

COVER PAGE

THE MANORS AT BRUSH CREEK
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Date: _____, 2022

Grantor: Elite Brush Creek Development LLC

Grantor's Address: 17415 North Outer Forty Road
Chesterfield, Missouri 63005

Grantee: The Manors at Brush Creek Homeowners' Association

Grantee's Address: 17415 North Outer Forty Road
Chesterfield, Missouri 63005

Legal Description: As set forth on Exhibit A

This cover page is attached solely for the purpose of complying with the requirements stated in §§ 59.310.2; 59.313.2 RSMo 2001 of the Missouri Recording Act. The information provided on this cover page shall not be construed as either modifying or supplementing the substantive provisions of the attached Declaration of Covenants, Conditions and Restrictions. In the event of a conflict between the provisions of the attached Declaration of Covenants, Conditions and Restrictions and the provisions of this cover page, the attached Declaration of Covenants, Conditions and Restrictions shall prevail and control.

THE MANORS AT BRUSH CREEK

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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THE MANORS AT BRUSH CREEK

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

ELITE BRUSH CREEK DEVELOPMENT LLC, a Missouri limited liability company (the “Declarant”), and THE MANORS AT BRUSH CREEK HOMEOWNERS’ ASSOCIATION, a Missouri nonprofit corporation (the “Association”), make and enter into The Manors at Brush Creek Declaration of Covenants, Conditions and Restrictions (this “Declaration”) effective as of _____, 2022.

RECITALS:

A. Declarant is the owner of certain real property located in the City of Pacific, Missouri (the “City”), which is more particularly described on Exhibit A, attached hereto and incorporated herein.

B. Declarant desires to create on the Property (as hereinafter defined) a planned residential community of single-family dwellings to be known as The Manors at Brush Creek with open spaces, streets, roads, walkways and other common ground and facilities (the “Community”), and the Board of Aldermen of the City by its Ordinance Number 3275 (the “Authorizing Ordinance”) approved the rezoning of the Property to R-1B Residential and adopted and approved the Planned District Development (PUD-PDR) of the Community, subject to the conditions set forth in the Authorizing Ordinance, as may be amended.

C. This Declaration is not a condominium declaration, the Community does not constitute a “Condominium” as defined in Chapter 448 RSMo., as amended, and the Property now or hereafter subject to this Declaration shall not be subject to or governed by Chapter 448 RSMo., as amended.

D. Declarant desires to ensure compliance with the requirements and the general purposes and objectives upon which the Community has been established.

E. Declarant deems it desirable, for the efficient preservation of the values and amenities in the Community, to form the Association as a nonprofit corporation to which the Common Properties (as hereinafter defined) shall be conveyed, and which Association shall have the powers of maintaining, operating and administering the Common Properties and facilities existing thereon from time to time and administering and enforcing the covenants and restrictions hereinafter set forth and collecting and disbursing the assessments and charges hereinafter created.

F. Declarant has caused the Association to be incorporated under the laws of Missouri as a nonprofit corporation, for the purpose of exercising the functions aforesaid.

G. All restrictions, reservations, limitations, conditions, easements and covenants herein contained are jointly and severally for the benefit of Declarant and all persons who may purchase, hold or own from time to time any of the Property covered by this Declaration.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, covenants and agreements made by the parties hereto, the receipt and sufficiency of which is

hereby acknowledged, Declarant hereby declares that all of the Property and each individual parcel thereof shall be held, sold and conveyed subject to the following restrictions, reservations, limitations, conditions, easements and covenants herein contained, all of which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. The Recitals are incorporated into the body of this Declaration.

1. DEFINITIONS

The following words when used in this Declaration (unless the context shall prohibit or clearly indicate otherwise) shall have the following meanings (and shall not have the meaning ascribed thereto in Chapter 448 RSMo., as amended):

- (a) “Adjustment/Variance” shall have the meaning ascribed thereto in Section 2(f).
- (b) “Antenna” shall have the meaning ascribed thereto in Section 10(a)(xiii).
- (c) “Assessments” shall have the meaning ascribed thereto in Section 5(a).
- (d) “Association” shall mean and refer to The Manors at Brush Creek Homeowners’ Association, a Missouri nonprofit corporation, and its successors and assigns.
- (e) “Board” shall mean the Board of Directors of the Association created pursuant to this Declaration. The directors on the Board may be individually or collectively referred to herein as “Director” or “Directors.”
- (f) “City” shall mean the City of Pacific, State of Missouri.
- (g) “City Code” shall mean the Code of Ordinances of the City, as adopted, amended, modified, repealed or replaced from time to time.
- (h) “Common Properties” shall mean and refer to those areas of real property and the improvements thereon owned by the Association, and all easements, licenses and other occupancy or use rights which the Association has in any portion of the Property, or in other land or properties adjacent thereto whether as an appurtenance thereto or otherwise, and which are intended to be devoted to the common use and enjoyment of all of the Owners of the Lots, including, without limitation:
 - (i) any areas labeled as “Common Ground” or “C.G.” on a Plat (as hereinafter defined) or otherwise shown as easements in favor of the Association on a Plat;
 - (ii) open spaces, parks, paths, walkways, cluster mailbox units or kiosks, and other amenities and facilities for the benefit in common of the Owners or for the benefit of the Association, and all easements therefor, whether created pursuant to this Declaration, a Plat, or other document or instrument recorded in the County Records;

(iii) subdivision entrance areas, monuments or signs, street lights, parking areas (if any) within the Common Properties, retaining walls, and other improvements or facilities for the benefit in common of the Owners or for the benefit of the Association, and all easements therefor, whether created pursuant to this Declaration, a Plat, or other document or instrument recorded in the County Records;

(iv) all sanitary and storm sewer facilities, including all detention and retention basins, and all utility installations, lines and connections for gas, electricity, light, telephone, water and plumbing, and cable television wires and any other utility or data transmission wires, lines, or cables, as located in any utility easements on a Plat properly recorded in the County Records, excepting any and all of the foregoing facilities or utilities and all related items to the extent any part thereof is located on or within a Lot (unless or until such time that any of the foregoing facilities are accepted for maintenance by a Governmental Body) or to the extent any part thereof is constructed by or on behalf of the City;

(v) all apparatus and installations now or hereafter erected on the Common Properties and intended for common use;

(vi) any auxiliary buildings (if any), recreational facilities (if any) and other structures which may, at any time, be erected on the Common Properties and which are intended for common use; and

(vii) all streets dedicated for public use but privately maintained by the Association, until such time as a street has been dedicated to and accepted by the City or other applicable Governmental Body, if ever.

Common Properties shall not include any item that solely serves a particular Lot or Single Family Dwelling. No such item that solely serves a particular Lot or Single Family Dwelling shall be permitted to be constructed on any part of the Common Properties without approval of the Board in its sole discretion, except for utilities within a utility easement. Further, the Common Properties shall not include any improvements, facilities, infrastructure or other properties that are installed or constructed by or on behalf of the City or for which the City is responsible for the maintenance, repair or replacement. Nothing contained in this definition shall be deemed a representation that any of the enumerated facilities or improvements are or will be included in the Community or constructed on the Common Properties.

(i) “Community” shall have the meaning ascribed to it in Recital B.

(j) “County Records” shall mean the Office of the Recorder of Deeds of Franklin County, Missouri.

(k) “Declarant” shall mean and refer to Elite Brush Creek Development LLC, a Missouri limited liability company, its successors and assigns if such successors or assigns acquire or succeed to ownership of all Lots which have not been improved with a Single Family Dwelling (as hereinafter defined) remaining in the Community and then owned by Declarant for the purpose of development or if Declarant expressly assigns its “Declarant rights” hereunder to such assigns

in writing. Notwithstanding the foregoing, upon the acquisition of any one (1) Lot by McBride Brush Creek, LLC, a Missouri limited liability company, from Elite Brush Creek Development LLC, then Elite Brush Creek Development LLC shall be deemed to have expressly assigned all of its Declarant rights hereunder with respect to the Property to McBride Brush Creek, LLC and thereafter McBride Brush Creek, LLC shall be the sole Declarant hereunder.

(l) “Declaration” shall mean and refer to The Manors at Brush Creek Declaration of Covenants, Conditions and Restrictions, as the same may be amended from time-to-time.

(m) “Encroachment” shall have the meaning ascribed thereto in Section 2(f).

(n) “Governmental Body” shall mean any governmental or quasi-governmental authority, including any federal, state, county, city, town, village, district, administrative, or municipal government, agency, branch, department, or other entity.

(o) “Interest Rate” shall have the meaning ascribed thereto in Section 5(g).

(p) “Interim Director” shall have the meaning ascribed thereto in Section 6(a).

(q) “Lot” shall mean and refer to the subdivided parcels of land shown on any Plat (with the exception of the Common Properties as herein defined) to be improved with Single Family Dwellings, including but not limited to Lots 1A through 32A, and Lots 33B through 45B.

(r) “Member” shall have the meaning ascribed thereto in Section 3(a).

(s) “Mortgage” and “Mortgagee” shall mean and refer also to a deed of trust and the trustee and beneficiary under a deed of trust, respectively.

(t) “Owner” shall mean and refer to the owner of record, whether one or more persons or entities, of the fee simple title to any Lot, including but not limited to the Declarant or Successor Builder-Developers where applicable, but shall not mean or refer to any Mortgagee unless and until such Mortgagee has validly acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(u) “Permittees” shall have the meaning ascribed thereto in Section 2(b).

(v) “Plat” shall mean any final recorded subdivision plat of all or any part of the Property, including, without limitation, any such subdivision plat recorded simultaneously herewith, any later recorded subdivision plat or plats of all or part of the Community or the Property, or any final recorded subdivision plat of any contiguous real property that on its face indicates that it is subject to the terms of this Declaration and such contiguous real property is approved or accepted by the Association.

(w) “Property” shall mean and refer to that certain real property described on Exhibit A attached hereto, and such additions thereto as may hereafter become subject to this Declaration, contained on any Plat, or brought within the jurisdiction of the Declaration or the Association.

(x) “Resident” shall mean and refer to every resident of any part of the Property, all guests or invitees of such resident, and all guests or invitees of any Owner.

(y) “Rules and Regulations” shall mean those guidelines, regulations, rules or restrictions as may be approved from time to time by a majority vote of the Board of Directors (in accordance with Section 6(i)) on behalf of the Association, and may be applicable to all or part of the Common Properties of the Community, as such guidelines, regulations, rules or restrictions may be amended or modified from time to time by a majority vote of the Board of Directors in accordance with this Declaration.

(z) “Single Family Dwelling” shall mean and refer to the building consisting of one dwelling unit to be constructed on each Lot.

(aa) “Successor Builder-Developer(s)” shall mean and refer to any owner of record, whether one or more persons or entities, of the fee simple title to any Lot, that acquired or succeeded to ownership of any such Lots that have not been improved with a Single Family Dwelling for the purpose of construction and development.

(bb) “Successor Declarant” shall mean and refer to any Successor Builder-Developer to which Declarant expressly assigns all or any part of its “Declarant rights” hereunder in writing with respect to any Property.

2. EASEMENTS AND PROPERTY RIGHTS

(a) Every Owner of a Lot subject to this Declaration shall have a right and easement of enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title to every Lot, and every Resident and all of the Permittees shall have a privilege and license for enjoyment in and to the Common Properties, subject to the following provisions:

(i) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against liens, foreclosure, and the acquisition of rights therein by the public and other third parties;

(ii) The Rules and Regulations and the right of the Association to promulgate additional Rules and Regulations;

(iii) The right of the Association to suspend the voting rights of any Owner or to suspend or revoke the rights or privileges to use any of the Common Properties or any recreational facilities situated on the Common Properties by any Owner, Resident, or Permittee for (A) any period during which any Assessment remains unpaid, or (B) any period during which the Owner or the Owner’s Lot is in violation of the terms of this Declaration or the bylaws or other governing documents of the Association, as determined by the Board, or (C) any period as determined by the Board;

(iv) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated on the Common Properties and require licenses and license fees where it is deemed necessary by the Board;

(v) The right of the Association to dedicate or transfer all or part of the Common Properties, or grant such easements and rights of way in and to the Common Properties, to any Governmental Body or utility company subject to such conditions as may be reasonably necessary for the development of the Community. No conveyance or transfer of fee title to all or any of the Common Properties to any party other than a Governmental Body or utility company shall be effective unless an instrument agreeing to such conveyance or transfer has been recorded and approved by two-thirds (2/3) of each class of Members at a meeting of the Members or consented to in writing and signed by Members holding at least eighty percent (80%) of the voting power pursuant to Section 6(k) hereof;

(vi) The right of the Declarant or other Successor Builder-Developers to utilize the Common Properties for promotional purposes until development and sale of each Lot is complete;

(vii) The right of Owners to perpetual easements as reasonably necessary over any part of the Common Properties for such portion of their Single Family Dwelling that may properly overhang any Common Properties, and if ingress or egress is typically provided to an Owner over a particular portion of the Common Properties, then the right of said Owner of ingress and egress over such particular portion of the Common Properties;

(viii) The right of the Association to enter into licensing agreements with commercial enterprises for the operation of recreation facilities and related concessions for the benefit of Owners and Residents of the Property;

(ix) The right of the Association and Declarant (during such time as Declarant owns a Lot) to annex additional contiguous property and Common Properties to the Community;

(x) The right of the Directors to prescribe or assess fines pursuant to a fine policy and/or schedule adopted by the Directors, in the sole discretion of the Directors, in connection with the enforcement of (1) the Rules and Regulations, whether now or hereafter established, and/or (2) all other provisions of the Declaration; and

(xi) All other rights of the Association or the Directors as set forth herein, including but not limited to the right to make rules and regulations not inconsistent with the law and this Declaration for the use and operation of the Common Properties, to restrict the use or otherwise place limitations on the use and operation of the Common Properties, and in every and all respects to govern the operation, functioning and usage of the Common Properties and all other provisions of the Declaration.

(b) Subject to Section 2(a), the Common Properties shall be for the benefit, use, and enjoyment of (1) the Owners and Residents, present and future, (2) at the discretion of the Board and upon such Rules and Regulations as the Board may adopt from time to time, individuals residing outside the Community (the benefitted parties listed in clause (2) shall be referred to as the "Permittees"). To the extent such Permittees are permitted to use the Common Properties:

(i) No Owner or Resident of the Property shall be denied the use of the Common Properties for any reason related to the extension of such privilege to the Permittees;

(ii) All Rules and Regulations promulgated pursuant to this Declaration with respect to the Owners or Residents of the Property shall be applied equally to the Owners, Residents, and, as applicable, all of the Permittees;

(iii) All Rules and Regulations promulgated pursuant to this Declaration solely with respect to the Permittees shall be applied equally to the Permittees;

(iv) At any time after recording of this Declaration, a majority of the Owners, by election duly called, may elect to allow or disallow usage of the Common Properties by the Permittees.

(c) Every utility easement, whether granted on a Plat, by this Declaration or other document or instrument recorded in the County Records, on any Lot shall constitute an easement for utility purposes to serve any other Lot or the Common Properties.

(d) In the event that any utilities and utility connections serving a Lot are located in part on a Lot other than the Lot being served by such utilities and connections, then the utility provider, the Owner of a Lot being served, and the contractors and employees of such provider or Owner shall have the right and easement to enter upon the Lot in which the utility line or connection is located for the repair, maintenance and replacement of such line or connection.

(e) There shall be and is hereby imposed on each Lot an easement for reasonable ingress and egress by or on behalf of the Owner of any adjoining Lot and by or on behalf of the Association for the purpose of repair, maintenance or replacement of improvements on any adjoining Lot or Common Properties.

(f) Should any portion of any Single Family Dwelling or other improvement as originally constructed, or any planting or tree, overhang or encroach on an adjacent Lot or any part of the Common Properties ("Encroachment"), the Owner of any such Single Family Dwelling or other improvement, planting or tree shall have a license to enter upon such adjacent Lot or Common Properties for the purpose of necessary repair, maintenance or replacement of such overhanging or encroaching portion of such Single Family Dwelling or other improvement or to trim such overhanging or encroaching planting or tree. The Directors are hereby appointed as agent and attorney-in-fact (coupled with an interest) for and on behalf of each of the Owners of such adjacent Lot or any Common Properties affected by the Encroachment and may petition the proper authorities for a boundary line adjustment or request such variance as may be necessary ("Adjustment/Variance") to allow for said Encroachment. The Directors, as agent and attorney-in-fact, may also execute and file of record such easement or other necessary documents of record on behalf of each Owner to effectuate such Adjustment/Variance granted upon the determination and payment of reasonable compensation, if any, as determined by the Directors, to the Owner affected by such change, to be paid from funds assessed against the Owner benefiting therefrom. All Owners shall be bound by any resulting Adjustment/Variance granted.

(g) There shall be and hereby is imposed a non-exclusive perpetual easement fifteen (15) feet in width along the rear lot lines and four (4) feet in width along the side lot lines of all Lots for the benefit of all other Lots for purposes of water drainage from sump pump discharge lines or gutter downspouts. Without limiting the generality of any other provision of this Declaration, the Association may, but shall not be obligated to, maintain, clean and repair all such drainage easements, and is hereby granted easements in gross for ingress to and egress from such drainage easements and as otherwise required to perform the foregoing. The Owner shall be permitted to use the affected areas on its Lot, subject to the terms of the easements granted herein, except that the Owners shall not be permitted to perform any clearing, grading, excavation, or disturbance of any kind, nor permit any change in slope or grade, within or immediately adjacent to such easement areas.

(h) There shall be and hereby is imposed a non-exclusive perpetual easement ten (10) feet in width along the rear lot line of all Lots for the benefit of the Declarant for the construction and placement of a sight-proof privacy fence as may be deemed necessary by the Declarant for privacy screening and aesthetic improvement to the Community. Nothing in this subsection shall give any other Owner other than Declarant the right to install a fence, which shall be governed by the provisions of Section 10(a)(ix).

(i) There have been or may be designated on a Plat subject hereto driveway easements for the joint and mutual use and benefit of the Lots on which they are located and the Lots to which they provide access from a street. Those easements are to be held by the respective Owners of each of those Lots, and their respective heirs, executors, administrators, successors and assigns as appurtenant to the Lot owned by each of those Owners. The Owners of each of those Lots shall be jointly responsible for the maintenance and repair of the driveway improvement located on each such easement and each such Owner shall pay an equal share of the cost of maintenance. In the event that any such driveway improvement is not kept in good repair, upon thirty (30) days' written notice by the Directors to each Owner, the Directors may cause such maintenance or repair to be provided and the reasonable cost thereof shall be a charge and lien against each Lot to which such driveway easement is appurtenant, in the amount of the equal portion of such cost allocated to such Lot. Said charge shall be enforceable in the same manner as herein provided in Section 5 hereof.

(j) The Property, including the Lots and Single Family Dwellings thereupon located, shall be subject to a perpetual easement in gross to the Directors and the Association, their successors and assigns, for ingress and egress to perform their obligations and duties as required by this Declaration as well as all maintenance, repair, replacement and other tasks which the Directors and Association have the right or discretion to perform hereunder. Should it be necessary on a non-emergency basis, to enter upon a Lot in order to maintain, service, improve, repair or replace any Common Properties, the exterior of any Single Family Dwelling, or any other item required or permitted to be maintained by the Association hereunder, employees, agents and workmen shall be entitled to entrance by exhibiting to the Owner an order from the Association signed by one of the members of the Board of Directors or an agent of the Board of Directors. The Association shall specifically have the authority to enter any Lot, on an emergency basis, for the purposes of repairing, maintaining, servicing or replacing the sewers, other utilities, pipes and wires within or upon any Lot which serves another Single Family Dwelling or Lot, without the necessity of exhibiting an order from the Association. The determination of whether such an emergency exists shall be within the sole discretion of the Association, but it is anticipated that

entering any Lot without an order from the Association shall only occur if the Owner is not present or reasonably available at the time such emergency occurs.

(k) The Property, including the Lots and Single Family Dwellings thereupon located, shall be subject to a perpetual easement in gross to the Declarant, its successors and assigns, for access, ingress and egress to perform any duties and obligations which may be imposed upon Declarant, its successors and assigns, by this Declaration or by any Governmental Body, including, without limitation, any obligations or duties which may be helpful or necessary for the release of development escrows deposited with any such Governmental Body.

(l) The Property, including the Common Properties, the Lots and Single Family Dwellings thereupon located, shall be subject to a perpetual easement in gross to the Association, its successors and assigns, for access, ingress and egress to perform any duties and obligations which may be imposed upon the Association, its successors and assigns, by this Declaration or by any Governmental Body, including, without limitation, any obligations or duties which may be helpful or necessary for the maintenance of the detention basin and stormwater facilities.

(m) There shall be and hereby are imposed non-exclusive, perpetual landscape easements in favor of the Association on the areas designated and shown on a Plat as a "Landscape Easement" on Lots 15A through 21A (collectively, the "Landscape Easement Areas"), for the installation, maintenance, repair, or replacement of natural vegetation, vegetative landscaping and irrigation and appurtenant landscape materials, with the right of temporary use of adjacent ground not occupied by improvements, for the excavation and storage of materials during installation, maintenance, repair or replacement of the vegetative landscaping, irrigation, and landscape materials. Structures of any kind, whether temporary or permanent, are not permitted within the Landscape Easement Areas, including private fences. Owners are prohibited from removing any trees or vegetative landscaping within these easement areas or otherwise disturbing these Landscape Easement Areas in any manner.

(n) There shall be and hereby are dedicated and imposed non-exclusive perpetual easements for public use forever over and across the areas identified and shown on a Plat as "Sidewalk Easement(s)" for sidewalks in favor of and dedicated to the City, and the City shall be responsible for the maintenance, repair and replacement thereof.

(o) There shall be and hereby is dedicated and imposed a non-exclusive perpetual easement over and across the areas identified and shown on the Plat as "Parking Easement" to each of the Owners and their respective successors and/or assigns, guests, and invitees for private use as parking areas, if such parking areas are constructed in this area, and the Association shall be responsible for the maintenance thereof.

(p) There shall be and hereby are imposed non-exclusive, perpetual easements in favor of the Association in, on and over the areas designated and shown on Lots 36B to 45B on the Plat as "Fence Easements" (collectively, the "Fence Easement Areas"), for the construction, installation, maintenance, repair, and replacement of a subdivision fence and appurtenant materials, with the right of temporary use of ground adjacent to such easement areas and not occupied by improvements for the excavation and storage of materials during such construction, installation, maintenance, repair or replacement of the fences or related materials. All fences within

the Fence Easement Areas shall be maintained by the Association. The Owners of any Lots affected by said fences are hereby granted access across the Fence Easement Areas for access to their respective rear yards, and no Owner shall prevent access by the Association.

3. CREATION OF ASSOCIATION

(a) Every Owner of a Lot which is subject to assessment, and the Declarant and each Successor Builder-Developer (so long as the Declarant or such Successor Builder-Developer owns a Lot subject to the Declaration), shall be a member of the Association (each, a "Member"). Membership shall be appurtenant to and may not be separated from ownership of any Lot.

(b) The Association shall have two classes of voting memberships:

(i) Class A: Class A Members shall be all Owners, with the exception of the Declarant and Successor Builder-Developers, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot and the Board shall have the right to rely on or reject such vote in its discretion.

(ii) Class B: The Class B Members shall be the Declarant and Successor Builder-Developers and each shall be entitled to three (3) votes for each Lot owned by Declarant or any Successor Builder-Developers before title to the Lot has been transferred to the first purchaser thereof at retail (as distinguished from sale in bulk or at wholesale to others for development and construction). The Class B membership shall cease and be converted to Class A membership upon the earlier to occur of:

(A) the total votes held by the Class A Members equaling or exceeding the total votes held by the Class B Members;

(B) December 31, 2042; or

(C) When Declarant, in its sole discretion, so determines and declares in an instrument recorded in the County Records.

4. DURATION

(a) The restrictions, reservations, limitations, conditions, easements and covenants herein contained and established by this Declaration shall run with the land and continue and be binding upon the Property and upon the Declarant, the Owners, the Residents, the Permittees, and the Directors and upon their successors and assigns for the longer of the following: (i) for the duration of the subdivision, or (ii) for a period of fifty (50) years from the date this Declaration is recorded, and shall automatically be continued thereafter for successive periods of fifteen (15) years each; provided, however, that the fee simple record Owners of the Lots now subject and hereafter made subject to this Declaration, by the approving vote of two-thirds (2/3) of each class of Members then entitled to vote at a meeting of the Members, or the consent given in writing by Members holding at least eighty-percent (80%) of the voting power, pursuant to Section 6(k) hereof, may terminate the Declaration or release all of the Property restricted thereby at the end

of said fifty (50) year period or any fifteen (15) year period thereafter, by executing and acknowledging an appropriate agreement or agreements in writing for such purposes and filing the same of record in the County Records, at least one (1) year prior to the expiration of said fifty (50) year period or of any fifteen (15) year period thereafter.

(b) In the event the subdivision is vacated, this Declaration shall terminate, and the Board shall convey fee simple title to the Common Properties to the then Owners as tenants in common and shall dissolve the Association pursuant to the vote of the Members as provided above. The rights of the tenants in common shall be exercisable appurtenant to and in conjunction with their Lot ownership. Any conveyance or change in ownership of any Lot shall convey with it ownership in the Common Properties, and no interest in the Common Properties shall be conveyed by an Owner except in conjunction with the sale of a Lot. No Owner shall have at any time a property interest in any part of the Common Properties that may be subject to any lien created by the Owner, and no pledge, mortgage, conveyance or transfer of any interest in or to the Common Properties by any Owner to any party shall be effective. The Association may encumber, pledge, mortgage, convey or transfer a security interest in or to any part of the Common Properties as the Board shall deem necessary or appropriate. The sale of any Lot shall carry with it all the incidents of ownership of the Common Properties regardless of whether such ownership is expressly mentioned in the deed of conveyance; provided, however, that no right or power conferred upon the Directors or the Association shall be abrogated. Any interest in real property which may vest at any time in the future as a result of this Declaration shall vest, if at all, within the longer of (i) 21 years of the death of the last to survive of the now living descendants of Joseph Biden, 46th President of the United States of America, or (ii) such longer vesting period as is allowed by law.

5. COVENANT FOR MAINTENANCE ASSESSMENTS

(a) Except as set forth in Section 5(h), the Declarant, for each Lot within the Property, hereby covenants and agrees, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or their conveyance, shall be deemed to covenant and agree to pay to the Association (i) annual assessments or charges as determined by the Board, (ii) special assessments or charges, with such assessments or charges to be fixed, established and collected from time to time as hereinafter provided, including, but not limited to, any charges or assessments created pursuant to Sections 5(d) and 5(e) below, and (iii) a one-time working capital assessment in the amount of \$850.00 which shall be due immediately upon the first conveyance of any Lot (and not on any subsequent conveyance) after a Single Family Dwelling has been constructed upon such Lot for purposes of providing working capital for the Association; each such assessment to be treated as a special assessment hereunder and shall be a charge against the title of each such Lot and shall be a continuing lien and otherwise shall be collectable and enforceable in accordance with this Section 5 (all such assessments and charges being sometimes herein collectively referred to as "Assessments").

(b) Any and all Assessments permitted in this Section 5, together with interest thereon at the Interest Rate, any late fees which may be imposed by the Board from time to time, and costs of collection thereof including but not limited to attorney's fees and court costs incurred whether or not a lawsuit filed and not based on the amount of the Assessment owed but based on the reasonable value of the legal service performed, shall be a charge against the title of each Lot

and shall be a continuing lien upon the Lot against which such Assessment is made, which shall bind such Lot and its Owner, and such Owner's heirs, devisees, personal representatives, successors and assigns without the need or requirement of filing any additional documentation with respect to such lien. Recording of this Declaration constitutes record notice and perfection of the lien as to Assessments which become delinquent thereafter, together with interest and late fees thereon and costs of collection thereof as hereinafter provided. Further recording of a claim for Assessment under this Section 5 is not required. The Association shall be entitled to enforce collection of any and all of such Assessments, interest and costs through enforcement of such lien, whether by foreclosure or otherwise. Each such Assessment, together with such interest thereon and cost of collection thereof as herein provided, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment became due. Notwithstanding anything herein to the contrary, the lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage and non-payment of any such Assessment shall not constitute a default under any federally insured Mortgage. Furthermore, Mortgagees of any such financing on a Lot or improvements thereon shall not be required to collect, retain or escrow any Assessments as referenced hereinabove.

(c) The Assessments levied under this Section 5 shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Residents of the Property or for maintaining the market value of the Property and in particular for the rendering of services in the furtherance of such purposes, including the carrying out of all functions herein authorized and required, and for the improvement, maintenance and operation of the Common Properties and all facilities thereon, including, but not limited to, the payment of taxes and insurance thereon, debt service and repair, maintenance, replacements and additions thereto and for the cost of labor, equipment, materials, management and supervision thereof and for such other needs as may arise and for maintenance of reserves for the benefit of the Association.

(d) As indicated in Section 5(a) above, in addition to the annual assessment herein authorized, there may be levied in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement within or upon the Common Properties or any easement, street, drive, walkway or other right-of-way provided for the benefit of the Lots subject hereto, and including the provision of necessary fixtures or personal property related thereto, provided that any such assessment shall have the consent given in writing and signed by Members holding at least two-thirds (2/3) of the voting power, pursuant to Section 6(k) hereof, or the approving vote of two-thirds (2/3) of the votes cast by each class of Members who are voting, in person or by proxy, at a meeting of the Members duly called for such purpose, written notice of which shall have been sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance and shall set forth the purpose of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(i) In addition to other special assessments authorized by this Section 5(d), the Board is authorized to make and collect a separate special assessment, without a vote of

the Members, for the construction, operation, maintenance, repair and replacement of sewer systems, creeks, and other storm water control easements and storm water facilities including, but not limited to, any retention and detention ponds. The special assessment provided for by this subsection shall be allowed and applicable until the operation and maintenance of such sewer systems, creeks, and other storm water control easements and facilities have been accepted for maintenance by an appropriate Governmental Body or utility company.

(ii) In addition to other special assessments authorized by this Section 5(d), the Board is authorized to make and collect a separate special assessment pursuant to this subsection, without a vote of the Members, as deemed necessary by the Directors for compliance with all subdivision and other ordinances, rules and regulations of the City or other Governmental Body. Specifically, but not by way of limitation, the Board of Directors may make provisions for the maintenance and operation of all street lights, roadways, easements, utilities, amenities or other Common Properties.

(iii) The provisions of this Section 5 with respect to the establishment of due dates, effect of non-payment and remedies for enforcement shall be applicable to any special assessment levied as hereinabove authorized.

(e) In addition, the Directors may levy a special assessment or charge against any Owner and any Lot(s) for all costs and expenses incurred, including costs of collection, interest, attorney's fees and other associated costs for purposes of (i) making repairs or maintenance to a Lot or improvements thereon, which repairs or maintenance the Owner has failed to make or which the Association or Board has the duty or right to make, (ii) for repairing any damage caused by an Owner, a Resident, or such Owner's or Resident's employees, agents, invitees or tenants, or (iii) removal of unapproved or unauthorized signage erected anywhere on the Property. Nothing herein shall be deemed to impose absolute liability without respect to fault or negligence upon the Owners for damage to the Common Properties or the Lots.

(f) Assessments shall be made in a manner and subject to the following procedure:

(i) As to annual assessments, on or before thirty (30) days in advance of each assessment year, as established by the Directors, the Directors shall prepare proposed budget(s) for the upcoming assessment year taking into consideration all anticipated items of expense, including but not limited to reasonable amounts for Common Properties maintenance (including without limitation irrigation expenses of the Association), roadway maintenance, and reasonable replacement and other reserves. Based upon the proposed budgets, the Directors shall establish the annual assessment for the upcoming assessment year for all Lots. The Directors shall set the due date for payment of the assessments and may provide for a periodic payment schedule if deemed desirable by the Directors. If at any time during an assessment year, the Directors determine in their reasonable opinion that the annual assessment will not provide sufficient funds during the assessment year to cover the expense of items in the proposed budgets or the expense of any items not indicated on the proposed budget which may occur and are reasonably necessary to the general operation of the Association or the Common Properties, then the Directors may levy an additional supplemental assessment for the remainder of the assessment year in the amount

necessary to cover the anticipated revenue deficit for that assessment year. The right and power to levy a supplemental annual assessment shall extend to the Directors for the first assessment year and each assessment year thereafter. Written notice of any levy of a supplemental assessment shall be given to each Owner and payment shall be made as directed by the Directors in such notice.

(ii) Subject to requisite Member approval as set forth herein, special assessments shall be made by the Directors upon at least thirty (30) days' notice, and, at the discretion of the Directors, may be payable in a lump sum, in periodic installments or due and payable within thirty (30) days from the date of such notice.

(iii) Any Assessment imposed by the Association, with the exception of a special assessment levied under Section 5(e) hereof, shall be equitably divided among all Owners on the basis of an equal amount allocated to each Lot.

(iv) Notice of any Assessment shall be given by the Directors, either by mail, postage prepaid, addressed to the address shown on the real estate assessment records of the County or any applicable municipality (and notice so given shall be considered given when mailed), or by posting a brief notice of the assessment upon the Lot itself.

(v) The failure or delay of the Directors to prepare or serve any budget or any Assessment shall not constitute a waiver or release in any manner of any Owner's obligation to pay such Assessment whenever the same shall be made, and in the absence of any annual assessment or supplemental annual assessment, the Owner shall continue to pay at the then existing rate established for the previous payment.

(g) If any Assessment is not paid within thirty (30) days after the delinquency date, such Assessment shall bear interest from the date of delinquency at the lesser of eighteen percent (18%) per annum or the highest rate allowed by law (the "Interest Rate"), and the Directors may bring legal action against the Owner personally obligated to pay same, and, in addition, shall be entitled to the rights as set forth in Section 5(b) hereinabove with respect to enforcement of payment of same. The Board of Directors is hereby authorized to notify any Mortgagee that the Board is taking steps to collect unpaid assessments or to enforce a lien against said Lot.

(h) The following properties subject to this Declaration shall be exempt from the Assessments and liens created herein:

(i) All Common Properties.

(ii) All properties exempt from taxation under the laws of the State of Missouri.

(iii) All Lots owned by Declarant or any Successor Builder-Developers before title to the Lot has been transferred to the first purchaser thereof at retail (as distinguished from sale in bulk or at wholesale to others for development and construction).

(iv) Any Lot subsequently added hereto, the Owners or residents of which are permanently ineligible to use portions of the Common Properties, shall not be subject to assessment for such portions of the Common Properties.

(i) Each Owner shall be responsible for the maintenance, repair and replacement of its Lot and all improvements thereon, including without limitation the lateral sewage line or lines servicing each Owner's Lot, and shall keep such Lot and all improvements thereon in good order and repair as determined by the Board.

(j) The liability for an Assessment may not be avoided by a waiver of the use or enjoyment of any Common Properties, services or recreation facilities, or by abandonment of the Lot against which the Assessment was made, or by reliance upon assertion of any claim against the Board of Directors, the Association or another Owner.

(k) Nothing contained herein shall abridge or limit the rights or responsibilities of Mortgagees and nothing herein shall be construed to require a Mortgagee to collect the Assessments provided for herein.

(l) This Section 5 does not prohibit the Association from taking a deed in lieu of foreclosure.

(m) A judgment or decree in any action brought under this Section is enforceable by execution of the judgment and shall include the costs and reasonable attorney's fees and paralegal expenses incurred by the Association.

(n) Any payments received by the Association in discharge of an Owner's obligation may be applied to the oldest balance due.

6. SELECTION OF DIRECTORS, MEETINGS OF OWNERS

(a) The Board of Directors of the Association shall consist of three (3) members (each a "Director" and collectively "Directors"). The original Directors are Rob Berra ("Director 1"), Jeremy Roth ("Director 2"), and Josh Foster ("Director 3"). During the period of service of Director 1, Director 2, and Director 3 ("Original Directors"), one or more shall be subject to removal, with or without cause, and Declarant shall have the exclusive right to designate the successor to such removed Director for his or her unexpired period of service as provided for hereunder. Should any of the Original Directors die, resign, or cease to hold office, or decline to act or become incompetent or unable for any reason to discharge the duties, or avail himself or herself of or exercise the rights and powers hereby granted or bestowed upon them as Directors under this Declaration, then Declarant shall have the exclusive right to designate the successor thereto for his or her unexpired period of service as provided for hereunder. In the event that the provisions of this Declaration cannot be fulfilled due to unfilled vacancies among the Directors, an Owner or Resident of the Property may petition the Board of Aldermen of the City (and the Board of Aldermen of the City shall have the right and power) to appoint or cause to be appointed a director to fill the vacancy during said interim ("Interim Director") until such time as a new Director is elected in accordance with this Declaration. Any Interim Director who is not an Owner or Resident shall be allowed a reasonable fee for services rendered as an Interim Director and the fee shall be determined by the Directors who are not Interim Directors. The fee shall be levied as a special assessment against the Lots, which assessment shall not be subject to any limitations on special assessments, if any, contained in this Declaration.

(b) Until such time as Declarant has sold and conveyed all of the Lots (regardless of whether such Lots are constructed or sold in phases) which may be subject to this Declaration to persons or entities other than a Successor Builder-Developer, the following procedure for designating successor Directors shall be followed:

(i) After Declarant or any Successor Builder-Developer has sold and conveyed in the aggregate fifty percent (50%) of the Lots that may be subjected to this Declaration to persons other than a Successor Builder-Developer, then Director 1, or his or her appointed successor Director, shall resign and his or her successor shall be elected by the Members other than Declarant or Successor Builder-Developer at a special meeting of the Members to be called thereafter, such successor being the nominee receiving the highest number of votes cast. Such Director shall serve as Director until all Directors are elected by Members other than Declarant or Successor Builder-Developer under the provisions of Section 6(c) below.

(ii) After Declarant or any Successor Builder-Developer has sold and conveyed in the aggregate seventy-five percent (75%) of the Lots that may be subjected to this Declaration to persons other than a Successor Builder-Developer, then Director 2, or his or her appointed successor Director, shall resign and his or her successor shall be elected by the Members other than Declarant or Successor Builder-Developer at a special meeting of the Members to be called thereafter, such successor being the nominee receiving the highest number of votes cast. Such Director shall serve as Director until all Directors are elected by Members other than Declarant or Successor Builder-Developer under the provisions of Section 6(c) below.

(iii) After Declarant or any Successor Builder-Developer has sold and conveyed one hundred percent (100%) of the Lots that may be subjected to this Declaration to persons other than a Successor Builder-Developer, then Director 3, or his or her appointed successor Director, shall resign and his or her successor shall be elected by the Members other than Declarant or Successor Builder-Developer at a special meeting of the Members to be called thereafter, such successor being the nominee receiving the highest number of votes cast. Such Director shall serve as Director until all Directors are elected by Members of the Association under the provisions of Section 6(c) below.

(iv) Declarant, in its sole discretion, may (but shall not be required to) appoint a Director from the membership of the Association prior to the time designated for election of a second or third Director as set out in Sections 6(b)(ii) and (iii) above. In anticipation of the Declarant exercising this option, the Association may call a special election in accordance with the provisions of this Declaration to elect an Owner or Owners to be the nominee(s) for Director(s) to be appointed by the Declarant under the provisions of this subsection. If the Association fails or refuses to elect the nominee(s) for the Director(s) to be appointed, then Declarant shall have the right to appoint any Member(s). In the event the Declarant does appoint such Director(s) prior to the time set forth in Sections 6(b)(ii) and (iii) above, then such nominee(s) or Member(s) shall become Director(s) with full powers and shall not be subject to removal by the Declarant, just as if such person(s) were elected pursuant to the provisions of Sections 6(b)(ii) and (iii), and no Director(s) shall be elected by the Members under the provisions of Sections 6(b)(ii) and (iii) and the appointed

person(s) shall serve as Director(s) until all Directors are elected by the Owners under the provisions of Section 6(c). If the Declarant chooses to exercise its option to appoint Director(s) pursuant to this subsection, it shall do so by recording a written instrument evidencing the exercise of such option in the County Records.

(c) No later than ninety (90) days after Declarant or any Successor Builder-Developer has sold and conveyed in the aggregate one hundred percent (100%) of the Lots that may be subjected to this Declaration to persons other than a Successor Builder-Developer, the following procedure shall be followed:

(i) All of the then-acting Directors shall resign; and

(ii) At a special meeting of the Members, three (3) Directors shall be elected, as follows: one (1) for a term of three (3) years, one (1) for a term of two (2) years, and the third for a term of one (1) year.

(iii) After the expiration of the term of office of the Directors elected as provided in Section 6(c)(ii) above, each successor Director shall be elected by Members, and each such successor Director shall serve for a term of three (3) years so that the terms shall be continuously staggered.

(d) Following each annual meeting of the Association as provided for herein, the Directors shall designate one (1) Director to serve as President, one (1) Director to serve as Vice-President, and one (1) Director to serve as Secretary/Treasurer, until the time of the next following annual meeting.

(e) There shall be an annual meeting of the Association (subject to the provisions of Section 6(j) hereof), open to all Owners and Residents, to be held after 5:00 p.m. on the second Wednesday of March of each year during the term of this Declaration, said meeting to be held at a convenient place in the City. There may be special meetings of the Association as may be called by any one of the Directors, or upon written request of the Members holding five percent (5%) of all the votes, also to be held at a convenient place in the City. Except in the case of an emergency, no less than ten (10) days' and not more than sixty (60) days' notice in writing to each Member of the time and place of any annual or special meeting shall be given by the Directors or by the Director calling said meeting, by depositing same in the United States mail, properly addressed to the address shown on the real estate tax assessment records for each Owner and with postage prepaid and in the case of a special meeting, stating the purpose of the meeting. The successor to an elected Director whose term has expired shall be elected at the annual meeting or at the special meeting called for that purpose. At any annual or special meeting each Lot shall be entitled to one (1) vote (except as provided in Section 3(b)) and any action or proposal to be approved shall require approval by a majority of votes cast at such meeting. Any vote may be cast in person or by proxy. Any designation of a proxy shall be on a form approved by the Directors and shall be filed with the Directors at least forty-eight (48) hours before any meeting at which such proxy will vote. Any Member who has failed to pay any Assessments due and payable shall not be entitled to vote at any annual or special meeting provided for herein. The person or persons receiving the highest number of votes cast shall be deemed elected and shall, upon his, her or their acceptance in writing, at once and by force of this Declaration imposed, succeed to, be vested

with, and possess and enjoy all of the rights, interests, privileges and powers granted by this Declaration to the Directors. In the event that any Director elected hereunder shall die or become unable for any reason, to discharge the duties or avail himself or herself of or exercise the rights and powers herein granted or bestowed upon him, her or them as Directors under this Declaration, then and thereupon, it shall be the duty of the remaining Directors to select a successor to carry out the duties of such Director for the remainder of such Director's term.

(f) Any person voting on behalf of the Owner or Owners of a Lot shall be known as the "Voting Member." If a Lot is jointly owned, only one person shall be entitled to vote for the Owners of that Lot. If a Lot is jointly owned and if only one of the multiple Owners of that Lot is present at a meeting of the Association, he or she shall be entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners is present, the vote allocated to that Lot may be cast only as determined by said Owners. If any one of the multiple Owners casts the vote allocated to that Lot without protest being made prior to or at the time of such vote to the person presiding over the meeting by any of the other Owners of the Lot, then the Association shall be entitled to rely on such vote, which shall be conclusive and binding on such Lot and its multiple Owners. A corporation, if an Owner, shall act through its president or through another officer or director as the board of directors of that corporation designates in writing. A partnership or limited liability company, if an Owner, shall act through a partner or member or manager, as applicable, as designated by the partnership or company in writing. A trust, if an Owner, shall act through its trustee. If there is more than one such trustee for a trust, then the beneficiaries of such trust shall designate in writing which trustee shall be entitled to vote.

(g) All Directors, except Interim Directors and the Original Directors, shall be an Owner or a Resident. If any Owner is a corporation, partnership, limited liability company or trust, then any partner, officer, director, member, manager, employee or agent of such corporation, partnership or company or trustee of such trust may be a Director.

(h) No business may be transacted at any meeting (special or general) at which there is not a quorum, except as provided below. Except as otherwise provided herein, a quorum shall be deemed present at a meeting of the Association if the Members in attendance at the beginning of the meeting represent at least ten percent (10%) of the votes of each class of Members eligible to vote at the time of the meeting, either in person or by proxy. If proper notice is given and a meeting called at which the proposed business cannot be conducted because of failure to achieve a quorum, then the Directors may either:

(i) Give another notice of the meeting indicating the proposed business or purpose and if such meeting is held within thirty (30) days of the date of the first meeting at which there was no quorum, then there shall not be a quorum requirement to transact the proposed business at such second meeting; or

(ii) Take a vote of the Association on any proposed business by written ballot of the Members in lieu of a meeting.

(i) A quorum is present at a meeting of the Directors if a majority of the Directors are in attendance. All actions of the Directors shall be by majority vote of those present so long as

there is a quorum. The Directors may take action by majority vote on written ballots or by unanimous consents in lieu of a meeting.

(j) For the period from the date of execution hereof until such time as there are fewer than two Original Directors still serving, at the option of the then existing Directors, no annual meeting of the Association shall be held. During such period, the Directors may appoint an advisory board consisting of Owners. The number of members of such advisory board shall be the number deemed appropriate by the Directors from time to time. The members of such advisory board shall serve at the will of the Directors. The advisory board shall be formed for the purpose of reporting to and advising the Directors concerning the status and operation of the Property. Such advisory board may hold informal meetings of its members if so desired by the advisory board, but such meetings are not required.

(k) Notwithstanding anything contained herein to the contrary, any action required or permitted to be taken herein by approval of the Members may only be taken without a meeting of the Members if the action is approved by Members holding at least eighty percent (80%) of the voting power. The action must be evidenced by one or more written consents, signed by Members representing at least eighty percent (80%) of the voting power and delivered to the Association. Such written consents shall be filed by the Secretary with the minutes of the proceedings of the Members and shall have the same force and effect as a vote at a meeting duly held. Written notice of such Member approval shall be given to all Members who have not signed a written consent. If written notice is required because consents have not been received from all of the Members, such Member approval shall be effective ten (10) days after such written notice is given.

(l) All records pertaining to Community matters, including budgets and financial records, shall be open to the Owners unless they relate to personnel matters, legal actions, causes of action, litigation, or are otherwise protected by attorney-client privilege or work product, and such records shall be retained for three (3) years unless a majority of the Owners authorizes their destruction.

7. RESERVATION OF EXPENDITURES

The Declarant reserves the right to receive and retain any money consideration which may be refunded or allowed on account of any sums previously expended, deposited, placed in escrow, or subsequently provided by it for utility facilities or services, streets, subdivision fees or for any other purpose of any nature or description with respect to any subdivision or land which is now or may in the future be made subject hereto. Declarant further reserves the right to receive and retain any monies, damage payments or condemnation award for any easement or other interest granted or condemned as to any street or Common Properties within the Property.

8. ARCHITECTURAL CONTROL

(a) From and after such time as a Lot becomes subject to assessment as provided herein, the Owner thereof shall not cause or allow any (i) building, fence, wall, driveway or other structure or improvement of any sort to be commenced, erected or maintained thereon; (ii) exterior addition or removal of all or any part thereof, or exterior change or alteration in any improvement thereon to be made; (iii) removal of any tree with a three-inch or greater caliper; or

(iv) change in grade or slope thereof, until all plans and specifications showing (as applicable) the degree, nature, kind, shape, size, square footage, height, elevation, materials, colors, location, entrances and driveways, and configuration of all improvements upon such Lot shall have been submitted to and approved by the Directors. All decisions rendered by the Directors shall be deemed final. It is the intent of this Declaration that the restrictions of this Section shall not apply to Declarant. With respect to architectural approvals, the Directors, at their option, may appoint an architectural approval committee comprised of neither less than three nor more than five Owners to review all proposed construction and submit non-binding recommendations of approval or disapproval of the same to the Directors. All requests for approval submitted to the Board of Directors shall be deemed automatically rejected if no written approval is given by the Board within sixty (60) days of receiving any submissions. The Owner shall, after obtaining the approvals required by this Declaration, obtain and maintain in effect all necessary permits and approvals from any and all applicable Governmental Bodies prior to commencing any such improvements and modifications and the same shall be completed in accordance with this Declaration and applicable laws and ordinances. The Owner shall also bear the responsibility for the maintenance of any Owner-constructed improvement authorized under this Section 8. The Association shall not be liable for any damage, loss or prejudice suffered or claimed by any Owner, its agents or any other person or entity on account of: (1) the approval or disapproval of any improvements or modifications under this Section 8, or any plans, contracts, bonds, contractors, sureties or other matters in connection therewith; (2) the construction or performance of any work, whether or not pursuant to approved plans; (3) any Owner's or any other person's or entity's failure to obtain the proper permits and approvals; or (4) the compliance of any improvements or modifications with applicable codes.

(b) An Owner may not change the appearance of the improvements or landscaping within or upon the Common Properties or add or remove any improvements to or landscaping on the Common Properties.

(c) All additions, alterations and improvements to or on the Lots and Common Properties shall not, except pursuant to prior approval of the Board of Directors, cause any increase in the premiums of any insurance policies carried by the Association; and all additions, alterations and improvements to or on the Lots shall not cause any increase in the premiums of any insurance policies carried by the Owners of any Lots other than those requesting or approving such change.

9. ASSOCIATION DUTIES AND POWERS

The Association, acting by and through the Directors or officers, shall have the following rights, powers, duties and obligations:

(a) To acquire and hold the Common Properties and to transfer or sell the Common Properties in accordance with the provisions provided for herein, to exercise control over the Common Properties, to continuously maintain, improve and operate same with landscaping (including the operating costs and maintenance of any irrigation installed by the Declarant or the Association for the benefit of the Common Properties), shrubbery, decorations, buildings, recreational facilities and structures of any kind or description, and any and all other types of facilities in the interest of the health, welfare, safety, recreation, entertainment, education and for

the general use of the Owners of the Property, to grant such easements and rights-of-way over the Common Properties to such utility companies or Governmental Bodies or others as they shall deem necessary or appropriate in accordance with the provisions of Section 2(a)(v), to make rules and regulations, not inconsistent with the law and this Declaration, for the use and operation thereof, to restrict the use or otherwise place limitations on the use and operation of the Common Properties, and in every and all respects govern the operation, functioning and usage of the Common Properties.

(b) At the discretion of the Directors, to maintain, repair and replace, any improvements on Lots which have been neglected and to charge the Owner thereof with the reasonable expense incurred, which shall be a lien against the Lot owned by such Owner and improvements thereon pursuant to Section 5(e) hereof.

(c) To exercise such control over the easements, streets, drives, sidewalks, retaining walls, walkways and rights-of-way within the Common Properties that have not been accepted for maintenance by an applicable Governmental Body or utility company, as is necessary to maintain, repair, supervise and insure the proper use thereof, including the right (for the Association and others to whom the Association may grant permission) to construct, operate and maintain on, under and over said easements, streets, drives, sidewalks, retaining walls, walkways and rights-of-way, any of the following: street lights, sewers, pipes, poles, wires and other facilities and utilities for service to the Lots.

(d) To establish traffic regulations for the use of the streets, drives, sidewalks, and walkways in the Community, and to operate and maintain a system of street lights and pay electric utility payments on the system at such time as the system is completed and delivered to the Association, and to operate and maintain any storm water control facilities, including detention or retention areas, serving any portion of the Property, which have not been accepted for maintenance by an applicable Governmental Body or utility company.

(e) To plant, care for, maintain, spray, trim, protect and replace trees, shrubbery, and vegetation and all landscaping within any rights-of-way, on any Common Properties, or any Landscape Easement Areas, and to decorate the entranceway to the subdivision by appropriate landscaping or in such other manner as the Directors shall deem appropriate. The Declarant, any Successor Builder-Developers, or the Directors, in their sole discretion, may plant native grasses in portions of the Common Properties or, prior to or concurrently with the sale to the first purchaser thereof at retail, on any Lots, and may promulgate such rules and regulations in connection therewith including the power to prohibit the mowing of such native grasses existing on the Common Properties. Neither the Declarant, any Successor Builder-Developers, or the Association or its Directors shall have any liability in connection with the destabilization of any sloped area as a result of the removal or mowing of such native grasses from any Lot.

(f) To dedicate the private streets, drives, sidewalks, walkways, or rights-of-way, or any portion or portions thereof, for public use, regardless of whether such dedications are accepted by an applicable public entity, and to grant easements to any party over or otherwise affecting Common Properties.

(g) At the discretion of the Directors, to designate certain parking areas on the Common Properties for the sole and exclusive use of Owners, their occupants, guests or invitees.

(h) At the discretion of the Directors, to clear rubbish and debris and remove grass and weeds from and trim, cut back, remove, replace and maintain trees, shrubbery and flowers upon any neglected Lot in the Community, and to charge the Owner of such Lot with the reasonable expense so incurred, which shall be a lien against such Lot and the improvements thereon pursuant to Section 5(e) hereof. The Directors, or their agents or employees, shall not be deemed guilty or liable for any manner of trespass for any such abatement, removal or planting.

(i) At the discretion of the Directors, to provide for the collection of trash, rubbish and garbage and otherwise to provide such services as shall be in the interest of the health, safety and welfare of the Owners and Residents, and to enter into and assume contracts for such purposes covering such periods of time as they may consider advisable; provided, however, that neither Declarant, nor the Association, nor their respective officers, directors, successors, assigns, agents, employees, affiliates or licensees shall provide or maintain or be responsible for providing or maintaining, in any way, security for all or any portion of the Property, and for any Owners, or Owners' principals, shareholders, partners, agents, family members, invitees or guests. Furthermore, each and every Owner, and each of Owners' principals, shareholders, partners, agents, family members, licensees, invitees and guests, hereby releases and holds harmless the Declarant (including any Successor Builder-Developer) and the Association, and their respective officers, directors, successors, assigns, agents, employees, affiliates or licensees from and against any and all claims, demands and liabilities for any damage to real or personal property or injury or death resulting in any way, due to the existence, if any, or level of security provided with respect to the Property.

(j) To enter into contracts, employ agents and other employees as the Directors deem necessary or advisable in exercising the rights, powers and privileges granted to them, and in discharging the duties imposed upon them by the provisions of this Declaration, and to employ counsel to advise the Directors or to institute and prosecute such suits as they deem necessary or advisable, and to defend suits brought against them individually or collectively in their capacity as Directors.

(k) To receive, hold, convey, dispose of and administer in trust for any purpose mentioned in this Declaration any gift, grant, conveyance or donation of money or real or personal property.

(l) With regard to all property, real, personal or mixed, owned or held by the Association, the full and unqualified right, power and authority to:

(i) Make all contracts and incur all liabilities necessary, related or incidental to the exercise of the Association's powers and duties hereunder, including the construction of improvements.

(ii) Purchase insurance against all risks, casualties and liabilities of every nature and description, including without limitation directors and officer's insurance and insurance covering the Common Properties.

(iii) Borrow money, including making or obtaining a permanent, temporary or construction loan; make and execute promissory notes or incur liabilities and obligations with respect thereto; pledge or assign future Assessments; and to grant a lease or leasehold security interest in Common Properties to secure such obligations such that the secured party could charge admissions for the use of said Common Properties to Owners or a wider public until the loan with respect thereto is repaid.

(iv) Sell, convey, trade, exchange, use, handle, manage, control, operate, hold, and deal in and with such property, in all respects, limited only as provided in this Declaration or by law.

(m) The Association shall deposit Association funds in a state or national bank protected by the Federal Deposit Insurance Corporation.

(n) All rights, powers, duties, privileges and acts of every nature and description conferred upon the Association and the Directors by the terms of this Declaration may be executed and exercised by a majority of the Directors, unless otherwise provided herein. The Directors shall not be personally liable for their acts in the performance of their duties, except for dishonesty or acts criminal in nature, and the Association shall indemnify and hold the Directors harmless from all such acts to the extent permitted by law.

(o) Notwithstanding any other condition herein, the Association shall make suitable provision for compliance with all subdivision and other ordinances, rules and regulations of the City, as applicable, and any other Governmental Body of which the Property may be subject. Specifically, and not by way of limitation, the Association shall make provision for the maintenance and operation of all street lights, roadways, storm water facilities and easements not otherwise accepted for maintenance by a Governmental Body or utility company.

(p) At the discretion of the Directors, the Association may enter into licensing agreements with commercial entities for the management and operation of any portion of the Common Properties, including, without limitation, any recreational or event facilities and any related concessions, for the benefit of the Owners and Residents.

(q) The Association shall have the power to erect, install, construct, improve, operate, maintain, repair and replace ornamental entrance monuments or signs, landscaping, and irrigation for the Community in the areas designated and shown on the Common Ground of any Plat as an "Entrance Monument Area." In addition, the Association, with approval from applicable Governmental Bodies, shall have the power to erect such monuments or signs on the street corners or median within the street right-of-way, and in adjacent easements as may be shown on any recorded subdivision Plat of the Property or as otherwise approved by the City. The Association shall have the duty to maintain and repair such monuments, together with all related equipment, utility facilities and landscaping.

(r) The Association may remove any signage erected or constructed anywhere within the Property which signage was not approved by the Directors and is not otherwise specifically allowed hereunder.

(s) To construct, improve, operate, maintain, repair and replace the stormwater facilities and/or detention basin.

(t) To maintain, repair and replace mail kiosks and cluster box units, if any, used for mail, and related appurtenances and parking areas, and located within the Common Properties for the Community.

(u) To promulgate and enforce any other Rules and Regulations as the Board may determine in its discretion to be necessary or desirable to aid in the governance and enforcement of the terms of this Declaration for the benefit of the Community, including but not limited to the right to suspend or revoke the rights and privileges of Owners, Residents or Permittees to use the Common Properties and to prescribe or assess fines in connection with the enforcement of the Rules and Regulations and all other provisions of the Declaration and late fees that may be imposed by the Board from time to time for past due payments. All fines and late fees shall be collected and enforced in the same manner as an Assessment pursuant to Section 5 hereof.

(v) To construct, install, maintain, repair, or replace the fences and related materials within the Fence Easement Areas.

(w) To maintain, repair, or replace the parking areas and related materials within the Parking Easement, if such parking areas are installed in this area.

10. USE RESTRICTIONS

(a) The following restrictions shall apply to all portions of the Property, and Declarant, for and on its behalf and on behalf of each and every subsequent Owner of any Lot therein, and their grantees, lessees, successors and assigns, covenants that:

(i) No building or structure shall be used for a purpose other than that for which the building or structure was originally designed, without the approval of the Directors. No residence, other than one Single Family Dwelling, may be constructed on each Lot.

(ii) No commercial activity of any kind shall be conducted on any Lot, but nothing herein shall prohibit the maintenance of such facilities as are incident to the sale of residences nor the conduct of promotional activities by the Declarant, or any Successor Builder-Developers, nor the conduct of a home occupation in strict accordance with the provisions of applicable law.

(iii) No noxious or offensive activity shall be carried on upon any portion of the Property, nor shall anything be done thereon that is or may become a nuisance or annoyance to the neighborhood.

(iv) Each Owner shall maintain and keep his or her Lot in good order and repair.

(v) No animals, reptiles, birds, horses, rabbits, fowl, poultry, cattle or livestock of any kind, shall be brought onto or kept on any portion of the Property, except that no more than three (in the aggregate) dogs, cats, or other household pets and aquariums may be kept or maintained on any Lot (except house pets with vicious propensities, as

determined by the Board from time to time in its sole discretion, shall not be allowed in any circumstances). The keeping of any pet which by reason of its noisiness or other factor is a nuisance or annoyance to the neighborhood is prohibited. All pets shall be contained on the Lot and shall be on leashes when in Common Properties. Owners must diligently remove and properly dispose of pet waste from their Lot and the Common Properties.

(vi) No signs, advertisements, billboards, or advertising structures of any kind may be erected, maintained or displayed on any Lot; provided, however, that, except as expressly provided in this Section 10(a)(vi), nothing herein shall prohibit (A) Owners from placing one “For Sale” or “For Rent” sign (not to exceed 2 feet x 4 feet in dimension) on a Lot; (B) Owners from placing “Political Signs” (not to exceed 2 feet x 4 feet in dimension) on a Lot; or (C) signs erected or displayed by Declarant or by Successor Builder-Developers in connection with the development of the Property and the sale, rental, or construction of improvements on the Lots. For the purposes of this Section 10(a)(vi), the term “Political Sign(s)” shall refer to any ground-mounted sign or display in support of or in opposition to a person seeking elected office or a ballot measure. Subject to all applicable laws and subject to any Rules and Regulations consistent with the terms of this Declaration established in the sole discretion of the Directors from time to time, no more than one (1) Political Sign on any Lot may be erected, maintained or displayed per candidate or ballot measure and no Political Signs may be erected, maintained or displayed on any Lot except during the period that begins thirty (30) days prior to the election date for such office or ballot measure and ends one week after such election date. Each Owner acknowledges and agrees that the terms of this Section 10(a)(vi) are reasonable regarding the time, size, place, number, and manner of display of Political Signs.

(vii) No structure of a temporary character, trailer, basement, tent, shack, garage, or other outbuilding shall be used on any Lot at any time as a residence, whether temporarily or permanently. No outbuildings, detached garages, sheds, shacks or structures whether of temporary character or not, other than the residences constructed on Lots, shall be constructed or maintained on any Lot in any portion of the Property. No retaining wall or shade or decorative structures such as pergolas, gazebos and arbors shall be constructed on any Lot without the prior written approval of the Directors in their discretion.

(viii) No clothesline, and no above-ground swimming pools shall be allowed, constructed or placed upon any Lot in any portion of the Property, and no in-ground swimming pools shall be allowed, constructed or placed upon any Lot in any portion of the Property without the prior written approval of the Directors.

(ix) No fences or screening of any kind shall be erected or maintained on any Lot without the prior written consent of a majority of the Directors (in accordance with Section 6(i)) as to location, color, material and height, and the decision of the Directors to approve or reject a fence shall be conclusive. Nothing herein contained shall (i) prevent placement of fences by the Association on the Common Properties or (ii) affect or limit the rights of Declarant to erect privacy fences pursuant to Section 2(h) hereof. The Directors or their designated committee may approve an application for the installation of fence or screening but only in accordance with the following terms and conditions:

(A) Notwithstanding anything contained herein to the contrary, any fence approval issued by the Directors pursuant to this Section 10 shall be conditioned upon the Owner also receiving any and all final approvals, permits and/or variances for the fence from the applicable governmental authority, as may be necessary, under such authority's regulations or ordinances.

(B) The Board may require an application be submitted setting forth the proposed location, color, material and height of all such fences. No fence shall be constructed within the Landscape Easement Areas, and no fences shall be constructed in a manner which prohibits drainage or access to any area inlet.

(C) The Directors' review of all fences for approval shall assure that such fences adhere to the following standards and requirements unless the applicant can demonstrate to the satisfaction of the Directors that strict adherence to such standards and requirements would (i) create an undue hardship on the applicant; and (ii) approval would be in the best interests of the Community, in which case the Directors are authorized to approve fencing which does not strictly conform to the following requirements:

(1) Maximum height for full perimeter fencing shall be forty-eight inches (48"), which shall be measured on the fence post from the ground to the top of the post.

(2) Fencing shall only enclose the rear yards of any residence. Rear yard fencing shall run the full perimeter of the yard, and no fencing shall be erected or maintained on any Lot between the rear of the residence constructed upon such Lot and the street upon which such Lot fronts. Fencing must start at the rear corners of the residence constructed. Fencing must be within four inches (4") of the Lot lines and Lot corners. With respect to corner lots, fencing along the side of the rear yard facing the street shall not be placed any nearer to said street than four inches (4") of the building line limit established by any Plat. Lots may have exceptions at the sole discretion of the Directors.

(3) All fencing shall be made of wrought iron, aluminum simulated wrought iron, or vinyl.

(4) Vinyl board fencing may have a picket width up to a maximum of six inches (6"). The minimum open space between pickets must be three inches (3") regardless of the picket width.

(5) All fences shall be installed with the good side facing out.

(6) The Directors, in their discretion, may, but shall not be obligated to, require that all Lots be professionally surveyed to assure proper fence locations prior to installation thereof.

(7) No wood fences of any kind shall be permitted.

(8) The Directors may allow a variance from these fence requirements for swimming pool and patio privacy fencing as necessary in the Directors' sole discretion to comply with all laws and code and to prevent hardship.

(9) All fence posts shall be anchored in a base of concrete at least one foot six inches (1'6") into the soil.

(10) Notwithstanding any provision hereof to the contrary, with the prior written consent of a majority of the Directors (in accordance with Section 6(i)), a six foot (6') privacy or "shadow box" fence may be placed along the border of a busy street or to screen an adjacent parcel of property not within the Community. In such event, the fencing on all Lots bordering such area shall be of the same style, material and configuration.

(11) Within one (1) year following the erection of a fence, the Directors may, in their sole discretion, require the Owner to landscape along such fence, in which event landscaping may include vegetation such as rambling rose, multi-flora rose, evergreen shrubbery or such similar materials as may be approved by the Board.

(D) In addition to the foregoing, no fence may be constructed or otherwise erected on any of Lots 14A through 21A or 36B unless such fence is made of black aluminum material.

(x) All decks shall only be constructed with cedar, composite or vinyl materials, except that the sub-framing or other non-exposed materials may be constructed with pressure-treated wood.

(xi) Nothing contained in this Declaration shall restrict, limit, inhibit or prevent the Declarant, its successors or assigns from developing the Property and building residences and selling the same.

(xii) No Lot may have an exterior solar collector system, wind generator system, or any similar type system or appliance without Board approval pursuant to Section 8 hereof.

(xiii) No exterior television, radio aerial, antenna, receiving dish, satellite dish, or any other device for the reception or transmission of radio or television or other electronic signals (hereinafter referred to as "Antenna") shall be erected or maintained on any Lot or upon the exterior of any Single Family Dwelling or the Common Property except with the prior written approval of the Directors. The Directors or their designated committee shall approve an application for the installation of an Antenna only upon the following conditions:

(A) No more than one Antenna shall be allowed per Lot.

(B) The Antenna shall be for the personal use of the Owner or Residents.

(C) The Antenna shall not be visible from the street towards the Single Family Dwelling (including the street view of Single Family Dwellings on corner Lots).

(D) The Owner shall satisfy one of the following:

(1) The Antenna shall not be visible from the neighboring Lots or Common Properties; or

(2) The Antenna shall be disguised to resemble and in fact shall be visually indistinguishable from structures, devices or improvements otherwise allowed in the Community or by this Declaration.

(E) The Antenna shall not pose any known or verifiable hazards to the health of the Residents of the Lot or the neighboring Lots. The Directors may require, in their sole discretion, that certain tests be performed on the Antenna at the expense of the Owner at any time before or after the installation of the Antenna.

(F) The Directors or their designated committee shall have the power to require such specific forms of screening (fencing, shrubbery, etc.) as the Directors deem appropriate in order to effectuate the intent of this Section 10(a)(xiii).

(G) All installations must comply with applicable local zoning requirements and building codes.

(H) The Directors reserve the right to require any repair, maintenance, additional landscaping or testing to the Antenna at any time after the installation thereof. Failure to comply with this Section shall be enforceable by a schedule of fines as published by the Directors from time to time. All fines shall be collected and enforced in the same manner as an Assessment pursuant to Section 5 hereof. The Directors shall have the further right to take such action to enforce this Section with all remedies available to it at law or in equity.

(I) The granting of the written permission to install the Antenna pursuant to this Section shall be a revocable license issued by the Directors to the Owner and such Owner's successors, which may be revoked if the Owner does not remain in compliance with the terms of this Section as amended from time to time.

(xiv) No Lots shall be combined, no Lot shall be resubdivided, and no fractional part of any Lot may be sold without the written consent of a majority of the Directors (in accordance with Section 6(i)). This provision shall not, however, require the consent of the Directors for the sale of an entire Lot as shown on a final recorded Plat.

(xv) Personal property, including, without limitation, boats, trailers, trucks with a gross vehicle weight in excess of five (5) tons, campers and recreational vehicles, shall not be placed or stored permanently or temporarily in the open or in an unenclosed carport on any Lot; nor shall they or any motor vehicle of any type or description be parked any time on the side of any street marked as No Parking; nor shall they or any motor vehicle of

any type or description (including motorcycles and motor scooters) be parked for any time on the unpaved portion of any Lot or on any street “overnight.” For purposes hereof, overnight shall be defined as being any time between the hours of 12:00 A.M. and 8:00 A.M.

(xvi) No trash, garbage, rubbish, refuse, debris, trash cans or trash receptacles of any type shall be stored in the open on any Lot, but shall be kept secured within the improvements located on each Lot; provided that after sunrise on any day designated for trash pick-up, trash, garbage, rubbish, refuse and debris secured within appropriate trash cans or receptacles may be placed at the street curbing for pick-up; provided further that trash cans or receptacles shall be removed and secured within the improvements for each Lot prior to sundown of the same day.

(xvii) All water and other sewer systems servicing the Property (other than lawn sprinkler systems servicing any single Lot or a sprinkler system servicing the Common Properties) shall be constructed by the Declarant or any subsequent builder or developer or by a contractor hired by the Association. No Owner or occupant of any Lot in the Property shall construct any water or other sewer system on the Property, other than a lawn sprinkler system servicing a single Lot.

(xviii) No motor vehicle or equipment shall be repaired or otherwise serviced in front of or adjacent to any residence in the Property. No abandoned cars, motorcycles, jeeps, trucks or other motor vehicles of any kind whatsoever that are unable to move under their own power and no mobile homes, campers, buses, boats or boat trailers may be stored or suffered to remain upon any of the Common Properties or the Lots other than in an enclosed garage.

(xix) No activity shall be conducted or permitted on the Common Properties which would create a nuisance, disturbance or excessive noise or commotion. The Association shall have the right to prohibit, restrict and prevent such gatherings or assemblies of individuals on the Common Properties under such reasonable rules and regulations as the Association, in its sole discretion, may from time to time determine.

(xx) No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot or portion of the Property. No above ground gas or propane storage tanks shall be permitted upon or in any Lot or portion of the Property.

(xxi) No improvements or above-ground structure, other than required street lights or other public utilities, may be erected, constructed or installed within a cul-de-sac, divided street island or median strip without the written approval of the Board and the issuance of the permits required by the City or other applicable Governmental Bodies.

(xxii) All basketball poles or similar structures or improvements of any size, whether mobile or fixed, temporary or permanent, may only be placed on a Lot upon the written consent of a majority of the Directors (in accordance with Section 6(i)). In no event shall any basketball poles or similar structures or improvements of any size, whether

mobile or fixed, temporary or permanent, be permitted to be placed in front of the front elevation of any Singled Family Dwelling constructed on a Lot.

(xxiii) No fences, walls, trees, hedges or shrubs shall be erected or maintained in such manner so as to obstruct sight lines for vehicular traffic.

(xxiv) The Board may require a reasonable deposit in connection with the proposed erection of any building or structure on the Property approved in accordance with this Declaration, in order to provide that upon completion of the project, all debris shall be removed from the site and from adjacent Lots and parcels, and that any and all damages to subdivision improvements shall be repaired.

(xxv) All driveways serving Single Family Dwellings shall be concrete. The Owners must keep such driveways in good repair and in their natural color. The Board may require a driveway to be replaced if the Owner of the Single Family Dwelling has not kept such driveway in good condition and in its natural color. If the Board deems it necessary, the driveway shall be replaced and the Owner shall reimburse the Association for such expenses. If the Owner fails to promptly reimburse the Association for such expenses, the Association may place a lien against the Owner's Lot in accordance with Section 5.

(xxvi) With the consent of the Directors, bird baths and fountains are allowed to be placed upon an exterior portion of a Lot. No other kind of yard appurtenances such as sculptures, lawn ornaments or similar personal property items or fixtures shall be placed upon any portion of a Lot.

(xxvii) No structures or improvements of any size, whether temporary or permanent, are permitted within the Landscape Easement Areas, including any fences and such other structures or items except as approved by the Board from time to time in its sole discretion. Owners are prohibited from removing any trees or vegetative landscaping within the Landscape Easement Areas or otherwise disturbing the Landscape Easement Areas in any manner, except as expressly permitted by the Board.

(xxviii) Owners are prohibited from removing any landscaping or improvements within the Fence Easement Areas or otherwise disturbing the Fence Easement Areas in any manner, except as expressly permitted by the Board. Structures of any size, whether temporary or permanent, are not permitted within the Fence Easement Areas, except as approved in writing by the Board, and nothing shall be installed prohibiting access by the Association.

(b) Each Owner shall at all times maintain property insurance on his Single Family Dwelling in an amount equal to its full insurable replacement value. Such policies shall insure against loss or damage by fire or other perils normally covered by the standard extended coverage endorsement available in the State of Missouri and against all other perils customarily covered with respect to residential developments similar to the subdivision including, without limitation, all perils normally covered by the standard "special" coverage endorsement as well as earthquake coverage and, if available, an "inflation guard endorsement." All such insurance shall be

maintained with an insurer with an “A” rating or better by A. M. Best Company and authorized to do business in the State of Missouri. If a Single Family Dwelling is damaged or destroyed by casualty, the Owner shall promptly repair, restore, rebuild or replace such improvement in accordance with the original plans and specifications therefor or in accordance with plans and specifications approved by the Directors.

11. LEASES

Each Owner shall have the right to lease or rent the Single Family Dwelling for single family residential purposes only, subject to the following requirements:

(a) Every lease, license, rental agreement or other agreement for the use of any Single Family Dwelling by any person or entity other than the Owner (individually or collectively referred to herein as a “Lease”) shall be in writing, and shall be subject to all provisions of this Declaration as amended from time to time. Further, each Lease shall be deemed to incorporate the Rules and Regulations of the Association by reference and shall include the provisions that any violations of (A) the Rules and Regulations; (B) the Declaration, as amended; or (C) the covenants and conditions of the Lease itself other than nonpayment of rent, shall be the basis for termination of the Lease.

(b) Every proposed Lease shall be subject to the Directors’ approval so as to assure compliance with this Section, and any Lease that is not approved by the Directors shall be null and void.

(c) Every Lease shall appoint the Board in its sole and absolute option and discretion, to act as an agent for the Owner for the purpose of enforcing the terms, covenants and conditions of the Lease, other than the non-payment of rent. If any violation of a Lease is not cured within thirty (30) days or such shorter time that may be provided in the Lease, the Association shall have the right of action to evict or otherwise terminate the Lease or the tenant’s possession of the Single Family Dwelling under the Rent and Possession Laws or Unlawful Detainer Laws of the State of Missouri. The Directors and the Association shall have no liability to the Owner or the tenant on account of any action taken to evict or otherwise terminate the Lease or the tenant’s possession of the Single Family Dwelling. Each Owner hereby assigns all Leases and rents to the Association, such that if an Owner is delinquent in the payment of any Assessments or other sums due hereunder, the Association has the right to notify tenant to pay all subsequent rent payments under the Lease to the Association until further notice and the tenant has the right to rely on such notice and make such payments to the Association without liability therefor.

(d) Every Lease shall have a minimum initial term of one (1) year and shall prohibit assignment or subletting by tenant.

(e) Every Lease shall be subject to the Rules and Regulations as promulgated by the Directors from time to time, and every Lease shall contain a legend indicating that it is subject to the terms and provisions of this Declaration.

(f) In no event shall any Owner have the right to lease or rent any part of its Lot or the Single Family Dwelling via Airbnb, Inc. or any other peer-to-peer property rental service, nor shall any Owner market any part of its Lot or the Single Family Dwelling via any such peer-to-

peer property rental service, except as otherwise in compliance with the terms of this Section 11. An Owner shall not lease less than the entire Single Family Dwelling nor may any Single Family Dwelling be leased for transient or hotel purposes.

12. GENERAL PROVISIONS

(a) Successor Developers. Any subsequent builder or developer, including the Successor Builder-Developers, shall be responsible in the same manner as Declarant with respect to that portion of the Property developed by said builder/developer for construction of all major improvements, and the establishment and conveyance of Common Properties. In the event that any subsequent builder or developer, including any of the Successor Builder-Developers, or their contractors, representatives or agents, damages any roadways or other property in the Community during the course of construction as a result of the use of construction equipment and machinery or otherwise, such builder/developer shall be solely responsible for the maintenance, repair and replacement of such roads or other property damaged to the extent of the damage, and shall promptly repair and replace such damaged property. The Association shall have the right to enforce the provisions hereof in the same manner as herein provided in Section 5 hereof.

(b) Enforcement. The Association, or the Directors on behalf of the Association, or the Owner of any Lot subject to this Declaration, shall have the right to enforce, by any proceeding at law or in equity, all of the covenants, conditions, restrictions and provisions hereof, either to restrain or enjoin a violation or threatened violation or to recover damages. Failure or forbearance by the Directors or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any legal action filed by the Directors or the Association against an Owner, or if the Directors or the Association retain legal counsel (with or without filing a legal action) in order to enforce any covenant or restriction herein contained or adopted pursuant to any Rules and Regulations, or in any action to recover damages on account of breach of any such covenant, restriction, rule or regulation, or in the defense of any legal action (including any counterclaim or administrative action), the Owner shall be personally liable for and pay the Directors' reasonable attorneys' fees and costs incurred with or without legal action. If the attorneys' fees and costs are not paid by the Owner upon demand, then the fees and costs shall bear interest at the Interest Rate provided in Section 5(g) hereof and the Directors may execute and acknowledge an instrument reciting the debt and causing the instrument to be recorded in the County Records, thereupon the debt shall become a continuing lien on the Lot and the improvements thereon which shall bind the Owner and such Owner's heirs, successors and assigns. The lien shall be enforceable and governed by Section 5 of this Declaration.

(c) Amendment of Declaration. So long as Declarant owns a Lot, it shall have the right from time to time to unilaterally amend, modify or change this Declaration and the provisions herein, including the right to add new burdens or restrictions on Owners and Lots, by recording such amendment in the County Records. So long as any Successor Declarant owns a Lot, the Successor Declarants who currently own a Lot or Lots at such time shall have the right from time to time to unilaterally, by majority vote, amend, modify or change this Declaration and the provisions herein, including the right to add new burdens or restrictions on Owners and Lots, by recording such amendment in the County Records. So long as Declarant or any Successor Declarant owns a Lot, this Declaration may not be amended, modified or changed without the prior

written consent of Declarant and a majority of the Successor Declarants, as applicable. All unilateral amendments to this Declaration by Declarant or any Successor Declarants that concern planning and zoning matters in the Community, grant additional unilateral rights to the Declarant or Successor Declarants, or cause the Community or this Declaration to fail to conform to any part of the City Code affecting the Community, shall be approved by the City or applicable Governmental Body, or agents thereof, prior to recording of such amendment, if necessary or required by law. After Declarant and any Successor Declarants no longer own any Lots, subject to the requirements of Section 4, this Declaration and any part thereof may be altered or amended, and new burdens or restrictions on Owners and Lots may be added, by a written agreement approved by the vote of two-thirds (2/3) of the Owners at a meeting of the Owners, or the consent given in writing and signed by members holding at least eighty percent (80%) of the voting power pursuant to Section 6(k) hereof; and such written alteration or amendment, recorded in the County Records, shall become a part of the provisions and restrictions of this Declaration. In addition, so long as Declarant or any Successor Declarant owns a Lot, the Directors may amend this Declaration and may add new burdens or restrictions on Owners and Lots by written amendment signed by two-thirds (2/3) of the Directors and recorded in the County Records. No such amendment, modification or change shall reduce or modify the obligation or right granted to or imposed upon the Directors or the Association with respect to maintenance obligations and the power to levy assessments therefor or eliminate the requirement that there be Directors unless some person is substituted for the Directors with the responsibility and duties of such Directors.

(d) Assignment of Declarant Rights. In connection with the sale of all or part of the Property subject to this Declaration, Declarant shall have the right to assign to such purchaser all or some of the rights herein reserved or granted to Declarant.

(e) Notices. Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the address shown on the real estate tax assessment records of the County.

(f) Severability. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

(g) Continuation of Declarant's Development Rights. In the event that the Declarant exercises its option to appoint any additional Directors nominated by the Association as set out in Section 6(b)(iv) above thereby giving the Association control of the Directors, the Declarant and Successor Builder-Developers shall retain the sole and exclusive right to exercise all powers heretofore granted to it under the terms of this Declaration pertaining to or in any way related to the continuation of development of the Property until such development is completed. The Directors shall not interfere with the orderly development of the Property or the rights of Declarant in such development. It is the intent of this provision that once control of the Directors is vested in the Association that such Directors shall exercise (independent of Declarant control) all governance powers and duties as provided in this Declaration including, but not limited to, the budget, assessments and other matters which will come under their exclusive control upon the sale of one hundred percent (100%) of the Lots to persons or entities other than any Successor Builder-Developers. The control of the completion of the development and all rights and powers necessary and appurtenant thereto shall remain exclusively and solely in the Declarant; provided

however, the Directors shall execute any and all documents necessary for the proper exercise of the powers and rights set forth and reserved herein to Declarant. For the period after Declarant no longer exercises control of the Directors due to accelerated appointment pursuant to Section 6(b)(iv) and prior to the date Declarant has sold and conveyed ninety-five percent (95%) of the Lots which may be subjected to this Declaration to persons or entities other than any Successor Builder-Developers, the Common Properties shall be operated at the times (both as to hours and days) and in the manner (specifically, without limitation, as to quality of maintenance) which is substantially equivalent to the operation which was provided by the Declarant controlled Directors, unless any such deviation is specifically approved in writing by Declarant. The provisions of this subsection may not be modified or amended without the written consent of Declarant so long as Declarant or any Successor Builder-Developers owns any Lot in the Property.

(h) Headings. The captions and headings of this Declaration are for the convenience of reference only and shall not define or limit any of the terms or provisions hereof.

(i) No Forfeiture of Declarant's Rights. Any exercise or enforcement by Declarant of its rights or powers as authorized or set forth in this Declaration, including but not limited to its rights with respect to amending the terms and provisions hereof, shall not in any way be deemed to cause a forfeiture, elimination, release, reduction, modification or transfer of Declarant's rights, powers and remedies as set forth herein except as specifically provided otherwise.

(j) Release or Addition of Property. Declarant (so long as it owns a Lot), a majority of Successor Declarants (who currently own a Lot or Lots at such time), or a majority of the Directors (at any time), shall each have the right, without consent of the Directors (in the case of Declarant or Successor Declarants) or Owners (in the case of Declarant, Successor Declarants, or Directors), to amend the Declaration to delete and/or remove any portion of the Property subject hereto which is owned by Declarant or Successor Declarant (provided Declarant or such Successor Declarant approved such deletion in writing) or to add any property to the Property subject hereto which is contiguous to the Property and the owners of such added property shall become Owners hereunder and such added property when platted shall be included within the definition of Lot(s) or Common Properties hereunder, as designated by Declarant, a majority of Successor Declarants, or the Directors, as the case may be.

(k) Condemnation. In the event it becomes necessary for any public agency or Governmental Body to acquire all or any part of the Common Properties or of any property herein conveyed to the Directors or the Association, for any public purpose, the Directors, during the period of this Declaration as well as the times fixed for the appointment or election of Directors, are hereby authorized to negotiate with such public agency or Governmental Body for such acquisition and to execute instruments necessary for that purpose including without limitation conveyance to such Governmental Body subject to the provisions of Section 2(a)(v). Should acquisition of Common Properties by eminent domain become necessary, only the Association need be made a party, and subject to the reservation by Declarant as provided in Section 7 hereof, the proceeds, damage payments, or condemnation award received shall be held by the Association for the benefit of those entitled to the use of the Common Properties.

(l) General Disclaimer. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within the Community nor shall they be liable for any loss or damage by reason or failure to provide adequate security or ineffectiveness of measures undertaken, if any. All members, Owners and occupants of any Lot, and all tenants, guests and invitees of any Owner, acknowledge that the Association, its board, and Declarant, do not represent or warrant that (i) any fire protection system, burglar alarm system, gatehouses, roving patrol, electronic monitoring system or other such systems, if any, designated, operated, or installed according to guidelines established by Declarant or the Association may not be compromised or circumvented (ii) any fire protection system, burglar alarm system, gatehouses, roving patrol, electronic monitoring system or other such systems, if any, will prevent loss; or (iii) any fire protection system, burglar alarm system, gatehouses, roving patrol, electronic monitoring system or other such systems, if any, will in all cases provide the detection or protection for which the system is designed or intended. Each member, Owner and occupant of any Lot, and each tenant, guest and invitee of an Owner, as applicable, acknowledges and understands that the Association, and Declarant, are not insurers and that each member, Owner and occupant of any Lot and each tenant, guest and invitee of any member or Owner assumes all risks of loss or damage to person or property. All Owners hereby agree to hold Declarant (and their subsidiaries and affiliated entities), the Association and their successors and assigns, the Directors, and all other officers, governors, agents and employees, harmless from any injuries, damages, losses, or claims arising from or in connection with the occurrence of any criminal or other unlawful activity of such Owner. Declarant, and Association and their successors and assigns, Directors, and all other officers, governors, agents, and employees, shall not be bound by any prior or present terms, statements, representations, conditions, obligations or warranties, oral or written, implied or express, including, but not limited to, the implied warranties of habitability, merchantability and fitness for a particular purpose, which are not contained in this Declaration. Neither Declarant, nor the Association or the Directors, are responsible for the security of the Owners and their family members, tenants, invitees, licensees and guests and the guests, invitees and licensees of their tenants. All Owners are advised to notify the appropriate police or sheriff's department of any and all health and property emergencies in the Community.

(m) Recitals and Exhibits. Each recital set forth and exhibit referenced in this Declaration is incorporated herein and is a part of this Declaration.

(n) Private Restrictions; Compliance with Laws. Notwithstanding anything herein to the contrary, the terms and provisions of this Declaration are private restrictions, which are exclusive to the Community. In addition to the terms and provisions of this Declaration, Owners are subject to all applicable governmental laws, ordinances, rules and regulations, as the same may exist from time to time.

(o) Owner Indemnity. Upon acquisition of any Lot or other interest in the Community, and in consideration for the rights and easements granted hereunder, each Owner agrees to indemnify, defend, and hold the Declarant, the Association, the Directors, and each of their agents, representatives, employees, volunteers, or anyone else acting on their behalf, harmless against, and releases each of them from, any and all liability, loss, claims, demands, liens, damages, penalties, fines, interest, costs, expenses or injunctive or equitable relief, including attorneys' fees, costs and expenses, arising out of or relating to the use of any of the Common Properties by the Owner or the Residents of said Owner's Lot. Owner further agrees to

assume any and all risk to personal property which may occur while exercising the rights granted under this Declaration and hereby expressly releases the Declarant, the Association, the Directors, and each of their agents, representatives, employees, volunteers, or anyone else acting on their behalf, from any and all claims which Owner or the Residents of said Owner's Lot, may at any time have for any injury or damage to persons or property occurring as a result of or relating to the use of any of the Common Properties by the Owner or the Residents of said Owner's Lot.

(p) Association Indemnification. Subject to the indemnification provisions in Chapter 355 RSMo., as amended, the Association shall indemnify every officer, Director and committee member against all damages and expenses, including without limitation attorneys' fees reasonably incurred in connection with any action, suit or other proceeding (including settlement of any suit or proceeding approved by the Board at such time) to which he or she may be a party by reason of being or having been an officer, Director or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section 12(p) and Missouri law.

(i) The officers, Directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and Directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

(ii) The 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. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, Director or committee member may be entitled, including without limitation any rights of indemnification as provided under the bylaws of the Association from time to time. The Association may obtain general liability and officers' and directors' liability insurance to fund its obligations hereunder, if such insurance is reasonably available.

[signature page follows.]

IN WITNESS WHEREOF, the undersigned have executed this Declaration the day and year first above written.

DECLARANT:

ELITE BRUSH CREEK DEVELOPMENT
LLC, a Missouri limited liability company

CONSENT OF THE DIRECTORS OF
THE MANORS AT BRUSH CREEK
HOMEOWNERS' ASSOCIATION,
a Missouri nonprofit corporation

By: _____
Jeremy Roth, Authorized Agent

Director 1:

Print Name: Rob Berra

Director 2:

Print Name: Jeremy Roth

Director 3:

Print Name: Josh Foster

Being all of the Directors of the Association

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

On this ____ day of _____, 2022, before me, _____,
a Notary Public in and for said State, personally appeared Jeremy Roth, Authorized Agent of Elite
Brush Creek Development LLC, a Missouri limited liability company, known to me to be the
person who executed the within instrument in behalf of said limited liability company and
acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in
the County and State aforesaid, the day and year first above written.

Notary Public

My term expires:

STATE OF MISSOURI)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2022, before me personally appeared Rob Berra, to
me personally known, who, being by me duly sworn, did say that he is a Director of The Manors
at Brush Creek Homeowners' Association, a Missouri nonprofit corporation, and that the
foregoing instrument was signed in behalf of said nonprofit corporation by authority of its
Directors and said individual acknowledged said instrument to be the free act and deed of said
nonprofit corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in
the County and State aforesaid, the day and year first above written.

Notary Public

My term expires:

STATE OF MISSOURI)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2022, before me personally appeared Jeremy Roth, to me personally known, who, being by me duly sworn, did say that he is a Director of The Manors at Brush Creek Homeowners' Association, a Missouri nonprofit corporation, and that the foregoing instrument was signed in behalf of said nonprofit corporation by authority of its Directors and said individual acknowledged said instrument to be the free act and deed of said nonprofit corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My term expires:

STATE OF MISSOURI)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2022, before me personally appeared Josh Foster, to me personally known, who, being by me duly sworn, did say that he is a Director of The Manors at Brush Creek Homeowners' Association, a Missouri nonprofit corporation, and that the foregoing instrument was signed in behalf of said nonprofit corporation by authority of its Directors and said individual acknowledged said instrument to be the free act and deed of said nonprofit corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My term expires:

**EXHIBIT A
LEGAL DESCRIPTION**

DRAFT