise be assigned only by a written assignment, properly recorded, which specifically refers to the rights of the Developer hereunder, and the Class B voting rights, and assigns all or a portion of such rights. The Developer can assign all or a portion of its Class B voting rights, hereinafter set forth, to other Builders or Lot Owners who build within the Development, but such assignment shall be made solely by a specific reference in the Deed or conveyance, or by a separate written assignment which specifically refers to such rights, and is properly recorded. If any Class B voting rights are so assigned by the Developer to other Builders or Lot Owners or developers, the assignee shall be deemed to lose one (1) Class B vote for every Unit conveyed, leased or rented by him or it to another person. If a Unit is sold, leased or rented by the Developer, or any assignee of the Developer's rights hereunder, or the holder of any Class B membership rights hereunder, or if a Unit is occupied as a residence, then the Class B membership, if any, attributable to such Unit shall cease, and such Unit shall automatically have (from the date of the first sale, renting, leasing or occupancy thereof) a Class A membership attributable thereto and attached thereto, and the Unit Owner of such Unit shall become, with respect to such Unit, a Class A Member, subject to all duties, obligations, assessments, rights and privileges of Class A membership attributable to such Unit, regardless of whether such Unit Owner is the Developer or any other Class B Member. If a Unit is rented or leased by the Developer or any other Class B Member, or any assignee of any of the Developer's rights hereunder, or if a Unit is occupied as a residence, then such Unit shall be deemed to have been "conveyed", for

purposes of determining the termination of Class B membership rights under the terms of ARTICLE III hereof. Notwithstanding anything to the contrary hereinabove set forth in the Declaration, in the event a Class A membership has not earlier attached to a Unit under the above provisions of this ARTICLE II, such a membership shall attach to such Unit, and the Class B membership attributable to such Unit shall terminate, if not earlier terminated, upon the earliest to occur of the following events:

a. Twelve (12) months have expired following substantial completion of the Building which contains (or is intended to contain) the Living Unit of such Unit; or

b. Twenty-four (24) months have expired following the start of work for the construction of the Building which contains or is to contain the Living Unit of such Unit; or

c. A Class A Membership has been attached to a Unit which contains a Living Unit located within the Building which contains the Living Unit of such Unit, and a period of more than six (6) months has expired following the date when such Class A membership has attached to such other Unit; or

d. The Living Unit of such Unit has been conveyed, rented or leased to someone other than the Developer or the Builder who builds the Building containing the Living Unit located on the Unit or such Living Unit has been occupied as a residence; or

e. Any Living Unit located within the Building which contains the Living Unit of such Unit has been occupied as a residence for a period of more than twelve (12) months.

## ARTICLE III
## VOTING RIGHTS

The Association shall have two (2) classes of voting membership:

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 it assigns all or any portion of its rights as the Developer, under the terms of this Declaration, shall, at the outset, be entitled to sixty (60) Class B votes; there being one (1) Class B vote attributable to each of the forty (40) Lots shown by the Plat of Vistas at Old Hawthorne Plat 1-A, and there being twenty (20) additional Class B votes which are not attached to any Lot or Unit. Initially, therefore, the Class B votes shall be as follows:

– Forty (40) Class B votes and Class B Memberships shall be allocated to the Lots shown by the Plat of Vistas at Old Hawthorne Plat 1-A, there being one such membership allocated to each of such forty (40) Lots; and

– Twenty (20) unassigned Class B votes and Class B Memberships which do not attach to any Lot or Unit; and

– Total initial Class B votes and Class B Memberships - 60

If portions of the Annexation Parcel are hereafter annexed to the Development, then the number of Class B votes will be increased by the number of anticipated Units to be located within each such portion of the Annexation Parcel which is so annexed.

There shall, therefore, be one (1) Class B vote attributable to each Living Unit (each Unit) intended to be located within the Parcel, and to each portion of the Annexation Parcel which is annexed to the Development, and there being twenty (20) unassigned Class B votes and Class B memberships, which will not end until all Class B voting rights have ended.

All Class B voting rights and Class B memberships, if not previously terminated, shall terminate:

i. When the Developer and the Developer's assignees of the Developer's rights as the Developer, and all Class B members, cease to own any Lot or Unit within the Parcel as it then exists, and a period of more than forty-eight (48) months has expired since the Developer and the Developer's assignees of the Developer's rights hereunder and all Class B members have last owned a Lot or Unit within the Parcel and a period of more than forty-eight (48) months has expired since the Developer last annexed any portion of the Annexation Parcel to the Development (or more than 48 months have expired since the last part of the Annexation Parcel has been so annexed to the Development); or

ii. On January 1, 2048; or

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

A failure of the Developer to cast its Class B votes or to exercise any of its rights as the Developer shall not constitute a waiver of such votes or such rights. If the Developer on any occasion elects not to cast its Class B votes (and it may elect to do so if it, in its sole, absolute, unlimited and unmitigated discretion deems it appropriate to do so), and if it permits all members of the Board of the Association to be elected for any year by the Class A members of the Association (which it shall be permitted to do), it shall not, under any circumstances whatsoever, have waived its right to cast such Class B votes at any time in the future. In other words, the Developer may from time to time relinquish control of the Association by not casting its Class B votes, and then reassert such control at any later time or times of its choosing.

Automatically, on the date of termination of a Class B membership attributable to a Unit, a Class A membership shall attach thereto.

## ARTICLE IV
## UNITS

Section 1. Descriptions of Units and Boundaries of Units. Each Living Unit located within the Development will be located within a Building that contains one (1) or two (2) Living Units. That part of such Building which contains [the] a single Living Unit will be located within one or two of the Lots of the Development. For all purposes under this Declaration, a "Unit" consists of the following and that part of the Land within the Lot which contains the following:

a. A single Living Unit and all of its parts and components; and

b. That part of the Building which contains such Living Unit, including the entirety of the exterior walls and all exterior wall surfaces and wall coverings, the roof, the entirety of the roof structure, all roof coverings, that part of the party wall (if any) between such Living Unit and any adjacent Living Unit, to the centerline thereof (if the Living Unit is in a Building that contains two Living Units); and

c. All of the footings and foundations for [the] such part of the Building which contains the Living Unit, and any basement or floor slab for such [part of] the Building, all other structural components of [such part of] the Building, and all other parts and components of [such part of] the Building which contains the Living Unit, of every kind, nature and description whatsoever, including but not limited to any fixtures attached to [such part of] the Building, and including fixtures or attachments attached to the exterior walls of [such part of] the Building, and all systems (example: HVAC systems, air conditioning systems, cooling systems, electrical systems, plumbing systems and sewer systems) within such [part of the] Building or serving the Living Unit, wherever located, and all parts, components, equipment and appliances of such systems, whether same shall be located within the boundaries of the Unit or the Common Areas as described herein; and

d. Any private garage or carport for such Living Unit; and

e. Any private courtyard, private patio, porch or portico for such Living Unit and all parts and components thereof; and

f. Any area located within any privacy fence, which fences a privacy area accessible only from such Living Unit [but not including areas within fenced in rear yards which shall remain Common Area]; and

g. Any other privacy area for such Living Unit,

with all other portions of the Land located within the Lot that contains the Living Unit, and which such Lot is conveyed to the Unit Owner, while being titled in the name of the Unit Owner, to be and to conclusively be considered to be and conclusively treated as Common Area, as described in Section 8 of ARTICLE I of this Declaration.

The above provisions of this Section notwithstanding, however, any Common Area located within a Lot, and any driveway, walkway or similar improvement located within the boundaries of

a Lot which lead to and serve only the Living Unit located within such Lot, shall be "Limited Common Areas" and "Limited Common Elements," being restricted to the use of the Unit Owner of the Living Unit, and such Unit Owner's tenants and their respective family members, guests and invitees. Any driveways or walkways which serve two (2) Living Units, located in two adjacent Lots, shall be "Limited Common Elements," limited to use by the Unit Owners of the adjacent Living Units, and their tenants and lessees, and their respective family members, guests and invitees.

Therefore, even though a Unit Owner may be the titled owner, and the grantee of a conveyance of, the entirety of the Land located within a Lot, and even though the Unit Owner shall pay real estate taxes on the entirety of the Lot conveyed to the Unit Owner, all of the Land of the Lot, other than the Land which contains the items of the "Unit" as hereinabove described in this Section, shall be "Common Area," and shall be treated as if owned by the Association and shall be subject to a perpetual, irrevocable easement in favor of the Association, the terms of which shall be that such portion of the Land shall be, for all intents and purposes, treated as Common Area, and shall be subject to all characteristics of, burdens upon, and restrictions upon Common Area as described in this Declaration, although same shall be a Limited Common Area.

Any description of a Lot or Unit shall be deemed to include and to convey, transfer, encumber or otherwise affect the Unit Owner's corresponding membership in the Association, even though same is not expressly mentioned or described therein. Ownership of a Lot or Unit and of the Owner's corresponding membership in the Association shall not be separated, nor shall any Lot or Unit, by deed, plat, court decree or otherwise, be subdivided, or in any other manner separated into tracts or parcels smaller than the whole Lot or Unit. No Lot Owner or Unit Owner (and such terms shall be synonymous, in that the Owner of a Lot which contains a Unit to which a Class A membership has attached shall be both a "Lot Owner" and a "Unit Owner") shall, by deed, plat, lease or otherwise subdivide or in any other manner, cause his Unit or Lot to be separated into any tracts or Parcels smaller then the whole Unit or Lot. 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. No Unit Owner shall own any sewers, pipes, wires, conduits, or utility lines, contained on, within, or beneath his Lot or Unit, which serve any Lot or Unit, or Lots or Units, or any Living Unit or Living Units in addition to his Unit, as such items, if not publicly owned, shall be deemed to be a part of the Common Elements. Any Drives, Private Drive, driveways, sewer lines, electrical lines, water lines, or other utility lines or equipment, contained within the Parcel, or which make up a part of the Property (including those within the boundary lines of any Lot or Unit), other than those publicly owned, which service more than one Unit, shall be deemed to be a part of the Common Elements, and shall be owned by the Association for the benefit of the Unit Owners of the Units served by such Drives, Private Drives, driveways, sewer lines, water lines, electrical lines and utility lines, and the Unit Owners of any Units within the boundary lines of which such Drives, Private Drives, driveways, sewer lines, water lines, electrical lines and utility lines or related equipment are located shall be required to afford access, at any reasonable time, to the Association for the purposes of performing necessary maintenance or repairs upon or replacements of such Drives, Private Drives, driveways, utility lines, or equipment; provided, however, that notwithstanding anything to the contrary at any place appearing in this Declaration, all costs of repair, maintenance and replacement of such Drives, Private Drives, driveways, utility lines or equipment [excluding snow and ice removal for such Drives or driveways which shall be provided by the Association], which are designated hereby as "Common Elements", shall be shared, equally, by the Unit Owners of the Units

serviced thereby and such Unit Owners shall be required to reimburse the Association, forthwith, for all of its costs and expenses incurred in repairing and replacing or resurfacing such Drives, Private Drives, driveways, utility lines or equipment. The provisions of this ARTICLE IV are not intended to provide that individual "customer service lines" or "laterals", or sewage lines, water lines or other utility lines which service only one Unit shall be made a part of the Common Elements, as such lines (regardless of whether located within the boundary lines of Units or the Common Areas) shall be deemed to be owned by the individual Unit Owners of the Units serviced thereby, who shall be required to repair, maintain and replace same at their sole expense, and, in the event, utility lines or sewer lines or facilities serving another Lot, Unit or Living Unit are located within the boundary lines of a Lot or Unit other than the Unit or Lot so served thereby, the Lot or Unit upon which or within which same are located shall be imposed with an easement in favor of the Unit Owners of all Units, Lots and Living Units served thereby, for the continued location, maintenance, servicing and repair thereof, and the Owners of the Lot or Unit occupied by same, shall be required to afford access to the Owners of the Lots, Units or Living Units served thereby, at all reasonable times for the purposes of performing necessary maintenance, repair or replacement of such utility lines, facilities or equipment. Each Unit or Lot, within the boundary lines of which a Drive or driveway or sewer line, water line, electrical line, cable television line, gas line, or other utility line servicing more than one Unit, or servicing another Unit, exists, or within the boundary lines of which a stormwater drain, stormwater flowage, or stormwater passageway or groundwater passageway or Stormwater Facility servicing more than one Unit, Living Unit or Lot, or servicing another Lot, Unit or Living Unit, exists, shall be and is hereby imposed with a perpetual, irrevocable easement, running with the Lot or Unit, and running in favor of the Association, and in favor of each of the Units, Lots or Living Units served by such Drive, driveway or such lines, drainageways, drainways or other facilities, for the continued location, use, maintenance, repair, replacement, servicing, improvement and upkeep of same, and for purposes of affording the Association and the Unit Owners of each of the Lots or Units served thereby access to maintain, repair or replace such line, lines, drains, drainways or other such Stormwater Facilities; provided that the Association or the Unit Owners performing the maintenance, repair or replacements, or causing same to be performed or on whose behalf same are performed, shall be liable for all damage and disruption of the Unit or Lot caused by same, and shall promptly restore same to its previously existing condition.

The provisions of this Section 1 and any other provisions of this Declaration to the contrary notwithstanding, the Association shall provide all snow and ice removal for all Drives, Private Drives, driveways, sidewalks and walkways, located in the fronts of the Building, and for all Private Drives which serve more than one (1) Unit, but the Unit Owner(s) of the Unit(s) served by such Drives, Private Drives or driveways, shall be required to provide for all resurfacing of and repairs of such Drives, Private Drives or Driveway, and if more than one (1) Unit shares the use of the Drive, Private Drive or Driveway, then the Unit Owners of the Unit served thereby shall equally bear the costs of any repair or resurfacing of the Drive, Private Drive or Driveway; the Association's obligations being limited to snow and ice removal.

Any provisions of this Declaration to the contrary notwithstanding, if a fence serving a Living Unit is placed within the Lot that contains the Living Unit after approval pursuant to the Architectural Control provisions of ARTICLE VIII of this Declaration, then such fence shall not be a Common Element, but rather shall be deemed to be and shall constitute a part of the Unit, and the fence must be painted by, repaired and replaced by, and maintained by the Unit Owner of the Living Unit. Fences

may not be installed except in compliance with the Architectural Control provisions of this Declaration. All fences are required to be black, wrought iron fences.

Section 2. Further Descriptions of Units/Zero Lot Line Units. The boundary lines of the Unit on a Lot are, as described in Section 1 of this ARTICLE, intended to be established on a "Zero Lot Line" concept, even though the Units are not separated from the Common Areas within the Lot by a resubdivision plat which resubdivides the Lot into a Unit and Common Area. Each Unit will include and is intended to include within the boundary lines of such Unit the entirety of that part of the Building which contains a single Living Unit (including the exterior walls of or that part of the Building which house the Living Unit), and all private garages, private carports, private courtyards, private patios, privacy areas which are accessed solely from the Living Unit, and similar privacy areas. Such boundary lines may or may not be established by a replat of the Lot identifying the Unit and Common Area. Even in the absence of such a replat, all areas outside of the Unit as identified in Section 1 above and in this Section 2 shall be Common Area.

Section 3. Resubdivision. Any provisions of this Declaration to the contrary notwithstanding, the Developer reserves the right to subdivide Lots, to amend Lot lines, to change Lot lines, to alter Lot lines, to replat the Lot, to subdivide a Lot into a Unit and Common Area, and to otherwise amend the Plat or any Plat as to land owned by the Developer, but not as to land owned by any other person or party.

Section 4. All Areas Outside of Boundaries of Building and Privacy Areas Are Common Areas, Whether or Not Owned by the Association. As hereinabove stated in this Declaration, all portions of each of Lots located on the outside of (to the exterior of):

i. The exterior walls of the Building, or that part of a Building located on such Lot, and

ii. Any private garage(s), private carport(s) or other covered, private parking area(s) located on such Lot, intended to serving any Living Unit(s) located within the boundaries of such Lot, and

iii. Any private courtyards, private patios, private decks and similar privacy areas for any Living Unit located within such Lot,

[with all of the items described in subparagraphs i, ii and iii above, and that part of the Land of such Lot which contains such items to be a part of a "Unit" or of the Units located within such Lot]

shall be, and shall be conclusively treated as, Common Area, and shall be deemed to be owned by the Association and shall be treated as if owned by and as if having been conveyed to the Association (whether or not actually owned by the Association or being conveyed to the Association); provided, however, that if a Lot is resubdivided by resubdivision Plat into a Unit or Units and Common Area, it is absolutely required (without exception) that such Common Area be conveyed to the Association, free and clear of all liens, deeds of trust and encumbrances, and such requirement shall be mandatory and not optional. Under no circumstances shall areas within a Lot located outside of the exterior walls of the Building or part of a Building located on such Lot, and outside of the private courtyards, private

patios, private decks, porticos and similar privacy areas located within such Lot be treated as if owned by the Unit Owner(s) of the Living Unit(s) located within such Lot even if such Unit Owner(s) acquire(s) and retain(s) legal title to same. The provisions of this Section 4 and any other provisions of this Declaration to the contrary notwithstanding:

a. While the Association shall provide snow and ice removal for driveways, drives and sidewalks leading from the fronts of the Living Units to the public street, the Unit Owner(s) of the Living Unit(s) served by such sidewalk(s) and driveway(s) shall be required to provide all resurfacing of and repairs of such sidewalk(s) and driveway(s) or drive, and if more than one Living Unit is served thereby, then the Unit Owner(s) of such Living Unit(s) shall be required to cooperate in providing the repairs and resurfacing and shall share, equally, all costs of such repairs and resurfacing, and shall cause all such repairs and resurfacing to be performed as required to keep such components in good repair and condition; and

b. If the rear yard of any Living Unit is fenced in (and same can be fenced in only by a fence approved pursuant to the Architectural Control Provisions of ARTICLE VIII of this Declaration, it being understood that fences are generally required to be black, wrought iron fences), then the area within such fence shall nevertheless be Common Area, although it shall be Limited Common Area, limited to the use of the occupants of such Living Unit, and the Unit Owner of such Living Unit shall be deemed to be and shall the owner of such fence, which shall be included as a part of the Unit and not the Common Elements, and shall be required to provide all maintenance, repairs, repainting and replacement of such fence; and

c. All heat pumps, air conditioning compressors and any similar equipment or facilities which serve each Living Unit shall be a part of the Unit, whether located within the boundaries of the Unit or the Common Area, and must be maintained, repaired and replaced by the Unit Owner of the Living Unit served thereby and not by the Association, and such items shall be "Common Elements"' and

d. If sewer lines, water lines or other utility lines are located within the boundaries of any Lot or Unit and same serve more than one Lot or Unit, then, while same shall be treated as if a part of the Common Elements, the cost of maintenance, repair and replacement of same must be paid, equally, by the Unit Owners of the Living Units served thereby, and the Association and the Unit Owners of each of such Units, and their designees and contractors, shall have easements over each Lot and Unit for purposes of performing maintenance, repairs, replacements and servicing of such components, as required; and

e. Any sewer line lateral, water line lateral, electrical line lateral or similar utility facility which serves only a single Living Unit shall be a part of the Unit which contains the Living Unit and must be maintained, repaired and replaced by the Unit Owner of such Unit.

Section 5. Sprinkler System and Irrigation System, and Entry Signs, Entryway Signs, Entryway Monuments and Landscaping, Lighting, and Components Therefor. Any provisions of this ARTICLE IV or of this Declaration of the contrary notwithstanding, all pipes, sprinkler heads, controls and other components, appliances and equipment of any irrigation systems installed within the Development by the Developer or the Association shall be a Common Element, whether located within the Common

Area or any Unit, and any portion of any Lot or Unit occupied by any such component of such sprinkler system/irrigation system shall be imposed with a perpetual easement in favor of the Association, and the Lot and Unit shall be imposed with an easement in favor of the Association, so that the Association and its contractors and designees may enter upon the Lot and Unit for using, maintaining, repairing and replacing the sprinkler system/irrigation system and each part and component thereof. Any entry signs or monuments for the Development, and all landscaping, lighting and components of same shall be Common Elements, and a perpetual easement for the location, repair, keeping, maintenance and location of same shall be held by the Association.

Section 6. Stormwater Facilities. Easements for Stormwater Facilities, as described in Section 28 of ARTICLE I of this Declaration, are hereby established within each Common Area, Lot and Unit within which any such Stormwater Facility now or hereafter exists or is hereafter placed.

Section 7. Fences. The Developer may install, or may permit Builders to install or may permit Unit Owners to install (or the party holding Architectural Control powers under ARTICLE VIII of this Declaration may permit Unit Owners to install) fences for the rear yards of various Living Units. Any such fence must, however, be installed after full compliance with the Architectural Control provisions of ARTICLE VIII of this Declaration. Any fence must be a black, wrought iron fence. If a fence exists for a Living Unit or is installed for a Living Unit, then regardless of who installed such fence, such fence shall be deemed to be a part of the Unit, even though located within the Common Area, and the fence shall not be a Common Element, but rather shall be maintained, repaired, replaced, and painted and repainted by the Unit Owner. The area within the fence shall remain Common area; although Limited Common Area.

## ARTICLE V
## THE ASSOCIATION

Section 1. Formation. The Developer, upon the sale of one or more Units, shall cause to be incorporated, a not-for-profit corporation under the laws of the State of Missouri, to be called the "Vistas at Old Hawthorne Homes Association", or a name similar thereto (as shall be available through the office of the Secretary of State of the State of Missouri). The responsibility of the Association shall be more fully described by the following terms of the Declaration. 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 the Declaration shall automatically become a Class A Member therein, and the Developer and its assignees shall hold those Class B membership rights hereinabove 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. Membership in the Association is not optional. When a Unit Owner acquires ownership of a Unit, such Unit Owner shall automatically become a Class A member of the Association, and shall automatically be subject to assessment by the Association as hereinafter provided for in this Declaration.

Section 2. Articles of Incorporation and By-Laws. The Association shall have as its Articles of Incorporation and By-Laws such Articles and By-Laws as are attached hereto as **Exhibit C** and **Exhibit D** 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. The Board of Directors shall have general responsibility to administer the Development, approve the annual budget of the Association, provide for the collection of annual, special, 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. The Board of Directors of the Association shall consist of three (3) or five (5) or seven (7) (or some other odd number of) individual, natural persons, as the Board of Directors shall (prior to each Annual Meeting) from time-to-time finds to be appropriate. The members of the first Board of Directors of the Association, as named in the Association's Articles of Incorporation, shall serve until the first annual meeting of the members of the Association, and until their successors are duly elected and qualified. Thereafter, so long as there are Class B voting rights in existence, a majority such Directors shall be natural persons (who need not be Unit Owners) elected by the Class B Members, and the remaining Director or Directors, as the case may be, shall be (a) natural person(s), holding (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) or five (5) or seven (7) (or some other odd number of) natural persons, as determined by the Board of Directors from time to time, who shall be holders of ownership interests in Units, elected by the members of the Association. The Directors shall be elected in that manner, and for those terms, specified by the By-Laws, 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 for out of the maintenance fund hereinafter provided for, the following:

a. Providing waste removal, electricity and telephone and other necessary utility service for the Common Elements and Common Area, excluding that for light fixtures or other electrical fixtures, the electrical current for which are provided by the electrical system for a Living Unit, or which are controlled from switches or other controls located within a Living Unit;

b. Obtaining and maintaining a policy or policies insuring the Association, 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 Elements, the liability under which insurance shall be of the limits determined by the Association's Board of Directors, but shall never be less than Two Million Dollars ($2,000,000.00) single limit coverage, for injuries to or death of any one person or for injuries or deaths arising out of any one occurrence. [Such limits shall be reviewed annually by the Association's Board of Directors and may be increased in its discretion. Such insurance shall be payable to the Association in trust for the benefit of the Unit Owners. The Association shall also obtain Worker's Compensation Insurance to the extent necessary to comply with any applicable laws.];

c. 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, to

furnishing to any Unit Owner a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing by such Owner;

d. When the Association's Board of Directors, in its sole and absolute discretion, deems it advisable to do so, retaining the services of a professional manager or management firm or managing agent to fulfill the Association's obligations, and to retain 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 to discharge, the Association's obligations for the maintenance, repair and replacement of the Common Elements shall be made by the Association's Board of Directors, or as they direct the manager, or management firm, if one is employed, or the managing agent, if one is employed. The Association's Board of Directors shall have the sole and absolute discretion to retain such a manager, management firm or managing agent. (Notwithstanding anything to the contrary hereinabove set forth in this subpart d of this Section 5, or at any other location in this Declaration, any management contract entered into with any manager, management firm or managing agent prior to the termination of Class B voting rights hereunder shall not, in any event, have a term exceeding five (5) years, or extending beyond the date of termination of Class B voting rights as hereinabove provided for, whichever would provide the shorter term. The Association or its Board of Directors shall not delegate any of its responsibilities for a term exceeding five (5) years, or 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 exceeding five (5) years, or extending beyond the termination date of Class B voting rights, whichever shall provide for the shorter term.) Any delegation by the Board of Directors of any of its duties, powers or functions to a manager or managing agent must be revocable upon no more than six (6) months written notice from the Association.];

e. Providing for the cutting of all grass within the Property, other than that located within any privacy fences or courtyards, and for the irrigation of all lawns, trees and shrubbery and the like within the Property, other than those located within the boundaries of any privacy fences or courtyards or privacy areas and for the landscaping, gardening, maintenance and replacement of all lawns, trees, shrubbery and landscaping within the Development and the Property (provided that all gardening, landscaping, mowing, fertilization, irrigation and servicing of lawns and landscaping within private courtyards or within privacy fences or similar areas shall be performed by the Unit Owner at the Unit Owner's expense), and maintaining and providing cleaning and snow removal for any Private Street or Private Drive, and providing cleaning and snow removal for all drives, walkways, sidewalks and parking areas located in the Common Areas (in the fronts of the Buildings), which are a part of the Property, and maintaining, repairing, and replacing of all sewer lines and utility lines located within the boundary lines of any of the Units or the Common Area, which serve more than one (1) Unit (provided, however, that all costs of resurfacing or repairs of any such Private Drive or of any drives, driveways, walkways or sidewalks which serve only a single Unit shall be paid by the Unit Owner of such Unit and when such improvements serve more than one (1) Unit shall be shared, equally, by the Unit Owners of the Units served thereby, and provided further that all costs of maintenance and replacements of any such sewer lines and utility lines which serve a single Unit shall be paid by the Unit Owner of such Unit and when such improvements serve more than one (1) Unit, shall be charged equally to, and shall be paid equally by the Unit Owners of the Units served by such facilities). [The

Association shall not provide any cosmetic or structural maintenance (other than, at its sole discretion, light "touch up") or other maintenance for the exteriors of the Building located upon the Units, or any roof repair or replacement or gutter or down spout repair or replacement, which shall be provided by the Unit Owners, or any other maintenance or repairs or replacements for the Units or the Buildings located therein, all of which shall be provided by the Unit Owners in that manner hereinafter described. (The above provisions of this paragraph e and any other provisions of this Declaration notwithstanding, the Association shall not provide for maintenance of, mowing of, irrigation of, or other servicing of trees, shrubs or landscaping located within any private courtyards or within any privacy fences or similar private areas.)];

f. Providing snow and ice removal for all drives and driveways and walkways located in the fronts of the Buildings and all sidewalks located in the fronts of the Buildings, and for any Private Drive or Drive which serves more than one (1) Unit; providing that all costs of resurfacing or repair of such items shall be provided by and paid by the Unit Owner(s) of the Unit(s) served by such improvement;

g. Establishing reasonable rules and regulations governing parking on all streets (including public streets) within the Parcel, including any Private Drives, and all driveways within the Parcel, and reasonable rules and regulations governing all roads, driveways, parking areas, sidewalks and walkways within the Property and the Parcel, and reasonable rules and regulations governing the Common Areas and Common Elements so as to provide reasonable protection for the rights and privacy of all Unit Owners, in the use and enjoyment of their Units and any parking areas or Common Areas or Common Elements intended for the sole use and enjoyment of owners of any particular Unit;

h. Obtaining, providing and paying for any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments which the Association is required to secure or pay for pursuant to the terms of this Declaration, including the Association's Bylaw, 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;

i. Paying any amount necessary to discharge any mechanic's lien or other encumbrances levied against the entire Property or any part thereof which may, in the opinion of the Association's Board of Directors, constitute a lien against the Property or against the Common Elements, or more than one (1) Unit, rather than merely against the interests of a particular Unit Owner; provided, however, that there shall not be paid from the Maintenance Fund, by reason of the provisions of this subparagraph j, any sums due from the Developer, or by reason of any improvements contracted for by the Developer. [When one or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the costs of discharging the lien and any costs incurred by the Association and its Board of Directors by reason of the lien or liens shall be specially assessed to said Unit Owners and shall constitute a lien against the Units owned by the Unit Owners, and shall be enforceable as described in ARTICLE VI of this Declaration.];

j. Providing for the payment of taxes and assessments, general and special, levied against or by reason of the Common Areas and Common Elements, other than those titled in the names of Unit Owners;

k. Enforcing those provisions hereinafter set forth in this Declaration which require that the Owners of each Unit located within the Development repair, maintain and replace certain portions of their Units, and the improvements attributable thereto, or located thereon, including, in certain circumstances, the repair, maintenance and replacement of the exterior surfaces of the Units and the repair, maintenance and replacements of roofs and roof structures, and gutters and down spouts, and the repair, maintenance and replacement of heating or air conditioning equipment, and the repair, maintenance and replacement of structural elements, interior surfaces, and the interiors of Buildings located on the Units, or containing the Units, and the repair, maintenance and replacement of glass surfaces, doors, gates and hardware, and window and window hardware, and private patios and decks and courtyards, and any fences for a Living Unit, and enforcing all of the following provisions of this Declaration which impose upon the Owners of each Unit, and upon the Owners of certain Units, certain maintenance, repair and replacement obligations;

l. Providing for the maintenance, repair or replacement of the interiors or exteriors of any Building, privacy area, patio, decks or private courtyard, located on any Unit, or any utility lines serving only a single Unit, or any exterior or interior surfaces of any such Building, or any glass surfaces, patio, courtyard or storage area, doors, gates and hardware, or windows and window hardware, or heating or air conditioning equipment, or structural elements of exterior walls or surfaces, (all of which would otherwise be required to be maintained by the Unit Owner), or for the repair or replacement of any structural elements or roofs or gutters or down spouts, which would otherwise have to be maintained by the Unit Owner or Owners, or any similar items which would otherwise have to be repaired or replaced by a Unit Owner or Owners, or any maintenance or repair of any fence, if such maintenance, repair or replacement is necessary, in the discretion of the Association's Board of Directors, to protect the Association or the Common Elements, or any other Unit or portion of a Building or any other Building or any aspect or portion of the value of the Property or any part thereof, when the Unit Owner or Owners of Units responsible therefor have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair 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; and provided further, however, that the Board of Directors shall levy a special individual Unit assessment against the Units responsible therefor, and the Unit Owner or Owners thereof, for the cost of the maintenance or repairs, which shall constitute a lien upon the Units and their improvements, and be enforceable pursuant to ARTICLE VI;

m. Providing for the maintenance, repair and replacement of any roofs, gutters, down spouts, utility lines, exterior walls or exterior surfaces, or other improvements, which are to be collectively maintained, repaired or replaced by the Owners of any Unit or certain of the Units, if such maintenance, repair or replacement is necessary in the discretion of the Association's Board of Directors to protect the Association or the Common Elements, or the Common Areas, or any other Unit, or any portion of a Building, or any other Building, or any portion or aspect of the value of the Property or Properties, or any part thereof, when the Unit Owner or Owners responsible for such maintenance, repair or replacement have failed or refused to perform said maintenance, repair or replacement within a reasonable time after written notice of the necessity of such maintenance, repair or replacement 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; and provided further, however, that the Board of Directors shall levy a special individual Unit assessment against the Unit Owner or Owners responsible for the costs of the maintenance, repair or replacement, which shall constitute a

lien upon such Unit or Units, and their improvements, which liens shall be enforceable in that manner described in ARTICLE VI below;

n. Entering into agreements, contracts, undertakings or understandings with the Owners of any Units, or with the Owners of certain Units, collectively, to perform or to cause to be performed, on behalf of such Owner or Owners any maintenance, repair, servicing or upkeep for which such Owner or Owners would otherwise be responsible in accordance with the following provisions of this Declaration; provided, however, that the entire cost of same shall be immediately paid by such Owner or Owners to the Association, and shall be the responsibility of such Owner or Owners;

o. Maintaining, repairing, replacing, operating and keeping in place any Stormwater Facilities;

p. Providing snow removal and ice removal for the drives and driveways and sidewalks located in the fronts of the Building and for all Private Drives which serve more than one (1) Unit, providing that all costs of replacement of, repair of or resurfacing of such item shall be paid by the Unit Owner(s) of the Living Unit(s) served thereby and shall not be paid by the Association; and

q. Owning, operating, maintaining, repairing, replacing, insuring, managing, and providing reasonable rules and regulations regulating and dealing with any swimming pool, club house, changing rooms, and other amenities at any time located within the Development, which are intended for use by the Unit Owners of each of the Units and the members of their families, and their guests and invitees, and otherwise managing all such amenities.

Section 6. Entry Into Units. The Association, or its agents, or its Directors, may enter any Lot or Unit when necessary in connection with any lawn or landscaping maintenance, or any other maintenance or construction for which the Association is responsible, or which it is authorized to perform. It, or its agents or directors may likewise enter any Buildings contained on any Lot or Unit, any lawn contained on any Lot or Unit, any balcony or deck contained on any Unit or any patio, deck, courtyard or privacy area contained on any Unit for maintenance, repairs, construction or painting, if same is reasonably necessary and required for the Association to perform with any maintenance, repair or construction or reconstruction for which the Association is responsible or is authorized to perform. Such entry shall be made with as little inconvenience to the Unit Owners 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. The Association, or its agents, or its directors, shall be specifically authorized to enter into any Unit, or any Building located on any Unit, for purposes of maintaining or repairing any sewer line or lines running within or beneath such Unit or Building which serves more than such Unit or any Unit other than such Unit. The Association or its agents or directors may not enter into any Living Unit unless such entry is reasonably necessary and required in order for the Association, or its agents or its directors, to perform any maintenance, repair, replacement, construction or reconstruction, which the Association or its Board of Directors or its agents are authorized to perform pursuant to the provisions of this Declaration or are required to perform pursuant to the provisions of this Declaration. The Association or its directors or its agents must give to the Unit Owner of any Living Unit reasonable notice of the intention to enter the Living Unit, except in the case of an emergency. The Association and its directors and its agents and contractors shall have

an easement over each Unit and Living Unit for purposes of the entries authorized by this Section 6, but the rights of entry must be exercised reasonably and only in the event of reasonable necessity and then only after reasonable notice, except in the case of an emergency.

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 any improvements which have been damaged or which reasonably require replacement for any reason) having a total cost in excess of Twenty Thousand Dollars ($20,000.00), 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 Twenty Thousand Dollars ($20,000.00), without in each case obtaining the prior approval of a majority of the Class A 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. The above provisions of this Section 7 to the contrary notwithstanding, the Board of Directors of the Association shall have no power or authority whatsoever to make payment for any improvement located within the Development which the Developer shall cause to be placed within the Development. The responsibility for erecting within the Development all improvements shown by the Plans for the Development, or any portion of the plans for the Development, shall be placed upon the Developer, and not the Association.

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, which are not inconsistent with this Declaration, as it may deem advisable for the use, operation, maintenance, conservation and beautification of the Common Elements, and areas of Units located on the outsides of Buildings located on the Units and the exteriors of Buildings located on the Units and for the health, comfort, safety and general welfare of the Unit Owners and occupants of Buildings located on the Units.

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 Association or the Unit Owners or any of them.

## ARTICLE VI
## ASSESSMENT - MAINTENANCE FUND

Section 1. Creation of a Lien and Personal Obligation for Assessments. The Developer, for each Lot of the Development, and for each Unit and Living Unit contained therein, and for each Lot and Unit and Living Unit now or hereafter owned by the Developer or the Developer's assignees within the Parcel and the Property, and for each Unit now or hereafter contained within the Development, and for all present and future Owners of such Units and Living Units, hereby agrees, and each Owners of any Unit or Living Unit or Lot 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) annual assessments or charges hereinafter described; (2) special assessments for capital improvements hereinafter

described; (3) special assessments for tax bills or public improvements, hereinafter provided for; (4) special assessments for replacement or nonperiodic maintenance hereinafter provided for; (5) special assessments for repair or replacement or maintenance to be done by Unit Owners, as hereinafter provided for; (6) assessments for insurance premiums hereinafter described; (7) any other sums or assessments provided for in this Declaration; and (8) fines and assessments as provided for by Section 20 of ARTICLE XII of this Declaration. Such sums and assessments to be fixed, established and collected from time to time as hereinafter provided. All such annual and special assessments, and other sums and assessments, together with such interest thereon and costs of collection thereof as may be hereinafter provided for, shall be a charge on the Units and Lots owned by the Unit Owner, and shall be a continuing lien upon the Units and Lot 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 such Unit at the time when the assessment fell due. The personal obligation shall not pass to such Owner's successor in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively by the Association to discharge its duties and obligations as provided for by the Declaration, and for the purposes of promoting the recreation, health, safety and welfare of the Unit Owners and residents of the Development, and in particular for the improvement and maintenance of the Property and the services and facilities devoted to this purpose, and for the improvement and maintenance of the Common Area and Common Elements, and the services and facilities related to the use and enjoyment of the Common Area and Common Elements, and of the Buildings situated upon the Lots and Units, as required by the provisions of the 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 the Buildings located on the Lots and Units and the Units as required by the terms and conditions of the Declaration, and for the cost of labor, equipment, materials, management and supervision of the Common Area and Common Elements, and for the maintenance, repair and services listed in ARTICLE V and IX hereof, as required by such Articles.

Section 3. Maintenance Fund. The annual assessments or charges and special assessments established and collected under the terms of this Article shall constitute a fund to be known as the "Maintenance Fund".

Section 4. Amount and Setting of Annual Assessments. From and after the conveyance of the first Unit to an Owner other than the Developer, or another Class B Member, or a Builder, or from and after the date of the first leasing or renting of the first Unit within the Development to be rented or leased, whichever shall first occur, and until January 1 of the year immediately following such conveyance, renting or leasing, the annual assessment upon each Unit shall be the sum of **One Thousand Dollars ($1,000.00)** per year. Beginning January 1 of the year immediately following such conveyance, renting or leasing the annual assessment for all Units from time to time subject to assessment may be increased or decreased as follows:

a. Each year, on or before December 31st, the Board of Directors of the Association shall estimate the total amount necessary to pay the costs of wages, materials, insurance, services and supplies, which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Board of Directors to be necessary for a reserve for contingencies and replacement or for maintenance of a periodic but not annual nature,

and shall on or before January 31, the following year notify each Unit Owner in writing as to the amount of such estimate, with reasonable itemization thereof.

b. Beginning, and from and after January 1st of the year immediately following the conveyance of the first Unit to a Unit Owner other than the Developer or another Class B Member, and on January 1 of each following year, the annual assessment may be increased or decreased above or below the assessment for the preceding year by the Association's Board of Directors, effective January 1st of each year, without a vote of the membership, if required to meet the established cash requirements described in subpart a of this Section 4.

The Association's Board of Directors, or its manager or managing agent, or any person employed by it to collect the annual assessments, shall have the authority, as to each Unit, to allow the annual assessment to be paid in one (1), annual installment equal to the entire amount of the annual assessment, or may permit annual assessments on the Unit to be paid in quarterly, semi-annual or monthly installments. Unless the Board of Directors of the Association or its manager or managing agent or the party employed by it to collect the annual assessments elects to allow annual assessments to be paid other than in one (1) lump, annual sum, annual assessments shall be paid in one (1) lump, annual sum.

**If a Building contains only one (1) Living Unit, meaning that the Building is a single family house, then, any of the provisions of this ARTICLE or this Declaration to the contrary notwithstanding, the annual assessments on the Unit which contains the Living Unit of such Building (meaning the Unit, a part of which is the Living Unit within the Building) shall be one hundred fifty percent (150%) of the sum of the annual assessments on other Units. For example, if a single family dwelling is placed in the Development, and the annual assessments on the Units remain at One Thousand Dollars ($1,000.00) per year, the annual assessments on the Unit which contains the Living Unit of such single family house shall be One Thousand Five Hundred Dollars ($1,500.00).**

**Annual assessments on single family, detached dwellings, as opposed to annual assessments on Living Units located in Buildings that contain two (2) Living Units, shall be one hundred fifty percent (150%) of the sum of the annual assessments on the Units, the Living Units of which are located in Buildings that contain two (2) Living Units.**

**Only the annual assessments on the single family dwellings shall be greater than the annual assessments on other Dwellings. All other assessments shall be uniform among Units.**

Section 5. Special Assessments for Capital Improvements or Other Purposes. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, or unexpected repair or replacement of a capital improvement, or for purposes of making up or offsetting or paying any deficiency, for such year, and the annual assessment established pursuant to Section 4 above, or for purposes of paying the difference between the sums raised by virtue of the annual assessments, for such year, and the total costs of providing, for such year, the services to be provided by the Association during such year; 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.

Section 6. Special Tax Bill or Assessment for Public Improvements. The Association shall pay any special tax bill or benefit assessment of any public body for public improvements which abut or run along any of the Common Area, or which benefit the entire Development as opposed to Unit Owners of only specific Units. The entire cost of any such tax bill or assessment shall, automatically, upon levy thereof by the public body or authority, become a Special Assessment against all Units. The entire sum of such Special Assessments shall be apportioned equally among all of the Units. 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 6 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 6 shall attach to all Units, whether owned by Class A or Class B members or other members.

Section 7. Special Assessment for Replacement or Non-Periodic Maintenance. In the event the Association is required to perform any non-periodic maintenance, repair or replacement for any portion of the Properties, including, by way of example only, the need to replace lawns or landscaping within the Common Areas, and in the further event the annual assessment for the Units shall be insufficient to cover the costs of such non-periodic maintenance, 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, maintenance or replacement (a requirement that such reserve be established, although possibly advisable, shall not be implied herefrom), then the entire sum of the costs of such repair, maintenance or replacement of a non-periodic character shall be apportioned equally among all of the Units then located within the Development, and that portion of such cost 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 cost of such repair, replacement or maintenance of a non-periodic character, and shall be due and owing by each Unit Owner, on demand, in time to permit timely payment of the cost of the maintenance, repair or replacement. Special assessments provided for in this Section 7 shall be enforceable in that manner hereinafter provided for in this ARTICLE VI for enforcement of all assessments. The sum of such special assessment shall be established by the majority vote of the Association's Board of Directors, acting within its sole and absolute discretion, and such determination by such Board of Directors, if made in good faith, shall be binding upon all Unit Owners.

Section 8. Uniform Rate of Assessment. In all cases, the rates of those assessments provided for by Sections 4, 5, 6 and 7 of this ARTICLE VI must be fixed at a uniform rate for all Units subject to such assessments.

Section 9. Collection of Assessments. Both annual and special assessments shall be due and payable at such times, and in such installments, as the Association's Board of Directors or its manager or managing agent, or the party employed by it to collect assessments shall determine, and may be collected on an annual, semi-annual, quarterly or monthly basis. Unless the Association's Board of Directors or its manager, or managing agent or management company or the party employed by it to collect assessments elects to allow the payment of assessments other than on an annual basis the

assessments must be paid on an annual basis, in one (1) lump sum. Assessments shall be "Late" if not paid within thirty (30) days of the date when due.

Section 10. Special Assessments - Repairs or Replacements or Maintenance to Be Done by Unit Owners. As indicated in this Declaration, if a Building contains only a single Living Unit, then the Unit Owner of such Living Unit is required to provide for all maintenance, repairs and replacements for the roof and roof structure, gutters and downspouts, exterior walls, and all other components of the Building containing such Unit Owner's Living Unit. As hereinafter indicated in this Declaration, if for Living Units located within a Building which contains two (2) Living Units, the roofs and roof structures for the individual Living Units within the Building are clearly divisible by party walls or other structures into separate roofs, serving the individual Living Units, then the individual Unit Owners of such Living Units are required to provide for all maintenance, repairs and replacements for the roof and roof structure, and gutters and down spouts, for their individual Units, and shall be required to pay the entire expense of same. If, however, any Living Units share a common roof (i.e. the roof for such Living Units is not divided into clearly discernible separate roofs by separate walls or other structures), then the Unit Owners of such Living Units shall be required to cooperate, and to jointly repair, maintain and replace all and every part of the roof or roof structure which serves their Units, and to cooperate and jointly arrange for the repair, maintenance and replacement of all and every part of such roof or roof structure which serves their Units, and to cooperate and to jointly arrange for the repair, maintenance and replacement of all and every part of such roof or roof structure, and the gutters and down spouts for their Units, including those parts of the roof or roof structure or gutters or down spouts which serve only a single Living Unit; provided, however, that for purposes of apportioning between and among the Owners of such Units, the cost of the maintenance, repair or replacement or servicing or upkeep of the roof or roof structure, or gutters or down spouts, the planes of the party walls between the Living Units shall be theoretically extended upwards through the roof and roof structure, and outwards through the planes of the exterior walls, and each Unit Owner shall be responsible for that portion of the costs attributable to repairing, replacing, servicing or upkeep of the portion of the roof, roof structure, gutters or down spouts located within his Unit as determined by the planes of the party walls so extended. In addition, although the Association may perform (but shall not be compelled to perform, and shall have no obligation to perform) for the exteriors of the Buildings certain general, light "touch-up" maintenance, the Unit Owners of Living Units located within a Building shall be required to jointly arrange for, and to cooperate in arranging for, all roof repairs and replacements for, and all painting, cleaning, tuckpointing or other cosmetic maintenance for all or every part of such Building, and must jointly arrange for all such roof repair or replacement, and such painting, cleaning, tuckpointing and other exterior, cosmetic maintenance. However, for purposes of determining the costs of same to be paid by each Unit Owner, again, the planes of all common party walls between the Living Units shall be theoretically extended upwards through the roof and roof surface, and outwards through the exterior walls, and each individual Unit Owner shall be responsible for paying for that portion of the Building costs attributable to the roof repairs or replacements for and painting, cleaning, tuckpointing or other substantial exterior cosmetic maintenance for that portion of the Building contained within his Unit as determined by such extension of such party walls. Unit Owners of all Units serviced by water lines, sewer lines or utility lines, which are a part of the Common Elements, under the above terms and conditions of this Declaration, and which are not publicly owned, and which service more than one Unit, shall be required to maintain, repair and replace such lines, and to share the costs of such maintenance, repair and replacement, equally. Each individual Unit Owner shall be required to maintain, repair and replace all customer service lines

(utility lines), laterals and other utility lines serving only his Unit, whether located within the boundary lines of his Unit or within the Common Area. While the Association shall provide snow and ice removal for all Private Drives, and all Private Streets, and for all Drives, Driveways and sidewalks located in the fronts of the Buildings, the Unit Owner of any Unit which is served by a Drive or Driveway or sidewalk shall be required to provide for all repairs of, and resurfacings of such components, other than snow and ice removal. Unit Owners of Units served by a Private Drive or Private Street shall be required to share, equally, all costs of resurfacing or repairing such improvement, other than snow and ice removal which shall be provided by the Association. [Note: The Association will maintain all lawns, trees, shrubs and landscaping materials within the Development, other than those placed within private courtyards and similar privacy areas (with the Association also providing such maintenance within fenced in rear yards which are included in the Common Areas), which must be maintained by the Unit Owners. The Association will repair and replace all trees, shrubs or landscaping materials which require repair or replacement (including those within fenced in rear yards) other than those within such private courtyards and other similar privacy areas. If a Unit Owner plants, with the permission of the Developer so long as Architectural Control Powers are vested in the Developer, or with the permission of the Association's Board of Directors (thereafter) [and same may not be planted without such permission] any tree, shrub, or other item of landscaping, then the duty or obligation to maintain, replace or repair such tree, shrub or other item of landscaping shall thereafter be vested in the Association, provided that same shall be replaced only with the same size tree or plant as was originally planted and as existed at the time of the original planting.] Each Unit Owner shall further be required, at his expense, to provide for all lawn mowing, lawn fertilization, lawn irrigation and landscaping, maintenance, repair, replacement, servicing and upkeep, for all areas of his Unit located within any privacy fence, courtyard or other privacy area, but excluding areas within fenced in rear yards which shall be maintained by the Association. Each individual Unit Owner shall further be required to maintain, in good repair, all structural elements of all walls, surfaces and structural elements of his Unit, including walls, floors and foundations, and the maintenance obligations collectively imposed upon the owners of all Units located within a Lot shall be limited solely to the cosmetic appearance of exterior walls and surfaces, including painting, cleaning and tuckpointing. Each Unit Owner shall further be required to maintain, repair and replace the heating and air conditioning equipment for his Unit (whether located within the boundaries of his Unit or the Common Areas). Each individual Unit Owner shall further be required to repair, maintain and replace (so as to maintain same in a clean, neat, and well maintained and sightly condition) all glass surfaces, all decks, gates and hardware, and windows and window hardware, and private patios and decks, private courtyards and all landscaping located therein, and the interior of his Living Unit; each Unit Owner shall further be required to paint, repaint, repair, maintain and replace any fence for the rear yard which serves his Living Unit. All such fences, which must be black, wrought iron fences and which must be approved pursuant to the Architectural Control provisions of ARTICLE VIII of this Declaration, shall be a part of the "Unit", and shall not be a part of the Common Elements, and must be maintained, painted, repainted, repaired and replaced by the Unit Owner of the Living Unit served by the fence. No such fence shall be a part of the Common Elements. If any Unit Owner should fail to perform or provide for any item of repair, replacement, maintenance or servicing imposed upon such Unit Owner or Owners by this Section 10, or any other provisions of this Declaration, then the Association's Board of Directors, in its discretion, may (but shall not be required to do so) cause the item of repair, maintenance, replacement or servicing to be performed, at the expense of the Unit Owner or Owners required to perform or to provide for same. The costs of such performance of such item of repair, maintenance, replacement or servicing shall, automatically, become a special

assessment against the Unit Owners required to perform same and their respective Units, and shall constitute a lien upon such Units. Such Special Assessment shall bear interest at that rate hereinafter provided for in this ARTICLE VI and shall be enforceable against the Unit Owners and Units obligated for same, in that manner hereinafter provided for in this ARTICLE VI, and shall constitute a lien upon the applicable Units, enforceable in that manner hereinafter provided for in this ARTICLE VI. The provisions of this Section 10 notwithstanding, if a rear yard for a Living Unit is fenced in pursuant to prior approval granted under the Architectural Control Provisions of ARTICLE VIII of this Declaration (and such prior approval shall be required), then the yard within such fence shall nevertheless be a Common Area (although it shall be a Limited Common Area, limited to such Living Unit), and such yard and all other landscaping components shall be maintained and replaced by the Association as described in this Section 10, subject, however, to the limitations of this Section 10, but the fence itself shall be a part of the Unit, owned by the Unit Owner of such Living Unit, who must provide for all painting, repainting, maintenance and repairs and replacements of such fence.

Section 11. Establishing a Need for Non-Periodic Maintenance or for Exterior Cosmetic Maintenance or for Maintenance, Repair or Replacement of Roofs, Exteriors Walls, Gutters and Down Spouts. As hereinabove indicated, the Unit Owners of Units containing a Building, and the Unit Owners of Living Units located within a Building, are required to provide for all cosmetic maintenance, repair and replacement for such Building, including painting, cleaning, tuckpointing or other substantial cosmetic maintenance for the exterior of the Building. As also hereinabove indicated, for Living Units located within Buildings, if the roof serving Living Units located within the Building is not fully divisible into clearly discernible separate roofs by party walls or other structures, then the Unit Owners of such Living Units are required to cooperate and jointly repair, maintain and replace all and every part of the roof or roof structure serving their Units, and to cooperate and jointly arrange for the repair, maintenance and replacement of all and every part of such roof or roof structure, and the gutters and down spouts, for their Units. Therefore, it is necessary that Unit Owners of those Living Units in such Building cooperate in performing maintenance of a non-periodic or irregular nature, or any general, exterior cosmetic maintenance, and roof repair and replacement, exterior wall maintenance or repairs, and gutter and down spout repair and replacement. Uniformity of exterior appearance must be preserved. In the event the Owners of Living Units required to cooperate in performing general, exterior cosmetic maintenance, or exterior wall maintenance, or roof repair and replacement, or gutter and down spout repair and replacement, are unable to unanimously agree upon the necessity for same, and upon the manner in which same shall be performed, and upon the costs of same (and the sharing of such costs), then a meeting for purposes of establishing the necessity for same, and a special assessment for the costs of same, may be called by any individual holding an ownership interest in any of the Units, the owners of which are responsible for paying for the applicable maintenance, repair or replacement. The notice of such meeting shall be in writing, and shall be given not less than ten (10) days, nor more than forty (40) days in advance of the meeting. Such notice shall set forth the purpose of the meeting. Such notice may be delivered to each Unit Owner, who will be obligated for a portion of the cost of the maintenance, repair and replacement, at his, her or their last known address, either personally or by regular United States Mail, or by personal delivery, to the Owner or the individual or individuals occupying such Unit. If personally delivered, the notice shall be deemed to have been given when delivered. If mailed, such notice shall be deemed to have been delivered on the day of mailing. The presence or representation by proxy at any such meeting of Owners of a majority of the Units obligated for payment of a portion of the cost shall constitute a quorum (provided, however, that if there are only two (2) such Units, then the presence

of Owners of one (1) of such Units shall constitute a quorum). If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to any notice requirements set forth in this Section 11, and the required quorum at the subsequent meeting shall be one-half the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. All decisions made at such meeting by a majority of those Unit Owners, who are present, either in person or by proxy, shall be binding upon all Unit Owners. If there are only two (2) Unit Owners entitled to be present at the meeting, and only one of such Unit Owners appears, then all decisions made by such Unit Owner shall be binding upon both Unit Owners. Any decisions made, in such manner, as to the necessity of a particular item of maintenance, repair or replacement, or as to the manner in which same shall be performed, or as to the costs of same, or an assessment for same, shall be binding upon all Unit Owners. Each of the Unit Owners shall be required to pay his share (as such share is established in accordance with the above provisions of this ARTICLE VI) of the maintenance, repairs, replacement, servicing or upkeep approved by a vote of the Unit Owners, in accordance with the above provisions of this Section 11. The Unit Owner's share of such cost shall constitute a Special Assessment against his Unit, and shall constitute a lien against his Unit. Such Special Assessment shall bear interest in the manner herein provided in this ARTICLE VI for other assessments charged under this ARTICLE, and shall constitute a lien against the applicable Unit in the same manner as is provided by the provisions of this ARTICLE VI for other assessments. All assessments established in accordance with this Section 11 shall be due and owing from each Unit Owner in time to permit timely payment of the cost of the work. The above provisions of this Section 11 to the contrary notwithstanding, and any provisions of Section 10 to the contrary notwithstanding, if any Unit Owner or Unit Owners shall fail to perform or to cause to be performed, or to provide, for any items of repair, replacement or maintenance imposed upon such Unit Owner or Unit Owners by this ARTICLE VI (including, but not limited to the provisions of Sections 10 and 11 of this ARTICLE VI) or by ARTICLE IX of this Declaration, then the Association's Board of Directors, in its discretion, may (but shall not be required to do so) cause the item of repair, maintenance or replacement to be performed, at the expense of the Unit Owner or Owners required to perform or to provide for same, and to levy Special Assessments against such Unit Owners and Units in accordance with all of the provisions of this ARTICLE VI. If a majority of the Unit Owners obligated to perform maintenance, repairs and replacements are unable to agree upon the necessity for such maintenance, repairs and replacements, then the Association's Board of Directors shall have the power to decide, at the request of any of such Unit Owners, or on the Board's own motion, whether the maintenance, repairs or replacements shall be performed or are required to be performed, and the decision of the Association's Board of Directors shall be binding upon all of the involved Unit Owners.

Section 12. Assessment for a Portion of Insurance Premiums. ARTICLE XIII of this Declaration provides that the Association, by and through its Board of Directors, may (but shall not be required to) obtain and maintain insurance on all or certain of the Units and the improvements located thereon; although, until the Association's Board of Directors determines to the contrary, the duties and obligations to provide such Units shall be vested in the individual Unit Owners. If the Association's Board of Directors does elect (as it may, in its complete discretion elect to do) to maintain insurance on any Units and the improvements located thereon, then (and only then) in addition to the assessments provided for above, each Owner of each Unit covenants to pay and shall pay to the Association his pro rata share of the total insurance premium, as provided for by ARTICLE XIII of this Declaration. In the event an Owner fails or refuses to pay the aforesaid prorated portion of the premium for that insurance described by ARTICLE XIII of this Declaration, then such prorated

amount of such premium shall be added to and become a part of the annual assessment to which such Unit is subject under this Declaration, and as a part of such annual assessment or charge, it shall be a lien and obligation of the Owner and shall become due and payable, and be collectible, in all respects as provided for the annual assessment by this Declaration. As indicated by Section 2 of ARTICLE XIII of this Declaration, the Unit Owner's prorated portion of the premium for that insurance described in ARTICLE XIII of this Declaration, shall, at the option of the Association's Board of Directors (or the insurers selected by it), be paid to the Association, or the insurance carrier for the insurance to be obtained and maintained under ARTICLE XIII of the Declaration. However, in any event, if an Owner fails or refuses to pay his aforesaid prorated portion of the premium for the insurance described in ARTICLE XIII of this Declaration, then such prorated amount of such premium shall be added to and become a part of the Annual Maintenance Assessment hereinabove provided for in Section 4 of this ARTICLE VI, and, as a part of such annual assessment, shall be a lien and obligation of the Unit Owner, and a lien against the Unit owned by such Unit Owner, and shall become due and payable, and be collectible, in all respects as provided for the Annual Assessment hereinabove described in Section 4 of this ARTICLE VI. If the Association's Board of Directors does not elect to maintain insurance on any Units, then the individual Unit Owners of such Units shall be obligated to maintain insurance on their individual Units which satisfy the requirements for insurance provided for by ARTICLE XIII of this Declaration. If a Unit Owner fails to properly insure his Unit, then the Association's Board of Directors may, at its option, obtain and maintain insurance on such Unit and all costs of such insurance shall constitute a special Unit assessment against the Unit of the Unit Owner who fails to maintain the insurance, which shall be a lien and obligation of the Unit Owner and a lien against the Unit owned by such Unit Owner, which shall be collectible and enforceable in the manner provided for by this ARTICLE VI.

Section 13. Special Unit Assessment. If any Unit Owner or Unit Owners shall fail to satisfy their maintenance obligations imposed upon them by ARTICLE IX of this Declaration, or any other provisions of this Declaration, or shall fail to provide for any maintenance, repairs, replacements, servicing or upkeep to be provided by them pursuant to ARTICLE IX of this Declaration, or any other provisions of this Declaration, and if the Association's Board of Directors, in its sole and absolute discretion, deems the performance of such maintenance, repair, servicing or replacement to be necessary to protect the Association, or the Common Elements, or any Unit, or any portion of a Building, or any of the values of all or any part of the Property, and if the Unit Owner or Owners responsible for the performance of the maintenance, repair, replacement, servicing or upkeep have failed or refused to perform said maintenance, repair, replacement, servicing or upkeep 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, servicing, replacement or upkeep to be performed (including, but not limited to, providing insurance, painting, cleaning, tuckpointing, roof repair or replacement, gutter or down spout repair or replacement, or any other maintenance, decorating, repair or replacement or servicing); provided, however, that the cost of same shall be apportioned among the Owners of the Units obligated for the performance of such maintenance, repair, replacement, servicing or upkeep in accordance with the provisions of this ARTICLE VI of this Declaration, or in accordance with the provisions of ARTICLE IX of this Declaration, or any other provisions of this Declaration, and that portion of such costs as so properly apportioned to each such Unit shall become a special assessment against each such Unit which shall be due and owing by each Unit Owner in time to permit timely

payment of the costs of the work. Special assessments provided for by this Section 13 shall attach to all Units, whether owned by Class A or Class B Members, or other members. Special assessments provided for by this Section 13 shall, like all other assessments, constitute the joint and several obligations of the Owners of the Units who are responsible for payment of the assessments, and shall constitute liens against the Units owned by such Unit Owners, and the property and improvements making up such Units, and shall bear interest in that manner hereinafter provided for in this ARTICLE VI, and shall be enforceable in that manner hereinafter provided in this ARTICLE VI.

Section 14. Date of Commencement of Annual Assessments: Due Dates. All of the annual and special assessments and other assessments hereinabove provided for in this ARTICLE VI shall apply to each Unit from and after (and beginning with) the date when such Unit is rented, leased, sold, conveyed or otherwise disposed of by the Developer or the Builder erecting the Building which contains the Living Unit of such Unit, or the earlier date when the Living Unit of such Unit is first occupied as a residence. In any event such assessment shall apply, beginning with the dates that a Unit is first occupied as residence (whether under a lease or rental basis, or any other basis). No Assessment shall attach to any Unit, until such Unit is either first conveyed, or first rented, or first leased by the Developer or the Builder thereof, or is first occupied as a residence. The annual assessments provided for herein shall commence on that day, when, following the completion of the structure located upon the Unit, the Unit is first rented, leased, sold or occupied as a residence, and shall continue thereafter unabated, but shall not apply prior to such completion, and such first renting, leasing, selling or occupancy. The above provisions of this Section 14 to the contrary notwithstanding, however, a Unit shall become subject to assessments, automatically, should a Class A membership attach to the Unit under ARTICLE II of this Declaration. In such event, the Unit shall become automatically subject to assessment, effective on the date the Class A membership attaches. The first annual assessment for each Unit shall be adjusted according to the number of months remaining in the calendar year. The Association's Board of Directors shall fix the amount of the annual assessment against each Unit as soon as practicable before or after January 1, unless approval of each year for the ensuing year, unless approval of the Association's membership is required as hereinabove provided for in this Declaration. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be established by the Association's Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 15. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid within thirty (30) days of the date when due shall be "Late". Late assessments must be accompanied by a late fee of Fifty Dollars ($50.00), which shall be a part of the assessment. If the assessment is not paid within thirty (30) days after the due date, the assessment shall, additionally, bear interest from the due date therefor at the "Prime Interest Rate", plus three percent (3%) per annum (but in no event less than eighteen percent (18%) per annum or 1.5% a month) and the Association may bring an action at law or in equity against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit. All reference herein to the "Prime Interest Rate" shall mean that interest rate

published as "Prime" or as the "Prime Rate" or as the "Prime Interest Rate" in the Money Rates column of the Wall Street Journal; meaning that rate of interest being charged by the Nation's largest money center banks to their most favored corporate borrowers. The interest rate shall be adjusted, up or down, with each adjustment in the Prime Interest Rate (as published in such Money Rates column) so as to always be equal to a rate of interest three percent (3%) per annum above the said Prime Interest Rate; provided that the Interest Rate shall never be less than ten percent (10%) per annum.

Section 16. Subordination of the Lien to Mortgages. The lien of assessments provided for herein shall be subordinate to the lien of any mortgage or deed of trust now or hereafter placed upon any property subject to assessment; provided, however, that in the event of default in the payment of any obligation secured by such mortgage or deed of trust such subordination shall apply only to the assessments or installments thereof which shall become due and payable prior to the sale of such property pursuant to power of sale under such deed of trust, or prior to a conveyance to the mortgagee or holder of the deed of trust in lieu of foreclosure. Such foreclosure or such sale or conveyance in lieu of foreclosure shall not relieve such property from liability for any assessments or installments thereof thereafter becoming due or from the lien of any such subsequent assessments or installments thereof thereafter becoming due.

Section 17. 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; and (c) all Units owned by the Developer or its assignees of its rights as Developer, and Builders who build buildings or Living Unit or Units, other than those used or held for rental or lease purposes or occupied as residences (provided that such Units shall be subject to the assessments when and as provided for by the above Sections of this ARTICLE VI); and (d) all Units owned by the Developer or a Builder, until same have been rented, leased, sold or occupied, unless otherwise subject to assessment under the foregoing provisions of this ARTICLE VI. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 18. Collection of Assessments. Both annual and special assessments shall be due and payable at such times, and in such installments, as the Association's Board of Directors shall determine, and may be collected on an annual, semi-annual, quarterly or monthly basis.

Section 19. Retroactive Effect of Assessments. If an annual assessment for a calendar year is not established until after January 1 of such year, then such new assessment shall be retroactive from the date of setting or approval to the first day of the calendar year and shall apply for the entire calendar year. If installments upon the Assessment have been previously paid, prior to such setting or approval, then the sum of any deficiency in such installments shall be due on the due date of that installment which next follows setting or approval of the Assessment, or if there is no such installment, shall be immediately due following such setting or approval.

Section 20. Failure to Establish Assessment. If the annual assessment described in Section 4 should not be set for any year the assessment for the preceding year shall be in effect for such year.

Section 21. Shortages. In the event the annual assessments to be paid to the Association shall, in any year, be insufficient to enable the Association and the 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 equally apportioned among all Units then subject to assessment. Such special assessment shall constitute an assessment against each of the Units, which such assessment shall be payable at such time or times as the Association's Board of Directors, in its discretion, shall specify. Such assessment shall bear interest, and shall be enforceable, in the manner provided for by this ARTICLE VI, and shall constitute a lien against the Units in the manner provided for other assessments by this ARTICLE VI. Such special assessment shall bear interest in the manner provided for in this ARTICLE VI, and shall constitute liens against the Units in the manner provided for in this ARTICLE VI, and shall be enforceable in the manner provided for by this ARTICLE VI.

Section 22. 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 until the date when paid, at a rate of Interest defined in Section 15 of this ARTICLE. Interest shall accrue until the Assessment is paid. Such Assessment and accrued interest thereon, and all costs of collection incurred by the Association in seeking to enforce payment of an Assessment or in enforcing the lien for the Assessment and interest (including but not limited to attorneys fees), shall be due and payable by the Lot Owner or Unit Owner to the Association, and the Association may collect such Assessments (and all subsequent Assessments). All costs of collection of Assessments, and interest, including reasonable attorneys fees, shall be added to and shall constitute a part of such Assessments and shall be chargeable and collectable as a part of the Assessments. Same shall be a part of the lien for the Assessment. 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 Lot Owners and Unit Owners who own the Units which are charged with said Assessment, and shall constitute liens on such Units and the Lots containing same. If more than one person owns a Lot or Unit, then such obligation shall be the joint and several obligation of all such persons who own said Lot and/or Unit. In addition, such Assessment shall constitute a lien against a Lot Owners' Lot or Unit Owners' Unit, and all improvements located thereon, including any Residence or Building or Living Unit located thereon, if not paid in a timely manner.

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 Lot Owner(s) or 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 Lot or Unit. Said costs of collection also shall be chargeable to and collectible personally from any Lot Owner or 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 Lot Owner(s) or Unit Owner(s). Alternatively, or in addition, the

Association may foreclose its lien against the Lot or 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 Lot Owner or Unit Owner may waive or otherwise avoid liability for the Assessments provided for in this Declaration because of the non-use of a Lot or Unit or the non-use of the Common Area. Ownership of a Lot or 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 Lot or 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 Lot or 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. Any officer of the Association or the Association's manager may act as the trustee, with full power of sale. If any such foreclosure does not result in full payment of the Assessment, then the Lot Owner or Unit Owner shall remain obligated for the deficiency, together with interest thereon as described above and costs of collection thereof, including attorneys fees. Each Unit Owner of each Unit, as to the Unit Owner's Unit in the Lot containing the Unit Owner's Unit, hereby grants unto the Association, and its Board of Directors and officers, and its managing agents, a lien against the Unit Owner's Unit and the Lot containing the Unit, and covenants and agrees that such lien may be foreclosed in precisely the same manner as a mortgage against real property, with power of sale, and pursuant to the procedures and requirements of the above-referenced sections of the Missouri Statutes. Each Unit Owner covenants and agrees that any lien against a Lot or Unit may be foreclosed in like manner as a mortgage or deed of trust upon real property (with full power of sale) as provided for by Sections 443.190 through 443.235 of the Revised Statutes of Missouri, and any amendatory or successor statutes thereto. The liens and rights to enforce the liens in the manner described in this Section are hereby granted and shall be deemed to be automatically granted to the Association by each Unit Owner.

7. The Association may elect to refrain from foreclosing upon any Assessment lien, and instead may bring suit against the Lot Owner(s) or Unit Owner(s) for the collection of same without waiving or affecting the Association's right to assert said lien against the Lot or 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 Lot or Unit shall not preclude the Association from thereafter filing suit against the Lot Owner(s) or Unit Owner(s) to enforce said lien, or vice versa.

Section 23. For Purposes of this Article, and Any Other Articles of this Declaration Establishing a Lien, the Lien Shall Be on the Entirety of Land and Improvements Owned by the Unit Owner. Any provisions of the Declaration to the contrary notwithstanding (including those provisions which define a "Unit" as not including certain portions of the Land of a Lot conveyed to a Unit Owner, such portions of the Land being defined by Sections 8 and 9 of ARTICLE I and other provisions as being a Common Area), the Assessments and the liens for Assessments provided for by this ARTICLE VI and other lien upon Units established by this Declaration, shall accrue to and attach to the entirety of the land/real estate conveyed to and acquired by each Unit Owner, and shall attach to:

a. The Land/real estate acquired by the Unit Owner, however described; and

b. The Living Units and Unit owned by the Unit Owner, and all parts and components of same; and

c. All other improvements located on such Land; and

d. The entire Lot and Unit of the Unit Owner.

Therefore, if, for example, the Unit Owner acquires an entire Lot, as will be the case in most cases, then the lien shall be lien not just on the Unit of such Unit Owner as the Unit is described in this Declaration, but also on the entire Lot, although all portions of the Land of the Lot located outside the boundaries of the Unit as described in this Declaration shall be and continue to be and shall always be treated as Common Area.

Section 24. No Requirements to Resort to Arbitration. Any provisions of this Declaration to provide for resolution of disputes by mediation or arbitration notwithstanding, the Assessments and liens for Assessments provided for by this ARTICLE may be enforced by direct recourse to the judicial system, at the option of the Association. The Association may seek to enforce Assessments and liens by way of arbitration and mediation, rather than resort to the judicial system/the legal system, as it, in its sole and absolute discretion, finds to be appropriate. In other words, the Association, acting through its Board of Directors, may elect to enforce liens or assessments by way of the mediation and arbitration provisions set forth in ARTICLE XVII of this Declaration, or, to the contrary, may elect to enforce liens or assessments by direct resort to the judicial system, the legal system, as it, in its sole and absolute discretion finds to be appropriate. The Association's Board of Directors shall also have all of those remedies for non-payment of assessments conferred upon it by Sections 15 and 22 of this ARTICLE. If there are disputes concerning assessments, the sums of the assessments, or the enforcement of the liens therefor or the collection thereof, then such disputes shall be resolved, either by direct resort to the judicial system or by mediation and arbitration as provided for by ARTICLE XVII of this Declaration, as the Association's Board of Directors, in its sole and absolute discretion, finds to be appropriate.

Section 25. 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 Lot or 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 Lot or 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 Lot Owner or Unit 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 Lot or Unit as to the existence of the Association's lien against the Lot or Unit in question, to wit:

"Notice of Lien in Favor of Vistas at Old Hawthorne Homes Association"

Take notice that Vistas at Old Hawthorne 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 Vistas at Old Hawthorne Subdivision (that portion thereof sometimes referred to as "Vistas at Old Hawthorne"), a subdivision in Boone County, Missouri, to-wit:

[HERE INSERT LEGAL DESCRIPTION OF LOT 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 Vistas at Old Hawthorne", a subdivision of Columbia, Boone County, Missouri, dated the _____ day of _____, 2007, 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 OF ASSOCIATION].

IN WITNESS WHEREOF, Vistas at Old Hawthorne Homes Association has caused this notice to be executed by its President as its duly authorized officer on this _____ day of _____, 20___.

VISTAS AT OLD HAWTHORNE HOMES ASSOCIATION

By: _____
President

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 of Vistas at Old Hawthorne 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 Vistas at Old Hawthorne 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, State of Missouri
My commission expires:_____.

Section 26. 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
Vistas at Old Hawthorne Homes Association"

Take notice that the Assessment lien in favor of Vistas at Old Hawthorne 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___.

VISTAS AT OLD HAWTHORNE HOMES ASSOCIATION

By: _____
President

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 of Vistas at Old Hawthorne 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 Vistas at Old Hawthorne 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, State of Missouri
My commission expires:_____.

## ARTICLE VII
## PARTY WALLS

Section 1. General Rules and Law to Apply. Each wall or fence which is built as the original construction of a Building, Living Unit or Unit upon the Property and placed on the dividing line between Living Units or Units or Lots 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.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or fence and the foundations and footing therefor shall be shared by the Owners who make use of same in proportion to such use.

Section 3. 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.

Section 4. Weatherproofing. Notwithstanding any other provisions 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.

Section 5. 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.

Section 6. Arbitration. In the event of any dispute concerning a party wall, or under the provisions of this ARTICLE, such dispute shall be submitted to and determined by Mediation and Arbitration in the manner provided for by ARTICLE XVIII of this Declaration.

Section 7. Fences Common to Two Units. Any fence, wall or similar structure, whether located within the boundary lines of the Common Area or the boundary lines of one or more Units, which are common to two Units, shall be a party wall or subject to the same party wall provisions as are set forth in this ARTICLE, and same must be jointly maintained, repaired, replaced, painted and otherwise kept in good repair and condition, and in a sightly repair and condition by the Unit Owners of the Units served thereby, acting in cooperation with each other, and in the absence of agreement, the needs for maintenance, repair, replacement or upkeep of any such fence, wall or similar structure shall be established in the manner provided for in Sections 10 and 11 of ARTICLE VI of this Declaration.

## ARTICLE VIII
## ARCHITECTURAL CONTROL

So long as Class B voting rights are in existence, and for so long thereafter as the Developer owns any Lot or Unit located within the Parcel, no Building, fence, wall or other structure or improvement shall be commenced, erected or maintained within the Lots or Units or within the Common Areas, or at any location within the Parcel, other than those placed thereon by the Developer or its assignees, and those, the plans, drawings and specifications for which have been previously approved by the Developer. 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 own any Lot or Unit then located within the Parcel, no exterior addition to, or alteration of, or exterior change in color, or exterior change in materials, shall be made on any completed structure, Building, fence, wall or improvement located within a Lot, or within the Common Areas, or at any location within the Parcel, other than those previously approved by the Developer or the Developer's assignees, and no Building, fence, wall or other structure shall be commenced, erected or maintained within a Lot or Unit, and no tree, shrub or plant shall be planted by any Unit Owner of any Unit (other than within private patios, decks, courtyards, or similar areas) until the plans and specifications showing the nature, kind, shape, color, height, materials and location of same have submitted to and approved by the Developer or the Developer's assignees. After Class B voting rights have ceased to exist, and after the Developer and the Developer's assignees of the Developer's rights as a Developer hereunder cease to own any Lot or Unit within the Parcel, no exterior addition to, or change to, or alteration of any structure, Building or improvement located within a Lot or Unit or within the Common Areas shall be made, and no alteration or exterior change in color or exterior Building materials shall be made on any Building, fence, wall or improvement located within any Lot, Units or with the Common Areas, and no change in the exterior appearance of any such Building, fence, wall or improvement shall be made, and no Building, fence, wall or other structure (temporary or permanent) or improvement shall be commenced, erected or maintained within a Lot, or Unit or within the Common Areas, and no tree, shrub, plant or other growing item shall be planted by any Unit Owner within any Lot, Unit, or Common Area (other than within private patios, decks, courtyards or similar areas) until the plans and specifications for such addition, alteration, change, change in color, modification, or change in materials, or the plans and specifications for such Building, fence, wall or other structure, or such planting (showing, in detail, the nature, kind, shape, color, height, materials and location of the

proposed addition, alteration, change, change in color or change in materials, or such Building, fence, wall or other structure, or such planting) have been submitted to and have been approved in writing by:

a. The Board of Directors of the Association or by an Architectural Control Committee composed of two (2) or more persons appointed by said Board; and

b. The Architectural Review Board (the "ARB") appointed pursuant to the Old Hawthorne Declaration, it being understood that an Architectural Review Board, an ARB, is to be constituted pursuant to the Old Hawthorne Declaration.

The Architectural Review Board for Old Hawthorne as provided for by the Old Hawthorne Declaration ("the Old Hawthorne ARB") shall have all powers, duties, discretions and immunities conferred upon it by the Old Hawthorne Declaration. The Board of Directors of the Association or its Architectural Control Committee shall not be required to approve any exterior addition to, or change to or alteration of, or change of exterior color or Building material, or erection or Building of any structure or Building or improvement or any planting located within a Lot or Unit, or within the Common Areas, if same is not deemed by the Board or the Architectural Control Committee to be in the very best interest of the Development and the Association, and if the Board or the Architectural Control Committee for any reason in its sole, absolute and unlimited discretion, deems same not to be in total and complete harmony as to external design and location, size, appearance, quality and intended use in relation to surrounding structures and topography, or to not be of the same quality as the then existing structures located within the Lots. In no event shall there be any such planting or change in the exterior appearance or color of any Building, fence, wall, roof, gutter, down spout, door, window or other structures or portions of structures or improvements within the Development or Property until same has been approved by the Developer or the Developer's assignees, if Class B voting rights are in existence, or if the Developer and such assignees own any Lot or Unit then located within the Development, and thereafter by the Old Hawthorne ARB and by the Board of Directors of the Association, or its Architectural Control Committee, and there shall be no such planting or change in the type or nature of exterior roofing materials or other exterior materials for any structure or improvement within the Development or Property until same has been approved by the Developer, if Class B voting rights are in existence or if the Developer and its assignees own any Lot or Unit within the Parcel, and thereafter by the Old Hawthorne ARB and by the Board of Directors of the Association, or its Architectural Control Committee.

The discretion of the Board of Directors or its Architectural Control Committee shall be unlimited so long as it exercises good faith and does not act arbitrarily, unreasonably or capriciously. In any event, whether before or after the termination of the Developer's Architectural Control powers provided for by the above provisions of this ARTICLE VIII, any Builder or Lot Owner or Unit Owner who proposes to build a new Building upon a Lot shall be required to submit a landscaping plan. Such landscaping plan must, prior to termination of the Developer's Architectural Control powers provided for by the above provisions of this ARTICLE VIII be approved by the Developer and must, thereafter, be approved by the Association's Board of Directors or its Architectural Control Committee. Any such landscaping plan must provide for landscaping of the nature, type and quality equivalent to the landscaping of any existing Buildings and structures located within the Development and must provide for the landscaping, not just of the Units but of the Common Areas located within each Lot. Any

Builder or Lot Owner or Unit Owner who proposes to build a new Building upon a Lot shall be required to landscape the entire Lot in accordance with an approved landscaping plan, including the Units and the Common Areas. Once plans and specifications for a Building or structure, or landscaping plans for landscaping, have been approved by the Developer or the Association's Board of Directors or its Architectural Control Committee under the provisions of this ARTICLE VIII, the Association's Board of Directors shall have the power and authority to compel that the Buildings, structures, improvements and landscaping provided for thereby be completed in compliance therewith within a reasonable time following the start of the work therefor, and until such completion, the Owners of Units contained within such structures shall not be entitled to any Class A voting rights at any membership meetings of the Association. In the event Buildings, structures or improvements or landscaping provided for by plans, specifications or a landscaping plan approved by the Developer and/or the Association's Board of Directors or its Architectural Control Committee are not completed within a reasonable time following the start thereon, then the Developer or the Association's Board of Directors shall have the following rights and authorities:

i. Either to compel completion pursuant to the plans, specifications or landscaping plan by mandatory injunctive relief or other suitable court order, and, until such completion is accomplished, to bar occupancy or continuing occupancy of any applicable Units, by injunction or otherwise; or

ii. To enter upon the applicable Lot or Units and to complete the improvements or the landscaping, in accordance with the approved plans and specifications, and to charge all costs of such completion against the Lot Owner or Unit Owner(s) of the applicable Lot or Unit(s), which such cause shall constitute special Unit assessments, which are charged in accordance with ARTICLE VI of this Declaration and shall be enforceable as special Unit assessment (and shall constitute liens of special Unit assessments) in accordance with ARTICLE VI of this Declaration.

No landscaping shall (without the prior written consent of the Developer so long as the Developer holds the Architectural Control powers hereunder, and thereafter, without the written consent of the Old Hawthorne ARB and the written consent of the Association’s Board of Directors or its Architectural Control Committee) be performed upon any Unit or Lot, except within the boundary lines of privacy fences, private courtyards, or similar privacy areas, and except the original landscaping installed within the Lot or Unit in accordance with an approved landscaping plan, as described above. If any Unit Owner receives permission to install trees, shrubs or other landscaping materials within a Unit or Lot, other than the original landscaping installed within the Lot by the Builder, the Developer, or the Association, then, while the Association shall thereafter maintain, repair and replace (with a planting of reasonable, but not necessarily mature size) same (unless same is located within a privacy fence, courtyard or similar privacy area) duties and obligations for such repair or replacement of such landscaping shall be permanently vested in the Association.

No landscaping upon any Lot, Unit or any real estate within the Parcel shall be changed, altered, modified or added to, and no trees, shrubs, plants, flowers or similar items shall be planted within the boundary lines of such Lots, Units, Common Areas or the Parcel (other than in such private patios or within such privacy fences or courtyards) until plans for same have been approved by the Developer, so long as Class B voting rights are in existence, or thereafter by the Association's Board of Directors or its Architectural Control Committee.

If a Builder or Lot Owner other than the Developer seeks approval of the Developer or the Board or the Architectural Control Committee for the construction of a Building, structure or other improvement within the Parcel, then such Builder or Lot Owner must submit to the Developer or the Board or Architectural Control Committee, as the case may be, two (2) copies of the plans and specifications for the Building or structure, including and showing the following;

Floor plans, and interior and exterior dimensions;

Site plans;

Site locations;

Elevations of all structures and Buildings;

Exterior finish materials (including a specific description as to whether same are stain/clear wood finish on all wood exteriors, paints and paint color types, types of brick [including type, nature and manufacturer of brick and brick colors], roofing material types and colors, and a specific description of stone and types of stone finishes, and a very specific description of all exterior finish materials;

A complete landscaping plan, including specific descriptions of all landscaping, including trees, shrubs, materials, lawn, etc. (which specifies the types of plants, the sizes of plants, the locations of plants and the manner in which all plants shall be planted);

Dimensions;

All other data reasonably deemed necessary by the Developer or the Board or Architectural Control Committee so that the Developer or Board or Architectural Control Committee can reasonably make a reasonable decision as to whether or not the Building or improvement is compatible with surrounding structures and topography, and with other Buildings and improvements located within the Parcel, and with the existing and planned character of the neighborhood, and with the existing character of the neighborhood, and with the planned development to occur within the Parcel, and with the type of development anticipated for the Parcel.

If approval of the Old Hawthorne ARB is required pursuant to this ARTICLE VII then all information and documents required by the Old Hawthorne ARB shall be submitted in compliance with the requirements of the Old Hawthorne ARB and the Old Hawthorne Declaration.

If plans and specifications are required to be provided to the Developer or its Board of Directors or its Architectural Control Committee, then two (2) copies of such plans and specifications must be presented, so that compliance therewith can be monitored. A submission of any documents which do not satisfy the requirements hereinabove set forth shall be deemed to be an incomplete submission, and shall not require any action for approval or disapproval by the Developer or Board or Architectural Control Committee. In order to require action by the Developer or the Board or Architectural Control Committee, a complete submission of two (2) copies of the documents, which satisfy all requirements hereinabove set forth, must be made.

**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 IT, IN ITS SOLE, ABSOLUTE AND UNMITIGATED DISCRETION DEEMS SAME TO BE IN THE BEST INTEREST OF THE DEVELOPMENT, AND ONLY IF IT, IN ITS 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 ITS 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 ITS 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.**

Fences: While it is the intention of the Developer, that fences shall be allowed only in very limited instances, and then only after substantial showing of good reasons therefor and of any attractive and suitable design therefor, fences which are so approved by the Developer must comply with the provisions of this paragraph. The fencing in certain of the backyards which serve Living Units may be approved pursuant to these Architectural Control provisions of this ARTICLE. No fence may, however, be installed at any location within the Development without prior approval pursuant to these Architectural Control provisions of this ARTICLE. Fences shall be prohibited, unless approved pursuant to the Architectural Control provisions of this ARTICLE. Only black, wrought iron fences shall be permitted. Such fences shall not be considered to be "privacy fences", meaning that the areas within the fences shall not be deemed to be or treated as being areas within "privacy fences" or "private courtyards" and shall remain Common Area. Any fence which serves a Living Unit within the Development, by whomever constructed, shall be a part of the "Unit", and shall not be a part of the Common Elements. Any such fence must be maintained, repaired, replaced, painted and repainted by the Unit Owner of the Unit. The Unit Owner of the Unit must keep the fence in good repair and condition and in a neat and sightly appearance. Even though areas may be located within fenced in rear yards, such areas shall nevertheless remain "Common Area," although such area shall be "Limited Common Area" allocated to the Living Unit, the rear yard of which is fenced in.

Stairways from Decks: It is the intention of the Developer to not allow or permit the installation of stairways leading from decks, or serving private decks for any Units, other than such stairways as shall be installed by the Developer or a Builder at the time of the initial construction of the Building, and then same must be approved pursuant to the Architectural Control Provisions of this ARTICLE. It is the intention that very severe, strict limitations upon and against stairways from decks shall be in place and shall be enforced, and that stairways from decks shall be allowed only in very rare instances

and situations. Under no circumstances shall a stairway from a deck be installed without the prior approval granted pursuant to the Architectural Control Provisions of this ARTICLE.

Decks: Decks, patios, porches, gazebos and all structures and similar structures are subject to the Architectural Control Provisions of this ARTICLE.

Invisible Fences: It is the intention of the Developer to approve, pursuant to these Architectural Control Provisions, so-called "invisible fences", for certain of the Lots and Units, which such "invisible fences", are the fences that rely on transmitting electricity or other signals through buried wires, to collars on pets, in order to keep the pets within the boundaries of the "invisible fence". Invisible fences shall be subject to the Architectural Control Provisions of this ARTICLE and must receive prior Architectural Control approval under this ARTICLE before such fences shall be allowed. However, invisible fences may be approved by the Developer or the Architectural Control Committee or the Board in the exercise of its sole, absolute and unlimited discretion. The discretion to approve or disapprove invisible fences shall be absolute.

**TRANSFER BY DEVELOPER. IF THE DEVELOPER'S RIGHTS OF WELEK CONSTRUCTION COMPANY ("WELEK"), THE INITIAL DEVELOPER IDENTIFIED HEREIN, SHALL BE TRANSFERRED OR CONVEYED BY WELEK TO ANY PERSON, PARTY OR OTHER ENTITY, OTHER THAN JOHN WELEK, OR A CORPORATION OR ENTITY IN WHICH JOHN WELEK HOLDS A MAJORITY OF THE VOTING RIGHTS (MEANING THAT JOHN WELEK CONTROLS SUCH ENTITY), OR IF SUCH DEVELOPER'S RIGHTS SHALL BE TRANSFERRED, INVOLUNTARILY, BY FORECLOSURE OR OTHERWISE, TO ANY PERSON OR PARTY OTHER THAN WELEK OR ANY PERSON OR PARTY OTHER THAN JOHN WELEK OR ANY OTHER ENTITY CONTROLLED BY JOHN WELEK, OR IF JOHN WELEK SHALL, BY REASON OF DEATH, DISABILITY, INCAPACITY OR VOLUNTARY OR INVOLUNTARY TRANSFER OF HIS SHARES OR VOTING RIGHTS AS TO WELEK OR ANY SUCCESSOR ENTITY, CEASE TO CONTROL WELEK, OR ANY OTHER SUCH SUCCESSOR ENTITY (MEANING THAT HE HOLDS LESS THAN 50% OF THE VOTING RIGHTS OR VOTING SHARES OF WELEK OR SUCH OTHER ENTITY), THEN, IN SUCH EVENT, AND ANY OF THE PROVISIONS OF THIS ARTICLE NOTWITHSTANDING, THE DEVELOPER, MEANING THE SUCCESSOR DEVELOPER, AND THE OLD HAWTHORNE ARB SHALL HAVE, JOINTLY, THE ARCHITECTURAL CONTROL POWERS PROVIDED FOR BY THIS ARTICLE, AS WELL AS THE ARCHITECTURAL CONTROL POWERS PROVIDED FOR BY THE OLD HAWTHORNE DECLARATION, MEANING THAT ALL PLANS, DRAWINGS AND SPECIFICATIONS FOR ANY BUILDINGS OR IMPROVEMENT WHICH WOULD OTHERWISE, IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE, BE REQUIRED TO BE APPROVED BY THE DEVELOPER, MUST BE APPROVED BOTH BY THE NEW, SUCCESSOR DEVELOPER AND BY THE OLD HAWTHORNE ARB.**

## ARTICLE IX
## MAINTENANCE

Section 1. General Maintenance by Association. The Association shall provide for all of the following maintenance, repairs, replacements, servicing and upkeep within the Development:

a All maintenance, repair, replacement, servicing and upkeep, of any kind or nature whatsoever, for the Common Areas and Common Elements, other than as specifically provided otherwise for certain landscaping and for drives, driveways, walkways and Private Drives;

b. All mowing, fertilization, irrigation, maintenance, repair and replacement (subject to the limitations of this Declaration) of all lawns, trees and landscaping located throughout the Property, within the Common Areas and the Units, other than lawns, trees, shrubs, landscaping and similar materials located within private courtyards, private patios and similar privacy areas which shall be maintained solely by the Unit Owners (but the Association shall provide such service within fenced in backyards, but the fence itself shall be maintained, repaired and replaced by the Unit Owner); provided, however, that while Unit Owners shall not be permitted to plant trees or shrubs or other items without the prior written consent/permission of the Developer so long as the Developer holds the Architectural Control Powers under ARTICLE VIII, or the Association's Board after the Developer ceases to hold such Architectural Control Powers, at any location within the Common Areas, and if a Unit Owner does, with such consent, plant trees, shrubs or other landscaping materials within the Common Areas and same thereafter require any replacement, then any tree or shrub which was initially placed or planted within the Common Area by the Unit Owner or a Unit Owner shall be replaced by the Association but shall be replaced only with a tree or shrub of the same size (caliper size) and type as existed at the time when the tree or shrub was initially planted.

c. All mowing, fertilization and irrigation of all lawns located within the boundary lines of the Lots and Units, with the exception of those located within the boundary lines of privacy fences, courtyards or other privacy areas (which shall be mowed, fertilized, irrigated and maintained solely by the Unit Owners – but the Association shall provide such services within fenced in backyards, but the Unit Owner shall maintain the fence itself);

d. The irrigation, fertilization and general maintenance of all trees, shrubbery, plantings and the like within the Lots, Units and the Common Area and the Property (provided, however, that each Unit Owner shall be required to replace all lawns, trees, shrubbery and other plants located within the private courtyards, private fences, and other privacy areas located within such Unit Owner's Unit and shall be required to irrigate, fertilize, mow, keep and maintain all trees, shrubs, lawns and landscaping materials and plantings located within the said private courtyards, private patios and similar privacy areas); provided that the Association shall provide such services within fenced in backyards, but the Unit Owner must maintain the fence; provided, however, that Unit Owners shall not plant trees, shrubs or other landscaping materials within Common Areas other than with prior written consent given by the Developer so long as the Developer holds the Architectural Control Powers under ARTICLE VIII of this Declaration and thereafter given by the Board of the Association in the manner described in ARTICLE VIII of this Declaration; and provided further, however, that if any tree or shrub planted by a Unit Owner requires replacement, while same shall be replaced by the Association same shall be replaced only with a tree or shrub of the same type and size (caliper size) as existed at the time when the tree or shrub was initially planted;

e. The furnishing of reasonable snow removal for and reasonable cleaning for any Drives, Driveways or sidewalks located in the front (streetside) of the Buildings, and for any Private Street or Private Drive, excluding any sidewalks or walkways located in the rear of a Building, and excluding any repairs or resurfacing for any such Drive, Driveway, sidewalk, Private Street or Private Drive, all of which shall be provided by the Unit Owner(s) of the Unit(s) served thereby, with all such costs of repair or resurfacing or replacement of any of such components which serves more than one (1) Unit to be equally shared by the Unit Owners of such Unit;

f. Maintaining, repairing and replacing all sewer lines, water lines and other utility lines which are not publicly owned, and which service all Units located within the Development;

g. Maintaining, repairing and replacing all sewer lines, water lines, electrical lines and other utility lines located within the Development, and all Stormwater Facilities located within the Development, which serve more than one (1) Unit (provided, however, that the Owners of such Units shall be required to equally share the cost of maintaining, repairing and replacing such sewer lines, water lines, electrical lines, other utility lines and Stormwater Facilities);

h. The payment of all taxes upon the Common Areas and Common Elements other than those titled in the name(s) of any Lot Owner(s) or Unit Owner(s), as the Lot Owners or Unit Owners shall pay all real estate taxes on all property within each Lot which is titled in their name(s), even though a substantial portion of same may be Common Area under the provisions of this Declaration;

i. The providing of liability insurance for the Common Areas and Common Elements;

j. The painting, cleaning, tuckpointing, maintaining, decorating, operating, repairing (lighting where appropriate) servicing and replacing of all Common Elements;

k. The replacement of all dead and dying trees, shrubs, plants and other plantings located within the Common Areas, including those planted by any Unit Owner with the Association's permission, provided that same shall be replaced only with a tree or plant of the same type and size (i.e. caliper) as existed at the original planting;

l. The planting of any new trees, shrubs, plantings and the like within the Common Areas; and, subject to subparagraph k above, the replacement of same;

m. At the sole and unlimited discretion of the Association's Board of Directors (and the Association shall not be required to do so), providing only very light, "touch-up" maintenance for the exteriors of the Buildings and the Units;

n. To provide for all maintenance, repairs, replacements and operations of and costs of operation of the irrigation systems which serve the Common Areas, located throughout the Development, and all parts and components of same.

**THE ASSOCIATION, HOWEVER, SHALL NOT BE REQUIRED TO DO ANY OF THE FOLLOWING:**

a. To provide for snow removal or any lawn upkeep, mowing, landscaping, irrigation, fertilization or other maintenance, repairs, replacements or servicing of any type for areas within privacy fences, privacy areas or courtyards, or for any walkways or sidewalks located in the rear of the Building; provided that the Association shall provide such lawn maintenance and landscaping maintenance services within fenced in rear yards, but the fence itself must be maintained by the Unit Owner;

b. To provide for any resurfacing of or replacements of or repairs of any Private Drives, Private Streets, walkways, Drives or Driveways, other than to provide snow and ice removal therefor and reasonable cleaning therefor, with all such repairs, replacements and resurfacing to be provided by the Unit Owner(s) of the Unit served by such component, at their equal cost and expense (when more than one Unit Owner is served thereby);

c. To provide for any exterior, cosmetic or structural maintenance for any of the Buildings,, patios, decks or similar items, including painting, cleaning or tuckpointing;

d. To provide for any roof repair or replacement, or gutter or down spout repair or replacement for any Buildings;

e. To provide for the maintenance, repair or replacement of interior or exterior surfaces of a Building or the interiors or exteriors of a Living Unit;

f. To provide for the maintenance, repair or replacement of glass surfaces, doors, gates or hardware, windows or window hardware or private patios and decks;

g. To provide for the maintenance, repair or replacement of structural elements of a Unit or Living Unit or for the structural repair of interior or exterior walls for a Unit or Living Unit, or for sewer lines or utility lines or water lines which service only a single Unit (all of which shall be maintained, repaired and replaced by the individual Unit Owner);

h. To provide for maintenance, repair, replacement or upkeep of any structural element of any portion of any Building which contains (a) Living Unit(s), or for the maintenance, repair, replacement or upkeep of any structural or non-structural component of any Living Unit or Unit or any Building containing (a) Living Unit(s), or any component of any garage or carport for any Unit/ Living Unit, all of which shall be maintained, repaired and replaced by the Unit Owner(s) of the Living Unit(s) in the manner provided by this Declaration;

i. To perform any maintenance, repair, replacement, servicing or upkeep, the duty for which is not specifically imposed upon the Association by this Declaration;

j. To provide for all painting of, repainting of, and maintenance, repair, replacement and servicing of (as required to keep same in good repair and condition and in a sightly repair and condition) any fence serving the Unit, or enclosing all or any part of the rear yard for the Living Unit of such Unit, although such fences shall not, for purposes of this Declaration, be considered to be "privacy fences", all of which such fences must be installed pursuant to the Architectural Control powers of ARTICLE VIII of this Declaration, and all of which shall be maintained by the Unit Owners.

Section 2. Maintenance of Roofs, Gutters, Exterior Walls and Down Spouts. If a Building contains only a single Living Unit, or if a Building contains two (2) Living Units but the roofs and roof structure for the individual Living Units are clearly divisible by party walls or other structures into separate roofs serving the individual Living Units, then the individual Unit Owners of such Living Unit or of such Living Units shall be required to provide for all maintenance, repairs and replacements for

the roof and roof structure, and gutters, and down spouts, and exterior walls, for their individual Living Units, and shall be required to pay the entire expense of same. If the roof or roof structures for certain Living Units are not clearly divided by walls or other structures into individual roofs, serving the individual Living Units (i.e. the Units share a common roof), then the Unit Owners of such Living Units shall be required to cooperate, and to jointly provide for all maintenance, repairs, servicing and upkeep for such roof and roof structure, and the maintenance, repairs, servicing and upkeep for such roof and roof structures and gutters and down spouts for their Units; provided, however, that the costs of all maintenance, repairs, servicing and upkeep for such roof and roof structures and gutters and down spouts to be paid by the individual Unit Owners shall be determined by theoretically extending the plane of the common, party walls, through the roof of the Building, and through the exterior walls, and each individual Unit Owner shall be required to pay all costs and expenses attributable to the maintenance, repair, servicing, replacement and upkeep of that portion of the roof and roof structure, and gutters and down spouts located within his Unit, as determined by such extension of the plane of such party walls. The provisions of this Section 2 to the contrary notwithstanding, however, and all of the provisions of this Declaration to the contrary notwithstanding, however, any roof patching or resurfacing, and any painting or resurfacing of gutters or down spouts or exterior walls, for any Building or Living Units or Units containing or located within a Building or containing a Building, can be done only with the cooperation of the Unit Owners of all Living Units contained within or located within such Building, and the Owners of all Units containing such Building, so as to preserve a uniform appearance for all roof surfaces and gutters and down spouts and exterior walls for such Building. Therefore, any roof resurfacing or patching, or gutter or down spout or exterior wall alterations or painting shall be done only with the cooperation of the Owners of all Units located within or containing a Building so as to preserve for that Building a uniform appearance for the gutters, down spouts and roof surfaces and walls for such Building. The necessity for maintenance, repair, replacement, servicing or upkeep of the roofs, gutters and down spouts and walls shall be established by the unanimous agreement of the Owners of the applicable Units, and, in the absence of such agreement, shall be established in that manner hereinabove provided in ARTICLE VI of this Declaration. The provisions of this Section 2 to the contrary notwithstanding, and any of the provisions of this Declaration to the contrary notwithstanding, there shall be no change in the exterior color of, or the exterior surface material of, any roof, gutters or down spouts or exterior walls without the consent of the Developer or the Association's Board of Directors or its Architectural Control Committee first obtained, as provided for by ARTICLE VIII. Should any Owner of any Unit perform or cause to be performed, any maintenance, repair or replacement or servicing or upkeep to which other Unit Owners are required to contribute under this Section 2 or under ARTICLE VI, then such Unit Owner shall be entitled to immediate reimbursement, upon demand from such other Unit Owners, and the sum of such reimbursement to which such Unit Owner shall be entitled shall bear interest at the rate provided for by ARTICLE VI of this Declaration for delinquent assessments from the date of demand. Should such Unit Owner seek to enforce his right to reimbursement by legal proceeding, then, in addition to the sum of the reimbursement to which he is entitled, together with interest thereon, he shall be entitled to recover his reasonable costs, expenses and attorneys fees incurred in connection with such legal proceedings. The sum of such reimbursement shall constitute a lien against the Units of the Owners responsible therefor, and shall constitute a charge upon the land and the improvements, and the Unit Owner entitled to reimbursement shall be entitled to proceed to enforce such lien, by suit or otherwise, and, shall be entitled to recover the sum of the reimbursement to which he is entitled, together with interest thereon at the rates established under ARTICLE VI of this Declaration for delinquent assessments and his costs and attorney's fees. The determination as to whether or not

exterior maintenance, repairs or replacements are required for any Building, or for any roof or roof structure, or for any exterior walls, gutters or downspouts, shall be made by the Association's Board of Directors, and the determination by such Board shall be final, conclusive and binding upon the Unit Owners of any Units within any Building as to which the Board makes a determination that maintenance, repair, replacement, servicing or upkeep of any roof, gutter, exterior wall or downspout for such Building is required. The Unit Owner(s) shall then be given the opportunity by the Association's Board to cause the required maintenance, repair, replacement, servicing or upkeep to be performed, in the manner described in this Section 2, but if he, she or they fail to cause same to be performed within such reasonable time as shall be specified by the Board, the Board shall have the absolute, unlimited and unmitigated power, right and authority (and all necessary easements) to enter upon the Unit(s) and upon or within the Building containing the Unit(s) and the Unit(s) themselves (which such authority may be designated to the employees or contractors of the Board), and to perform the required maintenance, repair, replacement, servicing or upkeep. Therefore, even if Unit Owners disagree concerning the need for maintenance, repair, replacement, servicing or upkeep of any exterior component of a Building the Board shall resolve such disagreement and shall have the total authority to resolve such disagreement, and whether or not there is agreement to cause maintenance, repairs, replacements, servicing or upkeep which the Board finds to be necessary to be performed. All costs of all maintenance, repairs, replacements, servicing or upkeep caused to be performed by the Board shall be charged to the Unit Owners responsible for the exterior maintenance of the applicable Building and shall become Special Unit Assessments against the Units of such Unit Owner and liens upon their Units

Section 3. Porches and Other Improvements Common to More Than One Unit. In the event a porch, deck, privacy fence between two decks for two Units, or utility line, or a sewer, or a Private Drive or driveway serving two or more Units requires repair or replacement, the Owners of such Units shall be required to contribute equally to the costs of such repair or replacement and shall be obligated to cause such repair or replacement to be performed at their expense. If any of such Unit Owners pays the entire said cost then he or they shall be entitled to immediate reimbursement of the prorata share of such cost from the other Unit Owners. If the necessity for such repair or replacement is caused by the fault or negligence of an Owner, occupants or invitees of any Unit, the Owner of such Unit shall pay the entire cost of same. In the event a driveway, sewer line, water line or utility line or fence, serving more than one Unit, requires maintenance, repair or replacement, then the Association may provide such maintenance, repair or replacement, but the cost of such maintenance, repair or replacement shall be paid equally by the Unit Owners of the Units serviced by same. The costs of such maintenance, repair or replacement shall be added to, and shall become a part of the Annual Assessment to be paid to the Association to which each such Unit is subject. This type of assessment shall be added to the Annual Assessments to be paid to the Association, as provided for by the above terms and conditions of this Declaration, and shall be enforceable as a part of such annual Assessments pursuant to the above terms and conditions of this Declaration dealing with enforcement. Should any Owner of any Unit perform any maintenance, repair or replacement or servicing or upkeep to which other Unit Owners are required to contribute under this Section 3, then such Unit Owner shall be entitled to immediate reimbursement, upon demand, by such other Unit Owners, and the sum of such reimbursement to which such Unit Owner shall be entitled shall bear interest at the rate provided for delinquent assessments by ARTICLE VI of this Declaration from the date of demand. Should such Unit Owner seek to enforce his right to reimbursement by legal proceedings, then, in addition to the sum of the reimbursement to which he is entitled, together with interest thereon, he shall be entitled

to recover his reasonable costs, expenses and attorneys fees incurred in connection with such legal proceedings. The sum of such reimbursement shall constitute a lien against the Units of the Owners responsible therefor, and shall constitute a charge upon the land and the improvements, and the Unit Owner entitled to reimbursement shall be entitled to proceed to enforce such lien, by suit or otherwise, and, shall be entitled to recover the sum of the reimbursement to which he is entitled, together with interest thereon and his costs and attorney's fees. The Board of the Association shall have the same power and authority to require performance of maintenance, repairs, replacements, servicing and upkeep of porches and improvements common to more than one Unit, and porches and improvements common only to one Unit, as are given to the Board with respect to maintenance of exterior components of a Building under Section 2 above.

Section 4. Cosmetic Maintenance for Exterior Surfaces of Buildings. All general, exterior maintenance, such as painting, cleaning, tuckpointing or other exterior maintenance for the exterior wall surfaces for a Building and the exterior surfaces of the Building, must be jointly and cooperatively arranged for and be paid for by the Unit Owners of the Living Units located within such Building and of the Unit Owners of the Units containing such Building or contained within such Building, so as to preserve, a common and uniform appearance for the exterior surfaces of such Building. No such Unit Owner shall, without the cooperation of all other Owners of Living Units or Units located within or containing a Building, independently arrange for the exterior painting, cleaning, tuckpointing or other cosmetic maintenance for his individual Unit, if same would, in any respects whatsoever, damage, interfere with or alter the uniform appearance of the Building. When exterior, cosmetic maintenance is required for a Building, the Owners of the Units located within or containing such Building shall be required to jointly and cooperatively provide for such painting, cleaning, tuckpointing or exterior cosmetic maintenance, and shall be required to pay their prorata portions of the costs thereof, which prorata portions shall become a special, individual Unit assessment against the Unit Owners and their respective Units, which shall constitute a lien against the Units, and shall draw interest at the rate of interest provided for delinquent assessments by ARTICLE VI of this Declaration, and be enforceable in that manner provided for by ARTICLE VI. The costs of painting, cleaning and tuckpointing, and other general exterior cosmetic maintenance for a Building which contains Living Units, shall be apportioned among the Owners of Living Units located within such Building, by the theoretical extension of the planes of the common party walls, in the manner hereinabove provided for in this Declaration, and in the manner hereinabove specifically described in ARTICLE VI of this Declaration. Should any Owner of any Unit perform any painting, tuckpointing, or other maintenance, repair or replacement or servicing or upkeep to which other Unit Owners are required to contribute under this Section 4, then such Unit Owner shall be entitled to immediate reimbursement, upon demand, from such other Unit Owners, and the sum of such reimbursement to which such Unit Owner shall be entitled shall bear interest at the rate provided for delinquent assessments by ARTICLE VI of this Declaration from the date of demand. Should such Unit Owner seek to enforce his right to reimbursement by legal proceedings, then, in addition to the sum of the reimbursement to which he is entitled, together with interest thereon, he shall be entitled to recover his reasonable costs, expenses and attorney fees incurred in connection with such legal proceedings. The sum of such reimbursement shall constitute a lien against the Units of the Owners responsible therefor, and shall constitute a charge upon the land and the improvements, and the Unit Owner entitled to reimbursement shall be entitled to proceed to enforce such lien, by suit or otherwise, and, shall be entitled to recover the sum of the reimbursement to which he is entitled, together with interest thereon and his costs and attorney's fees. The necessity for cosmetic maintenance of the type hereinabove described shall be established

in accordance with ARTICLE VI of this Declaration, and if the Association pays any part of the costs of same, then the costs shall be apportioned in the manner hereinabove described in such ARTICLE VI, and each Unit Owner's portion of such costs shall constitute a lien against his Unit, and shall constitute a special assessment, which such lien and special assessment shall be enforceable in the manner hereinabove provided for in this Section 4, and in the manner provided for in ARTICLE VI of this Declaration.

Section 5. Repairs of Utility Lines. All sewer lines, water lines, electrical lines and other utility lines, other than those which are publically owned, which service only a single Unit (whether located within the boundary lines of such Unit or the Common Areas, including, but not limited to, so called "laterals" or "customer service lines"), shall be maintained, repaired and replaced by the Owner of the Unit served thereby. All sewer lines, water lines electrical lines and other utility lines, located within the boundary lines of one or more Lot(s) or Unit(s), which service only certain Living Unit(s) located within such Lot(s) or Units(s), shall be maintained, repaired and replaced by the Unit Owners of those Units serviced thereby. Any fence, sewer lines, water lines or other utility lines which serve several Units, but not all Units, shall be maintained, repaired and replaced by the Unit Owners of those Units serviced thereby, and all of such Owners shall be required to contribute, equally, to the costs of such repair, maintenance and replacement. Should any Owner of any Unit perform any maintenance, repair or replacement or servicing or upkeep to which other Unit Owners are required to contribute under this Section 5, then such Unit Owner shall be entitled to immediate reimbursement, upon demand, by such other Unit Owners, and the sum of such reimbursement to which such Unit Owner shall be entitled shall bear interest at the rate provided for delinquent assessments by ARTICLE VI of this Declaration from the date of demand. Should such Unit Owner seek to enforce his right to reimbursement by legal proceeding, then, in addition to the sum of the reimbursement to which he is entitled, together with interest thereon, he shall be entitled to recover his reasonable costs, expenses and attorney's fees incurred in connection with such legal proceedings. The sum of such reimbursement shall constitute a lien against the Units of the Owners responsible therefor, and shall constitute a charge upon the land and the improvements, and the Unit Owner entitled to reimbursement shall be entitled to proceed to enforce such lien, by suit or otherwise, and, shall be entitled to recover the sum of the reimbursement to which he is entitled, together with interest thereon and his costs and attorney's fees.

Section 6. Other Maintenance or Replacement of Improvements on Units or Constituting Units. Each individual Unit Owner shall be required, at his sole expense, to do the following, to-wit:

a. To maintain all parts and components, interior and exterior, and systems of and for his Unit and Building (or that part of the Building which includes his Living Unit), and all interior and exterior surfaces thereof, and all parts of the Building which houses his Living Unit;

b. To maintain, in good repair, all structural elements of his Unit and Living Unit, and all parts of the Building which includes his Unit or contains his Living Unit, including all walls, floors and foundations, and all parts of the Building which includes his Living Unit;

c. To maintain, repair and replace all water lines, sewer lines and other utility lines which serve only his Unit (whether located within the boundary lines of his Unit or the Common Areas);

d. To provide all necessary irrigation for, mowing of, cutting of, trimming of, fertilization of and other maintenance, repairs, replacements and servicing of all lawns, trees, shrubs and landscaping located within any private courtyard, private patio, privacy fence or similar private area of his Unit or serving his Unit or intended for exclusive use of his Unit, excluding any rear yard which is fenced in, which shall remain Common Area for which the Association shall provide such services;

e. To provide for the maintenance, repair and replacement of heating and air conditioning equipment for his Unit and Living Unit (whether located within the boundary lines of his Unit or the Common Areas);

f. To repair, maintain and replace, so as to maintain same in a neat, attractive and sightly condition, all glass surfaces, patio and storage area walls and fences, and all doors and gates, and the hardware therefor, and all windows and window hardware for or serving his Unit or Living Unit;

g. To maintain, repair and replace all parts of the roof and roof structure for that part of the Building containing his Living Unit, and the gutters and downspouts for such part of the Building and his Unit, if the roof and roof structure for such part of the Building is a clearly discernible, separate, roof (i.e. the roof for that part of the Building containing his Living Unit is divided from the roof serving any other Unit or Living Unit by a clearly discernible party wall or other structure);

h. To perform all maintenance, repairs, replacements and servicing for his individual Living Unit, and the improvements located therein or constituting such Unit or Living Unit, and the surfaces thereof (both interior and exterior), the obligations for which are not imposed upon the Association, or certain Unit Owners collectively, by this Declaration;

i. To provide all maintenance, repairs, replacements, servicing and upkeep for all courtyards, and courtyard area and privacy areas for or serving his Unit or Living Unit, whether located within the boundary lines of the Unit or the Common Area;

j. To provide all lawn and landscaping maintenance, repairs, replacements, servicing and upkeep within the boundary lines of any courtyard, privacy fence or private lawn area for or serving his Unit, whether located within the boundary lines of the Unit or the Common Areas; provided the Association shall provide such services within fenced in rear yards, which shall remain Common Areas, but the Unit Owner shall maintain the fence;

k. To provide for all repairs and replacements of (other than snow and ice removal for) the Driveway and sidewalks serving his Living Unit;

l. To share with other Unit Owners all costs of replacement or resurfacing of or repairs (other than snow and ice removal) for any Private Drive or Private Street which serves his Unit, together with other Units;

m. To maintain, repair, replace, paint and repaint any fence which encloses all or any portion of the back yard for his Living Unit [Note: Black, wrought iron fences may, in certain circumstances which may be limited as the Developer in the Developer's discretion determines appropriate, be allowed pursuant to the Architectural Control powers of ARTICLE VIII of this Declaration for purposes of fencing in portions of the rear yards of Living Units or Units. Such fences shall not, however, for purposes of this Declaration, be considered to be "privacy fences", and the areas within such fences shall not be considered to be areas within privacy fences, but shall be Common Area. Areas within such fences shall continue to be considered to be Common Area. The Unit Owner of the Living Unit served by the fence shall be required to provide all maintenance, repairs, replacements, painting, repainting, servicing and upkeep of the fence required to keep the fence in good repair and condition and in sightly condition.]

In the event an Owner or Owners of any Unit or Units fail to perform any repair, replacement or maintenance specifically imposed upon them by this Declaration, including this Section 6, 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 other Unit Owners or the public safety of residents in or visitors to the Properties, or to prevent or avoid damage to or destruction of any part, portion, or aspect of the value of the Properties or of any Unit or Units, 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 into the Building or Buildings thereon and to maintain, repair, replace and service the same. The costs of such maintenance, repair, replacement or service shall be added to and shall become a part of the Assessments to which such Unit or Units are subject. This type of Assessment shall be added to the Annual Assessments and charges provided for by the above terms and conditions of this Declaration, and shall be enforceable in that manner provided for by ARTICLE VI of this Declaration. In the event a porch, fence, wall, or deck, or other improvement common to two Units requires repair or replacement, the Owners of such two Units shall be required to contribute equally to the costs of such repair or replacement. If one of such Unit Owners pays the entire said cost then he shall be entitled to immediate reimbursement of one-half (1/2) of such cost from the other Unit Owner. If the necessity for such repair or replacement is caused by the fault or negligence of the Owner, occupants or invitees of any Unit, the Owner of such Unit shall pay the entire cost of same. In the event a sewer line, water line or utility line, serving more than one Unit, requires maintenance, repair or replacement, then the cost of such maintenance, repair or replacement shall be paid equally by the Unit Owners of the Units serviced by same. The costs of such maintenance, repair or replacement shall be added to, and shall become a part of the assessment to which each such Unit is subject. This type of Assessment shall be added to the annual Assessments and shall be enforceable in that manner provided for by ARTICLE VI of this Declaration. If any Private Drive or Private Street or drive or driveway or walkway serves more than one (1) Unit, then the Unit Owners of the Units served thereby shall be required to share, equally, and pay, equally, all costs of resurfacing of, and repairs and replacements of such Drive, Private Drive or street, driveway or walkway, excluding snow and ice removal and cleaning (for such items located in the fronts of Buildings), which shall be provided by the Association. All of the maintenance, repair and replacement obligations imposed upon the individual Unit Owners by this Section 6 must be performed by such Owners so as to cause the Units to be maintained in a clean, neat, safe 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 possible. In the event of any dispute over such standards of maintenance, including the standards of cleanliness, safety, neatness, attractiveness, aesthetics and beauty, such dispute shall be resolved either by the Association's Board of Directors, or by a Maintenance Committee appointed by it, which shall be made up of representatives as hereinafter provided for in Section 7 of this Article. Any such dispute shall be resolved in that manner provided for by such Section 7 or by Section 2 above. It is the intention that these maintenance standards be strongly and vigorously enforced, so that the Development and all improvements located therein, be maintained as a Development of the highest order, and that maximum standards of cleanliness, safety, neatness, beauty, attractiveness and aesthetics be maintained, and that the Development be free of any conditions of unsightliness, including, but not limited to, those conditions specifically described in such Section 7.

Section 7. Standards of Maintenance, Repair and Replacement. The Owners of each of the Units located within the Development shall be obligated to each other, and to the Association, and the Association shall be obligated to each and all of the Unit Owners, and the Unit Owners and the Association shall be jointly and severally obligated to each other, to cause the grass cutting, irrigating, snow removal, painting, cleaning, tuckpointing, maintenance, repair, replacement, servicing and upkeep described in this ARTICLE IX or elsewhere in this Declaration, to be performed, at all times, so as to cause each of the Living Units, each of the Units, and all Common Areas and Common Elements, and all Buildings, contained within the Development, and all improvements contained within the Development, to be maintained 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 either by the Association's Board of Directors, or by a Maintenance Committee appointed by it, which shall be made up of three (3) persons holding ownership interests in three (3) separate Units representing three (3) distinctly different geographical sections of the Development (who must not be the Developer or its assignees), and one (1) representative of the Association's Board of Directors. If any such dispute is to be resolved by the Association's Board of Directors, then such dispute must be resolved by the majority vote of all Directors who are present and voting. If such dispute is to be resolved by the Maintenance Committee, then a decision of a majority of the members of such committee present and voting shall resolve the dispute. Any decision made by the majority vote of the Board of Directors, or by a majority of such committee, shall be binding upon all parties. It is the intention that the Development, and all improvements located therein, be maintained as a development of the highest order, and that maximum 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 down spouts; walkways, driveways, sidewalks or parking areas requiring patching or resurfacing; brick surfaces in need of cleaning or tuckpointing; or other conditions of any kind or nature whatsoever, without limitation, which would reasonably be construed as not in keeping the maximum standards of cleanliness, safety, neatness, beauty, attractiveness or aesthetics, and that the standards be very strongly and vigorously enforced and very strongly applied.

Section 8. Mixed Refuse Removal. The applicable Mixed Refuse Service may not provide front or back door Mixed Refuse Service for certain of the Units, as the Units may be located on private drives and/or private streets, which are not publicly owned nor publicly dedicated. Therefore, the owners or occupants of each such Unit shall be required to carry their mixed refuse to the curb line of the nearest adjacent public street. At weekly intervals, on the day designated by the applicable Mixed Refuse Service for pickup, the owners and occupants of all such Units will cause mixed refuse to be placed at a location designated by the Developer and/or the Association on the curb line of the nearest adjacent public street at a time which will permit the removal therefrom by such Mixed Refuse Service in bags or containers provided by, or approved by such Service. The Association's Board of Directors shall have the power to designate specific areas within which mixed refuse shall be placed. Any mixed refuse placed by a Unit Owner, or by the occupants of a Unit, which is not picked up by the Service, must be removed by such Owner or occupant, immediately following the pick-up by the Service of other refuse in the area.

Section 9. Special Assessment. In the event an Owner or Owners of any Unit or Units fail to perform any repair, replacement or maintenance specifically imposed upon them by this Declaration, including this ARTICLE IX, 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 of other Unit Owners, or the public safety, or the safety of residents in or visitors to the properties, or to prevent or avoid damage to or destruction of any part, portion or aspect of the value of the Property or of any Unit or Units, 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 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 such Units, responsible therefor, and shall become a part of the assessment to which each such Unit or Units are subject, and shall constitute a lien, and be collectible and enforceable in that manner hereinabove described in ARTICLE VI of this Declaration.

Section 10. All Repairs to be Collectively Performed are to be Deemed to be Performed by the Association. All repairs which are to be performed by other than the Owner of a single Unit (i.e. either by the Association, or by the Owners of Units located within or containing a Building, or by the Owners of certain Units), shall, for purposes of construing the easements in the Association hereinafter provided for by ARTICLE X of this Declaration, be deemed to be repairs and maintenance and replacements to be performed by the Association. If any repairs are to be collectively performed by the Owners of more than one Unit, then all and each of such Owners, and their designees, shall be deemed to have any easements over (and rights to enter upon) each of such Units, which are conferred upon the Association by ARTICLE X of this Declaration or by any of the provisions of this Declaration. If any Owner of any Unit shall fail or refuse to perform (or to contribute to the performance of, or to permit the performance of) any maintenance, repair, replacement, servicing or upkeep, which is to be performed by such Unit Owner (or to which such Unit Owner is to contribute), then the Owners of all other Units (and of each of such Units), who are also obligated for the performance of such maintenance, repair, replacement or servicing and their designees and contractors, shall have a right of access, and an easement to, over and through all of the property and the Unit of

the Unit Owner who has failed to perform (or to permit or to cause to be performed) such maintenance, repair, replacement, servicing or upkeep; provided that the exercise of this easement shall be at reasonable times with reasonable notice to the individual Unit Owners, except in any case where emergency exists which would place any Unit, or any portion thereof, or any other portion of the Properties, or any part or portion of the value of the properties, in immediate peril or danger if repairs, maintenance and/or restoration were not immediately effected.

Section 11. Maintenance, Repairs, Replacement and Servicing to be Provided by Builders and Developer. Any provisions of this ARTICLE IX to the contrary notwithstanding, and any of the provisions of this Declaration to the contrary notwithstanding, the Association need not perform, unless the Association in its discretion elects to do so, any maintenance, repairs, replacements, servicing or upkeep whatsoever, for any Common Area located within a Lot until such Common Area has been properly landscaped in accordance with a landscaping plan approved in accordance of the Architectural Control provisions of this Declaration. Until such Common Area has been so landscaped (unless the Association elects to maintain same, which it may, at it option do) the Owner(s) of such Unit(s) located within such Lot shall be required to perform all mowing, irrigation, fertilization, cleaning and other maintenance, repairs and replacements provided for by this Declaration. The provisions of this ARTICLE IX, and the provisions of this Declaration to the contrary notwithstanding, the Association shall not be required to provide any lawn mowing, lawn servicing, irrigation, landscaping services, snow removal, or other maintenance, repairs, servicing or upkeep for any Unit or the Lot containing a Unit, until a Class A membership has attached to such Unit, and such Unit has become subject to Assessment hereby, and has paid the first installment on the assessment, and, until such events have occurred, the Owner of the Unit must provide all lawn mowing, lawn irrigation, snow removal, cleaning, and other maintenance, repairs, replacements, servicing and upkeep, required to maintain his Lot and Unit, and all parts and portions thereof, in a clean, neat, safe and attractive condition, free from unsightly conditions, and free from dead or dying lawns, trees, shrubbery or other unsightly conditions. The provisions of this ARTICLE IX, and of this Declaration to the contrary notwithstanding, the Developer, or any Builder, who owns a Unit or Lot, before a Class A membership attaches to such Unit or to the Unit located within such Lot, shall have all duties and obligations for maintenance, repairs, replacements, servicing and upkeep imposed upon the Unit Owners by this ARTICLE IX, for each Unit owned by them, and for the Common Areas within each Lot owned by them, which does not contain a Unit to which a Class A membership has attached. The above provisions of this ARTICLE IX, and of this Declaration to the contrary notwithstanding, the Association shall have no duties or obligations (unless it elects to assume same or to undertake same) to provide any mowing, irrigation, fertilization, or other maintenance, repairs, replacements, servicing or upkeep for the Common Area located within two (2) Lots which contain a Building (meaning those two adjacent Lots which contain a Building) until the Units located within both such Lots have had attached thereto Class A memberships, and have paid the first installments upon the annual assessments, unless the Owners of such Units agree to pay to the Association the installments on the annual assessments which would otherwise be required by this Declaration if Class A memberships had attached to both such Units; provided, however, that once a Class A membership has attached to a Unit, the Owner of such Unit shall be obligated to pay the assessments provided for by this Declaration, even though the Association may not be required to provide for the Unit or the Common Area within the Lot which contains the Unit, any services under this Declaration. Even though the Association may not be required to perform maintenance, repairs, replacements, servicing or upkeep within a Lot, the Owners of the Unit located within such Lot shall nevertheless be required to maintain

the entire such Lot, and the Building and improvements located thereon, in a clean, neat, safe, well kept and attractive condition, and well mowed and well irrigated condition, free from conditions of unsightliness.

Section 12. Maintenance of Garages and Carports. The Unit Owners of the respective Units shall be required to provide all maintenance, repairs, replacements, servicing and upkeep for the respective garages and carports for their individual Units/Living Units, and shall be solely obligated to provide all maintenance, repairs, replacements, servicing and upkeep for all parts and components of such garages and carports, although the Association shall provide snow removal for, and reasonable cleaning for, and maintenance, repair and replacement of all drives leading to such garages and carports.

Section 13. Fences. Fences are prohibited unless approved in accordance with the Architectural Control powers of ARTICLE VIII of this Declaration. Black, wrought iron fences, which enclose a portion of the rear yards of Living Units may be permitted by the Developer, in the Developer's sole discretion (and to the extent the Developer intends to limit such fences it may do so) if approved in accordance with such Architectural Control provisions. Such fences shall not, however, be considered to be "privacy fences" for purposes of this Declaration, and the areas enclosed by such fences shall continue to be treated as if same are a part of the Common Areas and Common Elements. Such fences shall, however, be deemed to be owned by and shall be a part of the Unit of the Unit Owner, who must provide all maintenance, repairs, replacements, servicing, upkeep, painting and repainting of same.

Section 14. Drives and Driveways, Private Streets and Private Drives. The Association shall provide snow and ice removal for the sidewalks located within the Lots, in front of the Buildings on the Lots, and for all Driveways located within the boundaries of the Lots, in the fronts of the Buildings, and for all Private Streets and Private Drives located throughout the Development. The Association shall not, however, provide for any repairs (other than snow and ice removal) for such component or any resurfacing or replacement of such components. All such repairs, replacements and resurfacing shall be provided by the Unit Owner(s) of the Unit served by such components, at their (at their equal) expense. All such repairs and replacements must be provided by the Unit Owners so as to keep all such components in good repair and condition, and in a safe condition, and in compliance with the standards of maintenance, repair and replacement set forth in Section 7 of this ARTICLE.

Section 15. Authority of Board. The Board of the Association or its Maintenance Committee, as described in Section 7 above, shall have the full power and authority to resolve all disputes and disagreements concerning any requirements for (or the need for performance of) any maintenance, repairs, replacements, servicing or upkeep of any components of any Building. The Board or such Committee may impose requirements upon Unit Owners that the Unit Owners perform roof replacements, or exterior painting, cleaning or tuckpointing, or other exterior maintenance, repairs or replacements if the Board or such Committee determines that such performance is required in order to keep and maintain the Development in compliance with the standards of maintenance, repair and replacement described in Section 7 of this ARTICLE. If the Board or such Committee requires that a certain item of maintenance, repair, replacement, servicing or upkeep be performed and the Unit Owners responsible therefor fail to perform the required item of maintenance, repair, replacement,

servicing or upkeep then the Board shall, in its sole and absolute discretion, have the power and authority (and its contractors and authorities shall have the power and authority) to:

a. Enter upon the Unit or Units;

b. Enter into Living Units which make up a part of the Unit, after reasonable notice;

c. Cause the required maintenance, repair, replacement, servicing or upkeep to be performed;

d. Charge the cost of such maintenance, repair, replacement, servicing or upkeep to the Unit Owners and the Units, which shall become Special Unit Assessments from the Unit Owners and special liens and assessments upon their Units enforceable in the manner provided for the enforcement of all Assessments by this Declaration.

## ARTICLE X
## GRANTS AND RESERVATIONS OF EASEMENTS

Section 1. Easements for Repair, Maintenance and Restoration. The Association shall have the right of access and an easement to, over and through all of the Properties, including each Lot and Unit and the Buildings and structures located thereon, for ingress and egress and all other purposes which enable the Association to perform its obligations, rights and duties with regard to maintenance, repair, restoration and/or servicing of any items, Lots, Units, Buildings, improvements, things or areas of or on the Properties, provided that exercise of this easement as it affects the individual Units shall be at reasonable times with reasonable notice to the individual Unit Owners, except in any case where emergency conditions exist which would place any Unit, or any portion thereof, or any other portion of the Properties, or any part or portion of the value of the Properties in immediate peril or danger if repairs, maintenance and/or restoration were not immediately effected.

Section 2. Easements for Road or Driveway or Walkway or Sidewalk Purposes. Easements for road or driveway or walkway or sidewalk purposes shall exist, as to any Private Street or Drive, and shall exist as established by the Plat, and shall exist, whether or not shown on the Plat or formally dedicated by any Plat or other instrument over all private roads, streets, driveways, sidewalks and parking areas which serve more than one Unit, as actually constructed (whether contained within the Common Areas or within the boundaries of a Unit). Such easements, which shall exist over any Private Street and any Private Drive and over all non-public roads, streets, driveways, drives, parking areas, walkways and sidewalks constructed within the Parcel and within the Property (whether located within the Common Areas or the boundaries of one or more of the Units), shall be owned by the Association, which shall hold the same for the benefit of all Units and all Unit Owners and the residents of all Units. It is anticipated that certain portions of the driveways, parking areas, drives, walkways and sidewalks constructed within the Parcel, and constituting a part of the Property, will be located within the boundaries of certain of Units or Lots. Such portions of such driveways, drives, parking areas, walkways and sidewalks shall be subject to the easements for road, or driveway, or walkway, or sidewalk purposes provided by this Section 2, and the individual Unit Owner, owning the Unit and/or Lot within which such portion of the driveway, drive, parking area, walkway or sidewalk

is located, shall have no right whatsoever to erect any structure or improvement upon such portion of such drive, driveway, parking area, walkway or sidewalk or to use such portion of such drive, driveway, parking area, walkway or sidewalk in such a manner as to interfere with, or block the usage of such portion of such drive, driveway, parking area, walkway or sidewalk by other Unit Owners who must necessarily use such portion of such drive, driveway, parking area, walkway or sidewalk in order to obtain access to, or ingress to or egress from their particular Units. The easements provided by this Section 2 shall constitute a part of the Common Elements, and the driveways, drives, parking areas, sidewalks and walkways, shall constitute a part of the Common Elements. All Unit Owners and residents shall have an easement across the real estate subject to such easements and all roads, driveways, drives, parking areas, sidewalks and walkways within the Property when required for access to and ingress and egress to and from their Unit, which shall run with their Unit. Such easement for access, ingress and egress shall be appurtenant to, and run with each Unit. The easements in the Association described by this Section shall be appurtenant to, and run with the Common Areas and Elements. The Developer hereby reserves an easement, concurrent with the easements for road, driveway, walkway or sidewalk purposes and other easements described by this Section, over and upon the real estate subject to such easements, and over all roads, streets, driveways, drives, parking areas, walkways and sidewalks not publicly dedicated for purposes of access to, ingress to and egress from all and every part of the real estate first described in the Declaration for construction purposes; provided, however, that such easements for construction purposes shall not be used in such a manner as to unreasonably interfere with the use and enjoyment of any particular Unit by the Owner thereof. Notwithstanding anything to the contrary hereinabove set forth, the streets, roads, driveways, walks, walkways and other elements subject to the easement by this Section 2, shall be maintained in that manner hereinabove provided for in ARTICLE IX of this Declaration. Each of the Units and the Unit Owners thereof shall have a perpetual, irrevocable easement, to use for street/driveway purposes, for the Private Street, which such easement shall run with and be appurtenant to each of the Units. No Unit Owner shall park any vehicle upon the Private Street in any manner which obstructs the free passage of vehicles over the Private Street. No Unit Owner shall in any fashion whatsoever obstruct the free flow of traffic over the Private Street. The entirety of the Private Street for its entire length is intended for use by all Unit Owners, and their tenants and lessees, and their respective family members, guests and invitees.

Section 3. Easement for Encroachments. Each Owner of a Lot or Unit covenants that if any portion of any improvement, whether same be an improvement of an Owner or of the Association, encroaches upon a Lot or Unit, a valid easement for the encroachment and for the maintenance of same, so long as it stands, and for repair and reconstruction thereof, in the event of damage or destruction, shall and does exist. In the event an improvement is partially or totally destroyed and then reconstructed, each Owner of any Lot or Unit further covenants that encroachment of any portion of any improvement, whether of an Owner or of the Association, upon a Lot or Unit due to construction shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist. Each Building, and all utility lines and other improvements as originally constructed on each Unit shall have an easement to encroach on any other Unit, and upon the Common Areas and dedicated areas as originally constructed and laid out; and the Common Areas, dedicated areas and each Building and all utility lines and other improvements as originally constructed thereon, shall have a reciprocal easement for encroachment upon each Lot and Unit and any portions of the Property. Such encroachments may occur (and it is anticipated that such encroachments will occur because of overhanging eaves, balconies, decks and footings and foundations) as the result of overhangs in the

design, or deviations in construction from the Development Plans or location of Buildings, utility lines and other improvements across boundary lines and between and among Lots or Units, Common Areas and dedicated areas.

Section 4. Easement for Support. Every portion of a Building, or utility easements and lines, and of any portion of the Properties contributing to the support of another Building, utility appliance, utility equipment, utility line, improvement, or any other portion of the Properties, shall be burdened with an easement of support for the benefit of all other such Buildings, utility easements and lines, improvements and other portions of the Properties.

Section 5. Construction and Development Easement. The Developer shall have an easement of ingress and egress for the purpose of construction and development of any part of the Parcel, and for the purpose of construction and development of any part of the Properties, for so long as the exercise of such easement does not unreasonably interfere with the use of the recreational facilities and Common Areas and provided that such easement does not apply to the individual Units which have been completed and conveyed to Owners.

Section 6. Access, Ingress and Egress. Every Unit Owner shall have an easement for access to, ingress to and egress from his Unit over, across and upon the Private Street, and over, across and upon all streets, drives, driveways, parking areas, walkways and sidewalks, as shown by the Plat or as constructed within the Property (whether or not shown by the Plat), and all real estate and portions of the Common Areas and Common Elements, and all real estate contained within any of the Units upon which a street, drive, driveway, parking area, walkway or sidewalk is constructed, as necessary to insure adequate means of access to, ingress to and egress from the Unit Owner's Unit and to the Common Areas, and the full enjoyment of the Owners' Unit and the improvements located thereon. Every Unit Owner shall have an exclusive easement over and upon any patio, balcony, deck, or private garden attached to or adjacent to, and abutting upon his Unit, and intended for his exclusive use. Such easements as are described in this Section shall be appurtenant to and run with each Unit.

Section 7. Easements for any Path or Walkway Leading to or Located in Common Areas. All Paths, pathways or Trails located in any Common Area, and all Paths or pathways or Trails which are intended to provide common access to any Common Area or to any Path, pathway or Trail, wherever located, and whether located within the boundaries of any Lot or Unit or Common Area, shall be a Common Area and Common Element, intended for the common use of the Unit Owners and occupants of the Units, and easements for such Paths, pathways or Trails are hereby established. The terms of such easements shall be such that the Paths, walkways, pathways or Trails, wherever located, may be used by the Unit Owners of all Units for reasonable pedestrian purposes, and where permitted by the Association's Board of Directors, for bicycling purposes, and for purposes of obtaining pedestrian access to and egress from any Common Areas accessed through the use of such improvements.

## ARTICLE XI
## PROPERTY RIGHTS IN COMMON AREAS

Section 1. 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 (including any swimming pool, club house, shelter house, changing rooms and other related recreational facilities and any other recreational facilities wherever located) 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 Unit or Units, and the owners or occupants thereof, to the exclusion of all other 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 shall be for the exclusive use of the Unit Owners of certain of the Units located on the Lots; provided that such action shall appear to be reasonably necessary to protect the privacy of the Unit Owners in the use and enjoyment of their Units, and that it shall not affect those easements provided by ARTICLE X.

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 Unit 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 which is titled in the name of the Association (as opposed to any Unit Owner or Lot Owner) 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 fifty-five percent (55%) of the votes of the Class A membership and fifty-five percent (55%) 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 Unit or contained within a Unit) the Unit Owners of such Unit have agreed to such transfer. The Association shall have no right to transfer any Common Area located within any Lot which is titled in the name of a Unit Owner;

f. The right of the individual Unit Owners to the exclusive use of parking spaces as provided in this Article;

g. The right of the Developer and of the Association through its Board of Directors to create, grant and convey easements upon, across and over any part of the Common Areas (including those located within any Lots which are titled in the name of Unit Owners) 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 television system;

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

Section 2. Delegation of Use. Any member may delegate his right of enjoyment to the Common Area 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/Easements Establishing Areas as "Common Areas" Even Though Not Owned by Association.

A. Title to Common Areas, Common Units and Common Elements Designated as Such. If a Common Area, Common Unit or Common Element is, by a Plat, designated as such [example: a Lot is subdivided into a Unit and Common Area], then, in such event, title to the Common Areas, Common Units and Common Elements, which are so designated by any such Plat, shall be vested in the Association, whether or not conveyed to the Association; provided, however, that the provisions of this Section 3 shall not be deemed to limit the rights of Owners of Lots, not previously subdivided into Units and Common Area, to subsequently divide such Lots into Units and Common Area. All "C" Lots shall also be such Common Area.

B. Common Areas Which Are Not Designated as Such by Any Plat. Section 8 of ARTICLE I of this Declaration, and ARTICLE IV of this Declaration, and other provisions of this Declaration, provide that certain areas of the Land within each Lot shall be treated as, and shall for all intents and purposes be, and shall be conclusively deemed to be, Common Area, even though title to such portions of the Land may be held in the name(s) of the Unit Owner(s) of the Unit(s) located on such Lot/within such Lot, with such areas of the Land which is to be treated as Common Area to include all Land of each Lot which, after construction of the Building and Improvements located thereon by the original Builder of the Building and improvements on such Lot, is located outside of (that is, excludes) the exterior walls or exteriors of:

a. The exterior walls of the Building containing the Living Unit(s) located on such Lot (all portions of the Land located within (to the interior of) the exterior walls of the Building, and all portions of the Land upon which the exterior walls are located, being included within the Unit(s)); and

b. The garage(s) or carport(s) located on such Lot, which is (are) designated for the use of the Unit Owner(s) or occupants of the Unit(s) located on such Lot(s); and

c. Any private courtyard, patio, porch, portico, deck or other privacy area for the Living Unit(s) located on such Lot, all of which shall be a part of the Unit(s) (and the Land of

which shall be a part of the Unit). [Any area within the black, wrought iron fences permitted pursuant to ARTICLE VIII of this Declaration shall not be considered to be areas within a "privacy fence" or to be a "privacy area" for the Living Unit, but shall remain and be Common Area.]

All areas of the Land of the Lot, excluding those areas hereinabove described in subparagraphs a through c, both inclusive (all such areas of the Land so described in such subparagraphs a through c being a part of the Unit(s) and being included in the Unit(s)) shall be, and shall be treated as if same is Common Area, and, even though titled in the name of the Unit Owner(s), shall be treated as if owned by and held by the Association as Common Area, and all such Land (following the construction of the Building and improvements thereon by the initial Builder) shall be and it is hereby imposed with a perpetual, irrevocable Easement, running with the Land of the Lot and each Unit located on the Lot (which is binding upon each Unit Owner), and which runs in favor of the Association, the terms of such Easement being that although the Land may be titled in the name of the Unit Owner(s), it shall nevertheless, for all intents and purposes, perpetually and irrevocably, be treated as if same is Common Area, which is burdened by all of the provisions of this Declaration dealing with Common Area, and which is subject to all of the rights, easements, rights and privileges in the Association which accrues to Common Area, as described in this Declaration. However, any liens in the Association or other parties for enforcement of Assessments (under ARTICLE VI) or other sums due, shall attach and continue to attach to all Land and improvements owned by each Unit Owner; subject, however, to the provisions of this paragraph B, and the Easements established by this paragraph B and other provisions of this Declaration. The Unit Owner shall also be required to pay all real estate taxes on the entirety of the Lot titled in the name of the Unit Owner, even though a substantial portion of such Lot may be Common Area.

Section 4. Parking Rights. Ownership of each Unit shall entitle the Owner or Owners thereof to the exclusive use (to the complete exclusion of the Owners or occupants of other Units, or the guests or invitees thereof) of any garage, carport or parking spaces assigned to such Unit by the Board of Directors of the Association or the Developer or the Plat. The Board of Directors of the Association or the Developer (so long as Class B voting rights exist) may permanently assign vehicular parking spaces for each Unit. The Association's Board of Directors shall have the right and the duty to establish reasonable rules and regulations concerning use of, and parking upon streets, roads and driveways not dedicated to the public, and to enforce same by fines or towing at the Owner's expense, or such other methods as it shall determine. Such right and duty shall include the promulgating of reasonable traffic regulations. The Unit Owners of each Unit may and their guests, invitees, lessees, tenants and designees of each such Unit Owner, shall have the exclusive right to use all parking spaces located within driveways leading to any garage or parking area serving the Living Unit located within such Unit, even though the driveways or parking areas may be located within the boundary lines of Common Areas. In other words, driveways leading to a garage or parking space serving a Living Unit shall be limited in use to the owners of such Living Unit and their guests, invitees and designees.

Section 5. Units/Common Areas. As hereinabove indicated in Section 3 of this ARTICLE and elsewhere in this Declaration, all of those portions of the Land of each of the Lots, on the exteriors of the Units located on the Lot as defined in this Declaration, shall be deemed to be and shall be conclusively be treated as Common Area, and shall for all intents and purposes be treated as if owned by the Association as Common Area, whether or not specifically defined by any Plat and whether or not conveyed to the Association. In the event any of those portions of a Lot hereinabove described

in this Section 5, which are deemed to be Common Areas, shall not be conveyed to the Association, then same shall be imposed with a perpetual, irrevocable Easement in favor of the Association. The terms of each such easement shall be such that although title to the land subjected thereto may be retained by the Unit Owner or Lot Owner, all such lands shall for all intents and purposes be Common Area and shall be treated as such for all purposes. All Common Areas as described in this Section 5 shall be subject to all restrictions on use of Common Area imposed by this Declaration.

Section 6. Fire Lanes. The Association shall, with the advice and help of the Columbia, Missouri, Fire and Police Departments established sufficient fire lanes to insure adequate access to all Buildings and Units by fire, police and emergency vehicles, and shall, with the help of such departments, establish adequate rules and regulations for maintaining such fire lanes at all times. The Association may enforce such regulations by fines or other enforcement procedures.

Section 7. Acceptance of Common Areas. The Developer, so long as Class B voting rights exist, and the Association's Board of Directors thereafter, shall have the right to establish reasonable standards for the sodding, seeding, landscaping, grading and improvement of Common Areas and Units which Builders propose to convey to the Association or to have maintained by the Association, and same shall not be accepted by the Association for maintenance until such standards, or any reasonable requirements for such sodding, seeding, landscaping, grading and improvements have been satisfied. No Unit or Common Area contained within a Lot shall be accepted for maintenance by the Association until the Common Area within such Lot has been accepted for maintenance. Units shall be subject to assessments, and Unit Owners shall be members of the Association (although they shall be without voting rights), even though the Common Area contained within the Lot occupied by such Unit has not been accepted for maintenance.

Section 8. Limited Common Elements and Exclusive Use. Notwithstanding anything to the contrary contained at any place in this Declaration, all portions of each Lot (including all parking areas, drives and driveways located within the boundary lines of each Lot), which are not required for, or are not intended to provide access to, or egress from a Unit located within another Lot or a parking area or driveway located within other Lots, shall be deemed to be "Limited Common Elements" and "Limited Common Areas", and shall be reserved for the sole and exclusive use of Owners, occupants, guests and invitees of the Unit(s) located within the Lot, to the complete exclusion of all other Unit(s) and Unit Owners, guests, occupants and invitees. Any driveways, walkways or similar improvements which provide access to or egress from Living Units located within a single Building (meaning that each of such Living Units use such driveways, walkways or similar improvements) shall be Limited Common Areas and Limited Common Elements reserved to the sole and exclusive use of the Unit Owners of such Living Units and the occupants of such Living Units, and their guests and invitees, to the complete exclusion of all other persons whomsoever. If any areas located within any garage, carport, courtyards, private lawns or privacy fences serve only a single Unit, and even if same are located within Common Areas, then such area shall be deemed to be and shall be treated as if and shall be deemed to be included within the boundaries of the Unit, and even if same may be arguably be considered to Common Area, same shall be deemed to be and shall be "Limited Common Areas" and "Limited Common Elements", and shall be reserved for the sole and exclusive use of Owners, occupants, guests and invitees of the Unit served thereby, or accessed therefrom, or from which same are accessed. All walkways, driveways and parking areas and similar improvements located within the boundary lines of a Unit or leading to or serving only a single Living Unit shall be Limited

Common Elements and exclusive use thereof shall be limited to the Unit Owners of such Unit and their tenants, renters, guests, occupants and invitees.

Section 9. Parking. In no event shall any Unit Owner, or the occupant of any Unit, or the guests, occupants or invitees of any Unit, park vehicles on the Private Street or private drives (those serving more than one Unit) making up a part of the Common Areas or Common Elements, other than within designated parking places, and, in no event, shall any vehicles be parked so as to block or obstruct such Private Street or any of such drives. Parking spaces designated by the Plat, or by the Association, or by the Developer, for the exclusive use of the Owners, occupants, guests or invitees of a particular Unit, shall be deemed to be Limited Common Elements or Limited Common Areas, and shall be reserved for the sole and exclusive use of the Owners, occupants, guests and invitees of such Unit, to the complete and total exclusion of all other Units and the Unit Owners, guests, occupants and invitees thereof.

Section 10. Trespass. Usage by, or entrance upon "Limited Common Elements" or "Limited Common Areas", by the Owners, occupants, guests or invitees of Units, other than those to which the usage of such elements or areas are reserved, shall be wholly improper. The "Limited Common Elements" or "Limited Common Areas", shall be reserved to the exclusive use of the Owners, or occupants of the applicable Units, and the guests or invitees of such Owners or the occupants of such Units, the same as though such "Limited Common Elements" or "Limited Common Areas" were owned, exclusively, by the Owners of such applicable Units. Entry upon, or usage of such Limited Common Areas or Limited Common Elements by the Owners, occupants, guests or invitees of Units, other than those to which the usage of such elements or areas are reserved, shall be a trespass. The Owners and occupants of all Units within the Properties shall be, and they are hereby given notice (including any notice required by the Revised Ordinances of the City of Columbia, Missouri, or the statutes of the State of Missouri), that entry upon, or usage of any "Limited Common Areas" or "Limited Common Elements" designated for the exclusive use or enjoyment of the Owners or occupants of other Units shall be a trespass, including a trespass in the first degree as provided by the applicable laws of the State of Missouri, and the applicable ordinances of the City of Columbia, Missouri. The Owners of all Units, by accepting a deed for any Unit located within the Development or the Properties, agrees that any entry upon Limited Common Areas or Limited Common Elements designated for the exclusive use of other Units shall be unlawful, wrongful and improper, and that same shall be a trespass, and that he, she or they have received actual notice or communication against such trespass, including that actual notice or communication required under any of the ordinances of the City of Columbia, Missouri, and any successor ordinances, and the state statutes of the State of Missouri. Notwithstanding anything to the contrary hereinabove set forth in this Section 10, however, the Association shall have an easement, over, across and upon Limited Common Areas and Limited Common Elements for the purposes of performing the maintenance and repair duties and obligations of the Association, as imposed upon the Association by this Declaration. Further notwithstanding anything to the contrary hereinabove set forth in this Section 10, the provisions of this Section 10 shall not in any respects reduce nor affect the easements granted by ARTICLE X of this Declaration. The Association shall be authorized to promulgate such reasonable rules and regulations, as its Board of Directors, in its sole and absolute discretion, shall, from time to time deem necessary or appropriate for purposes of preventing or discouraging trespasses of the type hereinabove described in this Section 10. In addition to the remedies provided for by the above provisions of this Section 10, the Association shall have the right and the power to protect the rights of Unit Owners to the exclusive

use of parking spaces designated for their exclusive use by the towing of vehicles improperly parked within parking spaces designated for the exclusive use of certain Units, at the expense of the Owners of such vehicle, or by such other methods as the Association shall determine appropriate.

Section 11. Diminishment of Easement. No easement granted by this ARTICLE XI, and none of the terms and conditions of this ARTICLE XI, shall be deemed to in any way affect, diminish or reduce the easements granted under ARTICLE X hereof, or any easement granted by the Plat or by any replat of any of the Lots located within the Parcel.

## ARTICLE XII
## USE RESTRICTIONS

Each of the Units and that part of the Building containing each of the Units, and each of the Living Units located within the Development (all, hereinafter collectively referred to as a "Unit" in this ARTICLE) shall be subject to the following provisions and restrictions:

Section 1. Single Family Residence. No Unit shall be used for any purposes other than as a residence site for, and as a residence for, a single Family, which shall use the Unit only for residential purposes and none other. Short term guests are permitted. There shall be no prohibition upon renting or leasing of Units. No such prohibition shall be either expressed or implied.

Section 2. No Roomers or Boarders. Except to the extent provided in Section 1, it is hereby provided that no boarders or roomers shall be permitted in addition to the Family occupying each such Unit. The provisions of this Section 1 and 2 (and any provisions of this Declaration), shall not be deemed to prohibit the renting or leasing of a Unit; provided, however, that such Unit must be used as a single Family residence, for one Family, which shall use the Unit only for residential purposes. Renting or leasing of Units is permitted.

Section 3. Home Occupation. The restriction above to use of any Unit as a single Family residence shall not prohibit the conduct of a "home occupation" upon said 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 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 there are no persons employed other than members of the immediate Family residing on the premises; 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 ARTICLE OR BY OTHER SECTIONS OF THE DECLARATION, ARTICLES OR BYLAWS. NOTHING HEREIN SHALL BE CONSTRUED TO PERMIT (WITH THE FOLLOWING TO BE PROHIBITED) HOME OCCUPATIONS NOT PERMITTED BY APPLICABLE ZONING LAWS. NO DAYCARE HOMES, DAYCARE HOUSES, DAYCARE ESTABLISHMENTS, GROUP HOUSES, HALF-WAY HOUSES, RECOVERY HOUSES, RESIDENTIAL CARE FACILITIES, DAYCARE CENTERS, PRESCHOOL CENTERS, NURSERY SCHOOLS, CHILD PLACEMENT CENTERS, CHILD EDUCATION CENTERS, CHILD EXPERIMENT STATIONS OR CHILD DEVELOPMENT INSTITUTIONS, OR CHILD CARE OR BABYSITTING SERVICES OR SIMILAR FACILITIES, SHALL BE PERMITTED, AND DAYCARE OF CHILDREN FOR HIRE SHALL NOT BE PERMITTED.**

Section 4. Additional Structures or Improvements. No additional and/or accessory structures or 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, basketball goals, tennis courts, pools, swimming pools, wading pools, children's play equipment, driveways, walkways, parking areas, basketball goals, children's play equipment, racket sports courts, or other improvements of any kind, or any similar items of any nature whatsoever shall be erected upon any Lot or Unit, in addition to the basic Building, patio, walk, deck, porch and any other improvements originally provided by the Developer or Builder, or any reasonably similar replacement thereof, or addition thereto, without the approval of the Association's Board of Directors or its Architectural Control Committee, pursuant to ARTICLE VIII of this Declaration. In addition, any fence, wall, stairway from any deck, or other passageway leading from any deck, and any deck, porch, patio or similar structure or any other structure or improvement of any kind or nature whatsoever shall be prohibited unless approved, in advance, pursuant to ARTICLE VIII of this Declaration.

Section 5. Parking. Except as may be otherwise provided by specific regulations of the Association, no uncovered parking spaces on the Property, or on any Private Street or Private Drive, or any street (public or private) or any driveway within the Property, shall be used for the parking of any trailer, truck, boat, camper, mobile home, motor home or commercial vehicle of any kind or type, or anything other than operative automobiles, vans, pickup trucks and similar utility vehicles which are used primarily as passenger vehicles by persons occupying the Units, and which are in good condition and repair, and are currently licensed, and which are used with very substantial, regular frequency, (i.e., at least once a day) (it being the intention of the parties that inoperative (or seldom used) automobiles, or other passenger vehicles or any kind of vehicle not be placed within the Development, and not be stored within the Development, and that automobiles not used with very substantial regular frequency not be placed within the Development). The word "trailer" shall include trailer coach, house trailer, mobile home, automobile trailer, camp car, camper 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 passenger automobiles, vans and pick-up trucks and other similar utility vehicles which are used

primarily as passenger vehicles by persons occupying the Units. Commercial vehicles shall be prohibited, unless such commercial vehicles are at all times parked solely within enclosed garages. "Commercial vehicles" shall include vehicles which are used, primarily, for commercial purposes, and shall include, by way of example, vans, or trucks, which display commercial signs, signage or logos intended to advertise a business. Commercial vehicles may be used if parked, at all times, within enclosed garages. Same shall not be parked on any Drive, Driveway or street. No covering or walling in of uncovered parking spaces shall be permitted except as specifically approved by the Association or it Architectural Control Committee. 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, or of additional Units 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 Units, or with the appearance of the Units, 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, Unit Owners shall be permitted to park within the boundary lines of the Lot containing their Unit, and within the parking spaces provided for their Unit (but not within parking spaces reserved for other Units), for 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 Unit Owners and occupants shall be deemed to have agreed that the provisions of this Section 5 shall apply not only to the Lots and the Units, but also to any Private Streets and Drives and driveways located within the Development and to the public streets located within the Development, including but not limited to Old Hawthorne Drive West, Marcassin Drive, Screaming Eagle Lane and Green Gate Lane, as shown by the Plats. All Unit Owners agree, on behalf of themselves and their successors, and all present and future Owners, and the occupants of each of the Units, to be bound by the restrictions set forth in this Section 5, not just as to the Lots and Units, but as to any Private Street, Private Drive, drive, driveway and all public streets and portions thereof, which are located within or abut upon the Development, and the provisions of this Section 5 shall be as enforceable as to such Streets and Drives, as is the case with respect to the Lots and Units. 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. No motor vehicles, boats, motor homes, mobile homes or trailers of any kind may be parked in any Private Street or Private Drive or any driveway, 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. No parking shall be permitted on any Private Street or Private Drive unless the Board of Directors of the Association elects to allow parking thereon, and then parking on such Private Street shall be limited to those areas as to which the Board of Directors of the Association determines that parking shall be permitted.

**Garages located within the Lots and Units must be used for purposes of parking motor vehicles, and shall be used for their intended purpose as a garage for motor vehicles, and shall not be converted to other uses, nor be used for storage to such an extent as to make same not usable as a garage for the number of motor vehicles intended to be parked therein. Garages may not, for example, be converted to use as a shop, used for extensive storage which would prevent use of the garage for parking the intended number of vehicles therein, to a game room or any similar use, other than a vehicular parking garage, although reasonable storage within a garage to the extent that such storage shall not prevent use of the garage for its intended use for parking of motor vehicles is not interfered with.**

Section 6. Nuisances. No illegal, noxious, noisy or offensive activities shall be carried on upon the 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.

Section 7. Signs. No signs of any kind shall be displayed to the public view of 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 to advertise the 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 Unit for sale or rent; provided that same shall be no more than five (5) square feet (i.e. five feet by five feet) in area, and no more than five (5) feet tall, and that same shall only state that the Unit is for sale or rent, together with the name and telephone number of the 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;

f. Pennants or signs placed on lamp poles which identify the Development.

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 Units, not otherwise permitted by applicable sign ordinances of the City of Columbia, Missouri.

No political signs may be placed within any Lot, including the Common Area within any Lot, unless the Board of Directors of the Association elects to allow political signs, with the term "political signs" being deemed to include signs which promote any candidate or any ballot issue, or which raise any political issue, or which speak to or in favor of or against any political issue or matter of public policy.

Section 8. Exterior Wiring, Antennas or Installations of Satellite Receiving Dishes or Similar Improvements, Air Conditioners, Etc. No exterior wiring, aerials or antennas, or satellite receiver dishes, or TV receiving dishes, or dishes or receivers receiving television, radio or electronic signals, or any 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 situation upon any Lot nor be placed upon any Lot, Unit or Building except as may be erected by the Developer or as shall be approved in advance (by the Developer or the Association's Board of Directors or Architectural Control Committee (whoever holds the Architectural Control powers) in accordance with the Architectural Control provisions of this Declaration. No air conditioning, heat pumps or other types of installations shall be installed or permitted which appear on the exterior of any Building or which protrude through walls, roofs or window areas of any Building, or which are located on any Lot, except as may be installed by the Developer or the Builder in the original construction or as may be subsequently approved, in advance, in accordance with the Architectural Control provisions 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 AND THE ASSOCIATION'S BOARD OF DIRECTORS OR IT ARCHITECTURAL CONTROL COMMITTEE (WHOEVER HOLDS THE ARCHITECTURAL CONTROL POWERS UNDER ARTICLE VIII OF THIS DECLARATION) SHALL, TO THE MAXIMUM EXTENT LAWFULLY PERMITTED, HAVE AND RETAIN ALL POWERS AND AUTHORITIES PROVIDED FOR BY THIS SECTION 8, BUT THAT THIS SECTION 8 SHALL BE AUTOMATICALLY MODIFIED TO CONFORM WITH APPLICABLE FEDERAL LAW OR REGULATION OR ANY OTHER APPLICABLE LAW OR REGULATION. TO THE EXTENT THAT ANY PARTY HOLDING THE ARCHITECTURAL CONTROL POWERS AND AUTHORITIES MAY LAWFULLY CONTROL THE TYPE, LOCATION, APPEARANCE, SIZE OR PLACEMENT OF SATELLITE RECEIVER DISHES, TELEVISION RECEIVER DISHES OR ANTENNAS OR ANTENNAS DESIGNED TO RECEIVE A DIRECT BROADCAST SIGNAL, THE PARTY HOLDING THE ARCHITECTURAL CONTROL POWERS (THE DEVELOPER OR THE ASSOCIATION'S BOARD OF DIRECTORS, AS THE CASE MAY BE) SHALL HAVE THE RIGHT AND AUTHORITY REASONABLY, ACTING IN GOOD FAITH, TO SPECIFY THE LOCATIONS FOR, THE SIZES OF, THE TYPES OF, THE COLOR OF, AND SCREENING FOR SUCH SATELLITE RECEIVER DISHES OR ANTENNAS. ALL SATELLITE DISHES OR ANTENNAS, WHETHER BROADCAST OR RECEIVING, OTHER THAN THOSE GOVERNED BY THE RULES OF THE FEDERAL COMMUNICATIONS COMMISSION OR ANY SIMILAR GOVERNMENT AUTHORITY SHALL BE SUBJECT TO ALL OF THE ARCHITECTURAL CONTROL PROVISIONS OF ARTICLE VIII OF THIS DECLARATION AND MAY NOT BE ERECTED UNTIL SAME ARE APPROVED, IN ADVANCE, IN ACCORDANCE WITH THE ARCHITECTURAL CONTROL PROVISIONS OF ARTICLE VIII OF THIS DECLARATION. ALL DBS DISHES AND ANTENNAS AND OTHER SATELLITE DISHES WHICH ARE GOVERNED BY THE RULES AND REGULATIONS OF THE FEDERAL COMMUNICATIONS COMMISSION OR ANY OTHER GOVERNMENTAL AUTHORITY SHALL BE SUBJECT TO SUCH REASONABLE RESTRICTIONS AS THE PARTY HOLDING THE ARCHITECTURAL CONTROL POWERS UNDER ARTICLE VIII OF THIS DECLARATION MAY LAWFULLY IMPOSE, IN ACCORDANCE WITH THE APPLICABLE FEDERAL COMMUNICATIONS REGULATIONS OR OTHER APPLICABLE LAW.**

Section 9. Livestock, Poultry and Pets. No animals, livestock, poultry or pets of any kind shall be raised, bred or kept upon or in any portion of the Properties, except that up to two (2) dogs or cats

or other normal household pets per household may be kept in and upon Units subject to the following provisions:

a. Such pets may not be kept in or upon any Unit, temporarily or permanently, for any commercial purpose;

b. Such pets shall not be allowed to disturb others by barking, noise or other activities, and shall not run loose on portions of the properties other than the Unit in which kept, and shall not be either chained or housed, or allowed to run loose upon the exterior portion of any Unit, or upon the exterior portion of any Building located on any Unit; provided, however, that such pets may be chained or allowed to run within any private patio or deck portion of a Unit if such pets do not thereby create a nuisance, or in any respects cause inconvenience to owners of occupants of other adjacent Units, and that the portion of the Unit so occupied by the pet is sufficiently fenced to enclose such pet; provided further, however, that no pet shall, in any event, be housed outside of the Building located on a Unit;

c. 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 three (3) complaints require that any certain pet(s) be removed permanently from the Properties and the Owner of the Unit shall have a period of thirty (30) days to comply with such decision of the Directors;

d. The Owner of a Unit which has such pet(s) 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 pets. Accordingly, such Owner shall be absolutely responsible for adherence by the pets to these conditions and be absolutely liable for any and all injury and damage done by such pets 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.

e. No dog pens, dog houses, or other similar enclosures are allowed in the Development. "Dog pens" shall include pens with improved or non-improved floors, with fences on top and/or around which are used to encage animals. Dog pens shall further include electronic fences or so-called invisible fences.

f. No dog houses, dog enclosures, pet enclosures, pet houses or any similar improvement, structure or components hall be allowed within the Development;

g. All waste from pets must be promptly cleaned up and removed by the owner of the pet from such Unit Owner's Unit or Lot and/or any other Lot, Unit or Common Area;

h. No vicious animals are permitted. No exotic or dangerous animals shall be kept. Any animal which exhibits any vicious propensity whatsoever shall be excluded or removed from the Development. No Pit Bulls, German Shepherds, Saint Bernards, Alaskan Malamutes, Rottweilers, Chinese Chows, Dobermans, Mastiffs, American Staffordshire Terriers or other recognized vicious breeds, or breeds generally believed to be vicious or dangerous, of any kind, are permitted; provided that this exclusion shall not apply to dogs which are certified by a recognized certifying agency or

organization as being an "assistance animal," such as, by way of example only, a seeing eye dog. No exotic or dangerous animal shall be kept. No animals other than dogs, cats and other normal household pets shall be kept.

Section 10. Trash, Storage, Disposal/Outdoor Storage. All trash, rubbish, garbage and other materials being thrown away or disposed of by Unit Owners or residents on the premises must be placed in bags or containers approved by the Mixed Refuse Service of the City of Columbia. These bags or containers are to be stored in concealed locations on 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 materials, equipment, canoes, boats, or other items of any kind, nature or description whatsoever, on any outside portion of a Unit 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 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. As indicated in ARTICLE IX of the Declaration trash and mixed refuse, in certain areas, must be placed by the Owners or occupants of Units on the curb lines of public streets, in a timely fashion, so as to permit the removal thereof by the Mixed Refuse Service, on the day designated for pickup by such service. All such trash or mixed refuse so placed on such curb line shall be contained in suitable bags or containers as approved by the Mixed Refuse Service of the City of Columbia. The Association shall have the right to designate specific areas where trash or mixed refuse shall be placed, and to promulgate reasonable rules and regulations for the location or placement of trash or mixed refuse, and for the types of containers which shall be used for trash or mixed refuse placed on the curb line of the public streets. All trash or mixed refuse shall be placed, at the appropriate location, on the curb line of the public street, in time to permit the orderly pick-up thereof on the day designated by the Mixed Refuse Service for mixed refuse pick-up. If a Unit Owner or occupant does not place trash or mixed refuse at the appropriate location in time to permit the orderly removal of same by the Mixed Refuse Service, then such owner or occupant shall be required to remove same from the curb line and to make other arrangements for the orderly removal of same. No owner or occupant of any Unit shall permit trash or mixed refuse placed by him on the curb line of the public street to remain at such location after the mixed refuse trucks have made a pick-up at such location. All bags or containers used by Unit Owners for the placement of trash or mixed refuse on the curb line of the public street shall be such as will reasonably prevent the littering of the area, or the scattering of the trash or mixed refuse.

Section 11. Temporary Structures. No structure of a temporary character, shack, shed, tent, dog house, locker 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 12. Open Fires. No open fires shall be permitted on the individual Unit premises, with the exception of outdoor grill-type fires used for the preparation of food to be consumed on the premises.

Section 13. Interference with Maintenance by Association. No Owner or resident of a Unit or any portion of the Property shall have, claim or exercise any right to maintain, alter the appearance of, or change or improve any areas or surfaces of the Properties or the color thereof (including the exterior surfaces of the exterior walls of Units), except in compliance with ARTICLE VIII.

Section 14. Garages. All garage doors shall be kept closed at all times other than when driving vehicles into or out of garages, or when placing other articles in or removing other articles from garages. No garages shall be used for storage of goods, merchandise, wares, tools, equipment, produce, products or other items of any kind or nature whatsoever used in connection with a business or commercial activity. Garages may not be converted to habitable space or living space for pets or humans or animals. In addition those restrictions set forth at the end of Section 5 of this ARTICLE shall apply to garages. While limited storage within garages shall be permitted, storage within garages shall not be such as reasonably prevents or interferes with the use of the garage for the parking within the garage of the number of motor vehicles intended to be parked within the garage. Garages shall not, therefore, be converted to storage space to such an extent as would interfere with or prevent the parking within the garage of the number of motor vehicles intended to be parked within the garage. Garages may not be converted to use for shops, work shops, offices, game rooms, family rooms or any other similar use. Garages shall be used for the parking of motor vehicles or primarily for the parking of motor vehicles although limited storage therein shall be permitted.

Section 15. Planting and Gardening Prohibited. Except in the individual patio areas, or private deck areas, or private garden areas, or private porch areas, or private courtyards, or other areas inside privacy fences, or other areas designated by the Board of Directors, no planting or gardening shall be done, unless approved in advance by the Developer or the Association's Board of Directors (whoever holds the Architectural Control powers), pursuant to the Architectural Control provision of ARTICLE VIII of this Declaration, and no fences, hedges or walls shall be erected or maintained upon any Unit except as are planted or installed in accordance with the initial construction of the improvements on any Unit, or as approved, in advance, in accordance with the Architectural Control provisions of ARTICLE VIII of this Declaration. These restrictions shall apply to fenced in rear yards.

Section 16. Storage Tanks. No tank for the storage of propane or other fuel may be maintained on any Unit or within any Lot.

Section 17. 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 or Unit or Common Area hereby restricted; provided, however, that Unit Owners shall be permitted to perform ordinary periodic maintenance upon their motor vehicles within enclosed garages upon their respective Units.

Section 18. Awnings and Storm Doors Prohibited. No awnings or storm doors, not installed by the Developer or the Builder as a part of the original construction, may be constructed, installed or erected nor may any external changes of any kind be made to any Building or improvement within the

Development, unless approved, in writing, in advance, pursuant to the Architectural Control Provisions of ARTICLE VIII of this Declaration.

Section 19. Two, Three, Four Wheeled Recreation Vehicles or Similar Vehicles. Motorcycles, mopeds, powered scooters, or powered tricycles, or motor bikes, or motorized recreational vehicles may not be run within the Development, either on streets, roads (including public streets and roads), or Common Areas or Common Elements; provided, however, that they may be used solely to go to and from the Unit Owner's Unit for purposes of going to and from work, or one's job, or to school. 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 it is hereby agreed, on behalf of all Unit Owners, that it shall so apply.

Section 20. Enforcement. In addition to any rights and remedies provided to the Association or the Unit Owners by this Declaration or by law for the enforcement of the use restrictions established by this ARTICLE XII or ARTICLE VIII, or the maintenance requirements of ARTICLE IX of this Declaration, or the Architectural Control provisions of ARTICLE VIII, and in addition to any other rights and remedies provided for by this ARTICLE XII, and those provided by ARTICLE VIII, and those provided by ARTICLES IX and VI, and elsewhere in this Declaration, the Board of Directors of the Association shall, in the event of a violation of any of the use restrictions or requirements established by this ARTICLE XII, or any of ARTICLES VI, VIII or ARTICLE IX, or other requirements of this Declaration, in its sole, absolute and unmitigated discretion, have the following additional rights, powers and authorities, to-wit:

a. To deny to any 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 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 Five Hundred Dollars ($500.00) per month during the continuance of the violation. Such fine shall constitute a special Unit assessment upon the Unit (and the Owners thereof) subjected to the assessment. Such special Unit 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 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 Unit, and the Owners, occupants, guests and invitees thereof, access to the Unit, and to any parking spaces designated for the exclusive use of the Unit, until the breach of the use restrictions has been remedied.

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 set forth in this ARTICLE XII or the requirements of any of ARTICLES VI, VIII or ARTICLE IX, seek to utilize any of those powers or remedies conferred upon it by subsections a through c of this Section 20 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 Unit. Such written notice shall specify the violation or apparent violation of the use restrictions hereinabove set forth in this ARTICLE XII, or the requirements of any of ARTICLES VI, VIII or ARTICLE IX, 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 c. 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 XII, or the requirements of any of ARTICLES VI, VIII or ARTICLE IX, 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 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 adjourn, and shall, in closed session, 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 20. As soon as practicable following the decision by the Board, the Board shall notify the Owners or occupants of the applicable 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 Unit shall have five (5) days, from the date of delivery of such written notice to the 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 Unit is occupied by a person or persons other than the Unit Owners, the Board of Directors, where it is reasonably practicable to do so, shall notify both the occupants of the Unit and the Owners thereof 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 located within the property, hereby covenants, on behalf of the Developer and the Developer's successors, and each Owner of any 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 20, and to the rights, powers, remedies and authorities imposed within the Association's Board of Directors by this Section 20, 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 20. In addition, should the Association, or its Board of Directors, by reason of a violation of the restrictions set forth in this ARTICLE XII or the requirements of any of ARTICLES VI, VIII or ARTICLE IX, 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 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 Unit or any Lot). 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 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 Unit by acceptance of a Deed therefor, recognize that strict compliance with the use restrictions hereinabove set forth in this ARTICLE XII, and the requirements of any of ARTICLES VI, VIII and ARTICLE IX 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 Unit Owners, and the occupants of the properties, and would constitute a substantial threat to proper enjoyment of the 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 XII and the requirements of each of ARTICLES VI, VIII and ARTICLE IX is, therefore, of the essence.

Any action taken by the Association's Board of Directors in accordance with this ARTICLE XII, or this Section 20, shall be conclusive and binding upon the Unit Owner and the occupants of a Unit, unless the Unit Owner of the Unit seeks a judicial review of the actions of the Board of Directors under the provisions of Chapter 536 of the Revised Statutes of Missouri, the Administrative Procedure Act, as it is in effect in the State of Missouri. The Association's Board of Directors, the Association, and each Unit Owner shall be deemed to have conclusively contracted and agreed that procedures conducted by the Association's Board of Directors under this Section 20 are contested cases, which are subject to the Administrative Procedure Act of the State of Missouri, as same appears in Chapter 536 RSMo., and that appeals or reviews of the actions of the Board of Directors under the provisions of this Section 20 shall be taken only in accordance with the provisions of Sections 536.130, *et seq.*, of the Administrative Procedure and Review Act as same is in effect in Chapter 536 RSMo. In the event review of a decision of the Board of Directors is not sought by a Unit

Owner, in accordance with the requirements of this Section 20, then the Unit Owners shall be conclusively bound by the decisions of the Board of Directors. If a Unit Owner does seek review of the actions of the Board of Directors, and if the Board has caused a reasonable record to be made of the proceedings before it, and, at the request of the Unit Owner, provides such record to the court or the Unit Owner, then the inquiry of the court which seeks to review the actions of the Board of Directors shall extend to the following and only to the following:

(1) Is the action of the Board of Directors in violation of constitutional proceedings;

(2) Is the action of the Board of Directors in excess of the authority granted to the Board of Directors by this Declaration, or in excess of any limitation imposed by the statutes of the State of Missouri or other applicable laws of the State of Missouri;

(3) Is the action of the Board of Directors unsupported by competent and substantial evidence upon the whole record;

(4) Is the action of the Board of Directors, for any other reason, unauthorized by law;

(5) Was the action of the Board of Directors made upon an unlawful procedure or without a fair trial;

(6) Was the action of the Board of Directors arbitrary, capricious or unreasonable;

(7) Did the action of the Board of Directors involve an abuse of discretion?

The action of the Board of Directors shall be reviewed by a court of competent jurisdiction solely for the purposes of making the determinations set forth in subparts (1) through (7). The court shall review the action of the Board of Directors based solely upon the record adduced at the proceedings before the Board of Directors. The court shall hear the case without a jury and shall not take additional evidence. The court may render a judgment affirming, reversing or modifying the Board's determination and order, and may order the Board to reconsider the case in light of the court's opinion and judgment, and may order the Board to take such further action as the court may find proper and appropriate. However, the court shall not substitute its discretion for the discretion legally vested in the Board of Directors. Appeals may be taken from the judgment of any reviewing court, which reviews the action of the Board of Directors, as in other civil cases.

If there is a dispute over the use by the Board of Directors or the Association of the remedies provided for by this Section 20, then, unless the disputing parties agree to resolve such dispute by mediation and arbitration as provided for by ARTICLE XVII of this Declaration, the provisions of ARTICLE XVII of this Declaration which provides for resolution of disputes by mediation and arbitration, shall have no application to such dispute but rather the procedures hereinabove outlined in this Section 20 shall prevail. The parties can agree to mediate and arbitrate such dispute, in lieu of undergoing the judicial proceedings provided for by the above provisions of this Section 20, but in the

absence of such agreement the provisions provided for by this Section 20 shall prevail over the arbitration and mediation procedures provided for by ARTICLE XVII of this Declaration.

**Each Unit Owner, by acceptance of a deed for the Unit Owner's Lot or Unit, covenants and agrees that such Unit Owner accepts and agrees to, and agrees to be bound by all of the enforcement remedies of the Association, and its Board of Directors and Officers, as provided for by this Section 20. Since the Development is a "community", and consists of a community of homeowners/Unit Owners, and since performance in accordance with an observance of the covenants provided for by this Declaration are of the essence to the preservation of the value of the Development, the Lots thereof, the Buildings thereon, and the Units, and to the peaceful use and enjoyment of their respective Units by the Unit Owners thereof and the members of their families, and the occupants of the Units, it is agreed by each Unit Owner and such Unit Owner's successors that the Association and its Board of Directors and officers shall have all of those enforcement remedies provided for by this Section 20, and that such remedies are essential to the preservation of the health, enjoyment, property values and other rights of all Unit Owners of all Units within the Development.**

Section 21. No Waiver Other Than by Express, Written Waiver/Selective Enforcement Permitted and Agreed To. Any provisions or purported provisions of law to the contrary notwithstanding, the Developer, the Association, its Board of Directors and/or its Architectural Control Committee, whoever or whichever then holds the Architectural Control Powers under ARTICLE VIII of this Declaration, and/or any Unit Owner or Owners, shall not be held to have waived, and shall not have waived, the rights to enforce or to seek enforcement of any of the provisions of this Declaration, including, but not limited to, the provisions of ARTICLE VIII above or this ARTICLE XII, by reason of the fact that he, she, they or it have, from time to time, not enforced or chosen not to enforce any of the provisions of ARTICLE VIII above or this ARTICLE XII, or any of the other provisions of this Declaration. No provision and no requirement and no restriction of this Declaration, including, but not limited to, those of ARTICLE VIII above and this ARTICLE XII, shall be subject to being impliedly waived or to implied waiver, or to any contention of waiver, unless a written document providing for such waiver is executed by the party against whom the waiver is sought to be charged. Each Lot Owner and Unit Owner, by acquiring such Lot Owner's Lot or such Unit Owner's Unit, shall be deemed to have agreed and shall have expressly agreed to all of the provisions of this Section 21, and shall be deemed to have agreed that the provisions of this Declaration, and the provisions of the restrictions of this Declaration, including, but not limited to, the provisions of ARTICLE VIII above and this ARTICLE XII, may be selectively enforced by the Developer, the Board of Directors of the Association, its Architectural Control Committee or any Lot or Unit Owner or Owners. For example, the Board of Directors of the Association may choose to enforce the restrictions of this ARTICLE XII so as to prohibit certain types of improvements or structures or uses which would otherwise be prohibited pursuant to this ARTICLE XII, while not seeking to prohibit or to enforce the provisions of this ARTICLE XII or this Declaration as to other uses, structures or improvements which would be similarly prohibited by this Declaration. Reasonable selective enforcement of the provisions of this Declaration is specifically contemplated, and the Developer, the Board of Directors of the Association, and its Architectural Control Committee and each Lot Owner seeking to enforce any of the provisions of this Declaration shall be and they are hereby vested with reasonable discretion to determine when, and under what circumstances, and for whatever reasons, the provisions of this Declaration shall be sought to be enforced, or the provisions of this ARTICLE XII or the provisions of ARTICLE VIII

above shall be sought to be enforced, and the fact that they seek to enforce provisions on certain occasions and not on others shall not constitute a defense to any actions brought to enforce any of the provisions of this Declaration. The Board of Directors of the Association, the Developer, the Architectural Control Committee of the Board of Directors of the Association, or any Lot or Unit Owner or Owners may, therefore, for good and valid reasons, which are reasonably applied, engage in selective enforcement of these covenants and the provisions of these covenants and the restrictions of ARTICLE VIII above and this ARTICLE XII.

For example, the Developer, the Board of Directors of the Association, or its Architectural Control Committee may elect to allow, without the need to seek Architectural Control approval, certain types of basketball goals, while prohibiting yet other types of basketball goals, if the Board of Directors, the Developer or the Architectural Control Committee reasonably determines that certain types of basketball goals are not damaging to the quality or value of the Development or of any Lot or Unit or any part of the Property, while other types of basketball goals are so damaging. The Developer, the Architectural Control Committee of the Board of Directors of the Association, or the Board of Directors of the Association, whoever or whichever then holds the Architectural Control Powers hereunder, may allow certain types of play structures to appear on Lots and Units, and yet prohibit other types of play structures from being located on Lots or Units.

Under no circumstances shall a Lot Owner or Unit Owner be heard to claim that any of the provisions of this Declaration have become void or unenforceable by reason of:

a. Estoppel;

b. Waiver, expressed or implied;

c. Non-enforcement of same; or

d. Selective enforcement of same.

Even though certain structures or improvements may be installed which violate provisions of this Declaration, and same remain for some period of time, the Board of Directors of the Association, the Developer or the Architectural Control Committee may thereafter seek to require the removal of such structure or improvements.

Section 22. Waiver of Statute of Limitations. The provisions of any statute of limitations, which would purportedly restrict any claim for relief under this Declaration, or any claim for enforcement of any of the provisions of this Declaration, to a period of less than five (5) years from the date of the event causing the effort to obtain relief or the initiation of a proceedings to enforce any of the provisions of these covenants, is hereby waived, including, but not limited to, any provision of Section 516.095 RSMo., which would restrict enforcement of covenants relating to buildings or other visible improvements to a period of two (2) years. The five (5) year general statutes of limitations, as it is in effect in the State of Missouri, shall apply to all of these covenants and all provisions and restrictions of these covenants, and to any actions to enforce or to seek to enforce these covenants, and any lesser period of limitations or the benefit of any lesser period of limitations shall be waived by the Lot Owner and Unit Owner of each Lot and Unit and shall be deemed to have been waived by the Lot

Owner and Unit Owner of each Lot and Unit upon the acquisition of such Lot Owner's Lot or such Unit Owner's Unit.

## ARTICLE XIII
## INSURANCE

Section 1. Insurance to be Acquired and Maintained by the Association. Unless the Association's Board of Directors, in its discretion, determines that the Association will obtain and maintain insurance on all Buildings and Units, the Unit Owners of each Unit as to which the Association has not made a determination that it will obtain and maintain insurance on their respective Buildings and Units and the improvements located thereon, shall obtain and at all times keep in full force and effect insurance on the Units and Living Units and that part of the Building containing same, insuring same, in the name of the Unit Owner and the Association, against loss or damage by fire, lightening, wind storm, hail, explosion, vandalism and malicious mischief, and all other hazards as are generally carried in the area under standard all risk or extended coverage or broad form coverage provisions for at least the full insurable replacement cost of the improvement insured. The provisions of this Section 1 notwithstanding, the Board of Directors of the Association, may in its discretion elect to have the Association obtain and maintain insurance on all or certain Buildings and Units of the type hereinabove described in this Section 1, in which event the replacement costs shall be determined by the Association's Board of Directors or the insurer, and may be increased or decreased from time to time as such Board or the insurer shall, in its sole and absolute discretion elect. All insurance shall be placed with companies approved by the Association's Board of Directors and authorized to do business in the State of Missouri. Such insurance shall provide for protection against loss due to fire and such other causes and casualties as are included in so-called "all risk" or broad form or extended insurance coverages for each Unit and the Building located thereon, and the attached, built-in or installed fixtures, appliances, and equipment contained in such Building, and all floor coverings, wall coverings, ceiling coverings and fixtures, and all parts and components of the structure and of the walls, ceilings and floors therefor and all finishes therefor. **THE INSURANCE COVERAGE APPLICABLE TO EACH UNIT AS PROVIDED FOR HEREIN (WHETHER OBTAINED BY THE ASSOCIATION OR THE UNIT OWNER), SHALL (MUST) BE ISSUED IN THE NAME OF THE UNIT OWNER AND THE ASSOCIATION (OR THE ASSOCIATION SHALL BE INCLUDED AS A LOSS PAYEE AND IF IT CANNOT BE SO INCLUDED AS A LOSS PAYEE MUST BE INCLUDED AS AN ADDITIONAL PARTY OR INTERESTED PARTY), AND THE PROCEEDS THEREOF SHALL, IF PRACTICABLE AND LAWFUL, BE PAYABLE TO THE UNIT OWNER AND THE ASSOCIATION TO BE USED UNDER THE FOLLOWING TERMS AND PROVISIONS OF THE DECLARATION DEALING WITH INSURANCE PROCEEDS. UPON DEMAND, THE ASSOCIATION OR THE UNIT OWNER, AS THE CASE MAY BE, SHALL FURNISH THE OTHER SAID PARTY WITH A CERTIFICATE OF INSURANCE COVERING THE OWNER'S UNIT AND IMPROVEMENTS, AND WITH A CERTIFICATE EVIDENCING THAT SUCH INSURANCE IS IN EFFECT. INSURANCE ON ALL UNITS CONTAINED WITHIN A SINGLE BUILDING OR STRUCTURE SHALL (IF REQUIRED BY THE INSURER INSURING THE FIRST UNIT CONTAINED WITHIN SUCH BUILDING OR STRUCTURE OR BY THE BOARD OF DIRECTORS), BE WITH THE SAME COMPANY, BUT DIFFERENT COMPANIES MAY INSURE WITH RESPECT TO UNITS CONTAINED WITHIN OTHER BUILDINGS OR STRUCTURES.** In any event, unless the Association's Board of Directors elects to obtain the insurance on the Units, the Unit Owners shall be required to obtain and maintain fire and casualty insurance on their respective Buildings and Units which satisfies all of the requirements of this Section 1, and, upon demand by the Association, shall provide to the

Association proof that such insurance is in effect. The following provisions are also in effect as to the insurance coverages required by this Section 1:

A. Proof on Demand. Each Unit Owner shall provide to the Association's Board of Directors or its authorized officers, or its manager or managing agent or management company, proof that the insurance coverage required by this Section 1 is in effect, if the Unit Owner is to provide the Unit Owner's own insurance. Such proof may be requested at reasonable intervals, including annually. Failure to provide such proof shall be conclusively treated to be a failure by the Unit Owner to provide insurance coverage as required by this Section 1, and shall be a breach and default by the Unit Owner of the Unit Owner's duties and obligations under this Declaration. The Board of Directors of the Association shall have all remedies for such breach and default which are conferred upon the Board of Directors by ARTICLE VI of this Declaration, and by Section 20 of ARTICLE XI of this Declaration, and by any other provisions of this Declaration.

B. Failure to Provide Coverage or Proof of Coverage. If a Unit Owner fails to provide required insurance coverages, which name both the Unit Owner and the Association as named insureds or loss payees, or if the Unit Owner fails to provide to the Association's Board of Directors, its duly authorized officers or its manager, management company or managing agent, on demand, proof that the required insurance coverages are in effect, then the Association's Board of Directors shall have the right and option, in its sole and absolute discretion, to place insurance coverage on the Unit Owner's Unit with an insurance carrier selected by the Association's Board of Directors, and all premiums for such insurance coverage, together with a sum equal to twenty percent (20%) of such premium to compensate the Association for its efforts in obtaining the insurance coverages, and interest thereon at the interest rate provided for by Section 15 of ARTICLE VI of this Declaration, and all attorney's fees and costs of collection incurred by the Association in seeking reimbursement to the Association of the insurance premiums, such fee, and interest, shall constitute an assessment upon the Unit Owner and the Unit Owner's Unit, and shall constitute a lien upon the Unit Owner's Unit, which shall be enforceable in the manner provided for by Section 22 of ARTICLE VI of this Declaration, and the Association and its Board of Directors shall have all remedies conferred upon the Association by ARTICLE VI of this Declaration for collection of unpaid assessments.

C. Indemnification. The Unit Owner of each Unit shall indemnify, defend, save and hold harmless each other Unit Owner and the Association and its Board of Directors, officers, manager, managing agent and management company, of an from any and all, and each and every, suit, action, cause of action, demand, loss, expense, liability and responsibility of every kind, nature and description whatsoever which arises out of any failure by a Unit Owner to at all times maintain in full force and effect the insurance coverages required by this Section 1, with the Unit Owner and the Association being named as insureds or as loss payees.

D. Right of Association to Place Insurance or to Require that Insurance on Units in Same Building be With Same Carrier is Absolute. The Association, acting through its Board of Directors, shall have the absolute right, at the option of the Association's Board of Directors (but shall have no obligation) to require that:

a. Insurance on certain of the Units, or any of the Units, or all of the Units, as required by this Section 1, be obtained and placed and put into effect by the Association, with the

premiums therefor to be paid by the Unit Owners of the respective Units, and with such premiums to constitute an additional assessment against the Unit Owners and their Units as provided for by Section 12 of ARTICLE VI of this Declaration; or

b. To approve each insurance carrier which provides or is to provide or might provide insurance coverage on any of the Units within the Development, as all such insurance carriers must be approved by the Association's Board of Directors; or

c. To require that each of the two (2) Units which contain Living Units within each Building be insured with the same insurance carrier, meaning that the Board of Directors shall be permitted to require that a single insurance carrier insure the Units that contain the two (2) Living Units in each Building, and further meaning that the insurance carrier procured by the first Unit Owner who owns a Living Unit in a Building must also provide the insurance on the other Unit/Living Unit within such Building; or

d. To take any and all other actions which are reasonably required to insure that all Units are adequately insured as described in this Section 1.

While the Association's Board of Directors shall have the right to require that insurance coverage required by this Section 1 be demonstrated by adequate proof of insurance, it shall have no liability, obligation or responsibility for requiring such proof of insurance, and it shall be relieved, discharged and exonerated from all suits, actions, causes of action, claims, liabilities, expenses or responsibilities which might otherwise arise or be claimed to arise out of any failure on its part or purported failure on its part to require proof of insurance coverage or to place insurance coverage on a Unit. For example, if a Unit is not insured through the failure of the Unit Owner to procure insurance, and damage by fire or casualty results, the Unit Owner of an adjacent Unit shall have no claim against the Association or its Board of Directors for any purported failure by the Association or its Board of Directors to require proof of adequate insurance coverage upon the damaged Unit.

Each Unit Owner is also hereby empowered to require, and is authorized to require that the Unit Owner of any Living Unit in the same Building shall provide to the Unit Owner proof that such Unit Owner of the Living Unit in the same Building has in effect the insurance coverage required by this Section 1, and if the Owner of an adjacent Living Unit requests that the Unit Owner of a Living Unit provide proof of insurance coverage as required by this Section 1, then the Unit Owner upon whom such request is made shall immediately provide documentary proof, issued by the insurance carrier, that the insurance required by this Section 1 is in full force and effect.

**Even if the Association's Board of Directors does not require that Living Units/Units within the same Building be insured by the same insurance carrier, the Unit Owners are strongly advised to obtain insurance on the Units/Living Units in a Building with the same insurance carrier in order to avoid conflicts between the insurance carriers in the event of damage or destruction, such as, by way of example only, hail damage to a roof.**

Section 2. Insurance on Common Elements. The Association, by and through its Board of Directors, shall obtain and maintain insurance on all Common Areas and Common Elements (other than those titled in the name(s) of (a) Unit Owner(s)) and all facilities located thereon against loss or

damages by fire, lightening, windstorm, hail, explosion and other casualties which may reasonably be insured against, to the extent that such insurance can reasonably and practicably be obtained.

Section 3 . Insurance Premiums. If the Association's Board of Directors has, as to any Units elected to obtain and maintain the insurance on the Units and the Buildings, then (and only then) in addition to the annual assessment provided for above, each Owner of each Unit as to which the Association's Board of Directors has made such an election, covenants to pay (and shall be required to pay) to the Association, or its Board of Directors, or its officers, or the insurance carrier for the insurance obtained by the Association's Board of Directors, as determined by the Association's Board of Directors, at such times and in such installments as shall be determined by the Association's Board of Directors or such company, commencing on the day an Owner takes title to a Unit, his prorated share of the total insurance premium charged by the insurance carrier for any insurance obtained and maintained under Section 1 of this Article by the Association. The Association, or its Board of Directors, or the insurance carrier for that insurance described in Section 1 of this Article shall apportion the total premium for all such insurance among the various Units based upon the cost of replacement and risks involved with respect to the improvements located upon each Unit.

In the event an Owner fails or refuses to pay the aforesaid prorated portion of the premium for that insurance described by Section 1 of this Article, then such prorated amount of such premium shall be added to and become a part of the Annual Maintenance Assessment or charge to which such Unit is subject under this Article, and as a part of such Annual Assessment or charge, it shall be a lien and obligation of the Owner, and shall become due and payable, and be collectible, in all respects as provided for the Annual Assessment by the Declaration. If a Unit Owner fails to maintain insurance on such Unit Owner's Unit and Building, as required by Section 1 of this ARTICLE XIII, then the Association's Board of Directors may (but need not) obtain insurance on such Unit and Building, and the cost of such insurance shall be a special assessment against such Unit Owner and such Unit Owner's Unit, which shall be enforceable in the manner provided for by ARTICLE VI of this Declaration.

Section 4. Repair and Restoration of Improvements. In the event of damage to or destruction of a Building or of an improvement on a Unit due to fire or other disaster or cause, the Owner shall repair, rebuild and restore said improvement 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. In the event an Owner fails or refuses to repair, rebuild and restore such improvements as provided herein, each Owner of any Building or Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any deed of conveyance, hereby irrevocably constitutes and appoints the Association his true lawful attorney in fact, in his name, place and stead, and with full and complete authorization, right and power to collect the proceeds of the insurance policy described in the above provisions of the Declaration, in its sole name and to cause the repair, reconstruction and restoration of such improvements and to pay for same with said insurance proceeds. An Owner shall have no claim against the Association in the event it collects the proceeds of such insurance policy and uses same to repair, restore and reconstruct such improvement. If the Owner does make the repairs, rebuilding or restoration, then the Owner shall be entitled to the proceeds of the insurance.

It is expressly acknowledged and agreed by each Owner of any Unit that this Article is for the mutual benefit of all the Owners of the Units and is necessary for the protection of all said Owners.

Section 5. Other Insurance. Nothing herein shall preclude a Unit Owner from obtaining whatever additional insurance he may desire, and it shall be the individual responsibility of each Owner to provide tenant's theft, liability and other insurance covering personal property, damage or loss.

Section 6. Waiver of Subrogation. To the maximum extent permitted by law, each Unit Owner, and the tenants and occupants of each Unit Owner's Unit, and the members of their families, do hereby totally and completely release, discharge and exonerate the Association, its Board of Directors, and its officers, managing agents, manager and employees of and from each and all, and every, suit, demand, action and cause of action, liability, expense and responsibility which arises out of or might arise out of or is claimed to have arisen out of any damage or destruction, by fire or other casualty, of any Unit of Living Unit, or any failure to have in effect on any Living Unit/Unit any of the insurance coverages required by this ARTICLE XIII, or any failure or purported failure on the part of the Association, or its Board of Directors, officers, managers, managing agents or other agents or employees to require proof of insurance coverage as required by this ARTICLE XIII. To the maximum extent permitted by law, each Unit Owner, and the tenants and lessees and occupants of each Unit Owner's Unit, and the respective members of their families, do hereby release the Unit Owner, tenants, and occupants of any adjacent Unit, and the members of their family, of and from each and every, suit, action, cause of action, demand, loss, expense, liability, damage and responsibility of every kind, nature and description whatsoever which arises out of any loss, damage or destruction caused by fire or other casualty to any Living Unit, Unit or physical improvement, provided only that the Unit Owners have maintained in effect the insurance coverages required by Section 1 of this ARTICLE XIII. For example, if an adjacent Living Unit is damaged by fire or other casualty which allegedly arises out of the fault or neglect of the Unit Owner of the immediately adjacent Unit, or the fault or neglect of any family member of such Unit Owner, the Unit Owner of the damaged Unit shall be deemed to have totally and completely released, discharged and exonerated the Unit Owner of the adjacent Unit and the members of that Unit Owner's family, and the occupants of such adjacent Unit of and from all suits, actions, causes of action, claims, liabilities, expenses and responsibilities arising out of the damage to the Unit Owner's Living Unit which allegedly arises out of the fault or neglect of the adjacent Unit Owner or the occupants of the adjacent Unit. The waivers of subrogation and waivers of claims provided for by this Section 6 should be binding upon the Unit Owners and their respective fire and casualty insurance carriers, meaning that each insurance carrier shall be barred from asserting claims to the extent that its insured is barred from asserting claims under this Section 6.

Section 7. Subordination of Rights. The provisions of ARTICLE XIII shall be subject and subordinate to the rights of any mortgagee or beneficial owner of a deed of trust in and to any insurance proceeds payable by reason of any loss covered by such insurance concerning any Building or an improvement situated on any Unit in which said mortgagee or beneficial owner of a deed of trust may hold a security interest. The proceeds of such insurance payable to said mortgagee or beneficial owner of a deed of trust shall be applied by said mortgagee or beneficial owner toward the payment of those costs of restoration or repair of the damaged improvements actually incurred. Any excess proceeds received, or if for any reason such restoration or repair does not take place then the entire proceeds, shall be applied in reduction of the mortgage or deed of trust indebtedness.

**SECTION 8. ASSOCIATION AND DEVELOPER ADVISED THAT INSURANCE ON LIVING UNITS IN SAME BUILDING SHOULD BE WITH SAME INSURANCE CARRIER. EACH UNIT OWNER IS HEREBY**

ADVISED BY THE DEVELOPER AND THE ASSOCIATION THAT IT IS HIGHLY ADVISABLE THAT THE FIRE AND CASUALTY INSURANCE ON THE LIVING UNITS/UNITS WITHIN AND MAKING UP EACH BUILDING SHOULD BE WITH THE SAME INSURANCE CARRIER, IN ORDER TO PREVENT DISPUTES AND DISAGREEMENTS BETWEEN THE INSURANCE CARRIERS CONCERNING THE NEEDS FOR VARIOUS REPAIRS AND REPLACEMENTS.

**SECTION 9. INSURANCE COMPANIES BOUND.** ANY INSURANCE COMPANY/INSURANCE CARRIER WHICH ISSUES INSURANCE ON ANY OF THE BUILDINGS OR PARTS OF THE BUILDINGS OR THE UNITS OR ANY OF THE LIVING UNITS WITHIN THE DEVELOPMENT SHALL BE CONCLUSIVELY TO HAVE ISSUED SUCH INSURANCE WITH FULL KNOWLEDGE OF THIS DECLARATION AND ALL OF ITS PROVISIONS, PARTICULARLY INCLUDING THOSE OF THIS ARTICLE. IF TWO (2) INSURANCE CARRIERS INSURE THE SEPARATE LIVING UNITS/UNITS (AND PARTS OF THE BUILDINGS CONTAINING THE LIVING UNITS) WITHIN A SINGLE BUILDING AND THERE ARE DISPUTES BETWEEN THE INSURANCE CARRIERS OR THE UNIT OWNERS OF THE LIVING UNITS WITHIN SUCH BUILDING CONCERNING THE NEEDS FOR VARIOUS REPAIRS, REPLACEMENTS OR RESTORATIONS, INCLUDING, BY WAY OF EXAMPLE ONLY AND NOT BY WAY OF LIMITATION, DISPUTES OR DISAGREEMENTS CONCERNING THE NEED FOR REPLACEMENT OF A HAIL DAMAGED ROOF FOR A BUILDING (MEANING THE ENTIRETY OF THE ROOF), THEN SUCH DISPUTES AND DISAGREEMENTS SHALL AND MUST BE RESOLVED SOLELY IN THE MANNER DESCRIBED IN ARTICLE XVII OF THIS DECLARATION, AND THE INSURANCE CARRIERS SHALL BE CONCLUSIVELY DEEMED TO HAVE AGREED TO RESOLVE SUCH DISPUTES IN THE MANNER DESCRIBED IN SUCH ARTICLE.

## ARTICLE XIV
## SALE OF COMMON AREA

A sale, mortgaging or other disposition of all or any part of the Common Area titled in the name of the Association (as opposed to a Unit Owner) shall not be valid unless given prior approval by the titled owner of same, and by a three-fourths (3/4) majority vote 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, and unless given prior approval by mortgagees of seventy-five percent (75%) of all Units subject to mortgages or deeds of trust and unless approved by Owners of all immediately adjacent Units and all Owners of Units containing any such Common Area. A disposition, so approved, shall be binding upon all Unit Owners. The provisions of this ARTICLE XIV notwithstanding, the Association's Board of Directors, in the exercise of its discretion, may grant to any public agency, public utility or utility provider, reasonable utility easements, over the various portions of the Common Areas (including those portions of Lot or Units designated as Common Area), as reasonably required to provide appropriate utility services to all Unit Owners and Units, or to certain Units

## ARTICLE XV
## RIGHTS OF FIRST MORTGAGEES

Notwithstanding anything to the contrary hereinabove set forth in this Declaration, the following terms and conditions shall prevail when the rights of holders of first mortgages or first mortgage deed of trust are considered or involved, to-wit:

Section 1. Notice. The beneficial holder of a first mortgage or first mortgage deed of trust shall, if it files a written request with the Association's Board of Directors to such effect, be given written notice by the Association when the Owner of any Unit upon which such first mortgage holder or the holder of such first mortgage deed of trust holds a mortgage or deed of trust is in default and such default has not been remedied within sixty (60) days. As indicated, before being entitled to such notice, the first mortgage holder or the holder of such first mortgage deed of trust must have filed with the Association's Board of Directors a written request to be so notified.

Section 2. Examination of Books and Records. The holder of a first mortgage deed of trust, or a first mortgage, shall be entitled to examine the books and records of the manager and Board of Directors of the Association upon reasonable notice to the manager and Board of Directors of the Association of its intent to exercise its right under this Section 2; provided, however, that such examination shall be made only at reasonable times and at reasonable intervals.

Section 3. Taxes in Default. The holder of any first mortgage deed of trust, or first mortgage, upon any Building or Unit shall have the right to pay taxes or other charges which are in default and which may become a lien against the Common Elements or Common Area, and may pay overdue premiums on hazard insurance for the Common Elements or Common Area, and any Unit upon which such first mortgage holder or first mortgage deed of trust holder holds a first mortgage, and any mortgagee or first mortgage deed of trust holder making such payment shall be owed immediate reimbursement and restitution for the sum of such premiums or taxes from the Association.

Section 4. Insurance Proceeds. Any insurance proceeds or condemnation awards paid to the Association, over and above the amount necessary to replace, repair or reconstruct the damaged Building or Unit or damaged Common Area shall be paid over by the Association to the holders of mortgages or deeds of trust of record covering any of the Buildings, Units or Property, if any, solely as their respective interests may appear.

Section 5. Transfer of Common Area. The Association shall not encumber, hypothecate, pledge, transfer, sell or otherwise subject the Common Area or Common Elements to liens or charges or transfer or disposition without the prior written approval of the holder of any mortgage or deed of trust thereby and seventy-five percent (75%) of the holders of first mortgage deeds of trust or first mortgages upon the Units.

Section 6. Other Changes. Neither the Association nor the Board of Directors shall make any change in the method of determining assessments, the Architectural Control provision, or the insurance requirements set forth in this Declaration without the prior written approval of the holders of seventy-five percent (75%) of the first mortgages or first mortgage deeds of trust upon the Units.

Section 7. Right of First Refusal. Any holder of a first mortgage deed of trust, or first mortgage, which comes into possession of a Unit pursuant to the remedies provided in the mortgage or deed of trust, by foreclosure, or by deed in lieu of foreclosure, shall be exempt from any "right of first refusal."

Section 8. Claims for Unpaid Assessments. Any first mortgagee or holder of a first mortgage deed of trust, which comes into possession of a Building or Unit pursuant to the remedies provided

in the mortgage or deed of trust, or by foreclosure of such mortgage or deed of trust, or by deed in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against the Building or Unit which accrued prior to the time such mortgagee or deed of trust holder came into possession of such Building or Unit.

Section 9. Approval of First Mortgagees. Without the written approval of seventy-five percent (75%) of the first mortgagees, or holders of first mortgage deeds of trust upon the Buildings and Units (based upon one vote for each such mortgage or deed of trust upon each Unit), the Association shall not be entitled to:

a. By act or omissions seek to abandon, partition, subdivide, encumber, sell or transfer real estate or improvements thereon which are owned, directly or indirectly, by the Association; provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Property shall not be deemed a transfer within the meaning of this clause;

b. Change the method of determining the obligations, assessments, dues or other charges which may be levied against each Unit and the Owners thereof;

c. By act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the improvements located upon the Units, the exterior maintenance of the Units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings in the property;

d. Fail to maintain fire and extended coverage insurance on any insurable permanent structures or improvements erected on the Common Area in an amount not less than one hundred percent (100%) of the current replacement costs;

e. Apply the proceeds from such fire and hazard insurance for other than repair, replacement or reconstruction of improvements and structures.

Section 10. Adequate Reserve. The Association shall establish an adequate reserve funded by regular monthly assessments, rather than by special assessments or charges, for the replacement of any permanent improvement or structure which the Association is required to replace under the terms of this Declaration. The amount of the contributions to the reserve fund shall be determined by the Board of Directors of the Association, based upon the projected useful life of such improvements requiring replacement, and the estimated replacement costs. However, the Association shall be required to establish such reserve only to fund the replacement of items which the Association is required to replace by the terms and conditions of this Declaration.

## ARTICLE XVI
## GENERAL PROVISIONS

Section 1. Enforcement. The Developer, the Association, or any Unit Owner, shall have the right to enforce, by any proceeding 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 Association or

by an Unit Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. 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 3. 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, or the Owner of any Units subject to this Declaration, or the Developer, 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 each unless an instrument signed by not less than sixty percent (60%) of the Class A Members 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 not less than sixty percent (60%) of the Class A Members and one hundred percent (100%) of the Class B Members, if any, and thereafter it may be amended in whole or in part only by an instrument signed by not less than sixty percent (60%) of the Members of the Association. All amendments to this Declaration shall be recorded in Boone County, Missouri.

Section 4. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been property 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 5. 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 6. 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.

Section 7. Approval of Plats. Any plats of Lots which divide same into Units and Common Area must, prior to recording, be approved by the Developer so long as Class B voting rights exist, and thereafter by the Architectural Control Committee.

Section 8. 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 cost, 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, in addition to judgment for such other rights and remedies to which such prevailing party would otherwise be entitled. The provisions of this Section 8 shall fully apply to any litigation which is commenced to require mediation and arbitration pursuant to ARTICLE XVII of this Declaration, or to dismiss or stay any proceedings for mediation and arbitration pursuant to ARTICLE XVII of this

Declaration. If, however, a dispute is submitted to mediation and arbitration pursuant to ARTICLE XVII of this Declaration, then the provisions of this Section 8 shall not apply to the attorney's fees and other expenses actually incurred in the mediation and arbitration processes, but rather the provisions of ARTICLE XVII shall prevail.

## ARTICLE XVII
## DISPUTE RESOLUTION/LIMITATION ON LITIGATION/MEDIATION AND ARBITRATION

If there is at any time a dispute between and among any Lot Owner(s), and/or Unit Owner(s), and/or any Builder(s), and/or the Developer and/or the Association, its Board of Directors, or any member of such Board of Directors or any officer of the Association, and/or any manager or management company employed by the Association or its Board of Directors, and/or any tenant or occupant of any Living Unit(s), or the insurers of any Living Units, 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 any duties provided by this Declaration, or the 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, which shall not be subject to Arbitration], then all such disputes shall be resolved solely in accordance with the provisions of this ARTICLE XVII.

If the Association's Board of Directors seeks to invoke any of the remedies conferred upon the Board of Directors by Section 20 of ARTICLE XII of this Declaration, and there is a dispute over any of the remedies sought to be imposed by the Board of Directors pursuant to such Section 20, then such dispute shall be resolved in the manner provided for by such Section 20 of ARTICLE XII of this Declaration, and the provisions of this ARTICLE shall have no application to such dispute, unless the disputing parties agree to submit the dispute to resolution by mediation and arbitration as provided for by this ARTICLE, in lieu of having such dispute be resolved in the manner provided for by such Section 20, meaning pursuant to the provisions of the Administrative Procedure Act as it is in effect in the State of Missouri, and the judicial proceedings provided for by such Act and by such Section 20.

**IF, AT ANY TIME, THERE IS A DISPUTE BETWEEN OR AMONG INSURANCE CARRIERS OR INSURERS WHICH PROVIDE INSURANCE ON SEPARATE LIVING UNITS/UNITS LOCATED WITHIN (OR MAKING UP) A SINGLE BUILDING, OR THE UNIT OWNERS OF SUCH UNITS, CONCERNING THE NEED FOR REPAIRS, REPLACEMENTS OR RESTORATION OF DAMAGED PARTS OR COMPONENTS OF THE BUILDING (SUCH AS, BY WAY OF EXAMPLE ONLY AND NOT BY WAY OF LIMITATION, THE NEED TO REPLACE A HAIL DAMAGED OR STORM DAMAGED ROOF), THEN SUCH DISPUTES AND DISAGREEMENTS SHALL BE RESOLVED IN THE MANNER PROVIDED FOR BY THE FOLLOWING PROVISIONS OF THIS ARTICLE AND ONLY IN THE MANNER PROVIDED FOR BY THE FOLLOWING PROVISIONS OF THIS ARTICLE, AND EACH INSURANCE CARRIER WHICH ISSUES ANY POLICY OF INSURANCE ON ANY OF THE UNITS/BUILDINGS/LIVING UNITS SHALL BE DEEMED TO HAVE TAKEN**

**SAME WITH KNOWLEDGE/NOTICE OF THE PROVISIONS OF THIS DECLARATION AND OF THE PROVISIONS OF THIS ARTICLE, AND OF THE PROVISIONS OF ARTICLE XIII OF THIS DECLARATION.**

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 XVII 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 XVII, as such paragraph 9 appears below; provided that all other provisions of this ARTICLE XVII shall remain in effect; meaning that arbitration shall proceed in accordance with this ARTICLE XVII, 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 XVII. 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 XVII 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 XVII 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 XVII. 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 XVII. Furthermore, the parties can agree to amend any of the rules provided for by this Section 2 of this ARTICLE XVII.

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 XVII, 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 XVII be modified to comport with the provisions of this Section 2 of this ARTICLE XVII). 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 XVII.

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 if this ARTICLE XVII, 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 XVII, be modified to comport with the provisions of this Section 2 of this ARTICLE XVII.

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.

l. Any provisions of this Section 2 of this ARTICLE XVII 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 XVII; 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 XVII, shall be modified to comport with the provisions of the rules set forth in this Section 2 of this ARTICLE XVII. The rules set forth in this Section 2 of this ARTICLE XVII 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 support 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 plead, 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 n 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 XVII, 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.

## ARTICLE XVIII
## OLD HAWTHORNE COVENANTS

**THE PARCEL AND EACH OF THE LOTS AND UNITS, ARE SUBJECT, NOT JUST TO THIS DECLARATION AND THE EASEMENTS, COVENANTS, RESTRICTIONS, ASSESSMENTS, LIENS AND CHARGES PROVIDED FOR BY THIS DECLARATION, BUT ALSO TO THE OLD HAWTHORNE DECLARATION, AND THE EASEMENTS, RESTRICTIONS, RESERVATIONS AND COVENANTS PROVIDED FOR BY THE OLD HAWTHORNE DECLARATION, INCLUDING, BUT NOT LIMITED TO THE REQUIREMENTS FOR PAYMENTS OF ASSESSMENTS AS REQUIRED OF UNIT OWNERS OF UNITS OF OLD HAWTHORNE, AS PROVIDED FOR BY AND DESCRIBED IN THE OLD HAWTHORNE DECLARATION, AND THE REQUIREMENT FOR MANDATORY CLUB MEMBERSHIPS IN THE CLUB AT OLD HAWTHORNE AS PROVIDED FOR BY THE OLD HAWTHORNE DECLARATION.**

## ARTICLE XIX
## PERFORMANCE OF DUTIES TO OLD HAWTHORNE ASSOCIATION

The Old Hawthorne Declaration provides for formation of an "Association", Old Hawthorne Community Association, Inc. ("the Old Hawthorne Association"). The Old Hawthorne Declaration further provides that various areas within Old Hawthorne may be classified as "Neighborhoods", and that certain Common Elements in each of the Neighborhoods may become Common Elements of the Old Hawthorne Association or the Old Hawthorne Community, and that the costs of maintenance, repair, replacement, operation and upkeep of such Common Elements may be assessed against the Unit Owners of the Units located within the "Neighborhood". To the extent that any of the Common Elements located within the Development provided for by this Declaration, Vistas at Old Hawthorne, become Common Elements of a Neighborhood of Old Hawthorne, which are to be maintained, repaired, replaced and operated by the Old Hawthorne Association, and to the extent that the costs of such efforts may be assessed by the Old Hawthorne Association against Units within the Development provided for by this Declaration, Vistas at Old Hawthorne, such costs shall be paid by the Association formed pursuant to this Declaration, with such costs to be apportioned among the Unit Owners of the Units within the Development provided for by this Declaration, Vistas at Old Hawthorne, as a part of the annual assessments against such Units.

## ARTICLE XX
## DEVELOPER'S UNILATERAL RIGHT, WITHOUT THE CONSENT OF ANY PERSON OR PARTY, TO AMEND THIS DECLARATION

Any of the provisions of this Declaration to the contrary notwithstanding and any provisions of law to the contrary notwithstanding (whether statutory, common law or other provisions of law) the Developer hereby reserves, and shall have, so long as the Developer holds any Class B memberships and Class B voting rights in the Association, and for so long thereafter as the Developer owns any Lot or Unit within the Parcel as the Parcel then exists (including any part of the Annexation Parcel annexed to the Parcel), the right and power, without the consent of any Unit Owner, Lot Owner, holder of any mortgage or deed of trust on any Unit, or any other persons or parties whomsoever, to amend or modify this Declaration, as the Developer, in the exercise of good faith, reasonable judgment and the Developer's best judgment, deems necessary in order to:

a. Correct any error in this Declaration;

b. Correct any typographical error in this Declaration;

c. Correct any obvious error in this Declaration;

d. Amend this Declaration in order to reflect the Developer's intentions as such intentions exist on the date of the recording of this Declaration;

e. Correct this Declaration or amend this Declaration or modify this Declaration in order to deal with, or appropriately reflect, or as required by any change in federal law, state law, city ordinance, or other applicable governmental regulation;

f. Fairly and equitably apportion among the Unit Owners of the respective Units any costs or expenses incurred by the Association or its Board of Directors;

g. Eliminate undue hardship upon or burden upon the Unit Owner, the Association, its Board of Directors, or its officers;

h. Bring this Declaration into conformity with the Old Hawthorne Declaration;

i. Cause the Association and the Unit Owners to perform any duties or obligations imposed upon it or them by the Old Hawthorne Declaration or pursuant to the provisions of the Old Hawthorne Declaration;

j. Cause the Units and Living Units to be appropriately insured;

k. Correct obvious errors or mistakes, or latent or patent mistakes;

l. Eliminate confusion;

m. Clarify any confusing or conflicting provisions of this Declaration;

n. Modify this Declaration so as to include any omitted provisions;

o. Modify this Declaration so as to correct any situations of obvious inequity, obvious injustice or obvious unfairness;

p. Impose reasonable additional use restrictions upon the Units or Living Units, as provided for by ARTICLE VIII or ARTICLE XII of this Declaration, or modify any of the restrictions of such ARTICLES, as reasonably required to assure all Unit Owners of the reasonable, peaceable and safe use of their Units and Living Units, and the preservation of the value of their Units and Living Units, and the protection of the peace, tranquility and safety of the Development.

Any amendments in or modifications in this Declaration which are made by the Developer must be made in good faith, and must be made reasonably and through the use of the Developer's best

judgment, and shall not be made arbitrarily, unreasonably or capriciously and may not be such as imposes on any Unit Owner an unfair burden or expense, which could not reasonably be anticipated by the Unit Owner in view of the provisions of this Declaration. Each Unit Owner, by accepting a deed for the Unit Owner's Unit, hereby consents and agrees to the provisions of this ARTICLE, and confers upon the Developer the power and authority conferred upon the Developer by this ARTICLE.

## ARTICLE XXI
## ANNEXATION

The Developer may bring additional parcels of the Annexation Parcel under the jurisdiction of the Association, and may make same a part of the Development, and may subject same to the provisions of this Declaration, and may cause the Lot Owners and Unit Owners of Lots and Units located therein to become subject to the Association and this Declaration, without the consent of any Lot Owner or Unit Owner or any Lot Owners or any 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 XXI to the contrary notwithstanding, the provisions of this Declaration shall not apply to any Land or to any portion of the Annexation Parcel, until such Land or such portion of the Annexation Parcel is annexed to the Development in accordance with the provisions of this ARTICLE XXI. The Developer shall have no duty or obligation (either expressed or implied) to annex any real estate, or any portion of the Developer's Land other than the Parcel or any part of the Annexation Parcel 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.

The Developer may, pursuant to its annexation powers reserved to it by this ARTICLE XXI, 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 Annexation Parcel.

## ARTICLE XXII
## LIABILITY FOR INJURIES OR DAMAGES WITHIN COMMON AREAS

This Declaration provides for the creation of certain "Common Areas," including those Common Areas which are to be located within portions of the land of certain Lots which are owned by the Unit Owners. For example, Common Area will be located within each of Lots 101-A and 101B, outside of the boundaries of the Units hereafter located within such Lots, as such "Units" are defined and described in this Declaration. The Unit Owners of the Units withing Lots 101-A and 101B will, therefore, be the titled owners of all areas of land within the Lots constituting "Common Areas," which such "Common Areas" are, in accordance with the provisions of this Declaration, to be treated as if owned by the Association, even though the Unit Owners hold legal title thereto and will pay the real estate taxes thereon. The Association has certain duties and obligations, under the provisions of this Declaration, for the lawn mowing of lawns located within such Common Area and the irrigation of such lawns, and the maintenance and replacement (subject to any limitations provided for by this Declaration) of lawns, trees, shrubs and landscaping located within such Common Areas, and the maintenance of the irrigation system located within and serving such Common Areas, and the providing of snow and ice removal for the driveways and walkways located in front of the Buildings (meaning on the street side of the Buildings) located within the Common Areas of the Lots containing such Common Areas. Any liability for any personal injury or property damage arising from an incident, action or failure to act that occurs on, within or with respect to the Common Areas located within each of the Lots, shall be the responsibility and liability of the Association and shall not be the responsibility or liability of Unit Owner; excluding only those injuries or damages which arise out of any failure by a Unit Owner to perform the Unit Owner's duties and obligations with respect to such Common Areas (example: failure to provide for repair or replacement of any driveway or sidewalk which requires repair or replacement). For example, if the Association fails to provide reasonable snow and ice removal for the driveways or sidewalks located within the Common Area of a Lot, and injury arises as a result thereof, then the Association, and not the Unit Owner(s) shall have the liability and responsibility for such injury. The Association shall indemnify, defend, save and hold harmless the Developer and each of the Lot Owners and Unit Owners of and from any and all, and each and every, suit, action, cause of action, demand, loss, expense, liability and responsibility of any kind or nature whatsoever which arises out of any duty or obligation of the Association (or any failure or neglect of the Association to perform any duty or obligation of the Association) of or with respect to any of the Common Areas or Common Elements located within the Development, including those located within the Common Areas that are located within the Lots which are conveyed to and titled in the names of the Lot Owners or Unit Owners. The Unit Owners shall remain liable and responsible

for, and shall indemnify, defend, save and hold harmless the Association and its Board of Directors, officers and employees of and from any liability or responsibility arising out of any failure by a Unit Owner to perform the Unit Owner's duties and obligations under this Declaration, including the duties and obligations to provide for maintenance or repairs of any driveways or sidewalks, the responsibility of which rests with the Unit Owner.

## ARTICLE XXIII
## LOTS SOLD TO BUILDERS OR PRIVATE OWNERS

The Developer may elect to sell and convey Lots to a Builder (other than Welek Construction Company, which is an affiliate of the Developer) or a Lot Owner, who will build the Buildings on the Lots. If the Developer, hereafter, sells and conveys Lots to a Builder, as a site for a Building, or to a Lot Owner in order that the Lot Owner may build on the Lot the Lot Owner's personal residence, or a personal residence of the Lot Owner and an adjacent residence for sale to another Unit Owner, then the following provisions of this ARTICLE shall be applicable and shall apply, in addition to all of the provisions of the foregoing ARTICLES of this Declaration:

Section 1. Conveyance of All or Part of Lot. The Developer may convey both an A Lot and a B Lot, and may or may not convey the immediately adjacent C Lot to the Builder or Lot Owner. For example, the Developer may convey Lots 101-A and 101B to the Builder or Lot Owner, retaining Lot 101C (which is and shall always be Common Area), or, alternatively, may convey all of Lots 101-A, 101B and 101C to the Builder or Lot Owner.

Section 2. Architectural Control Provisions. The Lots and any Building, and all other structures and improvements placed on the Lots, shall be subject to all of the Architectural Control Provisions of ARTICLE VIII of this Declaration, and before any Building, structure or other improvement is placed on the Lots, prior approval by the Developer, or the party then holding Architectural Control Powers pursuant to ARTICLE VIII of this Declaration, must be obtained in the manner described in ARTICLE VIII of this Declaration.

Section 3. Subject to All Restrictions. Each of the Lots shall be subject to all of the terms, covenants, conditions and provisions of this Declaration and all of the foregoing ARTICLES of this Declaration.

Section 4. Landscaping. The Lot Owner or Builder must, in addition to plans and specifications for the Building and other structures and improvements to be placed on the Lot, submit for approval in accordance with the Architectural Control Provisions of ARTICLE VIII of this Declaration, a Landscaping Plan ("the Landscaping Plan") for the Building to be placed on the Lots and all other improvements to be placed on the Lots, and if the C Lot (example: Lot 101C) is conveyed to the Builder or Lot Owner, then for the landscaping and irrigation system to be placed within the C Lot.

Section 5. Irrigation System. An irrigation system and all of its components must be installed by the Builder or Lot Owner, in accordance with the plans and specifications therefor approved pursuant to the Architectural Control requirements of ARTICLE VIII. The C Lot must be so irrigated, landscaped and otherwise improved in accordance with the plans and specifications approved in accordance with such requirements.

Section 6. Irrigation System. The Builder or Lot Owner shall be responsible for installing an irrigation system for the lawns and landscaping located within the Lots, including the C Lot if conveyed to the Lot Owner or the Builder, and those portions of the A and B Lot which would be "Common Areas" in accordance with the foregoing provisions of this Declaration. Such irrigation system and the plans therefor must be approved, in advance, pursuant to ARTICLE VIII's Architectural Control requirements. The irrigation system must be installed by the Builder or Lot Owner.

Section 7. Installation of Landscaping, Irrigation Systems and Other Improvements Within Common Areas. If the Lot Owner or Builder fails to install and complete, as soon as reasonably practicable through the exercise of reasonable diligence and good building practices (subject only to reasonable delays for weather conditions which prevent the appropriate installation of landscaping), the lawns, trees, shrubs, berms and other landscaping features provided for by the Landscaping Plan which is approved in accordance with the provisions of this ARTICLE and in accordance with the provisions of ARTICLE VIII of this Declaration, or the irrigation system described in this ARTICLE, then the Developer or the Association's Board of Directors may enter upon the Lots conveyed to the Lot Owner or the Builder (and shall have an unlimited easement and right of access to the Lots for such purposes) and may install, at the cost and expense of the Lot Owner or Builder, all of the lawns, landscaping, landscaping components and irrigation system which the Lot Owner or Builder fails to install and complete. All of the Developer's costs or the Association's costs incurred in installing such items, together with an additional fee for the Developer's or the Association's services incurred in causing the items to be installed (which such fee shall be equal to 20% of the cost of the items) and interest at the rates provided for in ARTICLE VI of this Declaration, and all attorney's fees and costs of collection, shall be at once due to the Developer or the Association, whichever of same installs the items. All such costs of installation, and such fees, interests and costs shall constitute a lien and assessment against the Lot, the Lot Owner of the Lot (being the Builder or the Lot Owner) and the Lots themselves and the Buildings and improvements located on the Lots, which shall be enforceable in the manner provided for the enforcement of assessments under ARTICLE VI of this Declaration. Alternatively, the Developer shall have the right to claim a mechanic's lien, superior to any construction money or development money loan, for the costs of such installation of such improvements, and such fees, interests and costs, if the Developer installs the improvements, with such mechanic's liens to be enforceable in the manner provided for by the statutes of the State of Missouri.

Section 8. C Lots Must Be Conveyed to Association. Immediately following the completion of any Building and improvements to be placed on the Lots by the Builder or Lot Owner, and the completion of the installation of the landscaping, irrigation system and other landscaping components which are to be installed by the Lot Owner or the Builder in accordance with the provisions of this ARTICLE, the Lot Owner or Builder shall be required to convey marketable fee simple absolute title to the C Lot (if the C Lot is conveyed to the Lot Owner or Builder), free and clear of all liens, deeds of trust, mortgages and other encumbrances granted or created by the Lot Owner or the Builder, or by actions of the Lot Owner or the Builder. The Association shall be deemed to be and shall be treated as the Owner of the C Lot, even if it is conveyed to the Lot Owner or Builder, and the Association's rights to the C Lot shall be superior to the rights of any other person or party, including any mortgagee or grantee under any deed of trust, mortgage or other encumbrance granted by the Lot Owner or Builder. No holder of any indebtedness collateralized or secured by any mortgage or deed of trust or other encumbrance granted by or created by the Lot Owner or the Builder, or by the actions of the Lot

Owner or the Builder, shall be superior to the rights of the Association to receive ownership of the C Lot, and the mortgage holder or mortgagee or holder under any such deed of trust, mortgage or other encumbrance shall, for all intents and purposes, be treated as if it had not acquired any rights to the C Lot. The requirement for conveyance of the C Lot to the Association shall be absolute. The requirements that the C Lot be landscaped in accordance with the requirements of this ARTICLE, and that an irrigation system therefor be installed in accordance with this ARTICLE, shall be absolute.

Section 9. Dedication of Irrigation System. The Development or the Lots and Units in the Development are to be irrigated with one or more common irrigation systems. Therefore, all Lots are to be irrigated with irrigation systems which are installed in accordance with the provisions of this Declaration, and in accordance with plans and specifications approved by the Developer. All such irrigation systems and all parts and components of such irrigation systems shall automatically be deemed to be conveyed to, and to be dedicated to the Association, and shall be a Common Element of the Association upon the completion thereof.

Section 10. Parts of Lots to be Common Areas. Once the Building on the Lots conveyed to the Lot Owner or Builder has been completed, then all parts of such Lots which are defined as being "Common Area" under Section 8 of ARTICLE I of this Declaration, and which are outside of the boundaries of the "Unit" or "Units" located within such Lots, as the "Unit" or "Units" are defined in Section 31 of ARTICLE I of this Declaration, and in ARTICLE IV of this Declaration, shall automatically be deemed to be and shall be and shall be conclusively and permanently treated as "Common Area," as defined in this Declaration, and specifically as defined and described in Section 8 of ARTICLE I of this Declaration, and all lawns, landscaping, trees, shrubs and other landscaping components located within such Common Area, and all parts and components of the irrigation system located within such Common Area, shall be "Common Elements," as defined and described in this Declaration, subject, however, to all of the terms, covenants, conditions and provisions of this Declaration.

Section 11. Time Limits for Construction of Building and Improvements and Developer's Rights and Option to Repurchase. Each Lot Owner (whether the Lot Owner is the intended owner and occupant of the Building to be placed on a Lot, or is the intended owner and occupant of one of the Units to be placed within Lots conveyed to such Lot Owner, or is a Builder) shall be required to start and fully complete construction of the Building to be placed on the Lot(s) conveyed to the Lot Owner or Builder, in accordance with the following requirements:

a. The construction of the Building must be started within no more than eighteen (18) months after the conveyance of the Lot(s) to a Lot Owner other then the Developer or the Developer's assignees or any other Class B Member; and

b. The Building to be placed on such Lots must be substantially completed, so as to be eligible for immediate issuance for each of the Living Units located within the Lots, by the City, of a final Certificate of Occupancy, within no more than thirty (30) months after the Lots are conveyed to a Lot Owner other than the Developer, any assignee of the Developer's Rights hereunder, or any other Class B Member, unless the Developer agrees, in writing, to an extension of such time limit.

If the time limits hereinabove described in this Section are not complied (that means conformed with) [and such time limits shall be of the absolute essence, subject to the Developer's written agreement to extend the time limits], then, or at any time after the expiration of the applicable time limit and before the commencement of the Building on the Lot(s) (if a Building has not been commenced), or the completion of the construction of the Building on the Lots (if such Building has been started but not completed), the Developer, or its assignee of its Developer's Rights hereunder, or its successor as the Developer hereunder, shall have an option to purchase from the then Lot Owner(s)/Unit Owner(s) (the Lot Owner(s) and Unit Owner(s) who then own the Lots) the Lot(s) previously conveyed to the Lot Owner or Builder, and the Building thereon if one then exists, for a Purchase Price ("the Purchase Price") equal to the sum of the following amounts:

i. The original Purchase Price paid for the Lots to the Developer or the Developer's successor to the Developer's Rights under this Declaration, or the Class B Member from whom or which the Lot was purchased; plus

ii. The aggregate sum of any actual Costs (actual out of pocket Costs) incurred and paid by the Lot Owner prior to the date of the exercise of the option, for the construction of any Building and improvements on the Lots.

The Developer or its assignee or its successor or other Class B Member who conveys the Lot to the Lot Owner (all collectively referred to herein as "the Developer") may exercise such option, which shall run with each Lot and shall be binding on each Lot Owner and such Lot Owner's heirs, personal representatives, and all successors in ownership of the Lots or of any of the Lots (and any Unit Owners of any Units within the Lots, are, collectively, "the Lot Owners") by delivering to the Lot Owner written notice of the exercise of such Option. If such written notice is so delivered, then the Developer shall have exercised the Developer's option and the Lot Owner shall be required to sell to the Developer, and the Developer shall be required to purchase from the Lot Owner, the Lot Owner's Lot(s) and any Building and Improvements then located thereon, for the Purchase Price. The Lot Owner shall be required to convey to the Developer marketable fee simple absolute title to the Lot(s), and the Building and improvements located thereon, free and clear of all liens, interests, judgments and encumbrances of any kind or nature whatsoever, excluding only any existing deed of trust on the Lot(s) for loans of the purchase price of the Lot(s) and/or for the cost of construction of the Building on the Lot(s), with the indebtedness secured by the encumbrance of such deed of trust to be paid from the proceeds of the Purchase Price (same being paid directly to the holder of the rights under the deed of trust), and, to the extent that the sum of such indebtedness exceeds the Purchase Price, the Developer shall assume and pay the difference (but only to the extent that the aggregate sum of the indebtedness represents only the original purchase price paid for the Lot(s) and the costs of construction actually incurred for the construction of the Building, and interest thereon). The obligations of the Lot Owner to convey the Lot(s), Building and Improvements to the Developer if the Developer exercises the Developer's option provided for by this Section 11 shall be fixed and absolute. The provisions of this Section are of the essence of the duties and obligations of each Lot Owner. The Developer shall be permitted to obtain the commitment for the issuance to the Developer of a policy of owner's indemnity title insurance, which will insure in the Developer that the Developer will obtain the title to the Lot(s) and Building required by this Section 11, and if the commitment for the issuance of such title insurance reasonably indicates to the Developer that the Developer will not obtain such title, then the Developer may cancel and terminate the contract to acquire the Lot(s) and the Building.

The Lot Owner(s) shall convey the Lot(s) and the Building to the Developer by the Lot Owner's general warranty deed, containing the usual and customary warranties. The closing of the purchase and sale of the Lot shall occur on a date and time specified by the Developer, by written notice to the Lot Owner, at the offices of a title insurance company acceptable to the Developer, which has offices in Columbia, Missouri; provided, however, that such closing shall occur within no more than forty-five (45) days after the Developer has given to the Lot Owner notice of the Developer's exercise of the Developer's option to repurchase the Lot(s). In the absence of any notice from the Developer to the contrary, and in the absence of any agreement to the contrary of the Lot Owner and the Developer, such closing shall occur on the thirtieth (30th) day following the date of the giving by the Developer to the Lot Owner of written notice of the Developer's exercise of the Developer's option to repurchase the Lot(s), at the hour of 10:00 a.m. o'clock, at the offices of Boone Central Title Company in Columbia, Missouri; provided, however, that if such thirtieth (30th) day is not a business day (Mondays through Fridays, excluding legal holidays), then the closing shall occur on the next succeeding business day. The Developer may exercise the Developer's option provided for by this Section 11 as to certain Lots or any Lot, and not as to other Lots, without waiving or relinquishing any such option. No failure by the Developer to exercise the Developer's option as to any Lot(s) shall be deemed to constitute a waiver or relinquishment of such option as to such Lot(s) or any subsequent Lot(s). The Developer's option provided for by this Section 11 shall completely cease and terminate, as to a Lot(s), if:

a. No Building has been started on a Lot and the Developer fails to exercise the Developer's option within thirty-six (36) months after the conveyance of the Lot to a Lot Owner other than the Developer or the Developer's assignees or any other Class B Member; or

b. A Building is commenced on a Lot, and such Building is fully completed and a Final Certificate of Occupancy for such Building is issued by the City, prior to the Developer's exercise of the Developer's option provided for by this Section; or

c. A Building is commenced on a Lot, but is not completed, and the Developer does not exercise the Developer's option provided for by this Section 11 within forty-eight (48) months after the date of conveyance of the Lot to a Lot Owner other than the Developer, any assignee of the Developer's Rights hereunder or any other Class B Member.

Section 12. Construction of Sidewalks. Each Lot Owner who purchases or acquires a Lot from the Developer, the Developer's Assignee of the Developer's Rights under this Declaration or another Class B Member, shall be required to construct the required sidewalks that are to be placed on such Lot, for each street frontage of such Lot, and must construct such sidewalk in accordance with the Performance Contract/Performance Agreement which the Developer executes or is required to execute with the City, and/or any applicable requirements of the City. Such sidewalk must be constructed by the Lot Owner, at the Lot Owner's cost and expense, even if the Lot Owner does not construct a Building, or even if the Lot Owner does not commence construction of the Building on the Lot within the time limits required by such Performance Contract/Performance Agreement. Each Lot Owner, therefore, upon acceptance of conveyance of a Lot to the Lot Owner by the Developer, the Developer's Assignee of the Developer's Rights under this Declaration or another Class B Member, shall be deemed to have agreed to assume (and shall have assumed), and to pay and perform, all of the Developer's duties and obligations under the Developer's Performance Contract/Performance

Agreement/Performance Bond with the City or otherwise to construct the sidewalks that are required to be placed on such Lot, and such Lot Owner shall indemnify, defend, save and hold harmless the Developer, and the Developer's Assignees of the Developer's Rights under this Declaration, and all Class B Members, of and from, any and all, and each and every, suit, action, cause of action, demand, loss, expense or liability arising out of the Lot Owner's failure to construct any sidewalk required to be placed within the Lot Owner's Lot, even if the Lot Owner does not build a Building on such Lot, as the requirements for such sidewalk are described in any Plat, the Plan or any Performance Contract, Performance Agreement or Performance Bond given by the Developer or any Assignee of the Developer's Rights as the Developer or any Class B Member to the City in connection with any plat approval process or other approval processes, or the Plan.

Section 13. Sewer Line Depth. Each Lot Owner or Builder agrees to measure or to cause to be measured the depth of the sewer line which services such Lot Owner's Lots, before excavation begins on such Lot(s). If a Lot Owner, Builder or contractor sets a foundation on a Lot which is too low to permit the Building on the Lot to be serviced by the sewer line that is in place, then the Lot Owner of such lot shall be required to indemnify, defend, save and hold harmless, the Board of Directors of the Association and its Architectural Control Committee, from all suits, actions, causes of action, claims, demands, losses, liabilities, damages, costs or expenses arising out of the setting of the Building or any dwelling on a Lot at a level which is too low to be serviced by the sewer line.

Section 14. Construction Activities. Each Builder who is a building a Building or improvements on any Lot (and the Lots Owners of such Lot, if different than the Builder, jointly and severally), shall be jointly and severally liable, obligated and responsible to the Association, the Developer, and the Lot Owners of each of the other Lots, and each of them, to comply with the following requirements during construction activities:

a. The Lot shall be kept, to the extent reasonably practicable using sound, reasonable and diligent construction practices, and to the extent reasonably consistent with sound construction practices, in a clean and neat condition, and free of debris and construction debris and waste;

b. The weeds on the Lot shall be kept mowed, and shall not be allowed to attain any appreciable height;

c. The Lot shall, to the extent practicable, be kept in a sightly condition;

d. Once construction of a Building or a structure on a Lot is commenced, it shall be prosecuted, thereafter, to completion, with reasonable diligence, so as to complete same within a reasonable time frame, as governed by sound and reasonable construction practices, diligently applied;

e. Construction activities, once commenced, shall not be abandoned, and shall be continuously prosecuted with reasonable diligence so as to complete the Building or structure as soon as reasonably practicable through the use of sound construction practices;

f. Erosion control measures shall be properly implemented, put in place, utilized and maintained and all erosion control requirements of the City shall be fully complied and conformed with, diligently and using the utmost good faith and diligence;

g. If dirt, mud or debris flows upon, or is caused to be deposited upon or placed upon any Street by reason of the construction activities performed on any Lot, then the Lot Owner and Builder must immediately cause same to be cleaned up and removed, at their expense, or if they do not do so, then the Developer or the Association or its Board or any member of such Board of any officer of the Association, or any Lot Owner, may clean up the Street or remove the mud, dirt or debris, and shall be entitled to immediate reimbursement, and the responsible Lot Owner and Builder shall be liable for all costs incurred in connection therewith, which shall be immediately due and payable, with any such costs incurred by the Association and any of its officers or directors to be a Special Assessment against the Lot and the Lot Owner thereof, enforceable in the manner described in ARTICLE VI of this Declaration;

h. Builders or Lot Owners who have engaged in any consistent violations of the provisions of this Section 14, any repeated violations or any repeated violation of the provisions of this Section 14, may be barred or by the Developer from the Development and from further construction of any Building, house or Improvement within the Development;

i. Compliance with all of the restrictions of this Section 14 shall be of the essence of the duties and obligations of each Lot Owner and Builder;

j. While Builders may park construction trailers, construction trucks or other vehicles within the Development, during the process of construction of a Building on a Lot, Builders shall not park trailers, trucks or other vehicles in front of (or permit their employees, contractors or subcontractors or suppliers, or any of their respective employees to park any truck, trailer or vehicle in front of) any Lot which contains a completed Building thereon or any Building thereon which is occupied or used as a residence or which is being made available for sale or occupancy;

k. The Lot Owner and the Builder shall indemnify, defend, save and hold harmless the Developer, the Developer's assignees of the Developer's Rights and all Class B Members, of and from any fine, penalty, cost, damage, expense, liability, obligation, claim, suit, action or cause of action arising out of any failure by the Builder and/or the Lot Owner to full comply with all of the requirements of this Section 14.

The Developer shall have the right to ban Builders from the Development who engage in consistent or regular violations of any of the provisions of this Declaration, or who fail to comply with reasonable requests of the Developer with respect to their construction practices.

Section 15. Drainage/Surface Water Drainage and Ground Water. The Lot Owner and Builder must proceed, reasonably, in dealing with drainage of and across the Lot Owner's Lots and in dealing with surface water to be drained from and across such Lot Owner's Lots. The Lot Owner and any Builder shall not unreasonably block, interfere with or obstruct the flow of surface from other Lots or Units and property across the Lot Owner's Lot or Lots. Reasonableness in dealing with ground water and surface water is required.

Section 16. Responsibility for Drainage. It shall be the responsibility of the Lot Owner and the Builder to provide for adequate drainage from such Lot Owner's Building and any Units within the Lot Owner's Lot(s). Neither the Developer, nor any Architectural Control Committee nor the Association nor its Board of Directors shall have any liability, obligation or responsibility, under the Architectural Control Provisions of this Declaration or otherwise to assure a Lot Owner or a Builder or any Lot Owners of adequate or appropriate drainage for ground water/surface water or storm water. The responsibility to provide for adequate drainage shall be the responsibility of the Lot Owner or the Builder, and the Builder of any Buildings or improvements placed on the Lots, and shall not be the responsibility of the Developer or the Association or its Board of Directors. Nevertheless, the Lot Owner and Builder must proceed, reasonably and in good faith and in accordance with sound design, building and construction practices, so as to provide for adequate drainage of any Building placed on the Lots and so as to not unreasonably obstruct or interfere with drainage of surface water/ground water from other Lots or Units or through natural drainageways. The erection of dams, berms, fences, walls or retaining walls to prevent the reasonable flow of ground water/surface water shall be prohibited.

Section 17. Landscaping, Berms and Fences. No landscaping, berms, fences or other structures or improvements shall be installed within any drainage easement, or shall be installed on any Lot in such manner as to impede or divert, in any fashion whatsoever, reasonable stormwater drainage from adjacent Lots or improvements.

Section 18. Gutters and Downspouts. The initial construction of gutters or downspouts shall be subject to approval as a part of the Architectural Control Provisions of ARTICLE VIII of this Declaration.

Section 19. Acceptance of Conveyance with Full Knowledge of Requirements of this Article. Any Lot Owner or Builder who or which accepts conveyance of a Lot from the Developer shall be deemed to have accepted such conveyance with full knowledge of all of the provisions and requirements of this ARTICLE and of this Declaration, and shall be obligated to comply with all of the provisions of this ARTICLE and this Declaration.

Section 20. Notice to Purchasers. If a Builder or Lot Owner acquires Lots from the Developer, and then conveys Units or Living Units within such Lots to Lot Owners or Unit Owners other than such Lot Owner or Builder, then the Lot Owner or Builder who originally acquired title to the Lots from the Developer shall be required to give copies of this Declaration to each new purchaser, Lot Owner or Unit Owner, and to advise them of the contents and restrictions of this Declaration.

Section 21. Subdivision Plat. No Lot Owner or Builder may amend or alter the Plat as it applies to the Lots acquired by the Builder or Lot Owner, without the prior written consent of the Developer or that party who then holds the Architectural Control Approval powers under ARTICLE VIII of this Declaration.

Section 22. Duties as to C Lot Even if C Lot is Not Conveyed to Lot Owner or Builder. If an A Lot and B Lot (or either an A Lot or B Lot) is sold or conveyed by the Developer to a Lot Owner or Builder (other than the Developer, Welek Construction Company, an affiliate of the Developer) or any other Class B Member of the Association or an assignee of the Developer's Rights hereunder (all

collectively referred to in this Section as "the Developer"), but the Developer does not convey to such Lot Owner or Builder (such Lot Owner and/or Builder and such Lot Owner's or Builder's successors being hereinafter referred to in this Section, collectively, as "the Lot Owner") the immediately adjacent C Lot [example: the Developer conveys Lots 101-A and 101B to a Lot Owner, but does not convey Lot 101C to the Lot Owner], then such Lot Owner shall, nevertheless, have the duty and obligation to (and hereby contracts and agrees to) install on the said adjacent C Lot, which is Common Area:

a. An irrigation system for the C Lot which is approved in accordance with the Architectural Control requirements of ARTICLE VIII of this Declaration;

b. Trees, shrubs, lawns, berms and other landscaping materials and components to be installed in accordance with a Landscaping Plan approved in accordance with the provisions of this ARTICLE and the provisions of ARTICLE VIII of this Declaration.

Therefore, the Lot Owner shall have the duties and obligations to install irrigation for and landscaping for the adjacent Common Area, the C Lot, as if the C Lot was conveyed to the Lot Owner in the manner hereinabove described in this ARTICLE. The duties and obligations of the Lot Owner to landscape the adjacent C Lot shall be absolute and shall be performed in accordance with the provisions of this ARTICLE as if the C Lot was conveyed to the Lot Owner. The Lot Owner and the Lot Owner's contractors and designees shall have an easement over the adjacent C Lot for purposes of installing the irrigation system, landscaping and other improvements which are to be installed on the C Lot pursuant to the provisions of this Section. If the Lot Owner fails to perform the Lot Owner's duties and obligations as to the adjacent C Lot, then the Developer and the Association shall have all of those rights and authorities as are conferred upon them by Section 11 of this ARTICLE.

Section 23. Deeds of Trust Subject to the Provisions of this Article. Any purchase money loan deed of trust and/or development or construction money loan deed of trust, which is granted by a Lot Owner or Builder to whom a Lot is conveyed by the Developer, shall be subject to all of the provisions ARTICLE and any mortgage or deed of trust granted for any construction money loan or purchase money loan shall be subject to and subordinated to the provisions of this ARTICLE.

## ARTICLE XXIV
## ALL C LOTS SHALL BE COMMON AREAS DEEMED TO BE OWNED BY ASSOCIATION WHETHER OR NOT OWNED BY ASSOCIATION

Whether or not the "C Lots" [examples: Lots 101C, 102C, etc., and Lots C1 and C2] are or are not conveyed to the Association they shall be Common Areas and Common Elements, and shall for intents and purposes be treated as if owned by the Association and is conveyed to the Association, and the Association shall for all intents and purposes be the owner of such C Lots. Therefore, if, for example, through inadvertence or otherwise, Lot 101C is not conveyed to the Association, it shall be treated as if so conveyed and the Association shall be the owner of such Lot.

**IN WITNESS WHEREOF, Welek Construction Company,** the Developer, has caused this Declaration to be executed in its name and on its behalf by its duly authorized members, all done on the day and year first above written.

**THIS DOCUMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAYBE ENFORCED BY THE PARTIES**.

**DEVELOPER:**
**Welek Construction Company, a Missouri corporation**

By: _____
John Welek, President

ATTEST:

_____
_____, secretary

| | |
|---|---|
| **Exhibit A** | Legal Description of Parcel |
| **Exhibit B** | Legal Description of Annexation Parcel |
| **Exhibit C** | Articles of Incorporation |
| **Exhibit D** | Bylaws |

STATE OF MISSOURI )
) ss.
COUNTY OF BOONE )

On this _____ day of _____, 2007, before me, the undersigned, a Notary Public, personally appeared John Welek, to me personally known, who being by me first duly sworn, did state and acknowledge that he is the president of Welek Construction Company, a Missouri corporation, and that the foregoing document constitutes the free and deed of said corporation.

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.

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

**APPROVAL AND SUBORDINATION BY HOLDER OF FIRST MORTGAGE TO DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS OF VISTAS AT OLD HAWTHORNE, AND MODIFICATION OF DEED OF TRUST**

THIS APPROVAL AND SUBORDINATION, AND THIS MODIFICATION OF DEED OF TRUST, is attached to the "Declaration of Covenants, Conditions, Easements and Restrictions of The Vistas at Old Hawthorne," Missouri," dated the _____ day of _____, 2007 ("the Declaration"), which such Declaration was executed by **Welek Construction Company**, a Missouri corporation, as the Developer (the said Welek Construction Company being referred to herein as "the Developer"). This document is executed by the said Developer and by **Boone County National Bank,** a banking corporation organized with a 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 in Book 3025 at Page 63 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 described in the Background Recitals of the foregoing Declaration, and the sale of Lots and Units within the Development.

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 the parcel of Vistas at Old Hawthorne (and all Land contained therein), shall be subordinated to the Declaration, and all of its terms, covenants, conditions and provisions, and to the various Plats of Vistas at Old Hawthorne, including the Plat of Vistas at Old Hawthorne Plat 1-A and any other Plats of Vistas at Old Hawthorne, and any other Plat hereafter recorded as to any portion of the Parcel (and any portion of the Annexation Parcel which is annexed to the Development) 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 Lots and Units of Vistas at Old Hawthorne, 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 lines of the Deed of Trust, and the Deed of Trust, shall be and are hereby subordinated to the provisions, easements, reservations and restrictions of the Declaration, and the Plats of Vistas at Old Hawthorne and each and every such Plat, and that the Deed of Trust shall, as to all of the Parcel of Vistas at Old Hawthorne [and any portion of the Annexation Parcel annexed to the Development] (and the Land and all Lots contained therein), 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 President [who warrants and represents to the Bank hereby that he is lawfully authorized to enter into this Agreement on behalf of such Developer and to bind 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, Welek Construction Company, a Missouri corporation (Grantor), with respect to Vistas at Old Hawthorne Homes Association, a not-for-profit corporation of the State of Missouri, the Association named in and provided for by the Declaration of Covenants, Conditions, Easements and Restrictions of Vistas at Old Hawthorne, executed by Welek Construction Company, as the Developer, and dated the _____ day of _____, 2007 , 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, Units 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, Welek Construction Company, 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 _____ day of _____, 2007, with the said Welek Construction Company executing this document acting by and through its president, 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:**
**Welek Construction Company**

By: _____
John Welek, President

ATTEST:

_____
_____, its secretary

**BANK:**
**Boone County National Bank**

(Corporate seal)

By: _____
Name Printed: _____
its _____

ATTEST:

_____
_____
its _____ secretary

STATE OF MISSOURI )
) SS
COUNTY OF BOONE )

On this _____ day of _____, 2007, me appeared John Welek, to me personally known, who, being by me duly sworn did say that he is the president of Welek Construction Company, a Missouri corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by of its Board of Directors, and said John Welek acknowledged said instrument to be the free act and deed of said corporation.

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

_____
_____, Notary Public
_____ County, State of Missouri
My commission expires: _____

STATE OF MISSOURI )
) SS.
COUNTY OF _____ )

On this _____ day of _____, 2007, before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared _____, to me personally known, who being by me first duly sworn, did state and acknowledge that he or she was _____ of Boone County National Bank, 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.

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

**EXHIBIT A**
**[The Parcel]**

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

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 14 AND THE SOUTHEAST QUARTER OF SECTION 15, BOTH IN TOWNSHIP 48 NORTH, RANGE 12 WEST, CITY OF COLUMBIA, BOONE COUNTY, MISSOURI, BEING A PORTION OF THE VISTAS AT OLD HAWTHORNE PLAT 1 AS RECORDED IN PLAT BOOK 40, PAGE 108 OF THE BOONE COUNTY RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF PLAT 1, THENCE ALONG THE QUARTER SECTION LINE N89°05'25"E, 558.14 FEET; THENCE ALONG SAID QUARTER SECTION LINE, N89°50'05"E, 576.64 FEET; THENCE S0°46'15"W, 62.08 FEET; THENCE ALONG A 375.00-FOOT RADIUS CURVE TO THE LEFT, 59.06FEET, SAID CURVE HAVING A CENTRAL ANGLE 9°01'30" AND A CHORD S86°15'30"W, 59.00 FEET; THENCE S81°44'45"W, 81.28 FEET; THENCE ALONG A 125.00-FOOT RADIUS CURVE TO THE RIGHT, 18.13 FEET, SAID CURVE HAVING A CENTRAL ANGLE 8°18'40" AND A CHORD S85°54'05"W, 18.12 FEET; THENCE N89°56'30"W, 10.63 FEET; THENCE S01°32'45"E, 157.94 FEET; THENCE S89°08'20"W, 534.58 FEET; THENCE S63°50'00"W, 59.10 FEET; THENCE S00°24'10"E, 137.04 FEET; THENCE S17°55'40"E, 169.39 FEET; THENCE S53°36'40"E, 130.88 FEET; THENCE S71°32'40"E, 241.02 FEET; THENCE S36°32'50"W, 25.89 FEET; THENCE S69°33'00"W, 106.38 FEET; THENCE ALONG A1200.00-FOOT RADIUS CURVE TO THE LEFT, 178.75 FEET, SAID CURVE HAVING A CENTRAL ANGLE 08°32'05" AND A CHORD S65°17'05"W, 178.59 FEET; THENCE ALONG A 20.00-FOOT RADIUS CURVE TO THE RIGHT, 30.04 FEET, SAID CURVE HAVING A CENTRAL ANGLE 86°03'20" AND A CHORD N75°57'30"W, 27.29 FEET; THENCE ALONG A 425.00-FOOT RADIUS CURVE TO THE LEFT, 377.50 FEET, SAID CURVE HAVING A CENTRAL ANGLE 50°53'30" AND A CHORD N58°22'35"W, 365.21 FEET; THENCE N83°49'20"W, 136.73 FEET; THENCE N01°42'50"W, 632.57 FEET TO THE POINT OF BEGINNING AND CONTAINING 10.66 ACRES (464,181 SQUARE FEET).

**EXHIBIT B**
**[The Annexation Parcel]**

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

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 48 NORTH, RANGE 12 WEST, CITY OF COLUMBIA, BOONE COUNTY, MISSOURI, BEING PART OF LOT SEVEN OF OLD HAWTHORNE PLAT 1 AS RECORDED IN PLAT BOOK 40, PAGE 86, ALL OF LOT C3 OF VISTAS AT OLD HAWTHORNE PLAT 1 AS RECORDED IN PLAT BOOK 40, PAGE 108 AND THE PROPERTY DESCRIBED BY THE WARRANTY DEED RECORDED IN BOOK 3025, PAGE 60; ALL BEING OF THE BOONE COUNTY RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT SEVEN, THENCE ALONG THE QUARTER SECTION LINE N89°05'25"E, 558.14 FEET; THENCE ALONG SAID QUARTER SECTION LINE, N89°50'05"E, 576.64 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID QUARTER SECTION LINE N89°50'05"E, 949.67 FEET; THENCE S0°32'50"E, 373.67 FEET; THENCE ALONG A 150.00-FOOT RADIUS CURVE TO THE LEFT, 217.29 FEET, SAID CURVE HAVING A CHORD S42°02'50"E, 198.79 FEET; THENCE S04°05'10"E, 459.75 FEET; THENCE S85°35'30"W, 92.91 FEET; THENCE ALONG A 575.00-FOOT RADIUS CURVE TO THE RIGHT, 232.05 FEET, SAID CURVE HAVING A CHORD N82°50'50"W, 230.47 FEET; THENCE N71°17'10"W, 779.26 FEET; THENCE ALONG A 525.00-FOOT RADIUS CURVE TO THE LEFT, 89.79 FEET, SAID CURVE HAVING A CHORD N76°11'10"W, 89.68 FEET; THENCE N14°19'00"E, 49.88 FEET; THENCE N87°08'00"E, 649.02 FEET; THENCE N71°28'10"E, 150.44 FEET; THENCE N25°12'40"E, 128.96 FEET; THENCE N05°09'30"W, 108.92 FEET; THENCE N32°26'40"W, 103.80 FEET; THENCE N80°06'00"W, 107.01 FEET; THENCE S89°08'20"W, 824.58 FEET; THENCE N01°32'45"W, 157.94 FEET; THENCE S89°56'30"E, 10.63 FEET; THENCE ALONG A 125.00-FOOT RADIUS CURVE TO THE LEFT, 18.13 FEET, SAID CURVE HAVING A CHORD N85°54'05"E, 18.12 FEET; THENCE N81°44'45"E, 81.28 FEET; THENCE ALONG A 375.00-FOOT RADIUS CURVE TO THE RIGHT, 59.06 FEET, SAID CURVE HAVING A CHORD N86°15'30"E, 59.00 FEET; THENCE N0°46'15"E, 62.08 FEET TO THE POINT OF BEGINNING AND CONTAINING 13.85 ACRES (603,260 SQUARE FEET)

**DECLARATION OF COVENANTS, CONDITIONS, RESERVATIONS, EASEMENTS AND RESTRICTIONS OF VISTAS AT OLD HAWTHORNE, A PLANNED UNIT DEVELOPMENT**

**Developer/ Grantor**: **Welek Construction Company,** a Missouri corporation [address: Welek Construction Company, 3212 Country Woods Road, Columbia, MO 65203]

**Grantee:** **Vistas at Old Hawthorne Homes Association,** a not for profit corporation of the State of Missouri [mailing address: c/o Welek Construction Company, 3212 Country Woods Road, Columbia, MO 65203]

_____].

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

See **Exhibit A** and **Exhibit B** hereto

**Date of Document:** _____, 2007

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