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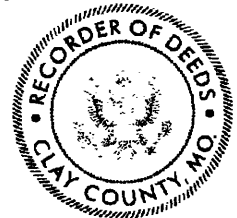
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Grantor: BT RESIDENTIAL
Grantee: FOUNTAIN HILLS



Robert T Sevier, Recorder

RECORDER OF DEEDS CERTIFICATE CLAY COUNTY, MISSOURI

NON-STANDARD DOCUMENT

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Robert T. Sevier
Recorder of Deeds
Clay County Courthouse
Liberty, MO 64068

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR

FOUNTAIN HILLS

A SUBDIVISION IN KANSAS CITY, CLAY AND PLATTE COUNTIES, MISSOURI

THIS DECLARATION is made on the date hereinafter set forth by BT RESIDENTIAL, LLC, a Missouri limited liability company, hereinafter referred to as the "Declarant".

WITNESSETH

WHEREAS, Declarant is the owner of certain property located in the City of Kansas City, partially in Clay County, Missouri and partially in Platte County, Missouri, which has been platted and subdivided into subdivisions known as Fountain Hills, First Plat and Fountain Hills, Second Plat. The plat of Fountain Hills, First Plat was recorded on November 16, 2004 as Document Number T04896 in Cabinet F, Sleeve 156 in the office of the Recorder of Deeds of Clay County, Missouri and recorded on November 16, 2004 as Document Number 22313 in Book 20, Page 58 in the office of the Recorder of Deeds of Platte County, Missouri. The plat of Fountain Hills, Second Plat was recorded on November 16, 2004 as Document Number T04897 in Cabinet F, Sleeve 157 in the office of the Recorder of Deeds of Clay County, Missouri. Both Fountain Hills, First Plat and Fountain Hills, Second Plat are subject to the conditions and restrictions declared herein; and

WHEREAS, Declarant desires to develop the land which has been platted as Fountain Hills, First Plat and Fountain Hills, Second Plat, hereinafter defined as the Property, and to provide for the preservation of the values of the residential community to be constructed on the Property and such other areas as may be subject to this Declaration, and for the maintenance of any open spaces and other facilities or structures, and for the adoption of a uniform plan of development; and to this end does declare and publish its intent to subject the Property (as is hereinafter defined), as the same may from time to time be dedicated and subdivided into lots and open spaces and easements designated for conveyance to a homeowners association, to the covenants, restrictions, easements, conditions, charges and liens hereinafter set forth; it being intended that the easements, covenants, restrictions and conditions shall run with the Property and shall be binding on all persons or entities having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of each Owner (as hereinafter defined) thereof.

NOW, THEREFORE, Declarant declares that the Property shall be developed, improved, sold, used, and enjoyed in accordance with and subject to the following plan of development, including the assessments, conditions, covenants, easements, reservations, and restrictions of this Declaration, all of which are adopted for and placed upon the Property; shall run with the Property and be binding on all parties who now or hereafter have any right, title or interest in the Property defined below, or any part of the Property, and on the heirs, executors, administrators, successors and assigns of such parties, regardless of the source of or the manner in which any such right, title, or interest is or may be acquired; and shall inure to the benefit of each Owner of any part of the Property.

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ARTICLE 1 DEFINITIONS

The following terms shall be defined as set forth below. Additional terms may be defined elsewhere in the Declaration.

1. Definitions.

1.1 “Association” shall mean and refer to Fountain Hills Homeowners Association, Inc., a non-stock, non-profit corporation, its successors and/or assigns.

1.2 “Board” shall mean and refer to the duly elected board of directors of the Association consisting of Members in good standing.

1.3 “Builder” shall mean and refer to any entity or person approved by the Declarant in its sole discretion to build Units or other permitted structures on the Lots. It is not intended that individual Lot Owners who may construct a Unit or other permitted structure for personal use or occupancy on a Lot owned by them be considered a “Builder” for the purposes of this Declaration.

1.4 “By-Laws” shall mean the by-laws of the Association.

1.5 “Certificate of Substantial Completion” shall mean a certificate executed, acknowledged and Recorded by the Declarant, in its sole and absolute discretion, stating that a substantial number of the Lots in the Property (as then composed or contemplated by the Declarant) have been sold by the Declarant and the Units to be constructed thereon are substantially completed; provided, however, that the Declarant may execute and Record a Certificate of Substantial Completion or instrument in lieu thereof in its discretion at any time and for any limited purposes hereunder.

1.6 “Committee” shall mean and refer to the Architectural Review Committee established and appointed pursuant to this Declaration.

1.7 “Common Area” and “Common Areas” shall mean those areas of the Property specifically noted on the Plats as “Common Areas” and including all (i) street rights of way, (ii) street and street islands, (iii) gateways, entrances, monuments, berms, and other similar ornamental areas, and related utilities, street lights, sprinkler systems, and landscaping constructed or installed by or for the Declarant, at or near the entrance of any street or along any street, and any easements related thereto; and (iv) drainage areas and detention ponds, including the storm detention facility identified as “Tract A” on the plat of Fountain Hills, Second Plat, included within the definition of Detention Facilities below; (v) and all other similar areas and places, together with all improvements thereon and thereto (including all Recreational Facilities such as any swimming pool, tennis courts, clubhouse, cabana, or similar recreational facilities that may be constructed or erected), the use benefit or enjoyment thereof which is intended for all of the Owners within the Property, whether or not any Common Area is located on any Lot.

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1.8 “**Declarant**” or “**Developer**” shall mean and refer to BT Residential, LLC, Missouri limited liability company, its successors and assigns.

1.9 “**Declaration**” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and any Recorded amendments, annexations and supplements hereto applicable to the Property.

1.10 “**Detention Facilities**” shall mean all detention ponds, retention ponds and drainage areas constructed within the Property on Common Areas including the detention facility which may be constructed within the area identified as “Tract A” on the Fountain Hills, Second Plat.

1.11 “**Exterior Structure**” shall mean any structure erected or maintained on a Lot other than the main Unit and shall include without limitation any deck, gazebo, greenhouse, doghouse, other animal shelter, outbuilding, fence, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, hob tub, basketball goal, swing set, trampoline, sand box, playhouse, tree house or other recreational or play structure.

1.12 “**Fountain Hills, First Plat**” or the “**First Plat**” shall mean the plat for Fountain Hills, First Plat Recorded on November 16, 2004 as Document Number T04896 in Cabinet F, Sleeve 156 in the office of the Recorder of Deeds of Clay County, Missouri; and Recorded on November 16, 2004 as Document Number 22313 in Book 20, Page 58 in the office of the Recorder of Deeds of Platte County, Missouri.

1.13 “**Fountain Hills, Second Plat or the “Second Plat”** shall mean the plat for Fountain Hills, Second Plat recorded on November 16, 2004 as Document Number T04897 in Cabinet F, Sleeve 157 in the office of the Recorder of Deeds of Clay County, Missouri.

1.14 “**Lot**” shall mean and refer to any plot of land indicated upon any Plat of the Property or any part thereof creating single-family home sites; provided, however, that if an Owner, other than the Declarant, owns all or part of one or more adjacent lots upon which only one Unit has been, is being, or will be erected, then such adjacent property under common ownership shall be deemed to constitute only one “Lot”. The Lots initially subject to this Declaration are listed in Exhibit B, attached hereto and incorporated herein by reference.

1.15 “**Member**” (individually) or “**Members**” (plural) shall mean and refer to those persons entitled to membership in the Association as provided herein and in the organizational documents of the Association.

1.16 “**Owner**” shall mean and refer to the record owner of any Lot, whether one or more persons or entities, of the fee simple title to the surface estate of any Lot which is part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.17 “**Plat**” or “**Plats**” shall mean: the plat for Fountain Hills, First Plat Recorded on November 16, 2004 as Document Number T04896 in Cabinet F, Sleeve 156 in the office of the Recorder of Deeds of Clay County,

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Missouri and also recorded on November 16, 2004 as Document Number 22313 in Book 20, Page 58 in the office of the Recorder of Deeds of Platte County, Missouri; and the plat for Fountain Hills, Second Plat, recorded on November 16, 2004 as Document Number T04897 in Cabinet F, Sleeve 157 in the office of the Recorder of Deeds of Clay County, Missouri; and all subsequent plats for Fountain Hills filed of record by the Developer in the real estate records of Clay County or Platte County, Missouri.

1.18 "Property" (which may hereafter sometimes be referred to as "**Fountain Hills**") shall mean and refer to Fountain Hills, First Plat and Fountain Hills, Second Plat, each a subdivision in the City of Kansas City, Clay and Platte County, Missouri, as legally described in Exhibit A, attached hereto and incorporated herein by reference, save and except any dedicated rights-of-way but including any and all additions to Fountain Hills as may hereafter be made subject to this Declaration and may be brought within the jurisdiction of the Association.

1.19 "Recorded" or "Recording" shall mean any document filed in the real estate records of Clay and/or Platte County, Missouri.

1.20 "Recreational Facilities" shall mean the swimming pool, cabana and other recreational improvements which may be constructed from time to time on the Common Areas, including but not limited to any swimming pool and cabana which may be constructed on the private open space identified as "Tract A" of Fountain Hills, First Plat.

1.21 "Rules and Regulations" shall mean the rules and regulations of the Association applicable to the Property which may be promulgated from time to time by the Association.

1.22 "Unit" shall mean and refer to the main residential dwelling situated upon any Lot.

ARTICLE II INCORPORATION OF PLAT

2. Incorporation of Plat. The Plat of the Property dedicates for use as such, subject to the limitations set forth therein, certain streets, rights-of-way, and easements shown thereon, and such Plat further establishes certain dedications, limitations, reservations, and restrictions applicable to the Property. All dedications, limitations, restrictions, easements, rights-of-way and reservations shown on the Plat, and any Plat filed hereafter, to the extent they apply to the Property, are incorporated herein and made a part hereof as if set forth fully herein, and shall be construed as being adopted in each contract, deed and conveyance executed or to be executed by or on behalf of Declarant, conveying each Lot in the Property.

3. Future Incorporations. Declarant reserves the right to add to and subject additional land adjacent to or near the Property subject to this Declaration by an amendment to this Declaration. In accordance with the provisions of this Declaration, until such time as the Declarant executes and Records the Certificate of Substantial Completion, the Declarant shall have the sole and unilateral right to file such an amendment to the Declaration without the need to obtain the consent or approval of any other Owner within the Property. After the Declarant

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Records the Certificate of Substantial Completion, all of the provisions of this Declaration which require the consent or approval of the Declarant shall instead mean and refer to the Board.

ARTICLE III FOUNTAIN HILLS HOMEOWNERS ASSOCIATION, INC.

4. Membership. The Declarant and every other Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot.

5. Voting Classes. The Association shall have two classes of voting membership:

5.1 Class A. Class A Members, sometimes herein referred to as such, shall be all Owners with the exception of Declarant and Builders and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members, but the vote for such Lot shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any Lot. A Builder shall not be entitled to cast a vote, regardless of the number of Lots owned by it or whether or not it has paid Annual Assessments (as hereinafter provided).

5.2 Class B. The Class B Member, sometimes herein referred to as such, shall be the Declarant who shall be vested with five hundred (500) votes **plus** shall be entitled to ten (10) votes for each Lot owned by it.

5.3 Suspension. All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in the payment of any assessment duly established pursuant to this Article or is otherwise in default hereunder or under the By-Laws or Rules and Regulations of the Association and such suspension shall apply to the proxy authority of the any voting representative, if any. An Owner whose voting rights have been suspended shall not be considered to be in good standing for purposes of serving on the Board or any Committee of the Association.

6. Assessments; Funding.

6.1 Obligation. Subject to the terms of this Declaration, and for the purposes set forth herein, Declarant hereby institutes a monetary obligation for each Lot Owner to pay assessments to be levied by and payable to the Association. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay (as a portion of the consideration and purchase money paid by each such Owner for such Lot) to the Association: (1) regular periodic assessments or charges; (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and (3) such other assessment as required by this Declaration. Such assessments will remain effective for the full term (and extended term, if applicable) of this Declaration. The annual and special assessments, together with penalty, interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall run with the land and be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the

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assessment fell due. The personal obligation for the delinquent assessments shall not pass to the successors in title of such Owner unless expressly assumed by them.

6.2 Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety, and welfare of the Members of the Association and for the improvement and maintenance of the Common Areas. Such uses and benefits to be provided by the Association may include, by way of clarification and not limitation, any and all of the following: normal, recurring maintenance of the Common Areas and the Landscape Easement Area (including, but not limited to: cleaning, mowing, edging, watering, clipping, sweeping, pruning, raking, and otherwise caring for existing landscaping and related facilities and providing for utilities to the Common Areas); maintenance of the improvements to such Common Areas, such as sprinkler systems, and private streets, if any; payment of all legal and other costs and expenses incurred in connection with the enforcement of all Recorded covenants, restrictions and conditions affecting the Property to which the Assessment Fund applies; paying for, without limitation, costs and expenses paid or incurred in connection with insuring such property and the payment of any and all taxes thereon; payment of all reasonable and necessary expenses in connection with the collection and administration of the assessments; employment of policemen and watchmen, if any; engagement of a manager or management firm to operate and/or maintain all or any portion of the Common Area; caring for undeveloped or unimproved Lots owned by Declarant; obtaining and maintaining such fire and extended casualty insurance, public liability insurance, errors and omissions insurance and/or other insurance as are deemed necessary or desirable in the opinion of the Board of the Association; and doing any other thing or things necessary or desirable in the opinion of the Board of the Association, to keep the Property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property. Notwithstanding the foregoing, the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Areas. The judgment of the Board in the expenditure of said funds and the determination of what constitutes normal recurring maintenance and/or insurance shall be final and conclusive so long as such judgment is exercised in good faith.

6.3 Annual Assessment. Subject to the terms of this Article, each Lot owned by a Class A Member is hereby subject to an initial maximum assessment of Three Hundred Seventy Five Dollars (\$375.00) per annum (“**Annual Assessment**”) for the purpose of creating a fund to be designated and known as the “**Assessment Fund**”, which annual assessment will be paid by the Owner of each Lot in advance as the Association may determine from time to time. The Annual Assessment for each Lot shall be uniform. Anything to the contrary herein notwithstanding, the Declarant, in its sole discretion, shall fix the amount of the Annual Assessment until the Declarant Records the Certificate of Substantial Completion. Thereafter, the Annual Assessment may be modified or increased by the Board up to one hundred ten percent (110%) of the previous year’s maximum Annual Assessment without a vote of the Members. Any required increase that results in an Annual Assessment greater than one hundred ten percent (110%) of the previous year’s Annual Assessment must be approved by a simple majority vote of the Members. The Annual Assessment shall commence: (i) as to all Lots upon which a completed Unit has been constructed, on the first day of the month following the month in which a Lot is conveyed to a Class A Member; and (ii) as to other Lots on the first day of the month following the date of completion of construction of the Unit thereon as confirmed by the issuance of a certificate of occupancy therefor. The

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Association shall, upon written demand and for a reasonable charge, furnish a certificate, signed by an officer of the Association setting forth whether or not the Annual Assessment has been paid for the assessment period for any given Lot. Notwithstanding anything herein to the contrary, in the event a Builder continues to own a Lot after a period of eighteen (18) months has elapsed following the date the Declarant conveyed ownership of the Lot, the Builder: (a) shall be obligated to commence payment of the Annual Assessment effective with the first day of the month following the eighteenth (18th) month after initial conveyance; (b) shall be obligated to continue payment of the Annual Assessment from that point until such Lot is conveyed to a Class A Member; and (c) shall not, by virtue of having paid an Annual Assessment, be entitled to any voting rights within the Association.

6.4 Special Assessment for Capital Improvements. In addition to the Assessments authorized above, the Association may, by a vote of two-thirds (2/3) of the Members in the aggregate, who are voting in person or by proxy at a meeting called for this purpose, levy special assessments as follows: in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any nonrecurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any Common Area, including fixtures and personal property related thereto, may be assessed. The Association shall not commingle the proceeds of such special assessment with the Assessment Fund. Such proceeds shall be used solely and exclusively to fund the nonrecurring maintenance or improvements in question.

6.5 Other Assessments. In the event that the Association incurs costs or expenses of any kind for maintenance, repair of damages or other activities that are caused by the negligence or failure to act of a Member, then the Association is entitled to full and prompt reimbursement by that Member for all such costs incurred. In the event that the Member does not promptly pay such amount due, then the Association shall be able to take those actions and use those remedies outlined in this Declaration. Any reference herein to "assessment" or "assessments" shall mean the annual assessment and any other assessment authorized herein.

7. Non-Payment of Assessment: Remedies of the Association. Any Annual Assessment not paid within ten (10) days after the due date shall be subject to a late fee of: (a) ten percent (10%) of the Annual Assessment or Forty Dollars (\$40.00), (whichever is greater); or (b) such other amount as shall be determined by the Board. Further, the unpaid Annual Assessment shall bear interest from the due date at the highest non-usurious rate of interest allowed by Missouri law or ten percent (10%) per annum, whichever is less. The Association may bring an action at law against the Owner personally obligated to pay any delinquent Annual Assessment, late fee, or interest or may foreclose the lien retained herein against the Lot and all improvements thereon. The lien shall be deemed perfected when the assessment is levied and the lien may be enforced and foreclosed by civil action in the same manner as equitable liens and enforced and foreclosed under the common law of the State of Missouri. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot. Furthermore, any Owner whose Annual Assessment remains unpaid after its due date shall not be entitled to use the Recreational Facilities or to have voting rights in the Association until such Annual Assessment is paid current.

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8. Lien and Subordination of Lien to Secure Payment and Performance. To secure the payment of the assessments established hereby and to be levied on individual Lots as above provided, and the performance by the Owners of the Lots of all of the duties, obligations and indebtedness of such Owners as set forth herein and in the Bylaws of the Association, there is hereby reserved a lien for the benefit of the Association, said lien to be enforceable through appropriate proceedings at law or in equity by such beneficiary; provided, however, that such lien shall be especially made secondary, subordinate and inferior to all liens, present and future, given, granted, and created by or at the insistence and request of the Owner of any such Lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the improvement of any such Lot; and further provided that as a condition precedent to any proceeding to enforce such lien upon any Lot upon which there is an outstanding valid and subsisting first mortgage or deed of trust lien, said beneficiary shall give the holder of such first mortgage or deed of trust sixty (60) days written notice of such notice, which shall be sent to the nearest office of the lienholder by prepaid U.S. registered mail, to contain the statement of the delinquent assessment charges upon which the proposed action is based. Upon the request of any such first mortgage or deed of trust lien holder, any such beneficiary shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular property covered by such first mortgage or deed of trust lien to the holder thereof. Sale or transfer of a Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale, foreclosure or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Association shall have the right to file notices of liens in favor of such Association in the real estate records of Clay and Platte County, Missouri.

9. Notice and Quorum. Excluding matters which may be acted upon solely by Declarant which do not require a vote of the Members, written notice of any meeting called for the purpose of taking any action authorized in this Article shall be sent to all Members at their last known address no fewer than thirty (30) days and no more than sixty (60) days in advance of the meeting. At any such meeting called, the presence of Members or of proxies entitled to cast one-third (1/3) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be two-thirds (2/3) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

10. Reserves for Replacements. The Association may establish and maintain a reserve fund ("Reserve Fund") for the replacement of the improvements in the Common Areas and the structures for which the Association has maintenance responsibilities, by the allocation and payment annually to such Reserve Fund of an amount to be designated from time to time by the Board. Such Reserve Fund shall be conclusively deemed to be a common expense of the Association and may be deposited in any banking institution, the accounts of which are insured by any State or by an agency of the United States of America or may, at the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacements of the improvements to the Common Areas and the structures for which the Association has maintenance responsibilities, may be expended only for the purpose of effecting the replacement of any Detention Facilities and Recreational Facilities including but not limited to a swimming pool, play ground equipment, benches, tables; lighting, and landscaping; pipes, structures and appurtenances, irrigation system and other improvements constructed or installed in the Common Areas or the structures for which the Association has maintenance responsibilities, major repairs to any such

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improvements, and for expenses and operating contingencies of a non-recurring nature relating to the Common Areas and the structures for which the Association has maintenance responsibilities. The Association may establish such other reserves for such other purposes as the Board may from time to time consider to be necessary or appropriate. The proportional interest of any Member in any such reserves shall be considered an appurtenance of such Owner's Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it pertains and shall be deemed to be transferred with such Lot.

ARTICLE IV GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

11. Powers and Duties of Board. In addition to the duties and powers enumerated in the organizational documents and By-Laws of the Association, or as elsewhere provided herein, and without limiting the generality of thereof, the Board, for the benefit of the Owners, shall have the following general powers and duties:

11.1 Own, maintain and otherwise manage all Common Areas, Detention Facilities, Recreational Facilities and all related facilities, improvements and landscaping thereon, and all other property acquired by the Association.

11.2 Pay any real and personal property taxes and other charges assessed against Common Areas.

11.3 Have the authority to obtain, for the benefit of all of the Common Areas, all water, gas and electric services and refuse collection.

11.4 Maintain such policy or policies of insurance as the Board of the Association may deem necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members including the authority to obtain and continue in effect as a common expense to all Owners, a blanket property insurance policy or policies to insure the structures and facilities upon the Common Areas and rights of way and the contents thereof and the Association against risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, in such amounts as the Association deems proper, and said insurance may include coverage against vandalism and such other coverage as the Association may deem desirable. The Association shall also have the authority to obtain comprehensive public liability insurance in such amounts as it may deem desirable, insuring the Association, its Board, agents and employees and each Owner (if coverage for Owners is available) from and against liability in connection with the Common Areas. The Association shall also have the power to purchase any other type of insurance that it deems prudent to take out to protect the welfare of the Association, its Board and Members.

11.5 Have the authority to employ for the Association a management agent or manager (the "**Management Agent**") at a rate of compensation established by the Board to perform such duties and services as the Board shall from time to time authorize in writing. In the event any management agreement is entered into by the Association, it shall provide, inter alia, that such agreement may be terminated for cause by either party upon thirty (30) days written notice thereof to the other party and without cause upon

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ninety (90) days written notice to the other party and without any termination fee. The term of any such management agreement may be renewable by mutual agreement of the parties for successive one-year periods.

11.6 Have the power to establish and maintain a working capital and contingency fund in such amounts to be determined by the Board of the Association.

11.7 Have a duty to landscape, mow and maintain the landscaping upon the Common Areas and the Landscape Easement Area and the duty to maintain perimeter walls, landscaping, lighting and signs at the entrance to the Property, including rights of way, greenbelt buffers and perimeter hedges.

11.8 To execute all declarations of ownership for tax assessment purposes with regard to the Common Areas, if any, on behalf of all Owners.

11.9 To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.

11.10 To enter into contracts, maintain one or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association including, at the option of the Board, the providing of any police and/or other security protection and/or snow removal from sidewalks and/or streets.

11.11 To protect or defend the Common Areas from loss or damage by suit or otherwise, as the Board sees fit.

11.12 To make reasonable Rules and Regulations for the operation of the Common Areas and to amend them from time to time; provided that, any rule or regulation may be amended or repealed by an instrument in writing signed by the Owners as provided elsewhere in this Declaration.

11.13 To make available for inspection by Owners within sixty (60) days after the end of each year an annual report and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.

11.14 To adjust the amount, collect and use any Insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

11.15 To enforce the provisions of any Rules and Regulations made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or Rules and Regulations, as the Board sees fit.

11.16 To collect all Annual Assessments and enforce all penalties for non-payment including the filing of liens, hiring of legal counsel and institution of legal proceedings, as the Board sees fit.

12. Purpose of Assessment Fund. The Board for the benefit of the Owners shall provide and shall pay out of the Assessment Fund provided for in this Declaration, the following:

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12.1 All taxes and assessments and other liens and encumbrances which shall, properly be assessed or charged against the Common Areas rather than against the individual Owners, if any.

12.2 All expenses associated with the care and preservation of the Common Areas and the Landscape Easement Area.

12.3 All expenses associated with retaining the services of a Management Agent or other person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board, (provided that any contract for management of the Association shall be terminated by the Association, with no penalty upon ninety days prior written notice to the managing party) and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.

12.4 All expenses for legal and accounting services.

12.5 All premiums associated with a policy or policies of insurance insuring the Association against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board, including a policy or policies of insurance as provided herein.

12.6 All premiums associated with workers compensation insurance to the extent necessary to comply with any applicable laws.

12.7 All expenses for fidelity bonds as may be required the By-Laws or as the Board may determine to be advisable.

12.8 All costs associated with any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board is required to obtain or pay for pursuant to the term's of this Declaration or by law or which in its opinion shall be necessary or proper for the enforcement of this Declaration.

12.9 All costs expended by the Declarant, the Board or the Association in fulfilling its obligations under this Declaration.

13. Board Powers Exclusive. The Board shall have the exclusive right to contract for all goods, services and insurance, payment of which is to be made from the Assessment Fund and the exclusive right and obligation to perform functions of the Board except as otherwise provided herein. Prior to the date of the Recording of the Certificate of Substantial Completion, the Declarant reserves the right to create an advisory committee ("**Advisory Committee**") consisting of Class A Members whose duties will be to handle such administrative matters on behalf of the Declarant within Fountain Hills as may be assigned and delegated to the Advisory Committee by the Declarant. On the date of the Recording of the Certificate of Substantial Completion, the Advisory Committee shall cease to exist.

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14. Maintenance Contracts. The Board, on behalf of the Association, shall have full power and authority to contract with any Owner of other person or entity for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association, and in compliance with all applicable laws, Rules and Regulations.

15. Limitation of Liability. The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the common expense funds, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas, streets or from improvements for which the Association is responsible or has a responsibility to maintain, or from any wire, pipe, drain, conduit or the like. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or from structures for which the Association is responsible or has a responsibility to maintain, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority

ARTICLE V TITLE TO COMMON AREAS

16. Conveyance / Association to Hold. At any time prior to the execution and Recording of the Certificate of Substantial Completion, the Declarant may, at it's sole option and in its sole discretion, grant and convey unto the Association all of the right, title and interest of the Declarant in and to all or any part of the Common Areas which are originally owned by Declarant, whereupon the Association shall assume all maintenance obligations with respect to any Common Areas which may then exist or thereafter be established. Even though the Common Areas may be owned by the Declarant during a portion of the term of this Declaration, the Assessment Fund may still be utilized to maintain the Common Areas and cover expenses incurred by Declarant and provided for in this Declaration. Nothing contained herein shall create an obligation on the part of Declarant to establish any additional Common Areas. Developer covenants and agrees to convey all of its right, title and interest in the Common Areas to the Association without any cost to the Association not later than one month after the Declarant has Recorded the Certificate of Substantial Completion.

17. Liability Insurance. From and after the date on which title to any Common Areas vests in the Association, the Association shall purchase and carry a general comprehensive public liability insurance policy for the benefit of the Association and its Members, covering occurrences on the Common Areas. The policy limits shall be as determined by the Board of the Association. The Association shall use its best efforts to see that such policy shall contain, if available, cross-liability endorsements or other appropriate provisions for the benefit of the Members, the Board, and the Management Company and other insureds, as their interest may be determined.

18. Condemnation. In the event of condemnation or a sale in lieu thereof all or any portion of Common Areas, the funds payable with respect thereto shall be payable to the Association and shall be used by the Association to purchase additional Common Areas to replace that which has been condemned. In the event that the Board of the Association determines that the funds cannot be used in such a manner due to lack of available land for

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additional Common Areas or for whatever reason, any remaining funds may be utilized by the Association for the general Assessment Fund.

ARTICLE VI EASEMENTS

This Article is included to outline and list those easements granted or reserved in this Declaration.

19. General Easement. The Declarant, shall have, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of drains, pipelines, sanitary and storm sewers, gas and water mains and lines, electric and telephone lines and other utilities, and to give or grant rights-of-way or easements therefor, over, under, upon and through all easements and rights-of-way shown on the Plat of the Property or any Common Area. All utility easement and rights-of-way shall insure to the benefit of all utility companies, for the purpose of installing, maintaining, or moving any utility lines or services and shall inure to the benefit of the Declarant, all Owners within the Property and the Association as a cross easement for utility line or service maintenance. The Declarant shall have and does hereby reserve for itself, its successors and assigns an easement over through the unimproved portion of each Lot in the Property for the purpose of performing the duties of the Association and maintaining any Common Area.

20. Sanitary, Storm Sewer and Water Easements. For so long as Declarant is the Owner of any Lot, Declarant reserves to itself the right to grant to any other governmental body or agency thereof, sanitary, storm sewer, storm drainage, water line, fire hydrant and other easements as may be required or requested by such governmental body or agency thereof on any Lot.

21. Utility Easements. For so long as Declarant is the Owner of any Lot, the Declarant hereby reserves the right to grant perpetual, non exclusive easements for the benefit if the Declarant or its designees, upon, across, over, through and under any portion of the Common Area or any portion of any Lot outside of the permitted building area of such Lot as reasonably required for the providing of egress in connection with the installation, replacement, repair, maintenance, use and operation of all utility and service lines and service systems, public and private including, without limitation, cable television, to the Property. Declarant for itself and its designees, reserves the right to retain title to any such easements. Upon cessation of Class B membership, the Association shall have the right to grant the easements described herein. Easements over the Property for the installation and maintenance of electric, telephone, cable television, water, gas, roof drains and other drainage systems connected directly to storm sewer, drainage and sanitary sewer lines and facilities and the like as well as other service providers are hereby reserved by Declarant, together with the right to grant and transfer the same. Declarant also reserves the right to enter onto all Common Areas for the purpose of completing improvements thereon, and on the Lots, and for the further purpose of carrying out the repair of any defects in workmanship or materials in the Property or the improvements thereon.

22. Utility Facilities. The rights and duties with respect to sanitary sewer and water, cable television, electricity, gas and telephone lines and facilities in favor of the Association shall be governed by the following:

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22.1 Whenever water, sanitary sewer, roof drains connected directly to storm sewer, electricity, gas, cable television or telephone connections, lines, cables or any portion thereof, are or have been installed within the Property, the Owner of any Lot, or the Association shall have the right, and are hereby granted an easement to the extent necessary therefor, to enter upon or have a utility company enter upon any portion of the Property in which said installation lie, to repair, replace and generally maintain said installations. The right granted in this sub-section shall be only to the extent necessary to entitle the Owner or the Association serviced by said installation to its full and reasonable use and enjoyment provided further that any one exercising said right shall be responsible for restoring the surface of the easement area so used to its condition prior to such use.

22.2 In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to its Board, who shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

23. Drainage Easements. In addition to other drainage easements provided for in this Agreement, Declarant has reserved easements for the installation and maintenance of utilities, storm water retention, Detention Facilities, detention ponds, and/or a conservation area as may be shown on the Recorded Plat. No Unit, Exterior Structure, improvement, plant, or material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may hinder or change the direction or flow of drainage channels or slopes in or across any drainage easements. The easement area on each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company, or the Association is responsible. Declarant and the Association shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be reasonably necessary to provide adequate drainage for any portion of the Property. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon the Declarant to correct or maintain any drainage facilities within the Property.

23.1 Each Owner shall provide, as may be required by Declarant, such easements for drainage and water flow as the contours of the Lot and the arrangement of buildings thereon demand.

23.2 Declarant hereby reserves for itself and the Association, a blanket easement on, over, and under the ground within the Property to reasonably maintain and correct drainage of surface water and other erosion controls in order to maintain reasonable standards of health, safety, and appearance.

23.3 Declarant hereby grants and reserves for the benefit of and appurtenant to the property identified on Exhibit C, attached hereto and incorporated herein by reference (the "**Commercial Tract**"), a non-exclusive easement in, to, over, and across the Property including access at any time, to construct, reconstruct, maintain, operate, and replace a storm water disposal system and to drain storm water from the Commercial Tract across the Property into the Detention Facilities ("**Commercial Drainage Easement**").

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24. Easement for Unintentional Encroachment. The Declarant hereby reserves an exclusive easement for the unintentional encroachment by any structure upon the Common Area caused by or resulting from construction, repair, shifting, settlement or movement of any portion of the Property, which exclusive easement shall exist appurtenant to the encroaching property to the extent of such encroachment.

25. Entry Easement. In the event an Owner fails to maintain its Lot as required herein, or in the event emergency repairs are required, the Declarant hereby reserves an easement to enter upon any such Lot and to do the work reasonably necessary for the proper maintenance and operation of the Lot and improvements thereon. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Association shall not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

26. Temporary Completion Easement. All Lots shall be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of such Lots as may be reasonably expedient or necessary for the construction, servicing and completion of dwelling Units and landscaping upon Lots adjacent to Lots, provided that such easement shall terminate twelve (12) months after the date such Lot is conveyed to the Owner by the Declarant.

27. Common Open Area Access Easement, Easement of Enjoyment. Each Lot Owner within the Property is hereby granted an access easement to the Common Areas of the Property subject to the organizational documents and By-laws of the Association, this Declaration and any Rules and Regulations of Fountain Hills.

28. Landscape Easement. Declarant hereby declares for the benefit of Declarant and the Property and grants a perpetual easement for the operation, repair and maintenance of existing and future ground cover, trees and other landscaping, over, under, across and through that portion of the back of Lots 35 through Lots 44 of Fountain Hills, Second Plat, as identified on the Fountain Hills, Second Plat (the "**Landscape Easement Area**"). No Exterior Structure shall be built on, nor shall any plantings be added to or removed from the Landscape Easement Area by any Owner, without the express written approval of the Declarant. The Declarant has reserved the Landscape Easement Area to preserve existing and future ground cover, plants and vegetation and to establish a buffer or privacy zone for the Property. The Declarant reserves the right (but is not obligated) to install retaining walls, plant additional trees or other landscaping materials within the Landscape Easement Area at any time and from time to time as determined by Declarant. The Assessment Fund may be used by the Declarant or the Association to maintain the Landscape Easement Area.

ARTICLE VII USE AND OCCUPANCY

29. Residential Use Only. The Lots shall be used for residential purposes exclusively, and no building shall be erected, altered, placed or permitted to remain on any such Lot other than one used as a single family dwelling, except that a professional office may be maintained in a dwelling, and provided that such maintenance and use is in strict conformity with the provisions of any applicable zoning law, ordinance or regulation. As used in this Article, the term "professional office" shall mean rooms used for office purposes by a member of any recognized profession, including doctors, dentists, lawyers, architects and the like, but not

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including medical or dental clinics or a law office with multiple attorneys. Nothing contained in this Article or elsewhere in this Declaration shall be construed to prohibit the Declarant or a Builder from the use of any Lot or dwelling, or improvement thereon, for promotional or display purposes, or as "model homes", a sales office, a construction office, or the like. It is the intention of the Declarant that only one (1) Unit may be erected per Lot.

ARTICLE VIII PROPERTY RIGHTS

30. Owner's Easement of Enjoyment. Every Owner shall have a right and non-exclusive easement in and to the Common Areas and a right and easement of ingress and egress to, from and through said Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

30.1 The right of the Association to establish and publish Rules and Regulations governing the use of the Common Areas including without limitation the Detention Facilities, Recreational Facilities affecting the welfare of Association Members;

30.2 The right of the Association to suspend the right of use of the Common Area and the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published Rules and Regulations;

30.3 The right of the Association's subject to the provisions hereof, to dedicate or transfer all or any part of the Common Areas, if any, to any public agency, authority or utility for such purposes and subject to the conditions as may be agreed by the Association. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes of each class of membership has been filed agreeing to such dedication or transfer;

30.4 The rights of the Association set forth elsewhere in this Article;

30.5 All easements herein described are easements appurtenant to and running with the land; they shall at all times insure to the benefit of and be binding upon the Owners, and all of their grantees, and their respective heirs, successors, personal representatives and assigns, perpetually and in full force;

30.6 The right of the Association to grant or dedicate easements in, on, or under or the Common Areas or any part thereof to any public or governmental agency or authority or to any utility company or any other organization for any service to the Property or any part thereof;

30.7 The right of the Association to prevent an Owner from planting, placing, fixing, installing or constructing any vegetation, hedge, tree, shrub, fence, wall, structure or improvement or store any personal property on the Common Areas. The Association shall have the right to remove anything placed on the Common Areas in violation of the provisions of this subsection and to assess the cost of such removal against the Owner responsible; and

30.8 the right of the Declarant (and its sales agents and representatives) to the nonexclusive use of the Common Areas and the facilities thereof, for display and exhibit

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purposes in connection with the sale of Lots within the Property, which right the Declarant hereby reserves; provided, however, that no such use by the Declarant or its sales agents or representatives shall otherwise unreasonably restrict the Members in their use and enjoyment of the Common Areas.

The aforesaid rights of the Association shall not be exclusive but shall be cumulative of and in addition to all other rights and remedies which the Association may have by virtue of this Declaration or its By-Laws or at law or in equity on account of any such default or infraction.

31. Recreational Facilities/Detention Facilities. Notwithstanding anything set forth or implied herein to the contrary, the rights of the Owners with respect to the Recreational Facilities are nonexclusive, and the Association may elect to permit owners of homes in subdivisions adjacent to the Property to have access to and to use and enjoy the Recreational Facilities upon terms and conditions reasonably established by the Association. Likewise, notwithstanding anything set forth or implied herein to the contrary, the rights of the Owners to the Detention Facilities are nonexclusive, and the Association may elect to permit other landowners adjacent to the Property to utilize the Detention Facilities by draining stormwater into the Detention Facilities, upon terms and conditions reasonably established by the Association or the Declarant. Prior to the Recording of the Certificate of Substantial Completion, Declarant shall have the right to construct such improvements on the Common Areas as it determines in its sole and absolute discretion.

32. Effect of Declaration. In addition to the imposition of all of the easements, restrictions and covenants herein described effectuated by the recordation of this Declaration, any reference in any deed, mortgage, trust deed or any other Recorded documents to the easements, restrictions and covenants herein described or to this Declaration shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of said parcels as fully and completely as if those easements, restrictions and covenants were fully related and set forth in their entirety in said documents.

33. Rezoning Prohibited. No Lot shall be rezoned to any classification allowing commercial, institutional or other non-residential use without the express consent of the Association and Declarant (as long as Declarant owns any Lot subject to this Declaration), which may be withheld in Declarant's sole discretion. Declarant or the Association may enforce this covenant by obtaining an injunction against any unapproved rezoning of the enjoined party.

ARTICLE IX USE RESTRICTIONS/MINIMUM DWELLING UNIT SIZES

34. Nuisances. No noxious, obnoxious or offensive activity shall be carried on upon any Lot, or any part of the Property, nor shall anything be done thereupon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way unreasonably interfere with the quiet enjoyment of each of the Owners of such Owner's respective dwelling Unit, or which shall be deemed to have been a factor that would create an increase in a neighboring Lot Owner's homeowner's insurance rates.

35. Development Activity. Notwithstanding any other provision herein, Declarant and its successors and assigns shall be entitled to conduct on the Property all activities normally associated with and reasonably convenient to the development of the Property and the construction and sale of dwelling units on the Property, including without limitations the right to

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place and maintain on the Property construction trailers, model homes, marketing facilities, signage, lighting, construction trucks, equipment and other similar items necessary for the construction on and marketing of the Property.

36. Improvements. No Unit shall be erected, altered, placed or permitted to remain on any Lot, other than one detached single-family primary dwelling, including a private swimming pool and other recreational structures, all of which must be approved in advance by the Committee. The approval for the construction or alteration of any Unit or Exterior Structure, including fences, shall be obtained from the Committee pursuant to the terms of this Declaration. No Unit may be more than three stories in height, however, split level Units shall be permitted.

37. Minimum Square Footage. All Units constructed on all Lots within the Property shall be subject to the minimum square foot restrictions set forth in this Section.

37.1 In Fountain Hills, First Plat, the following minimum square footage requirements shall apply:

37.1 (a) A Unit determined by the Declarant to be a "split entry" Unit (as such term is commonly used in residential real estate sales in the metropolitan Kansas City area) shall contain no less than 1,450 total gross square feet of air-conditioned floor area (excluding garages, basements, patios and similar areas).

37.1 (b) A Unit determined by the Declarant be a "ranch" Unit (as such term is commonly used in residential real estate sales in the metropolitan Kansas City area) shall contain no less than 1,450 total gross square feet of air-conditioned floor area (excluding garages, basements, patios and similar areas).

37.1 (c) A Unit determined by the Declarant be a "one and one half story" Unit (as such term is commonly used in residential real estate sales in the metropolitan Kansas City area) shall contain no less than 900 gross square feet of air-conditioned floor area on the main floor and no less than 1,650 total gross square feet within the Unit of air-conditioned floor area (excluding garages, basements, patios and similar areas).

37.1 (d) A Unit determined by the Declarant be a "two story" Unit (as such term is commonly used in residential real estate sales in the metropolitan Kansas City area) shall contain no less than 750 gross square feet of air-conditioned floor area on the main floor and no less than 1,800 total gross square feet within the Unit of air-conditioned floor area (excluding garages, basements, patios and similar areas).

37.1 (e) A Unit determined by the Declarant be a "reverse one and one half story" Unit (as such term is commonly used in residential real estate sales in the metropolitan Kansas City area) shall contain no less than 1,100 gross square feet of air-conditioned floor area on the main floor and no less than 1,800 total gross square feet within the Unit of air-conditioned floor area (excluding garages, basements, patios and similar areas).

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37.2 In Fountain Hills, Second Plat, the following minimum square footage requirements shall apply:

38.2 (a) A Unit determined by the Declarant to be a “split entry” Unit (as such term is commonly used in residential real estate sales in the metropolitan Kansas City area) shall contain no less than 1,100 total gross square feet of air-conditioned floor area (excluding garages, basements, patios and similar areas).

38.2 (b) A Unit determined by the Declarant be a “ranch” Unit (as such term is commonly used in residential real estate sales in the metropolitan Kansas City area) shall contain no less than 1,100 total gross square feet of air-conditioned floor area (excluding garages, basements, patios and similar areas).

38.2 (c) A Unit determined by the Declarant be a “one and one half story” Unit (as such term is commonly used in residential real estate sales in the metropolitan Kansas City area) shall contain no less than 850 gross square feet of air-conditioned floor area on the main floor and no less than 1,400 total gross square feet within the Unit of air-conditioned floor area (excluding garages, basements, patios and similar areas).

38.2 (d) A Unit determined by the Declarant be a “two story” Unit (as such term is commonly used in residential real estate sales in the metropolitan Kansas City area) shall contain no less than 550 gross square feet of air-conditioned floor area on the main floor and no less than 1,500 total gross square feet within the Unit of air-conditioned floor area (excluding garages, basements, patios and similar areas).

38.2 (e) A Unit determined by the Declarant be a “reverse one and one half story” Unit (as such term is commonly used in residential real estate sales in the metropolitan Kansas City area) shall contain no less than 750 gross square feet of air-conditioned floor area on the main floor and no less than 1,650 total gross square feet within the Unit of air-conditioned floor area (excluding garages, basements, patios and similar areas).

38.3 The decision by Declarant in determining the type of Unit to be constructed on a Lot and the resulting determination of the minimum square feet of floor area within the Unit shall be final and non-appealable.

39. Prohibition of Offensive or Commercial Use. Except as may be specifically permitted in this Declaration, no part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes, except Declarant or a Builder may use the Property for model home sites, and display and sales offices, and construction offices during the construction and sales period.

40. Building and Roofing and Landscaping Materials. Except as otherwise permitted in this Article:

40.1 The predominant exterior materials of each main residential Unit, garage and any other secondary Exterior Structures whether attached or detached, shall be

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masonry, stucco, stone or wood (or wood siding product) or a similar quality material approved by the Committee. No single-family construction, private garage or any other Exterior Structure located on the Property shall be permitted to have a heating or cooling device located in a window or any other opening which can be viewed from any portion of the Property. Heating and cooling devices may be used in windows or other openings of any structure used by Declarant or a Builder during the completion and sale of all construction of this Property.

40.2 Roofing materials may include composition shingles, slate, clay or concrete tiles. Composition shingle roofs may be comparable in color to weather wood shingles and comparable in surface textural appearance to wood shingles. Colors for slate, clay or concrete tile roofs shall be approved individually by Declarant or its assignee. Any other type of roofing material shall be permitted at the sole discretion of the Declarant or its assigns upon written request.

40.3 All retaining walls constructed on a Lot must be constructed with properly engineered uniform Millsap stone or other similar type materials established by the Committee or other material(s) approved in writing by the Committee and the Board.

41. Location of Improvements upon Lots. No building shall be located on any Lot nearer to the front line or nearer to the adjacent side Lot lines than the minimum building setback lines shown on the Recorded Plat and as otherwise set forth in this Declaration.

42. Deviations. Declarant at its sole discretion is hereby permitted to approve deviations in these restrictions on building area, location of improvements on Lots and building materials in instances where in its judgment, such deviations will not adversely affect the development of the Property as a whole. Such approvals must be granted in writing and when given will automatically amend these restrictions.

43. Composite Building Sites and Re-Subdividing. Any Owner of one or more adjoining Lots may consolidate such Lots into one (1) building site with the privilege of placing or constructing improvements on such resulting site, in which event setback lines shall be measured from the resulting side property lines rather than from the lot lines as indicated on the Recorded plat. Any such composite building site must have a frontage at the building setback line of not less than the minimum frontage of Lots on the Recorded Plat of the Property. Any revision of Lot sizes may be made only with written approval of Declarant and governmental authorities having jurisdiction over the Property. Subdividing or re-subdividing of any Lot, including a consolidated Lot, shall not be allowed without the prior written approval of the Committee.

44. Utilities; Easements. Easements for installation and maintenance of utilities are reserved as shown on the Recorded Plat, and no Exterior Structure shall be erected on any of such easements. Neither Declarant nor any utility or other company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or contractors to shrubbery, trees, flowers or improvements located on the land covered by such easements. An underground electrical distribution service will be installed in the Property, in a service area that will embrace all of the Lots that are platted on the Property. The Owner of each Lot shall, at his own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's installed transformers or energized secondary junction boxes, the point of attachment to be made available by the

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electric company at a point designated by such company at or within the property line of each lot. Declarant has either by designation on the plat or by separate instrument granted necessary easements to the electric company providing for the installation, maintenance and operation of its electrical distribution system and has also granted to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and maintenance of each homeowner's owned and installed service wires. For so long as this service is maintained in the Property, the electric service to each dwelling shall be underground. Easements for the underground service may be crossed by driveways and walkways provided the Lot Owner makes prior arrangements with the utility company furnishing any utility service occupying the easement and provides and installs the necessary conduit of an approved type and size under such driveway or walkways prior to construction thereof. Such easement for the underground service shall be kept clear of any other improvements, including buildings, patios or other paving, and neither the Declarant nor the utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or servants, to shrubbery, trees, flowers or other improvements (other than crossing driveways or walkways providing conduit has been installed as outlined above) of the Lot located on the land covered by such easements. It is the intention of this Declaration to require that any utility service required by a Unit shall be provided by registered public utility companies. For example, (and not by way of limitation), no Unit shall derive its electrical power from a gasoline powered generator except in the case of an electrical outage, and only for the period of such outage. Declarant hereby grants and reserves for the benefit of and appurtenant to the Commercial Tract, a non-exclusive easement in, to, over, and across the Property including access at any time, to construct, reconstruct, maintain, operate, and replace utilities from and to the Commercial Tract.

45. Abiding by Rules and Regulations. All Owners and occupants shall abide by the By-laws and any Rules and Regulations adopted by the Association.

46. Rental Leases. Any lease agreement between a Lot Owner and a lessee shall provide that the terms of the lease are subject in all respects to the provisions of this Declaration, and the organizational documents, the Bylaws, and any Rules and Regulations of the of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such leases shall be in writing and shall have attached to them the pertinent Rules and Regulations of the Association. No rental agreement shall be for a period of less than six (6) months unless part of an earnest money purchase contract agreement. No "For Lease" signs shall be permitted within the Property.

47. Temporary Structures. Except as otherwise expressly set forth herein, no structures of a temporary character, including, without limiting the generally thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, shall be used on any Lot at any time as a residence, either temporarily or permanently, except for Declarant's construction purposes, or a Builder upon written approval from Declarant or the Board. Such structures shall be inconspicuous and attractive and shall be removed at completion and sale of all construction within the Property. Outbuildings or Exterior Structures, whether temporary or permanent, used for accessory, playhouse, animal shelter, storage or other purposes shall be approved in accordance with the terms of this Declaration.

48. Signs and Picketing. No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Unit, fence or other improvement upon such Lot so as to be visible from public view except the following:

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48.1 For Sale Signs. An Owner may erect one (1) sign not exceeding two feet by 3 feet (2' x 3') in area, fastened only by stake in the ground and extending not more than two (2) feet above the surface of the ground advertising the Lot for sale.

48.2 For Lease Signs. No signs offering any Unit for rent or lease shall be allowed on any Lot or on the Property.

48.3 Declarant's Sign. Signs or billboards may be erected by the Declarant.

48.4 Political Signs. Political signs may not be erected upon any Lot or on the Property.

48.5 In addition to the foregoing, to protect the safety and harmony of the community, no person shall engage in picketing on any Lot, easement, right-of-way or Common Area within or adjacent to the Property, nor shall any vehicle parked, stored or driven in or adjacent to the Property bear or display any signs, slogans, symbols, words or decorations perceived by a reasonable person to create controversy, invite ridicule or disparagement, or interfere in any way with the exercise of the property rights, occupancy or permitted business activities of any Owner or Declarant. The Declarant and the Association shall have the right to remove any signs, advertisements or billboards or structure which are placed on said Lot or Property in violation of this Section and in so doing shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal.

49. Campers, Trucks, Boats, and Recreational Vehicles. No unlicensed vehicle, vehicle with expired tags, campers, vans, pickup trucks, boats, boat trailers, recreational vehicles, commercial vehicles and other types of non-passenger vehicles, equipment, implements or accessories may be kept on any Lot (except in connection with construction activities) unless the same are fully enclosed within the garage located on such Lot. Except in connection with construction activities, no automobiles, boats, trailers, campers, trucks, trailers, recreational vehicles, boats, buses, inoperative vehicles of any kind, rigs, or boat rigging and other large vehicles, including grounds maintenance equipment, may be parked or stored permanently or semi-permanently on any portion of the Common Areas, any public or private street right-of-way, or any portion of a Lot except as provided herein. Parking of all such vehicles shall be in garages or screened enclosures approved by the Committee. For the purposes of these restrictions, the words "semi-permanent" shall be defined as remaining in the same location without movement for forty-eight (48) or more consecutive hours. No eighteen-wheel vehicles and other similar large van or flatbed type vehicles may be parked on any public or private street right-of-way, front yard area or on driveways except to deliver or pick up merchandise or other materials to and from residents or construction sites. The Board shall have the right to tow any vehicles(s) at an Owner's expense, the keeping or parking of which violates this Declaration upon forty-eight (48) hours' notice. No junk vehicle or other vehicle on which current registration plates are not displayed, shall be kept within any Lot nor shall the repair or extraordinary maintenance of automobiles or other vehicles or equipment be carried out on any of the Lots unless within a garage or enclosed Exterior Structure approved by the Committee.

50. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other normal and customary household pets may be kept, provided that they are not kept, bred, or maintained for any

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commercial purpose and provided that they are not exotic and/or dangerous. Notwithstanding the foregoing, no animals or fowl may be kept on the Property which result in an annoyance or are obnoxious to residents in the vicinity. Animals are not permitted to roam the Property and must be controlled on a leash other means if they are not on a Lot. Any animal owner must also provide proper structures to control the activities of and provide adequate shelter for any and all animals. Such structures are subject to all of the requirements of this Declaration.

51. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. All refuse containers shall be screened or kept in a garage within the Unit.

52. Walls, Fences and Hedges. The intent of this Section is to minimize the obstruction of overviews within the Property while at the same time providing for the privacy of Owners and Members of the community in areas where such privacy is desired. All walls, fences, planters and hedges shall be controlled strictly for compliance with the general intent and the specific requirements of this Declaration and the architectural standards established by the Declarant or the Committee. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street boundary lines or in the case of a rounded property corner, from the intersection of the street boundary lines extended. The same sight line limitation shall apply on any Lot within ten (10) feet from the intersection of a street boundary line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. All fencing shall be constructed of wood unless otherwise approved by the Committee. No chain link fence shall be erected on any Lot unless approved by the Committee. All fences shall be constructed with the finished side out. No fence shall extend toward the front of the Unit beyond the rear corners of the Unit. No fence, wall or hedge shall be erected or maintained on any Lot nearer to the street than the building setback lines for the front and side yards as reflected in the Plat or by governmental authorities. No fence, wall or hedge shall be erected or maintained on any Lot which shall exceed six (6) feet in height. All fences, walls or hedges must also comply with all zoning laws and building codes of the City of Kansas City, Missouri applicable to any Lot. Fencing or privacy walls may be allowed closer to the main Unit to provide the necessary privacy provided they are approved in advance by the Committee. All fencing shall be maintained to a fence standard equivalent to original construction and all fencing must be consistent with this Declaration and the architectural standards established by the Declarant or the Committee.

53. Parking. No vehicles, trailers, implements or apparatus may be driven or parked in any Common Area or on any easement, except to the extent otherwise established and permitted a constituent portion of the Recreational Facilities.

54. Building Standards. No Unit, Exterior Structure or other building shall be erected or maintained on any Lot unless it complies with all applicable governmental ordinances, laws, Rules and Regulations. In addition, no Unit, Exterior Structure, building, structure, fence, wall or improvement shall be erected or maintained on any Lot unless same has been approved by the Committee (thereinafter defined) pursuant to the terms and provisions of this Declaration.

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55. Detached Buildings. No detached accessory building (including, but not limited to storage buildings), save and except for any detached garages approved by the Committee (thereinafter defined) shall be erected, placed or constructed upon any Lot without the prior consent of the Board.

56. Antennae, Satellite Dishes and Solar Collectors. No Owner may erect or maintain on any Unit or Lot a satellite dish or similar apparatus having a diameter in excess of thirty (30) inches. Furthermore, no Owner may erect or maintain a television or radio receiving or transmitting antenna, permitted satellite dish or similar implement or apparatus (as referred to above), or solar collector panels or equipment upon any Lot unless such apparatus is erected and maintained in such a way that it is fully screened from public view from a point in the center of the public right-of-way directly in front of the Lot and, in the case of a corner Lot, also screened from public view from a point in the center of the public right-of-way to the side of the Unit erected on such Lot.

57. Chimneys. All fireplaces flues, smoke stacks, and spark arrestors shall be completely enclosed and concealed from the public view in finished chimneys of materials architecturally compatible with the principle finish material of the exterior walls of the dwelling Unit on the Lot.

58. Clothes Hanging Devices. Exterior clothes hanging devices shall not be permitted.

59. Window Treatment. No aluminum foil, reflective film or similar treatment shall be placed on window or glass doors on any Lot.

60. Water Wells. The drilling, operating or maintaining of any water wells on any Lot shall not be permitted.

61. Oil and Mining Operations. No oil drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas or other material shall be erected, maintained or permitted upon any Lot.

62. Sodding and Landscaping. Each Lot (excluding any area of a Lot within the Landscape Easement Area) shall be fully sodded. Notwithstanding the foregoing: if a tree or trees are located on any Lot, sodding shall be required only at the tree lines thereof; and any area that is disturbed, landscaped and continuously maintained in accordance with the requirements established by the Committee shall not be required to be sodded. All vegetable gardens shall be located in the back yard.

63. Visual Screening. All equipment, garbage cans, service yards, woodpiles, refuse containers, or storage piles and household projects such as equipment repair and construction projects shall be screened by adequate planting or fencing so as to conceal them from view of neighboring Lots, streets, parks and public areas. Nothing herein shall be deemed to apply to the storage on the Property by Declarant or a Builder of building materials during, and for use in, the INITIAL construction of the Units on the Property. No exterior clotheslines shall be allowed on any Lot.

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64. Removal of Soil and Trees. The digging of soil or the removal of soil from any Lot is expressly prohibited except as necessary in conjunction with the landscaping of or construction on said Lots and then, only according to approved grading and landscaping plans. No trees shall be cut except to provide room for construction of improvements or to remove dead or unsightly trees and then only following the obtaining of written approval for such cutting or removal by the Declarant or the Association, in their sole discretion.

65. Sales and Marketing Exemption. None of the restrictions contained in this Declaration shall be applicable to the activities of the Declarant, its officers, employees, agents or assigns, in their development, marketing and sale of Lots or other parcels within the Property or to a Builder during the construction of a Unit on a Lot located on the Property.

66. Exterior Maintenance. Each Owner shall keep each Lot owned by him, and all improvements therein or thereon, in good order and repair and free of debris, including but not limited to the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management.

67. Swimming Pools. No above ground swimming pools shall be permitted. All pools and hot tubs shall be fenced or otherwise adequately screened. All pools and hot tubs shall be kept clean and maintained in operable condition.

68. Doghouses. All outside doghouses and other animal shelters shall be located in the back yard, shall be up against or within two feet of the Unit, shall be painted (where appropriate) the same color as the Unit and shall have roofs (where appropriate) that are compatible with the Unit, unless otherwise approved by the Committee. No dog runs of any kind will be allowed including those using chain link fence.

69. Other Restrictions. The following restrictions shall apply to all Lots within the Property:

69.1 All garage doors shall remain closed at all times except when necessary for entry or exit.

69.2 No garage sales, sample sales or similar activities shall be held within the Property without the consent of the Declarant (if prior to executing and Recording the Certificate of Substantial Completion), or the Association (if after the Certificate of Substantial Completion is Recorded).

69.3 No speaker, horn, whistle, siren, bell or other sound device, except intercoms, and those used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Unit or in any yard.

69.4 All residential utilities shall be underground.

69.5 In the event of vandalism, fire or other casualty, no buildings shall be permitted to remain in damaged condition for longer than ninety (90) days.

69.6 No shed, barn, detached garage, or other storage facility shall be erected upon, moved onto or maintained on any Lot.

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69.7 No seasonal lights shall be installed on a Unit before November 15 or a given year and shall be removed no later than January 15 of the following year.

69.8 No water from any roof, downspout, basement or garage drain or surface drain shall be placed in or connected to any sewer line unless permitted by the governmental authorities having jurisdiction over the Property.

70. Enforcement. In addition to the remedies provided for below in this Declaration, in the event of a default which continues beyond ten (10) days after the delivery by the Association of written notice to an Owner or occupant of any Lot in the Property on the part of the Owner or occupant of any Lot in the Property in observing any of the requirements of this Article, the Declarant or the Association may, without liability to the Owner or occupant, in trespass or otherwise, enter upon said Lot to take such action as may be necessary to cure such default. Such action may include, (but shall not be limited to) the following: (i) cutting, or causing to be cut, overgrown weeds and grass, (ii) removing or causing to be removed, garbage or trash creating such default, or (iii) doing any other thing necessary to secure compliance with these restrictions, so as to place said Lot in a neat, attractive, healthful and sanitary condition. All costs related to such correction, repair or restoration shall be charged to the Owner or occupant. The Owner or occupant, as the case may be, agrees by the purchase or occupation of the Lot to pay such statement immediately upon receipt thereof. To secure the payment of such charges in the event of nonpayment by the Owner, a vendor's and continuing contractual lien shall be retained by Declarant and collected at the time of conveyance of each Lot in favor of Declarant or the Association. Such vendor's and contractual lien shall be applicable and effective whether mentioned specifically or omitted in each conveyance of a Lot, whether or not the Declarant or the Board has taken any action to perfect such lien. Any such lien shall be subordinate to the lien of any first mortgage or deed of trust. The sale or transfer of any Lot shall not affect such lien. However, the sale or transfer of any Lot pursuant to a mortgage or deed of trust foreclosure or any proceeding in lieu thereof shall extinguish any such lien as to payments that became due prior to any such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No amendment to this Section of the Declaration shall affect the rights of the holder of any first mortgage on any Lot (or the indebtedness secured thereby) Recorded prior to the Recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment. Upon direction by the Board, regarding specific concerns and during reasonable hours, the Declarant, any member of the Committee, or member of the Board, or any other representative of any of them, shall have the right to enter upon and inspect any Lot for the purpose of ascertaining whether or not the provisions of these restrictions have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

ARTICLE X ARCHITECTURAL CONTROL COMMITTEE

71. Architectural Control Committee. The architectural control committee (herein called the "**Committee**") shall be initially composed of one or more representatives of the Declarant as may be determined from time to time by the Declarant. The Declarant shall control the Committee until such time as the Certificate of Substantial Completion is executed and filed in the real estate records of Clay and Platte County, Missouri. After the Certificate of

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Substantial Completion is executed and filed in the real estate records of Clay and Platte County, Missouri, the Committee shall be composed of five (5) individuals selected and appointed by the Association, each generally familiar with residential and community development design matters and knowledgeable about the Association's concern for a high-level of taste and design standards within the Property. The Committee shall function as the representative of the Owners of the Lots for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of the first-class community development. The Committee shall use its best efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the Property.

72. Successor Members. After the Declarant has turned over control of the Committee to the Association, in the event of the death or resignation of any member of the Committee, the Association shall have full authority to designate and appoint a successor. No member of the Committee shall be liable for, and shall be indemnified against, claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed pursuant to this Declaration. The Committee shall be entitled, at any time and from time to time, to seek and obtain professional advice and counsel (including but not limited to architects, attorneys, designers, engineers and landscape technicians) in connection with the performance of its duties and all reasonable costs and expenses related thereto shall be paid by the Association. The Association shall have the right and power to impose and collect a reasonable fee from each Owner for the review and approval/disapproval process and services rendered by the Committee.

73. Approval. It is accordingly covenanted and agreed that no Unit, building, Exterior Structure, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made (including change in color) nor shall any substantial alteration in landscaping, grading or planting on any Lot be made, until the plans and specifications, plot plan and survey showing the nature, kind, shape, height, materials, and location of the same shall be submitted to and approved in writing as to adherence to the overall plan, harmony of external design and location in relation to surrounding structures, topography, and landscape design, by the Committee. The following factors, including but not limited to those specified elsewhere in this Declaration, may be considered by the Committee:

73.1 Quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and proper facing of main elevation with respect to nearby streets;

73.2 Minimum finished floor elevation, mandatory brick shelf elevation, and proposed footprint of the dwelling;

73.3 Conformity and harmony of the external design, color type and appearance of exterior surfaces and landscaping;

73.4 Location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and improvements situated therein; drainage arrangements; and

73.5 Other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the Committee, or matters

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in which the Committee has been vested by the Association with the authority to render a final interpretation and decision.

74. Plan Submission. Final plans, specifications and surveys shall be submitted in duplicate to the Committee for approval/ disapproval. The Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans, specifications and surveys meet the approval of the Committee, one complete set of plans, specifications and surveys will be retained by the Committee and the other complete set will be marked "**Approved**" and returned to the Owner or such Owner's designated representative. If found not to be in compliance with this Declaration, one set of such plans, specifications and surveys shall be returned "**Disapproved**", accompanied by a reasonable statement of items found not to comply with this Declaration. Any modification or change to the approved plans, specifications and surveys must again be submitted to the Committee for its inspection and approval. The Committee's approval or disapproval, as required herein, shall be evidenced in writing. If the Committee fails to approve or disapprove such plans, specifications and surveys within fifteen (15) days after the date of submission, then such instruments shall be submitted by such Owner to the Board of the Association. If the Board fails to approve or disapprove such plans, specifications and surveys with fifteen (15) days, then the Committee and Association approval shall be presumed.

75. Committee Discretion. Any approval or disapproval of uses other than the permitted uses set forth herein may be based on purely aesthetic grounds and shall be at the discretion of the Committee. An Owner or the Declarant may appeal a decision of the Committee by submitting in writing to the Board a detailed report explaining why they feel that the decision of the Committee was not correct. The Board, at its sole discretion, shall review the report and advise the Owner of its reversal or support of the Committee's decision. This report must be submitted no later than thirty (30) days after receipt by the Owner of the Committee ruling that is being appealed. If not offered within this period, there will be no further appeal available to the Owner.

76. Architectural Standards. The Committee may from time to time publish and promulgate architectural standards bulletins and/or Lot information sheets which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Declaration. The Committee shall be responsive to technological advances or general changes in architectural designs and materials of taste and design (on the one hand) and use of private property (on the other hand). Such bulletins and information sheets shall supplement this Declaration and are incorporated herein by reference. EACH OWNER SHALL SEEK AND OBTAIN AND BECOME THOROUGHLY FAMILIAR WITH ANY AND ALL ARCHITECTURAL STANDARDS BULLETINS AND LOT INFORMATION SHEETS PRIOR TO ACQUISITION OF, AND CONSTRUCTION ON, ANY LOT.

77. Limitation of Liability. Neither Declarant, the Association, its Board, nor the Committee or the Members thereof shall be liable in damages to anyone submitting plans or specifications to them for approval, or to any Owner of a Lot affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications to the Committee for approval agrees by submission of such plans and specifications, and every Owner agrees, that no action or suit for damage will be brought against Declarant, the Association, the Committee, or any Members. The Committee is authorized and empowered to consider and review any and all aspects of

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dwelling construction which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Owners or the general value of the Property.

78. Commencement and Completion of Construction. Unless the following time periods are extended by the Declarant in writing, construction of the Unit on a Lot shall be commenced within ninety (90) days following the date of delivery of a deed from the Declarant to a purchaser of a Lot (including Builders) and shall be completed within two hundred seventy (270) days after such commencement. In the event such construction is not commenced within such ninety (90) day time period, the Declarant shall have, prior to commencement of construction, the right to repurchase the Lot from such purchaser at its original sales price, less closing costs. Notwithstanding the foregoing, Declarant shall have the right, in its sole and absolute discretion, to extend the foregoing time periods on a case by case basis. In the event a Builder and Declarant enter into and record a buy back agreement ("**Buy Back Agreement**") at the time a Builder acquires a Lot from Declarant, the terms of the Buy Back Agreement shall control the commencement and construction of the residence and supersede the terms of this section.

ARTICLE XI ANNEXATION

79. Annexation by Declarant. At any time prior to the time the Certificate or Substantial Completion is Recorded, the Declarant may, at its sole option, annex additional property to this Declaration to be subject to the terms hereof to the same extent as if originally included herein and subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. Annexation shall be evidenced by a written amendment to this Declaration executed solely by Declarant setting forth the legal description of the Property being annexed and the restrictive covenants to be applied to such annexed property.

80. Annexation by Action of Members. At any time the Board may request approval of the membership for the annexation of additional property into the Association to be subject to all of the terms for this Declaration to the same extent as if originally included herein. No such annexation shall be effective unless approved in writing by Members entitled to cast two-thirds (2/3) of the total votes in both classes of membership. Any property that is contiguous to Property subject to this Declaration may be annexed hereto according to the foregoing requirements; provided however, no such annexation shall be effective without the consent and joinder of the owners of the property to be annexed. Such annexation must be evidenced by a Declaration of Annexation executed by the parties herein described as set forth in this Declaration.

81. No Duty to Annex. Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any member to annex any member to annex any property to this Declaration.

82. Effect of Annexation on Class B Membership. In determining the number of Lots owned by Declarant for the purpose of Class B Membership status according to this Declaration, the total number of Lots covered by the Declaration including all Lots annexed thereto after the filing of this Declaration shall be considered.

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ARTICLE XII GENERAL

83. Remedies. In the event of any default by any Owner under the provisions of this Declaration, By-Laws or Rules and Regulations of the Association, the Association and/or any Owner shall have each and all of the rights and remedies which may be provided for in this Declaration, the By-Laws and said Rules and Regulations, and those which may be available at law or in equity (including without limitation the rights and remedies to enforce the lien created hereby securing any and all assessments against any Lot (which lien shall be deemed perfected when the assessment is levied), and may prosecute any action or other proceedings against such defaulting Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien by civil action in the same manner as equitable liens are enforced and foreclosed under the common law of the State of Missouri, and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or injunction, or specific performance, or for judgment for the payment of the money and collection thereof, or for any combination of the remedies, or for any other relief. No remedies herein provided or available at law or in equity shall be deemed mutually exclusive of any other such remedy. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expense, and all damages, permitted by law from the due date until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of the respective maintenance assessment (to the same extent as the lien provided herein for unpaid assessments) upon the Lot and upon all of his additions and improvements thereto, and upon all of his personal property upon the Lot. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or any Owner.

84. Term and Amendments. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is Recorded, after which they shall be automatically extended for successive periods of twenty-five (25) years, unless seventy-five percent (75%) of the total voting Members, in the aggregate, of the outstanding votes shall have voted to terminate the covenants and restrictions of this Declaration upon the expiration of the initial twenty-five (25) year period or any extension thereof, which termination shall be by written instrument signed by seventy-five percent (75%) of the total voting Members, in the aggregate, and properly Recorded in the real estate records of Clay and Platte County, Missouri. Prior to the Recording of the Certificate of Substantial Completion, this Declaration may be amended by an instrument signed by Owners constituting not less than seventy-five percent (75%) of the total votes, of the Association. After the Certificate of Substantial Completion is Recorded, this Declaration may be amended by an instrument signed by Owners constituting not less than sixty percent (60%) of the total votes of the Association. Any amendment must be Recorded. Notwithstanding any provisions hereof to the contrary, the Declarant may, at its sole discretion and without consent being required of anyone, (i) modify, amend repeal this Declaration at any time prior to the closing of the sale of the first Lot, provided said amendment, modification, or repeal is in writing and properly Recorded and/or (ii) amend this Declaration for purposed of resolving or clarifying any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein, or to cause this Declaration to be in compliance with any and all applicable laws, Rules and Regulations (including without limitation any and all applicable laws, Rules and Regulations of the Federal Housing Administration and/or the Veterans Administration).

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85. Severability. Invalidation of any section of this Agreement or any one or more of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

86. Rights and Obligations. The provisions of this Declaration and the organizational documents of the Association and By-Laws and the rights and obligations established thereby shall be deemed to be covenants running with the land and shall inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in a Lot whatsoever, the person to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration and the organizational documents and By-Laws of the Association, whether or not mention thereof is made in said deed.

87. Miscellaneous Provisions. Notwithstanding any provisions of this Declaration or of the organizational documents and By-Laws of the Association to the contrary, the following provisions shall control:

87.1 FHA/VA Approval. if any prospective Owner applies for FHA or VA mortgage financing and receives a commitment therefor, the following actions will require approval of the Federal Housing Administration or the Veterans Administration, as applicable: (1) addition of properties except additions of Property which may be solely made by Declarant, (2) dedication of Common Areas, and (3) amendment of this Declaration unless it may be amended solely by Declarant.

87.2 The following actions will require a notice to all institutional holders of first mortgage liens who have notified the Association in writing of their address to which such notices are to be delivered: (1) abandonment or termination of the Association; or (2) material amendment to the Declaration.

87.3 Upon the request of any first mortgagee of a dwelling on a Lot, the Association shall furnish to such mortgagee a written notice of any default by the Owner of such Unit in the performance of such Owner's obligations under this Declaration or the By-Laws or Association Rules and Regulations which is not cured within thirty (30) days. Any first mortgagee of a Unit who comes into possession of such Unit pursuant to the remedies provided in the mortgage or deed of trust, a foreclosure of the mortgage or deed of trust, or deed (or assignment) in lieu of foreclosure, shall take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged dwelling which occurred prior to the time such holder comes into possession of the Unit.

87.4 Unless at least seventy-five percent (75%), (or such lesser percentage as is allowed or permitted by applicable FHA or VA regulations from time to time) of the first mortgagees (based upon one vote for each first mortgage or deed of trust) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

87.4 (a) by act or omission seek to abandon, partition, encumber, or transfer the Common Areas, if any, or any portion thereof of interest therein (the granting of easements for public utilities or other public purposes consistent

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with the intended use of such property shall not be deemed a transfer within the meaning of this clause);

87.4 (b) substantially change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner by the Association;

87.4 (c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of the dwellings or maintenance of the dwellings or Lots;

87.4 (d) fail to maintain liability and extended coverage insurance on insurable property comprising a part of the Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs);

88. Gender. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders: the singular shall include the plural and vice versa.

89. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning of interpretation of this Declaration.

90. Conflicts. In the event of conflict between the terms of this Declaration and the By-Laws, Rules and Regulations or organizational documents of the Association, this Declaration shall control.

91. Floodplain. In the event any of the Lots are located partially within a floodplain or flood prone area as determined from time to time by FEMA, such Lots, and the construction of any improvements thereon, must conform to the rules, regulations and guidelines set forth in all applicable City of Kansas City, Missouri flood management ordinance(s) and other applicable laws, rules and regulations.

92. Marketing. The Declarant shall have the right, in its sole and absolute discretion, to designate one or more real estate brokers as the "**Master Broker**" for the Property. No Lot or Unit within the Property may be listed for sale by a Builder with a real estate sales or brokerage company other than the Master Broker without the prior written permission of the Declarant. Notwithstanding the foregoing, any Unit may be listed for resale by an Owner with a real estate broker of the Owner's choice.

93. Enforceability by City of Kansas City. All rights granted or retained by the Association hereunder shall inure to the benefit of, and be enforceable by, the City of Kansas City, Missouri.

94. Counterparts. This Declaration may be executed in one or more counterparts, all of which, when taken together, shall constitute one and the same Declaration.

95. Release. Upon acquisition of each Owner's Lot, each Owner, for himself, the members of his family, his guests and invitees (collectively the "Releasing Parties"), shall be deemed to have agreed to the following terms and provisions:

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95.1 The Releasing Parties agree to release and never make a claim against the Declarant, its affiliated companies, and its successors and assigns (collectively the **"Released Parties"**), for any injury, death or property damage that may be suffered or incurred by any of them while on or near the Common Areas and each of them shall be deemed to have waived any and all claims and causes of action that any of them may ever have against any of such Released Parties for damages or equitable relief or otherwise.

95.2 The Releasing Parties, for themselves and on behalf of the Association agree to release and never make a claim against the Released Parties for any property damage, siltation, vegetation, algae growth, blowing dust or excess deposit of soil, debris, dirt or other materials which may be deposited into any of the Detention Facilities located within the Common Areas or onto any Lot as a result of the Commercial Drainage Easement.

95.3 The Releasing Parties agree and acknowledge that certain real property located adjacent to the Property may be developed in the future for commercial purposes, including but not limited to the Commercial Tract (hereinafter collectively referred to as the **"Commercial Tracts"**) and accordingly, the Releasing Parties agree that they will not at any time in any way object to (either personally or in writing) in any public or private forum, protest, circulate petitions against, or resist the development of commercial improvements on the Commercial Tracts, the zoning or rezoning of the Commercial Tracts, or any site plan on the Commercial Tracts. All Owners shall be deemed to have consented in advance to the development of the Commercial Properties for commercial purposes, which may include, but not be limited to retail shopping center, so-called **"big box"** (as same is commonly known), restaurant and office purposes.

95.4 The Releasing Parties agree and acknowledge that the Declarant will not commence construction of the swimming pool and cabana to be located on Tract A as a part of the Recreational Facilities no sooner than such time as One Hundred and Fifteen (115) Units are occupied by Class A Members. The term **"commence construction"** as it relates to the swimming pool and cabana shall mean the application for, and receipt of, necessary construction permits as may be required by the applicable governmental authority.

96. Special Assessments. Each Owner acquiring a Lot within the Property acknowledges and agrees that each Lot within the Property may be subject to certain special assessments imposed upon the Property from various sources for various improvements benefiting the Property including but not limited to sanitary sewer improvements, water lines, storm water facilities and street improvements. Each Owner agrees to pay such special assessments, if any, imposed on an Owner's Lot within the Property.

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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

That certain property described as Fountain Hills – First Plat , which was recorded on November 16, 2004, as Document No. 22313 in Book 20, Page 58, Platte County, Missouri and was recorded on November 16, 2004, as Document No. T04896 in Cabinet F, Sleeve 156, Clay County, Missouri also described as :

A subdivision of land in the Fractional Northwest Quarter and the Fractional Southwest Quarter of Section 3, Township 51, Range 33, Kansas City, Clay County, Missouri, and in the Fractional Northwest Quarter and the Fractional Southwest Quarter of Section 3 and the Northeast Quarter of Section 4, Township 51, Range 33, Kansas City, Platte County, Missouri, all being bounded and described as follows: Commencing at the Northwest corner of the Fractional Southwest Quarter of said Section 3 (Platte County); thence South 0°29'03" West along the West line of said Fractional Southwest Quarter, 727.36 feet; thence South 89°30'57" East, 716.44 feet to the True Point of Beginning of the tract to be herein described; thence North 0°53'33" East, 228.57 feet; thence Northerly on a curve to the left, tangent to the last described course, having a radius of 700.00 feet, a central angle of 55°30'42", an arc distance of 678.20 feet; thence North 54°37'09" West, 152.93 feet; thence Northerly on a curve to the right, tangent to the last described course, having a radius of 800.00 feet, a central angle of 55°09'31", an arc distance of 770.16 feet; thence North 0°32'22" East, 235.03 feet; thence South 89°40'43" East, 100.00 feet; thence South 0°32'22" West, 235.41 feet; thence Southerly on a curve to the left, tangent to the last described course, having a radius of 700.00 feet, a central angle of 52°54'42", an arc distance of 646.44 feet; thence North 58°36'39" East, 140.18 feet; thence North 77°34'18" East, 182.47 feet; thence North 60°13'44" East, 182.39 feet; thence North 39°54'18" East, 121.21 feet; thence Southwesterly on a curve to the left, having an initial tangent bearing of South 50°05'42" East, a radius of 625.00 feet, a central angle of 07°48'00", an arc distance of 85.09 feet; thence North 32°06'18" East, 150.77 feet; thence South 57°53'42" East, 202.88 feet; thence South 66°20'25" East, 361.38 feet; thence South 23°39'35" West, 22.36 feet; thence Southerly on a curve to the right, tangent to the last described course, having a radius of 630.00 feet, a central angle of 08°07'04", an arc distance of 89.26 feet; thence Southerly on a curve to the left, having a common tangent with the last described course, a radius of 20.00 feet, a central angle of 88°30'36", an arc distance of 30.90 feet; thence South 37°52'45" West, 50.18 feet; thence Northwesterly on a curve to the left, having an initial tangent bearing of North 57°06'09" West, a radius of 20.00 feet, a central angle of 83°10'19", an arc distance of 29.03 feet; thence Southwesterly on a curve to the right, having a common tangent with the last described course, a radius of 630.00 feet, a central angle of 02°18'39", an arc distance of 25.41 feet; thence Southwesterly on a curve to the left, having a common tangent with the last described course, a radius of 486.50 feet, a central angle of 02°44'31", an arc distance of 23.28 feet; thence Southwesterly on a curve to the right, having a common tangent with the last described course, a radius of 513.50 feet, a central angle of 24°52'16", an arc distance of 222.90 feet; thence South 64°09'55" West, 455.89 feet; thence Southerly on a curve to the left, tangent to the last described course, having a radius of 20.00 feet, a central angle of 59°26'33", an arc distance of 20.75 feet; thence Southerly on a curve to the right, having a common tangent with the last described course, a radius of 99.00 feet, a central angle of 16°43'10", an arc distance of 28.89 feet; thence Southerly on a curve to the left, having a common tangent with the last described course, a radius of 86.00 feet, a central angle of 38°27'12", an arc distance of 57.72 feet; thence Southerly on a curve to the right, having a common tangent with the last described course, a radius of 800.00 feet, a central angle of 17°54'12", an arc distance

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of 249.98 feet; thence South 0°53'33" West, 200.00 feet; thence North 04°49'05" West, 201.00 feet; thence North 89°06'27" West, 60.00 feet; thence South 05°53'35" West, 229.44 feet to the True Point of Beginning. Containing 15.46 acres, more or less.

And ,

That certain property described as Fountain Hills – Second Plat , which was recorded on November 16, 2004, as Document No. T04897 in Cabinet F, Sleeve 157, Clay County, Missouri also described as:

A subdivision of land in the Fractional Northwest Quarter, the Fractional Southwest Quarter and the Northeast Quarter of Section 3, Township 51, Range 33, Kansas City, Clay County, Missouri being bounded and described as follows: Commencing at the Southwest corner of said Fractional Northwest Quarter; thence North 89°51'09" East, along the South line of said Fractional Northwest Quarter, 570.06 feet; thence North 00°08'51" West, 73.64 feet to the True Point of Beginning of the tract to be herein described; thence Northeasterly on a curve to the left, having an initial tangent bearing of North 45°41'52" East, a radius of 513.50 feet, a central angle of 06°24'13", an arc distance of 57.39 feet; thence Northeasterly on a curve to the right, having a common tangent with the last described course, a radius of 486.50 feet, a central angle of 02°44'31", an arc distance of 23.28 feet; thence Northeasterly on a curve to the left, having a common tangent with the last described course, a radius of 630.00 feet, a central angle of 02°18'39", an arc distance of 25.41 feet; thence Easterly on a curve to the right, having a common tangent with the last described course, a radius of 20.00 feet, a central angle of 83°10'19", an arc distance of 29.03 feet; thence North 37°52'45" East, 50.18 feet; thence Northeasterly on a curve to the right, having an initial tangent bearing of North 56°43'57" West, a radius of 20.00 feet, a central angle of 88°30'36", an arc distance of 30.90 feet; thence Northeasterly on a curve to the left, having a common tangent with the last described course, a radius of 630.00 feet, a central angle of 08°07'04", an arc distance of 89.26 feet; thence North 23°39'35" East, 22.36 feet; thence North 66°20'25" West, 60.00 feet; thence North 23°39'35" East, 105.33 feet; thence Northerly on a curve to the left, tangent to the last described course, having a radius of 20.00 feet, a central angle of 88°34'29", an arc distance of 30.92 feet; thence North 22°34'19" East, 50.05 feet; thence Easterly on a curve to the left, having an initial tangent bearing of South 65°02'38" East, a radius of 20.00 feet, a central angle of 91°17'47", an arc distance of 31.87 feet; thence North 23°39'35" East, 100.47 feet; thence South 66°20'25" East, 60.00 feet; thence South 58°58'37" East, 82.61 feet; thence South 54°00'42" East, 101.63 feet; thence South 49°18'48" East, 99.01 feet; thence South 43°47'46" East, 298.40 feet; thence South 63°17'37" West, 65.31 feet; thence South 25°58'18" East, 186.01 feet; thence Southwesterly on a curve to the right, having an initial tangent bearing of South 64°01'42" West, a radius of 495.00 feet, a central angle of 01°30'21", an arc distance of 13.01 feet; thence South 24°27'57" East, 135.13 feet; thence North 58°13'01" East, 160.51 feet; thence North 43°34'59" East, 160.51 feet; thence North 44°29'40" East, 177.46 feet; thence North 21°39'55" East, 74.23 feet; thence North 23°09'25" West, 74.23 feet; thence North 30°24'25" West, 71.10 feet; thence North 60°11'30" West, 71.19 feet; thence North 72°55'34" West, 197.33 feet; thence North 46°12'39" West, 91.68 feet; thence North 43°47'21" East,

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205.87 feet; thence South 64°37'58" East, 248.08 feet; thence South 82°24'18" East, 127.57 feet; thence North 87°05'47" East, 256.25 feet; thence South 19°02'50" East, 141.52 feet; thence Southerly on a curve to the right, tangent to the last described course, having a radius of 450.00 feet, a central angle of 53°33'20", an arc distance of 420.62 feet; thence North 55°29'31" West, 131.07 feet; thence South 38°37'56" West, 57.69 feet; thence South 55°15'18" West, 115.56 feet; thence South 64°53'44" West, 520.00 feet; thence South 67°55'02" West, 62.91 feet; thence South 22°09'22" East, 182.20 feet; thence Southeasterly on a curve to the right, having an initial tangent bearing of South 67°50'38" West, a radius of 1025.00 feet, a central angle of 02°53'00", an arc distance of 51.58 feet; thence South 70°43'38" West, 25.04 feet; thence Southerly on a curve to the left, tangent to the last described course, having a radius of 15.00 feet, a central angle of 96°02'24", an arc distance of 25.14 feet; thence South 64°41'14" West, 50.00 feet; thence Northerly on a curve to the right, having an initial tangent bearing of North 25°18'46" West, a radius of 525.00 feet, a central angle of 00°57'18", an arc distance of 8.75 feet; thence Westerly on a curve to the left, having a common tangent with the last described course, a radius of 15.00 feet, a central angle of 83°04'09", an arc distance of 21.75 feet; thence Westerly on a curve to the right, having a common tangent with the last described course, a radius of 1025.00 feet, a central angle of 13°28'50", an arc distance of 241.16 feet; thence South 86°03'12" West, 15.00 feet; thence Southerly on a curve to the left, tangent to the last described course, having a radius of 15.00 feet, a central angle of 92°23'17", an arc distance of 24.19 feet; thence Southerly on a curve to the left, having a common tangent with the last described course, a radius of 975.00 feet, a central angle of 00°19'57", an arc distance of 5.66 feet; thence South 83°19'58" West, 240.10 feet; thence North 18°29'23" West, 631.79 feet to the True Point of Beginning. Containing 22.32 acres, more or less.

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EXHIBIT B

ENUMERATION OF LOTS

Lots 1 through 24 of that certain property described as Fountain Hills – First Plat , which was recorded on November 16, 2004, as Document No. 22312 in Book 20, Page 58, Platte County, Missouri and was recorded on November 16, 2004, as Document No. T04896 in Cabinet F, Sleeve 156, Clay County, Missouri.

AND

Lots 1 through 44 of that certain property described as Fountain Hills – Second Plat, which was recorded on November 16, 2004, as Document No. T04897 in Cabinet F, Sleeve 157, Clay County, Missouri.

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EXHIBIT C

ADJACENT COMMERCIAL PROPERTY

All that part of Fractional Section 3, Township 51, Range 33, in Kansas City, Platte County, Missouri and all that part of Fractional Section 3, Township 51, Range 33, in Kansas City, Clay County, Missouri, being described as follows: Commencing at the Northwest corner of said Fractional Northwest Quarter; thence South $0^{\circ}32'22''$ West, along the West line of said Fractional Northwest Quarter, 1708.54 feet; thence Southerly, along a curve to the left, tangent to the last described course, having a radius of 750.00 feet, a central angle of $55^{\circ}09'31''$, an arc distance of 722.02 feet; thence South $54^{\circ}37'09''$ East, 152.93 feet; thence Southeasterly, along a curve to the right, tangent to the last described course, having a radius of 750.00 feet, a central angle of $28^{\circ}47'04''$, an arc distance of 376.79 feet to the True Point of Beginning of the tract to be herein described; thence Southerly, along a curve to the right, having an initial tangent bearing of South $25^{\circ}50'05''$ East, a radius of 750.00 feet, a central angle of $26^{\circ}43'38''$, an arc distance of 349.86 feet; thence South $89^{\circ}06'27''$ East, 30.00 feet to a point on the Easterly right-of-way line of North Platte Purchase Road, as now established; thence South $04^{\circ}49'05''$ East, along said Easterly right-of-way line, 201.00 feet to a point 50.00 feet East of Centerline Station 12+00; thence South $02^{\circ}31'27''$ East, along said Easterly right-of-way line, 335.60 feet to a point 70.00 feet Easterly of Centerline Station 15+35; thence South $57^{\circ}48'33''$ East, along said Easterly right-of-way line, 111.65 feet to a point 165.40 feet Easterly of Centerline Station 15+93, said point being also on the Northerly right-of-way line of relocated Missouri Route 152, as now established; thence North $76^{\circ}12'10''$ East, along said Northerly right-of-way line, 582.47 feet to a point 170.0 feet Northerly of Centerline Station 9+00; thence North $64^{\circ}18'53''$ East, along said Northerly right-of-way line, 215.20 feet; thence North $18^{\circ}29'23''$ West, 1096.24 feet; thence Southwesterly, along a curve to the right, having an initial tangent bearing of South $47^{\circ}57'00''$ West, a radius of 600.00 feet, a central angle of $16^{\circ}12'55''$, an arc distance of 169.81 feet; thence South $64^{\circ}09'55''$ West, 558.37 feet to the True Point of Beginning. Containing 793,625 square feet or 18.22 acres, more or less.

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