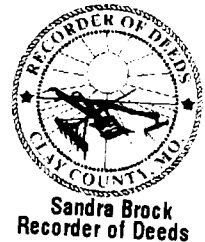




Recording Date/Time: 08/30/2023 at 11:10:24 AM  
 Book: 9619 Page: 168

Instr #: 2023021256  
 Pages: 21  
 Fee: \$84.00 S 20230019006

TIMOTHY HARRIS LLC



### Declaration of Homes Association and Covenants, Conditions, Restrictions and Easements of Auburndale Manor

**This Declaration of Homes Association and Covenants, Conditions, Restrictions and Easements of Auburndale Manor** (the "Declaration") is made and executed as the date notarized below, by **Timothy D. Harris, LLC**, a Missouri limited liability company (the "Developer", "Grantor" and "Grantee"), whose address is 244 W. Mill, Ste. 101, Liberty, MO 64068.

**Reference Book/Page:** Book J at Page 192 (Plat)

#### Recitals

- A. Developer previously executed that certain subdivision plat entitled "**Auburndale Manor**" (the "Plat") covering the real property formerly legally described as shown therein and on **Exhibit A (Page 20)** attached hereto, and platting the same into 50 single family residential lots and streets/roadways/Common Areas (the "Property").
- B. The Plat was approved on 08-29, 2023, by the City Council of the City of Kansas City, Missouri (the "City"), and was recorded on 08-30, 2023, in Cabinet/Book J, at Sleeve/Page 192, in the Office of the Recorder of Deeds of Clay County, Missouri.
- C. The Developer presently owns all of the Property.
- D. The Developer desires to create, establish, maintain and preserve a quality villa home, single- family residential neighborhood possessing features of more than ordinary value.
- E. From time to time the Developer may cause (or permit) Residences to be built upon the said Lots.
- F. The Developer desires to subject the Property to those certain covenants, conditions, restrictions and easements herein set forth.

#### Declaration

In consideration of the foregoing and the promises and benefits set forth herein, and to provide the means and procedures to achieve them, the Developer hereby subjects the Property to the following covenants, conditions and restrictions, including charges and Assessments. Such covenants, conditions and restrictions are hereby granted and imposed for the purpose of protecting the value and desirability of the Property, as a whole, and shall run with the land and be binding upon, and inure to the benefit of, the Developer and its successors, transferees and assigns and the heirs, personal representatives, successors, transferees and assigns of the Developer's transferees and assigns and all other persons and entities, who or which have, at any time, any right, title or interest in all or any part of the Property. Each Owner, by accepting a deed and taking title to a Lot, acknowledges, agrees to, and accepts the provisions of this Declaration with respect to such Lot and any Residence thereon.

## ARTICLE 1

### Definitions

When used in this Declaration or in any Supplemental Declaration, the following words shall have the meanings set forth below.

1. **"Annexation Property"** has the meaning set forth in Article 13 hereof.
2. **"Annual Assessment"** has the meaning set forth in Article 5 hereof.
3. **"Articles"** mean the Articles of Incorporation of the Association, as amended from time to time.
4. **"Assessments"** means the Annual, Special and Default Assessments levied pursuant to Article 5 hereof.
5. **"Association"** means Auburndale Manor Owners' Association, Inc. (or such similarly named corporation whose name shall be available from the Missouri Secretary of State), a Missouri mutual benefit, not for profit, corporation to be formed within a reasonable time after recordation hereof, and said Association's successors and assigns.
6. **"Association Documents"** means this Declaration, the Articles, the Bylaws, all Supplemental Declarations and all procedures, rules, regulations, and policies adopted under such documents by the Association.
7. **"Board of Directors"** means the governing body of the Association. There shall be three (3) Directors who shall serve on the Board of Directors.
8. **"Bylaws"** means the Bylaws adopted by the Association, as amended from time to time. The right to create, amend, supplement and abolish Bylaws shall be vested solely in the Board of Directors.
9. **"Common Area"** means Tracts A, B and C as depicted in the Plat referenced above. Without limiting the foregoing, the Common Area shall also include all (if any, at Developer's option) islands, median strips, landscaping berms and monument signs and sites (including easements for same), clustered mailboxes (including easements for same), irrigation systems on Common Area, green spaces, landscaped areas, private open space, dog parks, decorative streets lighting, lakes and storm water detention facilities, entrance magazines, exit magazines and monument signs adjacent to such streets.
10. **"Covered Services"** means the services which Association shall furnish to portions of each Lot limited to:
  - A. Mowing, at reasonable intervals determined by the Board (in any event, the Board shall not be required to [but may, at its option] provide mowing more than one (1) time each week during mowing season) of those portions of yards in each Lot which are sodded, or planted in, grass;
  - B. Provision, at reasonable intervals, of fertilization, weed control and insect control for those portions of yards in each Lot which are sodded, or planted in, grass (in any event, the Board shall not be required to [but may, at its option] provide chemical application to lawns more than four (4) times each year);
  - C. Provision, at reasonable intervals, of irrigation for those portions of yards in each Lot which are sodded, or planted in, grass (each Owner shall be required to provide initial installation of an irrigation system on Owner's Lot, at such Owner's sole cost but to the specifications of the Review Committee but, after initial installation of such system by Owner, maintenance (including spring startup and winterization) and repair of same shall be provided by Association as a Covered Service, unless maintenance and repair is necessitated by the intentional act or negligence of Owner or Owner's invitees, in which case Owner shall reimburse Association for the reasonable cost of such maintenance and repair); and
  - D. Provision, within a reasonable time after cessation of each frozen precipitation event, of snow or ice removal or pushing services on all sidewalks and driveways on each Lot, provided however, in no event shall snow removal or pushing be required of Association (at Association's option) when the depth of existing snowfall is less than two inches (2") after cessation of the frozen precipitation event. For frozen precipitation events depositing less than two inches (2") of accumulation, unless Association elects to perform same, Owner (rather than Association) shall be solely responsible for removal or pushing services on Owner's driveway and walks.
11. **"Common Expenses"** means all costs and expenses, including, without limitation, wages, electrical and water utility charges (including providing for irrigation of grassy portions of yards on Lots), legal,

accounting and other fees, taxes, personal property taxes, insurance (including that required or permitted to be maintained by Association pursuant to this Declaration), interest, supplies, parts, and management or service fees, incurred by the Association (a) to provide the Covered Services, (b) to manage and conduct the affairs of the Association, (c) to repay funds borrowed by the Association, (d) to pay any deficit remaining from a previous assessment period, (e) to create a reasonable contingency or other reserve or surplus fund for maintenance, repairs, and replacement of equipment used for the provision of Covered Services, (f) which are expressly declared to be Common Expenses by this Declaration, any Supplemental Declaration or the Bylaws, (g) to maintain, repair, care for, restore, replace the Common Area and improvements thereon, and (h) any other expenses which the Board of Directors reasonably determines to be Common Expenses of the Association.

12. "**Declaration**" means this Declaration, as amended or supplemented from time to time as herein provided.
13. "**Default Assessment**" has the meaning set forth in Article 5 hereof.
14. "**Developer**" means Timothy D. Harris, LLC, a Missouri limited liability company, and its successors and assigns. If the Developer assigns less than all of its rights, obligations and interest to one or more Successor Developers, the term "**Developer**" shall thereafter refer to both the Developer and all Successor Developers unless the context clearly means otherwise.
15. "**Fine**" has the meaning set forth in Article 5 hereof.
16. "**Improvements**" has the meaning set forth in Article 9 hereof.
17. "**Lot**" means a building lot that has been created by Developer in the Property, together with all appurtenances and Improvements now, or in the future, on such Lot, including a Residence.
18. "**Manager**" means a person or entity engaged (if at all) by the Association to perform certain duties, powers, or functions of the Association, as the Board of Directors may authorize from time to time pursuant to Article 4 hereof.
19. "**Member**" means a member of the Association as set forth in Article 3 hereof.
20. "**Mortgage**" shall mean any mortgage, deed of trust, contract for deed or other security document pledging or conveying in trust any Lot or interest therein as security for payment of a debt or obligation.
21. "**Mortgagee**" means any person named as a mortgagee or deed of trust beneficiary in any mortgage, deed of trust or other land security interest, or any successor to the interest of any such person under such Mortgage.
22. "**Owner**" means the owner of record, whether one or more persons or entities of fee simple title to any Lot, including the Developer and the purchaser under a contract for deed. The term shall not include any person or entity having any interest in a Lot merely as security for the performance of an obligation, including a Mortgagee or a trustee or beneficiary under a deed of trust, unless and until such person has acquired fee simple title to the Lot pursuant to foreclosure or other proceedings.
23. "**Owner's Proportionate Share**" means a fraction, the numerator of which is the number of Lots then owned by such Owner within the Property and the denominator of which is the total number of Lots then within the Property.
24. "**Plat**" means and refers to the Plat identified in the "Recitals" section of this Declaration, but shall also include any "lawful subdivision" with respect to any Annexation Property.
25. "**Property**" means and refers to the real property described in **Exhibit A** attached to this Declaration, together with all (if any) "Annexation Property" as defined below.
26. "**Residence**" means a single-family dwelling (a so-called "villa") constructed on any one Lot. For purposes hereof, "**single-family**" shall have the same meaning as in the ordinances of the City.
27. "**Review Committee**" has the meaning set forth in Article 9 hereof.
28. "**Special Assessment**" has the meaning set forth in Article 5 hereof.
29. "**Street**" shall mean any roadway, street, court, circle, terrace, drive or other right-of-way designated for vehicular traffic shown on the Plat.
30. "**Successor Developer**" means any person or entity to whom the Developer assigns or transfers all, or any part, of its rights, obligations or interests as the developer of the Property, as evidenced by an assignment or deed of record in the Office of the Recorder of Deeds of Clay County, Missouri, designating such person or entity as a Successor Developer.

31. **"Supplemental Declaration"** means an instrument which amends or modifies this Declaration, as more fully provided for herein, including any which includes or adds Expansion Property.
32. **"Turnover Date"** means the earlier of: (i) December 31, 2053; or (ii) the date the Developer, in its sole and absolute discretion, selects as the Turnover Date for the Property then covered by and subject to this Declaration (evidenced by a writing recorded in the Office of the Clay County Recorder of Deeds).

## ARTICLE 2

### Persons and Property Bound By Declaration

The benefits and burdens of this Declaration shall run with the land and shall inure to the benefit of, and be binding upon, the Developer and all persons or entities who shall hereafter acquire any interest in the Lots or other property within the Property. The Developer and all persons who take any interest in a Lot shall, by taking such interest, be deemed to agree and covenant with all other Owners, the Association and the Developer, and their respective heirs, personal representatives, successors, transferees and assigns, to conform to, and observe, the covenants, conditions and restrictions in this Declaration, all Supplemental Declarations and the other Association Documents for the term hereof.

## ARTICLE 3

### Membership, Voting and Operations

1. **Membership in the Association.** The Owner of each Lot within the Property shall be a Member of the Association. The Developer shall also be a Member of the Association regardless of whether such Developer owns a Lot. The Association shall be the sole judge of the qualifications of its Members and of their right to participate in its meetings and proceedings.
2. **One Class of Members.** Except as otherwise provided herein to the contrary, there shall be one class of Members consisting of the Developer and all Owners, provided however, Lots owned by Developer shall be entitled to special, enhanced and preferential voting rights as herein provided.
3. **Meetings.** Annual and special meetings of the Members shall be called, held and conducted in the manner provided in the Bylaws or, in the absence of any provision in the bylaws, as provided by applicable Missouri law.
4. **Voting Rights.** Except as otherwise provided herein, including in this Article with respect to preferential voting rights of Developer, all Members shall be entitled to vote on Association matters requiring a vote under this Declaration. Except as otherwise provided herein, on all matters to be voted on by the Members, each Member shall have one (1) vote for each Lot owned. If more than one Owner exists for any Lot, the vote for such Lot shall be exercised as the Owners determine among themselves and as they notify the Secretary of the Association in writing. Fractional votes shall not be permitted and there shall be only one (1) vote cast with respect to any Lot. Proxy voting is expressly prohibited. Unless specifically provided herein to the contrary, all matters requiring a vote of the Members under this Declaration shall be approved by a simple majority of the votes present at an annual or special meeting duly called at which a quorum is present. A quorum shall be the presence, in person, of 10% of the votes entitled to be cast at such meeting.
5. **Transfer of Membership.** Membership is appurtenant to, and may not be separated from, ownership of any Lot (except for membership of Developer which is not appurtenant to any particular Lot). An Owner may not transfer, pledge or alienate membership in the Association in any way except in connection with the sale or encumbrance of the Lot and then only to the purchaser or Mortgagee of the Lot. Upon the sale of a Lot, the membership associated with the Lot shall automatically transfer to the purchaser of the Lot, or the purchaser's Mortgagee if so designated by the purchaser.
6. **Books and Records.** The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records, and financial statements of the Association. The Association may charge a reasonable fee for copying such materials.
7. **Association as Successor Developer.** From and after the Turnover Date, the Association shall succeed to all (if any) of the rights, duties and responsibilities of the Developer under this Declaration.
8. **Implied Rights and Obligations.** The Association may exercise all rights and privileges expressly granted to the Association in the Association Documents and all other rights and/or privileges reasonably

implied from those expressly granted or reasonably necessary to effect any such duties and obligations expressly imposed upon the Association by the Association Documents.

9. **Developer's Control of Association Prior to Turnover Date.** Until the Turnover Date, the Developer shall have such number of votes as shall equal the product of the number of Lots owned by Developer **times (X) ten (10)**. Notwithstanding anything in this Article or elsewhere in this Declaration to the contrary, until the Turnover Date, the Developer shall maintain absolute and exclusive control over the Association and the Review Committee, including appointment, election and removal of all directors of the Association and all members of the Review Committee. Until the Turnover Date, only the Developer shall be entitled to cast any votes with respect to the election and removal of Association directors and members of the Review Committee or any other matters requiring the vote or approval of Members or Owners. The Developer may (but shall not be required to) at any time relinquish (either permanently or temporarily for a particular purpose or partially as to any part of the Property) all or any part of the Developer's control and rights under this Article.

## ARTICLE 4

### Association Power and Authority

1. **Power and Authority of The Association.** Subject to any limitations in applicable laws and regulations and the Articles and Bylaws, the Association has the power and authority to take all action, and to refrain from taking all action, on behalf of the Association, it deems reasonably necessary to protect the rights and to fulfill the obligations of the Association under the terms of this Declaration. Such power and authority includes, without limitation, the following, which the Association may (but shall not be obligated or required to) exercise in its discretion:
  - A. Accept by conveyance from the Developer and own any areas of the Property to be held for the general benefit of the Owners;
  - B. Enforce, either in the Association's name or in the name of any Owner within the Property, the covenants, conditions, restrictions and easements imposed upon the Lots and other parts of the Property as are in effect from time to time. The expenses and costs of any enforcement proceedings shall be paid out of the general funds of the Association. Nothing herein contained shall prevent the Developer, or any Owner having the right to do so, from enforcing in their own name any such covenants, conditions, restrictions or easements;
  - C. Levy and collect any Assessments and Fines which are provided for in this Declaration;
  - D. To the extent not provided by the City, erect and maintain signs for marking of Streets, and safety signs for protection of children and other persons, after such signs are approved by appropriate public authorities;
  - E. Enter into such agreements with other homes associations, municipalities or other governmental agencies, individuals or corporations in order to implement the purposes of the Association, and to provide such improvements for the benefit of the Owners and Members of the Association within the intent of this Declaration;
  - F. Perform the Covered Services with respect to each Lot;
  - G. Acquire, provide and maintain insurance for the protection of the Association, including, without limitation, casualty insurance for improvements erected in the Common Area, comprehensive public liability, officers and directors, workers compensation, fidelity insurance and bonds to protect against dishonest acts on the part of the Association's officers, directors, trustees, employees and agents and such other insurance against risks of a similar or dissimilar nature as the Board of Directors deems appropriate with respect to the Association's responsibilities and duties, including contractual liability for the indemnification set forth in Article 14.7, provided however, in no event shall the Association be required at any time to provide casualty and property coverage for any Lots and Residences situated thereon (such being the sole obligation of each Owner rather than the Association);
  - H. Employ or provide duly qualified officers for the purpose of providing police or security protection as the Board deems necessary or desirable in addition to that rendered by public authorities;

- I. Borrow money from any person, including the Developer, for the proper conduct of the Association's affairs, and the exercise of its powers and authority and the fulfillment of its obligations, subject to any limitations set forth in the Bylaws;
  - J. Suspend the voting rights of any Member (other than the Developer) during any period in which such Member is in default on payment of any Assessment or after notice and hearing for a period not to exceed ninety (90) days for infraction of published rules and regulations, unless such infraction is ongoing, in which case the rights may be suspended during the period of the infraction and for up to ninety (90) days thereafter;
  - K. Fine a Member (other than Developer) for infraction of any of the provisions of this Declaration or any published rules or regulations in amounts as may be determined and changed from time to time by the Board of Directors;
  - L. Exercise all rights, power and authority granted to the Association by this Declaration; and
  - M. Engage a paid Manager to perform such duties, powers or functions of the Association as the Board of Directors may authorize from time to time.
2. **Exercise of Authority.** Unless specifically reserved to the Members by this Declaration, the Bylaws, the Articles or applicable law, all powers and authority of the Association shall be exercised by the Board of Directors, acting within its sole discretion. Although the Association may exercise the powers and authority granted in this Article, the mere existence of such powers and authority shall not require the Board to exercise such powers or authority. The Association shall exercise such powers and authority in the discretion of its Board of Directors, unless otherwise specifically required or permitted herein or in the Articles or Bylaws to be exercised by the Members.
  3. **Casualty Damage.** Each Owner (rather than the Association) shall obtain and maintain in full force and effect casualty insurance on the Residences and other insurable improvements on each Owner's Lot. The insurance shall be carried in an amount also equal to the full replacement cost (i.e., one hundred percent (100%) of the current replacement cost exclusive of land, foundation, excavation and other items normally excluded from coverage), without deduction for depreciation. Such insurance shall afford protection against loss or damage caused by fire, windstorm, hail, the performance of Covered Services, and other hazards covered by the standard extended coverage policy or endorsement including debris removal, demolition, vandalism, malicious mischief and water damage. Each Owner shall, from time to time as demanded by Association, furnish Association evidence that such insurance is in effect and stating the terms thereof. Each Owner's casualty policies shall waive subrogation against the Association, the Developer and other persons performing Covered Services on such Owner's Lot from time to time.
  4. **Manager.** Any powers, duties or rights of the Association created pursuant to this Declaration, or of the Board, as provided by law and herein, may be delegated to a Manager under a management agreement, which Manager may or may not have a relationship to the Developer or its principals or affiliates; provided, however, that no such delegation shall relieve the Association of its obligation to perform such delegated duty.

## ARTICLE 5

### Assessments and Fines

1. **Obligation; Purpose.** The Association may assess against all Lots (and each Owner, by acceptance of a deed to such Owner's Lot, hereby agrees to pay to the Association) Annual Assessments, Special Assessments and Default Assessments. For purposes hereof, (a) "**Annual Assessments**" are Assessments imposed and levied by the Board of Directors against each Owner in accordance with such Owner's Proportionate Share which are necessary to meet the Common Expenses, (b) "**Special Assessments**" are Assessments for provision of Covered Services, and (c) "**Default Assessments**" are Assessments assessed against a Lot as the result of the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents. The Assessments shall be used for the benefit of the Owners and occupants of the Property as set forth herein and, except for Default Assessments, shall be levied against Lots and Owners pursuant to each Owner's Proportionate Share.

2. **Annual Assessments; Monthly Payments.** Subject to the limitations set forth herein and, in the Articles, and Bylaws, the Board of Directors, in its sole discretion, shall establish Annual Assessments based upon the estimated Common Expenses for the subsequent fiscal year of the Association. Until modified as provided herein, the Annual Assessments shall be in amounts as determined by the budgets established by the Board of Directors from time to time. The Annual Assessment for year 202\_\_ is hereby established as \$ \_\_\_\_\_. The first Annual Assessment for a Lot under this Declaration shall be made on the date the Residence constructed on said Lot is first occupied for single family residential use (and such first Annual Assessment shall be prorated for the Common Expense fiscal year encompassing date of first occupation for single family residential use). The Board of Directors shall endeavor to make the Annual Assessments on or before January 1 of each year. The Annual Assessments shall be due and payable in substantially equal monthly installments, in advance, on or before the 1<sup>st</sup> day of each month. If the Board of Directors fails to timely make any Annual Assessment for any fiscal year, the amount of such Annual Assessment for the year shall automatically be 113% of the Annual Assessment for the immediately prior year. Prior to the Turnover Date, the Board of Directors may increase the Annual Assessments as such Board shall determine appropriate without a vote of the membership. After the Turnover Date, the Annual Assessments made by the Board of Directors may not exceed (a) one hundred and twenty percent (120%) of the Annual Assessment for the immediately preceding year without the approval of a simple majority of votes present (in person) at a meeting duly called (and at which a quorum is present) or (b) one hundred fifty percent (150%) of the Annual Assessment for the immediately preceding year without the approval of sixty-six and 2/3 percent (66 2/3%) of the votes present (in person) at a meeting duly called (and at which a quorum is present). The Board of Directors may, but shall have no obligation to, make pro rata refunds of any Annual Assessments in excess of the actual Common Expenses incurred in any fiscal year or may hold the same in reserve.
3. **Special Assessments.** Except as limited or prohibited by the Articles or Bylaws, the Board of Directors may levy in any fiscal year one or more Special Assessments, payable over any period as it determines, for the purpose of defraying, in whole or in part, expenses incurred by the Association in fulfilling its obligations or exercising its rights under this Declaration (such as performance of Covered Services) or otherwise imposed upon the Association. In imposing any Special Assessment, the Board of Directors shall specifically refer to this Article. The Board of Directors shall promptly give the Owners written notice of the amount of all Special Assessments and the time for payment thereof. No payment of all or part of any Special Assessment shall be due less than thirty (30) days after such notice is given. This Article shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration.
4. **Default Assessments.** The Board of Directors may assess Default Assessments against an Owner at any time. Notice of the amount and due date of each Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date. Each Default Assessment shall become a lien against such Owner's Lot when due and may be foreclosed or otherwise collected as provided in this Declaration.
5. **Fines.** The Board of Directors may assess and impose a Fine of up to Twenty Dollars (\$20) per day (or such other amount as the Board of Directors shall determine appropriate from time to time) for each month in which any infraction of any of the provisions of this Declaration, the Articles, Bylaws or any rules or regulations promulgated by the Board is committed by any Owner or any tenant of any Owner. The Board of Directors may promulgate and change from time-to-time rules or regulations setting forth procedures for appealing Fines. Fines shall be imposed only after notice and an opportunity to be heard before the Board of Directors. Cause for Fines shall not be for frivolous reasons but for those actions which violate the security of Owners, endanger occupants, cause a nuisance to Owners or their tenants or interfere with the quiet enjoyment of their Residences by other Owners or their invitees.
6. **Effect of Nonpayment; Liens.** Any Annual, Special or Default Assessment or any Fine (individually, the "Delinquency" and collectively, the "Delinquencies") that is not paid within thirty (30) days after its

due date shall be delinquent. Upon a Delinquency becoming delinquent, the Board of Directors, in its sole discretion, may take any or all of the following actions:

- A. Assess a late charge for each Delinquency in an amount of five percent (5%) of the Delinquency;
- B. Assess an interest charge from the date of delinquency at a rate of 10% per annum;
- C. Suspend the voting rights of the Owner during any period of a Delinquency;
- D. Accelerate all remaining Assessment installments (if any are payable in installments) so that unpaid Assessments and other Delinquencies shall be immediately due and payable;
- E. Bring an action at law against any Owner personally obligated to pay the Delinquency;
- F. File a statement of lien with respect to the Lot; and
- G. Proceed with perfection and foreclosure of liens for the Delinquency.

A Delinquency shall constitute a lien on the Lot, including the Residence and any other Improvements, and shall attach on the due date for the Assessment. The Association may evidence the lien by filing a certificate of lien with the Office of the Recorder of Deeds of Clay County, Missouri. The certificate of lien, which shall be signed and acknowledged by the President, any Vice President or the Secretary of the Association, shall set forth (i) the name and address of the Association, (ii) the amount of the Delinquency, (iii) the amount of accrued interest, penalty and other amounts due, (iv) the name of the Owner of the Lot and (v) the legal description of the Lot. At least ten (10) days prior to filing any such certificate of record, the Association shall mail a copy of the certificate to the Owner at the address of the Lot or to such other address as the Association has in its files for the Owner. At any time thirty (30) or more days after filing the certificate of lien, any such lien may be foreclosed by appropriate action at law or in the manner provided by law for foreclosure of mortgages or sale by a judgment creditor or in any other manner permitted by the laws of Missouri (including, without limitation, common law procedures for perfecting, establishing and foreclosing equitable liens). Each Owner of a Lot by its acceptance of a deed thereto hereby consents to such foreclosure mechanism. In the event of any such lien foreclosure and sale (whether at private sale or by public execution sale), the Owner shall be liable for the amount of all unpaid (after application of sale proceeds) Delinquencies, all penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien and all reasonable attorneys' fees and expenses incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Lot at foreclosure or execution sale and to acquire and hold, lease, mortgage, and convey the same. All liens for Delinquencies shall continue for a period of five (5) years from the date of attachment and no longer, unless within such time suit is commenced to collect the Delinquency against persons personally liable for such amount or foreclosure proceedings are instituted. In such cases the lien shall continue until termination of the suit and sale of the Lot upon execution of any judgment obtained or until completion of foreclosure proceedings.

- 7. **Personal Obligation.** The amount of any Delinquency chargeable against any Lot shall also be a personal and individual debt of the Owner of the Lot at the time the Assessment became due. No Owner may exempt himself from liability for the Delinquency by abandonment of his Lot. All successors to the fee simple title of a Lot shall be jointly and severally liable for all unpaid Delinquencies, interest, late charges, penalties, costs, expenses, and attorneys' fees (in any action filed by the Association to collect a Delinquency or Assessment, the Owner shall reimburse Association for all attorney's fees therein incurred by Association) against such Lot with the Owner who owned the Lot at the time the unpaid Delinquency first became due. Nothing contained herein shall prejudice any such successor's rights to recover from any prior Owner amounts paid by such successor. The liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Lot. The successor may rely on the statement of status of Delinquencies by, or on behalf of, the Association under this Article. The Association may bring suit against the Owner or any successor to recover unpaid Delinquencies any penalties and interest thereon, the cost and expenses of such proceedings and all reasonable attorneys' fees and expenses in connection therewith, without foreclosing or waiving the Delinquency lien provided in this Declaration.
- 8. **Priority of Lien.** The lien for Delinquencies provided for in this Declaration shall be subordinate only to (a) liens for real estate taxes and special governmental assessments and (b) first priority purchase money



Mortgages on a Lot. The lien for Delinquencies shall be superior to and prior to any homestead exemption provided now or in the future under the laws of the State of Missouri which all present and future Owners waive by taking title to Lots. Except as specifically set forth herein or provided by law, no sale or transfer of a Lot shall release it from the lien of any Delinquency. The amount of any extinguished lien for a Delinquency may, at the direction of the Board of Directors, be reallocated and assessed to all Lots as a Common Expense.

9. **Notice to Mortgagee.** Upon written notice by a Mortgagee to the Association of a Mortgage and written request for notice of unpaid Delinquencies, the Association shall be permitted to report to the Mortgagee all Delinquencies remaining unpaid for longer than sixty (60) days after the due date. Any Mortgagee holding a lien on a Lot may pay any unpaid Delinquency, together with all costs and expenses incurred with respect to the lien.
10. **Statement of Status.** Upon written request of any prospective Mortgagee or purchaser of a Lot and payment of a reasonable fee established by the Board of Directors, the Board of Directors of the Association shall issue a written statement setting forth the amount of all unpaid Delinquencies, if any, with respect to such Lot. The amount set forth on such statement from the Association shall be binding on the Association if the prospective purchaser purchases the Lot (or the prospective Mortgagee mortgages the Lot); provided, however, the Owner of the Lot during the time when such Delinquency became due and owing shall remain liable for all unpaid Delinquencies. If the Association does not issue a written statement within thirty (30) days of its receipt of the request and fee payment, the prospective purchaser (or prospective Mortgagee, as the case may be) may make an additional written request. If the Association does not issue a written statement within ten (10) days of the second request, the lien for the unpaid Delinquencies shall be released automatically upon the prospective purchaser's acquisition of the Lot (or the prospective Mortgagee's mortgage of the Lot). A statement shall be deemed issued by the Association upon deposit in the U.S. Mails or tender of delivery to the prospective purchaser.
11. **Notification of Association's Address.** The Association shall notify each Owner, at their address listed with the Association, of the Association's address, and all changes thereto, where payments shall be made and other Association business may be conducted.
12. **Pledge of Assessment Rights as Security.** The Association shall have the power to pledge the right to exercise its assessment powers and rights as security for any obligations of the Association; provided, however, any such action shall require, prior to the Turnover Date, the assent of the Developer and, after the Turnover Date, a majority vote of all Members of the Association. Such power shall include the ability to make an assignment of Assessments then payable to, or which will become payable to, the Association, which assignment may be then presently effective but allows such Assessments to continue to be paid to the Association and used by it unless and until the Association shall default on its obligation secured by the assignment.
13. **Supplemental Developer Remedy.** In addition to (but not in lieu of) the remedies of Developer and Association as herein provided (including but not limited to the right to receive equitable and injunctive relief), all Owners are deemed to recognize that violations of any portion of the Declaration will, so long as Developer is owner of any portion of the Property (or any Annexation or Expansion Property), result in damages to Developer which are difficult if not impossible to ascertain at this moment (the parties and their successors in interest to the Property acknowledge that any such violations and breaches of the Declaration will have a negative impact on values of the portions of the Property still owned by Developer at the time of such violations/breaches). Accordingly, if any Owner of any Lot shall violate or breach the Declaration (or any provision thereof) while Developer is owner of any portion of the Property (including any Annexation Property), and if the violating or breaching owner shall not rectify or cure such violation or breach within two (2) days (the "Cure Period") after Developer shall give such Owner written notice generally describing the violation or breach, then in that event, the violating or breaching Owner shall pay to Developer special liquidated damages in the amount of \$57.00 for each day (or any part thereof) after the expiration of such Cure Period that the violation or breach shall continue, provided however, the maximum liquidated damages assessable for any single uninterrupted violation or breach shall not in any event exceed \$4,300.00 during any calendar year.

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The parties expressly agree that the liquidated damages stated above are a reasonable advance estimate of special damages to Developer in the event of a breach or violation of the Declaration and that such liquidated damages are not intended as a penalty. In any action or proceeding instituted by Developer for the recovery of such liquidated damages, the violating or breaching Owner shall also reimburse Developer for Developer's reasonable attorney's fees, expenses, investigative costs and costs of the action therein incurred.

14. **Developer's Lots/Exemption from Assessments.** Notwithstanding any provision of this Declaration to the contrary, until the Turnover Date, Lots owned by Developer shall not but subject to levy or assessment for Annual or Special Assessments or other charges provide in this Declaration.

## ARTICLE 6

### Repair of Casualty Damage

Notwithstanding any provision of this instrument to the contrary, each Owner (rather than Developer and/or Association) is responsible for insuring such Owner's Lot and Residence (and improvements thereon) against casualty loss and for promptly repairing and restoring loss or damage after the occurrence of any such casualty.

## ARTICLE 7

### Maintenance Services/Covered Services

1. **General.** As mentioned above, the Association shall provide (or arrange for provision of) the Covered Services for each Lot.
2. **Uniformity of Service.** The Association shall reasonably endeavor to arrange and provide for a uniform method of providing the foregoing Covered Service to all Lots. The Association shall have authority to determine the exact method of providing for such services by virtue of the powers set forth in this Declaration and toward that end shall have authority to contract with one or more providers of such services on behalf of all the Owners and the Association.
3. **Exclusivity.** No Owner shall do any act or take any action on his own which shall interfere, impede or conflict with the Association's obligation to provide the Covered Services.
4. **Owner's Maintenance and Repair.** Except for Association's performance of Covered Services, each Owner shall keep all portions of such Owner's Lots (including easement areas located thereon, if any), and all improvements therein or thereon, in good order and repair, including, by way of illustration and not of limitation, the pruning and cutting of any trees and shrubbery, the maintenance of any driveways and sidewalks in a serviceable and attractive condition, and the painting (or other appropriate external care) of all building and other improvements, all in a manner and with such frequency as is consistent with safety and good property ownership practices. There is reserved to the Board and the Developer a "maintenance easement" on Property lying between the foundation of any Structure on any Lot and the property line of said Lot to permit the Association, its agents, successors or assigns, at its election, to maintain said Property (in default of Owner's obligation to maintain same) at any reasonable hour. The Board and the Developer shall have the right, after written notice to the Owner of the affected Lot as hereinafter provided, to remove trash or rubbish and to trim or prune any tree, hedge or other planting that, in the opinion of the Board or Developer, by reason of its location or height of the manner in which it is permitted to grow, is detrimental to adjoining Lots or Property or is unattractive in appearance. The Board or Developer shall further have the right to care for vacant and unimproved Property and to remove grass, weeds and rubbish therefrom and to any and all things necessary or desirable, in the opinion of the Board or Developer, to keep such Property in neat and good order, all at the cost and expense of the Owner. Such cost and expenses incurred by the Board or Developer shall be paid to the Association or Developer (as the case may be) upon demand and the right to receive such costs and expenses so incurred may be enforced by either Association or Developer as provided herein or as provided by law.

## ARTICLE 8

### No Party Walls

Party Walls between Residences are expressly prohibited by this instrument.

## ARTICLE 9

### Review Committee and Construction Standards

1. **Architectural Review Committee.** An Architectural Review Committee (the "Review Committee"), consisting of three (3) or more people, shall be established to exercise the powers granted by this Article and elsewhere in this instrument. At all times prior to the Turnover Date, the Developer shall have the power to appoint all members of the Review Committee, who shall serve until they resign or are removed by the Developer. After the Turnover Date, the Board of Directors shall appoint the members of the Review Committee, who shall serve terms of one (1) year or until their successors are duly elected and qualified. All decisions of the Review Committee shall be made by a majority of its members.
2. **Architectural Control.** To preserve the harmony of the construction, location and exterior design and appearance of the Lots and the Residences and other Improvements on the Lots, (a) all Residences, buildings, structures and other Improvements of any kind to be constructed or located on any Lot (collectively, the "Improvements"), (b) all additions, changes and alterations to any Improvement which impacts its exterior design or appearance and (c) all changes to the topography of any Lot (collectively, the "Proposed Construction"), shall be approved (if at all), in writing, by the Review Committee before such Proposed Construction is commenced. The Review Committee shall not approve any Proposed Construction on any Lot which violates any express prohibition in this Declaration, or where the exterior design or appearance (including exterior color) of the Proposed Construction is not, in the sole discretion of the Review Committee, in harmony with the existing Residences in the Property, the topography and overall design and appearance of the Property, the Developer's intended design and appearance of the Property or otherwise detracts from the design and appearance of the Property in the sole opinion of the Review Committee.
3. **Application for Approval.** The Owner shall apply, in writing, to the Review Committee for approval of all Proposed Construction. The application shall include plans, drawings, specifications and information (including all construction drawings and site plans) showing, as and if applicable, (a) the front, rear and side elevations, (b) proposed grading and drainage from the Lot, (c) floor plan with total square footage, (d) height of all Improvements, (e) exterior materials, (f) method of construction, (g) exterior color scheme, including samples, manufacturers name and product numbers, (h) landscaping and (i) all other information reasonably requested by the Review Committee. The Review Committee may request additional information from an Owner at any time within ninety (90) days after its last receipt of information from the Owner or his representatives. The Review Committee may establish and publish such other rules and regulations regarding approval of Proposed Construction as the Review Committee determines are reasonable. If the Review Committee does not act upon an Owner's application within ninety (90) days after submission of all information required by the Review Committee, approval of the Proposed Construction as submitted shall be deemed to have been given and the requirements of this Article. The Owner shall bear the burden of proving the date on which such Owner submitted all information, required by the Review Committee, to each member of the Review Committee.
4. **Modification of Requirements; Appeal of Review Committee Decision.** Except as specifically provided herein to the contrary, by unanimous decision, the Review Committee may, for good cause shown, waive any of the requirements set forth in this Declaration. Any waiver granted shall not be effective and may not be acted upon until eleven (11) days after the date on which the Review Committee renders its decision. An Owner submitting an application may appeal any decision of the Review Committee which denies that application for Proposed Construction. An Owner of any Lot may appeal any decision of the Review Committee which waives any of the requirements set forth herein. All appeals shall be to the full Board of Directors. All appeals to the Board of Directors shall be made in writing and submitted to the Secretary of the Association within ten (10) days after the Review Committee renders its decision which is the subject of the appeal. If the Board of Directors does not act upon an appeal within ninety (90) days of it being timely submitted, the relief requested in the appeal shall be deemed granted. In deciding an appeal, the Board of Directors can take only such actions as the Review Committee was originally empowered to take. All decisions on appeals shall be made by a majority of the Board of Directors, acting in the sole discretion of the members of the Board, and shall be final and not subject to

further appeal, including to the Owners, or subject to judicial review. Pending final decision on appeal, the waiver requested shall be held in abeyance and may not be acted upon.

5. **Construction Standards.** In addition to complying with all ordinances, codes and restrictions enacted by the City which are applicable to a Lot, all Residences and other Improvements constructed on any Lot shall conform to the following:
- A. Except for model homes, sales offices or otherwise specifically provided herein, no building other than a Residence may be constructed on any Lot. Under no circumstance, even with Review Committee or Board of Director approval, shall any commercial, retail or other business building be constructed on any Lot.
  - B. All Residences shall be erected or located on each Lot as shown on the Plat. The Review Committee shall approve the orientation of the Residence on each Lot.
  - C. The finished first floor area of each Residence shall be at least 1400 square feet of total finished floor area. For purposes of calculating the foregoing minimums, the area of any attics, garages, basements, porches, and any portion of the Residence that is not enclosed and finished for all-year occupancy, shall not be included. The Review Committee may, in its sole discretion, require greater or lesser square foot area for any Residence.
  - D. No Residence may exceed one (1) story in height without approval of the Review Committee.
  - E. Front exterior surfaces of any Residence shall be constructed only of stucco, Canyon Stone, or such other materials as shall be approved by the Review Committee or a combination of the foregoing materials, and shall be of a color or colors required by the Review Committee.
  - F. All Residences shall have vinyl single hung windows or such other materials as approved by the Review Committee.
  - G. All Residences shall be roofed with 30 year architectural composite shingles ("Driftwood" color), or such other materials as shall be approved by the Review Committee.
  - H. All exteriors of any Residence (except roofs) shall be painted or stained with Sherwin Williams products of a color required by the Review Committee. During construction, no Residence or any addition to, or remodeling of, a Residence shall stand with an unfinished exterior for longer than six (6) months.
  - I. All sewage disposal shall be by means of subterranean sewer service connected to a public City sewer main.
  - J. Each Residence shall have a garage for no less than 2 vehicles and the interior walls of such garage shall be finished in a quality manner.
  - K. All grassy portions of yards on a Lot shall be sodded with any of the following perennial turf grasses: fescue. Zoysia grass may be used in areas approved by the Review Committee but the Review Committee shall have the absolute right, in its discretion, to disapprove the use of Zoysia grass. Use of bermuda grass shall not be permitted. Sodding shall not be required in locations where the Review Committee determines (in its sole and absolute discretion) the soil, light, topography or costs would make sodding impractical or unreasonably expensive.
  - L. No plantings of trees, shrubs, ornamentals, vegetables, herbs or flowers shall be made on a Lot without the approval of the Review Committee (which may withhold approval in its sole discretion). Once any such plantings are approved and installed, Owner shall be responsible for thereafter maintaining same in attractive condition, at Owner's sole cost and expense.
  - M. A hot tub or spa may be constructed at the rear of a Residence but within the Lot lines for personal, non-commercial use by the Owner, but only with the Review Committee's prior approval (which approval may be withheld in its sole discretion). The Review Committee may require fencing or screening of such hot tub or spa, if permitted.
  - N. Construction of a Residence shall be fully completed within six (6) months after excavation is started.

## ARTICLE 10 Use Restrictions

1. **General.** Unless the Board of Directors, acting in its sole discretion, unanimously waives the application thereof (which waiver may be granted even if contrary to any specific prohibition set forth herein), the following restrictions are hereby placed on the Property.
2. **Residence Use Only.** Except as specifically provided herein, each Residence shall be used strictly as a single family dwelling. No business shall be conducted, or carried on, in or from any Lot or Residence except (a) marketing or sales activities by the Developer and builders authorized to have model homes may be conducted from model homes and (b) with the approval of the Review Committee, conduct of a profession or home industry which does not involve (i) employees working at the Residence who are not permanently residing therein and (ii) customers regularly visiting the Residence to conduct business. Even if the foregoing are satisfied, the Review Committee may withhold its approval if it determines, in its sole discretion, the commercial activity is not compatible with the Property for any reason, such as, without limitation, a day care business which is prohibited.
3. **Prohibited Buildings and Structures.** No mobile home or trailer (with or without wheels), basement (without a Residence attached), moved house, manufactured house, tent, shack, barn, shed or other outbuilding or structure shall be constructed or located on any Lot at any time (except that tents used for temporary recreational or social purposes may be erected on a Lot with the prior written approval of the Review Committee).
4. **Fences.** No fences are allowed.
5. **Lighting.** No exterior lighting shall be directed outside the boundaries of any Lot but shall be directed so as to avoid glare and excessive light spillage onto abutting or adjacent Property or Lots. Exterior lighting shall consist of concealed sources of illumination and shall maintain lighting levels consistent with the recognized standards of the lighting industry. Exterior lighting shall be from white sources only. Upon notice from the Developer or Review Committee that an exterior light is objectionable, such Owner shall immediately shield such light in such a manner so that in the opinion of the Developer or the Review Committee such light is no longer objectionable. If shielding cannot be accomplished to the satisfaction of the Developer or Review Committee or the light continues to be objectionable, the Developer or Review Committee may require that such light be removed or replaced with a light that is not objectionable. Notwithstanding the foregoing, temporary, decorative lighting shall be permitted provided that such lighting conforms to the requirements and limitations as may be imposed by the Board. At a minimum, however, each residence on a Lot shall have 50 watt mini-can lighting (mounted under the soffit) on each offset (also including the front corners) of the front elevation of the said residence unless Developer and the Review Committee shall waive the necessity of same in writing. Such mini-can lighting shall be operable and operating from dusk until dawn and shall be activated by either timer or photo-electric cell.
6. **Keeping of Animals of Lots.** No animals, dogs, cats, cows, horses, swine, goats, sheep, poultry other domesticated farm animals, wild animals, exotic animals, animals requiring special permits from the State of Missouri or the United States of America, or birds shall be kept or maintained on any Lot without the written approval of the Review Committee, which approval may be withheld in the sole discretion of the Review Committee, provided however, so long as kept inside of the residence on the Lot between the hours of 9:00 P.M. and 7:00 A.M. and so long as kept in a sanitary manner, an Owner may keep not more than two (2) of the following animals on the Lot, to wit: domesticated cats, domesticated birds and domesticated dogs, provided further, at no time shall any Owner keep or harbor, on the Lot, any dog, cat or bird having or displaying dangerous or vicious propensities, provided further, no dog, cat or bird shall be kept on any Lot for breeding purposes.
7. **Parking of Motor Vehicles, Boats and Trailers.** No truck, commercial vehicle, trailer, commercial trailer house, recreational vehicle, all-terrain vehicle, van, minivan, camper, motorcycle, automobile, mobile home, boat or boat trailer shall be brought upon, stored, or parked on any Lot or upon any street abutting any Lot except as herein provided to the contrary. This shall not be construed to prohibit the temporary (i.e., a maximum of twenty-four (24) hours): (a) temporary standing or parking of a trailer,

boat, trailer house, recreational vehicle or mobile home preparatory to taking same to some other location for use; or (b) the temporary standing or parking of a truck or commercial vehicle for loading, or unloading (not to exceed 3 hours). The foregoing restriction shall also not be construed to prohibit the parking of any non-commercial automobile, non-commercial minivan, non-commercial van or non-commercial pickup truck (which is then currently operational, roadworthy and licensed) on any driveway on any Lot or in any enclosed garage. No mechanical maintenance on any vehicle shall be permitted except in enclosed garages. While nothing contained herein shall be considered to prohibit the use of the portable or temporary building or trailers as field offices by contractors during actual construction on the Property, the use and appearance of such a building or trailer must be specifically approved by Review Committee prior to its being moved on site.

8. **Antennas, Poles and Projections.** No facilities, including poles and wires for the transmission of electricity, telephone messages, CATV signals and the like shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas or satellite dishes shall be permitted on any Lot except as hereinafter provided. No flag poles, poles, nor standards shall be erected or maintained except with the prior written approval of the DRC, which approval may be withheld in the sole discretion of the DRC.
9. **Satellite Receivers and Transmitters.** Developer acknowledges the right of telecommunications consumers to receive satellite transmissions in accordance with the Section 207 of the Telecommunications Act of 1996. However, in order to preserve the aesthetics of the Property, Developer hereby directs that satellite receivers and transmitters ("Dishes") shall be located at the following points (listed in descending order of preference):
  - A. First Choice: If a Dish can be so located, without undue cost to the Owner and without undue diminution of signal reception or transmission, it shall be attached to the roof (immediately below and behind the roof ridge line) of the residence at a location so that it cannot be seen from the street running in front of the residence.
  - B. Second Choice: If the First Choice is not available and if a Dish can be so located, without undue cost to the Owner and without undue diminution of signal reception or transmission, it shall be attached to rear exterior wall of the residence at a location so that it cannot be seen from the street running in front of the residence.
  - C. Third Choice: If the First and Second Choices are not available and if a Dish can be so located, without undue cost to the Owner and without undue diminution of signal reception or transmission, it shall be attached to a side exterior wall of the residence at a location which is least likely to be seen from the street running in front of the residence.
  - D. Fourth Choice: If the First, Second and Third Choices are not available and if a Dish can be so located, without undue cost to the Owner and without undue diminution of signal reception or transmission, it shall be installed at ground level near the rear property line of the Lot at a location which is least likely to be seen from the street running in front of the residence.

Any satellite dish shall not exceed a diameter of one (1) meter. If installed on the roof or walls, the satellite dish shall be painted the same color as the surface upon which it is mounted so long as such painting shall not unreasonably interfere with the reception or transmission of satellite signals. If installed at ground level, the satellite dish shall be screened from view on all sides by shrubbery so long as the shrubbery shall not unreasonably interfere with the reception or transmission of satellite signals. If the first four choices mentioned above are not available for some reason, the Owner of each Lot and the DRC shall reasonably cooperate with each other so that any right of an Owner to receive or transmit satellite signals is harmonized with the preservation of aesthetics at the Property and on each Lot.
10. **Solar Collectors, Panels and Arrays.** No solar collectors, solar panels or solar arrays shall be erected or maintained on any Lot (including, without limitation, the roof of any Residence located on a Lot). However:
  - A. Prior to the Turnover Date, Developer may, in its sole and absolute discretion (for any or no reason whatsoever), permit installation of such solar collectors, solar panels or solar arrays.

- B. After the Turnover Date, the DRC may, in its sole and absolute discretion (for any or no reason whatsoever) permit installation of such solar collectors, solar panels or solar arrays.
11. **Drainage.** Drainage from a Lot directly onto an adjoining Lot as a result of any construction activity or any change to the grade of any Lot shall be prohibited and each Owner shall be required to maintain the Lot and to construct and maintain the gutters and downspouts to control such drainage. The final grading on each Lot shall not cause any adverse change (as determined solely by the DRC) to the natural grade of such Lot.
  12. **Fireworks and Use of Firearms.** The sale and use of fireworks of any kind whatsoever on the Property is prohibited. Except as permitted by law for security personnel, and for the safety and security of occupants of Residences, the use of or discharge of firearms of any kind whatsoever is prohibited
  13. **Trampolines.** No outdoor trampolines shall be permitted on any Lot.
  14. **Playground Structures.** No outdoor playground structures shall be permitted to stand outside of the Residence on any Lot.
  15. **Laundry Poles.** No poles for attaching wires or lines for the purpose of hanging laundry thereupon shall be erected, installed or constructed on any Lot. Drying of clothing outside of a Residence, by any other means, is also prohibited.
  16. **Gardens.** Vegetable gardens shall not be permitted on any Lot.
  17. **Basketball Goals.** No basketball goals.
  18. **Mailboxes.** Developer shall install "clustered" mail receptacles (i.e., a single structure serving more than one Residence) within the Property (each Owner understands that the clustered receptacle may not be adjacent to such Owner's Residence, depending upon the finally determined location of such clustered mail receptacles).
  19. **Garages.** No garage may be improved for use as living area. All doors of garages of Residences which are visible from the curb shall be kept closed except when removing motor vehicles or other items from, or cleaning of, such garage.
  20. **Pools.** No swimming pools shall be permitted on any Lot.
  21. **Holiday Decorations.** Christmas and other holiday lights and decorations may be located on the exterior of Residence on any Lot only between November 15 of each year and January 15 of the next. The method and means of installation of such lights and decorations shall be only as established or permitted by the Review Committee.
  22. **Septic Tanks.** No septic tanks or other individual sewage disposal system may be constructed on any Lot or elsewhere on the Property.
  23. **Storage Tanks.** No tank for storage of gasoline, kerosene, oil or other petroleum product may be maintained in any Residence or on any Lot, whether above or below the surface of the ground. Notwithstanding the foregoing, an Owner may keep a single container (having a volume not exceeding 5 gallons) inside the Residence.
  24. **Refuse.** No trash, ashes or other refuse may be thrown, dumped, stored or burned on any Lot, except during construction of a Residence or any addition thereto or remodeling thereof. The storage or burning of trash, garbage, old appliances, junk or other refuse is prohibited on the Property outside of a Residence, except such items may be set out for collection after 6:00 p.m. on the day before the scheduled collection day and shall be returned to storage inside the Residence no later than 8:00 p.m. on the day of scheduled collection.
  25. **Signs and Advertising.** Except as provided below, no signs, billboards or advertising structures of any kind may be placed on any Lot or on any Residence or visible from the exterior of any Residence or building on the Lot. Signs advertising the lease or sale of an individual Lot, which do not exceed five (5) square feet in size, may be erected or placed on the Lot being sold or leased. The Developer may erect or place "bill board" type signs related to the Property on any Lot owned by it.
  26. **Nuisances.** No activity shall be carried on in, on or from any Lot or Residence which is noxious or offensive or an annoyance or nuisance to the neighborhood. The Owner shall be responsible for all activity carried on in, on or from a Lot or Residence whether or not the Owner is involved in, or has knowledge of, such activity.

27. **Occupancy; Repair.** No Residence shall be occupied until it is fully completed, except for exterior painting and minor trim details. In the event of fire, windstorm or other casualty damage, no Residence shall be permitted to remain in a damaged condition longer than six (6) months and it shall be the obligation of the Owner of the damaged Residence to fully repair and restore such residence to its pre-casualty condition prior to the expiration of said six (6) month period.
28. **Storage of Construction Materials.** No building material of any kind or character shall be placed or stored on any Lot until the Owner thereof has received required approval from the Review Committee for the project and is ready to commence construction. All material permitted to be stored on a Lot shall be placed only within the property lines of the Lot or Lots upon which the approved Improvements are to be constructed.
29. **No Subdividing.** No Lot may be further subdivided once established as a Lot by the City unless approved by Developer (before the Turnover Date) and the Review Committee.
30. **No Mining Activities.** No portion of the Property shall be used, at any time, for mining, boring, quarrying, drilling, refining or other operations involving, or related to, the extraction or exploitation of any subsurface natural resource of any kind.

## ARTICLE 11

### Property Rights of Owners

1. **Recorded Easements.** The Property shall be subject to all easements as shown on the recorded Plat affecting the Property.
2. **Emergency Access Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.
3. **Easement to Perform Covered Services.** The Owner of each Lot hereby grants the Association (and its agents, servants, employees and contractors) an easement to enter each Lot for the purposes of performing the Covered Services or exercising any right it may have pursuant to the expressed terms of this Declaration. No Owner shall obstruct or impede Association's performance of the Covered Services.
4. **View.** No Owner has any right to an unobstructed view beyond the boundaries of the Owner's Lot. No Owner shall be entitled to prevent the construction or location of any structure, planting material or other item on any other part of the Property, which is permitted by this Declaration, because such structure, planting material or other item obstructs any view from the affected Lot.

## ARTICLE 12

### Incidents of Ownership in Property

1. **Inseparability.** Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Lot, including the Residence and other Improvements thereon, shall be presumed to be a gift, devise, bequest, transfer, encumbrance or other conveyance, respectively, of the entire Lot, including all easements, licenses and all other appurtenant rights created by law or by this Declaration.
2. **Limited Rental Rights.** Developer hereby declares that the Lots are principally intended for single family residences which are occupied by the owners of such Lots. However, rental and leasing of a Lot to those who are not owners of a Lot shall be permitted subject to the terms, conditions and limitations stated below:
  - A. No Lot, or any part thereof, shall be leased, rented, demised or let to any person or entity except pursuant to a written lease signed by the record owner of the Lot (as landlord) and the occupant thereof (as tenant), and such lease shall provide for a lease term of not less than one (1) year.
  - B. Copies of any written leases entered into with respect to a Lot, while an owner has had ownership of that Lot, shall be delivered to Developer within 10 days after Developer shall make written demand on the Lot owner for same, from time to time.
  - C. The record owner of a Lot (or at least one record owner of a Lot, if there are multiple owners) must occupy a Lot as his or her principal residence for at least 300 days out of any 1,000 day period. The record owner of a Lot shall bear the burden of proving to Developer (by such evidence as



Developer shall require in its sole discretion) that he or she has so occupied a Lot as his or her principal residence for at least 300 days at of any 1,000 day period.

- D. In the event a record owner of a Lot shall breach any provision of Paragraphs A., B or C, above, then, for a period of 1 year after Developer shall have acquired actual knowledge of such breach, Developer shall have the right to purchase the Lot (with respect to which such breach has occurred) for the same price as it was purchased by the person or entity who owned such Lot as of the time of such breach.
- E. The provisions of this Paragraph (and all subparts of this Paragraph) shall become null and void at such time as Developer no longer owns any Lot within the Property. The provisions of this Paragraph (and all subparts of this Paragraph) are for the sole and exclusive benefit of Developer and for no other Lot owner (or the Association) within the Property. Developer may, at its option, waive and release the provisions of this Article from any Lot (without waiving and releasing from all other Lots) so long as such waiver and release is in writing, signed by Developer and recorded in the office of the Clay County Recorder of Deeds.

## ARTICLE 13

### Duration, Amendment and Annexation

- 1. **Term.** The covenants, conditions, restrictions and easements set forth in this Declaration shall run with and bind the Property until December 31, 2053, after which time they shall be automatically extended for successive periods of ten (10) years each, unless terminated, in whole or in part, as provided below.
- 2. **Amendment.** After the Turnover Date, this Declaration may be amended by Supplemental Declaration signed by the Owners of a majority of the Lots then subject to this Declaration. No amendment shall be effective until the Supplemental Declaration setting forth the approved amendment is recorded in the Office of the Recorder of Deeds for Clay County, Missouri. Notwithstanding the foregoing, until the Turnover Date, this Declaration can be amended, modified or changed in whole or in part by the Developer (acting alone, without concurrence of the Owners, Association, Board or Review Committee) in order to correct deficiencies of this Declaration (as determined to exist by the Developer in Developer's sole discretion); to annex property as provided for herein; to de-annex Property; and to provide for the unified and efficient development of the Property (determined to be necessary in Developer's sole and absolute discretion). The rights of Developer to so unilaterally amend this instrument pursuant to this section are of the essence to Developer and shall therefore be liberally construed in favor of Developer.
- 3. **Revocation; Termination.** This Declaration may be terminated prior to the Turnover Date only by the unanimous consent of all Owners of Lots and the Developer. After the Turnover Date, this Declaration may be terminated at any time by Owners of not less than 2/3<sup>rd</sup> of the Lots then subject to this Declaration, and the respective mortgage holders for such Owners. Any such revocation or termination shall be evidenced and effective in the same manner (by Supplemental Declaration) as set forth in this Article for amendments hereof.
- 4. **Amendments Requiring City Consent.** Notwithstanding any other provision herein, no modification or amendment of this Declaration which conflicts with (a) the Plat, (b) any agreements entered into by the Developer and the City concerning the Property (which agreements are incorporated by reference herein by this reference) or (c) any City ordinance or code, may be made or become effective without the prior written consent of the City.
- 5. **Developer's Right of Future Annexation.**
  - A. **Reservation of Right to Annex Property.** Developer reserves and shall have the absolute unilateral right (but not the obligation) to expand the definition of the "Property" to include additional Lots and/or Common Areas and/or other land (herein the "Annexation Property"), any part of which is then within one (1) mile of the boundaries of the then-existing Property.
  - B. **Method of Annexation.** Such expansion may be accomplished by filing one or more Supplemental Declarations setting forth the Lots and other real property, if any, to be included in the expansion/annexation, The Supplemental Declaration, as it relates to the Annexation Property, may provide for covenants, conditions, restrictions and easements in addition to, or different from, those

herein stated or may delete some of the covenants, conditions, restrictions and easements herein stated, all in Developer's sole and absolute discretion. The expansion may be accomplished by one or more successive supplements or in one supplement.

- C. **Incorporation by Reference.** In the event of any such expansion or annexation, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded (and shall be binding on the entire Property, including the Annexation Property) except as otherwise provided in the Supplemental Declaration.

## ARTICLE 14

### Miscellaneous Provisions

1. **Enforcement.** Except as otherwise provided herein, the Association, the Board of Directors, the Developer and every Owner has the right and power to enforce, by a proceeding at law or in equity, all conditions, covenants, restrictions and easements set forth in this Declaration. Failure of the Association or the Board of Directors, the Developer or any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so at a subsequent time. Any person successfully enforcing any terms of this Declaration shall, in the discretion of a court of competent jurisdiction, be entitled to recover its reasonable attorneys' fees and costs from the person against whom this Declaration was enforced, provided however, no attorneys' fees or costs shall be awarded against Developer.
2. **Severability.** If any provision of this Declaration, or the application hereof to any circumstance, is held to be invalid or unenforceable to any extent, the remainder of this Declaration and its application to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
3. **Rule Against Perpetuities.** Notwithstanding anything in this Declaration to the contrary, the creation of all interests under this Declaration shall vest, if at all, within the period of time measured by the life of the survivor of the now living children of Prince Charles, Prince of Wales, plus twenty-one (21) years.
4. **Conflicts Between Documents.** If this Declaration conflicts, in any way, with the Articles or Bylaws, this Declaration shall control.
5. **Developer's Right to Assign.** The Developer may, by appropriate agreement made expressly for that purpose, assign or convey to a Successor Developer all, or any part, of the rights, reservations and privileges herein reserved by the Developer. Upon recording of the assignment in the Office of the Recorder Deeds of Clay County, Missouri, the Developer's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document. Every Successor Developer shall have the rights of the Developer, including the right to transfer such rights set forth in this section.
6. **Release of Liability.** None of the Developer, the Association, the Board of Directors or the members of the Review Committee, nor their respective officers, directors, stockholders, members, employees or agents, shall be liable to any person for any discretionary action taken or not taken under the terms hereof, including, without limitation, approval, disapproval or failure to approve of any application or enforcement or non-enforcement of the terms hereof. Furthermore, neither Developer nor any member of the Board, officer of the Association, or member of any committee of the Association (whether such committee is specifically described in this Declaration or hereafter created by the Association) shall be personally liable to any Owner, Member or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of Developer or such Board, officer of the Association, committee member, or any other representative or employee of the Association or of Developer, provided that such person has, upon the basis of such information as may be possessed by him, acted in subjective good faith, without willful or intentional misconduct.
7. **Indemnification.** To the fullest extent permitted by law, every director and officer of the Association, the members of the Review Committee and the Developer (to the extent a claim may be brought against the Developer by reason of its election, appointment, removal or control over directors of the Association Board, its officers or members or the Review Committee) shall be indemnified by the Association, and every other person serving as an employee or direct agent of the Association or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board of the

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Association, be indemnified by the Association against all liabilities, damages, costs and expenses, including reasonable attorneys' fees and costs, incurred by or imposed upon him in connection with any proceeding or any settlement thereof to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or in the case of the Developer by reason of having elected, appointed, removed or controlled, or failed to control, officers or directors of the Association or members of the Review Committee) whether or not he is a director, an officer or a member of the Review Committee, or serving in such other specified capacity at the time such expenses are incurred; provided, however, that prior to agreeing to any such indemnification, the Association's Board shall determine, in good faith, that such officer, director, member of the Review Committee or other person, or the Developer, did not act, fail to act or refuse to act, with gross negligence, in subjective bad faith or with fraudulent or criminal intent, in the performance of his or its duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise. Appropriate contractual liability insurance shall be obtained pursuant to Article 4 above to cover any liability exposure by virtue of the foregoing indemnification.

8. **Acknowledgement of Developer's Control. All persons or entities who are now or hereafter subject to this Declaration shall be deemed to acknowledge and agree that, prior to the Turnover Date, Developer shall retain significant voting control over the Association (and the election of the Board of Directors as well as appointment of the Review Committee) and that Developer has the unilateral right to modify or amend this Declaration (subject to any limitations hereinabove provided).**

**In Witness Whereof**, the Developer has caused this Declaration to be executed by its duly authorized officers as of the day and year first above written.

**Timothy D. Harris, LLC**

By:   
Timothy D. Harris, Sole Member

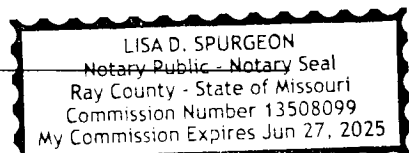
**Missouri Acknowledgment-Limited Liability Company  
(Member Managed)**

State of Missouri       )  
County of Clay        )

On 7/28, 2023, before me, the undersigned, a Notary Public, personally appeared Timothy D. Harris, to me known, who, being by me duly sworn, did say that he is the duly authorized agent and managing member of Timothy D. Harris, LLC, a limited liability company, and that said instrument was signed in behalf of said limited liability company, a member-managed limited liability company, by authority of the members and in accordance with its Articles of Organization and Operating Agreement, and the said Timothy D. Harris acknowledged that he executed the same as the free act and deed of such limited liability company.

**In Witness Whereof**, I have hereunto set my hand and affixed my official seal at my office in said county and state, the day and year last above written.

**My Commission Expires:**



  
Notary Public

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## **Exhibit A** **Legal Description of Property**

Lots 1-50, inclusive, and Tracts A-C, inclusive, **Auburndale Manor**, a subdivision of land in Kansas City, Clay County, Missouri, according to recorded plat thereof.

Before platting, the metes and bounds legal description of the foregoing Property was as follows:

### **DESCRIPTION FOR THE FINAL PLAT OF AUBURNDALE MANOR SITUATED IN A PORTION OF THE SOUTHEAST QUARTER OF SECTION 21 AND A PORTION OF THE SOUTHWEST QUARTER OF SECTION 22, ALL IN TOWNSHIP 52 NORTH, RANGE 32 WEST IN KANSAS CITY, CLAY COUNTY, MISSOURI.**

A tract of land being partially situated in the Southeast Quarter of Section 21 and partially in the Southwest Quarter of Section 22, all being in Township 52 North, Range 32 West, Kansas City, Clay County, Missouri, said tract of land lying Easterly of and coincident with the Easterly right-of-way line of N. Eastern Avenue as now established and lying Southwesterly of and coincident with the Southwesterly right-of-way line of NE. Cookingham Drive (also known as Missouri State Highway Route No. 291) as now established and lying Northwesterly of and coincident with the Northwesterly line of Lot A of the final plat of AUBURNDALE PATIO HOMES, a subdivision in said City, County and State recorded May 17, 2005 in the Office of the Recorder of Deeds for said County and State as Instrument No. 2005022433 in Plat Book F at Page 182. Said tract of land being now more particularly described as follows:

Commencing at the Southwest corner of the Southwest Quarter of aforesaid Section 22; thence North 00°16'50" East, along the West line of the Southwest quarter of said Section 22, a distance of 517.14 feet; thence South 89°43'10" East, perpendicular to the last described course, a distance of 47.24 feet to a point on the East right-of-way line of aforesaid N. Eastern Avenue, said point being the most Westerly, Northwest corner of aforesaid Lot A, AUBURNDALE PATIO HOMES, said point also being 46 feet East of the baseline of said N. Eastern Avenue as measured perpendicular to the baseline thereof and the Point of Beginning of the tract of land to be herein described; thence North 00°25'02" East along said East right-of-way line, being along a line 46 feet East of and parallel with the baseline thereof, a distance of 8.39 feet; thence North 03°51'03" East along said East right-of-way line, a distance of 100.18 feet to a point 52 feet East of the baseline of said N. Eastern Avenue as measured perpendicular to the baseline thereof; thence generally Northerly along the Easterly right-of-way line of said N. Eastern Avenue, said Easterly right-of-way line being 52 feet East of and parallel with the baseline thereof, the following courses and distances; thence North 00°25'02" East, 84.61 feet; thence Northerly and Northwesterly along a curve to the left, tangent to the last described course, having a radius of 752.00 feet and a central angle of 20°08'53", an arc length of 264.44 feet; thence North 19°43'52" West, tangent to the last described curve, a distance of 347.06 feet; thence Northwesterly, Northerly and Northeasterly along a curve to the right, tangent to the last described course, having a radius of 448.00 feet and a central angle of 58°13'18", an arc length of 455.24 feet; thence North 38°29'26" East, tangent to the last described curve, a distance of 124.10 feet to a point on the Southwesterly right-of-way line of NE. Cookingham Drive (also known as Missouri State Highway Route No. 291) as now established 40 feet Southwesterly of

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the baseline of said NE. Cookingham Drive as measured perpendicular to the baseline thereof; thence South 51°30'34" East, departing from the East right-of-way line of said N. Eastern Avenue, being now along the Southwesterly right-of-way line of said NE. Cookingham Drive, said Southwesterly right-of-way line being 40 feet Southwesterly of and parallel with the baseline thereof, a distance of 887.13 feet; thence Southeasterly along a curve to the left, tangent to the last described course, continuing along said Southwesterly right-of-way line, said curve being 40 feet Southwesterly of and parallel with the baseline of said NE. Cookingham Drive, having a radius of 22,958.31 feet and a central angle of 00°43'54", an arc length of 293.21 feet to the most Northerly corner of said Lot A, AUBURNDALE PATIO HOMES; thence generally Westerly along the Northwesterly line of said Lot A, the following courses and distances; thence South 58°03'57" West (South 58°05'06" West, Plat), a distance of 526.99 feet; thence South 24°00'54" West (South 24°02'03" West, Plat), a distance of 212.15 feet; thence North 89°43'28" West (North 89°42'19" West, Plat) a distance of 222.86 feet; thence South 58°03'57" West (South 58°05'06" West, Plat) a distance of 192.04 feet (189.15 feet, plat) feet to the Point of Beginning. This description having been prepared by Steven R. Whitaker, Missouri, P.L.S No. 2005019220. MEC Corporate Certificate / License No. 2012009395.

Containing 722,957 square feet or 16.597 acres, more or less.

**End of Exhibit**