

**DECLARATION OF  
THE VILLAS AT HICKORY HILLS  
A CONDOMINIUM**

**THIS INSTRUMENT** is the Declaration of The Villas at Hickory Hills, a Condominium, made as of the 15th day of August, 2008, pursuant to the provisions of Missouri's Uniform Condominium Act, §448.1-101, RSMo., *et seq.*

**Recitals**

**WHEREAS**, The Villas at Hickory Hills, LLC, a Missouri corporation, Grantor/Grantee, ("Declarant") is the owner in fee simple of all of the real property hereinafter described and the improvements thereon and appurtenances thereto; and

**WHEREAS**, Empire Bank, Grantor/Grantee, (the "Bank") is the holder of the promissory note secured by the Deed of Trust on the Property from the Declarant dated the 30th day of October, 2008, which is recorded among the records of Greene County, Missouri, in Book 2008, at Page 45773-08 (the "Deed of Trust"). The Bank is joining this Declaration for the sole purpose of subordinating the Deed of Trust to the legal operation and effect of this Declaration; and

**WHEREAS**, Declarant desires to create of this property a site of individually owned units, and commonly owned areas and facilities, and to these ends to submit this property to condominium ownership under Missouri's Uniform Condominium Act.

**Definitions**

The terms used in this document shall have these meanings, unless the context requires otherwise:

1. "Additional Property" means the land, and improvements thereon, that may, at a subsequent time, be added to the Condominium Property and become a part of the Condominium.
2. "Articles" and "Articles of Incorporation" mean the Articles of Incorporation, filed with the Secretary of State of Missouri, incorporating The Villas at Hickory Hills Condominium Association as a Missouri nonprofit corporation under the provisions of Chapter 355, RSMo.
3. "Assessments" mean all charges, of whatever nature, levied by the Association against a Unit and its Owners, and includes:
  - 3.1. "Operating Assessments,"

- 3.2. "Special Assessments for Capital Improvements," and
- 3.3. "Special Individual Unit Assessments," each of which is hereinafter defined in this Declaration.
4. "Association" and "The Villas at Hickory Hills Condominium Association" mean the nonprofit corporation created by the filing of the Articles and is also one and the same as the association created for the Condominium under Condominium Act.
5. "Board" and "Board of Directors" mean those persons who, as a group, serve as the board of directors of the Association.
6. "Bylaws" mean the bylaws of the Association, created under and pursuant to the provisions of the Condominium Act for the Condominium, and which also serve as the regulations for the management of the Association under and pursuant to the provisions of Chapter 355, RSMo.
7. "Common Elements" means all of the Condominium Property, except that portion described in this Declaration as constituting a Unit or Units.
8. "Condominium" and "The Villas at Hickory Hills, a Condominium" mean the condominium regime for the Condominium Property created under and pursuant to the Condominium Act.
9. "Condominium Act" means Missouri's Uniform Condominium Act, §448.1-101, RSMo., *et seq.*
10. "Condominium Instruments" means this Declaration, the Bylaws, the Plats and Plans, any contracts pertaining to the management of the Condominium Property, the original sale certificate provided for by the Condominium Act, and any other documents, contracts, or instruments establishing ownership of or exerting control over the Condominium Property or a Unit.
11. "Condominium Organizational Documents" means the Articles, the Bylaws, the Plats and Plans, and this Declaration.
12. "Condominium Property" means the real estate hereinafter described as being submitted to the Condominium Act, all buildings, structures and improvements situated thereon, and all easements, rights and appurtenances belonging thereto.
13. "Declarant" means whoever is designated in the recitals of this Declaration as creating the Condominium, and Declarant's successors and assigns; provided, however, that the rights specifically reserved to Declarant under the Condominium Organizational Documents shall accrue only to such successors and assigns as are designated in writing by Declarant as successors and assigns of such rights.
14. "Declaration" means this instrument, by which the Condominium Property is hereby submitted to the provisions of the Condominium Act.
15. "Director" and "Directors" mean that person or those persons serving, at the relevant time, as a Director or Directors of the Association.
16. "Eligible Lenders" means the beneficiaries of first deeds of trust on Units who have given written notice to the Association stating their names, addresses and Units subject to their deeds of trust.
17. "Limited Common Elements" means those Common Elements serving exclusively one Unit or more than one but less than all Units, the enjoyment, benefit or use of which are reserved to the lawful occupants of that Unit or Units either in this Declaration, or by the Board.
18. "Occupant" means a person lawfully residing in a Unit, regardless of whether or not that Person is a Unit Owner.

19. "Person" means a natural individual, trustee, corporation, partnership, limited liability company, or other legal entity capable of holding title to real property.
20. "Plats and Plans" means the plats and/or plans for the Condominium, as the context may require, which are a part of the Declaration as required by the Condominium Act.
21. "Unit" and "Units" mean that portion or portions of the Condominium Property described as a Unit or Units in this Declaration and designated by a Unit designation on the Plats and Plans, and is that portion of the Condominium constituting a "unit" or "units" of the Condominium under the provisions of the Condominium Act.
22. "Unit Owner" and "Unit Owners" or "Owner" and "Owners" mean that Person or those Persons owning a fee simple interest in a Unit or Units, each of whom is also a "member" of the Association, as defined in Chapter 355, RSMo.

**NOW, THEREFORE**, Declarant hereby makes and establishes the following plan for condominium ownership of the below-described property under and pursuant to the provisions of the Condominium Act:

**Article I  
Real Estate**

A legal description of the real estate constituting a part of the Condominium Property, located in the City of Springfield, Greene County, Missouri, and consisting of approximately 19.85 acres, more or less, is attached hereto and marked as Exhibit A.

**Article II  
Name**

The name by which the Condominium shall be known is "The Villas at Hickory Hills, a Condominium".

**Article III  
Purposes; Restrictions**

1. Purposes. This Declaration is being made to establish separate individual parcels from the Condominium Property to which fee simple interests may be conveyed; to create restrictions, covenants and easements providing for, promoting, and preserving the values of Units and the Common Elements and the well being of Unit Owners and Occupants; and to establish a Unit Owners' Association to administer the Condominium and the Condominium Property, to administer and enforce the covenants, easements, charges and restrictions hereinafter set forth, and to raise funds through Assessments to accomplish these purposes.
2. Restrictions. The Condominium and the Condominium Property shall be benefited by and subject to the following restrictions:
  - 2.1. Animals. Except as hereinafter provided, no animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or on the Common Elements. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained in a Unit, provided that: (i) the maintaining of animals shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation, the right to place limitations on the size, number and type of such pets, and the right to levy enforcement charges against Persons who do not clean up after their pets or abide by the rules and regulations promulgated by the Board; and (ii) the right of an Occupant to maintain an animal in a Unit shall be subject to termination if the Board, in its sole and absolute discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Condominium or other Units or Occupants.

- 2.2. Architectural Control. Except for improvements constructed by Declarant or Declarant's designee during the initial construction, no building, fence, wall, sign or other structure or improvement shall be commenced, erected or maintained upon the Condominium Property, or any part thereof, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board or its designated representative or representatives, in its or their sole and absolute discretion. Nothing visible to the exterior shall be permitted to be hung, placed, displayed or maintained in Limited Common Elements unless approved, in writing, by the Board or its designated representative or representatives, in its or their sole and absolute discretion, or unless the same is authorized by existing rule or regulation adopted by the Board. Notwithstanding any repair or maintenance provision contained herein to the contrary, the Board may require, as a condition to approval, that the responsibility for repairing and maintaining the addition or improvement shall be the responsibility of the requesting Unit Owner and all future Owners of that Unit.
- 2.3. Common Element Uses. The Common Elements (except the Limited Common Elements) shall be used in common by Unit Owners and Occupants and their agents, servants, customers, invitees and licensees, in accordance with the purposes for which they are intended, reasonably suited and capable, and as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of Units. Unless expressly provided otherwise herein, no Common Elements shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation or enjoyment of Unit Owners and Occupants.
- 2.4. Construction in Easements. No structure, planting or other material shall be placed or permitted to remain within the easements for the installation and maintenance of utilities and drainage facilities which may damage or interfere with the installation and maintenance of utility lines or which may change the direction of the flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easement areas. The utility facilities within the easement areas shall be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.
- 2.5. Conveyances. Each Unit shall be conveyed or transferred (voluntarily or involuntarily) as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof. The undivided interest of a Unit in the Common Elements shall be deemed to be conveyed or encumbered with the Unit even though that interest is not expressly mentioned or described in the deed, deed of trust or other instrument of conveyance or encumbrance. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an interest in the Common Elements will be void unless the Unit to which that interest is allocated is also transferred to the same transferee. In any instrument of conveyance or creating an encumbrance, or in any other document legally describing a Unit, it shall be sufficient to lawfully describe a Unit and its interest in the Common Elements by referring to the identifying number of the Unit, the recording data for the Declaration, and the county in which the Condominium is located. The right of a Unit Owner to sell, transfer or otherwise convey that Owner's Unit is not subject to any right of first refusal created by this Declaration. To enable the Association to maintain accurate records of the names and addresses of Unit Owners, each Unit Owner agrees to notify the Association, in writing, within five days after an interest in that Unit Owner's Unit has been transferred to another Person. In addition, each Unit Owner agrees to provide to a purchaser of that Owner's Unit a copy of the Condominium Organizational Documents and all effective rules and regulations.
- 2.6. Discrimination/Handicapped Accommodation. No action shall at any time be taken by the Association or its Board which in any manner would unlawfully discriminate against any Unit Owner in favor of another. In addition, notwithstanding any provision hereof, or any rule or regulation, the Board shall make reasonable accommodation if necessary to afford a handicapped Person equal opportunity to use and enjoy the Condominium Property; provided, that nothing contained herein shall be construed to mean or imply that any such accommodation be at the cost of the Association.

- 2.7. Limited Common Element Uses. Those portions of the Common Elements described herein and/or shown on the Plats and Plans as Limited Common Elements shall be used and possessed exclusively by the Unit Owners and Occupants of the Unit or Units served by the same, as specified in this Declaration, and shall be used only for the purposes intended and subject to the other provisions of this Declaration.
- 2.8. Offensive Activities. No noxious or offensive activity or abusive or harassing behavior, or any form of intimidation or aggression, either verbal or physical, shall be engaged in or carried on in any Unit, or upon the Common or Limited Common Elements, nor shall any be used in any way or for any purpose which may endanger the health of or unreasonably disturb any Occupant, or which might intimidate or interfere with the activities of any Occupant or representative of the Association or its managing agent, or their licensees or invitees.
- 2.9. Reallocations. Except as otherwise provided herein, boundaries between Units and/or appurtenant Limited Common Elements shall not be adjusted nor undivided interests in Units reallocated, nor rights to use Limited Common Elements reallocated, without the express prior written consent of the Board, which it may exercise in its sole and absolute discretion.
- 2.10. Renting and Leasing. No Unit or part thereof shall be rented or used for transient or hotel purposes, which is defined as: (i) rental under which Occupants are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (ii) rental to roomers or boarders, that is, rental to one or more persons of a portion of a Unit only. No lease may be of less than an entire Unit. No lease may be for a term of less than six months. Any lease agreement shall be in writing, shall provide that the lease shall be subject in all respects to the provisions hereof, and to the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the tenant to comply with the terms of the Condominium Organizational Documents and lawful rules and regulations shall be a default under the lease. The Association shall not have the right to initiate or prosecute eviction proceedings to evict a tenant of a Unit, either in its own name, as agent of the Association, or in the name of the Unit Owner. Prior to the commencement of the term of a lease the Unit Owner shall notify the Board, in writing, the name or names of the tenant or tenants, and all Occupants, and the time during which the lease term shall be in effect. Except as otherwise specifically provided herein, no more than ten percent (10%) of the Units may be held for rental or leasing purposes; however, there are no limitations on the number of Units that may be owned by any Unit Owner.
- 2.11. Replacements. Any building erected to replace an existing building containing Units shall be of new construction, be of comparable structure type, size, design and construction to that replaced, and shall contain a like number of Units of comparable size to the Units in the building replaced.
- 2.12. Rules and Regulations. In addition to adopting and enforcing rules and regulations in the instances specifically herein mentioned, the Board may, from time to time, adopt and enforce such further reasonable rules and regulations as it deems necessary or desirable to promote harmony, to serve the best interests of the Unit Owners, as a whole, and the Association, and to protect and preserve the nature of the Condominium and the Condominium Property. A copy of all rules and regulations shall be furnished by the Board to the Owners of each Unit prior to the time when the same shall become effective.
- 2.13. Signs; Commercial Devices. No sign, insignia, display, device, or form of external evidence of commercial advertising or use, of any kind, shall be displayed to the public view on the Condominium Property or on anything on the Condominium Property, except: (i) on the Common Elements, signs regarding and regulating the use of the Common Elements, provided they are approved by the Board; (ii) on the interior side of the window of a Unit, one professionally prepared sign not in excess of nine square feet in size, advertising the Unit for sale or rent; and (iii) on the Common Elements and model Units, signs advertising the sale and/or rental of Units by Declarant during the period of its sale and rental of Units shall be permitted; provided, however, that if these limitations on use of signs, or any

part thereof, are determined to be unlawful, only the signs described under 2.14(i) above shall be permitted after Declarant's period of sales and rental of Units.

- 2.14. Structural Integrity. Nothing shall be done in any Unit, or in, on or to the Common or Limited Common Elements, which may impair the structural integrity of any improvement.
- 2.15. Unit Uses. Except as otherwise specifically provided in this Declaration, no Unit shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping unit, and uses customarily incidental thereto; provided, however, that no Unit may be used as a rooming house, group home, commercial foster home, fraternity or sorority house, or any similar type of lodging, care or treatment facility. Notwithstanding the foregoing: (i) an Occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business (provided that such use does not involve customers, employees, licensees or invitees coming to the Unit), making professional telephone calls or corresponding, in or from a Unit, is engaging in a use expressly declared customarily incidental to residential use and is not in violation of these restrictions; (ii) it shall be permissible for Declarant to maintain, during the period of its sale or rental of Units, one or more Units, whether hereby made a part of the Condominium, or added hereafter, as sales and rental models and offices, and for storage and maintenance purposes; and (iii) one or more of such Units or a portion thereof may be maintained for the use of the Association in fulfilling its responsibilities.
- 2.16. Vehicles. The Board may promulgate rules and regulations restricting or prohibiting the parking of automobiles, vans, buses, inoperable vehicles, trucks, trailers, motorcycles, boats and recreational vehicles on the Common Elements, including the Limited Common Elements, or parts thereof, and may enforce such regulations or restrictions by levying enforcement charges, having such vehicles towed away, or taking such other lawful actions as the Board, in its sole and absolute discretion, deems appropriate.
- 2.17. Visible Areas. Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except interior inoffensive drapes, curtains, or louvered blinds) or placed on the outside walls of a building or otherwise outside of a Unit, or any part thereof, and no awning, canopy, shutter or television or citizens' band or other radio antenna or transmitter, or any other device or ornament, shall be affixed to or placed upon an exterior wall or roof or any part thereof, or the exterior of any door or window, or in, on, or over a patio, porch or balcony, visible to the exterior, unless authorized by the Board or required by applicable law to be allowed, but, in such case, the use shall be subject to such lawful rules and regulations as the Board may adopt from time to time.

#### **Article IV Improvement Descriptions**

1. Residential Buildings. There are initially two (3) residential buildings constituting the Condominium, each containing four (4) dwelling units, making a total of eight (12) dwelling units. The residential buildings are of traditional architectural style, ranch type (although some dwelling units may have a partial second story), with quad-plex layouts, so that each dwelling unit in a building faces in a different direction, and so that the garage spaces in each building adjoin at the center of the building. The dwelling units do not have basements. These buildings are of wood frame construction, on concrete foundations, with fiber-cement siding, brick and/or cultured stone trim, aluminum fascia, and asphalt shingle roofs. The principal materials of which these buildings are constructed are wood, glass, concrete, cultured stone or brick, asphalt shingle, and drywall. The residential buildings are located as shown on the Plats and Plans.
2. Other. Each dwelling unit has an attached two car garage, a private exterior entrance, an exterior parking area immediately in front of the dwelling unit's attached garage, a contiguous patio area with a concrete pad, and in some instances, an enclosed veranda. Also on and a part of the Condominium are portions of private roadways, mailbox facilities, walkways, driveways, drainage areas, and green and landscaped areas.

## **Article V Units**

1. Unit Designations. Each of the dwelling units, each of which is called "a Unit", is legally designated by a number, the first portion of said number corresponding with the numerical portion of the street address of the building in which that Unit is situated, followed by an alphabetic letter designating the building followed by a hyphen, then followed by the second portion of said number corresponding with Declarant's number of the Unit in that building.. The Unit designation of each Unit is shown on the Plats and Plans where that Unit is located. The location and designation of each Unit is also shown on the sketch plot plan attached hereto as Exhibit B. Information concerning the Units, with a listing of proper Unit designations, is shown on the attached Exhibit C.
  
2. Composition of Units. Each Unit constitutes a single freehold estate and consists, among other things, of the space in the building designated by that Unit's designation on the Plats and Plans that is bounded by the undecorated interior surfaces of the perimeter walls, the unfinished surface of the floor at the lowest level, and the unfinished interior surface of the ceiling of the highest floor, all projected, if necessary by reason of structural divisions such as interior walls and partitions, to constitute complete enclosures of space, and all improvements within that space. Without limiting the generality of the foregoing, or, as appropriate, in addition, each Unit shall include:
  - 2.1. the decorated surfaces, including paint, lacquer, varnish, wall covering, tile and other finishing material applied to floors, ceilings, and interior and perimeter walls, carpeting, if any, and the drywall, paneling and other finishing wall material;
  - 2.2. the finished walls, ceilings and floors themselves, but not the building's supporting elements, such as but not limited to rafters and joists, above the ceiling at the Unit's highest level, and the sub-flooring below the finished floors themselves at the lowest level of the Unit, and the structural walls or structural components thereof to which the finished walls, such as but not limited to plaster, drywall, and paneling are affixed;
  - 2.3. all windows, skylights, if any, and screens and doors, including storm doors and windows, if any, and the frames, sashes and jambs, and the hardware therefor;
  - 2.4. all fixtures and appliances installed for the exclusive use of that Unit, commencing at the point of disconnection from the structural body of the building and from utility pipes, lines or systems serving the entire building or more than one Unit thereof, including, without limiting the generality hereof, built-in cabinets, dishwashers, garbage disposal units, refrigerators, stoves and hoods, television antennas and cables, furnaces, hot water heaters, heat pumps, air conditioning units (even though located outside the bounds of a Unit), and components of the foregoing, if any;
  - 2.5. all plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts, conduits and apparatus, wherever located, which serve only that Unit;
  - 2.6. all control knobs, switches, thermostats and electrical outlets and connections affixed to or projecting from the walls, floors and ceilings which service only the Unit or the fixtures located therein;
  - 2.7. all interior walls that are not necessary for support of the structure, and all components thereof and all space encompassed thereby;
  - 2.8. the portion of fireplaces, if any, actually within the interior of a Unit and the vents and dampers therefor accessible from the Unit's interior;
  - 2.9. the space in the attached garage;
  - 2.10. the space in the attached enclosed veranda, if any; and

- 2.11. the attic space or storage space above the living area of a Unit, and the crawl space below a Unit, if any, to which the Unit has direct and exclusive access.
3. Exclusions from Units. All of the following items, whether or not located within the bounds of a Unit, shall not constitute a part of a Unit:
  - 3.1. any supporting element of the building contained in interior walls, floors and ceilings;
  - 3.2. all plumbing, electric, heating, cooling and other utility or service lines, pipes, sump pumps and accessories thereto, wires, ducts and conduits which serve any other Unit; and
  - 3.3. fireplace stacks and chimneys, if any.
4. Unit Types, Sizes, Locations and Components. The location, dimensions, type and composition of each Unit are shown on the Plats and Plans. Each Unit has direct access to the Common Elements, which lead directly to Cherry Street, a public street.

**Article VI**  
**Common Elements and Limited Common Elements**

1. Common Elements - Description. All of the Condominium Property, including all of the land and all improvements thereon and appurtenances thereto, (except those portions labeled or described herein) or on the Plats and Plans as a part of a Unit, are Common Elements.
2. Limited Common Elements - Description. Those portions of the Common Elements that are labeled or designated "Limited Common Elements" or "Limited Common Areas" on the Plats and Plans or as so described herein are Limited Common Elements. In the case of each Unit, these Limited Common Elements consist of a driveway area in front of the Unit's garage, a contiguous patio area with a concrete pad, and a concrete walkway, and the improvements in that area (except items that are defined as being part of a Unit and utility lines that serve another Unit). Each such Limited Common Element is reserved for the exclusive use of the Owners and Occupants of the Unit or Units it is designed or designated to serve.
3. Undivided Interest. Each Unit has an equal undivided interest in the Common Elements. The Common Elements shall be owned by the Unit Owners as tenants in common, and ownership thereof shall remain undivided. No Unit Owner may waive or release any rights in the Common Elements. Further, the undivided interest in the Common Elements of a Unit shall not be separated from the Unit to which it appertains. The Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void.

**Article VII**  
**Association**

1. Establishment of Association. The Association has been formed to be and to serve as the Unit Owners' Association of the Condominium. Declarant is presently the sole member of the Association.
2. The Association may not be dissolved without the written consent of the City Manager of the City of Springfield.
3. Membership. Membership in the Association shall be limited to the Unit Owners. Every Person who is or becomes a record Owner of a fee or undivided fee simple interest in a Unit is a Unit Owner and shall be a member. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit, and transfer of a Unit shall automatically transfer membership to the transferee.

4. Voting Rights. Voting rights of members are as set forth in the Bylaws.
5. Board of Directors. The number and composition, and the authority, rights and responsibilities, of the Board of Directors shall be as provided in the Articles and Bylaws. Members of the Board shall meet the qualifications set forth in the Bylaws.
  - 5.1. The Bylaws provide that Declarant shall designate three persons to constitute the initial Directors.
  - 5.2. No later than sixty (60) days after Declarant has sold and conveyed Units to which twenty-five percent (25%) of the undivided interests in the Common Elements appertain, the Unit Owners shall meet, and the Unit Owners other than Declarant shall elect one Director at such meeting to replace whichever Director Declarant designates.
  - 5.3. Within the earlier of (a) sixty days after Declarant has sold and conveyed Units to which seventy-five percent (75%) of the undivided interests in the Common Elements appertain; or (b) two years after Declarant has ceased to offer Units for sale in the ordinary course of business, the Association shall meet and all Unit Owners, including Declarant, shall elect six Directors, whose terms shall commence at the end of the meeting during which they are elected, to replace all of those Directors earlier elected or designated by the Unit Owners or Declarant, respectively. The terms of the six Directors shall be staggered so that the terms of one-third (two) of the Directors will expire and successors will be elected at each annual meeting of the Association. Thereafter, at such annual meetings, successors to the two Directors whose terms then expire shall be elected to serve three-year terms.
6. Security. The Association may, from time to time, implement measures of security on or with respect to the Condominium Property and/or its Unit Owners, Occupants, invitees and licensees. However, the Association is not and shall not be deemed to be a provider of security, shall have no duty to provide any security on the Condominium Property or with respect to its Owners, Occupants, invitees or licensees, and shall not be held liable for any loss, cost, or damage arising by failure of the Association to provide security or the effectiveness of security measures it undertakes, if any. The obligation to provide security lies solely with each Unit Owner and Occupant individually.

**Article VIII  
Maintenance and Repair**

1. Association Responsibility. The Association, to the extent and at such times as the Board, in its exercise of business judgment, determines to allocate funds for such purposes, shall maintain, repair and replace all improvements constituting a part of the Common Elements, including the Limited Common Elements, and including but not limited to utility facilities serving more than one Unit, utility lines in the Common Elements, lawns, shrubs, trees, walkways, drives, parking areas, fireplace stacks, liners and chimneys, and the structural portions and exterior portions of all buildings and improvements which are a part of the Common Elements, including the Limited Common Elements, and that do not constitute part of a Unit; provided, however, that the Association shall not be responsible for the cleaning and housekeeping of Limited Common Elements or components thereof. Except to the extent, if any, that a loss is covered by insurance maintained by the Association, and then only to the extent the net proceeds, after deductibles, are available for that purpose, the Association shall not have the responsibility to pay the cost of repair or maintenance of any Unit, or component thereof, or repair, maintenance or replacement of personal property within a Unit, or improvements made by Unit Owners hereafter.
2. City of Springfield Rights. Notwithstanding any other provision to the contrary within this Declaration, and in conjunction with the powers granted to the City of Springfield under Article I, Land Development Code, Section 5-2300, et seq., as amended, readopted or recodified from time to time, which is incorporated herein by reference, in the event for any reason the Association should fail to maintain any Common Area or Areas, or in the event the Association should be dissolved for any reason or cease to exist, and the Lot Owners (*Unit Owners for condominiums*) fail to maintain such Common Area or Areas, then the City shall have the right and full authority and ability to intercede and maintain the Common Areas and assess the City's costs of same to the Lot Owners (*or Unit Owners*) within the subdivision (*or*

*condominium*) or any lot (*unit*) or parcels previously served by the Association or any of the Common Areas of the subdivision (*condominium*), on a pro rata basis of square footage of the lots (*units*) within the area previously served by the Association and such shall run as a lien against the lots. The City shall be given the power provided herein, as well as any other remedy available to it under Law, to set and enforce such assessments to pay for the maintenance of, or abatement of any nuisance contained in, any Common Area or Areas.

3. Individual Responsibility. Each Unit Owner shall repair and maintain the Unit or Units, and all components thereof, owned by that Unit Owner, and improvements made by Unit Owners hereafter, and perform cleaning and housekeeping with respect to Limited Common Elements appurtenant to that Owner's Unit. Without limiting the generality of the foregoing, this repair and maintenance responsibility of a Unit Owner shall include repair, maintenance and replacement of all windows, screens and doors, including the frames, sashes and jambs, and the appurtenant hardware. In the event a Unit Owner shall fail to make a repair or perform maintenance required of that Unit Owner, or in the event the need for maintenance or repair of any part of any Unit or part of any of the Common Elements or Limited Common Elements is caused by the negligent or intentional act of any Unit Owner or Occupant, or is as a result of the failure of any Unit Owner or that Unit Owner's predecessors in title to timely pursue to conclusion a claim under any warranty, express, implied, or imposed by law, the Association may perform the same, and if the cost of such repair or maintenance is not covered by insurance, whether because of a deductible or otherwise, the cost thereof shall constitute a Special Individual Unit Assessment on the Unit owned by that Unit Owner and on that Unit Owner. The determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board.

#### **Article IX Utility Services**

Each Unit Owner by acceptance of a deed to a Unit agrees to pay for utility services separately metered or separately charged by the utility company to that Unit, and to reimburse the Association for that Owner's Unit's share of any utility cost that the Board, or its designee, reasonably determines is attributable to use by that Owner's Unit. All other utility costs shall be common expenses and paid by the Association.

#### **Article X Insurance; Losses**

1. Special Broad Form Casualty Insurance. The Board shall have the authority to and shall obtain insurance for all buildings, structures, fixtures and equipment, and common personal property and supplies now or at any time hereafter constituting a part of the Common Elements, the Limited Common Elements, or common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against under "special form" policies, or, if not available, or not available at competitive rates, a policy that includes the "broad form" covered causes of loss, in amounts at all times sufficient to prevent the Unit Owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and not less than one hundred percent (100%) of the current insurable replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage). This insurance shall also:
  - 1.1. provide for coverage of interior walls, windows and doors and the frames, sashes, jambs and hardware therefore, even though these improvements may be parts of Units;
  - 1.2. provide coverage for built-in or installed improvements, fixtures and equipment that are part of a Unit;
  - 1.3. have (i) an agreed amount and inflation guard endorsement, when that can be obtained, (ii) building ordinance or law endorsement, if any building, zoning, or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, providing for contingent liability from the operation of building laws, demolition costs, and increased costs of construction; and, (iii) when applicable, a steam boiler and machinery coverage endorsement, which

provides that the insurer's minimum liability per accident at least equals the lesser of two million dollars or the insurable value of the building or buildings housing the boiler or machinery (or a separate stand-alone boiler and machinery coverage policy);

- 1.4. provide that no assessment may be made against an Eligible Lender, or its insurer or guarantor, and that any assessment under such policy made against others may not become a lien on a Unit and its appurtenant interests superior to a first deed of trust;
  - 1.5. be written in the name of the Association for the use and benefit of the Unit Owners, or its authorized representative, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Unit Owners;
  - 1.6. contain or have attached the standard mortgagee clause commonly accepted by institutional lenders, insurers, and guarantors, which (i) must provide that the carrier shall notify the named insured and each first mortgagee (or holder of a first deed of trust) named in the mortgage clause at least ten days in advance of the effective date of any reduction in, cancellation of, or substantial change in the policy, and (ii) must be endorsed to provide that any loss shall be paid to the Association (or its insurance trustee), as a trustee for each Unit Owner and each such Unit Owner's mortgagee (or holder of a first deed of trust);
  - 1.7. have a deductible amount no greater than the lesser of ten thousand dollars or one percent of the policy face amount;
  - 1.8. be paid for by the Association, as a common expense;
  - 1.9. contain a waiver of the transfer of recovery rights by the carrier against the Association, its officers and Directors, and all Unit Owners;
  - 1.10. provide that the insurance shall not be prejudiced by any acts or omissions of individual Unit Owners who are not under the control of the Association; and
  - 1.11. be primary, even if a Unit Owner has other insurance that covers the same loss.
2. **Liability Insurance.** The Association shall obtain and maintain, at the Association's cost and as a common expense, a policy of commercial/general liability insurance covering all of the Common Elements, public ways and any other areas under the Association's supervision, and Units, if any, owned by the Association, even if leased to others, insuring the Association, its Directors, officers, agents and employees, and the Unit Owners and Occupants, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (b) one million dollars arising out of a single occurrence. This insurance shall contain a "severability of interest" provision, or, if it does not, an endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association, the Board, Unit Owners or Occupants, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of the Common Elements, and legal liability arising out of lawsuits related to employment contracts to which the Association is a party. Each such policy must provide that it may not be canceled or substantially modified, by any party, without at least ten days' prior written notice to the Association and to each holder of a first deed of trust on a Unit.
  3. **Fidelity Coverage.** From and after such time as Declarant no longer controls the Association, the Board shall obtain, or cause to be obtained, and maintain, a fidelity bond or policy providing coverage for the Association against dishonest acts on the part of Directors, officers, managers, trustees, employees, agents, and volunteers responsible for or handling funds belonging to or administered by the Association. The fidelity bond or policy shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is in no event less than the greater of (a) an amount equal to the

Association's reserve funds plus three months' Assessments on all Units, and (b) the maximum amount that will be in the custody of the Association or its managing agent at any time while the bond or policy is in force. In connection with such coverage, an appropriate endorsement to the bond or policy to cover any persons who serve without compensation shall be added if the bond or policy would not otherwise cover volunteers. The bond or policy shall provide that it shall not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten days' prior written notice to the Association, and any insurance trustee, and any servicer on behalf of any holder, guarantor or insurer of any deed of trust on a Unit who requires such rights. Any management agent who handles funds of the Association shall maintain a fidelity bond or policy providing coverage of no less than that required of the Association, which bond or policy names the Association as an additional obligee.

4. Hazard Insurance Carrier. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Missouri which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholders rating and a financial size category of "VIII" or better in Best's Insurance Reports—International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholders ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.
5. Other Association Insurance. In addition, the Board may purchase and maintain, at the Association's cost and as a common expense, contractual liability insurance, workers' compensation insurance, directors' and officers' liability insurance, and such other insurance as the Board may determine or as required by law.
6. Insurance Representative; Power of Attorney. There may be named under any policy obtained by the Association, as an insured on behalf of the Association, its authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy. Each Unit Owner, by acceptance of a deed to a Unit, irrevocably appoints the Association or such designated representative, or such successor, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or such designated representative, or such successor, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for Unit Owners and the holders of first deeds of trust for the Units, as their interests may appear. This power is for the benefit of each and every Unit Owner, holders of first deeds of trusts, the Association, and the Condominium, runs with the land, and is coupled with an interest.
7. Unit Owners' Insurance. Any Unit Owner or Occupant may carry such insurance in addition to that provided by the Association pursuant hereto as that Unit Owner or Occupant may determine, subject to the provisions hereof, and provided that no Unit Owner or Occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the insurance carried pursuant hereto by the Association. In the event any Unit Owner or Occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Unit Owner who acquired or whose Occupant acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. Without limiting the foregoing, a Unit Owner or Occupant may obtain insurance against liability for events occurring within a Unit, losses with respect to personal property and furnishings, and losses to improvements owned by the Unit Owner or Occupant, provided that if the Association obtains insurance for permanent improvements and built-in fixtures and equipment, then the insurance obtained by the Unit Owner with respect to improvements within the Unit shall be limited to the type and nature of coverage commonly referred to as "tenants' improvements and betterments." All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and Directors, and all other Unit Owners and

Occupants.

8. **Sufficient Insurance.** In the event the improvements forming a part of the Common Elements or any portion thereof shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be used in payment therefore; provided, however, that in the event that within sixty (60) days after such damage or destruction the Unit Owners and Eligible Lenders, if they are entitled to do so pursuant to the provisions of this Declaration, subject to the Condominium Act, shall elect to terminate the Condominium, then such repair, restoration or reconstruction shall not be undertaken.
9. **Insufficient Insurance.** In the event the improvements forming a part of the Common Elements or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, unless the Unit Owners and Eligible Lenders, if they are entitled to do so pursuant to the provisions of this Declaration, subject to the Condominium Act, shall elect within sixty (60) days after such damage or destruction not to make such repair, restoration or reconstruction, the Association shall make repairs, restoration or reconstruction of the Common Elements so damaged or destroyed at the expense (to the extent not covered by insurance) of all Unit Owners in proportion to their respective undivided interests in the Common Elements. Should any Unit Owner refuse or fail after reasonable notice to pay that Unit Owner's share of such cost in excess of available insurance proceeds, the amount so advanced by the Association shall be assessed against the Unit of such Unit Owner and that Assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of Assessments.
10. **Lender Requirements.** Notwithstanding the foregoing provisions of this Article, the Association shall at all times maintain hazard insurance, liability insurance, and fidelity insurance coverage conforming with the requirements then governing the making of a first deed of trust, or the purchase, guaranty, or insurance of first deeds of trust, by national institutional lenders, guarantors or insurers of first deeds of trusts on condominium units.

## **Article XI**

### **Damage Restoration; Termination**

1. **Restoration of Substantial Damage or Destruction.** In the event of substantial damage to or destruction of all Units in a residential building, or the taking of one or more Units in any condemnation or eminent domain proceedings, the Association shall promptly restore or replace the same, unless an election is made not to do so, as hereinafter provided.
2. **Election Not to Restore; Termination.** Subject to the Condominium Act, the Association may, with the consent of Unit Owners entitled to exercise not less than eighty percent (80%) of the voting power of Unit Owners, and the consent of Eligible Lenders hereinafter provided, both given within sixty (60) days after damage or destruction, determine not to repair or restore the damage or destruction, and to terminate the Condominium. In any such an event, all of the Condominium Property shall be sold in accordance with the Condominium Act. In the event of such an election not to repair or restore substantial damage or destruction or reconstruct such Unit or Units, the net proceeds of insurance paid by reason of such damage or destruction, or the net amount of any award or proceeds of settlement arising from such proceedings, together with the proceeds received from the sale of the Condominium Property, or in the case of an election otherwise to terminate the Condominium, the net proceeds from the sale, shall be distributed among the Owners of the Units, and the holders of their respective lienholders (as their interests may appear), as specified in the Condominium Act.

## **Article XII Condemnation**

1. **Standing.** Except as hereinafter provided, the Association, or its designated representative, or authorized successor, as trustee, shall represent the Unit Owners in any condemnation or eminent domain proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of all or any part of the Condominium Property, and shall have the sole and exclusive right to settle losses with the condemning authority and to receive the award or proceeds of settlement, for the use and benefit of the Unit Owners and their lienholders as their interests may appear. Notwithstanding the foregoing, in the event that a Unit Owner may lawfully separately pursue and realize upon a claim for incidental and consequential losses or damage to that Unit Owner resulting from a taking under the power of eminent domain, such as for relocation and moving expenses, loss of favorable mortgage terms, and other such individual incidental or consequential losses, that Unit Owner may, at that Unit Owner's election, separately pursue such claim, provided, that the pursuing of the same, or the realization of an award thereof, neither jeopardizes, in any way, an action by the Association to recoup the losses incurred by it, or any other Unit Owner, or the direct loss with respect to the Unit itself, or with regard to the usability thereof, nor diminishes any award for any such loss.
2. **Use of Proceeds.** The award or proceeds of settlement in any actual or threatened condemnation or eminent domain proceedings, after reduction by the costs, if any, incurred in obtaining the same, shall be applied first to the cost of restoring or replacing all damaged or taken improvements on the remaining Condominium Property in accordance with the Plats and Plans, or in accordance with any new plans and specifications therefor approved by Unit Owners exercising no less than seventy-five percent (75%) of the voting power of Unit Owners, and the consent of Eligible Lenders hereinafter provided.
3. **Insufficient Proceeds.** If the award or proceeds are insufficient for such purpose, the excess cost shall be paid by the Association and, to the extent funds of the Association are insufficient therefor, in the judgment of the Board, such excess cost shall be a common expense and assessed among the Units in the same manner as Special Assessments for Capital Improvements are assessed. Except as hereinafter provided, the balance of any such award or proceeds of settlement, if there is an excess, shall be allocated and disbursed to the Unit Owners, and holders of first deeds of trust, as their interests may appear, in proportion to the relative undivided interests of the Units in the Common Elements.
4. **Non-Restorable Unit.** Notwithstanding the foregoing, in the event that as a result of any such taking, and consequent restoration or replacement, any Unit could not reasonably be restored to a condition comparable to that which existed prior to the taking, or could not be replaced, prior to the allocation and disbursement of any sum to any other Unit Owner or that Unit Owner's first lender, there shall be allocated and disbursed from such award or proceeds, to each Unit Owner whose Unit cannot be so restored or replaced, and that Unit Owner's respective first lender, as their interests may appear, such amount as is equal to the then fair market value of the Unit that cannot be so restored or replaced. Thereupon, such Unit or Units, and the Owners thereof, shall be immediately and automatically divested of any interest in the Condominium, the Condominium Property, and the Association, including, without limiting the generality of the foregoing, divestment of an undivided interest, vote, membership in the Association, and liability for common expenses. All such rights and interests shall be reallocated among all other Units and Unit Owners in the same relative proportions as those rights and interests were prior to such taking. To illustrate, upon a Unit being divested from the Condominium, (a) the voting right of that Unit will be equally allocated among all other Units, and their Owners, since the Unit Owners of each Unit prior thereto had an equal vote, and (b) the undivided interest of that Unit will be reallocated among all other Units in the proportions of their relative undivided interests prior to such taking.
5. **Power of Attorney.** Each Unit Owner, by acceptance of a deed to a Unit, appoints the Association, or its designated representative, as that Unit Owner's attorney-in-fact to represent that Unit Owner, settle losses, receive and utilize the award or proceeds of settlement, and do all things necessary or desirable for such attorney-in-fact to exercise the rights and fulfill the responsibilities of the Association set forth in this Article with respect to condemnation or eminent domain proceedings. This power is for the benefit of each and every Unit Owner, each holder of a first deed of trust on a Unit, the Association, and the real estate to

which it is applicable, runs with land, is coupled with an interest, and is irrevocable.

**Article XIII**  
**Grants; Reservations of Rights; Easements**

1. Easements of Enjoyment; Limitations. Every Unit Owner shall have a right and easement of enjoyment in, over and upon the Common Elements and an unrestricted right of access to and from that Unit Owner's Unit, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Elements and the Limited Common Elements; provided that no such rule or regulation shall limit or prohibit the right of ingress and egress to a Unit, or any part thereof, or to that Unit's parking facilities. Each Unit Owner shall be deemed to have delegated that Unit Owner's right of enjoyment to the Common Elements and to ingress and egress to the Occupants of that Owner's Unit.
2. Easements for Encroachments. Each Unit and the Common Elements and Limited Common Elements shall be subject to and benefited by easements for encroachments on or by any other Unit and upon the Common Elements and Limited Common Elements created or arising by reason of overhangs; or by reason of deviations in construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements; or by reason of errors on the Plats and Plans. Valid easements for these encroachments and for the maintenance of same, as long as the physical boundaries of the Units after the construction, reconstruction, repairs, etc., will be in substantial accord with the description of those boundaries that appears herein or on the Plats and Plans, shall and do exist so long as the encroachments remain.
3. Easements Reserved to Declarant. Non-exclusive easements are hereby reserved to Declarant, its successors and assigns, over and upon the Common Elements and Limited Common Elements as follows:
  - 3.1. to provide access to and for the purpose of completing improvements for which provision is made in this Declaration; provided, however, that such right of access shall be to the extent, but only to the extent, that access thereto is not otherwise reasonably available;
  - 3.2. for the periods provided for warranties hereunder by law or as agreed between Declarant and any Unit Owners, for purposes of making required repairs; and
  - 3.3. for the initial sales and rental period, to maintain and utilize one or more Units and appurtenances thereto, and/or a portion or portions of the Common Elements for sales and management offices and for storage and maintenance, and model Units, parking areas for sales and rental purposes, and advertising signs;

The rights and easements reserved pursuant to the provisions of this section shall be exercised and utilized, as the case may be, in a reasonable manner, and in such way as not to unreasonably interfere with the operation of the Association and the rights of Owners and Occupants of Units.

4. Easements for Proper Operations. Easements to the Association shall exist upon, over and under all of the Condominium Property for ingress to and egress from, and the installation, replacing, repairing and maintaining of, all utilities, including, but not limited to water, sewer, gas, telephone, electricity, security systems, master television antennas and cable television, and the road system and all walkways, and for all other purposes necessary for the proper operation of the Condominium Property. By these easements it shall be expressly permissible for the Association to grant to the appropriate public authorities and/or the providing companies and contractors permission to construct and maintain the necessary appurtenances and improvements on, above, across and under the Condominium Property, so long as such appurtenances and improvements do not unreasonably interfere with the use and enjoyment of the Condominium Property. Should any public authority or other company furnishing a service request a specific easement, permit, or license, the Board shall have the right to grant such easement, permit, or license without conflicting with the terms hereof. In addition, in the event the Board determines that the grant of easement rights to others is in the best interests of the Association, the Association shall have the right to grant the same, provided that use of the same would not, in the sole and absolute judgment of the Board, unreasonably interfere with the use and enjoyment of the Condominium Property by Owners and Occupants.

5. Easement for Support. Every portion of a building or utility line or any improvement on any portion of the Condominium Property contributing to the support of another building, utility line or improvement on another portion of the Condominium Property shall be burdened with an easement of support for the benefit of all other such buildings, utility lines, improvements and other portions of the Condominium Property.
6. Easement for Services. Non-exclusive easements are hereby granted to all police, firemen, ambulance operators, mailmen, delivery men, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association, but not to the public in general, to enter upon the Common Elements in the performance of their duties, subject to such reasonable rules and regulations as the Board may establish from time to time.
7. Entry for Repair, Maintenance, and Restoration. The Association shall have a right of entry and access to, over, upon and through all of the Condominium Property, including each Unit and the Limited Common Elements, to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to maintenance, repair, restoration and/or servicing of any items, things or areas of or in the Condominium Property. In the event of an emergency, the Association's right of entry to a Unit and its appurtenant Limited Common Elements may be exercised without notice; otherwise, the Association shall give the Owners or Occupants of a Unit no less than twenty-four hours advance notice prior to entering a Unit or its appurtenant Limited Common Elements.
8. Power of Attorney. Each Unit Owner, by acceptance of a deed to a Unit, appoints the Association or its designated representative, as that Unit Owners attorney-in-fact, to execute, deliver, acknowledge and record, for and in the name of such Unit Owner, such deeds of easement, licenses, permits, and other instruments as may be necessary or desirable, in the sole and absolute discretion of the Board, or its authorized representative, to further establish or effectuate the foregoing easements and rights. This power is for the benefit of each and every Unit Owner, the Association, and the real estate to which it is applicable, runs with the land, is coupled with an interest, and is irrevocable.
9. General. Unless specifically limited herein otherwise, the foregoing easements shall run with the land and pass with the title to the benefited properties, shall be appurtenant to the properties benefited thereby, shall be enforceable by Declarant, the Association, and the Owners of the properties benefited thereby, and shall be perpetual. The easements and grants provided herein shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or constitute an intention not to reserve said rights or easements, but the same shall be deemed conveyed or encumbered, as the case may be, along with the Unit.

**Article XIV**  
**Assessments; Liens; Reserve Funds**

1. Types of Assessments. Declarant, for each Unit within the Condominium, hereby covenants and agrees, and each Unit Owner by acceptance of a deed to a Unit (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to pay to the Association, to be established and collected as hereinafter provided:
  - 1.1. Operating Assessments;
  - 1.2. Special Assessments for Capital Improvements; and
  - 1.3. Special Individual Unit Assessments.
2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote and provide for the health, safety and welfare of Unit Owners and Occupants, to maintain and operate the Condominium Property, and for the operation of the Association.

### 3. Operating Assessments.

- 3.1. Prior to the time any Unit Owner is to be charged Assessments by the Association, the Board shall establish for the remainder of the Association's fiscal year, and prior to the beginning of each fiscal year of the Association thereafter, the Board shall estimate for the next fiscal year, and, in each case, prorate among all Units and their Unit Owners on the basis of the undivided interest of each Unit in the Common Elements, the common expenses of the Association, consisting of the following:
  - 3.1.1. that period's estimated cost of the maintenance, repair, and other services to be provided by the Association;
  - 3.1.2. that period's estimated costs for insurance premiums to be provided and paid for by the Association;
  - 3.1.3. that period's estimated costs for utility services not separately metered or charged to Unit Owners;
  - 3.1.4. the estimated amount required to be collected to maintain a working capital reserve fund, to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board, but in no event less than an amount equal to two months' currently estimated Assessments on all Units;
  - 3.1.5. an amount deemed adequate by the Board in its sole and absolute discretion, and without vote of Unit Owners, to establish or augment an existing reserve for the cost of unexpected repairs and replacements of capital improvements and for the repair and replacement of major improvements for which cash reserves over a period of time in excess of one year ought to be maintained; and
  - 3.1.6. that period's estimated costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded.
- 3.2. The Board shall thereupon allocate to each Unit that Unit's share of all of these items, prorated in accordance with each respective Unit's undivided interest in the Common Elements, and thereby establish the Operating Assessment for each separate Unit. For administrative convenience, any such Assessment may be rounded so that monthly installments will be in whole dollars.
- 3.3. The Operating Assessment shall be payable in advance, in equal monthly installments, provided that nothing contained herein shall prohibit any Unit Owner from prepaying Assessments in annual, semiannual, or quarterly increments. The due dates of any such installments shall be established by the Board, or, if it fails to do so, an equal monthly pro rata share of the Operating Assessment for a Unit shall be due the first day of each month.
- 3.4. If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board among the Units and their Owners on the same basis as heretofore set forth; provided, that if common expenses are incurred by the Association prior to the time the Association commences to levy Assessments against Units, Declarant shall pay the same (subject to its right, if any, to reimbursement from Unit purchasers contained in individual contracts for the sale of a Unit or Units or, if not, from the Association).
- 3.5. If Operating Assessments collected are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained as reserves, or as reductions in future Assessments, as determined by the Board, in its sole and absolute discretion, and shall in no event be deemed profits nor be available, except on dissolution of the Association, for

distribution to Unit Owners.

- 3.6. Each Unit's share of the working capital reserve fund shall be collected at the time the sale of the Unit is closed. The working capital reserve fund shall be transferred to the Association for deposit at or prior to the time Unit Owners other than Declarant control the Association.
4. Special Assessments for Capital Improvements.
  - 4.1. In addition to Operating Assessments, the Board may levy, at any time, Special Assessments for Capital Improvements to construct, reconstruct or replace capital improvements on the Common Elements to the extent that reserves therefore are insufficient; provided that new capital improvements not replacing existing improvements (except new capital improvements required to comply with applicable law or governmental regulation, or to correct any deficiency or defect creating a safety or health hazard to Occupants) shall not be constructed nor funds assessed therefore, if the cost thereof in any fiscal year would exceed an amount equal to five percent (5%) or more of that fiscal year's budget, without the prior consent of Unit Owners exercising not less than seventy-five percent (75%) of the voting power of Unit Owners and the consent of Eligible Lenders hereinafter provided.
  - 4.2. Each Special Assessment for Capital Improvements shall be prorated among all Units and their Owners in proportion to the respective undivided interests of the Units in the Common Elements, and shall become due and payable on such date or dates as the Board determines following written notice to the Unit Owners.
5. Special Individual Unit Assessments. Subject to the applicable provisions of the Bylaws regarding procedures with respect thereto, the Board may levy Special Individual Unit Assessments against an individual Unit, or Units, and the Unit Owner or Owners thereof, to reimburse the Association for those costs incurred in connection with that Unit or Units properly chargeable by the terms hereof to a particular Unit (such as, but not limited to, the cost of making repairs the responsibility of a Unit Owner, the cost to reimburse the Association for that Owner's Units share of any utility cost that the Board, or its designee, reasonably determines is attributable to that Owner's Unit, the portion of the cost of casualty and/or liability insurance provided by the Association that the Board determines is attributable to a particular use of a Unit or course of conduct by a Unit Owner or Occupant of that Owners Unit, returned check charges, interest, late charges, collection costs, and enforcement charges properly chargeable to a Unit and its Owners pursuant hereto). Each Special Individual Unit Assessment shall become due and payable on such date as the Board determines, and gives written notice to the Unit Owners subject thereto.
6. Effective Date of Assessment. Any Assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Unit Owner subject thereto at least ten (10) days prior to the due date thereof, or if to be paid in installments, the due date of the first installment thereof. Written notice mailed or delivered to a Unit Owner's or Unit Owners' Unit shall constitute notice to that or those Unit Owners, unless the Unit Owner or Unit Owners have delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Unit Owner or those Unit Owners.
7. Effect of Nonpayment of Assessment; Remedies of the Association.
  - 7.1. If any Assessment or installment or portion of any installment of an Assessment is not paid within at least ten (10) days after the same is due, the entire unpaid balance of the Assessment shall immediately become due and payable, without demand or notice, unless the Board, in its sole and absolute discretion, determines not to accelerate the installments.
  - 7.2. If any Assessment or installment or portion of any installment of an Assessment is not paid within at least ten (10) days after the same is due, the Board, at its option, and without demand or notice, may (i) charge interest on the entire unpaid balance (including the accelerated portion thereof) at such rate as the Board, from time to time, establishes by rule; or if the Board fails to establish a rate by rule, at the rate of nine percent (9%) per annum, (ii) charge a reasonable, uniform, late fee, as established

from time to time by the Board, by rule, and (iii) charge the cost of collection, including attorneys' fees and other out-of-pocket expenses.

- 7.3. Operating Assessments, Special Assessments and Special Individual Unit Assessments, together with interest, late fees, and costs, including attorneys' fees, shall be a charge in favor of the Association upon the Unit against which each such Assessment is made.
- 7.4. At any time after any Assessment or any installment of an Assessment, or any portion of any installment of an Assessment levied pursuant hereto remains unpaid for ten (10) or more days after the same has become due and payable, a certificate of lien for the unpaid balance of that Assessment, including all future installments thereof, interest, late fees, collection costs and expenses, including attorneys' fees, and court costs and filing fees ("collection costs"), may be filed with the Recorder of Deeds for Greene County, Missouri, pursuant to authorization given by the Board. The certificate shall contain a description or other sufficient legal identification of the Unit against which the lien exists, the name or names of the record Owner or Owners thereof, and the amount of the unpaid portion of the Assessments and charges, and shall be signed by the president or other designated representative of the Association and acknowledged before a notary public.
- 7.5. The lien provided for herein shall become effective from the time a certificate of lien or renewal certificate was duly filed therefore, and shall continue for a period of ten (10) years unless sooner released or satisfied in the same manner provided by law in the State of Missouri for the release and satisfaction of deeds of trust on real property, renewed by recording a writing renewing the lien (which shall continue the lien for an additional period of ten (10) years from the date of recording), or discharged by the final judgment or order of a court in an action brought to discharge the lien, and may be foreclosed in the same manner as a deed of trust with a power of sale against real property under Missouri law.
- 7.6. Any Unit Owner who believes that an Assessment chargeable to that Unit Owner's Unit (for which a certificate of lien has been filed by the Association) has been improperly charged against that Unit, may bring an action in the Circuit Courts of Greene County, Missouri, for the discharge of that lien. In any such action, if it is finally determined that all or a portion of the Assessment has been improperly charged to that Unit and its Owners, the Court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.
- 7.7. Each such Assessment, together with collection costs, shall also be the joint and several personal obligations of the Unit Owners who owned the Unit at the time when the Assessment became due. The obligation for delinquent Assessments, interest, late charges and collection costs shall not be the personal obligation of that or those Unit Owner or Owners' successors in title unless expressly assumed by the successors, or required by applicable law; provided, however, that the right of the Association to a lien against that Unit, or to foreclose any lien thereon for these delinquent Assessments, interest, late charges and costs, shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby.
- 7.8. The Association, as authorized by the Board, may file a lien or liens to secure payment of collection costs, bring or join in an action at law against the Unit Owner or Owners personally obligated to pay the same, take action to foreclose a lien, or exercise any one or more of these options. The Association in any foreclosure action involving a Unit or Units shall be entitled to become a purchaser at the foreclosure sale. In any such foreclosure action, interest and costs of such action (including attorneys' fees) shall be added to the amount of any such Assessment.
- 7.9. No claim of the Association for Assessments and charges, whether in a collection action, foreclosure action, or otherwise, shall be subject to setoffs, off sets, counterclaims, or cross-claims, including, without limiting the generality of the foregoing, claims that the Association has failed to provide the Unit Owner with any service, goods, work, or materials, or failed in any other duty.
- 7.10. No Unit Owner or Owners may waive or otherwise escape liability for the Assessments provided for

in this Declaration by non-use of the Common Elements, or any part thereof, or by abandonment of that Owner's or those Owners' Unit.

7.11. Assessments shall run with the land, are necessary to continue the care, repair and maintenance of Units and their undivided interests in the Condominium Property, and to continue to provide utility and security service, if any, and, accordingly, Assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.

**7.12. WAIVER OF JURY TRIAL. THE ASSOCIATION, EACH UNIT OWNER, BY ACCEPTANCE OF A DEED TO A UNIT, AND THE HOLDER OF ANY DEEDS OF TRUST OR LIENS ON A UNIT, BY ACCEPTING OR APPLYING SUCH DEED OF TRUST OR LIEN ON A UNIT, HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR CLAIMS ARISING OUT OF THE ASSESSMENT, ENFORCEMENT, OR COLLECTION OF ASSESSMENTS AS PROVIDED IN THIS ARTICLE XIV OF THE DECLARATION.**

8. Subordination of the Lien to First Deeds of Trust. The lien of the Assessments and charges provided for herein shall be subject and subordinate to the lien of any duly executed first deed of trust on a Unit recorded prior to the date on which such lien of the Association arises, and any holder of such first deed of trust which comes into possession of a Unit pursuant to the remedies provided in the deed of trust, foreclosure of the deed of trust, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid installments of Assessments and charges against the Unit which became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date legal title vested in the successor owner. The foregoing will not relieve any successor Unit Owner from the obligation for Assessments accruing thereafter; nor shall the foregoing relieve the responsible Unit Owner from personal responsibility for the unpaid Assessments and charges. Notwithstanding the foregoing, rental payments a receiver collects during the pendency of a foreclosure action shall first be applied to the payment of the portion of common expenses chargeable to the Unit and its Owners during the foreclosure action.
9. Certificate Regarding Assessments. The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by the president, treasurer, secretary or other designated representative of the Association, setting forth whether the Assessments on a specified Unit have been paid. This certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

#### **Article XV Notices to and Voting Rights of Lending Institutions**

1. Notices. Any Eligible Lender, upon written request to the Association in compliance with Section 1.4 of this Article, shall be entitled to timely written notice by the Association of:
  - 1.1. any proposed addition to, change in, or amendment of the Condominium Organizational Documents of a material nature, including any addition to, change in, or amendment of any provision establishing, providing for, governing, or regulating: (i) voting rights; (ii) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or priority of such liens; (iii) reductions in reserves for maintenance, repair, and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements (including the Limited Common Elements), or rights to their use; (vi) redefinition of boundaries of any Unit; (vii) convertibility of Units into Common Elements or vice versa; (viii) hazard or fidelity insurance requirements; (ix) imposition of any restrictions on the leasing of Units; (x) imposition of any restrictions on a Unit Owner's right to sell or transfer that Owner's Unit; (xi) restoration or repair of the Condominium Property after damage or partial condemnation in a manner other than specified in the Condominium instruments; (xii) termination of the legal status of the Condominium after substantial destruction or condemnation occurs; or (xiii) expressly benefiting the holders of first deeds of trust or their insurers, or guarantors. No addition to, change in, or amendment of the Condominium Organizational Documents shall be considered material if it is for the purpose of correcting technical

errors, or for clarification only.

- 1.2. any proposed decision or action that: (i) terminates professional management and establishes self-management when professional management has been required previously by an Eligible Lender; (ii) causes restoration or repair of the Condominium Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Organizational Documents; (iii) substantial damage or destruction not be restored; (iv) the Condominium Property be renewed or rehabilitated; (v) significant new capital improvements not replacing existing improvements be constructed; or (vi) would, without addition to, change in, or amendment of the Condominium Organizational Documents, make any change with respect to the items described in Section 1.1 of this Article.
- 1.3. any condemnation or casualty loss that affects either a material portion of the Condominium Property or the Unit securing its first deed of trust; (ii) any delinquency for sixty (60) days in the payment of Assessments or charges owed by the Owner of any Unit on which it holds the first deed of trust; (iii) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and (iv) any proposed action that requires the consent of a specified percentage of Eligible Lenders.
- 1.4. A holder of a first deed of trust on a Unit which has sent a written request to the Association stating its name and address, the name and Unit of the applicable Unit Owner(s), and that it desires to be an Eligible Lender under this Declaration, shall be entitled to timely written notices of the events described in Section 1 of this Article.
2. Voting Rights. No action with respect to which Eligible Lenders are entitled to notice, as provided in Sections 1.1 or 1.2 of this Article, may be taken without the consent of Eligible Lenders of Units to which not less than fifty-one percent (51%) of the votes of Units subject to first deeds of trust held by Eligible Lenders appertain; provided, further, that no action to terminate the Condominium or that would have that effect other than by reason of substantial destruction or condemnation of the Condominium Property, shall be taken without the consent of Eligible Lenders of Units to which not less than seventy-five percent (75%) of the votes of Units subject to first deeds of trust held by Eligible Lenders appertain.
3. An Eligible Lender of a Unit who receives a written notice approve changes, additions, or amendments sent by certified or registered mail, return receipt requested, and who does not deliver or post to the requesting party a negative response within thirty (30) days after receipt of the same, shall be deemed to have consented to the changes, additions or amendments set forth in the notice.

## **ARTICLE XVI**

### **Expansion Developmental Rights**

1. Reservation of Expansion Option. Declarant expressly reserves the option to expand the Condominium Property, but only within the limitations, and subject to the terms, set forth in this Article.
2. Limitations on Option. Declarant has no limitations on its option to expand the Condominium Property except as provided in this Article, or elsewhere in this Declaration, and except as otherwise so expressly limited, has the sole right, power, and authority to expand the Condominium Property without the consent of any Unit Owner or Owners or Eligible Lenders.
3. Maximum Expansion Time. Except as hereinafter provided, Declarant's option to expand the Condominium Property shall expire and terminate at the end of seven years from the date this Declaration is filed for record. Notwithstanding the foregoing, Declarant, with the consent of a majority of the Unit Owners other than Declarant, may extend Declarant's option to expand the Condominium Property for an additional seven years, if Declarant exercises the right to so renew within six months prior to the expiration of that initial seven year period. Declarant shall have the right to waive Declarant's option to expand at any time by a duly recorded instrument. There are no other circumstances that will terminate this option prior to the expiration

of the time limit.

4. **Legal Descriptions.** A legal description or descriptions of all of the property that is part of the Additional Property, and that, through exercise of Declarant's option, may be added to the Condominium Property by submission to the Condominium Act as part of this Condominium, is attached hereto and marked Exhibit D.
5. **Composition of Portions Added.** Neither all nor any portion of the Additional Property must be added to the Condominium Property, nor, if any of the Additional Property is added, shall it be required that a particular portion of the Additional Property must be added, provided that portions added meet all other requirements set forth in this Article and provided, further, that all improvements a part of the Additional Property added to the Condominium Property shall be substantially completed prior to the addition. There are no limitations fixing the boundaries of portions added, or regulating the order in which portions are added.
6. **Time for Adding Portions.** Portions of the Additional Property may be added to the Condominium Property from time to time, and at different times, within the time limits previously described.
7. **Improvement Location Limitations.** There are no established or defined limitations as to the location of any improvements that may be made on any portion of the Additional Property added to the Condominium Property except such limitations as may then be in effect by reason of the laws and lawful rules and regulations of the appropriate governmental bodies and authorities having jurisdiction.
8. **Maximum Number of Units.** The maximum total number of Units that may be created on the Additional Property and added to the Condominium Property is seventy-two (72), for a total maximum number of Units constituting the Condominium Property of eighty-four (84); provided, that the foregoing shall neither limit nor restrict nor be so construed as to limit or restrict the number of dwelling units or other improvements that may be constructed on all or any portion of the Additional Property that is not added to the Condominium Property. Subject to the foregoing total maximum of Units that may be added to the Condominium Property, there is no limit as to the maximum number of Units per acre that may be created on any portion of the Additional Property added to the Condominium Property other than as may, from time to time, be imposed by law.
9. **Non-Residential Uses.** No Units may be created on the Additional Property or portions thereof and added to the Condominium Property that are not restricted exclusively to residential use as set forth in this Declaration.
10. **Compatibility of Structures.** All structures erected on all or any portion of the Additional Property that is added to the Condominium Property will be consistent and compatible with structures then on the Condominium Property in terms of structure type, quality of construction, the principal materials to be used, and architectural style, and design. Comparable style and design shall be deemed to exist if the exterior appearance of the structures on the Additional Property is compatible and harmonious with those then on the Condominium Property. Design shall not be deemed to be incompatible or not comparable because of changes in the number of dwelling units in a building, types or mix of types of dwelling units in a building, changes in number of garage parking spaces, variances in setbacks or locations of structures in relation to other improvements, changes in design or finish detail, or changes in size of the dwelling units in a building.
11. **Improvements other than Structures.** If all or a portion of the Additional Property is added to the Condominium Property, drives, sidewalks, yard areas, storm water drainage facilities, and other non-structural improvements similar to those then on the Condominium Property may be constructed on that Additional Property.
12. **Types of Units.** All Units that are created on all or any portion of the Additional Property and added to the Condominium Property shall be of the same types as the types of Units then on the Condominium Property, or as otherwise described herein; provided, however, that any such Units shall be deemed of the same types notwithstanding changes in interior layout, changes in design or finish detail, or changes in size.
13. **Limited Common Elements.** Declarant reserves the right with respect to all or any portion of the Additional Property added to the Condominium Property to create Limited Common Elements therein of substantially

the same type as those areas and improvements now so designated as such. The precise size and number of such newly created Limited Common Elements cannot be ascertained precisely, because those facts will depend on how large each portion added may be, the size and location of the buildings and other improvements on each portion, and other factors presently undetermined. Subject to the foregoing, there are no limits as to the types, sizes, and maximum number of Limited Common Elements that may be subsequently assigned to Units.

14. Supplementary Drawings. Attached hereto and marked Exhibit E is a not-to-scale and non-binding sketch drawing showing the approximate location and relationship of the Condominium Property and the Additional Property. Declarant does not consider any other drawings or plans presently appropriate. However, at such time as Declarant adds all or any portion of the Additional Property to the Condominium Property it shall file drawings with respect to the Additional Property as required by the Condominium Act.
15. Procedures for Expansion. All or any portion of the Additional Property shall be added to the Condominium Property by the execution and filing for record by Declarant, or its successor as Owner of the portion added and as assignee of the right to expand the Condominium, in the manner provided by the Condominium Act, of an amendment to the Declaration that contains the information and drawings with respect to the Additional Property and improvements thereon added required by the Condominium Act.
16. Effects of Expansion. Except as hereinafter specifically provided otherwise, upon the recording with the Recorder of Deeds for Christian County, Missouri of an amendment to the Declaration adding all or any portion of the Additional Property to the Condominium Property:
  - 16.1. the added portion shall thereafter be subject to and benefited by all of the terms and provisions hereof, to the same extent and with the same effect as if that added portion had been provided herein as constituting part of the Condominium Property; that is, the rights, easements, covenants, restrictions, and assessment plan set forth herein shall run with, bind, and benefit the added portion in the same manner, to the same extent, and with the same force and effect as the terms of this Declaration apply to the Condominium Property; provided, that non-exclusive easements are reserved to Declarant, its successors and assigns, over and upon the Common Elements and Limited Common Elements of property added to the Condominium (i) for a two year period of time from the date of the closing by Declarant of the first sale of a Unit in that property added to a bona fide purchaser, for access to and for the purpose of completing improvements in that portion added, (ii) for the periods provided for warranties, or by law, for purposes of making repairs required pursuant to warranties, and (iii) for the initial sales and rental period for Units to maintain and utilize one or more of those Units and appurtenances thereto, and/or a portion or portions of the Common Elements for sales and management offices and for storage and maintenance, and model Units, parking areas for sales and rental purposes, and advertising signs;
  - 16.2. the Owner or Owners of a Unit or Units in the added portion shall thereupon become members of the Association, to the same extent, with the same effect, subject to the same obligations, and imbued with the same rights, as all other members, including, without limiting the generality of the foregoing, one vote for each Unit owned by that Unit Owner or those Unit Owners;
  - 16.3. the undivided interests of Units in the Common Elements, as so expanded, shall be reallocated on the basis of the undivided interest of all Units in the Condominium, including those added by any expansion;
  - 16.4. with respect to Units added, Operating Assessments shall commence the later of (i) the first day of the calendar month next following the date the documents adding the Units were duly recorded or (ii) the date established by the Association for the commencement of any Operating Assessment, and shall be prorated based on the number of full calendar months remaining in the year for which the Operating Assessments were levied; and
  - 16.5. in all other respects, all of the provisions of this Declaration shall include and apply to such additional portions, and to the Owners, holders of first deeds of trust, and lessees thereof, with equal meaning and of like force and effect.

**Article XVII**  
**Amendments**

1. Power to Amend. Except as otherwise specifically provided herein, additions to, changes in, or amendment of this Declaration (or the other Condominium Organizational Documents) or the taking of any of the actions which require the consent of Eligible Lenders exercising not less than fifty-one percent (51%) of the Voting Power of Units subject to mortgages held by Eligible Lenders, as provided elsewhere herein, shall, in addition to such consents of Eligible Lenders, require the consent of Unit Owners exercising not less than sixty-seven percent (67%) of the voting power of Unit Owners.
2. The covenants cannot be amended to affect the City's rights without the City's written consent and this declaration cannot be amended to affect the Bank's rights without the Bank's specific, prior written consent in each instance.
3. The covenants are perpetual.
4. Except for the powers reserved by Declarant in Article XVI for the exercise of Expansion Development Rights, and notwithstanding the provisions of Section 1 of this Article, the consent of all Unit Owners, including Declarant, so long as it owns a Unit, shall be required for any amendment effecting a change in:
  - 4.1. the boundaries of any Unit;
  - 4.2. the undivided interest in the Common Elements appertaining to a Unit or the liability for common expenses appertaining thereto;
  - 4.3. the number of votes in the Association appertaining to any Unit;
  - 4.4. the fundamental purposes to which any Unit or the Common Elements are restricted;
  - 4.5. the provisions and requirements of this Article XVII;
  - 4.6. or to impose additional restrictions, limitations or prohibitions against or inhibiting the rental of any Unit or Units.
5. Notwithstanding the provisions of Section 1 of this Article, the consent of Unit Owners exercising not less than eighty percent (80%) of the voting power of Unit Owners shall be required to terminate the Condominium.
6. In any event, each Unit Owner by acceptance of a deed to a Unit is deemed to and does give and grant a power of attorney, which right and power is coupled with an interest and runs with the title to a Unit and is irrevocable:
  - 6.1. to Declarant, for so long as Declarant owns any Unit, to amend the Condominium Organizational Documents, to the extent necessary to (A) conform to the requirements then governing the making of a loan secured by a first deed of trust, or the purchase, guaranty, or insurance of a first deed of trust by an institutional lender or an institutional guarantor or insurer of a first deed of trust on a Unit, provided that the appropriate percentage (as described elsewhere herein) of Eligible Lenders is obtained (if required), or (B) correct typographical or factual or obvious errors or omissions the correction of which would not impair the interest of any Unit Owner, holder of a first deed of trust, insurer, or guarantor; provided, further, that if there is a Unit Owner other than Declarant, the Declaration shall not be amended to increase the scope or the period of control of Declarant; and
  - 6.2. to the Board, without a vote of Unit Owners, to amend the Declaration in any manner necessary for any of the following purposes, and for no purposes other than:

- 6.2.1. to meet the requirements of institutional lenders, guarantors and insurers of first deeds of trust, or the requirements of insurance underwriters;
  - 6.2.2. to bring the Declaration into compliance with requirements of the Condominium Act; and
  - 6.2.3. to correct clerical or typographical errors in this Declaration or an exhibit or amendment hereto.
7. An Eligible Lender of a Unit who receives a written request to approve changes, additions, or amendments sent by certified or registered mail, return receipt requested, and who does not deliver or post to the requesting party a negative response within thirty (30) days after receipt of the same, shall be deemed to have approved such request.
8. Notwithstanding the provisions of this Article XVII, Declarant may amend the Declaration at any time permitted by Article XVI for the exercise of Declaration's Expansion Developmental Rights without the consent of any other person.
9. Method to Amend. An amendment to this Declaration (or the Plats and Plans), adopted with the consents of Unit Owners and Eligible Lenders hereinbefore required, or by the Board, shall be executed with the same formalities as to execution as this Declaration by two officers of the Association and shall contain their certification that such amendment was duly adopted in accordance with the foregoing provisions. Any amendment adopted by Declarant or a duly empowered successor Declarant pursuant to authority granted it pursuant to the Declaration shall be duly executed by it with the same formalities as to execution as this Declaration and shall contain the certification of such signor or signors that such amendment is made pursuant to authority vested in Declarant or any duly empowered successor Declarant by the Declaration. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the Recorder of Deeds for Greene County, Missouri.

**Article XVIII**  
**General Provisions**

1. Covenants Running With the Land. The covenants, conditions, restrictions, easements, reservations, powers of attorney, liens, and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any part of the Condominium Property, and the Association, and their respective heirs, executors, administrators, successors and assigns.
2. Actions. In addition to any other remedies provided in this Declaration, Declarant, (only with respect to those rights directly benefiting Declarant), the Association, and each Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, but not the duty to enforce, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the Bylaws or now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant, the Association or by any Unit Owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge. Further, the Association and each Unit Owner shall have rights of action against each other for failure to comply with the provisions of the Condominium Organizational Documents, rules and regulations, and applicable law, and with respect to decisions made pursuant to authority granted thereunder; provided, the Association shall have the right to assess reasonable charges against a Unit Owner who fails to comply with the same, including the right to assess charges for the costs of enforcement, and provided, further, that neither the Association nor its Directors, officers, or other representatives, shall be liable to any Unit Owner or Occupant, or their invitees, for damage to any Unit or any part thereof, or any personal property of such Unit Owner, Occupant or invitee, or for injury to such person, unless the damage or injury was proximately caused by the gross negligence or the intentional tortious act of the Association or such Director, officer or other representative. In addition to all other remedies available by law, the Association may use summary abatement or similar means to enforce any

provisions hereof or restrictions against the Unit or its use, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished by summary means. Notwithstanding the foregoing, the Association shall not have the right to initiate or prosecute eviction proceedings to evict a tenant of a Unit, either in its own name, as agent of the Association, or in the name of the Unit Owner.

3. Severability. Invalidation of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect. In the event any language of this Declaration conflicts with mandatory provisions of the Condominium Act, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void; provided that such invalidity shall in no way affect any other provisions of this Declaration, which provisions shall remain in full force and effect.
4. Successor Owner. A successor owner of Condominium Property or any part thereof, who is not an affiliate of Declarant and who is a bona fide purchaser of the property for value, or a purchaser who acquires the property at a sheriff's sale or by deed in lieu of foreclosure, shall not be liable in damages for harm caused by an action or omission of Declarant or a breach of an obligation by Declarant.
5. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, men or women, shall in all cases be assumed as though in such case fully expressed.
6. Captions. The captions of the various provisions of this Declaration are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof.

**Article XIX**  
**The Bank**

The Bank joins in this Declaration for the purpose of assenting to and subordinating its interest under the Deed of Trust to the legal operation and effect of this Declaration, reserving, however, the lien and effect of the Deed of Trust on the Condominium Property Units and Common Elements, and the easements, reservations, rights and benefits reserved and retained by the Declarant in this Declaration.

**IN WITNESS WHEREOF**, the undersigned have executed this Declaration on the date indicated below.

DECLARANT:

THE VILLAS AT HICKORY HILLS, LLC

BY: \_\_\_\_\_  
David Hoke, Managing Member

Date: \_\_\_\_\_

THE BANK:

EMPIRE BANK

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me appeared David Hoke, to me personally known, who being by me duly sworn, did say that he is the Managing Member of The Villas at Hickory Hills, LLC, a Missouri corporation, and acknowledged that said instrument was signed in behalf of said corporation by authority of its Board of Directors, that said corporation has no seal, and further acknowledged said instrument to be the free act and deed of said corporation.

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

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

My Commission Expires:

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

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that he is the \_\_\_\_\_ of \_\_\_\_\_, and that the seal affixed to the foregoing instrument is the seal of said bank and that said instrument was signed and sealed in behalf of said bank by authority of its Board of Directors, and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said bank.

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

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

My Commission Expires: