

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
FALCON'S WAY  
ST. CHARLES COUNTY, MISSOURI

THIS DECLARATION is made by DJJ Investments, LLC, a Missouri limited liability corporation ("Declarant"),

RECITALS

A. Declarant intends to develop and improve that certain real property legally described as a Resubdivision of Lot 44 of Hidden Terrace, A tract of land being all of Lot 44 of Resubdivision of Lots 36-39 and Lots 42-46 of Hidden Terrace Plat One, Township 46 North, Range 4 East of the Fifth Principal Meridian, City of St. Charles, County of St. Charles, Missouri, hereinafter the "Proposed Development Area", or portions thereof and any additions thereto from time to time with attached residential homes and certain common amenities.

B. Declarant intends, by recordation of this Declaration, to subject the Proposed Development Area to the terms, covenants, conditions, restrictions, and provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Proposed Development Area, also hereinafter known as Falcon's Way Subdivision and or simply the "Subdivision", and any and all parts thereof, shall be held, sold, conveyed, occupied and developed subject to the following easements, reservations, restrictions, covenants, conditions, charges and liens which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in all or any portion of the subdivision (as hereinafter defined), their heirs, probate representatives successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

1. "Association" shall mean the Falcon's Way Homeowners Association, Inc., a Missouri Not-for-Profit Corporation, its successors and assigns.

2. "Board of Directors" or "Directors" shall mean the Board of Directors of the Association.

3. "Common Area" shall mean all real property (including the improvements thereto) for which the Association is obligated to maintain, in trust; for the common use, benefit and enjoyment of the Owners (as hereinafter defined), subject, however, to the uses, reservations, limitations, easements, conditions, and restrictions hereinafter provided in this Declaration. Although not reflected on the subdivision plat, the Common Area maintained by the Association for the benefit of the Owners at the time of the conveyance of the first Unit (as hereinafter defined), for all purposes herein, shall be the real property lying to the exterior of the six (6) unit building constructed on the Property, including the parking lot, drive, ingress-egress walkways, porches, and the roof and exterior walls of the building improvement itself.

4. "Declarant" shall mean DJJ Investments, LLC, a Missouri limited liability company, its successors and assigns, provided DJJ Investments, LLC designates such successor or assigns as a Declarant for purposes of this Declaration in an instrument executed and acknowledged by DJJ Investments, LLC and recorded in the office of the St. Charles County Recorder of Deeds.

5. "Member" shall mean an Owner in such Owner's capacity as a member of the Association as provided in Article IV.

6. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Unit which is a part of the Subdivision (as hereinafter defined), except that, where a Unit is being sold on a contract for deed and the contract vendee is in possession of the Unit, then the vendee and not the vendor shall be deemed the "Owner".

7. "Residence" or "residences" shall mean the single-family residence constructed upon lots located within the Subdivision.

8. "Subdivision Plat" shall mean the plat of the Resubdivision of Lot 44 of Hidden Terrace, a plat containing Units 1 - 6 thereon and also creates certain utility easements, the original of which has been filed of record with this Declaration in Plat Book \_\_\_\_\_, Page \_\_\_\_\_ in the Recorder of Deeds' office for the County of St. Charles, Missouri, incorporated herein by reference, and shall include any subsequent plats of the Properties.

9. "Subdivision" shall mean and refer to Falcon's Way Subdivision, as that subdivision is shown on the Subdivision Plat.

10. "Unit" shall mean the separately designed and numbered lots, Units 1 - 6, shown upon the Subdivision Plat.

## ARTICLE II BOARD OF DIRECTORS

1. Number and Term. The board of Directors of the Association shall, except as otherwise provided herein, consist of at least three (3) persons, and each Director shall hold office for a term of one year and, in any event, until his successor shall be elected (or appointed, as the case may be) and qualified. Each Director shall be elected or appointed as follows:

(a) The first Board of Directors shall consist of James Gross, Jason Gross, and Dawnice Gross, who shall serve and whose terms as Directors shall continue until new Directors are elected and appointed and qualified pursuant to subsection 9b of this Section 1 below;

(b) At the point in time at which fifty percent (50%) of the Units allowed in the Proposed Development Area are owned by Owners other than Declarant, then within ninety (90) days of such date (or at such earlier time as Declarant may elect) the Directors shall call a special election for the Association through which one Director shall be elected by a majority vote of a quorum of Owners and the remaining two Directors shall be appointed by Declarant. The Directors elected and appointed and qualified pursuant to subsection (c) of this Section 1 below;

(c) At the point in time at which ninety-five (95%) of the Units allowed within the Proposed Development Area are owned by owners other than Declarant, then within one hundred eighty (180) days of such date (or at such earlier time as Declarant may elect) the Directors shall call a special election of the Association through which two Directors shall be elected by a majority vote of a quorum of Owners and the remaining Director shall be appointed by Declarant. The Directors elected and appointed pursuant to this subsection (c) shall serve as Directors until new Directors are elected and qualified pursuant to subsection (d) of this Section 1 below;

(d) At the point in time at which one hundred percent (100%) of the Units allowed within the proposed Development Area are owned by Owners other than Declarant, then within thirty (30) days of such date (or at such earlier time as Declarant may elect) the Directors shall call a meeting of the Association (be it a special meeting or the first annual meeting) at which all three Directors shall be elected by a majority vote of a quorum of owners.

Notwithstanding any provision contained herein to the contrary, Declarant shall have the sole right and authority to remove, replace and/or fill the vacancy of any Director appointed by Declarant.

2. Qualifications. Except for Directors appointed by the Declarant, Directors shall be elected from among the owners, shall be owners, and shall reside in the Subdivision. Except as otherwise provided herein, if a Director shall cease to meet such qualifications during his term, he shall immediately cease to be a Director and his place on the Board shall be deemed vacant.

3. Vacancies. Except as provided for in (Article II; paragraph 1) hereof, any vacancy occurring in the Board shall be filled by the remaining Directors, with the successor elected by the Owners at the next annual meeting or at a special meeting of Owners called for such purpose.

4. Meetings. An annual meeting of the Directors shall be held immediately following the annual meeting of Owners and at the same place. Special meetings of the Directors shall be held upon the request of a majority of the Directors on not less than forty-eight (48) hours notice in writing to each director, delivered personally or by mail or telegram. Any Director may waive written notice of a meeting, or consent to the holding of a meeting without written notice, or consent in writing to any action of the Board without a meeting.

5. Removal. Except for the Directors appointed by Declarant, any Director may be removed from office by owners having two-thirds of the votes in the Association.

6. Quorum. A majority of the number of Directors fixed by this Declaration as the full Board of Directors shall constitute a quorum for the transaction of business and the act of a majority of the Directors at a meeting at which a quorum is present shall be the act of the Directors, provided notwithstanding the foregoing, so long as the Declarant is appointing any Directors, the presence of at least one Declarant-appointed director shall be required to have a quorum. In the absence of a quorum, a majority of the Directors present at a meeting, or the Director, if there be only one present, may successively adjourn the meeting from time to time, not to exceed thirty days in the aggregate, until a quorum is obtained, and no notice other than an announcement at the meeting need be given of such adjournment.

7. Actions without Meetings. Any action which is required to or may be taken at a meeting of the Board of Directors may be taken without a meeting if consents in writing, setting forth the actions so taken, are signed by all of the Directors of the Board of Directors. The consents shall have the same force and effect as the unanimous vote at a meeting duly held.

8. Compensation. Directors shall receive no compensation for their services, unless expressly provided for in resolutions duly adopted by the Owners.

9. Powers and Duties. The Subdivision and affairs of the Association shall be managed by the Board of Directors of the Association. The Board of Directors shall have and is vested with all powers and authorities, except as may be expressly limited by law or this declaration, to supervise, control, direct and manage the subdivision, affairs and activities of the Association, to determine the policies of the Association, to do or cause to be done any and all lawful things for and on behalf of the Association, to exercise or cause to be exercised any and all of its powers, privileges or franchises, and to seek the effectuation of its objects and purposes, without limiting the generality of the foregoing, the Board of Directors may:

- (a) administer the affairs of the Association and of the Subdivision;
- (b) engage, if deemed necessary or appropriate, the services of a professional managing agent who shall manage and operate the Subdivision for all of the Owners, upon such terms and for such compensation and with such authority as the Board may approve;
- (c) formulate policies for the maintenance, management, operation, repair and replacement of the Subdivision and improvements and obtain such services that provide for the public health, safety and welfare of the Subdivision as the Directors may consider advisable;
- (d) adopt and enforce administrative rules and regulations governing the maintenance, management, operation, repair and replacement of the Subdivision and improvements, and to amend such rules and regulations from time to time;
- (e) provide for the maintenance, management, operation, repair and replacement of the Subdivision and improvements, including, without limitation, mowing, landscaping, planting, seeding, pruning and care of shrubbery, removal of plants, maintenance, repair and replacement of street lights located within or adjacent to street right of ways (unless such maintenance, repair and replacement shall be performed by a municipal entity), and maintenance, repair and replacement of improvements located within the Common Areas;
- (f) provide for payments for all maintenance, management, operation, repair and replacement of the subdivision and improvements and also the collection and payment of any assessment pursuant to this Declaration, and to approve payment vouchers or to delegate such approval to the officers or the managing agent;
- (g) provide for the designation, hiring and removal of employees and other personnel, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the subdivision and improvements, and to delegate any such powers to a managing agent (and any such employees or other personnel that may be the employees of said managing agent);

(h) consider and approve or reject any and all plans and specifications (except those of Declarant) for alterations to and construction of Dwellings and improvements on the Units;

(i) estimate the amount of the annual budget, and to provide the manner of assessing and collecting from the owners their respective shares of such common expenses, as hereinafter provided;

(j) grant easements and rights-of-way over the Common Areas to such utility companies or public agencies or others as the Directors shall deem necessary or appropriate and to make rules and regulations, not inconsistent with the law and the Declaration, for the use and operation of the Common Areas and in every and all respects governing the operation funding and usage thereof;

(k) receive, hold, convey, dispose and administer, in trust, for any purpose mentioned in the Declaration, any gift, grant, conveyance or donation of money or real or personal property;

(l) make all contracts and incur all liabilities necessary, related or incidental to exercise the Board's power and duties hereunder;

(m) dedicate any private streets, drives, walkways or rights-of-way, or portions thereof to appropriate agencies and vacate or abandon easements in accordance with applicable legal procedures;

(n) comply with such instructions of owners having a majority of a quorum of votes in the Association, as expressed in a resolution duly adopted at any annual or special meeting of the owners, that the Directors deem to be beneficial to the Subdivision;

(o) obtain, in the Board's discretion, liability and hazard insurance on the Common Areas, as well as insurance protecting the Directors from any and all claims for damages arising out of any decision, act, or failure to act, of the Directors acting in their capacity as directors, said coverage to be at least in the form of a One Million Dollar (\$1,000,000.00) blanket liability policy and said property casualty policy, amongst generally standard provisions, shall include an eighty percent (80%) replacement value feature for the property of the Association;

(p) exercise all other necessary or appropriate powers and duties commonly exercised by a Board of Directors and all powers and duties of the Directors as stated in the Declaration;

(q) purchase a fidelity bond for any person or persons handling funds belonging to the Association or Owners;

(r) enforce the Declaration, and any and all restrictions governing the Subdivision and to take any and all necessary steps to secure the enforcement and compliance of the same; and

(s) exercise any and all other powers or acts as are authorized by the Declaration.

(t) Establish an Architectural Control Committee which shall be comprised of three (3) Directors, chosen from a pool of the existing Directors, who shall rule on those matters prescribed herein, by simple majority, with the Directors serving terms equal to the term they are serving as a Board Director and being replaced in manner consistent therewith.

10. Records. The Directors shall cause to be kept detailed and accurate records in chronological order of the receipts and expenditures affecting the Subdivision, specifying and itemizing the common expenses incurred. Such records and vouchers authorizing the payments of such expenses shall be available for examination by the Owners, and by the holders of a first mortgage or first deed of trust on any unit, at convenient hours or week-days. Payment vouchers may be approved in such manner at the Directors may determine.

ARTICLE III  
PROPERTY RIGHTS

1. Owners' Easements. Each owner and each owner's family, guests and invitees shall have an exclusive, perpetual right and easement of ingress, egress, use and enjoyment over, across, upon, in and to the Common Area, including but not limited to the ingress-egress walkways, drive, and parking lot. Such easement shall include, without limitation, (i) the rights of access to and from, and use of, such Common area; and (ii) the right of use utility, water, sewer, rainage and ponding easements therein. These rights and easements shall be appurtenant to and shall pass with the title to each Unit that is part of the Subdivision, shall not be severable there from and shall be subject to (i) the rights of the Declarant and Association as set forth in the Declaration; (ii) the easements uses, limitations, conditions reservations and restrictions provided in this Declaration; and (iii) the right of the Directors on behalf of the Association, to negotiate with any public agency for the dedication or conveyance of all or any part of the Common Area, for any public purpose, and to exclude such instruments as may be necessary for such purpose, subject to the proceeds of any such conveyance being held by the Association in trust for the Owners.

2. Use of Easements. Each Owner and such Owner's family, guests and invitees shall use and exercise their easement rights over the Common Area in a reasonable manner so as not to endanger or harm others create a nuisance for others, or cause any obstruction or impediment to the use of the easements created by the Declaration by others authorized to use them.

3. Association Right to Grant Easements and Associations Easements Over Lots and Common Area. The Association shall have the right to grant permits, licenses and easements over the Common Area for utilities, roads, and other purposes necessary for the property operation of the Subdivision.

A perpetual, nonexclusive easement is hereby established in favor of the Association, its employees, agents, contractors, successors and assigns to enter onto the common Area for the purpose of performing repairs or doing other work reasonably necessary for the proper maintenance of the Common Area and structures therein, including without limitation, repairs, landscaping and lawn care.

Each Property and Residence shall be subject to a perpetual easement in gross in favor of the Association, its successors and assigns, for ingress and egress or perform its obligations and duties as required by this Declaration. Should it be necessary or desirable, in the sole opinion of the Board of the Association, to enter a Residence or Property to maintain, service, improve, repair, or replace any improvements, landscaping, or equipment, then the employees, agents and contractors and their respective agents, subcontractors, and employees shall be entitled to enter in, upon or about the Property and Residence for such purpose. The Association shall specifically have the authority to enter any Residence or Property for the fulfillment of its obligations and duties required herein, including, without limitation, repairing, maintaining, servicing, improving, or replacing the roof, gutters, siding or exterior brick drives, porches, patios and sidewalks thereof or any pipes or wiring therein that serve more than one Residence or Property. Under no circumstances shall the Association be responsible for maintaining, servicing, improving, or replacing any equipment or improvements within or about any Residence that serve only that Residence, including, without limitation, the air conditioning, heating, plumbing, hot water heaters, garage doors and openers, skylights or any damage thereto, satellite dishes, and the wiring and electrical systems thereof. The responsibility for maintaining, repairing and replacing any equipment or improvements within or about any Residence that serve only that Residence shall be the sole responsibility of the particular Owner receiving the sole service of such equipment or improvement. To the extent that any such equipment or improvements are covered by an insurance policy maintained by the Association, the relevant owner(s) 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.

4. Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Subdivision 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 of flow or drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area shown on the Subdivision Plat and all improvements in it shall be maintained continuously by the Association, except for those improvements for which a



public authority or utility company is responsible. In the event that any utilities and connections therefore serving a Unit are located in part on a Plat other than the Plat on which the Unit being served by such utilities and connections located, the utility company, the owner of the Unit being served, and the contractors and employees of such company or owner shall have the right and easement to enter upon the Common Area located on the Plat in which the utility line or connection is located for the repair, maintenance and replacement of such line or connection.

5. Temporary Construction Easement. Until the last Unit in the proposed Development Area is sold and conveyed to an Owner other than the Declarant, the Common Area shall be subject to an easement allowing Declarant, its employees, agents, contractors and subcontractors to enter upon and over such portion of the Common Area for the purpose of grading and construction on the Common Area and Master Common Area.

#### ARTICLE IV MEMBERSHIP AND VOTING

1. Membership. Every Owner of a Unit that is within the Properties shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

2. Votes. All Owners, including Declarant with respect to unsold Units, shall be entitled to one vote in the Association for each unit owned by such Owner and in no event shall more than one vote in the Association be cast with respect to any Unit. If any Owner consists of more than one person, the voting rights of such owner shall be exercised as if the owner consists of only one person because only one vote is associated with each Unit.

3. Proxies. At all meetings of the Association, any member may vote in person or by proxy. All proxies shall be in writing, signed by the giver of the proxy, state that the giver of the proxy is appointing the proxy holder to vote for the proxy giver at a designated meeting or meetings, and be filed with the Directors of the Association. Every proxy shall be revocable and shall automatically cease upon the conveyance by the giver of the proxy of such proxy giver's Unit.

4. Association Meetings. Meetings of owners shall be held at a location within the Subdivision or at such other place in St. Charles county, Missouri as may be specified in the written notice of the meeting. The first annual meeting of the owners shall be called by the Directors at such time as the Directors deem appropriate, but in any event to later than sixty (60) days after Declarant sells the last Unit in the Subdivision owned by Declarant to an owner, and thereafter the annual meeting of the owners shall be held on the same day of each year on the anniversary date of the first annual meeting, called by the Directors at the same hour or at such other date or hour specified in the written notice of such meeting. Special meetings of the Owners may be called by the

president of the Association, a majority of the Directors, or by owners having at least one-third (1/3) of the votes in the Association. Written notice of the place, day and time of the annual meeting and all special meetings shall be delivered not less than five days before such meetings to all owners and Directors, if such Directors are not owners and to those institutional holders of a first mortgage or first deed of trust on any Unit that have requested such notice by written notification to the Directors no fewer than ten days prior to any such meeting. Any Owner or holder of a first mortgage or first deed of trust shall have the right to designate a representative to attend all annual and special meetings. If sent by mail, notice shall be deemed delivered when deposited in the United States mail, with postage thereon prepaid, addressed to the person or entity entitled to notice at his or her last known address.

5. Quorum. A quorum of the Owners for any meeting shall consist of Owners having one-half (1/2) of the votes in the Association, whether present in person or by written proxy submitted to the Directors at or before the meeting. Unless otherwise provided herein, the decision of a majority of a quorum shall be valid as the act of the Association.

#### ARTICLE V ASSESSMENTS

1. Creation of the Subdivision Lien. Each Owner of a Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) regular assessments and charges (including, without limitation, assessments for the improvement, betterment, upkeep, maintenance, repair and replacement of Common Area and improvements therein) ("Assessments"), and (ii) special assessments ("Special Assessments") for capital improvements, such assessments to be established and collected as hereinafter provided.

The Assessments and Special Assessments together with interest, costs, and attorneys' fees, shall be a charge on each Unit and improvements thereon and shall be, upon levying of the same by the Association, a continuing lien upon the Unit against which the Assessment and/or Special Assessment is made. Each such Assessment and/or Special Assessment together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such unit at the time the same became due.

2. Purpose of Assessment. The Assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents of the Subdivision, for the improvement, betterment, maintenance, upkeep, repair and replacement of the Subdivision and Common Areas, any recreational facilities constructed by Declarant or the Association for use by the owners and otherwise to fulfill and perform the rights, duties, obligations and functions pursuant to this Declaration.

3. Establishment of Budget and Assessments.

A. Unless the Directors otherwise decide, the fiscal year of the Association shall be a calendar year. On or before the end of each Assessment year, the Directors shall cause to be prepared an estimated annual budget for the next Assessment Year. Such budget shall take into account the estimated expenses and cash requirements for the Assessment Year, including, without limitation, salaries, wages, payroll taxes, supplies, materials, parts, services maintenance, repairs, replacements, landscaping, insurance, fuel, power, water and other common utilities, management fees, expenses associated with Common Areas and other common expenses (as distinguished from individual mortgage payments, real estate taxes and individual telephone, electricity, gas, and other individual utility expenses billed or charged to the separate owners on an individual or separate basis rather than a common basis). The annual budget may provide for a reserve for contingencies for the Assessment year and a reserve for replacements, in reasonable amounts as determined by the Directors, to the extent that the Assessments and other cash income collected from the owners during the preceding years shall have been more or less than the actual expenditures for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account.

B. Until commencement of the first Assessment Year after Declarant has transferred control of the Subdivision pursuant to Article II, hereof, the Owner of each Unit shall pay, on or before the 1<sup>st</sup> day of each Assessment month, as such Unit's respective monthly Assessment, such Unit's share of the estimated budget for each Assessment year as estimated and determined by the Declarant and approved by the Directors.

C. Upon commencement of the first Assessment Year after Declarant has transferred control of the Subdivision pursuant to Article II, hereof, the Directors shall prepare the annual Budget and shall fix the Assessment, provided that the Assessment may be increased by more than ten percent (10%) in any given Assessment year only by approval by owners having at least two-thirds (2/3) of the votes in the Association at an Association meeting and by a vote in accordance with the voting procedures set forth herein. Copies of the estimated annual budget shall be furnished by the Directors to the owners not later than thirty (30) days prior to the beginning of such Assessment year. Any institutional holder of a first mortgage or first deed of trust on any Unit shall receive at no cost, if it so requests in writing, said statement from the Directors. On or before the first day of each succeeding month, and without further notice, the owners of each unit shall pay, as the respective monthly Assessment for such Unit, such Unit's share of the expenses for such Assessment year as shown by the annual budget. In the event that the Directors shall not approve an estimated annual budget or shall fail to determine new assessments for any Assessment year, or shall be delayed in doing so, the Owners shall continue to pay each month the monthly Assessment as last determined. All owners shall pay the monthly Assessments to the managing agent or as may be otherwise directed by the Directors.

D. The Directors shall cause to be kept a separate account for each Unit showing the respective Assessments charged to and paid by the Owners of record of such Unit, and the status of such account from time to time. Upon ten (10) days written notice to the Directors, and the payment of a reasonable fee therefore, any Owner or holder of a first mortgage or first deed of trust on any Unit shall be furnished a statement of the respective account for such Unit setting for the amount of any unpaid Assessments that may be due and owing.

E. In the event that during the course of any Assessment year, it shall appear to the Directors that the monthly Assessments, determined in accordance with the estimated annual budget for such Assessment year, are insufficient or inadequate to cover the estimated common expenses for the remainder of such Assessment Year, then the Board shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of such year. Copies of such supplemental budget shall be made available to each Owner and, notwithstanding any provision hereof to the contrary, any additional Assessment necessary to cover such deficiency shall be levied in a fair and equitable manner within the sole discretion of the Directors.

4. Special Assessments for Capital Improvements. In addition to the Assessments authorized above the Association may levy, in any Assessment year, a Special Assessment applicable to that Assessment year only, 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 Areas during that year including fixtures and personal property related thereto, provided that Special Assessments shall be approved by a vote of Owners having at least two-thirds (2/3) of a quorum of the votes of the Association at a meeting at which a quorum is present.

5. Uniform Rate. Assessments and Special Assessments must be fixed at a uniform rate for all Units within the Subdivision, provided, however, the Board may, in the Board's discretion, set different rates for Assessments and Special Assessments with respect to the maintenance, repair, or replacement of items that are non-uniform in size, such as patios or decks.

6. Commencement of Assessments. Each Owner shall pay his first monthly Assessment upon the closing of the purchase of his Unit. Thereafter, monthly Assessments shall be paid as provided herein. In addition to the foregoing, each Owner purchasing a Unit from the Declarant shall pay an initial set-up fee to be deposited with the Association which shall be in such amount as the Declarant shall determine but which shall be uniform for all Unit Owners.

7. Non-payment of Assessments. Any Assessment and/or Special Assessment, not paid within thirty (30) days after the date levied shall bear interest from the date levied at the lesser of (i) the rate of ten percent (10%) per annum, or (ii) the maximum rate per annum allowed by law. The Association and its Directors shall have the authority to exercise and enforce any and all rights and remedies as provided in this

Declaration, or as otherwise available at law or in equity, including, but not limited to, the right to foreclose the lien against the defaulting Owner's Unit in like manner as a mortgage on real estate or a power of sale under chapter 443, R.S.Mo. In addition to the foregoing, any owner's voting rights and the right of such owner, his family, guests and invitees to use the improvements and recreational facilities in the Common Areas shall be automatically suspended for any period during which any assessment against such owner's Unit remains unpaid after the date the same is due. No Owner may waive or otherwise escape liability for the Assessments and/or Special Assessments established herein by non-use or abandonment of such Owner's Unit or the Common area. The Association may, at the sole option, elect to enforce any rights or remedies provided to the Association in the Declaration or at law or in equity to collect unpaid assessments levied by or on behalf of the Association against any owner who is delinquent, including, but not limited to, the right to foreclose the lien against the defaulting Owner's Unit in like manner as a mortgage on real estate or a power of sale under Chapter 443, R.S.Mo. Notwithstanding any of the provisions contained herein, nothing within this Declaration shall cause any property being subject to this Declaration and owned by Declarant to be subject to the payment of Assessment, be it a general assessment or special assessment.

8. Unexpended Assessments and Special Assessments. All funds paid from time to time by owners for Assessments and special Assessments, from time to time on hand and unexpended shall be deemed to be owned equally and in common by the Owners.

9. Subordination to the lien to Mortgages. The liens of the Assessments and/or Special Assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust encumbering the Unit. Sale or transfer of any Unit shall not affect the liens for Assessments and/or Special Assessments, however, the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments and/or Special Assessments as to payments which became due prior to such sale or transfer but shall not relieve the owner of such Unit at the time of the levying of such Assessment and/or Special Assessment of personal liability therefore. No sale or transfer shall relieve such Unit from liability for any Assessments and/or Special Assessments thereafter becoming due or from the lien thereof.

#### ARTICLE VI USE AND OTHER RESTRICTIONS

The use of each Unit, the easements reserved in this Declaration, and all Common Area are subject to the restrictions hereof, and each restriction, as set forth below and elsewhere in the Declaration, runs with the land and is perpetual and appurtenant to the Properties.

A. No Unit shall be used for any business or commercial purpose, and each Unit shall be used solely for residential purposes except (i) for use pursuant to home

occupations not in violation of any zoning ordinances affecting the subdivision, and (ii) Units or portions of Units may be used by Declarant for temporary offices, display or model homes and/or entrance monuments, provided however, that in no event shall any Unit be conveyed or transferred in any manner to a civic, religious, charitable or fraternal organization, or any persons other than for the exclusive use of an individual family.

B. No trash, rubbish, garbage, trash can or other receptacle therefore, other than those receptacles furnished or approved by the Association, shall be placed outside of any Unit for a period greater than three (3) days.

C. No Owner shall do anything that would increase the rate of insurance on such Owner's Unit, the improvements thereon, or on any other Unit or improvement.

D. Each owner shall be Responsible for obtaining and maintaining insurance on the personal property owned by such owner within such owner's Unit.

E. Each owner shall, as necessary, repair, maintain, replace, or clear at such owner's sole expense each and every gas, sewage, and water lateral line on or servicing only such Owner's Unit.

F. No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be used at any time as a temporary or permanent dwelling.

G. No sign of any kind shall be displayed to the public view on any Unit or the Common Area except (i) one sign of not more than five square feet may be placed thereon for each Unit that may be for sale or rent, (ii) one sign of not more than one square foot warning people of dangerous animals located in the Residence, and (iii) one sign not exceeding one square foot notifying people of the presence of an alarm or home security system located in the Residence; provided, however, there shall be no restrictions on the number or type of signage used by Declarant to advertise the Subdivision, Declarant's business, or any other development of Declarant in St. Charles County.

H. The Association shall be responsible for and shall undertake and maintain the landscaping, planting, laying of sod, and seeding of all Common Area. With prior written approval of the Architectural Control Committee, any Owner may undertake landscaping, laying of sod, seeding, or planting on any unpaved portion of the lot on which such Owner's Unit is located as shown on the Plat thereof; provided, however, that if, in the reasonable judgment of the Architectural Control Committee, the landscaping, planting, seeding or laying of sod or other similar actions performed by an Owner increases the cost to the Association of maintenance of any of the lot(s), the Architectural Control Committee may recommend to the Board of Directors and the Board of Directors may assess a special maintenance charge hereunder for the additional costs of such maintenance and such special maintenance charge shall be a lien against such owner's Unit and such Owner personally, as set forth in Article V of this Declaration pertaining to general and special assessments. The Board of Directors may, by a majority vote of

those voting thereon, establish and set aside such portions of any Common Area as the Board shall deem appropriate for the establishment of community gardens, and the Board shall promulgate the rules and conditions under which such community gardens may be used by the owners. No landscaping, gardening, planting, laying of sod, seeding, grading, paving, or changing of terrain or construction of any structure, building or other improvements shall be undertaken, constructed, erected, performed, done, dug or installed by any Owner within any of the Common Area except as approved by a majority of the Directors of the Association. In the event the Architectural Control Committee or the Directors fail to approve or disapprove any of the foregoing within thirty (30) days after submission of the same approval, the same shall be deemed disapproved.

I. No Owner shall perform any act upon such Owner's Unit or permit any act to be performed in contravention of, and each Owner shall comply with, and cause such Owner's family, guests, tenants, invitees to comply with the provisions of this Declaration, the by-laws, and/or the Articles of Incorporation of the Association, as any of the same may be amended from time to time.

J. No Unit or any portion thereof shall be used for any noxious or offensive activity nor for any purpose prohibited by law or ordinance or which may become an annoyance or nuisance, in the judgment of the Directors, to other Owners or inhabitants of Units.

K. No animals, livestock, or poultry of any kind shall be raised, bred or kept in any Unit, except dogs, cats or other household pets which may be kept, provided they are not kept, bred or maintained for any commercial purposes and provided that such household pets do not exceed three (3) in number per Unit in any Unit at any one time. Each Owner shall comply with all ordinances, zoning and subdivision regulations of the City/Village within which the subdivision is located relating to the supervision, control, responsibility and maintenance of animals and/or pets in residential areas.

L. Vehicles and watercraft, whether motorized, self-propelled, propelled or drawn by human, wind, sail, water, fuel or otherwise, including, but not limited to, boats, vessels, motorboats, sailboats, sailboards, rafts, canoes, kayaks, jet skis, boat trailers, recreational vehicles (RVs), sleds, recreational motor vehicles, trucks or vans containing business identification (unrelated to the manufacturer of such truck or van or retail auto dealership that sold or leased the van or truck) or commercial messages on their exterior, all-terrain vehicles (ATV's), motorcycles, motorized bicycles, motortricycles, dirt bikes, mini-bikes, tractors, truck-tractors, trailers, campers, and house trailers shall not be parked, placed or stored outside of any Residence, provided, this shall not prohibit the parking on the driveway serving each Residence of no more than two (2) passenger automobiles, licensed to the owner of the Unit or a full-time resident thereof that are in operating condition.

M. No firearms, pellet, or B.B. guns shall be discharged in the Subdivision.

N. Satellite dishes shall not be installed, constructed or maintained on the Common Area or on the exterior of any Unit or other improvement serving any Unit without the prior written approval of the Architectural Control Committee of the type, model, size, design, location, landscaping, appearance and other components thereof and related equipment therefore. Any satellite dish approved by the Architectural Control Committee shall be installed in accordance with, and maintained in the condition described in the plans and specifications approved by the Architectural Control Committee therefore. Under no circumstances shall television or radio antennas be permitted in the Common Area of the exterior of any Unit or other improvement serving any Unit.

P. Subject to any applicable municipal ordinance or regulations of the City/Village with respect to any Unit lying therein, no Owner, except Declarant with respect to Units owned by Declarant shall cause construction, painting, or any alteration affecting the exterior appearance of a Unit.

Q. No owner shall lease and or rent their unit to another without the express written approval of a majority of the Board of Directors. In order to preserve the quality of life within the Subdivision, the Board of Directors reserves the right to establish minimum monthly rental rates for units approved for rental.

#### ARTICLE VII PARTY WALLS

Each wall, including common garage walls and common fences, which is built as a part of the original construction of a Residence and placed on the dividing line between Units shall constitute a party wall and, to the extent not inconsistent with the provisions of the Article, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

1. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the owners thereof.

2. If a party wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time) other than an act of an adjoining Owner, or the agent, invitee or family of such Owner, it shall be the obligation of the Owners to rebuild or repair same at their joint and equal expense.

3. If a party wall is destroyed or damaged through the act of an Owner, or the agent, invitee, or family of an Owner, it shall be the obligation of such owner to rebuild or repair same at the sole cost of such Owner.



4. The extent that any of the foregoing are covered by an insurance policy carried by the Association, the relevant Owner or Owners 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.

5. 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 successor in title.

#### ARTICLE VIII INSURANCE: DAMAGE OR DESTRUCTION

Each Owner shall procure insurance insuring their respective Residence against loss or damage by fire and other hazards as are covered under standard fire and casualty coverage insurance policies. The Board of Directors shall from time to time establish rules and regulations governing the obtaining and maintenance of such insurance by the board of Directors, as the Board of Directors shall determine in its sole discretion, and each Owner shall comply with such rules and regulations. In all events, the obtaining and maintenance of such insurance shall be governed by the following:

1. Each Residence and other improvements, if any, located in the Subdivision shall at all times be insured in an amount equal to the full replacement cost thereof.

2. Regardless of how such insurance is purchased or by whom, the Board of Directors hereunder shall at all times be named as an additional insured, and a copy of each policy, including any renewal or additional policy, shall be delivered to the Board of Directors.

3. Each policy shall provide that the insurer waives any right of subrogation against the Board of Directors hereunder, their respective employees, agents or contractors, and any other party.

4. Each policy shall provide that the same shall not be canceled, terminated, or amended without thirty (30) days prior written notice to the Board of Directors hereunder.

In case of fire or other casualty covered by such insurance, the insurance proceeds shall be applied to reconstruction or repair of the improvements. The affected Residence and improvements shall be restored to substantially the same condition in which the same existed prior to the fire or other casualty, with the same vertical and horizontal dimensions as before.

If an Owner fails to obtain and maintain insurance in compliance with these provisions, the Board of Directors shall have the right, following written demand upon such owner to provide insurance in compliance herewith and failure of such owner to

obtain such insurance within ten (10) days of such written demand, shall cause the Board of Directors to obtain and maintain such insurance for the Residence and improvements of such Owner.

If the Board of Directors hereunder shall determine that such insurance shall be obtained and maintained by it in the case of a specific Residence, as hereinabove authorized, or if the Board of Directors shall determine that such insurance shall be obtained and maintained by it for each Residence and improvements in the Subdivision, the cost of the premiums for such insurance shall be assessed against each Unit and shall be added to the Assessment to which such Unit is subject under Article V hereof, and, as a part of such Assessment, the same shall constitute an obligation of the owner and shall be a lien on the Unit to which assessed and the same shall become due and payable in all respects as provided in Article V hereof, provided that the limitations in the amount of the annual Assessment as set out in said Article V shall not apply to the assessment for insurance premiums as authorized in this Article. The Board of Directors, when establishing the assessment for such insurance premiums, may utilize the estimated premium charges for such insurance but shall, thereafter, make such adjustments as are necessary to reflect the actual premium charge.

#### ARTICLE IX EXTERIOR MAINTENANCE

The Association shall be responsible for maintenance to the Common Area. In addition, the Association shall be responsible for exterior maintenance upon each Unit which is subject to assessment hereunder, as follows: paint, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, including patios, decks, walls, trees, shrubs, grass, walks, drives, parking lots, and other exterior improvements. Such exterior maintenance shall not include: (i) glass surfaces of exterior doors, garage doors, and windows, or (ii) roof leaks from skylights or solar tubes/lights.

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, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Owner is subject. An Owner shall not have the right to paint, repair, maintain, or otherwise cover the exterior portion of the Unit except the glass portions of any door or window.

#### ARTICLE X RESERVATION OF EXPENDITURES

The Declarant reserves the right to receive and retain any money consideration which may be refunded or allowed on account of any sums previously expended, deposited, placed in escrow, or subsequently provided by it for utility facilities or

services, streets, Subdivision fees or for any other purpose of any nature or description with respect to any of the Properties, regardless of when such expenditure is incurred.

#### ARTICLE XIV GENERAL PROVISIONS

The Directors or any Owner shall have the right to enforce by any proceeding at law or in equity, any of the covenants, conditions, restrictions and provisions hereof, either to restrain or enjoin a violation or threatened violation or to recover damages. Failure or forbearance by the Directors or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The covenants and restrictions of this Declaration shall run with and bind the land subject hereto for a term of twenty (20) years from the date of recordation of this Declaration, after which the said covenants and restrictions shall be automatically extended for successive periods of twenty (20) years each, unless an instrument signed by the then Owners of sixty-five percent (65%) of the Units has been recorded, agreeing to alter and/or terminate this Declaration. No such agreement of termination shall be effective unless made and recorded one (1) year in advance of the effective date of such change, and unless written notice of the proposed agreement of termination has been sent to every Owner at least ninety (90) days in advance of any action taken.

So long as the Directors are those appointed by Declarant, this Declaration may only be amended by instrument signed by all three Directors, and recorded in the Office of the Recorder of Deeds of St. Charles County, Missouri. Upon the election of Directors by the owners as set forth in Article II, any modification, amendment or change in the terms of the Declaration may be made by instrument approved by vote or amendment, signed by the Directors after such modification, amendment, or change has been approved by the affirmative vote of at least sixty-five (65%) percent of the eligible voting Owners, with said instrument then being recorded in the Office of the Recorder of Deeds of St. Charles County, Missouri.

Any notice required to be sent under the provisions of the Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears on the records as the record owner of the Unit at the time of such mailing.

Invalidation of any of the covenants and restrictions by final judgment or decree shall in no way affect any other provision hereof, each of which shall remain in full force and effect. In the event of any conflict between any of the terms, conditions or provisions of the Declaration and any of the terms, conditions or provisions of the Articles of Incorporation of the Association and/or the By-laws, the terms, conditions and provisions of the Declaration shall control.

IN WITNESS WHEREOF, the undersigned has executed this Declaration the day and year first above written.

BY: DECLARANT

*[Handwritten Signature]*  
DJI Investments, LLC, James Gross,  
Managing Member

State of Missouri )  
                          ) ss.  
County of St. Charles )

On this 11<sup>th</sup> day of July, 2005, before me appeared James Gross to me personally known, who being by me duly sworn, did say that he is the Managing Member of DJI Investments, LLC, a Missouri limited liability company, and that the instrument was signed in behalf of said company by authority of the Board of Directors; and said Managing Member acknowledged said instrument to be the free act and deed of said company.

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

*[Handwritten Signature]*  
Notary Public

My term expires: \_\_\_\_\_

