

WINDSONG  
PLATS ONE THROUGH FOUR  
DECLARATION AND ESTABLISHMENT  
OF  
COVENANTS, CONDITIONS, RESERVATIONS AND RESTRICTIONS

The DECLARATION, made and entered into this day of 1<sup>st</sup> day of October 1997 by and between the requisite owners of the lots located in Windsong Plats One through Four, hereinafter collectively referred to as "Declarant" and Windsong Homeowners Association, Inc., a Missouri not-for-profit corporation hereinafter referred to as the "Association".

**WITNESSETH THAT:**

**WHEREAS,** This Declaration amends and restates in its entirety the Indenture of Trust and Restrictions of Windsong filed of record with the St. Charles County Recorder of Deeds Office.

--AS, Those persons collectively referred to as Declarant, are the owners in fee simple title to the requisite lots shown on the recorded plat of Windsong Plat One, recorded in Plat Book 29, Pages 161 and 162 of the St. Charles County Records; Windsong Plat Two recorded in Plat Book 30, Pages 123 and 124 of the St. Charles County Records; Windsong Plat Three, recorded in Plat Book 30, Page 305 of the St. Charles County Records; Windsong Plat Four recorded in Plat Book 30, Pages 395 and 396 of the St. Charles County Records and the Directors are those persons named as Trustees in that instrument known as the Indenture of Trust and Restrictions of Windsong filed of record with the St. Charles County Recorder of Deeds Office.

**WHEREAS,** Common Ground has been designated and set aside on the plats of Windsong Plats One through Four;

**WHEREAS,** there have been designated, established and recited on the recorded plats of Windsong certain streets, Common Ground and certain easements which are for the exclusive use and benefit of the owner or owners of the lots and parcels shown on said subdivision plats (except those streets and easements which are now or may hereafter be dedicated to public bodies and agencies) and which have been provided for the purpose of construction maintaining and operating sewers, pipes, poles, wires, storm water drainage, parks and other facilities and public utilities for the use and benefit of the owner or owners of the lots and parcels shown and to be shown on said plats;

**WHEREAS,** it is the purpose and intention of this Declaration to preserve the tracts of land, subjected to this Declaration, as a restricted neighborhood and to protect the same against certain

uses by the adoption of a scheme of restrictions, and to apply those restrictions in favor of or against each lot and parcel as against or in favor of all parcels within said residential area in the hands of the present or subsequent owners thereof, and mutually to benefit, guard and restrict present or future title holders or Occupants of any or all said parcels and to foster the health welfare and safety and morals of all who own or reside in said areas; and

**WHEREAS**, on or about \_\_\_\_\_, 199\_\_ the requisite number of the owners of the lots located in Windsong Plats One through Four voted to amend and **restate** in its entirety the Indenture of Trust and Restrictions of Windsong Plats One through Four dated February 13, 1992 and contemporaneously therewith by requisite consent, acting collectively as Declarant establish and enact this Declaration; and

**WHEREAS**, the trustees of the former Indentures shall convey by separate instrument to Windsong Homeowners Association Inc., the Common Ground designated on Plats One through Four of Windsong, which common ground was titled to the trustees by the terms of the former Indentures; and

NOW, THEREFORE, in consideration of the premises and of mutual promises, covenants and agreements made by the parties hereto each to the other, the parties hereto covenant and agree to and with each other collectively and individually, for themselves, their successors and assigns, and for and upon behalf of all persons who may hereafter derive title to or otherwise hold through them their heirs, successors, or assigns, any of the lots in Windsong Plats One through Four recorded as aforesaid, all as described herein as follows to wit:

j,

#### SECTION I. DEFINITIONS.

When used in this Declaration the following terms shall have the following meanings:

1.1 "Articles" means the Articles of Incorporation of the Association and any amendments thereof, which have been filed with the Missouri Secretary of State.

1.2 "Association" means Windsong Homeowners Association Inc., a Missouri not-for-profit corporation.

1.3 "Board" means the Board of Directors of the Association.

1.4 "By-laws" means the By-laws of the Association.

1.5 "Common Properties" means those areas of real property, including improvements, and personal property designated as such on Plats One through Four of Windsong or owned by the Association or in which the Association has easement, license or other occupancy or use rights, as an appurtenance to any of the Lots or otherwise, and which are intended to be devoted to the

lots, playgrounds, streets or alleys which have not been dedicated to the public use, subdivision entrance areas and monuments, street lights, storm water control easement areas and facilities, paths, walkways, swimming pools, tennis courts, and other facilities for the benefit in common of such owners. The Declarant reserves the right to reconvey or relocate Common Properties from time to time if necessary to effectuate the orderly development of Windsong. No such reconveyance or relocation shall take place unless the Declarant replaces such reconveyed or relocated Common Properties with other property, so that the total size of the Common Properties, before and after such reconveyance or relocation is approximately unchanged.

1.6 "Covenants and Restrictions" means all reservations, limitations, conditions, easement and covenants contained in this Declaration.

1.7 "Declarant" means collectively the owners of the lots of Windsong Plats One through Four and those successor(s) or assign(s) designated by their heirs, successors or assigns with respect to any or all rights herein reserved or granted to Declarant.

1.8 "Declarant Board" means the Board designated by Declarant as provided in Subsection 3.5.2 of this Declaration.

1.9 "Declaration" means this Declaration and Establishment of Conditions, Reservations and Restrictions and any amendments hereto, made hereafter.

1.10 "Director" means a member of the Board.

1.11 "Improvements" means all buildings, out buildings, roads, driveways, parking areas, fences, retaining and other walls, planters, landscaping poles, antenna gas, electric, water, sewer and other utility lines and facilities, and any other structures of any type or kind.

1.12 "Individual" means a natural person.

1.13 "Interim Board" means the Board designated by Declarant as provided in Subsection 3.5.3 of this Declaration.

1.14 "Lot" shall mean any parcel of real property shown as a numbered lot on Plats One through Four of Windsong and shall include any improvements thereon.

1.15 "Owner" means any person or persons who holds fee simple title to any Lot.

1.16 "Permanent Board" means the Board elected by Owners as provided in Subsection 3.5.4 of this Declaration.

1.17 "Person" means any natural person corporation partnership, trust or other legal entity

authorized by law to hold legal title to real property.

I. 18 Plat" means Windsong Plat One, recorded in Plat Book 29, Pages 161 and 162 of the St. Charles County Records; Windsong Plat Two recorded in Plat Book 30, Pages 123 and 124 of the St. Charles County Records; Windsong Plat Three, recorded in Plat Book 30, Page 305 of the St. Charles County Records; Windsong Plat Four recorded in Plat Book 30, Pages 395 and 396 of the St. Charles County Records; and any additional plats subjecting additional land to this Declaration and any additions and modifications thereto from and after the date upon which such additions and modifications are recorded.

1.19 "Windsong" means all that real property situated in St. Charles County, Missouri, as shown and depicted on the Plats thereof, and includes all improvements thereon.

## SECTION 2. PROPERTY SUBJECT TO THIS DECLARATION.

2.1 Original Property Subject to Declaration. The real property which is held and occupied subject to this Declaration' is located in St. Charles County, and is more particularly described in Windsong Plat One, recorded in Plat Book 29, Pages 161 and 162 of the St. Charles County Records; Windsong Plat Two recorded in Plant Book 30, Pages 123 and 124 of the St. Charles County Records; Windsong Plat Three, recorded in Plat Book 30, Page 305 of the St. Charles County Records; Windsong Plat Four recorded in Plat Book 30, Pages 395 and 396 of the St. Charles County Records. No other or additional real property shall be subject to the Covenants and Restrictions of this Declaration until such time as such real property is made specifically subject hereto by the recording of any amendment to this Declaration.

## SECTION 3. WINDSONG HOMEOWNERS ASSOCIATION.

3.1 In General. The Association is a Missouri not-for-profit corporation organized to own all Common Properties and to further and promote the common interest of the Owners of Lots in Windsong. The Association shall have such powers in the furtherance of its purpose as are set forth in its Articles and By-laws, and shall have all of the rights, privileges, duties and liabilities as are prescribed under this Declaration.

3.2 Membership. Every person who is a record Owner of a fee or undivided fee interest in any Lot which is subject to this Declaration shall automatically be a member of the Association. Membership shall confer certain rights and privileges as described in this Declaration. Any person who holds an interest in any Lot or real property subject to this Declaration merely as security for the performance of an obligation shall not be a member of the Association.

### 3.3 Voting Rights.

3.3.1 There shall be one (1) vote for each Lot at meetings of the members of the Association. When a Lot is owned by more than one (1) person the vote of all such persons shall be exercised as they determine amongst themselves, but in no event shall more than one (1) vote be cast with respect to any Lot. If there is a multiple Owner of any Lot, the Owners shall file a written statement with the Board designating the person authorized to vote on behalf of such Owners. If the Owners of a Lot fail to file such a statement with the Board then any Owner present at a meeting of the Association may cast the vote for such Lot and if more than one (1) Owner is present the one (1) vote shall be cast by one of the Owners. Any designation shall remain in effect until revoked in writing and filed with the Board.

3.3.2 The voting rights of any Owner shall be suspended for long as the Owner is more than 30 days delinquent in the payment of any assessment under this Declaration.

3.3.3 The initial Board` of Directors shall be the current subdivision trustees:

Director 1:	Jeff M. Gremminger
Director 2:	Nancy Riemann
Director 3:	Charles Wiley

Director 1 shall serve until the Association's next annual meeting when an election shall be held to elect Director 1 . Director 2 shall serve for two (2) years until the second annual meeting of the Association when an election shall be Held to elect Director 2. Director 3 shall serve for three (3)t years until the third annual meeting of the Association when an election shall be held to elect Director

### 3.4 Association Meetings.

3.4.1 An annual meeting of the members for the purpose of hearing reports from all officers and standing committees and for electing directors shall be held in the County of St. Charles, State of Missouri not later than thirty (30) days before the close of the Association's fiscal year, beginning with the year 1996. Subsequent regular annual meetings of the members shall be held within thirty (30) days of the same day of the same month each year thereafter set at an hour by the Board. The date and place of the annual meeting shall be set by the Board of Directors.

3.4.2 In addition to the annual meetings, regular meetings of the members shall be at such time provided however, that there shall be no regular meetings held during the month during which the annual meeting is held.

3.4.3 The President may call special meetings. In addition it shall be the duty of the President to call a special meeting if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by at least ten (10%) percent of the total votes of the

Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

3.4.4 It shall be the duty of the Secretary to mail or cause to be delivered to the owner of record of the Association stating the purpose of the special meeting, as well as the time and place where it is to be held; if an owner wishes notice to be given at an address other than his or her Residential Unit, he or she shall have designated by notice in writing to the Secretary such other address. The mailing or delivering of a notice of meeting in the manner provided in this Section shall be considered service of Notice. Notices shall be served not less than ten (10) days nor more than thirty (30) days before a meeting. Notice of meetings published in the subdivision newsletter shall be considered sufficient so long as mailed or delivered to each Resident Unit Owner as provided for in this Section.

3.4.5 Waiver of notice of meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or in proxy, shall be deemed waiver by such member of notice of the time, date, and place thereof, unless such member specifically objects to the lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted therein unless objection to the calling or convening of the meeting, of which proper notice was not given is raised before the business is put to a vote.

i.

3.4.6 If any meetings of the Association cannot be held because a quorum is not present a majority of the members who are present at such meeting either in person or by proxy, may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to the members in the manner prescribed for regular meetings.

The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum provided that any action taken shall be approved by at least the members required to constitute a quorum.

3.4.7 At all meetings of the members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Each proxy shall be revocable and shall automatically cease upon conveyance by the member of his or her Residential Unit or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member or upon the expiration of eleven (11) months & on the

date of the proxy. A form of proxy or written ballot may provide an opportunity to specify approval or disapproval with respect to any proposal.

3.4.8 Where directors or officers are to be elected by members, or where there is an act requiring the vote of the members, such election or vote on such proposed action may be conducted by mail in such manner as the board of directors shall determine.

3.4.9 The term majority shall mean those votes, owners, or other group as the context may indicate totaling more than fifty (50%) per cent of the total number.

3.4.10 The presence in person or by proxy of ten (10%) per cent of the members shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

3.4.11 The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all occurring thereat.

3.4.12 Any action which may be taken by the vote of members at a regular meeting or special meeting except the election of Board members, may be taken without a meeting as and to the extent permitted by Missouri Law.

### 3.5 Board of Directors, `

3.5.1 The affairs of the Association shall be governed by a Board of Directors. Directors shall be members of the Association.

3.5.2 The number of Directors shall be three (3). Such number may be increased or decreased, but to no fewer than three (3) by resolution amending these By-Laws adopted by members entitled to a majority of voting power present in person or by proxy at a meeting of members, but no decrease in number of directors shall have effect of removing any Director prior to expiration of his term of office.

3.5.3 The initial Board of Directors shall be the current subdivision trustees:

Director 1:	Jeff M. Gremminger
Director 2:	Nancy Riemann
Director 3:	Charles Wiley

Director 1 shall serve until the Association's next annual meeting when an election shall be held to elect Director 1. Director 2 shall serve for two (2) years until the second annual meeting of the Association when an election shall be held to elect Director 2. Director 3 shall serve for three (3) years until the third annual meeting of the Association when an election shall be held to elect Director

3.5.4 Directors shall be designated as Director I, Director 2 and Director 3 and shall serve staggered terms as set forth in Section 3 hereinabove. Commencing with the next annual meeting of the Association Director's shall be elected to serve a term of three (3) years. The election of a Director shall be held at the annual meeting of 'the Association.

3.5.5 Vacancies on the Board of Directors caused by an reason excluding a vote of the Association shall be filled by a majority of the remaining Directors, though less than a quorum at any meeting of the Board. Each person elected shall serve the unexpired portion of the vacated term.

3.5.6 Directors shall not receive compensation for their services as Directors.

3.5.7 At a meeting called expressly for that purpose, the entire Board of Directors may be removed with or without cause, by a vote of a majority of the members then entitled to vote at an election of Directors. If less than the entire Board is to be removed, no one of the Directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire Board of Directors. Any Director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than twenty (20) days may be removed by a majority vote of the Directors at a meeting, a quorum being present.

3.5.8 The meetings of the board of Directors may be held at any place within St. Charles County, Missouri, as a majority of the Board of Directors may from time to time by resolution appoint.

3.5.9 There shall be at least four (4) regular meetings of the Board of Directors each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to Directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

3.5.10 Special meetings of the Board of Directors shall be held when called by written notice signed by the President, Vice -President, or Secretary of the Association or by any two (2) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) written notice by first class. mail, postage prepaid; C by telephone communication, either directly to the Director or to a person at the Director's office who would reasonably be expected to communicate such notice promptly to the Director; or Cd) by telegram, charges prepaid. All such notices shall be given or sent to the Director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting.



Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time for the meeting

3.5.11 The transactions of any meeting of the Board of Directors, however, called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.5.12 At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.5.13 The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings.

3.5.14 Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken shall be signed by all the Directors.

3.5.15 The officers of the Association shall be a President, Vice-President, Secretary, and the Treasurer. The Board of Directors may elect such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurer, as it shall deem desirable, such officers to have the authority and perform the duties prescribed &om time to time by the Board of Directors. Any two or more offices may be held by the same person excepting the offices of President and Secretary. The President and Treasurer shall be elected form among the members of the Board of Directors.

3.5.16 The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the members. A vacancy in any office arising because of the death resignation removal or otherwise may be filled by the Board of Directors for the expired portion of the term.

3.5.17 Officers of the Association shall serve without compensation.

3.5.18 Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

3.5.19 The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specially conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

3.5.20 When a vacancy occurs in one of the executive offices by death resignation or otherwise, it shall be filled by the Board of Directors. The officer so selected shall hold office until his successor is chosen and qualified.

3.5.21 Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any time specified and unless otherwise specified therein the acceptance of such resignation shall not be necessary to make it effective.

3.5.22 All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

3.5.23 The Board shall purchase a fidelity bond for the treasurer and for any other person or persons handling funds of the Association. The amount of such bond shall not be less than the estimated maximum of funds, including the reserve funds, in the custody of the Board at any given time during the period of the bond. The bond shall contain a waiver of all defenses based on the exclusion of persons serving without compensation & of the definition of "employee" or similar terms or expressions. The premium for such bond shall be an expense Of the Association apportioned and collected in the same manner as other Association expenses. Such bond shall provide that it .may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice of the Board.

3.6 Association By-Laws and Articles. The Board of Directors shall have the exclusive right to adopt, amend, or repeal any By-laws of the Association not inconsistent with the provisions of this Declaration. The initial By-laws of the Association shall be adopted at the initial meeting of the Board of Directors. The Board shall have the exclusive right to amend the Articles of Incorporation.

### 3.7 Ownership and Maintenance of Common Properties.

3.7.1 Common Properties, including subdivision entrance structures and recreational ground will be held and maintained by the Association in perpetuity.

3.7.2 The Association shall be responsible for payment of property taxes, maintenance of all Common Properties, open space areas and facilities, maintenance of liability insurance and other related duties of ownership of the Common Properties.

### SECTION 4. POWERS AND DUTIES OF THE BOARD.

The Board shall have the rights, powers and authorities described in this Declaration and the following rights, powers and authorities:

4.1 Incorporation. To incorporate the subdivision as a Missouri Not-For-Profit corporation or act as an unincorporated association.

4.2 Common Ground. To acquire and hold the Common Ground as set forth and shown on Windsong Plats One through Four and on any subsequently recorded plat of Windsong. The Board shall deal with the Common Ground under the provisions hereinafter set forth.

4.3 Control of Common Property. To exercise such control over the easements, streets and roads (Except for those easements, streets and roads which are not or may hereafter be dedicated to public bodies or agencies), entrances, lights, monuments, Common Ground, park areas, shrubbery, storm water sewers, storm water retention areas, sanitary sewer trunks and lateral lines, and pipes as may be shown on the recorded plats of said above described tract of land as is necessary to maintain, repair, rebuild, supervise and insure the proper use of said easements, streets, Common Ground and roads, etc., by the necessary public utilities and them and others to whom they may grant permission to construct operate and maintain on under and over said easements and streets, sewers, pipes, poles, wires and other facilities and public utilities for services to the lots and dwellings shown on said plats.

4.4 Easements. To grant easements over the Common Ground.

4.5 Abandonment of Easements. The Board may abandon an easement or portion thereof by executing and recording a proper and appropriate instrument in the Office of the Recorder of Deeds of St. Charles County, Missouri, but such easement or portion thereof may be abandoned only when the Board determined that it is in the best interest of the subdivision that same be abandoned.

4.6 Maintenance of Common Property. To exercise control over and to maintain the Common Ground as shown on said Windsong Plats One through Four and any subsequently recorded plat of Windsong subjected to this Declaration. The Board may pay real estate taxes and assessments on said Common Ground out of the general assessment hereinafter provided for. The Board may

maintain and improve the Common Ground with ornamental entrance ways, shrubbery, vegetation, decorations, buildings, recreational facilities of any kind, or description other structures, any and all other types of facilities in the interest of health welfare, safety, recreation, entertainment, education, and general use of the lot owners of said subdivision all in conformity with applicable laws. The Board may prescribe by reasonable means and regulations the terms and conditions including reasonable fees and charges for the use of said Common Ground and all improvements thereon, all for the benefit and use of the lot owners of Windsong and according to the discretion of the said Board. The Board, shall in addition have the right and power to establish, operate, conduct, regulate, maintain and repair such common property, buildings and facilities as may exist or be established on the land subject thereto; to make means and regulations, not inconsistent with the law and this Indenture, for the use and operation thereof and in every and all respects govern the operation, thereof.

4.7 Dedication. To dedicate to public use any private streets constructed OR to be constructed on said Common Ground, and whenever such dedication would be accepted by a public agency. The Board shall exercise control over any storm water retention areas located on the Common Ground. The Board shall maintain improve, repair, rebuild, supervise, and insure the proper use of said retention areas.

4.8 Condemnation. In the event it shall become necessary for any public agency to acquire all or any or part of the property conveyed to the Board for any public purpose, the Board, during the period of this Declaration as well as the times fixed for the appointment or election of a Director, are hereby authorized to negotiate with such public agency for such acquisition and to execute deeds and other instruments necessary to convey the property. Should acquisition by eminent domain become necessary, only the board need be made a party, and in the event the proceeds received shall be held by the Board for the benefit of those entitled to the use of said Common Ground, road or easements.

4.9 Enforcement. To prevent, as Directors of this Declaration any infringement and to compel the performance of any restriction set out in this Declaration or established by law, and also any means regulations issued by said Directors governing the use of the Common Ground or any matters relating thereto. This provision is intended to be cumulative and not to restrict the right of any lot owner to proceed in his own behalf, but the power and authority herein granted to the Directors is intended to be discretionary and not mandatory.

4.10 Vacant and Neglected Lots. To clean up rubbish and debris and remove grass and weeds from and to trim, cut back remove, replace and maintain trees, shrubbery and flowers upon any vacant OR neglected lots or property, and the owners thereof may be charged with the reasonable expenses so incurred which if not paid, shall constitute a continuing lien upon the property against which such charge is made. The Directors, their agents or employees shall not be deemed guilty or liable for any manners of trespass or any other act or any injury, abatement, removal or planting.

4.11 Plans and Specifications. The Board shall consider, approve or reject any and all plans

and specifications for any and all buildings or structures, fences, detached buildings, outbuildings, accessory buildings, swimming pools or tennis courts proposed for construction -and erection on said lots, proposed additions to such buildings or alternation in the external appearance of buildings already constructed, it being provided that no buildings or structures, fences, detached buildings, outbuildings, accessory buildings, swimming pools or tennis courts or other structures may be erected or structurally altered on any of said lots unless there shall be first had the written approval of a majority of the Board to the plans and specifications therefore and the grade proposed therefore. In the event the Board fails to approve or disapprove within forty-five (45) days after building plans or specifications for fences,` swimming pools or tennis courts, accessory buildings and other outbuildings have been submitted to them hereunder, approval will not be required and the applicable restrictions shall be deemed to have been fully complied with provided the party alleging submission of the plans can supply written evidence that said plans and restrictions were in fact submitted to the Board.

4.12 Deposits. The Board may require a reasonable deposit in connection with the proposed erection of any building or structure, fence, detached buildings, outbuildings, swimming pool, tennis courts, or other structure of any of said lots in order to provide for completion of the project, all debris shall be removed from the site and from adjacent lots, and that any and all damages to subdivision improvements shall be repaired.

4.13 Minimum Costs. The Board may establish and minimum costs which shall apply to buildings and structures which may be erected on said lots as the Board deems necessary and desirable in order to maintain a high character on the buildings and structures which may be erected on said lots. Minimum costs so established shall at all times be subject to revision or abandonment at the discretion of the Board in order to provide that the buildings and structures which may be erected on said lots shall be fairly uniform in character irrespective of cost or other circumstances.

4.14 Health, Safety and Welfare. The Board may provide said subdivision with adequate fire and police protection and for the collection of trash rubbish or garbage, and may otherwise provide for the public health safety, and welfare and assume contracts for such purposes covering such periods of time as the Directors may consider advisable.

4.15 Donations. The Board may receive, hold, convey, dispose of and administer, IN TRUST for any purpose mentioned in this Declaration any gift, grant, conveyance or donation of money or real or personal property.

4.16 Employment. The Directors in exercising the rights, powers and privileges granted to them and in discharging the duties imposed upon them by the provisions of this Declaration may from time to time to enter into contracts, employ agents, attorneys, accountants, servants, clerks, and other employees and labor as they may deem necessary or advisable, and may institute and prosecute such suits as they deem advisable or necessary, and defend suits as they deem necessary and advisable, and defend suits brought against them in their capacity as Directors, or against other employees.

4.17 Insurance. To purchase and maintain in force liability insurance protecting the Directors, Officers and lot owners from any and all claims for personal injury and property damage arising from use of the Common Ground. The Board shall have the power to purchase and maintain in force insurance protecting the Directors and Officers from any and all claims for damages arising out of any decision act, or failure to act, of the Directors and Officers acting in their capacity of Directors and Officers.

4.18 Littering and Trash Receptacles. In the interest of the health, welfare, safety and morals of the lot owners of the land subject to this Declaration, and provided that same is not prohibited by law or Federal State, County or Municipality regulation said Board shall have the right and power to erect maintain and replace fences on the Common Ground; to plant, care for, maintain spray, trim and protect trees, shrubbery and vegetation on Common Ground and elsewhere in the interest of health welfare, safety, and morals within the land subject hereto;

4.19 Unqualified powers. The Board shall have the full and unqualified right, power and authority concerning all of the property, real personal or mixed, owned or held by said Board to:

(a). Make all contracts and incur all liabilities necessary, related or incidental to exercise of the Board's power and duties hereunder including the construction of improvements;

(b). Purchase insurance against all risks, casualties and liabilities of every nature and description;

(c). Borrow money on same; encumber and hypothecate same, make and execute promissory notes or incur liabilities and obligations secured by deed of trust, mortgage, lien, or encumbrance on same.

(d). Make all types of permanent, temporary, construction, or other loans; and

(e). Use, handle, manage, control, operate, hold, deal in and in all respects treat with the aforesaid property, real personal or mixed, limited only as provided in this instrument.

4.20 Bond. The Board shall have the right to produce a bond for the individual serving as Treasurer.

4.21 Exercise of Powers. AU rights and powers conferred on the Directors by this instrument shall be exercised by them collectively and not individually. In the event of any difference of opinion among the Directors as to the exercise of the rights and powers conferred hereby, the decision of a majority of the Directors shall be conclusive.

## SECTION 5. ASSESSMENTS.

5.1 In General. The Board is hereby authorized, empowered and granted the right to make assessments upon and against the several lots and said parcels of land in Windsong Plats One through Four and any other recorded plat of Windsong subjected by Owner to this Declaration for the Purpose herein stated and at the rate hereinafter provided, and in the manner and subject to the provisions of this instrument, as set forth in the following sections.

5.2 General Assessments. The Board is authorized to make uniform assessments, except as hereinafter provided, of an amount not to exceed One Hundred Fifty Dollars (\$150.00) per lot in each calendar year upon and against the lots on which a residence has been erected in said subdivision for the purpose of carrying out any and all of the general duties and powers of the Board as herein described and for the further purpose of enabling the Board to defend and enforce restrictions, adequately to maintain streets, if required, Common Ground, utilities recreational facilities, and to dispose of garbage or rubbish to perform or execute any powers or duties provided for in this instrument, or otherwise property to protect the health safety and general welfare of the residents in said Subdivision.

Commencing with the third annual assessment to be made hereunder, and each five years thereafter, the fixed annual assessment per lot shall not exceed the greater of purchasing power of \$150.00 for the month in which this Declaration' is recorded. Such number of dollars shall be determined by dividing \$150.00 by the index for said month of recording as computed in the Consumers Price Index Published by the Bureau of Labor Statistics of the United States Department of Labor Statistics of the United State Department of Labor, U.S. City Average, All Items, All Urban Consumers (1982-84=100) and then multiplying the quotient by the similar index number for the month in which the sixth assessment thereafter commences. If the Bureau of Labor Statistics shall change the base period in effect during the month in which this Declaration is recorded, the new index figure applicable as a divisor and multiplier shall be correspondingly changed. In the event such statistics shall no longer be available, the most nearly similar statistics showing the purchasing power of United States Dollars shall be used instead, and the table to be used shall be designated by the Board.

5.3 Special Assessment. If at any time the Board shall consider it necessary to make any expenditure requiring an assessment additional to the assessments above provided, they shall submit in writing to the then owners of lots for approval an outline of the plan for the project contemplated and the estimated amount required. If such project and the assessment so stated by approved either at a meeting of the owners of lots called by the Board upon not less than ten (10) days written notice, by a two thirds (2/3) majority vote of those present in person or by proxy, or on written consent of two-thirds (2/3) of said owners, the Board shall notify all owners in said tracts of the additional assessment. The limit of the annual assessment for general purposes as set above, shall not apply to any assessment made under the provisions of this paragraph.

In the event the Board exercises the rights granted it under Section 4.10 hereof to enter and

clean up any vacant lot or neglected property the Board, may assess against said lot the cost of the work involved plus 20% for overhead and carrying charges.

5.4 Estimate of Assessment and Payment. All assessments, made by the Board for the purpose hereinabove enumerated shall be made in the manner and subject to the following procedure, as set forth in the following sub-sections.

5.4.1 The Board shall annually prepare a budget in which the anticipated revenues and anticipated expenditures for the ensuing calendar year as set forth. The Board shall attempt to limit the anticipated expenditures so that the same do not exceed the anticipated revenues.

5.4.2 Notice of all assessments may be given by mail addressed to the last known or usual post office address of the holder of a fee simple estate and deposited in the United States mail with postage prepaid, or may be given by posting a brief notice of the assessment upon the lot or dwelling unit by itself

5.4.3 Every such assessment shall become due and payable within thirty (30) days after notice is given as hereinabove provided from and after the date when said payment is due, it shall bear interest at the rate of twelve per cent (12%) per annum until paid and such payment and interest shall constitute a lien upon said lot, and said lien shall continue in full force and effect until said amount is fully paid. At any time after passage of the resolution levying an assessment and its entry in its minutes, the Board may, in addition execute and acknowledge an instrument reciting the levy of the assessment with respect to any or more lots and cause same to be recorded in the Recorder's Office in the County of St. Charles, State of Missouri, and the Board may, upon payment, cancel or release any one or more lots from the liability of assessments (as shown by recorded instrument) by executing acknowledging and recording (at the expense of the owner of the property affected) a release of such assessment with respect to any lot affected, and the Board shall cause to be noted from time to time in the minutes of the proceedings the payments made on account of any assessments. All costs of collection, including a reasonable attorneys fee incurred by the Board in enforcing any obligations of any owner hereunder, including the payment of any assessment, shall be paid by the non-paying or non-complying lot owner and the amount of such costs, including reasonable attorney's fees shall likewise be a lien against the lot involved.

5.4.4 Assessments may be enforced in the same manner as is provided by law for the enforcement of special tax liens against real estate, except that the lien or liens for assessments hereunder shall be subordinate and junior to any first mortgage or deed of trust of record insured by the Federal Housing Administration the Veterans Administration or any other agency of the United States or the State of Missouri and to any other bonafide first mortgage or deed of trust, if given for a valid consideration and if not placed on record for the purpose of defeating creditors and evading the assessments provided for herein; provided, however, that the terms and provisions shall be and remain fully applicable to all of the land subject hereto after foreclosure of any deed of trust or mortgage and any and all lot owners subsequent to such foreclosure shall be fully subject to any assessments provided for herein and made subsequently to such foreclosures. Should an owner pay



after the recording of notice thereof, as herein provided, the Board shall release said lien.

5.4.5 The Treasurer of the Association shall deposit the funds coming into his hands as Treasurer in a State of Missouri Bank, protected by the Federal Deposit Insurance Corporation, or in a Savings and Loan Association protected by the Federal Savings and Loan Insurance Corporation, at interest, when deemed feasible by him at his discretion. AU assessments collected under this Section shall be placed in the custody and control of such Treasurer. The Treasurer shall be bonded for the proper performance of his duties in an amount to be fixed by the Board.

5.4.6 The following properties subject to this Declaration shall be exempt from the assessments, charges and liens created hereby:

- (a) The Common Ground shown on the record plats of Windsong;
- (b) AH property exempted from taxation under the laws of the State of Missouri;

5.4.7 The initial annual assessment against a lot shall begin on the first day of the month beginning after the date the original home purchaser took title or in the event of a residence retained by Owner or subsequent builder cu the date the residence was first occupied and the initial amount of assessment due shall be an amount equal to the fraction of the year remaining times the annual assessment for that calendar year. ~Thereafter the total annual assessment shall be due against the lot regardless of whether or not the residence is occupied.

#### SECTION 6. RESTRICTIONS ON USE.

6.1 In General. In addition to the limitations and restrictions imposed by other provisions of this Declaration and the Ordinances, the following restrictions are imposed upon and against the Property and each Lot now or hereafter existing therein:

6.2 Building Use. No building or structure shall be used for a purpose other than that for which the building or structure was originally designed.

6.3 Resubdivision. No lot shall be resubdivided nor shall a fractional part of any lot be sold.

6.4 Commercial Use. No commercial activities of any kind shall be conducted on any lot, nor the conduct of an home occupation in strict accordance with the provisions of the applicable zoning ordinances.

6.5 Nuisances. No noxious or offensive activity shall be carried on upon any portion of the properties, nor shall anything be done thereon be or become a nuisance or annoyance to the

neighborhood. No exterior lighting shall be directed outside the boundaries of a lot or other parcel.

6.6 Maintenance. Each owner shall maintain and keep his Lot in good order and repair, and shall do nothing which would be in violation of law.

6.7 Obstructions. There shall be no obstruction of any portion of the Common Property or any storage or construction of planting thereon by an owner. No clothes, laundry or other articles or equipment shall be placed, hung, exposed or stored in any portion of the Common Property or in any portion of the exterior or yard area of any Lot or on or about the exterior of any building.

6.8 Animals. No animals, reptiles, birds, horses, rabbits, fowl, poultry, cattle or livestock of any kind shall be brought onto or kept on the Properties; except that no more than three dogs, cats or other household pets (except house pets with vicious propensities) may be kept or maintained on any Lot provided that such pets are not kept for any commercial purpose and provided that such pets are at all times leashed and no "runs" or other outside structures are erected or installed therefore. Dog houses may be constructed only upon the issuance of a permit from the Board, Dog houses must be in conformity with the construction of the Owner's residence and may be located not more than ten (10) feet from the rear wall of a residence. The keeping of any pet which by reason of its noisiness or other factor is a nuisance as determined by the Board in its sole judgment or annoyance to the neighborhood is prohibited.

6.9 Trucks Boats, Etc. No trucks or commercial vehicles, boats, motorcycles, campers, house trailers, boat trailers and trailers of any other description shall be permitted to be parked or stored on any Lot unless they are parked or stored in an enclosed garage or in such other enclosure approved by the Board (open or otherwise).

6.10 Abandoned Vehicles. No abandoned cars, motorcycles, jeeps, trucks or motor vehicles of any kind whatsoever that are unable to move under their own power may be stored or suffered to remain upon any of the Common Property or on any lot. If any such motor vehicle is so stored or remains on the aforesaid premises, the Trustees may take the necessary steps to remove the same at the owner's expense.

6.11 Vehicular Sit Lines. No fence, wall, tree, hedge or shrub planting shall be maintained in such manner as to obstruct sight lines for vehicular traffic.

6.12 Temporary Structures. No structure of a temporary character, trailer, tent, shack garage, barn or other out building shall be use on any Lot at any time as a residence either temporarily or permanently.

6.13 Signs. No signs, advertisements, billboards, or advertising structures of any kind may be erected maintained or displayed on any Lot; provided however, nothing herein shall prohibit a sale sign of residences therein and nothing herein shall prohibit a sale sign erected by any future Owner attempting to market their individual house, provided such sign is not in excess of six (6) square feet.

6.14 Garbage. No rubbish, trash or garbage receptacle shall be placed on the exterior of a Lot except on the day of regularly scheduled collection.

6.15 Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or How of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. Service to the individuals residences shall be underground.

6.16 Oil Drilling. No oil drilling, cu development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot or portion of the Properties, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot or portion of the Properties. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or portion of the Properties.

6.17 CuI-De-Sac Etc. No above-ground structure, other than required street lights, may be erected upon a cul de-sac, divided street entry island or median strip without the written approval of St. Charles County, the City of O'Fallon or other appropriate Governmental Authority.

6.18 Fences. No fences or screening of any kind shall be erected or maintained on any Lot between the rear of the residence constructed on such Lot and the Street which such lot fronts. Fences may be maintained on other portions of the lots only with written consent of the Board as to location material and height, and the decision of the Board to approve or reject a fence shall be conclusive. Nothing herein contained shall prevent replacement of fences by the Board on the Common Ground.

6.19 Television Antennae. No exterior television or radio antennae, or towers of any size or dimension or similar structures will be allowed on any Lot in the Properties.

6.20 Satellite Dishes. Satellite dishes shall not exceed 39" (one meter) at the widest point. Satellite dishes may be installed only with written consent of the Board as t9 location and the decision of the Board to approve or reject the location shall be conclusive.

6.21 Living Area. The living area of the main residential structure, exclusive of porches, garage, and basement shall be not less than 860 square feet for a one-story dwelling and the upper Hoof of split foyer or bi-level homes, nor **less** than 576 square **feet** for two story homes on the ground level. No more than one dwelling shall be built on any Lot or building site.

## SECTION 7, GENERAL PROVISION.

These general provisions shall apply to the foregoing Declaration for the Properties:

7.1 Enforcement. Enforcement of any of these covenants by proceedings at law or in equity against any person or persons in violation or attempting to violate any covenants and may be brought to restrain any such violation and/or to recover damages therefore together with reasonable attorney's fees and court costs.

7.2 Actions by Directors and Officers. The Board is authorized to act through a representative, provided, however, that all acts of the Board shall be agreed upon by at least a majority of said Directors. No Director or Officer shall be held personally responsible for his wrongful acts, and no Director or Officer shall be held responsible for the wrongful acts of others. No Director or Officer shall be held personally liable for injury or damage to persons or property by reason of any act or failure to act of the Director(s) or Officer(s), collectively or individually. The Directors and Officers from time to time serving hereunder, shall not be entitled to any compensation or fee for services performed pursuant to this Declaration.

7.3 Adjoining Tracts. The Directors and Officers named hereunder are authorized and empowered to cooperate and contract with Directors, Officers, or Trustees of adjoining or nearby tracts in the development and maintenance of facilities inuring to the benefit and general welfare of the inhabitants of the entire area.

7.4 Amendments. The provisions hereof may be amended modified or changed from time to time by recording an instrument of amendment in the Office of the Recorder of Deeds for St. Charles County, Missouri. The provisions herein may be amended, modified or changed by the written consent of two-thirds (2/3) of all the Owners, with any such amendment, modification or change being recorded in the Office of the Recorder of Deeds for St. Charles County, Missouri. No amendment, modification or change shall reduce or modify the obligations or rights granted to or imposed upon the Directors and Officers or eliminate the requirement that there be Directors and Officers unless some person or entity is substituted for the Directors and Officers with their responsibilities and duties in a manner approved by the Director of Planning or the appropriate Governmental Authority.

7.5 Severability Etc. All covenants and agreements herein are expressly declared to be independent and not interdependent. No laches, waiver, estoppel, condemnation or failure of title as to any part of the Properties of any Lot in the Properties shall be of any effect to mod, invalidate or annul any grant, covenant or agreement herein with respect to the remainder of the Properties, saving always the right to amendment, modification or repeal as hereinabove expressly provided.

7.6 Invalidation. Invalidation of any one of the covenants of this Declaration shall in no way affect other provision hereof.

7.7 Use of Common Areas by Non-Residents. The common areas, including open spaces, recreational areas, or other Common Property, shall be for the benefit, use and enjoyment of the Lot

Owners, present and future.

7.8 Term. The provisions of this Declaration shall affect and mu with the land and shall exist and be binding upon all Lots and Owners. This Declaration may be amended by an affirmative vote representing two-thirds {2/3} of the Lots entitled to vote. In the case of an amendment, such amendment to this Declaration shall be duly executed by the requisite number of Owners required to affect such amendment, such amendment shall have attached to it a copy of the resolution of the Board attesting to the affirmative action of the requisite number of such owners to effect such amendment, listing the owners thereof and certified by the secretary of the Board.

7.9 Notices. Any notice required to be sent pursuant to the provisions of this Declaration shall be deemed to have been sent when mailed, postage prepaid to the last known address of the person who appears in the records of the assessor of St. Charles County as the record owner hereunder of the Lot at the time of such mailing.

7.10 Waiver. No covenants, restrictions, conditions, obligations or provisions in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches that may occur.

**In Witness Whereof**, the parties have hereto executed this Declaration this 1st day of October, 1997

DECLARANT:

The Trustees of Windsong Subdivision cert that prior to their execution of this Declaration, amendment and restatement of Indentures of Windsong Plats One through Four that they did obtain the written consent of the requisite number of Lot owners required to enact this Declaration, amendment and restatement

By: Jeff Duss  
Trustee

Marie Remick  
Trustee

Charles Shiley  
Trustee

On this 1<sup>st</sup> day of October, 1997 before me personally appeared Jeff M.

Gremminger, Nancy Riemann and Charles Wiley to me personally known to be persons described in and who, being duly sworn, did say that they are the Trustees of Windsong and that said instrument was signed as there free act and deed as Trustees.

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

My Commission Expires: 10/31/97

LISA M. CARVER  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Charles County  
My Commission Expires: Oct. 31, 1997

ATTEST:

WINDSONGHOMEOWNERS ASSOCIATION, INC.

Nancy Riemann  
Secretary

By: Jeff M. Gremminger  
President

On this 1<sup>st</sup> day of \_\_\_\_\_, 1997, before me personally appeared Jeff M. Gremminger, to me personally known, who, being duly sworn, did say that Jeff M. Gremminger is the President of Windsong Homeowners Association, Inc., a not-for-profit corporation of the State of Missouri, and that said instrument was signed in behalf of said corporation, by authority of its Board of Directors; and said Jeff Gremminger acknowledged said instrument to be the free act and deed of said corporation and that said corporation has no corporate seal.

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

Lisa M. Carver  
Notary Public

My Commission Expires: 10/31/97