

DECLARATION OF PROTECTIVE  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
OLD KINDERHOOK

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR OLD KINDERHOOK is made as of 27, 1998, by OLD KINDERHOOK DEVELOPMENT COMPANY, L.L.C., a Missouri limited liability company (hereinafter referred to as "Declarant").

A. Declarant is the owner of certain parcels of land located in Camden County, Missouri containing approximately 638 acres which is defined in this Community Declaration as the "Project Area."

B. Declarant intends to develop the Project Area (including any additional property added to the Project Area) in accordance with this Community Declaration as a master planned residential community, including a private golf course, open space and other uses, which community is to be known as Old Kinderhook.

C. Declarant or its predecessor has caused an association, named Old Kinderhook Community Association, Inc., to be formed for the purposes set forth in this Community Declaration and in the Articles of Incorporation for the Community Association.

**ARTICLE 1. GENERAL**

1.1. Purposes of Declaration. The real property which becomes subject to this Community Declaration in the manner hereinafter provided shall be referred to as the Community. This Community Declaration is executed: (1) in furtherance of a common and general plan for those portions of the Project Area which may become part of the Community; (2) to protect and enhance the quality, value, aesthetics, desirability and attractiveness of all property which becomes a part of the Community; (3) to provide for a property owners' association to hold, maintain, care for and manage Community Properties and to perform functions for the benefit of Owners of Lots within the Community; (4) to define the duties, powers and rights of the Community Association; and (5) to define certain duties, powers and rights of Owners of Lots within the Community.

1.2. Declaration. Declarant, for itself, its successors and assigns, hereby declares that all property which becomes subject to this Community Declaration in the manner hereinafter provided, and each part thereof, shall, from the date the same becomes subject to this Community Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the easements, covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Community Declaration, for the duration hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Project Area. The provisions of this Community Declaration are intended to and shall run with the land and, until their expiration in accordance with this Community Declaration hereof, shall bind, be a charge upon and inure to the mutual benefit of (1) all of the property that becomes part of the Community and each part or parcel thereof, (2) Declarant and its successors and assigns, (3) the Community Association and its successors and assigns, and (4) all Persons having or acquiring any right, title or interest in any property that becomes part of the Community or any part or parcel thereof or any Improvement thereon and their heirs, personal representatives, successors and assigns.

**ARTICLE 2. DEFINITIONS**

Unless otherwise expressly provided herein, the following words and phrases, when used in this Community Declaration, shall have the meanings hereinafter specified.

2.1. Annexable Area. "Annexable Area" shall mean all of the real property described on Exhibit B attached hereto, all or any portion of which may from time to time be made subject to this Community Declaration pursuant to the provisions of Section 3.2 of this Community Declaration. The Annexable Area may be expanded or contracted as provided in Section 3.4 of this Community Declaration.

2.2. Annexed Property. "Annexed Property" shall mean any portion of the Annexable Area which may from time to time be annexed to the Community and thereby be made subject to this Community Declaration by the Recordation of a Supplemental Declaration, as provided in Section 3.3 of this Community Declaration.

2.3. Architectural Committee. "Architectural Committee" shall mean the committee provided for in Article XIII of this Community Declaration.

2.4. Architectural Guidelines and Rules. "Architectural Guidelines and Rules" shall mean the guidelines, rules and restrictions adopted by the Architectural Committee pursuant to Article XIII of this Community Declaration.

2.5. Articles of Incorporation. "Articles of Incorporation" shall mean the Articles of Incorporation of Old Kinderhook Community Association, Inc., which have been or will be filed in the office of the Secretary of State of the State of Missouri, as the same may be amended from time to time.

2.6. Assessment. "Assessment" shall mean charges levied against Owners and Lots by the Community Association for expenses incurred by the Community Association in the performance of its functions and duties as contemplated under this Community Declaration and the Articles of Incorporation and Bylaws. Assessments include Common Assessments, Special Assessments, Reimbursement Assessments, Water and Sewer Assessments, and Working Capital Assessments, as hereinafter defined.

2.7. Assessment Lien. "Assessment Lien" shall mean the lien granted to the Community Association for any Assessments levied by the Community Association and the lien described in any Notice of Lien, together with such interest thereon and costs of collection, including reasonable attorney fees, all as provided in Section 8.34 of this Community Declaration, and the same shall be a charge on the land and shall be a continuing lien on the real property against which each Assessment is made.

2.8. Board of Directors. "Board of Directors" or "Board" shall mean the Board of Directors of the Community Association.

2.9. Budget. "Budget" shall mean a written, itemized estimate of the expenses to be incurred by the Community Association in performing its functions under this Community Declaration and prepared pursuant to Section 8.8 of this Community Declaration.

2.10. Bylaws. "Bylaws" shall mean the Bylaws of the Community Association which have been or will be adopted by the Board of Directors of the Community Association, as the same may be amended from time to time.

2.11. Club. "Club" or "Club Owner" shall mean the Owner of fee simple title to the Club Property.

2.12. Club Property. "Club Property" shall mean the land designated as such in a Supplemental Declaration together with all Improvements located thereon from time to time, including the Golf Course. As of the date of this Community Declaration, the Club Property is a part of the Annexable Area and, upon being added to the Community, the Club Property will be a Private Amenity. THE CLUB PROPERTY IS NOT A COMMON AREA.

2.13. Common Area. "Common Area" shall mean all of the real property and all interests in real property now or hereafter owned by the Community Association, together with any Improvements thereon. The Common Area may be designated as Common Areas in any Supplemental Declaration or any portion of any Recorded Plat of the Project Area.

2.14. Common Assessment. "Common Assessment" shall mean the assessments made for the purpose of covering the portion of the annual costs of operating the Community Association, including expenses incurred in connection with any authorized function of the Community Association, which are to be paid by each Owner to the Community Association for purposes provided herein and charged to such Owner and to the Lot of such Owner.

2.15. Common Household Group. "Common Household Group" shall mean one or more natural persons, each related to the other by blood, marriage or legal adoption, or a group of not more than five such persons not so related, all of whom maintain a common household in a dwelling unit.

2.16. Community. "Community" shall mean the First Phase, together with Annexed Property which hereafter becomes subject to this Community Declaration by the Recordation of a Supplemental Declaration as provided in this Community Declaration.

2.17. Community Association. "Community Association" shall mean Old Kinderhook Community Association, Inc., a Missouri not-for-profit corporation, its successors and assigns.

2.18. Community Declaration. "Community Declaration" shall mean this document as it may be amended or supplemented from time to time.

2.19. Community Documents. "Community Documents" shall mean the basic documents creating and governing the Community, including this Community Declaration, any amendment to this Community Declaration, any Supplemental Declarations, the Plats, the Articles of Incorporation, the Bylaws, the Architectural Guidelines and Rules and the Rules and Regulations and any procedures, rules, regulations or policies adopted under any such documents by the Community Association, the Board or any of its authorized committees.

2.20. Community Properties. "Community Properties" shall mean all Common Area and personal property now or hereafter owned by the Community Association.

2.21. Declarant. "Declarant" shall mean Old Kinderhook Development Company, L.L.C., a Missouri limited liability company, its successors and assigns. A Person shall be deemed a "successor and assign" of Old Kinderhook Development Company, L.L.C. as Declarant only if specifically designated in a duly Recorded instrument as a successor or assign of Declarant under this Community Declaration and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Community Declaration which are specifically designated in the written instrument. However, a successor to Old Kinderhook Development Company, L.L.C. by consolidation or merger shall automatically be deemed a successor or assign of Old Kinderhook Development Company, L.L.C. as Declarant under this Community Declaration.

2.22. Declarant Control Period. "Declarant Control Period" shall mean the period of time commencing as of the date of this Community Declaration is Recorded and continuing until the earliest to occur of the following events: (1) at such time as Declarant no longer owns any Lot and no longer owns any real property in the Annexable Area; (2) December 31, 2022; or (3) at such time as Declarant in its sole discretion terminates the Declarant Control Period by Recording a written statement to that effect.

2.23. Declarant's Delegate. "Declarant's Delegate" shall mean the Delegate which may be appointed by Declarant to cast votes on behalf of Declarant with respect to certain Residential Lots owned by the Declarant as provided in this Community Declaration.

2.24. Deed of Trust. "Deed of Trust" shall mean a Mortgage, as hereinafter defined.

2.25. Delegate. "Delegate" shall mean the natural person selected (1) by Members within a Neighborhood to represent such Neighborhood and to cast votes on behalf of Members within such Neighborhood; (2) by a Member who is an Owner of a Private Amenity to represent such Member and to cast votes on behalf of the Member; or (3) by the Declarant to represent the Declarant as a Member and to cast votes on behalf of Declarant, all as provided in this Community Declaration.

2.26. First Mortgage. "First Mortgage" shall mean the Mortgage or Deed of Trust, if any, which has priority over all other Mortgages and Deeds of Trust on a Lot. The Mortgagee of a First Mortgage shall be a First Mortgagee.

2.27. First Phase. "First Phase" shall mean all of the real property described in Exhibit A attached hereto and incorporated herein by this reference.

2.28. Golf Course. "Golf Course" shall mean the golf course, club house, driving range, golf practice facilities and any other facilities and Improvements on the Club Property relating to the use of such property as a golf course and golf club.

2.29. Government Mortgage Agencies. "Government Mortgage Agencies" shall mean any public entity or reputable private entity, authorized, approved or sponsored by any governmental agency to insure, guarantee, make or purchase Mortgage loans, including the Federal Housing Administration, the Veteran's Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Governmental National Mortgage Association.

2.30. Improved Lot. "Improved Lot" shall mean a Lot upon which Improvements have been constructed or upon which construction of Improvements has been approved by the Architectural Committee. For purposes of defining whether a Lot is Improved or Unimproved only, Improvements shall be limited to structures or building, and shall not include landscaping, grading and site work.

2.31. Improvements. "Improvements" shall mean all structures and any appurtenances thereto of every type or kind

including buildings, outbuildings, swimming pools, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, walkways, bicycle trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, sports courts, playground equipment, basketball backboards, landscaping, hedges, windbreaks plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, exterior air conditioning and water softener fixtures.

2.32. Improvement to Property. "Improvement to Property" shall mean any change, alteration or addition to any property within the Community as more particularly defined in Section 13.2 of this Community Declaration.

2.33. Lease or Leasing. "Lease" or "Leasing" shall mean the exclusive occupancy of all or part of a Lot by any Person or Persons other than the Owner and the Common Household Group of the Owner for which the Owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

2.34. Limited Common Area. "Limited Common Area" shall mean certain portions of the Common Area, including any Improvements and fixtures located thereon, if any, the use of which has been granted exclusively or primarily to one or more, but less than all, Owners for the common use and enjoyment of such Owners. Limited Common Areas shall be designated as Limited Common Area in a Supplemental Declaration, or in the deed or Plat by which such Common Area is conveyed to the Community Association, which designation shall also designate which Owners shall be entitled to use such Limited Common Areas.

2.35. Lot. "Lot" shall mean any lot or parcel of land within the Community which is shown upon any Plat or any other parcel of land which may be sold or conveyed without violation of this Community Declaration and the provisions of Missouri law pertaining to the subdivision of land, including, if applicable, a condominium unit. "Lot" shall include Private Amenities which are included in the Community, but shall not include: (1) any property owned by a public body or (2) any Common Area.

2.36. Maintenance Funds. "Maintenance Funds" shall mean the accounts into which the Community Association shall deposit monies paid to the Community Association and from which disbursements shall be made in the performance of the functions of the Community Association as described in Article VIII hereof.

2.37. Manager. "Manager" shall mean any one or more Persons employed by the Community Association as provided in this Community Declaration who is engaged to perform any of the duties, powers or functions of the Community Association.

2.38. Marina Property. "Marina Property" shall mean the land described in Exhibit D. The Marina Property is not as of the date of this Community Declaration is part of the Annexable Area, but it may become a part of the Annexable Area as provided in Section 3.4 of this Community Declaration.

2.39. Master Plan. "Master Plan" shall mean and refer to the plan for the development of the Project Area, as prepared by the developer, as the same may be amended or modified by the Declarant from time to time, in its sole discretion.

2.40. Maximum Common Assessment. "Maximum Common Assessment" shall mean the maximum amount that a Common Assessment may be in any calendar year without the approval of the Delegates as provided in Section 8.15 of this Community Declaration.

2.41. Member. "Member" shall mean the Person, or, if more than one, all Persons collectively, entitled to membership in the Community Association as provided in this Community Declaration.

2.42. Mortgage. "Mortgage" shall mean any mortgage or deed of trust or other such security instrument, given voluntarily by the Owner of a Lot, encumbering the Lot to secure the performance of an obligation or the payment of a debt and which is required to be released upon performance of the obligation or payment of the debt. The term "Deed of Trust," when used herein, shall be synonymous with the term "Mortgage."

2.43. Mortgagee. "Mortgagee" shall mean a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee.

2.44. Neighborhood. "Neighborhood" shall mean a geographical area which constitutes any portion or portions of

the Community, which is designated as a Neighborhood in a Supplemental Declaration, and from which all Members in that Neighborhood shall elect a single Delegate to cast their collective votes, as further provided in Article IV of this Community Declaration.

2.45. Neighborhood Assessments. "Neighborhood Assessments" shall mean assessments levied by a Neighborhood Association against the Lots in a particular Neighborhood to fund Neighborhood Expenses, pursuant to the terms of the applicable Neighborhood Declaration.

2.46. Neighborhood Association. "Neighborhood Association" shall mean any Missouri profit or not for profit corporation, or unincorporated association, and its successors and assigns, organized and established or authorized pursuant to, or in connection with, one or more Supplemental Declarations and of which the membership is composed of Owners of Lots within a Neighborhood as defined in the Supplemental Declarations.

2.47. Neighborhood Declaration. "Neighborhood Declaration" shall mean a Supplemental Declaration which is Recorded and affects a particular Neighborhood.

2.48. Neighborhood Delegate. "Neighborhood Delegate" shall mean a Delegate appointed by the members of a Neighborhood Association.

2.49. Neighborhood Documents. "Neighborhood Documents" shall mean the basic documents creating and governing a Neighborhood, including the Neighborhood Declaration and any amendments thereto, the Articles of Incorporation and Bylaws of a Neighborhood Association, and the procedures, rules, regulations or policies adopted under any such documents by the Neighborhood Association, or the board of directors or any authorized committees of the board of directors of the Neighborhood Association.

2.50. Neighborhood Expenses. "Neighborhood Expenses" shall mean those actual and estimated expenses incurred or to be incurred by the Neighborhood Association primarily for the benefit of Owners of Lots within a particular Neighborhood, all as may be specifically authorized from time to time by the Board of Directors of the Neighborhood Association, including those expenses which the Community Association is authorized to incur on behalf of the Neighborhood Association pursuant to an agreement with the Neighborhood Association or as otherwise authorized in this Community Declaration or any Supplemental Declaration.

2.51. Notice and Hearing. "Notice and Hearing" shall mean a written notice and a hearing before the Board of Directors or a tribunal appointed by the Board, in substantial compliance with the procedures provided in the Bylaws.

2.52. Notice of Completion. "Notice of Completion" shall mean written notice to the Architectural Committee of the completion of any Improvement to Property pursuant to Article XIII of this Community Declaration.

2.53. Owner. "Owner" shall mean the Person, including Declarant and the Club, or, if more than one, all Persons collectively who hold fee simple title of record to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder.

2.54. Person. "Person" shall mean a natural person, a corporation, a partnership or any other entity.

2.55. Plat. "Plat" shall mean a subdivision plat of all or any part of the Community, prepared in accordance with applicable law, and signed and Recorded by the Declarant.

2.56. Private Amenity. "Private Amenity" or "Private Amenity Property" shall mean real property, and any Improvements and facilities thereon, located within the Project Area which are privately owned and operated by Persons other than the Community Association for recreation or related purposes, on a club membership basis, user fee basis or otherwise, and shall include, without limitation, the Golf Course. As of the date of this Community Declaration, no Private Amenity Property is a part of the Community. Private Amenity Property shall become a part of the Community by being annexed to the Community by the Recordation of a Supplemental Declaration, as provided in Section 3.3 of this Declaration. A Lot shall be designated as a Private Amenity in this Community Declaration or in the Supplemental Declaration by which such Lot is annexed to the Community.

2.57. Private Amenity Assessment Share. "Private Amenity Assessment Share" shall mean the number of Lots attributed to a Private Amenity for purposes of calculating the Assessments levied against a Private Amenity and for such other

purposes as set forth in this Community Declaration. The Private Amenity Assessment Share for a Private Amenity shall be designated in the Supplemental Declaration by which the Private Amenity is added to the Community.

2.58. Private Amenity Delegate shall mean the Delegate who is appointed by the Owner of a Private Amenity.

2.59. Private Amenity Votes. "Private Amenity Votes" shall mean the number of votes allocated to the Owner of a Private Amenity, which number shall be equal to the number of Lots attributed to the Private Amenity for Private Amenity Assessment Share purposes.

2.60. Project Area. "Project Area" shall mean the aggregate of the Community, which is subject to this Community Declaration at any point in time, and the Annexable Area. The real property which constitutes the Project Area as of the date of this Community Declaration is described on Exhibit C attached hereto.

2.61. Record, Recorded or Recordation. "Record," "Recorded" or "Recordation" shall mean the filing for record of any document in the office of the Recorder of Deeds of Camden County, Missouri.

2.62. Recreation Facilities. "Recreation Facilities" shall mean the swim, tennis and playground facilities owned by the Community Association and such other recreational improvements constructed on and a part of the Community Properties.

2.63. Reimbursement Assessment. "Reimbursement Assessment" shall mean a charge against a particular Owner and his Lot for the purpose of reimbursing the Community Association for expenditures and other costs incurred by the Community Association in curing any violation, directly attributable to the Owner, of the Community Declaration or the Rules and Regulations, together with late charges and interest as provided for herein, or for other expenditures and other costs owed by an Owner to the Community Association, as provided in Article VIII hereof.

2.64. Related User. "Related User" shall mean any member of the Common Household Group of an Owner of a Residential Lot who resides with such Owner; guests, customers and invitees of an Owner; employees of an Owner; and occupants, tenants and contract purchasers residing on a Lot of an Owner who claim by, through or under the Owner.

2.65. Residential Lot. "Residential Lot" shall mean any Lot within the Community designated for dwelling purposes in the Supplemental Declaration covering that Lot.

2.66. Restrictions. "Restrictions" shall mean covenants, conditions, restrictions, limitations, reservations, exceptions and equitable servitudes affecting real property.

2.67. Rules or Rules and Regulations. "Rules" or "Rules and Regulations" shall mean any rules and regulations adopted by the Board of Directors as provided in Section 5.15 of this Community Declaration and shall include the Architectural Guidelines and Rules.

2.68. Special Assessment. "Special Assessment" shall mean a charge against each Owner and his Lot representing a portion of the costs to the Community Association for the purpose of funding major capital repairs, maintenance, replacements and Improvements, pursuant to Section 8.23 hereof.

2.69. Supplemental Declaration. "Supplemental Declaration" shall mean a written instrument amending or supplementing this Community Declaration which subjects additional property to this Declaration or which imposes additional Restrictions and obligations on any property described therein which may be Recorded on any portion of the Project Area, including the Annexable Area, in accordance with Section 3.3 of this Community Declaration.

2.70. Tap Fee. "Tap Fee" shall mean the charge against an Owner and a Lot payable at the time any Improvements on the Owner's Lot are connected to the Water and Sewer Facilities.

2.71. Unimproved Lot. "Unimproved Lot" shall mean a Lot which is not an Improved Lot.

2.72. Utilities. "Utilities" or "Utility Services" shall mean all utility services including water, sewer, gas, electricity, telephone, cable television and similar services, regardless of whether such services are currently servicing the Community.

2.73. Utility Easement Area. The Utility Easement Area shall mean the area within five feet of the side lot lines of a

Residential Lot and within ten feet of the front and rear lot lines of a Residential Lot or as otherwise designated as a utility easement on any Plat.

2.74. Water and Sewer Assessment. Water and Sewer Assessment shall mean the Assessments for Water and Sewer Charges and for Tap Fees.

2.75. Water and Sewer Charges. "Water and Sewer Charges" shall mean the charges and fees payable by an Owner for use of the Water and Sewer Facilities and related services provided by the Community Association. Only Owners of Lots which have Improvements connected to the Water and Sewer Facilities are required to pay these charges and fees, other than standby fees, if any.

2.76. Water and Sewer Facilities. "Water and Sewer Facilities" shall mean the equipment, wells, pipelines and other facilities for providing potable water, and the treatment and disposal of waste water and sewage in the Community.

2.77. Working Capital Assessment. "Working Capital Assessment" shall mean a charge made against each Lot at the time of the purchase of the Lot by an Owner as provided in this Community Declaration.

### **ARTICLE 3. ANNEXATION TO COMMUNITY**

3.1. Property Hereby Made Subject. Declarant hereby declares that the First Phase is hereby made subject to this Community Declaration. One or more Supplemental Declarations shall be Recorded for properties within the First Phase to designate and create Neighborhoods and impose additional Restrictions and obligations on the properties described therein.

3.2. Property Which May Be Annexed. Declarant may, but shall in no way be required to, from time to time, unilaterally, add to the Community all or any portion of the Annexable Area.

3.3. Manner of Annexation. Real property within the Annexable Area may, from time to time, become Annexed Property and therefore a part of the Community and subject to this Community Declaration effective upon the Recordation in the office of the Recorder of Deeds of Camden County, Missouri, a Supplemental Declaration meeting the requirements set forth in this Community Declaration. In addition to any other requirements in this Community Declaration, a Supplemental Declaration shall:

- (1) Be executed and acknowledged by the owner of the Annexed Property described therein;
- (2) If the Annexed Property is not then owned by Declarant, contain the executed and acknowledged written consent of Declarant for so long as Declarant owns any property in the Project Area and has the power to annex additional property to the Community;
- (3) Contain an adequate legal description of the Annexed Property;
- (4) Contain a reference to this Community Declaration which shall state its date, its date of Recordation and the book and page of the records or, if book and page are no longer being used by Camden County for document identification, the document number or other document identification then being used, of the Recorder of Deeds of Camden County, Missouri, where this Community Declaration is Recorded;
- (5) Contain a statement that the Annexed Property is declared to be part of the Community under this Community Declaration and that the Annexed Property shall be subject to this Community Declaration;
- (6) Designate which of the Annexed Area is Residential Lots, Private Amenities and Community Properties and, for any Private Amenity, designate the Private Amenity Assessment Share, stated in number of Lots, which will be attributed to the Private Amenity for voting and Assessment purposes;
- (7) Designate and, if necessary, create a Neighborhood in which any Residential Lots in the Annexed Property will be located; and

- (8) Designate the Neighborhood Association to which the Lots therein shall be subject.

A Supplemental Declaration may provide for phased annexation so that real property may be made subject to the Supplemental Declaration and this Community Declaration at different times. A deed by which Declarant conveys a parcel of property to another Person may constitute a Supplemental Declaration if it meets the foregoing requirements. A Supplemental Declaration may impose on the Annexed Property described therein additional Restrictions and other provisions than those set forth in this Community Declaration, taking into account the unique and particular aspects of the proposed development of the Annexed Property covered thereby. A Supplemental Declaration may give the Neighborhood Association the right to assess the Owners of Lots within the subject Neighborhood. Upon Recordation of a Supplemental Declaration, the Annexed Property shall be subject to all of the Restrictions and other provisions set forth in this Community Declaration, except to the extent specifically stated in the Supplemental Declaration.

3.4. Expansion or Contraction of Annexable Area. During the Declarant Control Period, the Annexable Area may be expanded or contracted to add or delete real property effective upon the Recordation of a written instrument, executed by Declarant, describing such real property and declaring that such real property shall thereafter be added to or deleted from the Annexable Area. No real property may be added to the Annexable Area unless it is a part of the Marina Property or is contiguous to the Project Area or the Marina Property. Real property which is separated only by public roads or public or private rights of way shall be deemed contiguous for purposes of this Section.

3.5. Master Plan. The Master Plan may include all or a portion of the Annexable Area and any other property which Declarant may from time to time anticipate subjecting to this Community Declaration, including property which is not located within the Project Area. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of any Annexable Area from the Master Plan bar its later addition to the Community as provided in this Community Declaration. It is anticipated that changes will be made to the Master Plan. Declarant shall have the right to amend the Master Plan from time to time as Declarant, in its sole discretion, determines. Declarant shall not be obligated to publish a Master Plan or to update or conform the Master Plan to the actual development of the Project Area.

#### **ARTICLE 4. COMMUNITY ASSOCIATION OPERATION**

4.1. Community Association. The Community Association has been formed as a Missouri corporation under the Missouri Nonprofit Corporation Act. The Community Association shall have the duties, powers and rights set forth in this Community Declaration and in its Articles of Incorporation and Bylaws. As more specifically set forth hereinafter, the Community Association shall have a Board of Directors to manage its affairs; the Board of Directors shall be elected by Delegates representing Neighborhoods within the Community; and Delegates shall be elected by Owners within each Neighborhood, acting in their capacity as Members of the Community Association.

4.2. Community Association Board of Directors. The affairs of the Community Association shall be managed by a Board of Directors. The number, term, qualifications and method for election of the members of the Board of Directors shall be fixed in the Articles of Incorporation and Bylaws. The Board of Directors may, by resolution, delegate portions of its authority to officers, committees, agents and employees of the Community Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Community Association. Action by or on behalf of the Community Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent or employee without a vote of Members, except as otherwise specifically provided in this Community Declaration.

4.3. Membership in Community Association. The Person or Persons who constitute the Owner of a Lot shall automatically be the holder of the membership appurtenant to that Lot, and the membership appurtenant thereto shall automatically pass with fee simple title to the Lot. Membership in the Community Association shall not be assignable separate and apart from fee simple title to a Lot, except that an Owner may assign some or all rights as an Owner and as Member of the Community Association to a tenant who is Leasing the Owner's Lot in compliance with the terms of the Community Documents or a Mortgagee of the Owner's Lot and may arrange for such a tenant or Mortgagee to perform some or all of such Owner's obligations as provided in this Community Declaration, but no such assignment shall relieve the Owner of any of the responsibilities or obligations of the Owner under any of the Community Documents.

4.4. Number of Votes. Each Owner of a Lot within the Community shall be a Member of the Community Association. There shall be one membership and, except for Lots owned by Declarant, one vote in the Community Association for each Residential Lot within the Community. Declarant shall hold a membership in the Community Association for each Lot owned by Declarant and shall have six votes for each Residential Lot which it owns. There shall be one membership for each



Private Amenity Property within the Community. The number of votes held by the Owner of a Private Amenity shall be equal to the number of Private Amenity Votes allocated to the Private Amenity.

4.5. Establishment of Neighborhoods. The Residential Lots within the Community shall be divided into Neighborhoods, and each Neighborhood shall elect one (1) Delegate to the Community Association to cast the votes of all of the Members in such Neighborhood. Neighborhoods are created and the assignment of Residential Lots to a Neighborhood are made by the Recordation of a Supplemental Declaration.

4.6. Election and Appointment of Delegates. The Neighborhood Delegate for each Neighborhood shall be elected by the Neighborhood Association for that Neighborhood. Each Member shall be eligible to vote in the election of a Neighborhood Delegate to the Community Association for such Member's Neighborhood, by voting for the election of the Neighborhood Delegate from that Neighborhood in the same manner as the election of the Board of Directors of the Neighborhood Association; provided, however, that if Declarant has assigned its voting rights with respect to a Neighborhood to Declarant's Delegate, Declarant shall not be entitled to vote in the election of the Neighborhood Delegate for that Neighborhood. The Owner of a Private Amenity shall have the right to appoint the Private Amenity Delegate for the Owner's Private Amenity. The Declarant shall have the right to appoint a Delegate for some or all of the Residential Lots owned by the Declarant as provided in the Bylaws and this Community Declaration.

4.7. Voting Rights of Delegates. Each Neighborhood Delegate, other than the Declarant's Delegate, may cast one (1) vote for each Residential Lot which is owned by an Owner other than Declarant and is located in the Neighborhood represented by such Delegate. If Declarant has not assigned its voting rights with respect to the Neighborhood to Declarant's Delegate, the Neighborhood Delegate shall have six (6) votes for each Residential Lot in the Neighborhood owned by Declarant and located in the Neighborhood represented by such Delegate. The Private Amenity Delegate may cast votes equal to the number of Private Amenity Votes allocated to the Owner of the Private Amenity. The Declarant's Delegate, if any, appointed by the Declarant may cast six (6) votes for each Residential Lot owned by the Declarant in a Neighborhood for which Declarant's voting rights have been assigned to the Declarant's Delegate. A Delegate may not cast votes with respect to a Lot as to which the voting rights of the Member owning the Lot have been suspended.

4.8. Declarant's Delegate. Declarant may assign its voting rights with respect to all, but not less than all, of the Residential Lots owned by Declarant in a Neighborhood to Declarant's Delegate by written notice to the Community Association and the applicable Neighborhood Association. Once assigned, the Neighborhood Delegate for that Neighborhood shall not have any right to vote with respect to Declarant's Residential Lots located in that Neighborhood. Upon Declarant making such an assignment of voting rights, Declarant relinquishes its right to vote within the Neighborhood Association on the appointment and removal of the Neighborhood Delegate for that Neighborhood and, on any matter being voted on by the Members of the Neighborhood Association for submittal to the Neighborhood Delegate for a vote by the Members of the Community Association. Declarant will continue to be entitled to vote as a Member of the Neighborhood Association on all other matters affecting the Neighborhood, including the election of the board of directors of the Neighborhood Association. Notwithstanding anything to the contrary in this Community Declaration, the Articles of Incorporation or the Bylaws, if Declarant has not assigned its voting rights in a particular Neighborhood to Declarant's Delegate, the Neighborhood Delegate representing such Neighborhood shall not have the authority to vote any of Declarant's votes in a manner contrary to the direction of the Declarant.

4.9. Manner of Voting by Delegates. Unless otherwise required by this Community Declaration or directed by the Members, each Delegate shall cast the votes which the Delegate represents in such manner as the Delegate may, in the Delegate's sole discretion, deem appropriate, acting on behalf of all the Members in the Neighborhood, the Owner of a Private Amenity or the Declarant, as the case may be. If required by this Community Declaration or, if the Members of a Neighborhood Association by the vote of at least a majority of the votes of the Members of a Neighborhood Association eligible to vote on the issue, shall determine at any duly constituted meeting or other vote of the Members in such Neighborhood Association to direct their Neighborhood Delegate as to the manner in which the Delegate is to vote on any issue to be voted on by the Delegates, then the Neighborhood Delegate representing such Neighborhood shall cast all of the votes in such Neighborhood in the same proportion, as nearly as possible without counting fractional votes, as the Members in such Neighborhood shall have cast their votes "for" and "against" such issue in person or by proxy. A Delegate shall have the authority, in the Delegate's sole discretion, except where specifically required in this Community Declaration or the Neighborhood Documents for the applicable Neighborhood, to call a special meeting of the Members in the Delegate's Neighborhood, in the manner provided in the bylaws of the Neighborhood Association, for the purpose of obtaining instructions as to the manner in which the Delegate is to vote on any issue to be voted on by the Delegates. When a Delegate is voting in the Delegate's own discretion, without instruction from the Members whom the Delegate represents, then such Delegate may cast all of the votes which the Delegate represents as a unit or such Delegate may

apportion some of such votes in favor of a given proposition and some of such votes in opposition to such proposition. It will be conclusively presumed for all purposes of Community Association business that any Neighborhood Association Delegate casting votes on behalf of the Members in the Delegate's Neighborhood will have acted with the authority and consent of all such Members except the Declarant and, upon Declarant's confirmation of its vote, including Declarant. All agreements and determinations lawfully made by the Community Association in accordance with the voting procedures established herein, and in the Bylaws, shall be binding on all Members and their successors and assigns.

4.10. Voting on Water and Sewer Matters. If the Community Association owns the Water and Sewer Facilities, all of the rates and Rules and Regulations relating to the provision of water and sewer service by the Community Association shall require the approval of the Members who are connected to the Water and Sewer Facilities. For such purposes only, each Member, including Declarant and Owners of Private Amenities, shall have one vote for each Lot owned by the Member and connected to the Water and Sewer Facilities, and no such Member shall be disqualified from voting because the Member's voting rights have otherwise been suspended by the Community Association. The vote of the Members on water and sewer issues shall be conducted through the Delegates. In any vote of the Delegates under this Section, the Delegates representing Members in a Neighborhood Association may vote only the votes of Members who are connected to the Water and Sewer Facilities, and the Delegate shall be restricted in voting only those votes cast and exactly in the manner in which they were cast. The Delegate will not have the right to cast votes on behalf of any Members who did not vote. During the period Tap Fees are pledged as security, the amount of the Tap Fees shall not be modified without the approval of the secured party.

## **ARTICLE 5. DUTIES AND POWERS OF COMMUNITY ASSOCIATION**

5.1. General Duties and Powers. The Community Association has been formed to further the common interests of the Members. The Community Association, acting through the Board or Persons to whom the Board has delegated such powers, shall have the duties and powers set forth in this Community Declaration and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve and enhance Community Properties and to improve and enhance the attractiveness, desirability and safety of the Community. The description in this Community Declaration of specific duties and powers will not in any manner limit the foregoing general powers of the Community Association.

5.2. Duty to Accept Property from Declarant. The Community Association shall accept title to any property, including any Improvements thereon and personal property, transferred to the Community Association by Declarant, and equipment related thereto, together with the responsibility to perform any and all duties with respect to the maintenance, care and management of such properties the same as all other Community Properties. Property interests transferred to the Community Association by Declarant may include fee simple title, easements, leasehold interests and licenses to use. All real property and Improvements thereon shall be deemed to be Common Areas and not Limited Common Areas unless specifically designated as Limited Common Areas at the time title is conveyed to the Community Association by the Declarant or if acquired by the Community Association from a Person other than the Declarant, by the Community Association. Any property or interest in property transferred to the Community Association by Declarant shall be within the boundaries of the Project Area. Except for the Water and Sewer Facilities, and except as otherwise specifically approved by resolution of the Board of Directors, any property or interest in property transferred to the Community Association by Declarant shall be transferred to the Community Association free and clear of all liens and encumbrances (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Community Declaration, the terms of the Supplemental Declaration annexing the property to the Community, and easements and Restrictions or other encumbrances which do not materially affect the use and enjoyment of the property by the Community Association or by Owners. Except for the Water and Sewer Service Facilities and except as otherwise specifically approved by resolution of the Board of Directors, no property or interest in property transferred to the Community Association by Declarant shall impose upon the Community Association any obligation to make monetary payments to Declarant, including any purchase price, rent, charge or fee.

5.3. Manage and Care for Property. The Community Association shall manage, operate, care for, maintain and repair all Community Properties and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members.

5.4. Payment of Taxes. The Community Association shall pay all taxes and assessments levied upon the Community Properties and all taxes and assessments payable by the Community Association. The Community Association shall have the right to contest any such taxes or assessments provided that the Community Association shall contest the same by appropriate legal proceedings which shall have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of any lien for such tax or assessment and provided that the Community Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties which may accrue with respect thereto, if the contest of such

taxes is unsuccessful.

5.5. Water and Sewer Service. The Community Association shall be responsible for providing water and sewer service to the Community. The Community Association may fulfill this responsibility by arranging for a third party to provide some or all of such services. As long as the Community Association owns the Water and Sewer Facilities, the Community Association shall provide water and sewer service to all properties within the Community. All water and sewer services provided by the Community Association shall be provided subject to the terms of this Community Declaration and the Rules and Regulations. During the Declarant Control Period and during the period the Water and Sewer Facilities are encumbered, any sale, transfer or further encumbrance of any interest in the Water and Sewer Facilities shall require the written approval of the Declarant and the beneficiary of any such encumbrance.

5.6. Casualty Insurance. The Community Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, casualty, fire and extended coverage insurance with respect to all insurable Improvements and personal property owned by the Community Association including coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake and war risk. Casualty, fire and extended coverage insurance with respect to insurable Improvements shall, to the extent reasonably obtainable, be for the full insurable value based on current replacement cost.

5.7. Liability Insurance. The Community Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, broad form comprehensive liability insurance covering public liability for bodily injury and property damage including, if the Community Association owns or operates motor vehicles, public liability for bodily injury and property damage arising as a result of the ownership and operation of motor vehicles. Public liability insurance for other than motor vehicle liability shall, to the extent reasonably obtainable, have limits of not less than Five Hundred Thousand Dollars (\$500,000) per person and One Million (\$1,000,000) per occurrence.

5.8. Insurance Generally. Insurance obtained by the Community Association may contain such deductible provisions as good business practice may dictate. Insurance obtained by the Community Association shall, to the extent reasonably possible, and provided Declarant reimburses the Community Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant. Insurance policies and insurance coverage shall be reviewed at least annually by the Board of Directors to ascertain whether coverage under the policies is sufficient in the light of the current values of the Community Properties and in the light of the possible or potential liabilities of the Community Association. Casualty, fire and extended coverage insurance may be provided under blanket policies covering the Community Properties and property of Declarant. All insurance coverage obtained by the Community Association shall vest in the Board of Directors exclusive authority to adjust losses and shall not be brought into contribution with insurance purchased by individual Owners, Related Users or Mortgagees.

5.9. Insurance Endorsements. Insurance obtained by the Community Association shall, to the extent reasonably possible without undue cost, contain endorsements that (1) cover each Member without each Member necessarily being specifically named, and shall contain a waiver of rights of subrogation as against the Community Association, each Member and any Related User claiming by, through or under such Member and as against any officer, director, agent or employee of any of the foregoing; (2) waive the insurer's rights to repair and reconstruct instead of paying cash; (3) preclude cancellation, invalidation, suspension or nonrenewal by the insurer on account of any one or more individual Owners or on account of any curable defect or violation without prior written demand to the Community Association to cure the defect or violation and allowance of a reasonable time to cure; (4) exclude individual Owners' policies from consideration under any "other insurance" clause; and (5) require at least 30 days' prior written notice to the Community Association of any cancellation, substantial modification or nonrenewal.

5.10. Insurance for Neighborhood Associations. Insurance obtained by the Community Association may, to the extent reasonably possible, and provided the respective Neighborhood Associations reimburse the Community Association for any additional premium payable on account thereof, (1) provide coverage for Neighborhood Associations as required under their respective Neighborhood Documents; (2) name the Neighborhood Associations as additional insureds; and (3) contain a waiver of rights of subrogation as against the Neighborhood Associations.

5.11. Fidelity Bonds Required. The Community Association shall obtain and keep in force at all times a fidelity bond or bonds for any Person handling funds of the Community Association including the Manager and employees of the Manager. Each such bond shall name the Community Association as obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Community Association or the Manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three (3)

months' aggregate Common Assessments on all Lots plus reserve funds.

5.12. Other Insurance and Bonds. The Community Association shall obtain officers and directors insurance (including members of the Architectural Committee and other committees) and such other insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Community Association shall deem necessary or desirable.

5.13. Government Mortgage Agencies. The Community Association shall obtain and keep in full force and effect such insurance and bonds as may be required by Government Mortgage Agencies, to the extent that any such Government Mortgage Agency holds, or has agreed to insure or to guaranty, any Mortgage on any Lot within the Community Association, except to the extent such insurance or bond is not available and has been waived in writing by such Government Mortgage Agency.

5.14. Additional Property and Improvements. The Community Association may acquire property or interests in property for the common benefit of Owners including Improvements and personal property. The Community Association may lease real property, including leasing of Property on the Club Property, for offices, storage, maintenance and other purposes as deemed necessary for the Community Association to carry out its duties and powers. The Community Association may construct Improvements and may demolish Improvements, including Improvements on Lots as provided in this Declaration.

5.15. Rules and Regulations. The Community Association may adopt, amend, repeal and enforce Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of the Community Declaration, the operation of the Community Association, the use and enjoyment of Community Properties and the use of any other property within the Community, including Lots. Any such Rules and Regulations need not be applied to Declarant and any properties owned by Declarant. Such Rules and Regulations shall be effective only upon adoption by resolution of the Board of Directors. Notice of the adoption, amendment or repeal of any Rules or Regulations shall be given in writing to each Delegate and each Member at the address for notices to Delegates and Members as elsewhere provided in this Community Declaration or the Bylaws, and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the reasonable expense of copying the same. Each Member shall comply with such Rules and Regulations and shall cause all of the Member's Related Users to comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Community Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Community Declaration, the provisions of this Community Declaration shall prevail.

5.16. Services to Neighborhood Associations. The Community Association shall have the power to provide services to Neighborhood Associations. Such services to any Neighborhood Association shall be provided pursuant to an agreement in writing between the Community Association and such Neighborhood Association which shall provide for the payment by such Neighborhood Association to the Community Association of the reasonably estimated expenses of the Community Association of providing such services to the Neighborhood Association including a fair share of the overhead expenses of the Community Association. Services which may be provided to a Neighborhood Association may include: (1) the construction, care, operation, management, maintenance, repair and replacement of Improvements owned by or which are the responsibility of the Neighborhood Association; (2) the enforcement of the provisions of any Neighborhood Declaration for, on behalf of, and in the name of the Neighborhood Association; (3) the levy, collection and enforcement of Neighborhood Assessments for, in the name of, and on behalf of a Neighborhood Association; (4) the payment of taxes for a Neighborhood Association with funds of the Neighborhood Association; (5) the obtaining and maintenance of insurance for a Neighborhood Association; (6) the collection of charges for use of facilities of a Neighborhood Association; and (7) the appointment and supervision of a Manager or Managers for a Neighborhood Association, which Manager or Managers may also be a Manager for the Community Association.

5.17. Special Services for Members. The Community Association shall have the power to provide services to a Member or group of Members. Any service or services to a Member or group of Members shall be provided pursuant to an agreement in writing, or through one or more Supplemental Declarations, which shall provide for payment to the Community Association by such Member or group of Members of the reasonably estimated costs and expenses of the Community Association of providing such services, including a fair share of the overhead expenses of the Community Association. If the payment for such services is not made when due, the obligation to make payment it shall be subject to a Reimbursement Assessment without need for further notice or action by the Board.

5.18. Charges for Facilities and Services. The Community Association shall have the power to establish reasonable and uniformly applied charges for the use of facilities and services. The charges may include reasonable admission or other fees for any special or extraordinary use of property or facilities or services of the Community Association such as special parking privileges,

special recreation facilities, conference rooms, instruction, day-care or child-care services or similar uses beyond the ordinary use of Community Properties, facilities and services. Such charges or fees shall be set forth in schedules of charges and fees adopted from time to time by the Board of Directors.

5.19. Water and Sewer Facilities. The Community Association shall have the power to provide water and sewer service to the Community, either as owner of the Water and Sewer Facilities or by conveying the same to a third party. If the Community Association provides water and sewer service, such service shall be provided on a not-for-profit basis. The Community Association, in its sole discretion, may elect to convey ownership of the Water and Sewer Facilities to a third party to own and operate the Water and Sewer Service Facility in accordance with applicable law. If the Water and Sewer Facilities are conveyed to a third party, all references in this Community Declaration to the duty and obligation of the Community Association providing such services shall refer to the third party owner of the Water and Sewer Services Facilities, and not the Community Association, and the third party shall be the beneficiary of all Utility easements granted in this Community Declaration with respect to the provision of Water and Sewer Service. Any conveyance of the Water and Facilities to a third party during the Declarant Control Period shall require the consent of the Declarant.

5.20. Payment for Water and Sewer Facilities. The Community Association shall have the power to enter into an agreement with Declarant for Declarant to design, build and construct the Water and Sewer Facilities and for Declarant to loan to the Community Association all or part of the funds necessary for the Community Association to purchase from Declarant the Water and Sewer Facilities so designed and built by Declarant. In furtherance thereof, the Community Association shall have the power to sign such promissory notes and grant such security interest in the Water and Sewer Facilities and the right to the proceeds of Tap Fees, provided (1) the promissory note shall be nonrecourse to the Community Association and its Members; (2) the only funds of the Community Association that may be used to make payments to Declarant shall be the Tap Fees and no other Community Association funds, including from Water and Sewer Charges may be used for making payments to Declarant; (3) interest on the promissory note shall not exceed the interest rate being charged to Declarant under Declarant's construction loan, if any, for the construction of the Water and Sewer Facilities; (4) the amount paid to Declarant shall be based upon Declarant's actual costs, including interest, but shall not include any profit to Declarant for constructing such facilities; and (5) the agreement may not be amended by the Community Association to the detriment of the Community Association without the consent of a vote of Delegates representing a majority of the votes of the Members, excluding the Declarant.

5.21. Grant of Easements. The Community Association shall have the power to grant access, Utility, drainage, water facility and other such easements in, on, over or under Community Properties, including easements to expand or to construct additional Water and Sewer Facilities. During the Declarant Control Period, any such grant shall require the approval of the Declarant.

5.22. Conveyance or Dedication to Government. The Community Association, with the approval of Delegates representing at least two-thirds (2/3) of the votes of the Members of the Community Association, shall have the power to grant, convey, dedicate or transfer any Community Properties or facilities to any public or governmental agency or authority for such purposes and subject to such terms and conditions as the Community Association shall deem appropriate, subject to the approval of the same by Declarant, as provided in this Community Declaration.

5.23. Power to Borrow and Mortgage. The Community Association shall have the power to borrow money and, with the approval of Delegates representing at least two-thirds (2/3) of the votes of the Members of the Community Association, to encumber Community Properties and the proceeds of certain Assessments levied for the repayment of such borrowing (for example, long term Special Assessments) as security for such borrowing, subject to required approvals and consents to such action as otherwise provided in this Community Declaration. During the Declarant Control Period, any such borrowing or encumbrance shall require the approval of Declarant.

5.24. Employment of Managers. The Community Association shall have the power to retain and pay for the services of one or more Managers to undertake any or all of the management duties, obligations or functions for which the Community Association has responsibility under this Community Declaration to the extent deemed advisable by the Community Association, and may delegate any of its duties, powers or functions to any such Manager. Any contract or agreement with any Manager shall be terminable by the Community Association for cause on no more than thirty (30) days prior written notice, and shall be terminable by the Community Association without cause and without payment of a termination fee on no more than ninety (90) days prior written notice. Any such contract or agreement shall be for a term of no more than one (1) year, but may be subject to renewal for succeeding terms of no more than one (1) year each. Notwithstanding any delegation to a Manager of any duties, powers or functions of the Community Association, the Community Association and its Board shall remain ultimately responsible for the performance and exercise of such duties, powers and functions.

5.25. Employees, Agents, and Consultants. The Community Association shall have the power to hire and discharge employees and agents and to retain and pay for legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Community Association under this Community Declaration.

5.26. General Corporate Powers. The Community Association shall have all of the ordinary powers and rights of a Missouri corporation formed under the Missouri Nonprofit Corporation Act, including the power and right to enter into partnership and other agreements, subject only to such limitations upon such powers as may be set forth in this Community Declaration or in the Articles of Incorporation or Bylaws. The Community Association shall also have the power to do any and all lawful things that may be authorized, required or permitted to be done under this Community Association or the Articles of Incorporation or Bylaws and to do and perform any and all acts that may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Community Association under this Community Declaration and the Articles of Incorporation or Bylaws.

5.27. Trash Collection. The Community Association shall have the power to regulate the days and hours during which trash and solid waste may be collected or put out for collection in the Community or any Neighborhood. The Community Association shall also have the power to enter into a contract for the exclusive provision of services for the collection of trash and solid waste within all or any portions of the Community. If the Community Association contracts for the provision of such service, each Owner within any area served by such service shall, whether or not such Owner utilizes the service, be obligated to pay Special Assessments levied by the Community Association to cover the costs of providing such service. The areas to be served and the amount of Special Assessments shall be determined by the Board of Directors. The amount of the Special Assessment shall be reasonable and shall represent fair allocation of administrative and overhead costs of the Community Association associated with providing such service.

5.28. Community Cable Services. The Community Association may enter into a one or more agreements (collectively referred to as "Community cable agreements") for the provision of cable television, computer networking or other media provided by cable, fiber optics or other means to residents of the Community. If a Community cable agreement is entered into by the Community Association, a base cost of such service may be included in the costs used in calculating the Common Assessments and all Owners shall pay such cost as a part of Common Assessments, regardless of whether the Owner has connected to or desires such cable services. Any additional costs for expanded services (including, for example, extended service, pay channels, remote controls and other services which may be offered by the cable provider) shall be paid on an individual subscriber basis directly to the cable provider.

5.29. Security. The Community Association and Neighborhood Associations may, but shall not be obligated to, maintain or support certain activities within the Community designed to make the Community and individual Neighborhoods safer than they otherwise might be. Neither the Community Association, any Neighborhood Associations nor the Declarant shall in any way be considered insurers or guarantors of security within the Community, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner and Related User acknowledges, understands and covenants to inform its tenants and Related Users that the Declarant, Community Association, the Board of Directors and the Neighborhood Associations and their boards are not insurers and that each Person using the Community assumes all risks for loss or damage to persons, Improvements and the contents of Improvements resulting from acts of third parties.

## **ARTICLE 6. COMMUNITY PROPERTIES**

6.1. Members' Rights of Use and Enjoyment. All Members may use the Community Properties, unless otherwise provided in the Supplemental Declaration or deed governing a particular Common Area or a Limited Common Area, if any, as provided in this Community Declaration.

6.2. Right to Regulate Use. The Community Association, acting through the Board, shall have the power to regulate use of Community Properties by Members, Related Users and the public to further enhance the overall rights of use and enjoyment of all Members, including imposing reasonable limits on the times of use and numbers of guests permitted to use Community Properties and imposing reasonable fees and charges on guests using Community Properties.

6.3. Right to Allow Public Use. The Community Association, acting through the Board, shall have the right to allow members of the general public to use Community Properties, subject to reasonable limitations, and provided that use by the general public does not unreasonably interfere with or impair the rights of use and enjoyment of Owners.

6.4. No Partition. No Owner shall have the right to partition or seek partition of the Community Properties or any part thereof.

6.5. Damage by Member. Each Member shall be liable to the Community Association for any damage to the Community Properties or for any expense or liability incurred by the Community Association, to the extent not covered by insurance, which may be caused by the negligence or willful misconduct of such Member or any Related User of such Member and for any violation by such Member or any Related User of such Member of this Community Declaration or any Rule or Regulation adopted by the Community Association. The Community Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a Reimbursement Assessment against a Member, after Notice and Hearing, to cover the costs and expenses incurred by the Community Association on account of any such damage or violation of this Community Declaration or of such Rules and Regulations or for any increase in insurance premiums directly attributable to any such damage or violation.

6.6. Damage or Destruction. In the event of damage to Community Properties by fire or other casualty or if any governmental authority shall require any repair, reconstruction or replacement of any Community Properties, the Community Association shall have the duty to repair, reconstruct or replace the same. Any insurance proceeds payable by reason of damage or destruction of Community Properties by fire or other casualty shall be paid to the Community Association and shall be used, to the extent necessary, to pay the costs of repair, reconstruction or replacement. If funds from insurance proceeds or from reserves for replacement are insufficient to pay all costs of repair, reconstruction or replacement of Improvements damaged or destroyed, or if the Community Association is required to make repairs, reconstruction or replacements of Improvements by governmental authorities, the Community Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement or improvement, levy a Special Assessment, or if a Member or group of Members is liable for such damage, levy a Reimbursement Assessment against the Member or group of Members responsible therefor, to provide the additional funds necessary as elsewhere provided in this Community Declaration. Repair, reconstruction or replacement of Community Properties shall be done under such contracting and bidding procedures as the Community Association shall determine are appropriate. If insurance proceeds available to the Community Association on account of damage or destruction exceed the cost of repair, reconstruction and replacement, the Community Association may use the same for future maintenance, repair, improvement and operation of other Community Properties.

6.7. Condemnation of Community Properties. If any Community Properties or interests therein are taken under exercise of the power of eminent domain or by private purchase in lieu thereof, the award in condemnation or the price payable shall be paid to the Community Association, except to the extent payable to any other Person with an interest in such property including any Mortgagee of such property. The Community Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners therein. Any award or funds received by the Community Association shall be held by the Community Association in the appropriate Maintenance Fund as determined by the Board, as a reserve for future maintenance, repair, reconstruction or replacement of the Community Properties or may be used for improvements or additions to, or operation of, Community Properties. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

6.8. Dissolution of Community Association. In the event of dissolution of the Community Association, the Community Properties shall, to the extent reasonably possible, be conveyed or transferred to an appropriate public or governmental agency or agencies or to a nonprofit corporation, association, trust or other organization, to be used, in any such event, for the common benefit of Owners for similar purposes for which the particular Community Property was held by the Community Association. To the extent the foregoing is not possible, the Community Properties shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Members in proportion to which they pay Common Assessments.

## ARTICLE 7. DECLARANT'S RIGHTS AND RESERVATIONS

7.1. Term of Rights and Reservations. Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Community Association and the Community Properties from the date hereof, until the time that all property in the Annexable Area has become part of the Community and the last Lot within the Community has been sold and conveyed by Declarant. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of property by Declarant to the Community Association and each Owner, whether or not specifically stated therein and in each deed or other instrument by which any property within the Community is conveyed by Declarant. The rights, reservations and easements hereinafter set forth shall be prior and superior to any other provisions of this Community Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of this Community Declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other or subsequent amendment.

7.2. Construction of Additional Improvements. Declarant shall have and hereby reserves the right, but shall not be obligated to, construct additional Improvements on the Community Properties at any time and from time to time in accordance with the Master Plan and this Community Declaration for the improvement and enhancement thereof and for the benefit of the Community Association and Owners, so long as such construction does not directly result in an increase in the then current and applicable Common Assessments by more than twenty percent (20%). Declarant shall convey or transfer such Improvements to the Community Association and the Community Association shall be obligated to accept title to, care for and maintain the same as provided in this Community Declaration. If any such Improvements are not completed when transferred to the Community Association, Declarant shall undertake to complete such Improvements at Declarant's expense free of liens and encumbrances relating to the construction of the Improvements. The foregoing sentence shall not obligate the Declarant to construct any Improvements unless it commences, but does not complete, construction before transfer to the Community Association. Any claim of breach of this provision must be made within six months following the transfer of the Improvements or the Improvements will be deemed accepted by the Community Association and the claim will be deemed waived.

7.3. Promotion and Marketing by Declarant. Declarant shall have and hereby reserves the right to reasonable use of Community Properties and of services offered by the Community Association in connection with the promotion and marketing of property within the boundaries of the Project Area. Without limiting the generality of the foregoing, Declarant may erect and maintain on any part of the Community Properties such signs, temporary buildings and other structures as Declarant may reasonably deem necessary or proper in connection with the promotion, development and marketing of real property within the Project Area; may use vehicles and equipment on Community Properties for promotional purposes; and may permit prospective purchasers of property within the boundaries of the Project Area, who are not Owners or Members of the Community Association, to use Community Properties at reasonable times and in reasonable numbers; and may refer to the Community Association and to the Community Properties and services offered by the Community Association in connection with the development, promotion and marketing of property within the boundaries of the Project Area.

7.4. Right to Complete Development. No provision of this Community Declaration shall be construed to prevent or limit Declarant's rights to complete development of property within the boundaries of the Project Area; to construct or alter Improvements on any property owned by Declarant within the Project Area; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned by the Community Association within the Project Area; or to post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Project Area. Nothing contained in this Community Declaration shall limit the right of Declarant or require Declarant to obtain approvals (1) to excavate, cut, fill or grade any property owned by Declarant or to construct, alter, demolish or replace any Improvements on any property owned by Declarant, or (2) to use any structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Project Area, or (3) to require Declarant to seek or obtain the approval of the Architectural Committee or of the Community Association for any such activity or Improvement to Property by Declarant on any property owned by Declarant. Nothing in this Community Declaration shall limit or impair the reserved rights of Declarant as elsewhere provided in this Community Declaration.

7.5. Development of Project Area. Neither Declarant nor any person acting as an agent or representative on behalf of Declarant has made any representation or warranty, and there can be no assurance as to when, if at all, all of the Project Area will be built, developed or constructed, and Declarant is under no obligation to build, develop or construct any portion of the Project Area other than as set forth in any specific written agreement signed by Declarant.

7.6. Approval of Conveyances or Changes in Use. The Community Association shall not, without first obtaining the



prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change or alter the use of Community Properties, transfer, convey, lease, mortgage or encumber the Community Properties or any interest therein or use Community Properties other than solely for the benefit of Members.

7.7. Granting and Creation of Easements. Declarant shall have and hereby reserves the right to grant or create temporary or permanent easements, for access, Utilities, drainage, water and other purposes incident to development and sale of the Project Area, located in, on, under, over and across Lots and Community Properties, provided that such easements do not create a permanent, unreasonable interference with the rights of the Owners of such properties.

7.8. Modification of Plats. Declarant shall have and hereby reserves the right to grant, modify or enter into easements, dedications, agreements, licenses, restrictions, reservations, covenants and rights of way, to modify the boundary lines (including the boundary lines of Lots) and to Record one or more Plats or replat portions of the Project Area for development of such properties in furtherance of the Master Plan, as amended from time to time, or to locate easements granted by Declarant or the Community Association. No such modification shall be made to the boundaries of a Lot owned by an Owner other than Declarant without the consent of such Owner and its Mortgagee, which consent shall not be unreasonably withheld if the modification does not interfere with the use or materially reduce the value of such Lot. The Community Association and each Owner and Mortgagee shall execute and deliver any and all agreements, documents, plats and instruments which are necessary or desirable to accomplish or confirm any actions taken by Declarant with respect to the rights reserved by Declarant under this Community Declaration or any Neighborhood Declaration.

7.9. Conveyance of Property to Community Association. Declarant shall have and hereby reserves the right, but shall not be obligated to, convey additional real property and Improvements thereon to the Community Association at any time and from time to time in accordance with the Master Plan and this Community Declaration, so long as any conveyance does not directly result in an increase in the then current and applicable Common Assessments by more than twenty percent (20%). Unless Declarant specifically states otherwise in writing, Improvements on property conveyed to the Community Association shall be conveyed by Declarant to the Community Association in its "where is, as is" condition and without recourse, and without any representations, warranties or other agreements express or implied with respect to any Improvements, including representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and representations or warranties regarding the condition, design, construction, accuracy, completeness, adequacy of the size or capacity in relation to utilization or the future economic performance or operations of the Common Area, including Improvements thereon. Declarant will transfer and assign to the Community Association, without recourse, all warranties which it receives from contractors, manufacturers and suppliers relating to any of the Common Area or Improvements thereon which exist and are assignable.

7.10. Rights to Water. Declarant hereby reserves for itself and its assigns, to the maximum extent permitted by law, all rights to ground water, surface water and storm water runoff within the Community, and each Owner agrees, by acceptance of a deed to a Lot, that the Declarant shall retain all such rights. No Person other than the Declarant and its designees shall claim, capture or collect rainwater, ground water, surface water or storm water runoff within the Community without prior written permission of Declarant or the assignee of a particular right. The Declarant or its designee may establish programs for reclamation of storm water runoff and wastewater for appropriate uses within or outside the Community and may require Owners, Related Users and occupants of Lots to participate in such programs to the extent reasonably practical. No Owner, Related User or occupant of a Lot shall have any right to be compensated for water claimed or reclaimed from Lots.

## **ARTICLE 8. ASSESSMENTS, BUDGETS AND FUNDS**

8.1. Maintenance Funds to be Established. The Community Association shall establish and maintain at least the following separate Maintenance Funds: (1) an Operating Fund; (2) a Reserve Fund; and (3) a Working Capital Fund. Each of the Maintenance Funds and any other funds established by the Community Association shall be established as one or more accounts at any financial institution in which deposits are insured by an agency of the federal government.

8.2. Establishment of Other Funds. The Community Association may establish other funds as and when needed. By way of example, separate funds may be established for receipts and disbursements relating to the provision of water and sewer services and services provided by the Community Association for a Neighborhood Association. Nothing herein shall limit, preclude or impair the authority of the Community Association to establish other funds for specified purposes authorized by this Community Declaration by any Supplemental Declaration. If the Community Association establishes any additional funds, the Board shall designate an appropriate title for the fund to distinguish it from other funds maintained by Community Association.

8.3. Common Assessments to Maintenance Funds. Monies received by the Community Association from Common

Assessments shall be deposited in the Maintenance Funds in accordance with the following provisions: (1) there shall be deposited to the Operating Fund that portion of Common Assessments which, according to the Community Association Budget for the year, was budgeted for operating costs and expenses; (2) there shall be deposited to the Reserve Fund that portion of Common Assessments which was budgeted for the Reserve Fund; (3) there shall be deposited to the Working Capital Fund that portion of Common Assessments, if any, which was budgeted for the replenishment of the Working Capital Fund.

8.4. Other Deposits to Maintenance Funds. The Community Association shall deposit money received by the Community Association from sources other than Common Assessments in the Maintenance Fund or other funds determined by the Board of Directors to be most appropriate. For example, Reimbursement Assessments shall be deposited in the Maintenance Fund from which the costs and expenses were or will be paid that form the basis for the Reimbursement Assessments; Special Assessments for capital repairs, maintenance, replacements and Improvements shall be deposited in the Reserve Fund from which such capital costs have been or will be paid; Working Capital Assessments, including any payments to replenish funds expended from the Working Capital Fund, shall be deposited in the Working Capital Fund; Water and Sewer Assessments shall be deposited in the Operating Fund and the Reserve Fund consistent with the Budget used in establishing Water and Sewer Assessments; and insurance proceeds for damage to, or condemnation awards for the taking of, Community Properties shall be deposited in the Reserve Fund. Assessments collected for a Neighborhood Association shall be deposited in the fund for such Neighborhood Association. Interest and late charges received on account of delinquent assessments may be allocated among the Maintenance Funds in the same proportions as the delinquent assessments were allocated or, at the discretion of the Board of Directors, may be allocated to any one or more of the Maintenance Funds or other funds.

8.5. Disbursements from Maintenance Funds. All amounts deposited in the Maintenance Funds shall be used for the common benefit of all the Members for purposes authorized by this Community Declaration. Disbursements from particular Maintenance Funds shall be limited to specified purposes as follows: (1) disbursements from the Operating Fund may be made for such purposes as are necessary or proper under this Community Declaration, except those purposes for which disbursements are to be made from other Maintenance Funds as follows; (2) disbursements from the Reserve Fund shall be made solely for purposes of funding capital repairs and replacements and other extraordinary matters which are not expected to recur on an annual or more frequent basis; (3) disbursements from the Working Capital Fund may be made to pay unforeseen expenses to purchase additional equipment, property or services and for such other purposes as provided in this Community Declaration; provided, however, Declarant may not use any Working Capital Funds to defray Declarant's expenses or construction costs or to make up any budget deficits which Declarant is obligated to do under this Community Declaration; (4) disbursements from any fund established for a Neighborhood shall be made solely for the benefit of the particular Neighborhood for which the fund was created.

8.6. No Commingling of Maintenance Funds. The Community Association shall not commingle any amounts deposited in any one Maintenance Fund or other fund with amounts deposited in any other Maintenance Fund or other fund.

8.7. Authority for Disbursements. The Board shall have the authority to make or to authorize an agent, the Manager and employees and officers of the Community Association to make disbursements of any monies in the Maintenance Funds or any other funds established by the Board.

8.8. Annual Budgets. The Board of Directors shall cause to be prepared, at least sixty (60) days prior to the commencement of each calendar year, a Budget for such calendar year, including a reasonable provision for contingencies and deposits into the Reserve Fund. The Budget shall show, in reasonable detail, the categories of expenses and the amount of expenses in each Maintenance Fund, and shall reflect any expected income of the Community Association for the coming calendar year, any expected surplus from the prior year and any existing surplus in any Reserve Fund. The Budget shall include amounts for maintenance and repairs and may include an amount for contingencies and amounts deemed necessary or desirable for deposits to create, replenish or add to the Reserve Fund for major capital repairs, replacements and improvements to Community Properties and, if Working Capital Funds have been used, for replenishment of, but not otherwise increase, the Working Capital Fund. The Board shall cause a copy of the Budget to be distributed to each Delegate promptly after the Budget is prepared and approved by the Board and shall cause a copy of the Budget to be available for inspection at the principal office of the Community Association. Copies of the Budget shall be made available by the Community Association to any Members requesting a copy of the same upon payment of the reasonable copying expense.

8.9. Funding of Reserve Funds. The Board of Directors, in budgeting and levying Common Assessments, shall endeavor, whenever possible, to fund the Reserve Fund, if any, by regularly scheduled payments, included as part of the Common Assessments, rather than by Special Assessments or by drawing against the Working Capital Fund.

8.10. Common Assessments. For each calendar year, the Community Association shall levy Common Assessments

against Owners of the Lots. Each Owner shall be obligated, jointly and severally, to pay the Common Assessments levied against, and allocated to, such Owner and the Lot of such Owner as provided in this Community Declaration.

8.11. Apportionment of Common Assessments. Each Residential Lot shall be assessed the same Common Assessment regardless of the size, value, location or use of such Lot, except Common Assessments for Unimproved Lots shall be two-thirds (2/3) of the amount of the Common Assessment that would otherwise be payable. Each Private Amenity Property shall be assessed for Common Assessments based upon the Private Amenity Assessment Share for such Private Amenity Property.

8.12. Amount of Common Assessments. The amount of the Common Assessments for any year payable by an Owner for the Lot of such Owner shall be computed by multiplying the total amount to be raised by the Common Assessments for that year, as shown in the Budget for that year, by a fraction, the numerator of which is one (1) and the denominator of which is the sum of (1) the number of Improved Lots in the Community; (2) two-thirds (2/3) of the number of Unimproved Lots in the Community; and (3) the number of Lots attributed to Private Amenity Assessment Shares. The number of Lots shall be based upon the number of such Lots as of the first day of the calendar year for which the computation is being made.

8.13. Neighborhood Assessments. Any Neighborhood Assessments, including any Neighborhood Common Assessments shall be established by the appropriate Neighborhood Association. If the Owner of any Lot is obligated to pay a Neighborhood Common Assessment with respect to any Neighborhood, the Supplemental Declaration covering the Lot shall (1) identify the Neighborhood; and (2) identify the Lots covered by the Supplemental Declaration which shall be obligated to pay Neighborhood Common Assessments with respect to such Neighborhood.

8.14. Supplemental Common Assessments. Subject to the limitations imposed by the Maximum Common Assessment, if the Common Assessments prove inadequate for any reason, including nonpayment of any Owner's Assessments, the Board may, from time to time, use funds in the Working Capital Fund (in which case the replenishment of the Working Capital Fund shall be included in the Budget for the next year as a part of the Common Assessments) or levy a supplemental Common Assessment for any of the Maintenance Funds. Such supplemental Common Assessment shall be assessed against the Owner of each Lot in the same manner as Common Assessments are originally assessed each year by the Board with respect to the particular Maintenance Fund, provided in no event shall the sum of the initial and the supplemental Common Assessments, as the case may be, for a calendar year exceed the Maximum Common Assessment permitted for that year except as provided in Section 8.15. Written notice of any change in the amount of any annual Common Assessment shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change.

8.15. Maximum Common Assessments. The Board of Directors shall not levy a Common Assessment against a Lot in any calendar year that is greater than one hundred twenty percent (120%) of the Common Assessment against a comparable Lot in the preceding calendar year, except with the approval of Delegates as provided in Section 8.16. The maximum amount of Common Assessments that is permitted hereunder in any calendar year without further Delegate approval is the Maximum Common Assessment.

8.16. Increase in Maximum Common Assessment. If the Board of Directors, by majority vote, determines that the important and essential functions of the Community Association will not be properly funded in any one year or in any one year and subsequent years by the amount of the Maximum Common Assessment, it may call a meeting of Delegates requesting approval of a specified increase in the Maximum Common Assessment for either one year or that year and one or more subsequent years. An increase in the Maximum Common Assessment for any one year or for any one year and all subsequent years shall require the approval of Delegates representing two-thirds (2/3) of the votes of the Members of the Community Association entitled to vote, excluding votes exercisable by Declarant.

8.17. Adjoining Nuisances. Nothing in this Community Declaration shall be construed so as to permit the Community Association to use any Assessments to abate any annoyance or nuisance emanating from outside the physical boundaries of the Community.

8.18. Assessment on Declarant Owned Lots. As long as Declarant owns one or more Lots, Declarant shall pay the difference, if any, between the amount of Common Assessments payable by Owners other than Declarant, and the actual expenses incurred by the Community Association in any calendar year, unless Declarant otherwise elects to pay Common Assessments on its Lots as provided herein. If Declarant determines not to pay the difference between the amount of Common Assessments payable by Owners other than Declarant and the actual expenses of the Community Association, then Declarant shall pay Common Assessments for all Lots which Declarant owns on the same basis as all other Owners. Declarant may make the election to pay the difference or to pay Common Assessments on its Lots each fiscal year of the Community Association. Unless Declarant otherwise

notifies the Board of Directors in writing at least thirty (30) days prior to the end of the fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as the preceding fiscal year. Declarant's obligations hereunder may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of the same valued a fair market value for such services and materials. If the Declarant elects to pay the difference as described above, the Declarant shall not be obligated to pay or fund any portion of the Reserve Fund or Working Capital Fund, notwithstanding anything to the contrary.

8.19. Commencement of Common Assessments. Subject to the provisions of Section 8.18 of this Community Declaration, Common Assessments shall commence and be due and payable as to each Lot within an Annexed Property on the first day of the month in which the first conveyance of a Lot to an Owner other than the Declarant occurs. The Common Assessment for the then current calendar year shall be prorated on the basis of the number of days in such calendar year remaining from the date of commencement of such Common Assessment to the end of such calendar year.

8.20. Payment of Assessment. Common Assessments shall be due and payable in advance to the Community Association by the assessed Member during the calendar year in advance in equal semi-annual installments, on or before February 1 and August 1 of each calendar year, or in such other frequency or manner or on such other dates as the Board of Directors may designate in its sole and absolute discretion. Notice of the amount of the Common Assessments shall be given to each Member prior to January 1 of each year.

8.21. Failure to Fix Common Assessment. The failure by the Board of Directors to levy a Common Assessment or to give notice of the amount of the Common Assessment for any year shall not be deemed a waiver or modification with respect to any of the provisions of this Community Declaration or a release of the liability of any Member to pay Assessments, or any installment thereof, for that or any subsequent year. In the event of such failure, the amount of the Common Assessment for that year shall be the same as the amount of the Common Assessment for the previous year.

8.22. No Abatement or Offset. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including any claim that the Community Association or the Board of Directors is not properly exercising its duties and powers under this Community Declaration; that some portions of the Community Properties are not completed; or that inconvenience or discomfort has been suffered arising from the making of repairs or Improvements to Community Properties or from any action taken to comply with any law or any determination of the Board of Directors. Further, no Owner may exempt itself or otherwise be relieved of any liability or obligation for the payment of Assessments by nonuse of Community Properties or Community Association services or by abandonment or Leasing of the Owner's Lot.

8.23. Special Assessments. In addition to Common Assessments, the Board of Directors may, subject to the provisions of this Section, levy Special Assessments for the purpose of raising funds, not otherwise provided under the Budget from Common Assessments, to construct or reconstruct, repair or replace capital Improvements upon Community Properties, including necessary personal property related thereto; to add to the Community Properties, but, except as otherwise permitted in this Community Declaration, not for the purchase of property from Declarant; to provide for necessary facilities and equipment to offer the services authorized in this Community Declaration; or to repay any loan made to the Community Association to enable it to perform the duties and functions authorized in this Community Declaration. The Board of Directors shall not levy Special Assessments without the vote of Delegates representing at least two-thirds (2/3) of the votes of the Members who own Lots subject to the Special Assessment. Special Assessments for capital Improvements which may be used by all Members of the Community Association shall be levied equally against all Lots (regardless of whether the Lot is an Improved Lot or Unimproved Lot), except that a Private Amenity will be assessed based upon the Private Amenity Assessment Share for such Private Amenity. The Community Association shall notify Members in writing of the amount of any Special Assessment and of the manner in which and the dates on which any Special Assessment is payable. The Members shall pay any such Special Assessment in the manner so specified.

8.24. Long Term Special Assessment. In order to facilitate the financing of capital improvements, a Special Assessment for particular capital improvements may be made payable on an installment basis over a period of more than one fiscal year (a "long term special Assessment"). If the proceeds of a long term Special Assessment are pledged or granted to a lender as security for a loan, that long term Special Assessment may not be reduced or modified without the approval of the lender. The Community Association shall notify Members in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable and the Members shall pay any such Special Assessment in the manner so specified.

8.25. Reimbursement Assessments. The Board of Directors may, subject to the provisions hereof, levy an assessment, which Assessment shall be known as a Reimbursement Assessment, against any Member if the willful or negligent failure of the Member or a Related User of such Member to comply with this Community Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations shall have resulted in the expenditure of funds by the Community Association to cause or seek such compliance (including court costs and attorneys' fees) or to reimburse the Community Association for damage to Community Properties by a Member or the Related Users of such Member. Reimbursement Assessments may also be levied for such other damages, fines and charges imposed or levied by the Community Association as provided in this Community Declaration. The amount of the Reimbursement Assessment shall be due and payable to the Community Association thirty (30) days after notice to the Member of the decision of the Board of Directors that the Assessment is owing. No notice shall be required for late charges, interest and costs of collection.

8.26. Working Capital Assessment. Each Owner of a Lot shall make at the time of purchase of the Lot a nonrefundable contribution to the Community Association equal to one-quarter of the annual Common Assessment against an Improved Lot in effect at the time of the transfer of title to the Lot for deposit in the Working Capital Fund. The Working Capital Fund shall be held for the use and benefit of the Community Association to meet unforeseen expenditures or to purchase additional equipment, property or services. The Working Capital Fund shall not be used to defray any of Declarant's expenses, construction costs or to make up any budget deficits while Declarant is in control of the Community Association. Upon the transfer of a Lot, an Owner shall be entitled to a credit from his transferee (but not the Community Association) for the unused portion of the contribution to the Working Capital Fund. Declarant shall not be required to pay Working Capital Assessments for Lots which it owns.

8.27. Water and Sewer Service Assessments. Each Owner of a Lot on which Improvements are connected to the Water and Sewer Facilities shall pay the Community Association periodic Water and Sewer Service Charges, as levied by the Community Association from time to time with respect to water and sewer service provided to the Owner's Lot. Rates for such water and sewer service shall be established by the Community Association and shall be uniformly applied to all Residential Lots; rates for Private Amenities need not be uniform and may be set forth in one or more contracts between the Community Association and the Owner of the Private Amenity. The rates will be based upon the Community Association's actual cost of owning, operating, maintaining and administering the Water and Sewer Facilities. Each Owner shall be subject to and abide by such Rules and Regulations adopted by the Community Association regarding the operation of the Water and Sewer Facilities, including procedures for rates, billing, late fees for nonpayment, deposits or guarantees and disconnection of service and other matters related to the efficient operation and administration of the Water and Sewer Facilities. Each Owner shall pay to the Community Association a one time Tap Fee at the time Improvements on the Owner's Lot are first connected to the Water and Sewer Facilities.

8.28. Late Charges and Interest. If any Assessment or any installment thereof is not paid within thirty (30) days after it is due, the Member obligated to pay the Assessment shall pay a reasonable late charge as established by the Board from time to time, together with interest from the date the Assessment was due at such rate as may be determined by the Board of Directors from time to time. The Board, in its discretion, may waive late charges, interest and costs. All late charges, interest and costs (including attorneys' fees) incurred by the Community Association in the collection of any Assessments are Reimbursement Assessments.

8.29. Attribution of Payments. If any installment of a Common Assessment paid by an Owner is less than the amount assessed and the payment does not specify the Maintenance Fund or funds into which it should be deposited, the receipt by the Association from that Owner shall be credited in the following order of priority: (1) to the replenishment of the Working capital Fund until that portion of the Common Assessment has been satisfied; (2) to the Reserve Fund until that portion of the Common Assessment has been satisfied; and (3) to the Operating Fund until that portion of the Common Assessment has been satisfied. In each of the foregoing cases, receipts shall be credited first to interest and late charges, attorneys' fees and other costs of collection, and next to principal reduction, satisfying the oldest obligations first followed by more current obligations, in accordance with the foregoing order of priority.

8.30. Notice of Default and Acceleration. If any Assessment or any installment thereof is not paid within thirty (30) days after its due date, the Community Association shall, prior to commencing any acceleration, collection or foreclosure proceeding, mail a notice of default to the Owner and to the First Mortgagee of the Lot, if the First Mortgagee has, by written notice to the Community Association requested a copy of the notice. The Community Association may also, but shall not be obligated to, give notice to any other Mortgagee of the Lot. The notice shall specify (1) the fact that the installment is delinquent; (2) the action required to cure the default; (3) a date, not less than thirty (30) days from the date the notice is mailed to the Member, by which such default must be cured; and (4) that failure to cure the default on or before the date specified in the notice may result

in acceleration of the balance of the Assessment or the installments of the Assessment for the then current calendar year, if applicable, and the foreclosure of the Assessment Lien against the Lot of the Member. Failure to give a notice of default shall not affect the Member's obligation to pay the delinquent Assessment or installment. If the delinquent Assessment and any late charges or interest thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further demand and may enforce the collection of the full Assessment and all charges and interest thereon in any manner authorized by law in this Community Declaration, subject to the protection, if any, afforded to Mortgagees under this Community Declaration.

8.31. Obligation to Pay Assessments. Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner, regardless of whether made in the capacity as an Owner or a Member, against whom the same is assessed. All Owners of a Lot shall be jointly and severally liable to the Community Association for payment of all Assessments attributable to that Lot. The payment of any and all Assessments is an independent covenant, with all Assessments payable in full, when due, without notice (except as expressly provided in this Community Declaration) or demand, and without set off or deduction. Neither resignation as a Member nor nonparticipation in the Community Association shall relieve an Owner from its obligation for the payment of all Assessments or from any other obligations imposed upon it under this Community Declaration. Notwithstanding anything in this Community Declaration to the contrary, the sale or other transfer of a Lot will not affect the obligations of the Owner for the payment of all Assessments made against it prior to the sale or transfer, and any successor in interest, other than a First Mortgagee, will take title subject to the Assessment Lien as provided in this Community Declaration.

8.32. Remedies to Enforce Assessments. In the event of a default in payment of any Assessment or installment thereof, the Community Association may, in addition to any other remedies provided under this Community Declaration or by law, enforce such obligation by suit or foreclosure of the Assessment Lien as provided in this Community Declaration. Any judgment rendered in such action shall include any late charges, interest and other costs of enforcement, including reasonable attorneys' fees, in the amount as the court may adjudge, against the defaulting Owner or Related User of such Owner. All remedies provided for enforcement of Assessments in this Community Declaration shall be cumulative and shall be in addition to any and all other remedies available at law or in equity.

8.33. Owner Responsible for Related Users. All Restrictions and other provisions of this Community Declaration, the Bylaws, the Articles and the Rules and Regulations or any Restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Related Users. Every Owner shall cause all Related Users to comply with this Community Declaration, the Bylaws, the Articles and the Rules and Regulations and shall be responsible for all violations and damages to the Community Properties caused by such Related Users notwithstanding the fact that such Related Users are fully liable and may be sanctioned for any violation of this Community Declaration, and the Bylaws, Articles and Rules and Regulations.

8.34. Assessment Lien. The Community Association is hereby granted a lien against each Lot for any Assessments levied against that Lot, including any interest, late charges and costs of collection (including attorney fees) of any Assessments. This lien shall be known as the Assessment Lien. The Recording of this Community Declaration constitutes record notice and perfection of this Assessment Lien, and no further Recordation of any claim for lien is required. However, the Board, on behalf of the Community Association, may also elect to file a notice of claim of lien against the Lot of the delinquent Owner by Recording a notice ("Notice of Lien") setting forth (1) the amount of the claim of delinquency, (2) the interest and costs of collection which have accrued thereon, (3) the legal description of the Lot against which the lien is claimed, and (4) the name of the record Owner thereof. If filed, a Notice of Lien shall be signed and acknowledged by an officer of the Community Association or other duly authorized agent of the Community Association. The filing and Recording of a Notice of Lien shall not be required, and the failure to do so shall in no manner affect the right of the Community Association to enforce or foreclose the Assessment Lien.

8.35. Priority of Lien. The Assessment Lien created by this Community Declaration shall be prior to any declaration of homestead rights or exemption Recorded after the time that the Lot becomes part of the Community, and all other liens and encumbrances on such Lot except (1) liens and encumbrances Recorded before the Recordation of this Community Declaration; (2) a security interest for a First Mortgage on the Lot which was Recorded before the date on which the Assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other government assessments or charges against the Lot. The Assessment Lien of the Community Association shall have priority over any comparable lien of any Neighborhood Association, unless otherwise agreed to by the Community Association.

8.36. Release of Notice of Lien. If a Notice of Lien has been recorded, when all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Community Association shall execute and Record a notice releasing the claim evidenced by the Notice of Lien

upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the cost of preparing and Recording the release of the Notice of Lien. The notice shall release only the claim evidenced by the Notice of Lien and shall not release or otherwise affect the Assessment Lien.

8.37. Foreclosure of Assessment Lien. Unless paid or otherwise satisfied, the Assessment Lien may be foreclosed in the manner for foreclosure of mortgages in the State of Missouri.

8.38. Statement of Assessments. Upon the written request of any Member or any Mortgagee, and upon the payment of such reasonable fee as may be determined from time to time by the Board of Directors, the Community Association shall furnish to such requesting Person a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Lot and the Owner thereof and setting forth the amount of any Assessment levied against such Lot which is not yet due and payable. The requesting Member or Mortgagee may request that the statement also be issued to any Person with, or intending to acquire, any right, title or interest in the Lot of such Member or Mortgagee. Such statement shall, with respect to the Person to whom it is issued, be conclusive against the Community Association for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied against such Lot or Member, except a Member may not rely upon any such statement that contains a manifest error.

8.39. Transfer Fee. A transfer fee may be imposed by the Community Association in connection with each sale, Lease for a term in excess of one month or other conveyance of any Lot other than the first conveyance of the Lot to an Owner other than Declarant. The transfer fee shall not exceed \$100 without the approval of (1) Delegates representing a majority of the votes of the Members, excluding the votes of Declarant; and (2) during the Declarant Control Period, the Declarant.

## **ARTICLE 9. GENERAL RESTRICTIONS APPLICABLE TO PROPERTY**

All real property within the Community shall be held, used and enjoyed subject to the following limitations and restrictions, and subject to the exemptions of Declarant set forth in this Community Declaration. Any Neighborhood Declaration or additional Restrictions imposed on the property within any Neighborhood may impose stricter standards than those contained in this Community Declaration. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Board of Directors if the Board determines such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or be contained in the Architectural Guidelines and Rules.

9.1. Maintenance of Property. No property within the Community shall be permitted to fall into disrepair, and all property within the Community, including any Improvements and landscaping thereon, shall be kept and maintained in a clean, safe, attractive and sightly condition and in good repair. Maintenance, repair and upkeep of each Lot shall be the responsibility of the Owner of that Lot. Maintenance, repair and upkeep of the Community Properties shall be the responsibility of the Community Association. Maintenance, repair and upkeep of certain areas within a Neighborhood may be assumed by the Neighborhood Association, provided such assumption shall not relieve the Owner or the Community Association of their respective responsibilities as described above. Violation of the requirements of this Article by an Owner shall permit the Community Association, after Notice and Hearing, to enter on the Lot of the Owner and cure the violation or cause compliance with this provision and to levy and collect a Reimbursement Assessment for the costs and expenses of the Community Association in so doing; provided, however, that there shall be no entry into the interior of a dwelling unit without the consent of the Owner or the tenant thereof unless a clear emergency exists.

9.2. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any property within the Community, nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance or annoyance to others.

9.3. Annoying Sounds or Odors. No sound or odor shall be emitted from any property within the Community which is noxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, other than security devices used exclusively for security purposes, shall be located or used on any property except with the prior written approval of the Declarant during the Declarant Control Period and thereafter the Architectural Committee. The foregoing restrictions shall not apply to such sound devices used in the operation of a golf course, the Private Amenities or the Recreation Facilities, provided such devices are typically used in similar types of operations.

9.4. No Hazardous Activities. No activity shall be conducted on and no Improvement shall be constructed on any property within the Community which is or might be unsafe or hazardous to any person or property. Without limiting the

generality of the foregoing, no firearms shall be discharged upon any property and no open fires shall be lighted or permitted on any property except in a contained barbecue unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning embers. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

9.5. No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within a structure including garden or maintenance equipment except when in actual use.

9.6. Restrictions on Garbage and Trash. No refuse, garbage, trash, lumber, grass, shrub or tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse or debris of any kind shall be kept, stored or allowed to accumulate on any Lot except within an enclosed structure or appropriately screened from view and approved by the Architectural Committee, except that any container containing such materials may be placed outside at such time as may be necessary to permit garbage or trash pickup. All rubbish, trash, and garbage shall be stored in appropriate containers with lids and regularly removed from the Community and shall not be allowed to accumulate thereon.

9.7. No Temporary Structures. No tent, shack, temporary structure or temporary building shall be placed upon any property within the Community other than the Private Amenities except with the prior written consent of the Architectural Committee obtained in each instance. The foregoing restrictions shall not apply to tents, temporary structures or other temporary buildings installed upon the Club Property by the Club in connection with activities consistent with operation of the Golf Course.

9.8. Restriction on Pipes and Utility Lines. Pipes for water, gas, sewer, drainage or other purposes and wires, poles, antennae and other facilities for the transmissions or reception of audio or visual signals or electricity, and Utility meters or other Utility facilities shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure. Utility lines may only be installed, repaired or replaced under existing roadways, sidewalks and driveways by a method which will not disturb the paved surface of such roadway driveway or sidewalk.

9.9. Restrictions on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Community so as to be evident to public view except signs shall be permitted for the Private Amenities subject to the written approval of the Declarant during the Declarant Control Period and thereafter by the Architectural Committee. A sign advertising a Lot for sale or for lease may be placed on such Lot; provided, however, that standards relating to dimensions, color, style and location of such types of signs shall be determined from time to time by the Architectural Committee.

9.10. Restrictions on Mining or Drilling. No property within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth except drilling and exploring for or removing underground water by Declarant or any Person designated by Declarant for the purpose of providing water service to property within the boundaries of the Project Area. The Owners of the Private Amenities may, with the consent of the Declarant, establish and use individual water wells, cisterns and water systems for all or part of their properties.

9.11. Restrictions on Water and Sewage Systems. Individual private water wells, cisterns and other individual water systems and individual on-site sewage disposal systems such as septic tanks and holding tanks are prohibited on Residential Lots. Owners of Residential Lots must use the Water and Sewer Facilities for water and sewage disposal for their Lots.

9.12. Drainage. There shall be no interference with the established drainage pattern over any property within the Community except as provided in writing by the Architectural Committee. Approval shall not be granted unless provision is made for adequate alternate drainage. The "established drainage pattern" shall mean the drainage pattern which exists at the time the overall grading of any property is completed and shall include any established drainage pattern shown on any plans approved by the Architectural Committee. The established drainage pattern may include the drainage pattern from Community Properties over any Lot, from any Lot over the Community Properties, or from any Lot over another Lot. No Person, other than Declarant, the Club or the Community Association, may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Back flushing or drainage of any pool, spa or hot tub water onto the Golf Course or any other property outside of the Lot is prohibited.

9.13. Compliance with Insurance Requirements. Except as may be approved in writing by the Board of Directors, nothing shall be done or kept on property within the Community which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Community Association.



9.14. Compliance With Laws. Nothing shall be done or kept on any property within the Community in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction.

9.15. Restoration in the Event of Damage or Destruction. In the event of damage or destruction of any Improvement on any Lot, the Owner thereof shall cause the damaged or destroyed Improvement to be restored or replaced to its original condition or such other condition as may be approved in writing by the Architectural Committee, and, if necessary, the Neighborhood Association and any comparable architectural committee thereunder. In lieu thereof, the Owner shall cause the damaged or destroyed Improvement to be demolished and the Lot to be suitably landscaped, subject to the approval of the Architectural Committee. Restoration, repair or demolition work hereunder shall be commenced as soon as reasonably practicable after the damage or destruction was incurred.

9.16. Residential Use. Residential Lots shall be used for residential purposes only and uses which are customarily incident thereto, for one Common Household Group, and shall not be used at any time for any business, commercial or professional purposes, except that an Owner or occupant may use the Lot for a professional or home occupation, so long as the applicable zoning permits such use, there is no external evidence thereof, the business activity does not involve persons coming onto the Community who do not reside in the Community Association, and no unreasonable inconvenience to other residents of the Community is created thereby. This Section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Community or its use of any Lots which it owns within the Community.

9.17. Animals and Pets. No animals, reptiles, livestock, wildlife or poultry or any kind shall be raised, bred or kept on any portion of the Community, except that dogs, cats or other usual and common household pets may be permitted on a Lot. Household pets which are outside the Owner's residence shall at all times be confined on a leash held by a responsible person, or confined within a fenced area on the Owner's Lot. Pets which roam free, or which, in the sole discretion of the Board of Directors, endanger the health and safety of others, make objectionable noise, or constitute an unreasonable annoyance or inconvenience to others shall be removed from the Community upon request of the Board of Directors. If the Owner fails to honor such request, the pet may be removed by the Board of Directors. No pets shall be kept, bred or maintained for any commercial purpose.

9.18. Antennas and Satellite Dishes. No exterior radio antenna, television antenna, satellite dishes or other antennae of any type shall be erected or maintained on any Residential Lot without the approval of the Architectural Committee. The Architectural Committee shall have the right to restrict any or all such devices to the maximum extent permitted by law.

9.19. Golf Carts. No private golf carts will be permitted to operate on any streets or roadways within the Community except for (1) road ready carts approved by the Board and (2) use of any other golf carts in such areas designated for golf carts in connection with the operation or use of the Golf Course. The foregoing prohibition shall not limit in any way the use of golf carts within the Community by the Declarant.

9.20. Landscaping. All landscaping on a Lot requires Architectural Committee approval. No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain upon any Lot, and no refuse or unsightly objects shall be allowed to be placed or suffered to remain upon any Lot.

9.21. Parking. Vehicles shall be parked only in the garages or in the driveways, if any, serving the Lots or in appropriate spaces or designated areas in which parking may or may not be assigned. Notwithstanding the above, no more than one (1) vehicle shall be parked in the driveway of a Lot on a regular basis. For purposes of this paragraph, a car shall be deemed parked on a "regular basis" if parked in such driveway more than seventy-two (72) hours in any seven day period without prior approval of the Community Association. Any vehicle which is parked in violation of this paragraph or parking rules promulgated by the Board may be towed in accordance with the Bylaws. Garage doors shall remain closed at all times except during ingress and egress.

9.22. Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, pickup trucks, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or in the Common Areas designated for parking by the Community Association, if any. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted within the Community, except within enclosed garages. For purposes hereof, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for three (3) consecutive days without the prior approval of the Community Association. Any vehicle which is parked in violation of this paragraph may be towed by the Board of Directors at the Owner's

expense. These

parking restrictions shall not apply to commercial vehicles (including construction vehicles) providing service or making deliveries to or on behalf of the Community Association, Declarant or their designees. Construction vehicles will be subject to such other restrictions as may be adopted by the Architectural Committee.

9.23. Roofing. The roofs of all structures shall be maintained in a clean, neat and attractive condition with a full complement of roof tiles or shingles. All roofing materials (including color) shall be subject to the approval of the Architectural Committee.

9.24. Subdivision of Lot and Timesharing. No Lot shall be subdivided or its boundary lines changed unless approved in writing by the Board of Directors and, during the Declarant Control Period, by Declarant. Declarant may subdivide a Lot or change the boundaries of Lots and certain other properties within the Community without Board approval as provided in this Declaration. The consent to the subdivision of a Private Amenity shall not be unreasonably withheld provided it may be conditioned upon the Owner of such Lot, at its sole expense, filing a Plat and a Supplemental Declaration. In the Supplemental Declaration, there shall be an allocation of the Private Amenity Assessment Share among the newly created Lots and a procedure for the resulting Private Amenities to elect but one Delegate to represent such Private Amenities. Such documents shall be executed by the Owner of the Private Amenity, by the officers of the Community Association required to sign an amendment to this Community Declaration and, during the Declarant Control Period, by the Declarant. No Lot shall be made subject to any type of timeshare program, interval ownership or similar program whereby the right to exclusive use of the Lot rotates among multiple owners or members of the program on a fixed or floating time schedule over a period of years; except that Declarant hereby reserves the right for itself and its assigns to operate such a program with respect to Lots which it owns. Declarant further reserves the right to convert any Improvements which it owns to condominium type ownership. This paragraph shall not prohibit ownership of a Lot by up to four (4) joint tenants or tenants-in-common.

9.25. Tree Removal. No trees, other than diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, shall be removed unless approved by the Architectural Committee. This restriction shall not apply to Declarant or the Club.

9.26. Wetlands, Lakes and Water Bodies. All wetlands, lakes, ponds, and streams within the Community, if any, shall be storm water retention facilities or aesthetic amenities only, and no other use thereof, including fishing, swimming, boating, playing, or use of personal flotation devices, shall be permitted unless otherwise approved by the Community Association and, during the Declarant Control Period, the Declarant. The prior approval of the Club shall also be required if such areas are located on the Club Property. Such parties may withhold their approval for any reason in their sole and arbitrary discretion. The elevation of the land shall not be altered and fill shall not be used to extend the boundaries of a Lot or to change the bulkhead line on any Lot bounded by a wetland, lake, or other body of water unless approved in accordance with this Community Declaration. This paragraph shall not restrict the use of water for irrigation of the Club Property.

9.27. Leasing. Residential Lots may be Leased only if such Lease complies with the terms of this Community Declaration. Residential Lots may be leased only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Residential Lots or assignment of leases unless prior written approval is obtained from the Community Association. All leases shall be in writing and must include a provision in form and substance satisfactory to the Community Association whereby the tenant agrees to be bound by the Community Documents, including the enforcement and other provisions relating to Related Users to pay Assessments made against the Lot during the term of the Lease. The Owner shall provide to each lessee copies of this Community Declaration, the Bylaws, the Articles and the Rules and Regulations and any applicable Neighborhood documents. The Community Association and the applicable Neighborhood Association may require that an Owner leasing its Residential Lot file with the Community Association and the Neighborhood Association a copy of the Lease and to identify all occupants residing at a Lot under a Lease. The Community Association may adopt reasonable Rules and Regulations, including Restrictions regulating Leases for terms of less than 30 days. None of the terms of this Section shall apply to Lots owned by Declarant.

9.28. Assumption of Risk. Each Owner and Related User assumes all risks associated with the use of the Common Areas and Recreation Facilities, including swim and tennis facilities, playground and other play areas or equipment furnished in connection therewith, and all other Community Properties including any lakes, ponds, streams and wetlands within the Community. By accepting a deed to a Lot and using such facilities, each Owner, on behalf of itself and its Related Users, releases and holds harmless the Declarant, Community Association, each Neighborhood Association, the Club and each Manager from all claims, whether or not based on the acts or omissions of such parties, arising out of or in any way connected with the use of such facilities. In assuming the risk, each Owner and Related User of an Owner hereby releases and agrees to hold harmless Declarant,

the Community Association, each Neighborhood Association and Manager and their respective employees, owners and agents from any and all loss, cost, claims, injury, damage or liability sustained or incurred, resulting from or arising out of any use of such facilities.

9.29. Owners' Insurance. Each Owner shall carry "all risk" property insurance on the Improvements constructed on its Lot, providing full replacement cost coverage, less a reasonable deductible, unless the Neighborhood Association in which the Lot is located carries such insurance (which they are not required to do under this Community Declaration).

## **ARTICLE 10. PRIVATE AMENITIES**

10.1. No Right to Use. The Private Amenities are the private property of the Owners of such property. Access to and use of the Private Amenities is strictly subject to permission or license, including any rules and procedures of the respective Owners of the Private Amenities, and no Person gains any right to enter or to use any Private Amenity Property by virtue of being an Owner or a Member in the Association.

10.2. Change of Use. Rights to use the Private Amenities will be granted only to such Persons, and on such terms and conditions, as may be determined by their respective Owners. Such Owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether.

10.3. No Representation or Warranty. No representations or warranties, either written or oral, have been or are made by the Declarant or any other Person with regard to the nature or size of Improvements to, or the continuing existence, ownership or operation of the Private Amenities. No purported representation or warranty, written or oral, in conflict with this Section shall be effective without an amendment to this Community Declaration executed or joined into by the Declarant or the Owner of the Private Amenity which is the subject thereof.

10.4. Change of Ownership or Operation. The ownership or operation of the Private Amenities may change at any time and from time to time by virtue of, but without limitation, (1) the sale to or assumption of operations by an independent entity, (2) conversion of the membership or use structure (for example, conversion to an "equity" club or similar arrangement whereby the members of a Private Amenity or an entity owned or controlled thereby become the owner(s) and/or operator(s) of the Private Amenity), or (3) the conveyance of a Private Amenity to one or more affiliates, shareholders, employees or independent contractors of the Declarant. No consent of the Community Association, any Neighborhood Association or any Owner shall be required to effectuate such a change, transfer or conversion.

10.5. Notice of Rights. The Article is intended to give Owner notice of the rights of the owners of the Private Amenities. Any Private Amenity which is not a part of the Community will not be bound by any of the terms of this Community Declaration or the other Community Documents unless and until that Private Amenity Property is added to the Community.

## **ARTICLE 11. CLUB PROPERTY AREA**

11.1. No Right to Use. The Club Property is privately owned and operated, and is not a part of the Common Area. The Club has the exclusive right to determine from time to time, in its sole discretion and without notice or approval of any change, how and by whom the Club Property shall be used. Ownership of a Lot or membership in the Community Association or any Neighborhood Association does not give any right or easement, prescriptive or otherwise, to use the Golf Course or any other Club Property, or to acquire a membership in the Club, nor does it grant any Ownership or membership interest in the Club or the Club Property.

11.2. Acknowledgments Regarding Club Property. Each Owner, by acceptance of a deed or recorded contract of sale to a Lot, and each Related User, by entering upon the Community, acknowledges that:

(1) Any entry upon the Club Property without permission of the Club may be deemed a trespass, and each Owner shall refrain from, and shall cause all Related Users to refrain from, any unauthorized entry upon the Club Property;

(2) The proximity of Lots and Common Areas to the Club Property results in certain foreseeable risks, including the risk of damage or injury from errant golf balls, and that each Owner's use and enjoyment of the Owner's

Lot and the Community Properties may be limited as a result and that neither the Community Association, Declarant, any Neighborhood Association, the Architectural Committee nor the Club nor any Person involved in the design of the Golf Course or the Improvements on any Lot shall have any obligation to take steps to remove or alleviate such risks, nor shall they have any liability to any Owner or Related Users of any Owner or any other users of the Project Area, for damage or injury resulting from errant golf balls being hit upon any Lot, Community Properties or other portions of the Project Area;

(3) The Club and its designees may add to, remove or otherwise modify the landscaping, trees and other features of the Club Property, including changing the location, configuration, size and elevation of bunkers, fairways and greens altering the landscaping and constructing fences, and that neither the Club, Declarant, the Community Association, any Neighborhood Association nor the Architectural Committee shall have any liability to any Owner as a result of such changes or modifications to the Club Property;

(4) There are no express or implied easements over the Club Property for view purposes, and no guaranty or representation is made by Declarant or any other Person that any view over and across the Club Property will be preserved without impairment, and that neither the Club, Declarant, the Community Association, any Neighborhood Association nor the Architectural Committee shall have any obligation to prune or thin trees or other landscaping to preserve views over the Club Property;

(5) No representations or warranties which are inconsistent with this Section, either verbal or written, have been made, have been authorized to be made or are made by the Club, the Declarant, the Community Association, any Neighborhood Association nor the Architectural Committee or by any person acting on behalf of any of the foregoing;

(6) The Declarant reserves unto itself and the Community Association the right to grant such easements, licenses and other rights over, under and across the Common Areas as necessary or desirable for the Club to exercise its rights hereunder; and

(7) Any and all lakes on the Community may be used by the Club for the purpose of irrigating and maintaining the Club Property without compensation to the Community Association, and such use may result that the water level in such lakes may from time to time vary.

11.3. Rights of Access and Parking. The Club and members of the Club (regardless of whether such Persons are Members hereunder), their guests and invitees and the employees, agents, contractors and designees of the Club shall have a nonexclusive easement of access and use over all roadways located within the Club Property reasonably necessary to travel to and from the entrance to the Community from and to the Club Property, respectively, and, further, over those portions of the Community (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair and replacement of the Club Property. Without limiting the generality of the foregoing and notwithstanding any other limitations in this Community Declaration, members of the Club and permitted members of the public shall have the right to park their vehicles on the roadways located within the Community at reasonable times before, during and after tournaments and other functions held at the Club Property.

11.4. Golf Course Easements.

(1) The entire Community, including the Community Properties, each Lot and the Club Property, is hereby burdened with an easement allowing golf balls hit by any golfers using the Golf Course on the Club Property to come over and on each such property. All golfers using the Golf Course shall have an easement to come on each such property for the purpose of seeking and retrieving such golf balls; provided that golfers shall not have the right to use such easement to come on any fully fenced property. This easement shall not relieve golfers using the Golf Course of any liability they may have for property damage or personal injury resulting from entry of golf balls or golfers on any such properties.

(2) The Club Owner, the manager of the Golf Course and their employees, representatives, successors and assigns, shall at all times have a right and nonexclusive easement of access and use over those portions of the

Common Areas reasonably necessary to the operation, maintenance, repair and replacement of the Golf Course.

(3) All property within the Community which is now or in the future is immediately adjacent to the Golf Course is hereby burdened with a nonexclusive easement in favor of the Club Owner for reasonable overspray of water from any irrigation system serving the Golf Course. Under no circumstances shall the Community Association or the owners or operators of the Golf Course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(4) The Club Owner of the Golf Course, and its successors and assigns, shall have a perpetual, exclusive easement of access over the Common Areas for the purpose of retrieving golf balls from bodies of water within the Common Areas lying reasonably within range of golf balls hit from the Golf Course.

11.5. Assumption of Risk of Golf Course. Neither Declarant, the Community Association, any Neighborhood Association, or the Club nor any agents, servants, employees, directors, committee members, officers, members, managers, affiliates, representatives, successors and assigns of any such Person, shall in any way be responsible for and each Owner, by accepting a deed to its Lot, and each Related User, by entering upon the Community, waives and releases all such Persons from and against any claims, damages, losses, demands, liabilities, obligations, causes of action whatsoever including indirect, special or consequential loss or damage arising from personal injury, destruction of property, loss of view, noise pollution or other visual or audible offenses, or trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to in whole or in part from the existence, operation or reasonable use of the Golf Course. This waiver and release includes actions based upon (1) any invasion of the use or enjoyment of any Lot or Community Properties by any Owner or Related User of such Owner or any other Person; (2) improper design of the Golf Course or the location or the design of Improvements constructed on a Lot or the proximity of such Improvements or the Common Area to the Golf Course; (3) the level of skill of any golfer (regardless of whether such golfer has the permission of the Club to use the Golf Course); or (4) trespass by any golfer on any Community Properties, Lots or other property that may result in property damage or personal injury from golf balls hit on such Lot or any Community Properties, or from the exercise by any golfer of any easement granted in this Community Declaration. This hold harmless shall not extend to any other Persons whose actions are undertaken with a wanton or reckless disregard for the probability of personal injury or damage.

11.6. Cooperation. It is the Declarant's intention that the Community Association and the Club Owner cooperate to the maximum extent possible in the operation of the Community and the Golf Course. Each shall reasonably assist the other in upholding the standards created by the Community Documents. The Community Association shall have no power to promulgate rules and regulations affecting activities on or the use of the Golf Course.

11.7. Applicability Prior to Annexation. The Club Property may not be a part of the Community as of the date of Recordation of this Community Declaration. All of the terms of this Article, including easements and other benefits and rights afforded to the Club and all other provisions relating to the Club and the Club Property are intended to benefit the Club Property, notwithstanding that the Club Property may not be a part of the Community.

## **ARTICLE 12. EASEMENTS**

12.1. General. In addition to all easements and rights-of-way of record at or before the recording of this Community Declaration, all of the Community, including all property that may from time to time be annexed into the Community, shall be subject to the easements in this Community Declaration and such other easements as shown on any Plat, all of which easements, except as otherwise specifically provided, will be perpetual, will run with the land and will be binding upon and appurtenant to all of the Community or any part or parcel thereof.

12.2. Recorded Easements. Each Lot and all other portions of the Community shall be subject to any easements shown on any Recorded Plats affecting the Community.

12.3. Utility Easements. Declarant hereby grants a nonexclusive easement in, on, under, over and across the Utility Easement Area of each Residential Lot for the installation, repair, replacement and maintenance of Utilities servicing the Project Area. A general easement is hereby created upon, across, over, in and under the Community for ingress, egress, installation, replacement, repair and maintenance of all Utility Services. Should any Utility company furnishing a service covered by easement created under this Section request a specific easement by separate recordable document, the Community Association is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Community without

conflicting with the terms of this section, provided no such easement shall materially interfere with the use of a Lot by the Owner thereof. Notwithstanding anything to the contrary contained in this section, no lines, systems or facilities for Utilities may be installed or relocated on the Community, except as initially approved by or as granted by Declarant during the Declarant Control Period. The easements provided for in this section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Community.

12.4. Use of Common Area. Every Owner and Related User shall have a right and non-exclusive easement of use, access and enjoyment in and to the Common Area, including all roads and Improvements thereon other than Limited Common Areas, if any, subject to any Restrictions or limitations contained in this Community Declaration or the Rules and Regulations. The use, access and enjoyment in and to Limited Common Areas, if any, shall be as provided in this Community Declaration and any Supplemental Declarations.

12.5. Drainage Easement. The Declarant hereby reserves for itself, during the Declarant Control Period, and the Community Association a perpetual easement across the Community for the purpose of altering drainage and water flow and in connection therewith to enter upon, across, over, in and under any portion of the Community for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of the Community so as to alter the drainage of water.

12.6. Access Easement to Empire City Sub-Division. Declarant reserves for itself and the Community Association the right to grant a perpetual, nonexclusive easement for ingress and egress over roads within the Community Properties to owners and invitees and guests of owners of real property located in the subdivision in Camden County, Missouri described as the Amended Plat to Empire City Sub-Division. The beneficiaries of such easement shall not be required to pay any sums to the Community Association for the use, maintenance, replacement or repair of these roadways.

12.7. Easements for Encroachments. Each Lot and all other portions of the Community shall be subject to an easement for encroachments created by construction and overhangs of Improvements as designed or constructed by the Declarant or its affiliates. Encroachments referred to in this section include encroachments caused by error in the original construction of Improvements constructed on any Lot or Common Area, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Community or Improvements. The existence of an easement for such encroachments does not release an Owner of liability in cases of willful misconduct.

12.8. Emergency Easement. Each Owner grants to the Community Association and its respective officers, agents and assigns, an easement upon, across, over, in and under such Owner's Lot, and a right to make such use of such portions of the Lot as may be necessary or appropriate to make emergency repairs necessary to prevent damage to the Common Area or another Lot, and to perform the duties and functions which the Community Association is obligated or permitted to perform pursuant to this Community Declaration. No entry shall be made into the interior of a dwelling unit without the consent of the Owner or tenant thereof, unless a clear emergency exists.

12.9. Water and Sewer Easement. Declarant hereby grants the Community Association and any Persons providing water or sewer service to the Project Area a perpetual, nonexclusive easement upon, across, over, in and under the entire Community for the construction, installation, operation and maintenance of the Water and Sewer Service Facilities, including the installation, operation and maintenance of additional Water and Sewer Service Facilities from time to time as may be deemed necessary or desirable by the Community Association or such Persons providing water and sewer service to the Community, provided no easement shall be located on a Lot owned by an Owner other than Declarant without the consent of the Owner and its Mortgagee, which consent shall not be unreasonably withheld if the modification does not interfere with the use or materially reduce the value of such Lot.

12.10. Declarant's Reserved Right. Declarant reserves the right to grant, by recording appropriate instruments, exclusive and non-exclusive easements on, upon, over, across, through and under the Community for, among other things, the following purposes: (1) use of Community Properties for all proper and normal purposes in this Community Declaration; (2) ingress, egress and access to and from and through the Community; (3) inspecting any construction, proposed construction or Improvements; (4) repairing or maintaining the Community, and any facilities or improvements thereon; (5) encroachments for minor inaccuracies in survey, construction or reconstruction or due to settlement or movement; (6) errant golf balls and use of the Golf Course; (7) maintenance, installation, construction and repair of Utilities and facilities servicing any part of the Project Area; and (8) for access to each Lot in favor of the Community Association or a Neighborhood Association for maintaining, repairing, replacing and preserving the Common Area and enforcing the Restrictions.

## ARTICLE 13. ARCHITECTURAL REVIEW

13.1. Approval of Improvements Required. The approval of the Architectural Committee shall be required for any Improvement to Property on any Residential Lot or any properties owned by a Neighborhood Association except for Improvements made by Declarant and except as prior approval may be waived or certain Improvements to Property may be exempted in writing by the Architectural Committee or under the Architectural Guidelines and Rules.

13.2. Improvement to Property Defined. "Improvement to Property," requiring approval of the Architectural Committee, shall mean and include: (a) the construction, installation, erection or expansion of any building, structure or other Improvements, including Utility facilities; (b) the demolition or destruction, by voluntary action, of any building, structure or other Improvements; (c) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed; (d) landscaping, planting, clearing or removing of trees, shrubs, grass or plants; and (e) any change or alteration of any previously approved Improvement to Property including any change of exterior appearance, color or texture.

13.3. Membership of Committee. The Architectural Committee shall consist of at least three (3) and not more than five (5) members. During the Declarant Control Period, all of the Members of the Architectural Committee shall be appointed by Declarant. The initial Architectural Committee shall be appointed by the Declarant prior to the first sale of a Lot to a third party Owner or as soon thereafter as reasonably practicable. Declarant shall have the continuing right to appoint all members during the Declarant Control Period. Members of the Architectural Committee may, but shall not necessarily be, Members of the Community Association. Members of the Architectural Committee to be appointed by the Community Association shall be appointed by the Board of Directors. Members of the Architectural Committee appointed by Declarant may be removed at any time by Declarant and shall serve until resignation or removal by Declarant. Members of the Architectural Committee appointed by the Board of Directors may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board. After the Declarant Control Period, the Community Association may at any time, and from time to time, change the authorized number of members of the Architectural Committee, but the numbers of members shall always be an odd number and shall not be less than five (5).

13.4. Address of Committee. The address of the Architectural Committee shall be at the principal office of the Community Association.

13.5. Approval by Neighborhood Architectural Committee. Each Neighborhood Association may, but shall not be obligated, to create its own architectural review process within the applicable Neighborhood. If a Neighborhood Association requires such approval, then the Improvement to Property must be approved by both the Architectural Committee of the Community Association and such architectural review body (whether it be the board of directors, architectural committee, or any similar committee) of the applicable Neighborhood Association.

13.6. Committee Guidelines and Rules. The Architectural Committee may adopt Architectural Guidelines and Rules relating to the procedures, materials to be submitted and additional factors which will be taken into consideration in connection with the approval of any proposed Improvement to Property. The Architectural Guidelines and Rules may also include Restrictions on the manner in which construction activities are conducted within the Community by the Owner and the contractors, subcontractors and suppliers providing labor or materials. The Architectural Guidelines and Rules may specify circumstances under which the strict application of limitations or restrictions under this Community Declaration will be waived or deemed waived in whole or in part. The Architectural Guidelines and Rules may waive the requirement for approval of certain Improvements to Property or exempt certain Improvements to Property from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Community Declaration. The Architectural Guidelines and Rules may elaborate or expand upon the provisions herein relating to procedures and criteria for approval.

13.7. Submission of Plans. Prior to commencement of work to accomplish any proposed Improvement to Property, the Person proposing to make such Improvement to Property ("Applicant") shall submit to the Architectural Committee at its office such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the Architectural Committee shall reasonably request showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property. The Architectural Committee may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvement to Property. Until receipt by the Architectural Committee of all required materials in connection with the proposed Improvement to Property, the Architectural Committee may postpone review of any materials submitted for approval.

13.8. Criteria for Approval. The Architectural Committee shall approve any proposed Improvement to Property only if it deems in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of the surrounding areas of the Community as a whole; that the appearance of the proposed Improvement to Property will be in harmony with the surrounding areas of the Community, including the Club Property and the Golf Course; that the Improvement to Property will not detract from the beauty, wholesomeness and attractiveness of the Community or the enjoyment thereof by the Owners, including the Club; and that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the Community Association. The Architectural Committee may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the Architectural Committee may deem appropriate.

13.9. No Easement For View. The Architectural Committee may, but shall not be obligated to, take views into account in reviewing any proposed Improvements to a Residential Lot. There are, however, no view easements or guarantees of continuing views in connection with the Project Area. Neither Declarant nor any Person acting on behalf of Declarant has made or is authorized to make, any representation or commitment that any view from any Community including any view of the Club Property, lakes or waterways or any other vistas shall be preserved, protected or remain unobstructed, and there are no express or implied easements for view purposes appurtenant to any Lot.

13.10. Architectural Review Fee. The Architectural Committee may, in the Architectural Guidelines and Rules, provide for the payment of a fee to accompany each request for approval of any proposed Improvement to Property. The Architectural Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvement to Property or that the fee shall be determined in any other reasonable manner or basis, as determined by the Architectural Committee, including the type, size or estimated cost of the proposed Improvement to Property.

13.11. Decision of Committee. The decision of the Architectural Committee shall be made within thirty (30) days after receipt by the Architectural Committee of all materials required by the Architectural Committee unless such time period is extended by mutual agreement. The decision shall be in writing and, if the decision is not to approve a proposed Improvement to Property, the reasons therefor shall be stated. The decision of the Architectural Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Architectural Committee.

13.12. Appeal to Board of Directors. If the Architectural Committee denies, imposes conditions on or refuses approval of a proposed Improvement to Property, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Community Association and the Architectural Committee within twenty (20) days after such denial or refusal. The Board of Directors or a Tribunal appointed pursuant to the Bylaws shall hear the appeal in accordance with the provisions of the Bylaws for Notice and Hearing, and the Board shall decide whether or not the proposed Improvement to Property or the conditions imposed by the Architectural Committee shall be approved, disapproved or modified. Only the Applicant shall have the right to appeal; no other Owner, Related User or any other party shall have standing to appeal the decision of the Architectural Committee.

13.13. Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement to Property shall be deemed approved, unless disapproval or a request for additional information or materials is transmitted to the Applicant by the Architectural Committee within thirty (30) days after the date of receipt by the Architectural Committee of all required materials.

13.14. Prosecution of Work After Approval. After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Improvement to Property, any materials submitted to the Architectural Committee in connection with the proposed Improvement to Property and any conditions imposed by the Architectural Committee. Failure to complete the proposed Improvement to the Property within nine (9) months after the date of approval (or such longer period as approved in writing by the Architectural Committee) or to complete the Improvement to Property in accordance with the description and materials furnished to, and the conditions imposed by, the Architectural Committee, shall constitute noncompliance with the requirements for approval of Improvement to Property and a violation of this Community Declaration.

13.15. Notice of Completion. Upon completion of the Improvement to Property, the Applicant may give written Notice of Completion to the Architectural Committee. Until the date of receipt of such a Notice of Completion, the Architectural Committee shall not be deemed to have notice of completion of such Improvement to Property.

13.16. Inspection of Work. The Architectural Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to or after completion, provided that the right of inspection shall terminate thirty (30)



days after the Architectural Committee shall have received a Notice of Completion from the Applicant.

13.17. Notice of Noncompliance. If, as a result of inspections or otherwise, the Architectural Committee finds that any Improvement to Property has been done without obtaining the approval of the Architectural Committee, or was not done in substantial compliance with the description and materials furnished to, and any conditions imposed by, the Architectural Committee, or has not been accomplished as promptly and diligently as possible, then the Architectural Committee shall notify the Applicant in writing of the noncompliance; which notice shall be given, in any event, within thirty (30) days after the Architectural Committee receives a Notice of Completion from the Applicant. The notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance. In addition, the Architectural Committee may, but shall not be obligated to, send a copy of such notice to any Mortgagee for the Property upon which the Improvement to Property is being constructed.

13.18. Failure of Committee to Act After Completion. If for any reason other than the Applicant's act or neglect the Architectural Committee fails to notify the Applicant of any noncompliance within thirty (30) days after receipt by the Architectural Committee of written Notice of Completion from the Applicant, the Improvement to Property shall be deemed in compliance if the Improvement to the Property was, in fact, completed as of the date of Notice of Completion.

13.19. Appeal of Finding of Noncompliance. If the Architectural Committee gives any notice of noncompliance, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Board and the Architectural Committee within thirty (30) days after receipt of the notice of noncompliance by the Applicant. If, after a notice of noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Architectural Committee shall request a finding of noncompliance by the Board of Directors by giving written notice of such request to the Community Association and the Applicant within thirty (30) days after delivery to the Applicant of a notice of noncompliance from the Architectural Committee. In either event, the Board of Directors or a tribunal appointed pursuant to the Bylaws shall hear the matter in accordance with the provisions of the Bylaws for Notice and Hearing, and the Board shall decide whether or not there has been such noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same.

13.20. Correction of Noncompliance. If the Architectural Committee determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days after the date of receipt by the Applicant of the ruling of the Architectural Committee or, if the Applicant appeals, after the date of the decision on the appeal. If the Applicant does not comply with the Architectural Committee ruling within such period, the Architectural Committee may, at its option, record a Notice of Noncompliance against the Property on which the noncompliance exists, may remove the noncomplying Improvement to Property or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Community Association, upon demand, for all expenses incurred therewith. If such expenses are not promptly repaid by the Applicant or Owner to the Architectural Committee, the Architectural Committee may require the Community Association to levy a Reimbursement Assessment against the Owner of the Lot for such costs and expenses. The right of the Architectural Committee to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Architectural Committee may have at law, in equity, or under this Community Declaration.

13.21. Correction of Noncompliance By Mortgagee. If, within a period of not more than thirty (30) days after the date of the notice of noncompliance being given to the Owner as provided in Section 13.17 or if the Owner appeals 15 days after the decision on the appeal, the Mortgagee notifies the Architectural Committee that it has begun, and will continue to diligently pursue, proceedings to obtain title to the subject Lot pursuant to the remedies provided in the Mortgage held by such Mortgagee or pursuant to any foreclosure, or deed or assignment in lieu of foreclosure, of such Mortgage, then the Architectural Committee, at its option, may extend the period for remedy or removal of the noncompliance for a period expiring forty-five (45) days after the date the Mortgagee obtains title to the Lot. If the Mortgagee does not comply with the Architectural Committee ruling within such extended period, or if at any time during such extended period the Mortgagee shall fail to diligently pursue proceedings to obtain title to the Lot as set forth in the Mortgagee's Notice, the Architectural Committee may, at its option, withdraw its extension and exercise all of its rights and remedies provided in this Community Declaration.

13.22. No Implied Waiver or Estoppel. No action or failure to act by the Architectural Committee shall constitute a waiver or estoppel with respect to future action by the Architectural Committee with respect to any Improvement to Property. Specifically, the approval by the Architectural Committee of any Improvement to Property shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement to Property or any similar proposals, plans, specifications or other materials submitted with respect to any other Improvements to Property.

13.23. Committee Power to Grant Variances. The Architectural Committee may authorize variances from compliance

with any of the provisions of this Community Declaration or the Architectural Guidelines and Rules, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Architectural Committee. If any such variance is granted, no violation of the provisions of this Community Declaration or the Architectural Guidelines and Rules shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any of the provisions of this Community Declaration or the Architectural Guidelines and Rules for any purpose except as to the particular property and particular provisions hereof covered by the variance. The granting of an approval by the Architectural Committee shall not affect the obligation of an Owner to comply with the requirements of any Neighborhood Declaration, Neighborhood Association or architectural committee appointed thereunder, nor the obligation to comply with all governmental laws and regulations affecting the property concerned.

13.24. Estoppel Certificates. The Community Association shall, upon the reasonable request of any Owner or Mortgagee and after confirming any necessary facts with the Architectural Committee, furnish a certificate with respect to the approval or disapproval of any Improvement to Property or with respect to whether any Improvement to Property was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein. The Community Association may charge a reasonable fee for such certificate.

13.25. Meetings of Committee. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may, from time to time, by resolution in writing adopted by a majority of the members, designate a Committee Representative (who may, but need not, be one of its Members) to take any action or perform any duties for or on behalf of the Architectural Committee, except the granting of approval to any Improvement to Property, granting of variances and finding noncompliance. The action of such Committee Representative within the authority of such Committee Representative or the written consent or the vote of a majority of the members of the Architectural Committee shall constitute action of the Architectural Committee.

13.26. Nonliability for Committee Action. There shall be no liability on the Architectural Committee, any member of the Committee, any Committee Representative, the Community Association, any member of the Board of Directors of the Community Association, or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Architectural Committee unless due to the willful misconduct or bad faith of the Person to be held liable. The scope of any review by the Architectural Committee is limited to the criteria for approval set forth in this Community Declaration. In reviewing any matter, the Architectural Committee shall not be responsible for reviewing, nor shall its approval of any Improvement to Property be deemed approval of the Improvement to Property from the standpoint of, safety, whether structural, life safety or otherwise, or conformance with building codes or other governmental laws or regulations.

13.27. Construction Period Exception. During the course of actual construction of any permitted structure or Improvement to Property, and provided construction is proceeding with due diligence and in compliance with the this Community Declaration and the Architectural Guidelines and Rules, the Restrictions in Article IX will be interpreted with respect to the Lot upon which the construction is taking place to the extent necessary to permit such construction, so long as during the course of any such construction, nothing is done which will result in a violation of any of the provisions of this Community Declaration upon completion of construction, nothing is done which violates the Architectural Guidelines and Rules and nothing is done which will constitute a nuisance or unreasonable interference with the use and enjoyment of other property.

## **ARTICLE 14. ENFORCEMENT AND REMEDIES**

14.1. Violations Deemed a Nuisance. Every violation of this Community Declaration, the Rules and Regulations or any other Community Documents, whether by act or omission, is deemed to be a nuisance and is subject to all the remedies provided in this Community Declaration for the abatement or correction of the violation.

14.2. Violations of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Community is hereby declared to be a violation of this Community Declaration and shall be subject to any and all of the enforcement procedures set forth in this Community Declaration.

14.3. Compliance. Each Owner, Related User or other occupant of any part of the Community shall comply with the provisions of the Community Documents as the same may be amended from time to time. A Member shall be responsible for all breaches of provisions of the Community Documents by a Related User of such Member, notwithstanding that such Related Users shall be fully liable and responsible for their own actions, including any such breaches.

14.4. Failure to Comply. Failure to comply with the Community Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Notice and Hearing as provided in the Bylaws will be given to the delinquent party prior to commencing any legal proceedings.

14.5. Who May Enforce. The Community Association, acting by authority of the Board, the Manager, acting in the name of the Community Association by authority granted to it by the Board, any Neighborhood Association, acting by authority of its board of directors, and Declarant shall have the right to enforce any or all of the provisions or Restrictions contained in this Community Declaration or the other Community Documents against any Lot, Owner or any Related User. In addition, each Owner of a Private Amenity shall have the right to enforce the provisions of the Community Documents which specifically run to its benefit as an Owner of a Private Amenity, including the provisions of Articles X and XI, as appropriate, against the Community Association, any Neighborhood Association, any Owner and any Related User and any violation of any of the other provisions of the Community Documents which affects the quality, value, desirability or attractiveness of such Private Amenity or the use thereof. No other Persons, including Owners, Members or Related Users, shall have the right to enforce any of the provisions of the Community Documents.

14.6. Community Association Remedies. In addition to any other remedies set forth in this Community Declaration and the other Community Documents and, without limiting any such other remedies, the Community Association shall have the power to enforce the provisions of this Community Declaration and the other Community Documents by any one or more of the following means:

(1) By entry upon any property within the Community after Notice and Hearing (unless a bona fide emergency exists), without liability to the Owner thereof, for the purpose of enforcement or causing compliance with this Community Declaration or Rules and Regulations including abating, removing, modifying or replacing, at the expense of the offending Owner, any structure, things, or condition that may exist in violation of the Community Documents;

provided, however, that there shall be no entry into the interior of a dwelling unit without the consent of the Owner or occupant thereof unless a clear emergency exists;

(2) By commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of or to otherwise enforce the provisions of this Community Declaration or the Rules and Regulations, by mandatory injunction or otherwise;

(3) By commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Community Declaration or the Rules and Regulations;

(4) By exclusion, after Notice and Hearing, of any Member or Related User from use of any Recreation Facilities on the Community Properties during and for up to sixty (60) days following any breach by such Member or a Related User;

(5) By suspension, after Notice and Hearing, of the voting rights of a Member during and for up to sixty (60) days following any breach by such Member or a Related User of such Member of this Community Declaration or such Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues;

(6) By levying, after Notice and Hearing, and collecting a Reimbursement Assessment against any Member and/or Related User for violation or breach of this Community Declaration, the Rules and Regulations or any other Community Document by such Member or a Related User of such Member;

(7) By foreclosing the Assessment Lien in the manner for foreclosure of mortgages in the State of Missouri; and

(8) By disconnection of water or sewer service or both for nonpayment of authorized charges for such services or violation of the Rules and Regulations adopted by the Community Association relating to the provision of such services.

14.7. No Waiver. The failure of the Community Association, the Board of Directors, Declarant, the Manager, or any

other Person having enforcement powers to enforce the Community Documents will not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the Community Documents at any future time.

14.8. Recovery of Costs. In any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Community Documents or the restraint of violations of the Community Documents, the prevailing party will be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees, as may be determined by the court or arbitrator. The right to attorneys' fees hereunder shall be in addition to any attorneys' fees which may otherwise be a Reimbursement Assessment.

14.9. Enforcement by Self Help. Declarant, the Community Association, or any authorized agent of either of them may enforce, by self help, any of the provisions or Restrictions contained in this Community Declaration, provided that, except in emergency situations, such self help is preceded by Notice and Hearing as set forth in the Bylaws for the Community Association.

14.10. Remedies Cumulative. Each remedy provided under this Community Declaration is cumulative and not exclusive.

14.11. Limitations on Liability. The Community Association, its Board of Directors, the Managers, each Neighborhood Association and its board of directors, the Architectural Committee, Declarant and any member, agent or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice. In no event will any such Persons be liable to any Owner or any other Person for failure to enforce any of the Community Documents at any time. Any such Person shall be deemed to have acted in good faith if the action or any failure to act was taken with the care an ordinarily prudent Person in a like position would exercise under similar circumstances, and in a manner such Person reasonably believes to be in the best interests of the Community Association.

## **ARTICLE 15. DISPUTE RESOLUTION**

15.1. Community Parties. The Community Association, the Declarant, each Neighborhood Association, each Owner, Related User and all other Persons subject to this Community Declaration, and any Person not otherwise subject to this Community Declaration (collectively, "Community Parties") agree that it is in the best interests of all such Persons that there be the amicable resolution of disputes involving the Community, and to use good faith efforts to avoid the emotional and financial costs of litigation if possible. Accordingly, each Community Party covenants and agrees that all claims, grievances or disputes between such Community Party and any other Community Party involving the Community, including claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of any of the Community Documents (collectively, "Claim"), except for the Exempt Claims, shall be subject to the procedures set forth in this Section.

15.2. Exempt Claims. The following Claims, which are referred to as the "Exempt Claims," shall be excluded from the definition of Claims and exempt from the provisions of this Article:

- (1) Any suit by the Community Association against any Community Party to enforce the provisions of Article VIII or any suit by a Neighborhood Association under any comparable provisions of a Neighborhood Declaration relating to assessments;
- (2) Any foreclosure action brought by the Community Association to foreclose or recover an Assessment Lien or any foreclosure action by a Neighborhood Association to foreclose or recover any comparable lien under the terms of a Neighborhood Declaration;
- (3) Any suit by a Person entitled to enforce the Community Documents to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the Court may deem necessary in order to maintain the status quo and preserve the enforcing party's ability to enforce the provisions of Articles IX and XIII or under the Rules and Regulations relating to the provision of water and sewer service by the Community Association; and
- (4) Any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under the laws of the State of Missouri in the absence of a claim based upon the Community Documents, if the amount in controversy exceeds \$5,000.

Community Parties having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in this Article, but there shall be no obligation to do so.

15.3. Mediation Procedures. Any Community Party having a Claim ("Claimant") against another Community Party ("Respondent") shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has exhausted all of its remedies set forth in the Community Documents, and then only after Claimant has complied with the following procedures:

(1) Notice of Claim. Claimant shall notify each Respondent in writing of the Claim (the "Notice of Claim"), stating plainly and concisely:

(1) The nature of the Claim, including the date, time location, Persons involved, Respondent's role in the Claim and the provisions of the Community Documents or other authority out of which the Claim arises;

(2) The basis of the Claim (i.e., the provisions of the Community Documents triggered by the Claim);

(3) What Claimant wants Respondent to do or not do to resolve the Claim; and

(4) Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss good faith ways to resolve the Claim.

(2) Negotiation. Each Claimant and Respondent (the "Disputing Parties") shall make every reasonable effort to meet in person to confer for the purposes of resolving the Claim by good faith negotiation. Upon receipt of a written request from any Disputing Party, accompanied by a copy of the Notice of Claim, the Board may appoint a representative, at the expense of the Disputing Parties, to assist the Disputing Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Disputing Parties and to the welfare of the Community Association and its Members.

(3) Mediation. If the Disputing Parties do not resolve the Claim through negotiation within 30 days of the date of Notice of Claim (or within such other period as may be agreed upon by the Disputing Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to request the Claim be submitted to mediation with a service approved for mediation by the Community Association, or such other independent agency providing similar services upon which the Disputing Parties may mutually agree. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, however, nothing herein shall release or discharge Respondent from any liability to persons not a party to the foregoing proceedings.

15.4. Costs of Mediation. Each Disputing Party shall bear all of its costs incurred in the proceedings described herein, including the fees of its attorney or other representative. Each Disputing Party shall equally all charges rendered by the mediator(s) retained under this Article.

15.5. Enforcement of Resolution. If the Disputing Parties agree to resolve any claim through negotiation or mediation in accordance with this Article, and any Disputing Party thereafter fails to abide by the terms of such agreement, then any other Disputing Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article. In such event, the Disputing Party taking such action to enforce the agreement shall be entitled to recover from the noncomplying Disputing Party (or, if more than one noncomplying Disputing Party, from all Disputing Parties pro rata) all costs incurred in enforcing such agreement, including reasonable attorneys' fees and court costs.

15.6. Approval of Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Community Association unless approved by a vote of Delegates representing 75% of the votes of the Members. A Neighborhood Delegate shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Members holding 75% of the total votes in the Neighborhood Association represented by the Neighborhood Delegate. This Section shall not apply, however, to (1) actions brought by the Community Association to enforce the provisions of this Community Declaration (including, without limitation, the foreclosure of liens); (2) the imposition and collection of Assessments; (3) proceedings involving challenges to ad valorem taxation; or (4) counterclaims brought by the Community Association in proceedings instituted against it. This provision shall apply in addition to the limitation on bringing Claims under this Article, if applicable.

## ARTICLE XVI. MISCELLANEOUS PROVISIONS

16.1. Term of Community Declaration. Unless amended as herein provided, each provision contained in this Community Declaration which is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints on alienation shall continue and remain in full force and effect for the period of twenty-one (21) years following the death of the survivor of Kevin M. Smith, Stephen M. Smith and William J. Clinton, President of the United States and the now living children of said persons, or until this Community Declaration is terminated as hereinafter provided, whichever first occurs. Unless amended as herein provided, all other provisions or Restrictions contained in this Community Declaration shall be effective until December 31, 2045, and, thereafter, shall be automatically extended for successive periods of ten (10) years each unless terminated by first obtaining the written consent of the Board of Directors of the Community Association and then obtaining the approval of Delegates representing at least seventy-five percent (75%) of the votes of the Members of the Community Association. In any vote of the Delegates under this Section, a Neighborhood Delegate may vote the votes of the Members of the Neighborhood Association only after a meeting of the Members of the Neighborhood Association and a vote by the Members on the action to be taken. The Neighborhood Delegate may only vote for the approval with that number of votes of all of the Members multiplied by the percentage of the Members who were present at the meeting that voted for the approval. The termination of this Community Declaration shall be effective upon the Recording of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Community Association stating that this Community Declaration has been terminated with the written consent of the Community Association and by the vote of Members as provided herein.

16.2. Amendment of Community Declaration by Members. Except as otherwise provided in this Community Declaration, any provisions or Restrictions contained in this Community Declaration may be amended or repealed at any time and from time to time by first obtaining the written consent of the Board of Directors of the Community Association and then obtaining the approval of the amendment or repeal by Delegates representing at least seventy five percent (75%) of the votes of the Members of the Community Association and, during the Declarant Control Period, by also obtaining, prior to seeking approval of Members, the written consent of Declarant. In any vote of the Delegates under this Section, a Neighborhood Delegate may vote the votes of the Members of the Neighborhood Association only after a meeting of the Members of the Neighborhood Association and a vote by the Members on the action to be taken. The Neighborhood Delegate may only vote for the approval with that number of votes of all of the Members multiplied by the percentage of the Members who were present at the meeting that voted for the approval. The approval of any such amendment or repeal shall be evidenced by the certification by the Delegates from the appropriate Neighborhoods to the Board of Directors of the Community Association of the votes of Members in the Neighborhood. The amendment or repeal shall be effective upon the Recordation of a certificate, executed (1) by the President or a Vice President and the Secretary or an Assistant Secretary of the Community Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved by the appropriate number of Members, and (2) if the amendment or repeal occurs during the Declarant Control Period, by Declarant.

16.3. Declarant Amendment. During the Declarant Control Period, Declarant may amend this Community Declaration in its sole and absolute discretion at any time and from time to time if such amendment is (1) necessary to bring any provisions of this Community Declaration into compliance with any governmental statute, rule or regulation, or judicial determination; (2) necessary to enable any reputable title insurance company to issue title insurance coverage on a Lot; (3) required by an institutional lender or Government Mortgage Agency to enable the same to make, insure or purchase mortgage loans on any Lot; (4) necessary to enable any Government Mortgage Agencies to insure mortgage loans on a Lot; (5) correct any stenographic, scrivener's or surveyor's error, or any error of the like; provided, however, that any such amendment made by Declarant shall not affect the title to a Lot unless the Owner thereof shall consent to the amendment in writing. Until the first Lot subject to this Community Declaration has been conveyed by Declarant by a Recorded deed, this Community Declaration may be amended or terminated by Declarant by the Recordation of a written instrument, executed by Declarant, setting forth such amendment or termination.

16.4. Required Consent of Club to Amendment. Except for amendments made by the Declarant under Section 16.3, no amendment to this Community Declaration may remove, revoke or modify any right or privilege of the Club or any other Owner of a Private Amenity without the written consent of the Owner of the affected Private Amenity.

16.5. Association Right to Mortgage Information. Each Owner hereby authorizes any Mortgagee holding a Mortgage on such Owner's Lot to furnish information to the Community Association concerning the status of such Mortgage and the loan which it secures.

16.6. Priority of First Mortgage Over Assessments. Each First Mortgagee of a Mortgage encumbering a Lot who

obtains title to such Lot pursuant to the remedies provided in the Mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such holder acquires title to such Lot.

16.7. Consents and Approvals. Declarant, the Community Association, the Architectural Committee, each Neighborhood Association, and the Club (including any of their committees, employees, agents and representatives) may grant, withhold, condition or deny their consent, permission or approval in any instance under any of this Community Declaration, or any other Community Documents or any other document by which any such Person is bound when their consent, permission or approval is permitted or required, at their sole discretion and without any liability of any nature or kind to any Owner, Related User or any other Person for any reason whatsoever, and shall be indemnified and held harmless by such Owner, Related User or other Person from any and all damages resulting from any granting, withholding, conditioning, or denying any such consent, permission or approval, including court costs and reasonable attorneys' fees.

16.8. Notices. Any notice permitted or required to be given under this Community Declaration shall be in writing and may be given either personally or by mail. If served by mail or reputable overnight courier, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Community Association for the purpose of service of such notice, or to the Lot of such Person if no address has been given to the Community Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service or the next business day if sent by overnight courier. Any address may be changed from time to time by notice in writing to the Community Association. Any notice to the Community Association shall be sent to the business office of the Community Association and must be sent with receipt acknowledged by the Community Association.

16.9. No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Project Area, or any Improvement thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

16.10. Liberal Interpretation. The provisions of this Community Declaration and the other Community and Neighborhood Documents shall be liberally construed as a whole to effectuate the purpose of this Community Declaration.

16.11. Governing Law. This Community Declaration shall be construed and governed under the laws of the State of Missouri. The sole jurisdiction and venue for any action brought under the Community Documents shall be the state courts of the State of Missouri, and each Owner, Member and Related User and all other Persons who are bound by the Community Documents consents to such jurisdiction and venue.

16.12. Severability. Each of the provisions of this Community Declaration shall be deemed independent and severable and the invalidity or unenforceability or partial validity or partial enforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

16.13. Captions for Convenience. The titles, headings and captions used in this Community Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Community Declaration.

16.14. Use of "Old Kinderhook" Name. The Declarant has certain ownership and proprietary rights in the name "Old Kinderhook" and the Old Kinderhook logos. No Owner, Related User or other Person shall use the words "Old Kinderhook," the Old Kinderhook logos or any derivative of such words or logos in any printed or promotional material, whether for commercial purposes or otherwise, without the written consent of Declarant, which consent may be withheld by Declarant in its sole discretion. Owners and Related Users shall have the license to use the term "Old Kinderhook" in printed or promotional materials where such term is used solely to specify that the Owner's Lot is located within the Old Kinderhook community.

16.15. Claims Against Declarant. No action shall be brought against Declarant (or any officers, directors, employees, members, partners, managers and other affiliates of Declarant) by the Community Association, any Neighborhood Association, any current or former Owner, Member or Related User of an Owner which arises out of any of the Community Documents or Neighborhood Documents or any duty owed by Declarant under the Community Documents or the Neighborhood Documents or any other agreement between Declarant and any such Persons, unless: (1) Declarant is given 90 days prior written notice of the intent to bring such action, which notice shall state with specificity the nature of the claim being brought against Declarant; (2) Declarant is given the opportunity to cure the alleged default within such 90 day period; (3) the complaining party has complied

with the terms of Article XV of this Community Declaration relating to dispute resolution; and (4) the action is brought, if at all, within one year following the date the action accrues. This Section shall include all civil actions, regardless of the theory upon which suit is brought, or against whom suit is brought, and shall include all tort and contract actions.

16.16. Rules of Interpretation. In the interpretation of the terms and provisions of this Community Declaration and any other Community Documents, unless the context requires a contrary interpretation, the following rules of interpretation shall be used:

(1) Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and pronouns of any gender shall include all genders.

(2) The scope of a general statement made shall not be construed as having been referenced through the inclusion of reference to particular items that would be included within the statement's scope and therefore, unless the relevant provision contains specific language to the contrary, the term "include" shall mean "include, but shall not be limited to," the term "including" shall mean the term "including, without limitation," and the term "for example" shall mean "for example, for purposes of illustration and not limitation."

16.17. Indemnification. The officers, directors and committee members of the Community Association shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misfeasance, willful malfeasance or intentional bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Community Association (except to the extent such persons may otherwise have liability solely by reason of such persons also being Members of the Community Association). The Community Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. In addition, the Community Association shall indemnify every officer, director and committee member against all expenses, including attorneys' fees, reasonably incurred in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director or committee member. Any right to indemnification provided for in the Community Documents or the Neighborhood Documents shall not be exclusive of any other rights to which any present or former officer, director or committee member may be entitled. The Community Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

16.18. Conflicts Between Documents. In the event of any conflict between this Community Declaration and any Neighborhood Documents, this Community Declaration will control. In the event of any conflict between this Community Declaration and the Articles of Incorporation and the Bylaws, this Community Declaration will control.

THIS COMMUNITY DECLARATION is executed by Declarant as of the day and year set forth in the first paragraph.

OLD KINDERHOOK DEVELOPMENT COMPANY, L.L.C.,  
a Missouri limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_



STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1998, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the \_\_\_\_\_ of Old Kinderhook Development Company, L.L.C., a Missouri limited liability company, and that said instrument was signed and sealed on behalf of said limited liability company by authority of the Members, and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said limited liability company.

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

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**CONSENT OF LENDERS**

American National Bank

The undersigned, being the beneficiary under a Deed of Trust and Security Agreement dated September 29, 1997, and recorded in Book 187 at Page 981 of the Office of the Recorder of Deeds of Camden County, Missouri, approves the foregoing Declaration of Protective Covenants, Conditions and Restrictions for Old Kinderhook (the "Declaration"), consents to the recording of this Declaration and agrees that any foreclosure or enforcement of any other remedy available to the undersigned under the Deed of Trust and Security Agreement shall not render void or otherwise impair the validity of the Declaration, the covenants running with the land described in the Declaration or any other term or provision of the Declaration.

AMERICAN NATIONAL BANK AND TRUST  
COMPANY OF CHICAGO,  
a national banking association

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1998, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the \_\_\_\_\_ of American National Bank and Trust Company of Chicago, a national banking association, and that said instrument was signed and sealed on behalf of said American National Bank and Trust Company of Chicago by authority of the \_\_\_\_\_, and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said American National Bank and Trust Company of Chicago.

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

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



**EXHIBIT A**  
**FIRST PHASE**

All of Old Kinderhook Plats 1-3, 6, 8 and 9, subdivisions in Camden County Missouri, according to the Plats thereof filed and of record in the Office of the Recording Deeds, Camden County, Missouri.

**EXHIBIT B**  
ANNEXABLE AREA

Excluding all of Old Kinderhook Plats 1-3, 6, 8 and 9, subdivisions in Camden County, Missouri, according to the Plats thereof filed and of record in the Office of The Recorder of Deeds, Camden County, Missouri.

**EXHIBIT C**  
PROJECT AREA

**EXHIBIT D**  
MARINA PROPERTY



DECLARATION OF PROTECTIVE  
COVENANTS, CONDITIONS AND  
RESTRICTIONS  
FOR  
OLD KINDERHOOK

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