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RESTATEMENT OF
DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
OF
BRAEWOOD

Radberg, McSweeney
115 Locust St Ste 800
St Louis mo 63101

RESTATEMENT OF
DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
OF
BRAEWOOD

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RESTATEMENT OF
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND
RESTRICTIONS OF BRAEWOOD

THIS RESTATEMENT OF DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS OF BRAEWOOD (hereinafter referred to as "Declaration"), is made this 1st day of October, 1997, by GREATER MISSOURI BUILDERS, INC., a Missouri Corporation, hereinafter referred to as "Declarant", for itself, its successors, grantees, and assigns.

WITNESSETH:

WHEREAS, Declarant is the Owner of certain real property in the City of St. Peters, County of St. Charles, State of Missouri, which is more particularly described in Exhibit A, attached hereto and incorporated herein by reference. This Declaration initially pertains to the above-described Property (hereinafter defined) which may be amended by Declarant by amendment of real property of the legal description (by deletion or addition of real property) and recorded in the St. Charles County Recorder of Deeds Office at any time prior to December 31, 2005.

The development to which this Declaration shall apply shall be a Planned Environment Unit ("PEU") and not a Condominium, therefore it is not subject to or governed by the provisions of Chapter 448 et seq. of the Revised Statutes of Missouri, 1988, as amended.

WHEREAS, Declarant intends, by this Declaration, to impose upon the Properties mutually beneficial restrictions under a

general plan of improvement for the benefit of all Owners of Lots (hereinafter defined) within the Braewood Planned Environment Unit, Ordinance No. 2504 of the City of St. Peters, Missouri dated the 8th day of August, 1996, as amended from time to time. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties, and to establish a method for the governance, administration, maintenance, preservation, use and enjoyment of the Properties whether now or hereafter subject to this Declaration.

WHEREAS, the Developer recorded a Declaration of Covenants, Conditions and Restrictions of Braewood on August 15, 1997 at Book 1968, Page 1614 et seq. (hereinafter referred to as the "Original Declaration") which shall be deleted in its entirety except the legal description and shall be amended and restated by this election.

NOW, THEREFORE, the Original Declaration shall be deleted, except the legal description, and restated by this Declaration, all according to the terms of the Amendment contained in the Original Declaration.

ARTICLE I

DEFINITIONS

Disclaimer. The definition of any of the terms below shall not have the meaning as set forth in Chapter 448, et seq. of the Revised Statutes of Missouri, 1988 as amended, since this is not a Condominium.

Section 1. "Association" shall mean and refer to

Braewood Owners' Association, (also may be referred to as BOA) which is an unincorporated Association. The Association's Board of Directors, at any time may, by Board resolution, incorporate this Association as a nonprofit corporation. In such event, said corporation shall be the legal successor in interest to the Board of Directors or Trustees as said terms are used in Section 2.

Section 2. "Board of Directors", " Directors", "Board" or "Members" shall be the initial and subsequent Board Members as per ARTICLE III and may also be referred to as Trustees in any recorded Plat or Deed pertaining to BOA or Braewood.

Section 3. "Braewood/Braewood Owners' Association". See Association for definition.

Section 4. "Common Elements" of the Property include the following:

(a) The Property, excepting the Lots, and including, without limitation, easements depicted in the Plat and easements appurtenant, open parking areas, (if any) which are not located on the Lots, access ways, right-of-ways, cul-de-sacs, walkways and sidewalks, play areas, gardens, lawns, entrance monuments (whether on common ground or Lots), landscaped and planting areas, street lighting, common grounds, pump stations, detention and/or retention basins, retention walls, yards, but excepting the Lots as per the Plat of Braewood. (**Note:** reference to the Plat of Braewood shall include all Plats pertaining to Braewood.)

(b) Sanitary and storm sewer facilities, including detention and/or retention basins (if any), and utility

installations such as lines and connections for gas, electricity, streetlights, telephone, water, plumbing, cable television or digital satellite wires, as located in any utility easements on a recorded Plat in the St. Charles County Recorder of Deeds Office, except for those utilities located within a Lot;

(c) All apparatus and installations, erected now or hereafter, erected on the Common Elements and intended for common use;

(d) Any auxiliary buildings, parks, recreational facilities (if any) and other structures which may, at any time, be erected on the Property;

(e) All streets until such time as they have been dedicated public and accepted by the City of St. Peters. Notwithstanding the above, all streets dedicated and accepted by the City of St. Peters shall remain subject to this Declaration;

(f) Common Elements shall not include any item that solely serves a particular Lot, however, they shall include parking spaces, if any, which are not part of a Lot but which are assigned to individual Lot Owners pursuant to Article VI hereof;

(g) Declarant reserves the right to receive and retain any money consideration which may be refunded or allowed on account of any sums previously expended or subsequently provided by them for sewers, retention and/or detention facilities, pipes, conduits, poles, wires, street lights, streets, sidewalks, recording fees, subdivision fees, consultation fees, charges and expenses incurred with respect to the creation of any subdivision

(including any escrows) and the tracts described in Exhibit A attached hereto and made a part hereof;

(h) All other appurtenances not herein specifically designated.

Section 5. "Declarant" shall mean and refer to Greater Missouri Builders, Inc., and its successors and assigns if such successors and assigns should acquire one or more undeveloped Building Lot(s) from the Declarant for the purpose of construction of a Unit thereon for sale.

Section 6. "Limited Common Elements" include but are not limited to any chute, flue, duct, wire, conduit, bearing wall or column, fence or any other fixture or improvement **which** lies partially within and partially outside the designated boundaries of a Lot, serving only that Lot. These would be Limited Common Elements allocated solely to that Lot, however, any portion of them which serve more than one Lot, but less than all of the Lots, is considered a Limited Common Element, allocated proportionately to the Lots served. Notwithstanding anything to the contrary, stoops, patios and decks are owned by the Unit Owners but shall be considered Limited Common Elements for the purposes of the Board of Directors' authority to mandate maintenance of the same but are solely the responsibility and the expense of the Unit Owners.

The Board of Directors, from time to time, by resolution, may determine other fixtures and improvements which shall qualify as Limited Common Elements.

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Section 7. "Lot", shall mean any parcel of land, including improvements thereon, shown upon any recorded subdivision map or Plat of the Properties which depicts the location and dimensions, and establishes the legal boundaries of the individual Lot(s) and describes that portion of the Properties upon which a single residence is to be located. A subdivision Plat will be filed in the City of St. Peters (which may be commonly known as **Braewood Estates Subdivision** or such other name as determined by the Declarant), and then subsequently recorded with the St. Charles County Recorder of Deeds to show the location, the dimensions, and to establish the legal boundaries of each Lot and the Common Elements. The portions of the Plat which are not delineated as a Lot, shall be construed to be dedicated free and clear by the Declarant as a Common Element.

Each Lot, as created, constitutes a separate parcel of real estate and must be separately assessed and taxed.

Section 8. "Owner/Lot Owner" shall mean the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

The Declarant shall be considered, and is the "Owner" of all Lots from the date created by recorded Plat, until conveyed to purchasers.

Section 9. "Plat" shall mean the Plat or Plats or survey describing the Property (as amended from time to time) in the

official records of the Recorder of Deeds of St. Charles County, Missouri, and any amendments thereto.

Section 10. "Property" or "Properties" shall mean that real property hereinbefore described in Exhibit "A", and such additions thereto as may hereafter be brought within the jurisdiction of the Association by reason of ARTICLE IX hereof.

Section 11. "Trustee(s)". See Section 2, "Board of Directors".

Section 12. "Unit" shall mean any portion of a building on a Lot designed and intended for independent residential occupancy, the footprints of which are described in the Plats as recorded by the Declarant which is subject to this Declaration.

ARTICLE II

PROPERTY RIGHTS, EASEMENTS AND RESTRICTIONS

Section 1. Ownership of Common Elements. Fee simple title to the Common Elements, or parts of them, will be conveyed by the Declarant to the Association, if incorporated as a nonprofit corporation. If not, then fee-simple title will be conveyed to the Trustees in their capacity as a Trustee on behalf of the unincorporated Association by separate conveyance of record which describes, by metes and bounds, or by reference as the "Common Elements" or "Common Ground" as depicted on the Plat of Braewood, or by any other means of description that the Declarant may choose. The title to each part of the Common Elements so conveyed by express grant shall be vested in the Association or Trustees, or its/their successors or assigns,

under this instrument. Declarant reserves an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations hereunder.

Section 2. Encroachment. Through construction, settlement or shifting of any building, should any part of any building (including overhangs and utilities) encroach upon any part of the Common Element(s) or upon any other Lot(s), this Agreement hereby creates and grants a perpetual easement to the encroaching Owner for the use of the space required thereby to maintain or repair the encroaching property. This easement shall exist for the benefit of the encroaching Owner(s) and successor Owners provided, however, no easement shall be created if the encroachment is due to the willful conduct of a Lot Owner other than the Declarant.

Section 3. Easements.

(a) **Easement in Gross.** The Property, including the Lots and Units thereupon located, shall be subject to a perpetual easement in gross to the Association, its successors and assigns, for ingress and egress to perform its obligations and duties as required by this Declaration. Should it be necessary, on a non-emergency basis, to enter a Unit or upon a Lot in order to enforce this Declaration, maintain, service, improve, repair or replace any Common Element, Limited Common Element or Unit, or other item required by this section, employees, agents and workmen shall be entitled to entrance by exhibiting to the Owner an order from the Association signed by one of the Board Members

or an agent of the Board of Directors.

In case of an emergency, the Association shall specifically have the authority to enter any Unit or Lot for the purpose of repairing, maintaining, servicing or replacing those items described as Common Elements within any Unit or Lot which serves another Unit or Lot, without the necessity of exhibiting an order from the Association. The determination of whether such an emergency exists shall be within the sole discretion of the Board of Directors, but it is anticipated that entering any Unit or Lot without an order from the Board of Directors shall only occur if the Owner is not present or reasonably available at the time such emergency occurs.

(b) **Right to Grant Easement.** During Declarant control and thereafter, the Board of Directors shall have the right to grant such easements and rights-of-way to such utility companies, municipal agencies, and municipal authorities or Lot Owners or any other entities as it shall deem necessary or appropriate.

(c) **Declarant's Reserved Easement.** Notwithstanding any provisions contained in the Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a non-exclusive perpetual right, privilege and easement with respect to Properties for the benefit of Declarant and its successors and assigns, over, under, in and/or on Properties without obligation and without charge to Declarant, for purposes of exercising any development right reserved in this Declaration. This includes but is not limited to the use of

display units, sales offices, construction trailers, banners, billboards, etc., or construction, installation, relocation, development, sale, advertising, maintenance, repair, replacement, use and enjoyment, and/or otherwise dealing with the Properties, and any other property which may, in the future, be owned by Declarant, which is not annexed to the Properties.

(d) **Utility Easements.** All utility easements are for the benefit of all Lot Owners subject to the control of the Association and dedicated as per the recorded Plat in the St. Charles County Recorder of Deeds' Office.

(e) **Easements Created in this Agreement Run with the Land.** All easements and rights herein established shall run with the land and inure to the benefit of, and be binding upon the Declarant and any Owner, purchaser, mortgagee or other person having an interest in any portion of the Properties.

(f) **Owners' Easement of Enjoyment.** Every Owner shall be a member of the Braewood Owners' Association, subject to the provisions of this Declaration and the Rules and Regulations as promulgated by the Board of Directors. Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Lot, subject to paying the annual Assessments (described in Article IV) and subject to the following provisions:

(1) the right of the Association to charge reasonable admissions and other fees for the use of any recreational facility (if any) situated upon the Common Elements;

(2) the right of the Association to suspend the Owner's voting rights (including the right to serve on the Board of Directors) and the right to use the recreational facilities (if any) by an Owner and/or guests for any period during which 1) any Assessment against him/her remains unpaid, and/or 2) during any infraction of this Declaration or the Board's published Rules and Regulations by an Owner or guest;

(3) subject to Section 4 of this Article, the right of the Association to dedicate or transfer all or any part of the Common Elements (subject to any security interest of record) to any institution, trustee, agency, authority or utility for such purpose and subject to such conditions as may be agreed to by the Board of Directors. No such dedication or transfer (except those which were intended to be made by Declarant) shall be effective unless a simple majority of Association members (Owners) agree to such dedication or transfer at a duly authorized meeting (See Article III, Section 2 and 3 for special meetings and quorums). Notwithstanding the above, the dedication and acceptance by a public agency of Braewood's streets and sewers may be transferred upon the agreement of a simple majority of the Board of Directors;

(4) the right of the individual Owners to the exclusive use of the allocated parking space(s) (if any) as provided in ARTICLE VI.

(g) **Agreement with Montessori School.** The Board shall have the express authority to enter into an agreement with the

Montessori School to provide a recreational play area for use by the Unit Owners and their visitors which shall be the sole expense of the Montessori School but the Montessori School shall be listed as an additional insured on the Association's general liability policy.

Section 4. Conveyance of Common Elements.

Notwithstanding anything contained in this Declaration to the contrary, Declarant conveys the Common Elements to the Association/Directors subject to the right for it to request the Directors to reconvey the same to Declarant, in part or whole, as necessary for the Declarant to convey Lots as described herein. Accordingly, the Directors may convey such Common Elements to the Declarant with or without consideration.

Section 5. Streets. All streets located upon the Properties are intended to be dedicated and accepted by the City of St. Peters, Missouri. Initially, the streets shall be privately maintained for public use by the Association until such time as the City of St. Peters assumes part or all of the responsibilities upon acceptance,

Section 6. Personal Residence. Each Lot shall be used for single-family, residential purposes only; no trade or business of any kind may be carried on therein.

No commercial activity of any kind shall be conducted on any Lot or in any Unit, but nothing herein shall prohibit the carrying on of promotional activities by the Developer.

Notwithstanding the above, home occupations are permitted,

subject to the City of St. Peters' ordinances.

Section 7. Livestock/Animals. No hogs, cows, horses, snakes, rabbits, chickens, ducks, geese, goats, poultry, or any other livestock or animals of any kind, other than house pets (except house pets with vicious propensities), shall be brought onto or kept on any Lot or in any Unit. No more than one dog or cat or other such house pet may be kept or maintained on the Lot or in a Unit (except for fish or birds which may be kept within a Unit in reasonable number) except with the express written permission of the Board of Directors.

Owners who do not immediately remove their pets' waste, whether on their Lot, the Lot of another Owner, or on the Common Elements, shall be assessed a fine which shall be established by the Board of Directors from time to time, and collected in the same manner as a Special Assessment. Owners are responsible for any animals their invitees or guests have brought onto the Common Elements, a Lot or into a Unit.

Section 8. Parking Regulations. No commercial vehicles (including any vehicles with signage advertising a commercial enterprise), jet skies, boats, house or other trailers, recreational or farming vehicles shall be permitted to be parked or stored on any street (public or otherwise), Common Elements, or Lot, except in the Lot Owner's garage. No trucks in excess of one-half ton and/or their trailers (if any), except non-commercial passenger pickup trucks, shall be permitted to be parked or stored on any Lot except during periods of approved

construction on the Lot. This parking prohibition shall not apply to the above-referenced vehicles which are parked for no more than twelve (12) consecutive hours, limited to the pick-up, delivery or other commercial services to the Lot or Unit, including loading and unloading of such vehicles.

Section 9. Overhead Wiring. No power, telephone, cable or other service lines may be erected or maintained above the surface of the Common Elements or on any Lot without the express written consent of the Board of Directors.

Section 10. Clotheslines, Trash Containers, Tanks, Woodpiles, Rubbish, Etc. All clotheslines, trash containers, above ground tanks, woodpiles, and other similar items shall be located and/or screened so as to be concealed from view of neighboring Lots, streets and Properties. The Lot Owner is responsible for the removal of all rubbish, trash and garbage from his or her Lot and shall not let it accumulate thereon. Trash containers shall not be placed curbside except on the day(s) of pickup and shall be removed and stored prior to dusk the same day. Woodpiles shall be located so that they do not come in contact with a Unit, Common Element or Limited Common Element that could be damaged by termites that the woodpile could attract. Woodpiles should be raised no less than 8 inches from the ground.

Section 11. Fuel Tanks. No fuel tank or container of any nature, other than one (1) 40lb. or less propane type tank attached to a portable BBQ grill, shall be placed, erected,

installed or maintained on any Lot, without the express written consent of the Board of Directors.

Section 12. Temporary Structures. No structure of a temporary nature such as a trailer, basement, tent, shack, garage, barn or other out building shall be erected or used on any Lot at any time as a residence or for any other purpose, either temporarily or permanently. If, however, it becomes necessary to erect or construct a storage facility(s) for equipment or supplies utilized for the maintenance of the Common Elements, for the benefit of all Lot Owners, the Board may authorize such a structure by vote of a simple majority of Lot Owners. All reasonable members to maintain quality and unobtrusiveness of the structure will be considered.

Section 13. Structures. No structures of any character (the definition of structures shall include but not be limited to basketball poles and back-boards) shall be allowed at any time on any Lot or the Common Elements without the express written permission of the Board of Directors.

Section 14. Fences. No fence or wall of any kind shall be erected, begun, or permitted to remain upon any Lot or Unit of the Properties unless approved in writing by the Board of Directors and the City of St. Peters, Missouri, if necessary. If such fence or wall is permitted, the enclosed area shall be maintained by the Lot Owner, per the standards established by the Board of Directors, notwithstanding the fact that the Association may have maintained the same area had it not been enclosed by a

fence.

Section 15. Antennas/Satellite Receiving Dishes. No outside radio, television or satellite antenna or satellite receiving dishes shall be erected, installed or constructed on the Properties without the written consent of the Board of Directors. The procedure for obtaining permission for installation of dishes shall be governed by rules adopted by the Board, which rules shall be available upon request by an Owner of a Lot or Unit. Notwithstanding the above, the Board of Directors must comply with all Federal regulations concerning such apparatus.

Section 16. Signs. No signs, advertisements, billboards, or advertising structures of any kind including "For Rent" or "For Sale" signs may be erected or maintained on any Lot, other than the Developer's signs during promotion of sales or improvements without the express written permission of the Board of Directors. "For Rent" or "For Sale" signs may only be displayed at windows from inside a Unit.

Section 17. Landscaping. No shrubbery, landscaping, trees, or any other decorative landscaping including, but not limited to, statues, bird baths, feeders and houses, lawn furniture, replicas of animals, etc. are to be placed upon any Lot without the written permission of the Board of Directors. Upon receipt of such permission, said Lot Owner shall, thereafter, be responsible for the maintenance of the landscaping, monument or fixture. The Association shall not be

responsible for the damage or destruction of the same by its employees or agents.

Section 18. Nuisances. It shall be the responsibility of each Owner to prevent the development of or to maintain any unclean, unhealthy, unsafe, unsightly or unkept condition on his or her Lot. No Lot shall be used, in whole or in part, for the storage of anything that will cause such Lot to be in any of the above conditions or appears obnoxious to the eye, nor shall any thing be kept upon the Lot that will emit foul or obnoxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No obnoxious or offensive activity shall be conducted upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person(s) or surrounding properties. Any plants, animals, devices or things of any sort whose activities or existence is, in any way, obnoxious, dangerous, unsightly, unpleasant, or of a nature that may diminish or destroy the enjoyment of the Properties is not allowed. The determination of a nuisance, obnoxious or offensive activity shall be determined in the sole discretion of the Board of Directors.

Section 19. Leases. Each Owner shall have the right to "Lease" or rent a Unit for single-family, residential purposes only, subject to the following requirements:

(a) Each Lease shall be in writing and shall be subject to

all provisions of this Declaration as amended from time to time. Further, the Lease shall be deemed to incorporate the Rules and Regulations of the Association by reference and shall include the provisions that any violations of: (1) the Rules and Regulations; (2) the Declaration as amended; and (3) the Covenants and Conditions of the Lease itself, other than non-payment of rent, shall be the basis for termination of the Lease.

(b) Each proposed Lease shall be subject to the Board of Directors, approval so as to assure compliance with this Article.

(c) Each Lease shall appoint the Board of Directors to act as an agent for the Owner for the purpose of enforcing these terms, Covenants and Conditions of the Lease, other than the non-payment of rent. If any such violation is not cured within thirty (30) days or such shorter time that may be provided in the Lease, the Board of Directors shall have the right of action to evict or otherwise terminate the Lease or the tenant's possession to the Unit under the Rent and Possession Laws, Unlawful Detainer Laws or any other laws of the State of Missouri. The Board of Directors shall have no liability to the Owner or the tenant on account of any action taken to evict or otherwise terminate the Lease.

(d) Each Lease shall have a minimum initial term of six (6) months.

(e) Each Lease shall be subject to the Rules and Regulations as promulgated from the Board of Directors from time to time.

Section 20. Rules and Regulations. The Board of

Directors may establish reasonable Rules and Regulations concerning the use of the Limited Common Elements, the Common Elements and any individual Lots. Copies of such Rules and Regulations, and amendments thereto, shall be delivered by first class mail or hand delivered by the Association to all Owners thirty (30) days prior to the effective date of the Rules and Regulations. The Rules and Regulations shall be binding upon the Owners, other family members occupying the Unit, tenants, guests, invitees, and agents until and unless such Regulation, Rule or requirement shall be specifically overruled, cancelled or modified by the Board or the Association in a regular or special meeting (having met the quorum requirements) by the vote of a majority of each Class of Lot Owners present at such meeting. (See Article III, Section 3 for quorum requirements and Section 5 for Class identification). The Board shall have the authority to impose reasonable monetary fines and/or other sanctions; uncollectible monetary fines may be collected by lien and foreclosure or in the same manner as an Assessment as provided in ARTICLE IV. Sanctions may also include suspension of the Owners' right to vote and the right of Owner, guests, tenants, etc., to use certain areas of the Limited Common Elements or Common Elements. The Board shall also have the power to seek relief in any Court or arbitration forum for violations or to abate nuisances. Imposition of sanctions shall be as promulgated by the Board of Directors from time to time. In addition, the

Association, may, through the Board, by contract or other Agreement, enforce Ordinances and other applicable laws or permit the authorities of the applicable jurisdiction to enforce the same with regard to the Properties for the benefit of the Association and its Lot Owners.

ARTICLE III

BOARD OF DIRECTORS MEETINGS AND VOTING RIGHTS

Section 1. Board of Directors.

(a) **Original Directors.** The original Directors (together with their successors being hereinafter referred to as "Director" or "the Directors"), to serve on the Board shall be Dan Barnard, Paul (Scott) Campbell and Carolyn Kribben, who by their signatures hereto, consent to serve in such capacity until their successors are elected or appointed as hereinafter provided. Should an Original or successor Director appointed pursuant hereto resign, refuse to act, become disabled, or die, Declarant shall have the power to appoint, by duly written and recorded instrument, a successor Director who shall serve until his/her successor is elected by the Association members in the manner hereinafter provided.

(b) **Election of Directors.** At such time as fifty percent (50%) of the total Lots authorized to be developed in the Properties have been approved, sold, conveyed for residential use, and are ready for residential use, Declarant shall cause the resignation of Carolyn Kribben (or her successor) as Director. The current Class A member (see Section 5) shall then elect an

Owner, who shall serve as a Director until such time as one hundred percent (100%) of the total authorized Lots have been approved, sold, and conveyed for residential use, and are ready for residential use.

At such time as ninety-five percent (95%) of the Lots authorized to be developed in the Properties have been approved, sold, conveyed for residential use and are ready for residential occupancy, Declarant shall cause the resignation of PAUL (SCOTT) CAMPBELL (or his successor) as Director. The current Class A members shall then elect an Owner who shall serve as a additional Director until such time as one hundred percent (100%) of the total authorized Lots have been approved, sold, and conveyed for residential occupancy, and are ready for residential use. At such time as one hundred percent (100%) of the Lots authorized to be developed in the Properties shall have been approved, sold, and conveyed for residential occupancy, and are ready for residential occupancy, Declarant shall cause the resignation of the three (3) Directors then serving hereinunder, whether original Directors or elected as hereinabove provided. The Class A members shall then elect three (3) Owners as successor Directors, one of which shall be elected to serve for a one (1) year period, one of which shall be elected to serve for a two (2) year period and one of which shall be elected to serve for a three (3) year period from the date of the election. The actual initial Directors' terms may be extended to coincide and expire with the end of a calendar year, so that subsequent elections and

Directors' terms will be on a calendar basis. Thereafter, all Directors shall be elected for a term of three (3) years each. (Note: Having served as a prior Director does not preclude an Owner from being reelected for one of the above terms).

The successor to an elected Director whose term is expired shall be elected at the annual meeting or a special meeting called for that purpose.

Any Class A member who has failed to pay any Assessments due and payable shall not be entitled to vote at any annual or special meeting provided for herein or to be elected or appointed to serve on the Board. The person or persons receiving the highest number of votes shall be deemed elected and shall, upon his, her or their acceptance in writing, at once and by force of this Declaration imposed, to succeed to, be vested with, possess and enjoy as joint tenant but not as tenants in common with the remaining Directors, all the estate, rights, interest, privileges and powers granted by this Declaration to the Board of Directors. In the event that any Director elected hereinunder shall die or become unable, for any reason, to discharge the duties, exercise, or avail himself or herself of all the rights and powers herein granted or bestowed upon him or her, as a Director, it shall then be the duty of the remaining Directors to select a successor to serve until the next regularly scheduled election for that position.

(c) **Qualifications of Directors.** Any Director elected under these provisions shall be a Lot Owner, or officer or agent

of a corporate owner. If such Owner sells his or her Lot, resigns, refuses to act, becomes disabled or dies, the remaining Directors, providing a quorum exists, shall appoint another Owner to act as Director for the unexpired portion of the term of the Director no longer acting. Where the provisions of this instrument cannot be fulfilled by reason of unfilled vacancies on the Board, a Director may call for a special election of Directors within twenty (20) days after vacancy(ies) occur. Alternatively, the St. Peters City Council Or its successors may, upon the Petition of any Owner of the Properties, appoint one or more Directors to fill the vacancy(ies) until such time as the Directors are selected or elected in accordance with this Declaration. Any person so appointed, who is not a Lot Owner shall he allowed a reasonable fee for his/her services in the order of appointment, which fee shall be levied as a Special Assessment against the Lot Owners of the Association and which fee shall not be subject to any limitations on Special Assessments contained in this Declaration or elsewhere.

(d) **Officers.** Following each annual meeting of the Association as provided for herein (or at least annually if no meeting), the Board of Directors shall designate one (1) of its members to serve as Chairperson and President, one (1) member to serve as Secretary and one (1) member to serve as Treasurer until such time as the next following annual meeting.

Section 2. Meetings of the Association. There shall be an annual meeting of the Association (subject to the provisions

of Section 2(a) hereof) to be held on the first Saturday of April of each year during the term of the Declaration, said meeting to be held at a convenient place in the City of St. Peters. Special meetings of the Association may also be called by any one of the Directors, or twenty percent (20%) of the Class A members, also to be held at a convenient place in the City of St. Peters. Written notice shall be given no less than ten (10) days in advance of the meeting to each Owner of the time and place of any annual or special meeting. This shall be provided by the Directors or the Owner(s) calling said meeting, by depositing the same in the United States mail, properly addressed to the address shown on the real estate tax assessment records for each Owner, with postage pre-paid, or by hand delivery to each Unit. In the event of hand delivery, the delivery person shall file an Affidavit with the Secretary of the Board stating the name, approximate time, date and address of the delivery(ies).

(a) **Optional Annual Meeting.** For the period from the date of execution hereof until such time that there is less than two Declarant appointed Directors (which shall include the original Director's named herein and their appointed successors, at the option of the then existing Directors), no annual meeting of the Association shall be held. During such period, the Directors may appoint an Owners' advisory board for the purpose of reporting to and/or advising the Directors concerning the status and operation of the Properties. The number of Owners on such advisory board shall be the number deemed appropriate by the

Directors from time to time. The members of such advisory board shall serve at the will of the Directors and shall have no independent authority. Such advisory board may hold informal meetings of members, but such meetings are not required.

Section 3. Quorum.

(a) Except as provided in Section 5 of Article IV, or below, business may be transacted only at a special or general meeting of the Unit Owners at which there is a quorum. A quorum shall be deemed present at an Association meeting if the Owners in attendance at the beginning of the meeting represent at least twenty percent (20%) of the votes eligible to vote at the time of the meeting. If proper notice was given (as provided in Section 2, above) and a meeting called at which business cannot be conducted because of failure to achieve a quorum, then the Directors may either: (i) give another notice of the meeting indicating the proposed business or purpose and if such meeting is held within thirty (30) days of the date of the first meeting at which there was no quorum, then there shall not be a quorum requirement to transact the proposed business at such second meeting; or (ii) act by vote of a majority of the eligible Lot Owners on any proposed business by written ballot of the Owners in lieu of a meeting.

(b) A quorum is present at a meeting of the Directors if a majority of the Directors are in attendance. All actions of the Directors shall be by majority vote, oral or written.

Section 4. Nonprofit Corporation. in the event that the

Association shall desire to incorporate as a nonprofit corporation, the Board of Directors of the Association shall serve as the Directors of such corporation and have the same powers, duties and rights as per this Declaration. The Association may elect non profit status by a resolution of the Board of Directors. The By-Laws of the nonprofit corporation may be the same as the By-Laws (if any) as adopted by the Board of Directors for this Declaration.

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

(a) **Class A.** Class A members shall be Owners (other than Declarant) entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Owners. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) **Class B.** The Class B member shall be the Declarant who shall be entitled to a number of votes equal to three times the number of Class A votes. The Class B Membership and votes shall dissolve on the happening of either of the following events, whichever occurs earlier:

(i) when the total eligible votes in the Class A membership equal ninety-five percent (95%) of the total Lots shown on any recorded subdivision maps subject to this instrument; or,

(ii) January 31, 2002.

(c) Rules pertaining to proxies shall be governed by the By-Laws.

ARTICLE IV

MAINTENANCE ASSESSMENTS

Section 1. General. Each Owner, except the Declarant (which shall pay assessments as hereinafter stated), by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed covenants and agrees to pay to the Association: (1) Annual Assessments or charges; (2) Special Assessments for capital or other necessary improvements, as hereinafter provided; and (3) Special Assessments not requiring a vote of the Owners for the purpose of complying with local, state or federal ordinances and/or statutes. The Annual and Special Assessments, together with interest, costs and reasonable attorneys' fees, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment is made. Each such Assessment, together with interest, collection costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The Declarant shall only become obligated to pay Assessments for a Unit after it is ready for occupancy. For purposes of this Declaration, a Unit is deemed not available for occupancy until the earlier of: (a) conveyance to a Lot Owner, or (b) one hundred and twenty (120) days after the first Lot is conveyed to an individual Lot Owner in each building

(containing more than one Lot where the Units are connected by a common wall). The Declarant may offset its obligation to the Association against any advances it has made on behalf of the Association.

Section 2. Purpose. The Assessments levied by the Association shall generally be used as follows: (a) to promote the recreation, health and welfare of the Owners, and (b) to implement the intent and purposes of this Declaration. Assessments may also be used for the following: (a) improvement, maintenance, repair and/or replacement of the Common Elements and Limited Common Elements in the sole discretion of the Board of Directors; (b) those items mentioned in ARTICLE V; (c) the costs of all insurance carried by the Association; (d) the provision of utilities in the Common Elements; (e) the administrative and management costs of the Association; (f) legal, accounting and auditing fees of the Association; (g) such other expenses as determined from time to time by the Board of Directors; and (h) to build reserves for the Association.

Section 3. Establishment of Assessment.

(a) Each year, prior to December 1, at a meeting duly called for such purpose, the Board of Directors shall present the Owners with a budget showing the total amount necessary to pay the costs of carrying out the Association's duties, together with a reasonable amount considered by the Board to be necessary for contingencies for the following year.

(b) Any such proposed budget may be defeated by two-thirds

(2/3) votes of the Owners present at such duly called meeting whereupon the Board of Directors shall re-estimate amounts necessary to carry out the Association's duties, and shall resubmit such estimates for approval at that or a subsequent meeting as required by this subparagraph. In the event that the Association is unable to obtain the required approval or ratification, as the case may be, of the proposed budget, then the existing budget shall remain in place with an automatic five percent (5%) increase each year until such time as the budget is ratified according to this Declaration.

(c) On or before December 1 each year, the Board shall notify each Owner subject to Assessment, in writing, of the amount of the Assessment established in subparagraph (a) or (b) hereof, if different from the preceding Annual Assessment. The budget shall be divided by the total number of Lots subject to Assessment, and the result shall constitute the next Annual Assessment.

Section 4. Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment year, a Special Assessment for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements. This can include but is not limited to fixtures and related personal property, the repair of roofs of structures situated on a Lot or Lots, and the repair, maintenance and decoration of any outside walls or structures of any Lot.

Any Special Assessment shall have the assent of two-thirds (2/3) of the votes of each Class of Owner who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Assessment Meetings.

Notwithstanding any other notice or quorum requirements stated elsewhere in this Declaration, written notice of any meeting called for the purpose of taking actions authorized under Sections 3 or 4 of this Article shall be sent to all Owners not less than ten (10) days nor more than sixty (60) days in advance of the meeting. Notification will follow the procedures outlined in ARTICLE III, Section 2. At the first such meeting, the presence of Owners and/or of proxies entitled to cast twenty percent (20%) of all the votes of each Class of Owners shall constitute a quorum. If the required quorum is not present, a second meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots.

Section 7. Commencement of Annual Assessments. The Annual Assessments provided for herein shall commence on a monthly basis, with respect to any Owner, on the first day following the conveyance of the deed from the Declarant or a prior Owner by which the Lot is transferred to a new Owner. The

first Annual Assessment shall be adjusted according to the number of days remaining in the calendar year. Assessments shall be collected on a monthly basis, or for such other period as may be determined by the Board of Directors. The monthly due date shall be the 1st day of the month and delinquent after the 10th day of each month, unless otherwise established by the Board of Directors. The Board, or its duly authorized representative, shall, upon demand, and for a reasonable charge, furnish a statement signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

Section 8. Nonpayment of or Delinquent Assessments.

Each Annual or Special Assessment not paid by the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum, plus a late charge of Twenty Five Dollars (\$25.00). The Board, however, may adopt such other interest rate (not to exceed eighteen percent (18%) per annum) or late fee (to be determined by the Board from time to time) (not to exceed Twenty-Five Dollars (\$25.00) provided that notice of such charge is submitted with the proposed annual budget. The Association may bring an action at law against an Owner personally obligated to pay the same, or foreclose the lien against the property by power of sale under Chapter 443, RSMO. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements, abandonment of his Lot, or assertion of any claim against the Association, Board, Declarant or another Owner. In addition to the above-referenced Assessments, interest

and late charges, said Owner shall be responsible for any court costs, attorneys' fees, arbitration fees, recording and release fees, and interest at the rate of twelve percent (12%) per annum on any such fees advanced by the Association for the purpose of collection.

Section 9. Subordination of the Lien Mortgage. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure, however, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, unless there is a surplus of funds after the sale or transfer. No sale or transfer shall relieve such Owner from liability for any Assessments thereafter becoming due or relieve the Owner's Lot from the lien thereof.

Section 10. Assessment for Ordinance Compliance. Notwithstanding any other conditions herein, the Directors shall make suitable provisions for compliance with all subdivision and other ordinances, rules and regulations of St. Charles County, City of St. Peters, or any other municipality in which the subdivision may become a part. For these purposes, the Directors shall not be limited to charging the maximum Assessment or budgeted Assessment provided for herein. Specifically, and not by way of limitation, the Directors shall make provisions for the maintenance and operation of street lights, roadways and

easements. Accordingly, such Assessment may be assessed by the Directors without the consent of the Lot Owners.

ARTICLE V

EXTERIOR MAINTENANCE, INSURANCE, UTILITIES AND TRASH REMOVAL

Section 1. Exterior Maintenance. The Association shall be responsible for maintenance of the Common Elements. In addition, the Association shall be responsible for exterior maintenance upon each Unit and Lot which is subject to Assessment hereinunder, as follows: paint, repair, replace and care for roofs, gutters, overhangs, downspouts, exterior building surfaces, (except as provided below), front balconies, lawn irrigation systems (if any), grass, trees and shrubs (except those trees and shrubs installed by Owners with Association permission). Exterior maintenance shall not include exterior electrical fixtures, glass, surfaces, skylights, exterior doors, storm/screen doors, shutters, planters, garage doors, air conditioning units, stoops, windows, screens, fences, sidewalks, mailboxes, individual balconies, decks, porches, patios, walkways, private driveways and other such exterior structures or fixtures. An Owner shall not have the right to apply a different color, paint, stain or quality (other than the same color or stain and a comparable or better quality as originally provided by Declarant) to the exterior surfaces such as doors, decks, patios or fences without prior written approval by the Board.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, the

Owner's family, guests, invitees or tenants, the Association may enter upon said Owner's Lot or Unit and correct the condition and, in such event, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Owner is subject.

Notwithstanding the above, the Association, at its option, may provide snow removal from private driveways, front sidewalks leading to a Lot or Unit and front stoops or may opt to provide partial or no service regarding the same.

The Association shall be responsible for maintaining, repairing and replacing parking spaces not located on the Lots, if any.

Accordingly, the Association may, but is not required to budget for and maintain, repair and replace all or a portion of a Limited Common Element, Lot or Unit, provided that it is performed on a uniform basis or is part of a uniform schedule of maintenance, repair and replacement over a period of time.

Should the Association not provide for such maintenance, then it may require a Lot Owner to maintain, repair or replace a Limited Common Element, Lot or Unit. If the Lot Owner fails to maintain, repair or replace the same within a reasonable period of time, the Association may enter onto said Lot or Unit and maintain, repair or replace the same and assess the Lot Owner for the costs incurred and collect reimbursement in the same manner as if a Special Assessment has been assessed against the Lot and its Owner. In addition to any other remedies as provided for herein,

the Board of Directors, acting on behalf of the Association or its duly authorized agent, shall have the power to enter upon any Lot, Unit or portion of the Common Elements or Limited Common Elements to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, any By-Laws, the Rules and Regulations or Use Restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorneys' fees, court costs, or arbitration costs, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

All spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are part of that unit except for those which meet the definition of Limited Common Elements. The interior area of enclosed fences, utilities, utility meters, lateral sanitary sewer lines, and other fixtures designated to serve a single Unit, but located outside the Unit's or Lot's boundaries (as the case may be) are allocated exclusively to that Unit and are the Owner's responsibility to maintain, repair and replace. If damages are inflicted on the Unit as a result of a leak in the roof, skylight, or foundation, the Owner is responsible for the interior of the Unit including but not limited to repair and replacement of wallboard, wall covering, window covering(s), flooring and furniture to the

extent not covered by the Associations' Master Insurance Policy.

(Note: The Association's Master Policy may insure the damage sustained by a Unit or as a result of exterior damage on water penetration, but the fact that the Association has insurance coverage for this does not in and of itself require the Association to repair a Unit beyond insurance proceeds).

Section 2. Insurance. Commencing not later than the time of the first conveyance of a Lot to a person other than Declarant, the Association shall maintain a Master insurance policy to include, to the extent reasonably available:

(a) Property insurance on the Common Elements, Limited Common Elements, Units, and Lots insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. The total amount of insurance, after application of any deductibles, shall not be less than eighty percent (80%) of the actual cash value of insured Property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from the Property policies;

(b) Liability insurance, in an amount determined by the Board, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.

To the extent that any of the Lot(s) are covered by an insurance policy carried by the Association, the Owner or Owners

shall be responsible for the payment of the deductible amount under said policy, and the Association shall apply the policy's proceeds to any repair or replacement incurred on a Lot.

Insurance policies carried pursuant to this Section must provide that:

(a) Each Lot Owner is an insured person under the policy with respect to liability arising out of his/her membership in the Association;

(b) The insurer waives its right to subrogation under the policy against any Lot Owner or member of his/her household;

(c) No act or omission by any Lot Owner, unless acting within the scope of his authority on behalf of the Association will void the policy or be a condition to recovery under the policy;

(d) If, at the time of a loss under the Master Policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the Master Policy, the Association's Master Policy provides the primary insurance.

If the insurance described above becomes unavailable to the Association, the Association shall promptly provide notice of that fact, hand-delivered to the mailboxes for the Units or sent prepaid by United States mail to all Lot Owners.

The Association shall maintain such other forms of insurance as the Board deems advisable from time to time, and shall authorize a procedure for property insurance claims which may also be changed by the Board from time to time.

Any loss covered by the Master Policy under this Section must be adjusted with the Association, and the insurance proceeds for that loss are payable to the Association, and not to any mortgagee. The Association shall hold any insurance proceeds in trust for the Lot Owners and lienholders as their interest may appear. Subject to the provision of this Section, the proceeds must be disbursed first for the repair or restoration of the damaged area. Lot Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, and then only in the sole discretion of the Board of Directors.

An insurance policy issued to the Association does not prevent a Lot Owner from obtaining insurance for his/her own benefit. Any parts of a Lot not covered by the Association's Master Policy shall be insured by the Lot Owner. Lot Owners are also encouraged to obtain a sewer and drain backup endorsement since this is not the responsibility of the Association unless the Board carries coverage contracts for such insurance at the time damage event occurs. The Lot Owner shall be solely responsible for maintaining property insurance on his/her personal property and liability insurance for his/her acts and omissions.

An insurer that has issued an insurance policy under this Article, shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Lot Owner, or

mortgagee. The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Lot Owner and each mortgagee to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

Any portion of the Property, for which Master insurance is required under this Article, which is damaged or destroyed shall be repaired or replaced by the Association unless: (a) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (b) eighty percent (80%) of the Lot Owners vote not to rebuild.

The cost of repair or replacement in excess of insurance proceeds and reserves may be declared a Common Expense by the Board of Directors and assessed accordingly.

If the entire Property is damaged, the insurance proceeds attributable to the damaged Common Elements must be used to restore them to a condition compatible with the remainder of the Property. The insurance proceeds attributable to the Units and Limited Common Elements which are not rebuilt must be distributed in the following order: (1) to the Lot Owners of those nonrebuilt Units; (2) to the Lot Owners of the Units to which the nonrebuilt Limited Common Elements were allocated; (3) to lienholders as their interest may appear; and (4) any remainder of the proceeds to all Lot Owners or lienholders as their interest may appear in proportion to their ownership interest in the Association.

The Association shall pursue the repair or reconstruction of any damaged or destroyed Unit or Common Element as soon as practicable after: (1) receiving the proceeds of insurance; and (2) the receipt of Assessments from Lot Owners, if required. No consent or other action by any Unit Owner shall be necessary. Such repair or reconstruction shall be in accordance with the original plans and specification of the unit or may be in accordance with other plans and specifications approved by affirmative vote of eighty percent (80%) of the Association membership. In the latter event, neither the number of cubic feet nor the number of square feet of any Unit may vary by more than five percent (5%) from what constituted the original Unit pursuant to its original plans and specifications. The location of the building shall be substantially the same as prior to damage or destruction.

Section 3. Utilities. Lot Owners are responsible for all utilities which are individually billed or metered and serving only one Lot. Said utilities include but are not limited to water, sewer, gas, electric, telephone, and cable/digital satellite T.V.

Section 4. Trash Removal. The Board of Directors may, in its sole discretion, enter into contract(s) for trash pick-up by one vendor. This would normally benefit the Association by limiting the amount of traffic on the road which minimizes damage to the streets and/or safety concerns. If the Board chooses to contract for such services, said services shall commence upon the

termination of any existing agreement an individual Lot Owner has with a trash service provider. All Lot Owners shall be required to use the trash pick-up company negotiated by the Board.

ARTICLE VI

PARKING

Each Lot shall be entitled to two (2) assigned parking spaces. For Declaration purposes, each garage space shall be counted as an assigned space, e.g. if a Lot Owner has a two car garage, the garage shall be counted as his/her two (2) assigned spaces. Each Lot which does not have parking for two (2) cars, shall be assigned a space so that the Lot Owner has a total of two (2) parking spaces including his/her garage. All parking spaces which are not assigned for the exclusive use of an Owner shall be open for the use of any other Owner or his/her guests subject to the Rules and Regulations of the Board. Street parking shall be regulated by the Association subject to local, municipal and county ordinances.

ARTICLE VII

ARCHITECTURAL CONTROL AND OTHER COMMITTEES

Section 1. Architectural Control Committee

Applicability. The following provisions shall apply exclusively to Owners other than the Declarant. (The Declarant, even though an Owner for certain purposes of this Declaration is exempt from any provisions of this Article VII.

(a) **Additions, Changes or Alterations.** No structure shall be commenced, erected or maintained upon the Properties, nor

shall any exterior addition, change or alteration therein be made until proposed plans and specifications have been submitted to and approved in writing by the Board and be in keeping with the harmony of external design and location in relation to surrounding structures and topography. An Architectural Control Committee, composed of three (3) or more representatives, appointed by the Board, shall initially review all such plans or proposals submitted and provide a formal recommendation to the Board to accept or reject the proposal. In the event the Board, or its designated committee, fails to approve or disapprove such proposal within forty-five (45) days after said plans and specifications have been submitted, approval will not be necessary and the requirements of this Article will be deemed to have been fully satisfied. In the event that the addition, change or alteration is of such a nature that the Association would be responsible for continuing maintenance, repair or replacement after it has been made, the Board may condition its approvals upon the Owner agreeing to maintain, repair or replace such addition, change or alteration in the future and, if not so maintained, the Board may perform such service and shall charge the Owner for the associated costs. These costs will be due and payable the same as a Special Assessment. The Owner shall have the duty of advising any future Owner of said Unit of his or her duty to maintain, repair or replace said addition, change or alteration.

(b) **Fees for Review.** If the Architectural Control

Committee receives compensation for its efforts, or incurs costs, the Board of Directors may establish a reasonable fee for review of any proposed changes.

(c) **Guidelines.** The Architectural Control Committee may adopt reasonable guidelines to facilitate the review of proposed changes.

Section 2. Other Committees. The Board of Directors may appoint other committees, as deemed appropriate, in the Board's discretion in carrying out its purpose.

ARTICLE VIII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Units upon the Properties, and placed on the dividing line between the Lots shall constitute a party wall and, to the extent consistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other

Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to their use thereof. Any such use shall be without prejudice to the right of any of those Owners to call for a larger contribution from the others who may be liable for damage to said wall for their liability for negligent or willful acts or omissions under any rule of law.

To the extent that any of the aforementioned items are covered by the Association's Master Policy,, the relevant Owner or Owners of the damaged wall shall be responsible for the payment of the deductible amount under that policy, and the Association shall apply the policy's proceeds to any repair or replacement thereof.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection from such elements and that of any repairs or replacements required.

Section 5. Right to Contribution Runs With the Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE IX

STAGED DEVELOPMENT

The Declarant may make additions to or amend, from time to

time, the legal description of the Properties, the subdivision Plats of the Properties, or any additions to the Properties, and may cause such additions or amendments to be recorded, without the consent of any Owner.

ARTICLE X

GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions, easements, restrictions, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant, condition, easement or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall be entitled to bring an action in equity for injunctive relief to enforce these covenants and restrictions of this Declaration without the necessity of posting a bond.

Section 2. Severability. Invalidation of any one of these covenants, conditions, easements, or restrictions by judgment or court order shall, in no way, affect any other provisions which shall remain in full force and effect.

Section 3. Mortgagee Rights. An institutional holder, insurer or guarantor of a first mortgage shall be entitled to timely written notice of: (a) a proposed termination of the Association; (b) any condemnation laws or casualty law which affects a material proportion of the Properties or which affects

any Lot on which there is a first mortgage held, insured or guaranteed by the mortgagee(s); and, (c) any delinquency, continued for a period of sixty (60) days, in the payment of Assessments or charges owed by an Owner of a Lot subject to a first mortgage, or, (d) any default in the performance by the Owner, of any obligation under the Declaration which is not cured within sixty (60) days.

Section 4. Duration. The provisions of this Declaration shall run with and bind the land and shall be and remain in effect until such time as all Plats of Braewood are vacated by the City of St. Peters, Missouri or its successors after which period of time fee simple title to the Common Elements shall vest equally in the record Owners of all Lots on the Property as tenants in common. Any conveyance or change of ownership of any Lot shall convey with it ownership in the Common Elements, and no interest in the Common Elements shall be conveyed by a Lot Owner except in conjunction with the sale of a Lot. The sale of any Lot shall carry with it all incidents of ownership of the Common Elements although such is not expressly mentioned in the Deed, provided, however, that no right or power conferred upon the Board of Directors shall be abrogated.

Section 5. Amendment. This Declaration may be amended during the first ten (10) years by an instrument approved by vote or agreement of not less than sixty-five percent (65%) of the Owners, and, thereafter, by an instrument approved by vote or agreement of not less than fifty-one percent (51%) of the Owners.

At least thirty (30) days prior to the effective date of said instrument, written notice shall be given to all Owners, of the meeting to consider the amendment, which meeting shall be held at a place convenient to the Owners. Any amendment must be recorded and shall be effective upon said date. For the purpose of this Section, the Declarant shall have the right to veto any amendment so long as the Declarant has voting rights pursuant to Article III, Section 5, subparagraph (b).

Notwithstanding the above, the Declarant reserves the right to amend this Declaration unilaterally, at any time, without prior notice and without the consent of any person or entity so long as Declarant, as defined herein, owns one (1) Lot.

Section 6. Attorneys' Fees. In the event that the Board of Directors shall desire to enforce any of the provisions of the Declaration or defend any of the same, the Association shall be entitled to recover fees from the Lot Owner who is challenging or has failed to abide by the Declaration, including attorneys' fees, court costs, arbitration fees, paralegal fees, expert fees and interest on such fees advanced by the Association at the rate of twelve percent (12%) per annum.

Section 7. Arbitration. In the event any Owner chooses to challenge this Declaration or its amendments, or an act or omission by the Board, such action shall be submitted to binding arbitration pursuant to Chapter 435, RSMO. and according to the Rules of the American Arbitration Association. The decision of the arbitrator shall be binding upon all parties. The Board of

Directors, on behalf of the Association, when enforcing the Declaration or the Rules and Regulations may choose to bring such action in any court of law of any competent jurisdiction or in a forum of arbitration under the Rules of the American Arbitration Association. If the Board of Directors shall choose arbitration, the decision of the Arbitration Board shall be binding on the Owners and the Association.

Section 8. Indemnification. The Association shall indemnify every Officer, Director and member of the Association against any and all expenses, including attorneys' fees reasonably incurred by or imposed upon any Officer or Director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding approved by the then Board of Directors) to which she or he may be a party by reason of being or having been an Officer or Director of the Association. The Officers and Directors shall not be liable for mistake of judgment, negligence or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The Officers and Directors shall have no personal liability with respect to conduct or any commitment made by them in good faith on behalf of the Association (except to the extent such Officers or Directors may also be members of the Association) and the Association shall indemnify and forever hold each such Officer and Director free and harmless from and against any and all liability to others on account of such a contract or commitment.

Section 9. Compliance With Laws, Etc. Notwithstanding any condition herein, the Board of Directors shall make suitable provision for compliance with all subdivision and other ordinances, rules and regulations of the City of St. Peters and any other governmental entity for which the Properties may become a part. If such compliance requires improvements to the Properties, this shall be a Special Assessment, if necessary, to comply with such ordinance or statute, without the vote of the Lot Owners.

Section 10. Powers of the Association. The Association, acting through the Board of Directors, shall have the power to:

(a) adopt and publish Rules and Regulations regarding the use of Common Elements, Limited Common Elements and Lots, and the personal conduct of the Owners and their guests thereof, to impose penalties for any Owner's infractions after providing written notice and an opportunity to be heard thereof;

(b) exercise, for the Association, all powers, duties, and authority vested in or delegated to this Association and not reserved by the Owners by other provisions of the Declaration;

(c) employ, supervise and terminate a manager, independent contractor or such other employees as necessary and prescribe their duties and compensation;

(d) establish a budget, prior to October 1st of each year projecting the amounts necessary to be expended to carry out its obligations pursuant to the Declaration;

(e) adopt an annual budget and collect Assessments;

(f) establish the fiscal year of the Association which, in the absence of any establishment, shall be on a calendar year basis;

(g) establish the principal office of the Association, which shall be 1550 Wall Street, St. Charles, Missouri 63303 until changed by the Board of Directors;

(h) establish rules regarding proxies for voting;

(i) promulgate and amend By-Laws to execute the functions of the Board of Directors on behalf of the Association;

(j) borrow funds on behalf of the Association and to pledge the assets or future assessments of the Association as collateral;

(k) effect the interest and purposes of this Declaration;

(l) bring suit or arbitration matters to enforce or carry out the terms of this Declarations;

(m) designate any part of the Common Elements as a Limited Common Element. In addition to the Limited Common Elements specified by the Declaration, any Limited Common Element designated on a recorded plat shall be a Limited Common Element and the use thereof shall be limited solely to those persons using the Unit(s) to which said Limited Common Element is designated. **[Comment:** The Board shall not abuse this authority and shall consider the property rights of other Lot Owners. The Board shall establish general guidelines to exercise its authority which shall be consistently and equitably applied whenever and wherever possible. No designation of Limited Common


Elements shall take effect until such time that: (1) the property has been adequately described (in the sole satisfaction of the Board), and (2) the Lot Owner(s) receiving an allocation of a Limited Common Element, accept(s) such designation on behalf of its successors, heirs and assigns.]

(n) If the Association should incorporate, the Board would have the powers provided under Chapter 355, RSMo.

(o) Notwithstanding any of the above restrictions, the Directors may permit variances on a case-by-case basis or blanket variances as may be contained in the Rules and Regulations, which may be amended from time to time.

Section 11. Eminent Domain. In the event it becomes necessary for any public agency to acquire all or any part of the Property herein conveyed to the Directors, the Directors, during the period of this Declaration of Covenants, Conditions, Easements and Restrictions, are hereby authorized to negotiate with such public agency for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary only the Directors need be made parties, and in any event, the proceeds received shall be held by the Directors and used as they see fit, for the benefit of those who had been entitled to the use of the Property so acquired.

above written.



Notary Public


My Commission Expires:

STATE OF MISSOURI)
) SS.
COUNTY OF ST. CHARLES)

ANTHONY J SOUKENIK
Notary Public Notary Seal
STATE OF MISSOURI
ST LOUIS COUNTY
MY COMMISSION EXP NOV 18,2000

On this 19th day of NOV, 1997, before me appeared DAN BARNARD, PAUL (SCOTT) CAMPBELL and CAROLYN KRIBBEN, to me personally known, who, being duly sworn, upon their oath, did say that they are the Original Directors of Braewood Owners Association, and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

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



Notary Public

My Commission Expires:

ANTHONY J SOUKENIK
Notary Public Notary Seal
STATE OF MISSOURI
ST LOUIS COUNTY
MY COMMISSION EXP NOV 18,2000

EXHIBIT A

A tract of land being part of U.S. Survey No. 979, Township 47 North, Range 4 East, St. Charles County, Missouri, being more particularly described as follows: Commencing at the northwest corner of U.S. Survey 291 thence S 24° 29' 44" E, 1160.71 feet along the eastern line of the Edgar Meers tract as recorded in Book 100, Page 6 of the St. Charles County Recorder's Office, to the true point of beginning of the tract herein described; thence continuing along said line S 24° 29' 44" E, 792.29 feet to a point on the northern right-of-way line of Ehlmann Road; thence which point is N 24° 29' 44" W, 431.87 feet from the southwest corner of U.S. Survey 291; thence S 73° 58' 44" W, 538.11 feet along said right-of-way to a point on the common property line between said tract and the YMCA tract recorded in Book 707, Page 1312 of the St. Charles County Recorder's Office; thence along said YMCA tract and the Shady Springs Park, as recorded in Book 739, Page 66 of the St. Charles County Recorder's Office N 15° 12' 40" W, 838.41 feet to a point; thence N 72° 24' 40" E, 276.76 feet to a point; thence S 80° 54' 42" E, 146.70 feet to the true point of beginning.

The above described tract contains 9.0 acres.

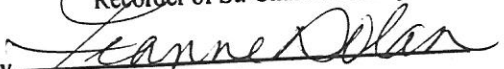
END OF DOCUMENT

State of Missouri }
County of St. Charles }

I hereby certify that this instrument was
FILED FOR RECORD and is RECORDED on
the Date and Time and in the Book and Page as
Stamped hereon



BARBARA J. HALL
Recorder of St. Charles County

By 
Deputy

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S-5
L-0

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Bk: DE3993 Pg: 967
10/04/2004 02:03:39PM 1/5

CERTIFIED-FILED FOR RECORD
Barbara J. Hall
Recorder of Deeds
St. Charles County, MO
BY: Michelle Kimble

TITLE OF DOCUMENT: Amendment to Restatement of the Declaration of Covenants, Conditions, Easements and Restrictions of Braewood

DATE OF DOCUMENT: July 12, 2004

GRANTOR(S): Braewood Owners' Association

GRANTOR(S) MAILING ADDRESS: c/o Braewood Owners' Association
Tony Lepski, President
146 Braewood Circle
St. Charles, MO 63301

GRANTEE(S): Braewood Owners' Association

GRANTEE(S) MAILING ADDRESS: c/o Braewood Owners' Association
Tony Lepski, President
146 Braewood Circle
St. Charles, MO 63301

RETURN DOCUMENTS TO: *ew* Anthony J. Soukenik
Sandberg, Phoenix & von Gontard
One City Centre, 15th Floor
515 N. 6th Street
St. Louis, MO 63101

LEGAL DESCRIPTION: None



AMENDMENT TO THE RESTATEMENT OF THE
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS,
AND RESTRICTIONS OF BRAEWOOD

WHEREAS, the Restatement of the Declaration of Covenants, Conditions, Easements and Restrictions (the "Declaration") concerning the certain subdivision in St. Charles County, Missouri, known as Braewood (the "Subdivision") was entered into by Greater Missouri Builders, Inc., a Missouri Corporation on December 5, 1997, said Declaration having been recorded in Book 2006, Page 1085 of the St. Charles County Records; and

WHEREAS, the Declaration provides in Section 5 of Article X thereof that the Owners of the Lots within the Subdivision may amend, modify or change the terms of the Indenture upon the written consent of two-thirds of said Lot Owners; and

WHEREAS, the undersigned, representing not less than two-thirds of all of the Owners of Lots within the Subdivision, deem it to be in their mutual best interest and in the best interest of the Subdivision, to further amend the Declaration as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises, this First Amendment to the Indenture is hereby amended as follows:

1. New paragraphs (f) and (g) shall be added to Article 19 and shall read as follows:

"(f) The Owner shall deposit with the Board of Directors the sum of One Thousand Dollars (\$1,000.00) as security for any costs incurred by the Board of Directors for enforcing and remedying any violations of the Rules and Regulations, Declaration as amended, and Covenants and Conditions of Lease, other than non-payment of rent. The security deposit shall be returned to Owner after the termination of the Lease if all rules, regulations, covenants, terms and conditions have been faithfully fulfilled. The Board, as agent for Owner is authorized to expend such sums as are necessary to correct, clean or repair damage done by the Lessee or Lessee's guests or invitees. The Board shall either return to the Owner the full security deposit or furnish a written itemized list and estimated cost of any of the damages or reasons for which the security deposit or any portion thereof is being withheld along with the balance of the security deposit, if any. In the event the security deposit is not sufficient to repair and restore the damage or loss, then the owner agrees to pay such additional

amounts upon notification of the dollar amount therefore.

(g) The Owner and Lessee shall be jointly and severally responsible for all attorney's fees and court costs incurred by the Association in the event legal proceedings are instituted by the Association for breach of the Declaration, Rules and Regulations and conditions and covenants of Lease against Lessee (except for non-payment of rent).

2. In all other respects, the Declarations of Braewood shall remain in full force and effect as amended hereby.

3. This Amendment shall be effective upon its recording in the official records of the Office of the Recorder of Deeds of St. Charles County, Missouri.

4. This Amendment may not be challenged one (1) year after the recordation of the Amendment in the office of the Recorder of Deeds of St. Charles County, Missouri.

IN WITNESS WHEREOF, the undersigned have executed this First Amendment to the Restatement of the Declaration of Covenants, Conditions, Easements and Restrictions of Braewood, this 12th day of July, 2004.

By: Tony Lepski
President,
of the Board of Directors

ATTESTED TO:

Doris M. Swift
Secretary

STATE OF MISSOURI)
) SS.
COUNTY OF St. Louis)

On this 12th day of July, 2004, before me personally appeared Tony Lepski and Doris M. Swift to me personally known, who, being by me duly sworn, did say that they are the Chairman ^{and Secretary} of the Trustees of Braewood, and that said instrument was signed and sealed in behalf of HOA, by authority of its Board of Trustees; and said Tony Lepski and Doris M. Swift acknowledged said instrument to be the free act and deed of Braewood HOA. + SWIFT

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

Lisa A. Duncan
Notary Public LISA A. Duncan

My Commission Expires:



**Sandberg, Phoenix
& von Gontard, P.C.**
Attorneys at Law

One City Centre • 15th Floor
St. Louis, MO 63101-1880
Telephone 314.231.3332
800.225.5529
Facsimile 314.241.7604

Kelly M. Zigaitis
Direct Dial: 314/446-4204
kzigaitis@spvg.com
Assistant: Nancy Dierks

October 6, 2004

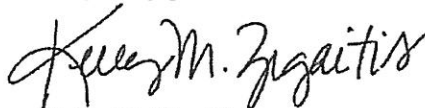
BRAEWOOD OWNERS' ASSOCIATION
Tony Lepski
146 Braewood Circle
St. Charles, MO 63301

Re: Braewood Lease Addendum

Dear Tony:

Attached hereto is a draft of the *Lease Addendum*, which incorporates the recent changes to the Braewood Owner's Association Statement of the Declaration of Covenant, Conditions, Easements, and Restriction. Please review this draft and feel free to contact me with any questions, comments or concerns.

Very truly yours,


Kelly M. Zigaitis

KMZ:bm

Enclosure

LEASE ADDENDUM

RE: (Unit Address)

LESSOR and LESSEE hereby agree to the following additional terms as conditions of said Lease and the Braewood Owner's Association (hereinafter the "Association") Rules and Regulations:

- (a) The Board of Directors of the Association is authorized to act as attorney-in-fact on behalf of Lessor and may enforce the Declaration of Covenants, Conditions, Easements and Restrictions of Braewood (hereinafter the "Declaration"), the Association Rules and Regulations and the conditions and covenants of the Lease (except provisions relating to the payment of rent) against Lessee;
- (b) The Board of Directors of the Association, as an agent for Lessor, is authorized to clean or repair damage done by Lessee or Lessee's guests or invitees, the cost of which will be paid by Lessor; the Association may collect the cost to clean or repair damage to common area of the Association in the same manner as an assessment.
- (c) Lessor and Lessee shall be jointly and severally responsible for all attorney's fees, court costs and damages to the common areas incurred by the Association in the event legal proceedings are instituted by the Association for breach of the Declaration, the Association Rules and Regulations, or conditions and covenants of the Lease (except for non-payment of rent) against Lessee.

This shall constitute the entire Lease.

LESSEE

LESSOR

LESSEE

LESSOR

DATE

DATE