

THE *fields* OF *highland* PARK



**Deeds
and
Restrictions**

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
THE FIELDS OF HIGHLAND PARK

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE FIELDS OF HIGHLAND PARK (the "Declaration") is made and entered into as of the 5th day of October, 2006 by THE FIELDS OF HIGHLAND PARK DEVELOPMENT, L.L.C., a Missouri limited liability company, authorized to do business in the State of Missouri (the "Developer").

WITNESSETH:

WHEREAS, Developer is the record owner of that certain property situated in unincorporated Jackson County, Missouri, expected to be included within the limits of the City of Lee's Summit (the "City"), legally described on Exhibit A, attached hereto and made a part hereof. If said property fails to be included within the city limits of Lee's Summit, then the "City" shall refer to the municipal governing body or its equivalent. Said property, along with improvements made thereon, shall constitute the Subdivision; and

WHEREAS, Developer desires to submit and subject the Subdivision, together with all buildings, improvements, and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances, and privileges belonging or in any way pertaining thereto, to the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights contained herein, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision; and

WHEREAS, Developer deems it desirable, for the efficient management of the Subdivision, to create a homeowners association which shall exercise the powers and functions as are set forth herein; and

WHEREAS, The Fields of Highland Park Homeowners Association, Inc., a Missouri non-profit corporation (the "Association") is incorporated under the laws of the State of Missouri for the purpose of exercising such powers and functions; and

WHEREAS, Developer desires and intends that all persons or entities hereinafter acquiring any interest in the Subdivision shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Subdivision.

NOW, THEREFORE, Developer declares that all property within the Subdivision shall hereafter be held, transferred, sold, conveyed, leased, occupied, and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights hereinafter set forth, all of which shall run with the land and be binding upon all property within the Subdivision and all parties having or acquiring any right, title, or interest in or to any

property within the Subdivision, or any part thereof, and shall inure to the benefit of and be a burden upon each Owner, the Association, and each Association Member.

ARTICLE I.
DEFINITIONS

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows:

1.1 "Architectural Control Committee" or "ACC" means the committee established in accordance with Article VIII of this Declaration.

1.2 "Assessments" shall include the following:

(a) "Regular Assessment" means the amount that is to be paid by each Association Member as such Association Member's Proportionate Share of the Common Expenses incurred by the Association pursuant to the terms hereof.

(b) "Special Assessment" means a charge against a particular Association Member, an Owner, or a Lot, directly attributable to such Association Member, Owner, or Lot, pursuant to the provisions of this Declaration, the Articles, Bylaws, Rules or Design Standards.

1.3 "Articles" means the Articles of Incorporation, as such may be amended from time to time, of the Association or of any successor thereto.

1.4 "Association" means the Fields of Highland Park Homeowners Association, Inc., a Missouri non-profit corporation, its successors and assigns. The Association shall be established prior to the recording of the final plat or sale of any part of the Subdivision.

1.5 "Association Member" means every Person who holds a membership in the Association.

1.6 "Board" means the Board of Directors of the Association.

1.7 "Bylaws" mean the Bylaws of the Association, or of any successor thereto, adopted in accordance with the Articles, as such Bylaws may be amended from time to time.

1.8 "City" means the City of Lee's Summit, Missouri, a municipal corporation of the State of Missouri, or its equivalent.

1.9 "Common Area" means an area on the applicable Plat of the Subdivision designated as common area, which is owned by the Association, or for which the Association has maintenance and easement rights and obligations. The Common Area described herein is legally described as follows:

Commencing at the NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, TOWNSHIP 47, RANGE 31 thence South S 02°36'20"W, 50.00 feet to a point on the south right of way of Langsford Road, a roadway as described in Lee's Summit, Jackson County, Missouri; thence East along said south right of way, S 87°45'15"E, 206.95 feet; thence South S 02°14'45"W, 15.00 feet to the Point of Beginning; thence continuing South along previous course S 02°14'45"W, 4.72 feet; thence along a curve to the left tangent to the preceding course having a radius 160.00 feet an arc length of 10.28 feet; thence East S87°45'15"E, 15.00 feet; thence North N02°08'33"E, 15.00 feet; thence West N87°45'15"W, 15.22 feet returning to the Point of Beginning.

AND

Tract A, The Fields of Highland Park, Lot 1-69 & Tract A, a subdivision in Jackson County, Missouri.

1.10 "Common Expenses" means the actual and estimated costs accrued, incurred or to be incurred by the Association in administering, maintaining, operating and conducting activities in connection with the Subdivision for which the Association is responsible pursuant to the terms hereof. The Association shall incur all Common Expenses. The respective Association Members will bear their Proportionate Share of the Common Expenses incurred by the Association. Common Expenses contemplated hereby shall include, but not be strictly limited to, the following: (i) the cost of maintenance, management, operation, repair and replacement of any amenities constructed upon or within the Common Area, all common areas of the Subdivision, including without limitation, the various monuments located within Common Area or Monument Easements, and any other areas within the Subdivision which are, or shall in the future be, maintained by the Association; (ii) unpaid Assessments; (iii) the cost of maintenance by the Association of areas within the right-of-way of public streets in the vicinity of the Subdivision as provided in this Declaration or pursuant to agreements with the City; (iv) the cost of management and administration of the Association, including, but not limited to real estate taxes, insurance costs, security costs, compensation paid by the Association to managers, accountants, attorneys, and employees; (v) reasonable reserves for contingencies, replacements, and other proper purposes as deemed appropriate by the Board; and (vi) any other expenses incurred by the Association for any reason whatsoever in connection with any item or items to be provided or performed by the Association pursuant to this Declaration, or the Articles, Bylaws, Rules, or Design Standards, or in furtherance of the purposes of the Association or in the discharges of any duties or powers of the Association.

1.11 "Declaration" means this instrument, as from time to time may be amended.

1.12 "Default Rate of Interest" means an annual rate of interest equal to the lesser of eighteen percent (18%), or the highest lawful rate of interest which may be paid by the Person required to pay the Default Rate of Interest hereunder.

1.13 **"Design Standards"** means the requirements set forth in Section 8.2 and any other rules, regulations, restrictions, architectural standards and Design Standards, if any, from time to time adopted by the ACC.

1.14 **"Developer"** means collectively The Fields of Highland Park Development, LLC, its successors and assigns, or any person to whom Developer's rights hereunder are hereinafter assigned by recorded instrument.

1.15 **"First Mortgage"** means the Mortgage which is the first and most senior of all Mortgages upon the same property. **"First Mortgagee"** means the holder of a First Mortgage.

1.16 **"Lot"** means a numerically identified subdivided lot for a residential dwelling unit within the Subdivision as shown on the Plat, but does not include any Common Area. Ownership of any Lot in the Subdivision shall not occur until the Association is formed and ownership of all of the Common Area has been transferred to the Association.

1.17 **"Majority"**, where not specifically designated otherwise, means the Association Members holding more than fifty percent (50%) of the total votes entitled to be cast with respect to a given matter. Unless otherwise specified, any provision herein requiring the approval of the Association Members means the approval of a Majority of such Association Members.

1.18 **"Monument Easements"** means those easements, if any, set forth on the Plat, in favor of the Association for purposes of constructing, erecting and maintaining certain entranceway monuments and landscaping for the Subdivision.

1.19 **"Mortgage"** means any recorded, filed, or otherwise perfected instrument given in good faith and for valuable consideration which is not a fraudulent conveyance under Missouri law as security for the performance of an obligation, including, without limitation, a Deed of Trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.20 **"Occupant"** means any Person, other than an Owner, in rightful possession of a Lot, whether as a guest, tenant, or otherwise.

1.21 **"Owner"** means the record owner, whether one or more Persons, of fee simple title to any Lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. In the case of Lots, the fee simple title to which is vested of record in a trustee, legal title shall be deemed to be in the trustor.

1.22 **"Person"** means an individual, corporation, partnership, trustee, or other entity capable of holding title to real property, and their respective heirs, successors and assigns.

1.23 **"Plat"** means the plat of the Subdivision as recorded in the official records of Jackson County, Missouri, and as thereafter from time to time may be amended or supplemented.

1.24 "President" means the duly elected or appointed president of the Association.

1.25 "Proportionate Share" means the fraction wherein the numerator equals the number of Lot(s) owned by an Association Member (or giving rise to such membership) and the denominator equals the number of Lots owned by all Association Members (or giving rise to such memberships) then required to pay any particular Assessment.

1.26 "Rules" means the rules and regulations adopted by the Association pursuant hereto.

1.27 "Subdivision" means that parcel of real property referred to in the recitals hereof and described in Exhibit "A" hereto, together with all buildings, improvements, and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances, and privileges belonging or in any way pertaining thereto.

ARTICLE II. THE DECLARATION

Developer hereby establishes the Subdivision and this Declaration to govern the use and occupancy of Lots and Common Area within the Subdivision.

ARTICLE III. ASSOCIATION

3.1 **Purpose of Association.** The Association has been, or will be, incorporated as a non-profit corporation to administer and delegate responsibility for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Subdivision, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Declaration, the Articles, Bylaws, Rules or Design Standards and serve as the supervising and coordinating body for all of the Association Members.

3.2 **Membership in Association.** The members of the Association shall consist of the Developer and all of the Owners; provided, however, until such time as ninety-five percent (95%) of all Lots within the Subdivision (including Lots made a part thereof from time to time by annexation) have been sold to third parties, the Developer shall be the sole voting member. Thereafter, each Owner shall have one vote in the Association. Each Owner shall be entitled to one Association membership, as long as he or she is the Owner of his or her Lot, and such Owner shall specify in writing to the Association the name of the individual who will hold the Association membership. In the absence of such written specification, Assessments shall nevertheless be charged against the Lot and owner thereof, but there shall be no right to vote the membership. The Association Member must be an individual who is either an Owner, or if the Owner is or includes a Person other than an individual, the Association Member may be an

individual who is a partner, if the Owner is or includes a partnership, or an officer of a corporation, if the Owner is or includes a corporation, or a beneficiary of the trust, if the Owner is or includes a trust, or an Owner of the entity, if the Owner is or includes a person other than an individual, a partnership, a corporation or a trust. Once an Association Member has been specified by an Owner of a Lot, a new Association Member may only be specified for that Lot by the Owner upon the written approval of the President of the Association, which approval shall not be unreasonably withheld. Membership in the Association shall not be transferred, pledged, or alienated in any way, except as herein expressly permitted. Association membership shall automatically be transferred to the new Owner upon the transfer of the Lot to which it appertains (and then only to such transferee), whether by sale, intestate succession, testamentary disposition, foreclosure of a Mortgage, or other legal process transferring fee simple title to such Lot. Membership in the Association shall be mandatory for each Lot Owner in the Subdivision and any successive buyer.

3.3 **Pledge of Voting Rights.** Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to his Association membership with respect to his Lot to a Mortgagee as additional security, the vote of such Mortgagee will be recognized only if a copy of such proxy, or other instrument pledging such vote, has been filed with the Association.

3.4 **Assignment of Developer's Voting Rights.** If any Mortgagee to whom the Developer has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration, succeeds to the interests of the Developer by virtue of said assignment, the absolute voting rights of the Developer as provided in this Declaration shall not be terminated thereby, and such Mortgagee shall hold the Developer's membership and voting rights on the same terms as they were held by the Developer pursuant hereto.

3.5 **Association Board of Directors.** The affairs of the Association shall be conducted by its Board as herein provided and in accordance with the Articles and Bylaws. Except for directors elected by the Developer, each director shall be an Association Member or the spouse of an Association Member. If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director and his place on the Board shall be deemed vacant. The Developer shall have the sole and absolute power and right to appoint and remove the members of the Board until ninety-five percent (95%) of the Lots in the Subdivision (as it shall exist from time to time), have been sold to third parties. After that date, a Majority of the Members of the Association shall have the power and right to appoint and remove the members of the Board as provided in the Articles and Bylaws. When any member of the Board may be removed from office, by action of the Association Members, the following procedures shall be as follows: Upon the presentation to the President of a petition duly executed by thirty-three percent (33%) or more of all of the Association Members in favor of the removal from office of the member or members of the Board therein named, a referendum of the Association Members shall be promptly held to determine whether such member or members of the Board should be removed from office. Upon the affirmative vote of a Majority of all of the Association Members to remove such member or members of the Board from office, such member or members of the Board as herein provided shall be filled by an election of all of the Association Members in the manner provided in the Articles or Bylaws for the election of directors.

3.6 **Duties and Powers of the President of the Association.** To the extent not prohibited by law, or as otherwise herein expressly limited, the President of the Association shall be empowered to exercise control over the Association and to act on behalf of, and bind, the Association in every event wherein the Association is required or permitted to take any action. The action of the President shall at all times be subject to the review of the Board. Notwithstanding anything herein to the contrary, the President shall not have the power to borrow any funds on behalf of the Association, or increase the amount of or levy any Assessment without the prior written approval of the Board. In any dispute or disagreement between any Owners, Association Members, or any other Persons subject to this Declaration, relating to the Subdivision, or any question of interpretation, or application of the provisions of this Declaration, the Articles, Bylaws, Association Rules, or any Design Standards, the determination thereof by the President shall be final and binding on each and all of such Owners, Association Members, or Persons. The President may, at his election, delegate the resolution of such dispute or disagreement, to the Board, or to a committee appointed by the President.

3.7 **Approval of Members.** Unless elsewhere otherwise specifically provided in this Declaration, or the Articles, or Bylaws, any provision of the foregoing which requires the vote or written assent of the Association Members shall be deemed satisfied by the following:

(a) The vote in person, or by proxy, of a Majority of Association Members at a meeting duly called and noticed pursuant to the provisions of the Articles, or Bylaws, dealing with annual or special meetings of the Association Members, or

(b) Written consents signed by the specified percentage of Association Members as provided in the Bylaws.

3.8 **Additional Provisions in the Articles and Bylaws.** The Articles and Bylaws may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents, and members not inconsistent with law, or this Declaration.

3.9 **Rules.** The Board shall be empowered to adopt, amend, or repeal such rules and regulations as it deems reasonable and appropriate binding upon all Persons subject to this Declaration and governing the use and/or occupancy of any part of the Subdivision. The Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments or otherwise. The Rules shall govern such matters in furtherance of the purposes of the Association; provided, however, that the Rules may not unreasonably or unlawfully discriminate among Owners and Association Members, and shall not be inconsistent with this Declaration, the Articles, Bylaws, or Design Standards. The Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners, Association Members, and all other Persons having any interest in, or making any use of, the Subdivision, whether or not actually received thereby. In the event of any conflict between any provision of the Rules and any provision of this Declaration, or the Articles, Bylaws, or Design Standards, the provisions of the Rules shall be deemed to be superseded by

the provisions of this Declaration, the Articles, Bylaws, or Design Standards to the extent of any such conflict.

3.10 **Indemnification.** To the fullest extent permitted by law, every director and every officer of the Association created pursuant hereto, and the members of the ACC, and the Developer (to the extent a claim may be brought against the Developer by reason of its appointment, removal, or control over members of the Board or ACC) shall be indemnified by the Association and every other person serving as an employee, or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding or any settlement thereof to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or in the case of the Developer by reason of having appointed, removed, or controlled, or failed to control members of the Board, or ACC) whether or not he is a director, officer, or member of the ACC, or serving in such other specified capacity at the time such expenses are incurred; provided, however, that prior to agreeing to any such indemnification, the Board shall determine, in good faith, that such officer, director, member of the ACC, or other Person, or the Developer, did not act, fail to act, or refuse to act willfully, or with gross negligence, or fraudulent, or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise.

3.11 **Non-Liability of Officials.** To the fullest extent permitted by law, neither the Developer, the President, any Board members, any ACC member, or any other members of committees of the Association, nor any officers of the Association, shall be liable to any Association Member, Owner, Occupant, the Association, or any other Person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval, or disapproval of plans or specifications (whether or not defective), course of action, inaction, omission, error, negligence, or the like made in good faith and which the Developer, the President, any Board member, or such committees or persons reasonably believed to be within the scope of their respective duties.

3.12 **Easements.** In addition to the blanket easements granted in Section 4.1, the Association is authorized and empowered to grant upon, across, or under real property owned, or controlled, by the Association such permits, licenses, easements, and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cables, and other similar public or private utility purposes, roadways, or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation, and enjoyment of all or any part of the Subdivision, or the preservation of the health, safety, convenience, and welfare of the Owners and Association Members, provided that any damage to any Lot resulting from such grant shall be repaired by the Association at its expense.

3.13 **Accounting and Records.** The Association at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles. The Association shall, upon reasonable written request and during reasonable

business hours, make available for inspection by each Association Member, the books, records, and financial statements of the Association together with current copies, as amended from time to time, of this Declaration and the Articles, Bylaws, Rules, and Design Standards. The Developer shall be under no obligation to make its own books and records available for inspection by the Association, any Owner, Association Member, or other Person.

3.14 **Managing Agent.** Any powers, duties, and rights of the Developer, the Association created pursuant hereto, or of the President, or Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Developer and/or Association of its obligation to perform any such delegated duty. Any agreement for professional management, or any other contract providing for services, shall not exceed a term of three (3) years, which term may be renewed by agreement of the parties for successive one-year periods, and shall further provide for termination by either party with or without cause and without payment of a termination fee upon 90 days' written notice.

3.15 **Developer's Control of Association.** Notwithstanding anything in this Declaration to the contrary, the Developer shall maintain absolute control over the Association and the ACC, including appointment of the President and members thereof, until ninety-five percent (95%) of the Lots in the Subdivision (as it exists from time to time) have been sold to third parties. The Developer voluntarily may (but shall not be required to) permit the members of the Association to assume control of the Association at any time. Such transfer of control shall be effectuated by way of a document executed by Developer and placed of public record in the official record of Jackson County, Missouri.

3.16 **Dissolution of Association.** The Association shall not be dissolved without the consent of the [City of Lee's Summit], unless the maintenance responsibilities set forth herein are assigned, with the consent of the [City], to a person or entity with the financial, legal, and administrative ability to perform such obligations.

ARTICLE IV. **EASEMENTS**

4.1 **Creation of Easements.** There is hereby created a blanket easement upon, across, over, and under the Subdivision for: (a) ingress and egress (over existing roadways), (b) provided the same meets City approval, for installing, constructing, replacing, repairing, maintaining, and operating all utilities, including but not limited to water, sewer, gas, telephone, electricity, television cable, security systems, and communications lines and systems, and (c) constructing and maintaining subterranean structures, footings and supports, drainage and storm water detention facilities, entrance-way monuments and above-ground protrusions which do not unreasonably interfere with the surface use of any Lot, and (d) for the use of emergency vehicles of all types. Such blanket easement shall in no way affect any other recorded easements on the Subdivision. When an easement contemplated hereby has been specifically located and established by an appropriate document or record, the blanket easement associated therewith shall cease to have any force and effect.

4.2 **Developer Easement.** There is hereby created an affirmative, nonexclusive easement in favor of Developer, and appurtenant to the property described on Exhibit "A" hereto, for ingress and egress over all of the Subdivision and for the right to go over, under, and across, and to enter and remain upon all of the Subdivision for all purposes consistent with development and maintenance of the Subdivision.

4.3 **Common Area Taxes and Insurance.** The Association shall be obligated to pay all real estate taxes and assessments which may, from time to time, be applicable to the Common Area and to maintain general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in, on or about the Common Area in order to afford protection in an amount of not less than One Million Dollars (\$1,000,000.00) for any occurrence and not less than One Hundred Thousand Dollars for property damage (\$100,000.00). The Developer shall not be required to transfer ownership of the Common Area, or portions thereof, to the Association, but when the Developer does transfer such ownership, the Association agrees to accept such transfer and to continue to be responsible for all taxes and assessments, insurance, maintenance and other costs incidental to ownership and operation thereof.

ARTICLE V. **ASSESSMENTS**

5.1 **Creation of Lien and Personal Obligation.** Each Owner and Association Member, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to covenant and agrees to pay any or all of the Regular Assessments, Special Assessments or other amounts due hereunder to the Association or Developer in accordance with the terms hereof. Such Assessments and all other amounts due under the terms hereof, together with interest thereon, late charges, attorneys' fees, and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon such Owner's or Association Member's Lot against which the Assessments are made or in connection with which such other amounts are due. Such lien shall attach immediately and automatically when any Assessment is due and payable. Each Assessment and other amounts due, together with such interest and other costs, shall also be the personal obligation of the Owner or Association Member and such obligation shall not pass to an Owner or Association Member's successor unless expressly assumed by him. The obligation of an Association Member and the Owner of the Lot to which such membership appertains for the payment of Assessments and other amounts shall be joint and several.

5.2 **Purpose of Assessments.** The Assessments levied by the Association shall be used: (a) to promote the recreation, health, safety, and welfare of Owners and Association Members, (b) to enhance the value of the Subdivision, (c) to pay the costs of administration of the Association, (d) to pay all other Common Expenses, or (e) to otherwise further the interests of the Subdivision.

5.3 **Regular Assessments.** Each Association Member shall pay as its Regular Assessment such member's Proportionate Share of the Common Expenses of the Association.

The Board shall annually determine the amount of the Regular Assessment to be paid by each Association Member and notify the member thereof. Each Association Member shall thereafter pay to the Association its entire Regular Assessment on or before the beginning of the Association's fiscal year, which date shall be set forth in the written notice sent to members. If the Board subsequently determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Association member for the balance of the year and the date or dates when due. Each Association Member shall be notified of the additional amount required to be paid and the due date of such payment. If the estimated total Regular Assessments for a current year prove to be excessive in light of the actual Common Expenses experienced by the Association, the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, or reduce the amount of the Regular Assessments for the next fiscal year. No reduction or abatement of Regular Assessments because of any such anticipated surplus may diminish the quantity, or quality, of services upon which the Common Expenses for the year in question are based, and if supplemental assessments are required, they shall be made as set forth above.

5.4 **Special Assessments.** Special Assessments shall be levied by the Association against an Association Member and/or an Owner and his Lot to reimburse the Association for: (i) costs incurred in bringing an Association Member or an Owner and his Lot into compliance with the provisions of this Declaration, or the Articles, Bylaws, Rules or Design Standards; (ii) any other charge designated as a Special Assessment in this Declaration, or the Articles, Bylaws, or Rules; (iii) fines levied or fixed by the Board as provided herein; and (iv) attorneys' fees, interest, and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this Declaration or the Articles, Bylaws, Rules or Design Standards.

5.5 **Uniform Assessment.** All Regular Assessments shall be uniformly based on Proportionate Shares for each Association Member.

5.6 **Exempt Property.** All properties and Lots in the Subdivision owned by the Developer, or dedicated to and accepted by, or otherwise owned or acquired by, the City or other public authority shall be exempt from the Assessments created herein.

5.7 **Date of Commencement of Regular Assessments.** The Regular Assessments shall commence as to each particular member of the Association, on the date of conveyance to the Owner of the Lot to which the Association membership appertains, and shall be prorated for the first year of ownership at the time of such conveyance.

5.8 **Time and Manner of Payment; Late Charges and Interest.** Assessments shall be due and payable by the respective members in such manner and at such times as the Association shall designate in accordance with the terms hereof. If not paid within ten (10) days after its due date, each such Assessment shall have added to it a late charge equal to 10% of the amount of Assessment and thereafter bear interest at the Default Rate of Interest until paid. The

Association may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A delinquent member shall, to the extent allowed by then applicable law, be liable for attorneys' fees and other related costs incurred by the Association as a result of such delinquency, and if any suit, action, or proceeding is brought to collect any such Assessment to charge, then there shall be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgement or award rendered thereon. The delinquency of an Association Member shall be deemed to also constitute the delinquency of the Owner of the Lot to which such membership appertains.

5.9 **No Offsets.** All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, any claim that the Association, Board, President, or the Developer is not properly exercising its duties and powers as provided in this Declaration or any documentation associated herewith, or that Assessments for any period exceed Common Expenses.

5.10 **Homestead Waiver.** Each Owner and Association Member, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration or any documentation associated herewith (whether such liens are now in existence or are created at any time in the future), the benefit of any redemption, homestead or exemption laws of the State of Missouri now in effect, or in effect from time to time hereafter.

5.11 **Subordination of Lien.** Any lien which arises against a Lot by reason of the failure or refusal of an Owner, or Association Member, to make timely payment of any assessment shall be subordinate to the lien of a prior recorded First Mortgage (together with any interest, cost, reasonable attorneys' fees and any late charges related thereto) on the Lot, acquired in good faith and for value, except for the amount of the unpaid Assessment which accrues from and after the date on which a First Mortgagee comes into possession of, or acquires title to the Lot, whichever occurs first.

5.12 **Certificate of Non-Payment.** Upon request, any Person acquiring an interest in any Lot shall be entitled to a certificate from the Association setting forth the amount of due but unpaid Assessments relating to such Lot, if any, and such Person shall not be liable for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Assessments which occur, or become due, after the date thereof and any interest, costs, attorneys' fees, and any late charges related to such Assessments.

5.13 **Enforcement of Lien.** Any lien provided for in this Article V may be foreclosed by the Association in any manner provided, or permitted, for the foreclosure of realty mortgages or homes association liens in the State of Missouri.

ARTICLE VI. INSURANCE

6.1 **Authority to Purchase.** The Association may purchase and maintain such insurance, and in such types and amounts as its Board shall determine from time to time. Premiums paid for such insurance shall be a Common Expense. Such policies, and endorsements thereon, or copies thereof, shall be deposited with the Association and copies shall be available to the Association Members and Owners upon reasonable request. Neither the Association nor any Board member nor the President nor the Developer shall be liable to any Owner, Association Member, Mortgagee, or other Person, if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner and Association Member to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner or Association Member may desire.

6.2 **Insurance Claims.** The Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The President has full and complete power to act for the Association in this regard and may, at his discretion, appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

6.3 **Benefit.** Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association, or any insurance trustee, shall be held or disposed of in trust for the Association, the Owners and the Association Members, as their interests may appear.

ARTICLE VII. **COMMON AREA AND MAINTENANCE**

This declaration of covenants and restrictions pertaining to the Common Area shall be permanent.

7.1 **Use of Common Area.** Every Owner, by reason of such ownership, shall have a right and easement of enjoyment in and to all Common Area and such easement shall be appurtenant to and shall pass with every Lot owner upon transfer. Any guest of a Member shall be entitled to a right or privilege of enjoyment of Common Area subject to such regulations as may be declared by the Board of Directors of the Association. Each such guest shall be accompanied by the Member sponsoring such guest at all times such guest is using the Common Area.

7.2 **Maintenance of Common Area.** Except as otherwise provided herein to the contrary, maintenance, repairs and replacements of the Common Area shall be furnished by the Association as part of the Common Expenses and shall be subject to the Articles, Bylaws and Rules. If, due to the act or neglect of an Owner or Association Member, or the invitee, guest, or other authorized visitor of either, or an Occupant of such Owner or Association Member's Lot,

damage shall be caused to the Common Area, or maintenance, repairs or replacement shall be required which would otherwise be a Common Expense, then to the extent not covered by the Association's insurance, such Owner or Association Member shall pay for the damage and for such maintenance, repairs and replacements as may be determined necessary or appropriate by the Board. Such obligation shall be collected by way of a Special Assessment, the payment of which shall be secured by the lien provided for in Article V. An authorized representative of the Association and all contractors, repairmen or other agents employed or engaged by the Association, shall be entitled to reasonable access to each of the Lots as may be required in connection with the inspection, maintenance, repairs or replacements of or to the Common Area or any equipment, facilities or fixtures affecting or serving same, or to perform any of the Association's duties or responsibilities hereunder.

All Owners within the Subdivision shall be liable for the costs of maintenance of the Common Area and the costs of such maintenance shall be assessed proportionally against the Owners in accordance with the Rules of the Association.

7.3 Damage or Destruction of Common Area by Owner. In the event any Common Area is damaged or destroyed by an Owner, or any of his/her/its guests, tenants, licensees, agents or members of their families, such Owner does hereby authorize the Association to repair such damaged areas. The amount expended for such repairs shall be a lien upon the Lot of said Owner and shall be enforceable as other Assessments referenced in Article V above.

In the event that any condition of the Common Area is determined to be a nuisance or in disrepair in violation of any provision of the Lee's Summit Property Maintenance Code, and such disrepair or nuisance is abated pursuant to procedures otherwise provided in the Property Maintenance Code, the costs to abate the nuisance created by the failure to maintain the Common Area shall be assessed proportionally against the individual Lots within the Subdivision, in an equal amount per individual Lot, pursuant to the tax bill provisions of the Property Maintenance Code, and the amount caused by the Finance Director to be assessed annually by tax bill shall not exceed five percent (5%) of assessed valuation per individual Lot.

ARTICLE VIII. ARCHITECTURAL AND DESIGN CONTROL

8.1 Architectural Control Committee. The Association shall have an Architectural Control Committee, which shall be the Developer until Developer has sold ninety-five percent (95%) of the Lots restricted by this Declaration to third parties, or until such time as Developer relinquishes such right to the Association. Thereafter, members of the ACC shall consist of three (3) persons who shall be appointed by the Board. Persons appointed to the ACC, other than those persons appointed by the Developer, must be Association Members or satisfy such other requirements as may be set forth in Design Standards. The Developer voluntarily may (but shall not be required to) permit Association Members to appoint one or more members of the ACC at any time.

8.2 The Design Standards.

(a) Landscaping. Each Lot, when first improved for occupancy, shall be landscaped with at least one (1) shade tree of a hardwood nature, which tree shall be at least 1 – 2 inches in trunk diameter, planted in the front yard of each Lot. All ground areas shall be covered with sod rather than seeding.

(b) Hard Surfaces. All paved surfaces shall be of high quality finish such as brick, concrete or other permanent material approved by the ACC. Asphalt paving shall not be acceptable.

(c) Construction Period Requirements. During the period that construction is being undertaken on a Lot, the following minimum measures will be required to minimize disturbance to adjacent sites: (i) no dumping of construction materials, waste or trash shall occur in the Subdivision; and (ii) each Lot shall be maintained in a clean and orderly manner during construction. Erosion shall be controlled on each Lot in a manner complying with City requirements.

(d) Residence Design. The design of each residence shall be subject to the approval of the ACC. Colors, materials, finishes and building forms shall be in conformity with the requirements hereof and integrated with the particular landscape and with neighboring sites, particularly with regard to drainage and views. No modular homes or prefabricated walls or houses will be allowed to be built on a Lot or moved on to a Lot from any other site.

(e) Exterior Materials and Colors. Residences shall be faced on all sides with quality materials, which shall be subject to the approval of the ACC. All residences are to be painted with earth tone colored paint on the exterior walls. Roofs shall be Timberline (Weathered Gray) or other equal or similar roofing having at least a thirty (30) year warranty.

(f) Garages. Each residence must have an attached, fully enclosed garage for not less than two and not more than four vehicles. Garages shall have the same architectural treatment and be constructed of the same materials as the house.

(g) Construction, Location, and Size Limitations. Construction of a residence must be commenced within one (1) year of the purchase of a Lot. If additional time is necessary, i.e. under special circumstances or if one Owner has purchased multiple lots, permission may be granted by the ACC. Once commenced, construction will be diligently pursued to completion and residence may not be left in an unfinished condition for more than thirty (30) days without written approval from the ACC. Minimum square footage requirements for residences shall be in compliance with the following:

1. The finished floor area of the main level shall be a minimum of at least 1650 square feet for all one-story and reverse story and one-half (1.5) residences.

2. There shall be a minimum of at least 1,000 square feet of finished first floor area and at least 1,800 square feet of total finished floor area for any split-level residence of any kind.

3. There shall be a minimum of at least 900 square feet of finished first floor area and a total finished floor area of not less than 2,300 square feet for any two story residence.

4. There shall be a minimum of at least 1,300 square feet of finished first floor area and at least 1,700 square feet of total finished floor area for any one and one-half story (1.5) residence of any kind.

5. The above-required minimum square footages shall be exclusive of porches, attached garages, carports, breezeways, steps, eaves, and similar portions of such residences. The Developer and/or the ACC reserves the right to require greater square footages on the approval of any plan. No building or structure other than a residence shall be erected, altered, placed or permitted to remain on any Lot. No residence may exceed two (2) levels in height, excluding the basement.

In calculating the foregoing minimum square footage requirements, unfinished basements, finished basements without walkouts, porches, decks, overhangs and garages shall not be considered. All residences and other improvements shall be located on each Lot as approved by the ACC and in full compliance with any setback lines, side yard or restrictions shown on the applicable Plat. All residences shall be subject to a minimum side yard set back of at least seven and one-half (7.5) feet.

(h) **Swimming Pool and Other Amenities.** In-ground swimming pools and external or outdoor hot tubs or spas may be allowed on any Lot. No above-ground swimming pools shall be allowed on any Lot. The pool or hot tub must be surrounded by either a patio, deck or landscaping, and the yard must be fenced according to ACC specifications. The ACC shall have the right to approve and designate any appropriate screening for such permitted installations. Any decorative pond or pool would require the approval of the ACC.

(i) **Fencing.** All fencing and walls (including, without limitation, the composition and location thereof) shall be subject to the approval of the ACC, which shall give consideration to maintaining the free and unobstructed flow of storm water discharge. Chain link fencing is prohibited, with preference for four foot high wood fencing. A six-foot high fence shall be allowed along the back or side of any Lot which adjoins Langsford Road. The ACC must give prior approval for any other type of fencing.

8.3 **Review Process.** Signed, written approval by the ACC shall be required prior to the undertaking of any site improvements, construction or installation, including clearing, grading, paving, signs, structures, landscaping and building and additions or alterations. Submission to the City for building permits or site plan approval shall not be made until final plans have been approved by the ACC. The review of each complete submission and

notification of recommendations or approval will be provided in writing to the Owner within ten (10) days of such complete submission.

8.4 **Interpretation and Waiver.** The ACC's interest in reviewing site and building designs is to assure that a high quality of compatible development is consistently achieved. In order to meet special situations that may not be foreseen, it may be desirable from time to time for the ACC to allow variances of certain requirements; however, such variances shall not be considered precedent setting. All approvals and consents of the ACC shall be in writing, and oral approvals or consents shall be of no force or effect.

8.5 **Architectural Control Committee Authority and Limits of Liability.** No residence, fence, wall or other structure or improvement of whatever type shall be commenced, erected or maintained within the Subdivision, except in compliance with plans and specifications therefor which have been submitted to and approved by the ACC. By its approval of plans and specifications, the ACC shall not be deemed to have warranted or approved the same for engineering design safety, or for compliance with zoning, health and building ordinances. Neither the ACC, the members thereof, the Association, any of its members, its officers, its Board nor the Developer assumes any liability or responsibility therefor, or (i) for any defect in any structure constructed from such plans and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (iii) the development of any property within the Subdivision.

8.6 **Authorized Builders.** The Developer, while in control of the Association and Board pursuant to this Declaration, reserves the right to approve or disapprove of any builder intending to construct a residence.

8.7 **Public Approvals.** All pertinent requirements of public agencies must be followed in the development of the Subdivision, and the appropriate departments of the City must approve all plans. Each Owner must verify code requirements at the time of purchase and development. Although based in part on local zoning and subdivision regulations, the Design Standards may be more restrictive in land use, site development standards, landscape requirements, or in other matters. In every case in which this criteria is at variance with public agency requirements, the more restrictive regulations shall govern. The City will make final legal approvals permitting development and occupancy of the property.

ARTICLE IX.
USE AND OCCUPANCY RESTRICTIONS

9.1 **Residential Use.** Each Lot within the Subdivision may be used only for single-family residential purposes and no other. No business or commercial building may be erected on any Lot and no business or commercial enterprise, or other non-residential use, may be conducted on any part thereof; provided, however, home offices, home daycares, and similar ancillary uses will be allowed, so long as such use does not generate an unacceptable amount of parked vehicles on the street and such use is in compliance with all applicable City codes and ordinances. No temporary buildings, structures, or trailers may be erected, placed or maintained on any Lot, except as expressly permitted by, and in compliance with, the Design Standards. Nothing herein contained shall be deemed to limit the Developer's rights as set forth in this Declaration.

9.2 **Violation of Law, Rule or Ordinance.** No Owner or Association Member shall permit anything to be done or kept on his Lot which would be in violation of any law, rule or ordinance.

9.3 **Signs.** No sign of any kind shall be displayed to the public view, or from any Lot without the approval of the Association, or the ACC, except: (a) such signs as may be used by Developer in connection with the development and sale of Lots in the Subdivision; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; or, (c) such signs as may be required for traffic control and regulation of streets of the Subdivision. Notwithstanding the foregoing, standard "For Sale" signs as commonly used by realtors in the Lee's Summit, Missouri market area, shall be permitted during periods in which individual Lots are offered for sale by Owners

9.4 **Animals.** No animals, including domestic farm animals, fowl or poisonous reptiles of any kind, may be kept, bred, or maintained, on any Lot, except a reasonable number of commonly accepted household pets. In no event shall any domestic pet be allowed to run free away from its Owner's Lot, without a leash, or so as to create a nuisance. No dog runs shall be allowed on any Lot.

9.5 **Nuisances.** No Owner or Member shall permit or suffer anything to be done or kept about or within his Lot, or on or about, any portion of the Subdivision, which will obstruct or interfere with the rights of other Owners, Association Members, Occupants, or Persons, or commit, or suffer any illegal act to be committed therein. Each Owner or Association Member shall comply with the Rules, the requirements of all health authorities and other governmental authorities having jurisdiction over the Subdivision.

9.6 **Boats and Motor Vehicles.** No boats, trailers, buses, motor homes, campers, or other vehicles shall be parked or stored in, or upon a Lot except within an enclosed garage, and except that an Owner shall be allowed to park such vehicles in his driveway for up to ten (10) consecutive days, but not more than sixty (60) days in any one calendar year. Nothing shall be parked on the streets in the Subdivision except as may be permitted by the City, or in such parking areas as may be designated by the Association. Vehicles are not allowed to be parked on

the streets of the Subdivision overnight. The Association may remove, or cause to be removed, any unauthorized vehicle or other item prohibited hereby at the expense of the Owner thereof in any manner consistent with law.

9.7 **Unlicensed Vehicles.** No Owner shall be allowed to park an unlicensed vehicle or vehicle in disrepair in the driveway or on the lawn of a Lot. Such vehicle may be parked inside the garage of said Lot.

9.8 **Lights.** No spotlights, floodlights, or other high intensity lighting, shall be placed or utilized upon any Lot in a manner which unreasonably interferes with the enjoyment of adjoining Lots.

9.9 **Antennas.** No external radio, television or other antennas of any kind or nature (including, but not limited to "large satellite dishes") or other device for the reception or transmission of radio, microwave or other similar signals, shall be placed, or maintained upon unenclosed portions of any Lot. A maximum thirty-six inch satellite dish may be installed on the back or side portion of a residential dwelling located on a Lot.

9.10 **Garbage.** No garbage or trash shall be kept, maintained or contained in any Lot so as to be visible from another Lot. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot. No trash shall be set out any earlier than twenty-four (24) hours prior to the designated trash collection day.

9.11 **Safe Condition.** Without limiting any other provision in this Article, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair, and shall correct any condition or refrain from any activity which might interfere with the reasonable safety of others. Except for barbecues, in properly constructed barbecue pits or grills, and fire pits in compliance with the Rules and the applicable Design Standards, no open fires shall be permitted on any Lot, nor shall any other similar activity or condition be permitted.

9.12 **No Obstructions to Drainage.** No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage or flow of storm water without the written consent of the ACC. No non-permanent structures, including fences, may be erected in those areas which contain any underground closed conduit storm drainage facilities.

9.13 **Outbuildings.** No outbuilding or other detached structure may be erected on any Lot.

9.14 **Rental of Lots.** An Owner who leases his Lot to any Person shall be responsible for assuring compliance by his lessee with all of the provisions of this Declaration and the Articles, Bylaws, Rules and Design Standards, all as amended and supplemented from time to time, and shall be jointly and severally responsible for any violations by his lessee thereof.

9.15 **Basketball Goals.** Freestanding basketball goals may be erected without the prior written consent of the ACC. No basketball goal will be attached to any building but shall be freestanding.

9.16 **Enforcement.** The Association, or its authorized agents, may enter any Lot on which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses and such fines as may be imposed pursuant to the Bylaws, Rules or Design Standards, shall be a Special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of Article V hereof. All remedies described in Article XII hereof and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Association Member, Occupant or other Person of any provision of this Article IX.

9.17 **Modification.** The Developer, or the Association, may modify or waive the restrictions in this Declaration or otherwise restrict and regulate the use and occupancy within the Subdivision and the Lots pursuant to reasonable rules and regulations of general application within the subdivision adopted by the Developer or Board from time to time.

ARTICLE X. RIGHTS OF FIRST MORTGAGEES

10.1 **Liability for Prior Assessments.** A First Mortgagee who comes into possession or becomes record Owner of a mortgaged Lot by virtue of foreclosure of a First Mortgage, or assignment in lieu of foreclosure or any third-party purchaser at a foreclosure sale or trustee's sale, will not be liable for such Lot's unpaid dues, charges or Assessments which may accrue prior to the time such First Mortgagee or third-party purchaser comes into possession of such Lot. Any such unpaid dues, charges or Assessments against the Lot foreclosed may be deemed to be a Common Expense. Nevertheless, in the event the Owner or Association Member against whom the original Assessment was made is the purchaser, (or redemption purchaser), the lien shall continue in effect and may be enforced for the respective Lot's Assessment that was due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment shall continue to exist as the personal obligation of the defaulting Association Member (and the defaulting Owner of the respective Lot) to the Association, and the Board may use reasonable efforts to collect the same from said member and/or Owner even after he is no longer a member of the Association or the Owner of the Lot.

10.2 **Enforcement After Foreclosure Sale.** An action to abate the breach of any of these covenants, conditions, restrictions, and reservations may be brought against the purchasers trustee's sale (or through any equivalent proceedings), and the successors in interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an interest in such Lot.

10.3 **Subject to Declaration.** At such time as the First Mortgagee, or any other Mortgagee, shall come into possession of or become record Owner of a Lot, such Mortgagee shall be subject to all the terms and conditions of this Declaration including, but not limited to,

the obligation to pay all Assessments and charges accruing thereafter in the same manner as any other Owner.

ARTICLE XI **EXEMPTION OF THE DEVELOPER FROM RESTRICTIONS**

Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of the Developer, its employees, agents and subcontractors, or parties designated by it in connection with the construction, completion, sale or leasing of the Lots, or any part of the Subdivision.

ARTICLE XII **REMEDIES**

12.1 **General Remedies.** In the event of any default by any Owner, Association Member, Occupant or other Person under the provisions of this Declaration, or any other declaration or documentation contemplated hereby, the Association or the Developer or the successors, assigns, or agents of either, shall have each and all of the rights and remedies which may be provided for in this Declaration, or any other declaration or documentation contemplated hereby, or which may be available at law or equity, and may prosecute against such defaulting Owner, Association Member, Occupant, or other Persons for an injunction, whether affirmative or negative, or for enforcement or foreclosure of the lien herein provided and the appointment of a receiver for the Lot, or for damages, or performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Lot and to rent the Lot and apply the rents received to payment of unpaid Assessments and interest accrued thereon, and to sell the same as hereinafter in this Article XII provided, or for any combination of remedies, or for any other relief, all without notice and without regard to the value of the Lot or the solvency of such Owner or Association Member. The proceeds of any such rental or sale shall first be paid to discharge court costs, other litigation proceeding and sale, and all such items shall be taxed against the defaulting Association Member in a final judgment.

Any balance of proceeds after satisfaction of such charges and any unpaid Assessments hereunder or any liens shall be paid to the Owner or Association Member. Upon the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the Lot and to immediate possession of the Lot and may apply to the court for a writ of restitution for the purpose of acquiring such possession, and it shall be a condition of any such sale and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration.

12.2 **Expenses of Enforcement.** All expenses of the Association, or the Developer in connection with any action or proceeding described or permitted by this Article XII, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon, until paid at the Default Rate of Interest,

shall be charged to and assessed against such defaulting Owner or Association Member, or other Person. The Association and the Developer, and any permitted manager or managing agent, if so authorized, shall have all expenses in connection therewith charged to and assessed against such defaulting Owner, Association Member, or other Person as a Special Assessment against the defaulting Owner or Association Member, or such other Person requiring the injunction against the Owner or Association Member, or such other Person requiring the defaulting Owner, Association Member, or other person to comply with the provisions of this Declaration, or any other declaration document contemplated hereby, and granting other appropriate relief, including money damages.

12.3 **In Action.** In addition to any other remedies available under this Article XII, if any Owner or Association Member (either by his conduct or by the conduct of any Occupant of his Lot or family member, guest, invitee or agent) shall violate any of the provisions of this Declaration or any other document contemplated hereby, as then in effect, then the Association shall have the right to file an action against the Owner or Association Member for a judgment, or injunction, or other action granting other appropriate relief, including money damages.

12.4 **Effect on First Mortgage.** Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for entry to reason thereof, shall not defeat or adversely affect the lien of any First Mortgage upon any Lot but, except as herein or therein specifically provided, each and all of said covenants, shall bind any lessee or Owner of a Lot whose title thereto is acquired by foreclosure, sale, deed in lieu of foreclosure, or otherwise.

12.5 **Limitation on the Developer's Liability.** Notwithstanding anything to the contrary herein, it is expressly agreed that Developer (including without limitation any assignee of the interest of the Developer hereunder) shall have no personal liability to the Association, any Owner, Association Member or other Person, arising under, in connection with, or resulting from action or failure to act with respect to this Declaration. In the event of a judgment against the Developer (or any assignee thereof), no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets of the judgment debtor, except to the extent of its interest in the Subdivision.

ARTICLE XIII. **AMENDMENT**

13.1 **Amendments to Declaration.** Amendment to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Amendments, other than amendments made by the Developer under Section 13.3 hereof, shall require a vote, at a duly called meeting of the Members, of two-thirds of all of the Association Members, or without any meeting if all Association Members consent in writing to such amendment. An amendment adopted by the Association Members shall bear the signature of the President and shall be attested by the Secretary of the Association, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Amendment to Declaration in the appropriate governmental office. Any amendment to this

Declaration properly adopted will be completely effective upon recording of the Amendment to Declaration in the appropriate governmental offices. Any amendment to this Declaration properly adopted will be completely effective to amend any and all of the covenants, conditions and restriction contained herein which may be affected.

13.2 **Required Approvals.** Notwithstanding the provisions of the foregoing sections of this Article XIII:

(a) If this Declaration or any applicable provision of law requires the consent or agreement of additional parties, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying or rescinding such provision shall require the consent of any such parties, as required by this Declaration or by said law.

(b) Until ninety-five percent (95%) of all the Lots in the Subdivision, as it exists from time to time, have been sold to third parties, this Declaration may not be amended by the Association Members pursuant to this Article XIII without the written consent of the Developer, which consent may be withheld for any reason.

13.3 **Developer's Right to Amend.** Notwithstanding any other provision of this Article XIII, until ninety-five percent (95%) of all the Lots in the Subdivision as it exists from time to time, have been sold to third parties, the Developer reserves the right to amend, in whole or in part, this Declaration without the approval of the Board or the Association Members; provided, however, that no such amendment shall have the effect of changing the plat of an Owner's Lot without the consent of the Owner.

ARTICLE XIV. GENERAL PROVISIONS

14.1 **Term.** This Declaration shall continue in full force and effect (subject, however, to the right to amend as herein provided) for a term of twenty (20) years from the date this Declaration is recorded. Thereafter, unless one (1) year prior to 20-year expiration date, there shall be recorded an instrument directing the termination of this Declaration signed by at least two-thirds (2/3) of all Association Members then entitled to vote, this Declaration shall be automatically continued, without any further notice, for successive periods of ten (10) years each; provided that within one (1) year prior to the expiration of any such ten (10) year period, this Declaration may be terminated as set forth in this Section.

14.2 **Notices.** Notices provided for in this Declaration, or the Bylaws, or Rules shall be in writing and shall be addressed to the Association at the address specified in the Bylaws. The Association may designate a different address or addresses for notice by giving written notice of such change of address to all Association Members at such time. All notices to Association Members shall be to the last address shown on the records of the Association. Any Association Member may designate a different address or addresses for notices to it by giving written notice of its change of address to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in

person with written acknowledgment of the receipt thereof. Each Owner, at the time of purchasing a Lot, shall be furnished with a copy of this Declaration.

14.3 **Captions and Exhibits; Construction.** Captions given to various Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. Any exhibit referred to herein is incorporated as though fully set forth where such reference is made. The provisions of this Declaration shall be literally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Subdivision as herein above set forth.

14.4 **Severability.** If any provision of this Declaration, the Articles, Bylaws, Rules, or Design Standards, or any section, clause, sentence, phrase or word, or the application thereof in any circumstances, is held invalid, the validity of the remainder of this Declaration, the Articles, Bylaws, Rules, or Design Standards, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration, the Articles, Bylaws, Rules, or Design Standards shall be construed as if such invalid part were never included therein.

14.5 **Rule Against Perpetuities.** If any of the options, privileges, covenants, or rights created by this Declaration shall be unlawful, void or voidable for violation of the Rule Against Perpetuities, then such provision shall continue until 21 years after death of the survivor of the now living descendants of George W. Bush.

14.6 **Mortgage of Lots.** Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages of his respective lot. No Owner or Association Member shall have the right or authority to make, or create, or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Subdivision or any part thereof, except only to the extent of his Lot.

14.7 **Power of Attorney.** Whenever the Association is granted rights, privileges or duties in this Declaration, the Developer (and then the President of the Association after 95% of all Lots have been sold by the Developer to third parties) shall have the authority to act for the Association, unless such right and power is hereby expressly reserved to the Board. Further, unless otherwise specifically restricted by the provisions of this Declaration, wherever the Association is empowered to take any action or do any act which may at any time be deemed to require the act of an Owner or Association Member, the Owners and Association Members and each of them hereby constitute and appoint the Developer or President as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming an Association Member, or by the acceptance of a deed for a Lot, or by succeeding in any other manner to the ownership of a Lot, or any interest therein, each Owner and Association Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.

14.8 **City Requirements.** In the event it is determined that the maintenance of any storm water conveyance, retention or detention facility located within the Common Area fails to meet any standard set forth in the final development plan, or final plat if no final development plan is required, and such failure is abated by the City pursuant to the procedures of the City of Lee's Summit's Common Property Ordinance, upon completion of the work and certification by the Director of Public Works that the deficiency has been abated, the Director of Public Works shall certify all costs of such abatement, including enforcement costs and expenses of staff time incurred in the remediation of the deficiency, to the City of Lee's Summit's Director of Finance who shall cause a special tax bill therefore, or add the costs thereof to the annual real estate tax bill, at the Director of Finance's option, proportionally against the individual lots within the Subdivision, in an equal amount per individual lot, the amount caused by the Director of Finance to be assessed annually by tax bill shall not exceed five percent (5%) of assessed valuation per individual lot, the tax bill from the date of its issuance shall be a first lien on the property until paid and shall be prima facie evidence of the recitals therein and of its validity and no mere clerical error or informality in the same, or in the proceedings leading up to the issuance shall be a defense thereto, each special tax bill shall be issued by the City Clerk and delivered to the Director of Finance on or before the first day of June of each year, and such tax bill, if not paid when due, shall bear interest at the rate of eight percent (8%).

The City of Lee's Summit shall be a third party beneficiary of all provisions herein pertaining to the assessment of costs for maintenance of storm water conveyance, retention, or detention facilities within the Common Area, and such provisions shall not be modified or amended without the written consent of the City.

ARTICLE XV. **RIGHTS AND OBLIGATIONS**

15.1 **Acceptance of Declaration.** Each grantee of the Developer, by the acceptance of a deed of conveyance, or each purchaser under any contract for such deed of conveyance, or each purchaser under any agreement of sale, or each Person acquiring a membership in the Association, and the heirs, successors and assigns of the foregoing Persons, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any Person having at any time any interest or estate in said land, and shall inure to the benefit of any such Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or instrument evidencing or creating such interest.

15.2 **Refunds to Developer.** As conditions precedent to the development of the Subdivision, Developer has been required to pay to the City of Lee's Summit and other authorities certain fees, charges and impositions for streets, parks, utilities and other off-site improvements. Each grantee of the Developer agrees to hold harmless the Developer or any Owner of a Lot, by the acceptance of a deed, and each purchaser under any contract for a deed of

conveyance, and each purchaser under any agreement of sale, and each occupant of a Lot, and the heirs, successors, agents, officers, members, stockholders and assigns from any obligation to remit any part of such fees, charges and impositions to him, her or it in the event any of the same are declared invalid or illegal, any refund or return of same to the Developer notwithstanding; it is expressly understood that Developer shall have the sole right to make claim for and receive any such refund or return.

IN WITNESS WHEREOF, the parties hereto have executed this Declaration as of the date and year first above written.

THE FIELDS OF HIGHLARD PARK DEVELOPMENT,
L.L.C., a Missouri limited liability company

By: [Signature]
Randall S. Gish, Executive Member

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

On this 28th day of September, 2006, before me, the undersigned, a Notary Public, personally appeared Randall S. Gish, Executive Member of The Fields of Highland Park Development, L.L.C., a Missouri limited liability company, known to me to be the person described in and who executed the within instrument on behalf of said limited liability company by authority of its members, and said Executive Member acknowledged said instrument to be the free act and deed of said limited liability company and that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the day and year last above written.

[Signature: Susan G. Williams]
Notary Public

Susan G. Williams
Notary Public - Notary Seal
State of Missouri
Jackson County
My Commission Expires October 18, 2007

My commission expires:

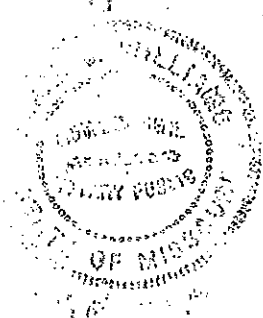


EXHIBIT A
(Legal Description)

Containing 842,567.13 Sq. ft. or 19.3427 acres, more or less, excluding that portion within the right of way

A tract of land being in the West half of the Northeast Quarter of the Southwest Quarter of Section 2, Township 47, Range 31, in Jackson County, Missouri more particularly described as follows:

Beginning at the Northeast corner of the Northwest Quarter of the Southwest Quarter of said Section 2; Thence S 87° 45' 15" E, 657.70 feet; thence South S 02° 35' 16" W, 1331.45 feet; thence West along the North line of Mill Creek 1st Plat, a subdivision as recorded in Lee's Summit, Jackson County, Missouri, N 87° 37' 22" W, 658.10 feet; thence North N 02° 36' 20" E, 1329.94 feet returning to the point of beginning.

RECORDER'S CERTIFICATION
JACKSON COUNTY, MISSOURI
02/02/2007 01:29:01 PM

INSTRUMENT TYPE: AMEND FEE: \$27.00 3 Pages



INSTRUMENT NUMBER/BOOK & PAGE:

2007E0015117

ROBERT T. KELLY, DIRECTOR, RECORDER OF DEEDS

AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE FIELDS OF HIGHLAND PARK

THIS AMENDMENT, is made on this 2nd day of February, 2007, to that certain document entitled, "Declaration of Covenants, Conditions and Restrictions for the Fields of Highland Park," executed by the Developer, **THE FIELDS OF HIGHLAND PARK DEVELOPMENT, L.L.C.**, a Missouri limited liability company, authorized to do business in the State of Missouri, Grantor, for the benefit of **THE FIELDS OF HIGHLAND PARK HOMEOWNERS ASSOCIATION, INC.**, a Missouri non-profit corporation, Grantee, 17701 East 199th Street, Pleasant Hill, Missouri 64080, and dated and recorded on October 5, 2006, in the official records of the office of the County Recorder of Jackson County, Missouri, at Independence as Document No. 2006E0102993, affecting real property described as:

Containing 842,567.13 Sq. ft. or 19.3427 acres, more or less, excluding that portion within the right of way:

A tract of land being in the West half of the Northeast Quarter of the Southwest Quarter of Section 2, Township 47, Range 31, in Jackson County, Missouri more particularly described as follows:

Beginning at the Northeast corner of the Northwest Quarter of the Southwest Quarter of said Section 2; Thence S 87° 45' 15" E, 657.70 feet; thence South S 02° 35' 16" W, 1331.45 feet; thence West along the North line of Mill Creek 1st Plat, a subdivision as recorded in Lee's Summit, Jackson County, Missouri, N 87° 37' 22" W, 658.10 feet; thence North N 02° 36' 20" E, 1329.94 feet returning to the point of beginning.

COMES NOW, Randall S. Gish, Executive Member of **THE FIELDS OF HIGHLAND PARK DEVELOPMENT, L.L.C.**, a Missouri limited liability company, and pursuant to the authority given in Section 13.3, the Developer hereby cancels and revokes Paragraphs (1) through (5) of Sub-Section 8.2(g) of Article VIII, of said Declaration, and in lieu thereof, the following Paragraphs (1) through (6) of Sub-Section 8.2(g) of Article VIII, are hereby substituted in lieu thereof:

“1. The finished floor area of the main level shall be a minimum of at least 1650 square feet for all one-story residences.

2. The finished floor area of the main level of a reverse story and one-half (1.5) residence, shall be a minimum of at least 1450 square feet and shall have a minimum of 800 square feet of finished floor area on the lower level.

3. There shall be a minimum of at least 1,000 square feet of finished first floor area and at least 1,800 square feet of total finished floor area for any split-level residence of any kind.

4. There shall be a minimum of at least 900 square feet of finished first floor area and a total finished floor area of not less than 2,175 square feet for any two story residence.

5. There shall be a minimum of at least 1,300 square feet of finished first floor area and at least 1,700 square feet of total finished floor area for any one and one-half story (1.5) residence of any kind.

6. The above-required minimum square footages shall be exclusive of porches, attached garages, carports, breezeways, steps, eaves, and similar portions of such residences. The Developer and/or the ACC reserves the right to require greater square footages on the approval of any plan. No building or structure other than a residence shall be erected, altered, placed or permitted to remain on any Lot. No residence may exceed two (2) levels in height, excluding the basement.”

Said Declaration of Covenants, Conditions and Restrictions, as modified by this Amendment thereto, is hereby ratified, confirmed and approved.

IN WITNESS WHEREOF, the Developer has executed this Amendment the day and year first above written.

THE FIELDS OF HIGHLAND PARK DEVELOPMENT, L.L.C.,
a Missouri limited liability company

By:  , *Executive Member*
Randall S. Gish, Executive Member

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

On February 2, 2007, before me, the undersigned, a Notary Public, personally appeared Randall S. Gish, Executive Member of The Fields of Highland Park Development, L.L.C., a Missouri limited liability company, known to me to be the person described in and who executed

the within instrument on behalf of said limited liability company by authority of its members, and said Executive Member acknowledged said instrument to be the free act and deed of said limited liability company and that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the day and year last above written.


Molly Blackwell, Notary Public

My Commission Expires:

