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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
DEER CREEK RESERVE**

**THIS DECLARATION** is made as of September 23, 2002, by **PRICE RESIDENTIAL, INC.**, a Missouri corporation (hereinafter "Developer").

**RECITALS:**

Developer desires to create a planned community of homeowners who are committed to establishing and preserving certain common values and amenities and in order to provide a structure for establishing and maintaining such a community, has developed these covenants, conditions and restrictions for the Deer Creek Reserve community.

**NOW, THEREFORE**, the Developer hereby declares that the land described in **Exhibit A** shall be held, sold, used and conveyed subject to the following covenants, restrictions, easements, charges and liens which shall run with such land and with the title to such land and shall be binding on all persons having or acquiring any right, title or interest therein or any part thereof, subject to the limitations herein provided, and shall inure to the benefit of each Owner, his or its heirs, grantees, distributees, personal representatives, successors and assigns, the Association and the Developer.

**ARTICLE I**

**Definitions**

The following terms, when used in this Declaration, or in any supplemental Declaration made effective against the Property according to law, and when the first letters thereof are capitalized, shall have the following meanings (except as otherwise expressly provided or unless the context otherwise requires):

**1.01 ARC.** "ARC" shall mean and refer to the Architectural Review Committee which shall have the duties and functions specified herein.

**1.02 Assessable Property.** "Assessable Property" shall mean and refer to the Property, together with all permanent structural improvements thereon, except such part or parts thereof as may from time to time constitute "Nonassessable Property."

**1.03 Assessments.** The term "Assessments" shall have the meaning specified herein and shall include Annual Assessments and Special Assessments as such terms are herein defined.

**1.04 Association.** "Association" shall mean and refer to the Deer Creek Reserve, a not-for-profit Kansas corporation, or any successor thereof, charged with the duties and obligations set forth herein.

**1.05 Association Board.** "Association Board" shall mean and refer to the Board of Directors of the Association.

**1.06 Common Property and Limited Common Property.**

(a) "Common Property" shall mean and refer to: (i) the improved or unimproved real property, together with the Structures and personal property located thereon, in which the Association or the Developer owns an interest as designated for the common use and enjoyment of the Owners, (as such areas may be depicted on any Plat, as "Common Property"); (ii) the private drive roadway easement area or similarly designated area depicting the private roadways and driveways within the Property.

(b) "Limited Common Property" shall mean and refer to: the real property owned by the Association or the Developer running from the foundation of each Living Unit to the designated yard line/boundary line for each Living Unit, as may be shown, depicted or further described on **Exhibit B** hereto, or as described in subsequent amendments to this Declaration as the Property is further platted or subdivided.

**1.07 Completed Unit.** "Completed Unit" shall mean and refer to a Living Unit upon which construction is completed and which has been conveyed to an Owner, other than the Developer.

**1.08 Declaration.** "Declaration" shall mean and refer to this Declaration as the same may from time to time be supplemented or amended in the manner prescribed herein.

**1.09 Developer.** "Developer" shall mean and refer to the Price Residential, Inc., a Missouri corporation, and its successors and assigns.

**1.10 Design and Development Guidelines.** "Development Guidelines" shall mean and refer to the rules, regulations and policy statements adopted, promulgated, revised and amended by the Developer and enforced by the ARC pursuant to this Declaration.

**1.11 Development Period.** "Development Period" shall mean and refer to the period of time commencing upon the execution date hereof, and terminating upon the occurrence of the earlier of: (a) the date Developer ends the Development Period or (b) the date Developer sells one-hundred percent (100%) of all of the Living Units in all of the parcels of land located or to be located within the Development Plan.

**1.12 Development Plan.** "Development Plan" shall mean and refer to Developer's plans for the development of the Property which, as of the date hereof, contemplates residential uses and which plans may from time to time be amended, expanded, changed, abandoned or implemented and include each and every plat, and all amendments thereto, which may be filed with respect to any portion of the land within the Development Plan.

**1.13 Director.** "Director" shall mean and refer to a member of the Association Board.

**1.14 Easement Area.** "Easement Area" shall mean that real property or portion of real property described as an easement herein and on the Plat, plats or maps filed in accordance with the Development Plan.

**1.15 Living Unit.** "Living Unit" shall mean and refer to any Structure or portion of a Structure situated within the Property which is designed and intended for use and occupancy as a single family residence by a single person or a family. For all purposes herein, each duplex Structure contains two (2) Living Units, and each Living Unit includes the land lying directly beneath the foundation footprint of the Living Unit.

**1.16 Member.** "Member" shall mean and refer to every person or entity holding membership in the Association, as set forth herein.

**1.17 Nonassessable Property.** "Nonassessable Property" shall mean and refer to all land designated "Common Property", "Limited Common Property", or with a similar common property designation given to it herein or upon the Plat, any map or plats of any part of the Property together with all land owned by the Developer.

**1.18 Occupant.** "Occupant" shall mean and refer to any Owner, guest, invitee or relative of any Owner who visits or resides, even on a Temporary (as herein defined) basis, in the Living Unit of the Owner.

**1.19 Owner.** "Owner" shall mean and refer to any person or entity holding record title to the fee interest of any Living Unit. "Owner" shall include a contract for deed seller, but shall exclude a person having an interest merely as security for the performance of an obligation.

**1.20 Plat.** "Plat" shall mean and refer to all plats recorded in respect of the Property.

**1.21 Private Road.** "Private Road" or "Private Street" or "Roadway" shall mean and refer to all land designated as such on any plat or subdivision of the Property. All roadways, streets and roads within the Property will be private; owned and maintained by the Association; and, subject to an easement for ingress and egress in favor of all Owners.

**1.22 Property.** "Property" shall mean and refer to that certain real property described more particularly in Exhibit "A" attached hereto and made a part hereof.

**1.23 Restriction.** "Restriction" shall mean and refer to any covenant, restriction, easement, charge, assessment, lien or other obligation created or imposed by this Declaration.

**1.24 Right of Action.** "Right of Action" shall have the meaning specified herein.

**1.25 Structure.** "Structure" shall mean and refer to:

(a) any thing or object, statuary, retaining wall, water garden, fountains, rock gardens, trees and landscaping, the placement, size, shape, color, height and quality of which upon any part of the Property may affect, in the opinion of the ARC, the appearance of the Property, including by way of illustration and not limitation, any



building or part thereof, garage, porch, greenhouse or bathhouse, covered or uncovered patio, fence, curbing, paving, wall, fence, hedge, sign, appurtenance, or any temporary or permanent improvement on the Property; and

(b) any excavation, fill, ditch, diversion dam, retention basin or other thing or device which affects or alters the natural flow of waters from, through, under or across any portion of the Property or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any part of the Property; and

(c) any change in the grade of any Lot of more than six (6) inches.

**1.26 Temporary.** "Temporary" as used herein shall mean used or lasting for a limited time of no more than four (4) hours in one (1) twenty-four (24) consecutive hour period.

## ARTICLE II

### Community Association

**2.01 Powers and Duties of the Association.** The Association is organized to operate for the promotion of the common good and general welfare of the Members and Owners and consistent therewith, to acquire, own, improve, maintain, preserve, convey and control the Common Property and Limited Common Property, to administer and to enforce all covenants, restrictions, easements and charges contained in the Declaration and all liens created herein, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers (but not intended as affirmative obligations unless so stated) of the Association, including by way of illustration and not obligation, unless so stated, or limitation:

(a) **Assessments.** The Association may levy Assessments on the Owners and enforce payment of such Assessments, all in accordance with the provisions of the Declaration set forth herein.

(b) **Right of Enforcement.** The Association shall also have the power and authority from time to time in its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration and to enforce, by mandatory or prohibitive injunction or otherwise, all of the provisions hereof or to pursue its Right of Action as provided herein.

(c) **Common Property and Limited Common Property.** The Association may plan, design, acquire, improve, construct on, lease and equip the Common Property and Limited Common Property (collectively, the "Common Property") with, by way of example and not limitation or affirmative obligation, open space, landscaping, the private road improvements, including the gates controlling access to the private road, and other facilities (collectively, the "Common Property improvements" which may be referred to herein with the Common Property and Limited Common Property as the Common

Property). The Association may also enter into contracts, leases or rental agreements as deemed necessary or desirable by the Association Board and shall maintain, repair and replace the Common Property improvements and provide adequate comprehensive insurance for the Common Property and Common Property improvements, all as shall be determined to be necessary by the Association Board.

(d) **Easements and Rights-of-Way.** The Association may grant and convey easements and rights-of-way in, on, over or under the Common Property and the Property for the purposes of constructing, erecting, operating or maintaining thereon, therein or thereunder any similar public or quasi-public improvements or facilities as may be considered necessary for the common good of said community.

(e) **Employment of Agents.** The Association may employ the services of any person or corporation as manager (herein, "Manager"), together with other employees, to, as may be directed and delegated by the Association Board, manage, conduct and perform the business, obligations and duties of the Association and may enter into contracts for such purpose.

(f) **Insurance.** The Association shall obtain and keep in force such policies of insurance and surety bonds, as are necessary to adequately insure and protect the Common Property and the operations thereon and of the Association and as deemed by the Association Board to be necessary and appropriate.

(g) **Management of Improvements.** The Association shall manage and control for its Members all improvements, including the private road, street markers and gates within or upon the private roadway public right of ways and on the Common Property.

(h) **Landscape Maintenance.** The Association shall care for and maintain shrubbery and grass in the Common Property and may maintain shrubbery and lawns located within the Limited Common Property.

(i) **Maintenance of Vacant Property.** The Association may mow, care for, maintain and remove rubbish from vacant or unimproved Property (except those Lots on which construction has commenced), and do any other things necessary or desirable in the judgment of the Association Board to keep any vacant and unimproved Property neat in appearance and in good order.

(j) **Street Lighting.** The Association shall provide, maintain and replace such lights as the Association may deem advisable on streets in the Common Property, gateways, entrances, or other features, and on other Common Property or public property subject to the prior written approval of the ARC.

(k) **Snow Removal and Street Cleaning.** The Association shall provide for the removal of snow from streets and the cleaning of streets, gutters, catch basins, and pedestrian ways.

(l) **Signs.** The Association may erect and maintain signs after such signs are approved by appropriate public authorities and by the ARC.

(m) **Security Protection.** The Association may employ duly qualified officers for the purpose of providing such security protection as the Association Board may deem necessary or desirable in addition to the protection rendered by public authorities.

(n) **Acquisition of Real Estate.** The Association may acquire and own title to such real estate as may be reasonably necessary to carry out the purpose of the Association and promote the health, safety and welfare of the Owners; pay taxes on real estate and facilities owned by it; and pay such taxes as may be assessed against the Common Property.

(o) **Landscaping Irrigation.** The Association may provide, install and maintain an irrigation system to reasonably provide for the irrigation of lawns within the Common Property.

(p) **Private Streets.** The Developer shall grant and convey easements and rights of way in, on and over and under portions of the Property designated as Private Streets or Roadway, which easements will be providing ingress and egress to, and from and within the Property and the Association shall install, maintain and manage such Private Streets in accordance with the plans therefor. Each Owner shall have an ingress and egress easement over the driveway located on the Limited Common Property to his Living Unit, together with the obligation to maintain such driveway improvement.

(q) **Maintenance and Maintenance Easement.** Each Owner shall maintain the landscaping on his Limited Common Property and shall maintain the exterior portions of his Living Unit, in good order and repair, as may be reasonably determined by the ARC, consistent with the requirements herein and in the Development Guidelines. The Developer, until the end of the Development Period, and the Association have the right to install, and, thereafter, at its option, maintain the landscaping on each Limited Common Property in accordance with the Development Plan. If the ARC determines that an Owner has failed to maintain his landscaping or Living Unit as herein required, the Association or the Developer shall have the Right of Action provided herein. In addition to the other remedies provided herein, upon the Owner's failure to maintain the exterior portion of his Living Unit, as may be reasonably determined by the ARC, the Association, at its option, without any obligation to do so, may cause the maintenance determined necessary by the ARC to be performed and assess against and collect from such Owner all costs and expenses incurred by the Association in respect thereof. There is reserved to the Developer and to the Association, their agents, successors, designees and assigns, a maintenance easement over the respective Limited Common Areas lying between the Living Unit boundary line and the inside of the exterior portions of each Structure ("Maintenance Easement Area") for the installation, repair, replacement or maintenance of the landscaping and lawns and for the repair, replacement and maintenance of the exterior portions of each Living Unit. Notwithstanding the foregoing, neither the Developer nor



the Association shall be obligated to repair, replace or maintain the landscaping and lawns or the exterior of any Living Unit.

(r) **Common Wall Easement.**

(i) Between each Living Unit will be a Common Wall (herein so called) erected and placed and supported by a Common Foundation (herein so called), and built on the dividing line between each Living Unit and on the dividing line between the foundations for each Living Unit. Within the Common Walls and Common Foundation of certain Living Units, there may be installations of plumbing lines and vent stacks for plumbing and heating lines and lines for communications and utilities (collectively "Utilities").

(ii) Developer hereby reserves to itself, and to its successors and assigns as Owner of each Living Unit, over that part of any Living Unit Lot (being that portion of the Property lying beneath the foundation for such Living Unit) on which any part of a Common Wall is situated for the benefit of the Parcel on which the remainder of such Common Wall is situated, the perpetual, non-exclusive right, privilege and easement to construct, maintain and repair, at the cost of such Owner, and in accordance with plans and specifications approved in writing by the ARC, supporting walls and foundations and Utilities installation across, within, and along the Common Wall between the Living Units, and each Living Unit shall have the right and privilege of support in respect of such Common Wall, with the right and obligation to maintain, restore and repair any such wall and Utilities installation.

(iii) Developer further reserves to itself and to its successors and assigns, and to each subsequent Owner of each Living Unit, an easement to install and maintain, as a part of the Improvements constituting the Common Wall, footings and underground supports and building walls which extend not more than two (2) feet beyond the boundaries of the respective tracts of land (it being understood that this easement is intended to provide for inadvertent errors in design, layout or construction, and is not intended to increase the area of any tract, and that in the event of any such encroachment, the parties, at the request of any party or either Owner hereto, will enter into a supplemental agreement adjusting the description of their tract so as to carry out the purpose of this provision).

(iv) These easements shall constitute a servitude on each tract and shall be appurtenant to each tract and shall run with the land so long as the Improvements benefited thereby, or any replacement thereof (whether similar or dissimilar) shall stand, or for the term of this Agreement, whichever is longer.

(v) Each Living Unit Owner shall keep the Living Unit Improvements fully insured against loss or damage by fire and the perils commonly covered under a builder's risk policy during construction or reconstruction thereof, and after completion of construction or reconstruction thereof under a so called "all risk"

hazard policy (collectively "Casualty Insurance"), in an amount not less than the actual and full replacement cost of such Living Unit. Each Owner agrees to provide proof and evidence of such insurance to the Association and to the Owner of the attached Living Unit as and when requested, but at least on an annual basis as and when such insurance is bound or renewed.

Consistent with the foregoing, the Association is authorized to exercise all powers which a corporation organized under the Not-For-Profit Corporation Law of Kansas may exercise.

## **2.02 Membership in the Association.**

(a) Each Owner (notwithstanding the number of Living Units owned) shall be entitled to one (1) Association Membership and one (1) vote in the Association so long as the Owner remains an Owner of such Living Units, and such Owner shall specify in writing to the Association the name of the individual who holds the Association Membership. Anything in this subsection to the contrary notwithstanding, where a Living Unit is owned of record in any manner of joint or common ownership, the joint or common Owners thereof shall share among them the rights (including voting rights) given to an Owner pursuant to this Declaration, which they shall be entitled to exercise their one (1) vote as a whole, but not in part, in whatever manner they shall jointly determine. With respect to voting rights in particular, joint or common ownership of a Living Unit shall entitle the Owners thereof to a total of one (1) vote, to be exercised in whatever manner they shall jointly determine.

(b) Except for the Developer, a builder of a Living Unit, although an Owner, shall not be entitled to any vote in the Association unless and until such builder occupies the Living Unit as such builder's sole place of residence.

(c) Subject to the provisions of this Section, once an Owner has been specified as a Member, a successor Member may only be specified upon at least fifteen (15) days' prior notice to the President of the Association.

(d) A Membership shall not be transferred, pledged or alienated in any way, except as herein expressly provided. Subject to the provisions of Subsection (a) above, an Association Membership shall automatically be transferred to a new Owner upon the transfer of the Living Unit to which it appertains (and then only to such transferee), whether by sale, intestate succession, testamentary disposition, foreclosure of a mortgage or other legal process transferring fee simple title to such Living Unit.

(e) Subject to the provisions of this Declaration and the Association's By-Laws, the Association Board may make, amend or rescind such rules and regulations as it deems advisable for any meeting of Members, Association vote, referendum or election.

## **2.03 Board of Directors (Association Board).**

(a) The powers of the Association shall be vested in, exercised by, and under the authority of, the Association in accordance with the Association Articles of



Incorporation and By-Laws, shall be controlled by, a Board of Directors consisting of three (3) persons who, during the Development Period need not be Members but, after the Development Period, shall be Members (the "Association Board"). The Association Board, by a majority vote, shall exercise for and on behalf of the Association all powers, duties and authority vested in or delegated to the Association.

(b) Directors shall be elected so that one (1) Director and two (2) Directors shall be elected respectively in alternating years. Directors shall be elected for two (2) year terms of office and shall serve until successors are elected and qualified.

**2.04 Suspension of Membership and Rights of Enjoyment.** The Association Board may suspend the voting rights of Members and the rights of enjoyment of any Member or user of the Common Property and the services offered thereon who:

(a) is subject to a Right of Action by reason of having failed to take reasonable steps to remedy a violation or breach of the Declaration within the number of days specified in a written notice given by the Association Board after such violation or breach; or

(b) has allowed any Assessment levied by the Association pursuant to this Declaration to become delinquent; or

(c) has failed to pay any user fee or charge levied by the Association when due and payable; or

(d) has violated any rules and regulations adopted by the Association Board governing the use and enjoyment of the Common Property or services thereon.

Such suspension shall be for the balance of the period in which the conditions set forth in subsections (a), (b), (c) and (d) of this Section exist.

**2.05 Termination of Membership.** No Owner shall continue to be a Member after he ceases to hold a qualifying interest in any Living Unit. No Member may avoid his obligations under this Declaration by declining to use Common Property, abandoning his Living Unit, or by any other act of abandonment or renunciation.

**2.06 Notice of Meetings and Referendums.** Proper notice shall be given by the Association Board of all meetings of the Association Board at least fifteen (15) days prior to the meeting date; and of all meetings of the Association Members, public hearings or referendums at least thirty (30) days prior to the hearing or referendum. The methods and procedures of such notice shall be determined by the Association Board in accordance with the By-Laws of the Association.

**2.07 Developer's Control of the Association.** Notwithstanding anything in this Article or elsewhere in this Declaration to the contrary, the Developer shall maintain absolute and exclusive control over the Association, the Association Board and the ARC, including appointment and removal of the president and all officers of the Association, all directors of the

Association Board and all members of the ARC until one hundred percent (100%) of the Living Units within the Property have been sold to Owners other than builders. Until such time, only the Developer shall be entitled to cast any votes with respect to the election and removal of the Association officers, directors and members of the ARC, or any other matter requiring the vote or approval of the Association Board or Members. The Developer may voluntarily (but shall not be required to) at any time relinquish all or any part of the Developer's control and rights under this Article. Until the Developer causes the Association to be formed, the Developer may exercise each or all of the rights, duties or obligations which are set forth herein with the same force and effect as though exercised by the Association. All of which action shall be ratified by the Association when formed.

### **ARTICLE III**

#### **Imposition of Assessments and Liens Upon Property**

**3.01 Covenants for Assessments and Creation of Liens.** The Developer and each Owner, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed or other conveyance for any Living Unit which is Assessable Property, whether or not the covenants contained herein shall be expressed in any such deed or other conveyance, hereby covenants and agrees that:

(a) he will pay to the Association all Assessments which may or shall be levied by the Association against Assessable Property owned by him in each year or any part thereof, and that he will pay to the Association the user fees and charges and all other duly authorized charges to be established as herein provided, if applicable, levied by the Association in each year and including Special Assessments levied pursuant hereto;

(b) he shall be personally liable for all such Assessments and user fees and charges which become due while he is the Owner of each Living Unit being assessed;

(c) all Assessments, together with the continuing obligation to pay each Assessment assessed in all future years, and all user fees and charges, together with all costs, expenses, interest and reasonable attorneys fees incurred in the collection of delinquencies, shall become, upon the filing of this Declaration, and thereafter remain a charge against and be secured by a continuing lien upon the Assessable Property of such Owner; and

(d) said charge and lien shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon the Assessable Property (or the Nonassessable Property to the extent that it may later become Assessable Property) whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instruments, excepting only purchase money mortgages or deeds of trust given to finance the purchase of the Living Unit and liens for taxes or other public charges as are made superior by applicable law.

**3.02 Uniform Rate of Assessment.**

(a) For the purpose of providing funds for the uses specified herein, the Association Board shall assess against the Assessable Property in each year a charge (referred to herein as "Assessment" or "Annual Assessment"), which shall be uniform with respect to all Assessable Property, and shall be in such amounts as determined by the Association Board. Living Units owned by the Developer need not be assessed until such Living Units are sold to a builder or Owner. Living Units which are owned by a builder shall be assessed at a rate to be determined by the Association Board.

(b) Not later than ninety (90) days prior to the end of each fiscal year for the Association, the Association Board shall prepare an annual cash budget projecting anticipated revenues, cash receipts, cash expenditures, reserves for maintenance, repair and replacement of Common Property and net cash, surplus or deficit for the ensuing fiscal year (the "Association Budget"). The fiscal year for the Association shall be the calendar year. The proposed Association Budget will automatically be approved unless two-thirds (2/3) of the Members vote not to approve such Association Budget. Upon approval of the Association Budget, the Association Board will determine the manner in which Assessments are to be made; provided, however, that the Assessments will be made on a per Living Unit basis and not on market value or assessed value. The rate of Assessment for an individual Living Unit can change as the character of ownership, nature of use and the status of occupancy of said Living Unit changes. The applicable Assessment for such a Living Unit shall be prorated according to the rate required for each type of ownership.

**3.03 Billing of Annual Assessments.** At such time or times as the Association Board may determine, the Association shall levy the Annual Assessment. The Association shall send a written bill to each Owner stating the amount of the Annual Assessment imposed against each Living Unit which is Assessable Property owned by the Owner, the time period for payment thereof, and the interest rate to be charged for late payments thereof. Each Annual Assessment shall be due and payable on a date established by the Association Board and shall become delinquent on a date established by the Association Board. The Association Board may establish payment procedures to allow payment of the Annual Assessment in increments during the year the Assessment is made, provided that this privilege is extended to all Owners on an equal basis, and provided that reasonable notice is given of each payment date, of the interest to be charged for late payments, of the liens established by this Declaration, and of the suspension of membership rights as a consequence of the failure to pay.

**3.04 Commencement of Assessments.** The Assessable Property shall become subject to the Assessments set forth herein on the date designated by the Developer. Such Assessments shall be adjusted and prorated according to the number of days remaining in the fiscal year of the Association as such fiscal year is set forth in the Association By-Laws.



### **3.05 Late Payments.**

(a) The Association Board may from time to time establish or change the rate of interest which shall be charged for the payment after the delinquency date of any portion of an Assessment, provided that such interest rate shall not exceed the maximum interest rate permitted under Kansas law and provided that reasonable notice of such charge is given to the Members.

(b) In the event of default in the payment of any one (1) or more installments of the Annual Assessment established hereunder, the Association may declare any remaining balance of said Annual Assessment at once due and payable.

(c) In the event that an Owner shall fail to fully pay the Assessment by the delinquency date thereof, such unpaid amount shall become a binding personal obligation of such Owner, and the Association shall have the right, pursuant to the provisions hereinafter provided to enforce the lien for Assessments. The Association shall have the right and duty to take all appropriate actions and steps to collect any such unpaid Assessments. Each delinquency shall constitute a separate basis for a demand or claim of lien or liens, but any number of defaults may be included within a single demand or claim of lien or liens on account of prior delinquencies and shall be deemed to include subsequent delinquencies and amounts due on account thereof. The Association may institute a suit to recover a money judgment for the same, together with interest thereon and reasonable expenses of collection, including attorneys fees, without foreclosing or waiving the lien hereinbefore provided.

**3.06 Certificate of Payment.** Upon written demand by an Owner, the Association shall issue and furnish to such Owner, within a reasonable period of time, a written certificate stating that all Assessments, including interest and costs (if any), have been paid with respect to any specific Living Unit owned by said Owner as of the date of such certificate, or if all Assessments have not been paid, setting forth the amount then due and payable.

**3.07 Additional Procedures.** The Association Board shall have the right to adopt procedures for the purpose of making the Assessments, user fees and charges provided for herein and for the billing and collection of the same, provided that such procedures are not inconsistent with the provisions hereof.

### **3.08 Special Assessments.**

(a) In addition to the Annual Assessments authorized herein, the Association may levy in any year a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of Common Property improvements including any capital improvement upon the Common Property, or the cost of any utility deemed necessary by the Association Board to serve the Property including the necessary fixtures and personal property related thereto, or any unexpected cost or expense of the Association, as the Association Board may determine.

(b) A Special Assessment shall become effective upon written notice by the Association Board. Billing of Special Assessments shall be handled according to the procedures set out herein.

(c) Following the Development Period, Special Assessments shall not be imposed by the Association until after the Association Board first presents any such proposed Special Assessment to the Members at a meeting to be called for that purpose as provided herein. The Special Assessment shall be deemed to be approved by the Members unless two-thirds (2/3) of the Members vote not to approve such Special Assessment.

## ARTICLE IV

### Use of Funds

**4.01 Purposes for which Funds May Be Used.** The Association shall apply all funds received by it pursuant to this Declaration and all other funds and property received by the Association including the accumulated funds referred to hereinafter, to the following:

(a) the operating costs and expenses of the Association, including planning and implementation of community programs and Common Property improvements;

(b) payment of all real and personal property taxes and assessments, if any, separately levied upon or assessed against the Association or any property owned by the Association; and

(c) payment of all premiums and charges for all policies of insurance or surety bonds, as deemed by the Association Board to be necessary and appropriate.

**4.02 Accumulation of Funds Permitted.** The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of Annual Assessments, or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessment in the succeeding year, but may carry forward from year to year such surplus as the Association Board may determine to be necessary or desirable for the greater financial security of the Association and the effectuation of its purposes, including accruing funds for the replacement of facilities.

**4.03 Posting of Bond.** The Association, acting through the Association Board, shall require that all persons or entities who handle the Association funds or monies, which funds and monies shall be deposited in federally insured banks or savings and loans, post bonds sufficient in amount to indemnify the Association from any loss.

**4.04 Mortgaging of Common Property.** Except as set forth in this Section, and subject to the approval of any holder of an existing lien on the Common Property (the "Development Loan Lien"), the Association may mortgage any Common Property to which it has clear title; provided, however, that any such mortgage shall be subject to the approval of two-thirds (2/3) of the Members who are present in person or by proxy and voting in a duly constituted Association election or meeting. The Association shall not mortgage any Common

Property to the Developer, or to any other entity or person to secure any conveyance, loan or advance made to the Association by the Developer. The Developer shall not take any action, the result of which may subject any Common Property to a judgment lien or otherwise jeopardize any Common Property, to satisfy a debt of the Developer.

## **ARTICLE V**

### **Common Property**

**5.01 Conveyance of Common Property.** The Developer shall convey the Common Property to the Association and, from time to time, may convey to the Association such certain other property as the Developer may determine in accordance with the Development Plan for the common use and enjoyment of the Owners. The deed of conveyance may contain appropriate restrictions and assurances that such property shall be reserved for the common use and enjoyment of the Owners and prohibit the construction thereon of buildings for commercial, retail or Living Unit use.

**5.02 Use of Common Property.**

(a) Every Owner, by reason of such ownership, shall have a right and easement of enjoyment in and to all Common Property, and such easement shall be appurtenant to and shall pass with every Living Unit upon transfer. Any guest of a Member shall be entitled to a right or privilege of enjoyment of Common Property subject to such regulations as may be promulgated by the Association Board.

(b) All such rights, easements and privileges conferred under this Article shall, however, be subject to the right of the Association Board to:

(i) establish, adopt, promulgate, amend and rescind reasonable rules and regulations pertaining to the use, operation and maintenance of Common Property which shall enhance the preservation of such facilities, promote the safety and convenience of the users thereof, and which shall serve to promote the best interests of the Members;

(ii) determine the use or uses to which Common Property may be put; provided, however, that any designation of use which is inconsistent with the use designated by the Developer upon conveyance, shall be subject to the provisions of this Declaration;

(iii) determine which, if any, Common Property may be used and enjoyed by, or conveyed or dedicated to the general public or a federal, state or local government body; provided, however, that Property shall not be conveyed to a public body unless, after the Development Period, the Association Board has obtained the prior approval of two-thirds (2/3) of the Members who are present in person or by proxy and voting at an Association meeting at which a quorum is present or voting in a referendum called for such purpose after proper notice is given;



(iv) borrow money for the purpose of acquiring, mortgaging, developing or improving any Common Property including improvements thereon; provided, further, that any such mortgage shall be subject to the approval of two-thirds (2/3) of the Members who are present in person or by proxy and voting at an Association meeting at which a quorum is present or voting in a referendum called for such purpose after the proper notice is given; and

(v) apply for, accept and expend loans or grants from federal, state or local governments and to comply with any conditions required by such governments in order to obtain such loans or grants including conditions relating to the use and enjoyment of Common Property by the general public.

**5.03 Damage or Destruction of Common Property by Owner.** In the event any Common Property is damaged or destroyed by an Owner, or any of his or her guests, tenants, licensees, agents or members of their families, such Owner does hereby authorize the Association to repair such damaged areas. The amount expended for such repairs shall be a Special Assessment and lien upon the Living Unit of said Owner and shall be enforceable as other Assessments.

**5.04 Suspension of Rights.** The Association shall have the right to suspend the right or privilege under this Article of any Member for any period during which the Assessments or user fees and charges assessed as provided herein, remain delinquent, and may suspend said right or privilege in connection with the enforcement of any rules and regulations relating to Common Property in accordance with the provisions of this Article.

## ARTICLE VI

### Architectural Review Committee

**6.01 Purpose, Powers and Duties of the ARC.** The purpose of the ARC is to assure that all proposed uses and any construction or alteration of any Structure shall be performed in conformity with the objective of high quality environmental design and development as set forth in the Development Plan. To carry out that purpose, the ARC shall have all of the rights, powers and duties conferred upon it pursuant to the provisions of this Article, including the right to approve any and all proposed uses, site plans and Structures to be constructed on the Property, including the Common Property improvements. The ARC shall also have the right to approve or disapprove any and all proposed external alterations or use changes for Living Units or Common Property. The ARC will not do anything, however, which would prevent the Developer from fulfilling its obligations under the Development Plan.

**6.02 Composition and Appointment.** The ARC shall be comprised of three (3) members, each serving three (3) year staggered terms. The first three (3) members of the ARC shall be appointed for terms of one (1), two (2) and three (3) years respectively. The members shall be appointed by the Developer during the Development Period and may be employees or agents of the Developer; thereafter the members shall be appointed by a majority vote of the Association Board.

### **6.03 Operations of the ARC.**

(a) **Meetings.** Except as otherwise provided herein, the act of such majority of members of the ARC present at any regular or special meeting thereof at which a majority is present shall constitute the act of the ARC.

(b) **Activities.** The ARC shall adopt and promulgate and, as it deems appropriate, amend the Development Guidelines and will, as required, make findings, determinations, rulings and orders with respect to the conformity with said Development Guidelines of plans and specifications to be submitted for approval to the ARC.

### **6.04 Development Guidelines.**

(a) As contemplated by and pursuant to the provisions of this Article, the ARC may adopt, promulgate, amend, revoke and enforce design and development guidelines, hereafter referred to as the Development Guidelines, for the purposes of establishing policies, requirements, standards, restrictions and specifications with respect to the approval and disapproval of all proposed uses and with respect to all construction or alteration of any Structure on any of the Property, including Living Units, Easement Area or Common Property.

(b) The ARC shall make a published copy of its current Development Guidelines, readily available to Members and prospective Members of the Association and builders.

**6.05 Submission of Plans and Specifications.** No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any of the Property, nor shall any existing Structure be altered in any way which changes the exterior appearance thereof, nor shall any new use be commenced, unless plans and specifications (including a description of any proposed new use) therefor shall have been submitted to and approved in writing by the ARC. Such plans and specifications submitted to the ARC shall be in such form and shall contain such information as may be required by the ARC.

**6.06 Approval of Plans and Specifications.** The ARC, in its discretion, is permitted to approve deviations from the Development Guidelines and from this Declaration when, in its judgment, such deviations will result in a more commonly beneficial use. Such approval must be granted in writing and when the ARC approves and grants a deviation from this Declaration, such approved deviation shall for all purposes amend this Declaration but only to the limited extent of such specifically approved deviation. No approved deviation shall be deemed to act as a precedent in respect of any other requests for approvals of deviations.

### **6.07 Disapproval of Plans and Specifications.**

(a) The ARC shall have the right to disapprove any plans and specifications submitted hereunder as determined by the ARC in its sole judgment and discretion for any reason including, among others, failure of such plans or specifications to comply with this Declaration or the Development Guidelines.

(b) In any case in which the ARC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ARC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

**6.08 Violations.** If any Structure shall be erected, placed, maintained or altered upon any of the Property, or any new use commenced on any of the Property, otherwise than in accordance with the plans and specifications approved by the ARC pursuant to this Declaration, such erection, placement, maintenance or alteration shall be in violation of this Article and without the approval required herein. Upon written notice of the violation to the Owner from the Association Board (which shall be deemed to have been delivered if sent by certified or registered mail, return receipt requested, postage paid), any such Structure so erected, placed, maintained or altered upon any of the Property in violation hereof shall be removed or altered, and any such use shall be terminated, so as to extinguish such violation. If the Individual who commits such violation shall not have taken reasonable steps toward the removal or termination of the same within the time specified in such notice, the Association shall have the right to pursue its Right of Action as provided herein, together with all remedies whether at law or in equity and whether specified herein, and including but not limited to the remedy of injunctive relief and obtaining a monetary judgment for all costs, expenses, including reasonable attorneys fees, and damages.

## ARTICLE VII

### General Restrictions

**7.01 Land Use and Building Type.** No building shall be erected, altered, placed or permitted to remain on any of the Property unless it is an approved Structure and no previously approved Structure shall be used for any purpose other than that for which it was originally approved. The Developer hereby reserves the exclusive right to use any of the Property for temporary use as an office or for model home purposes during the Development Period.

**7.02 Landscape Restrictions.** No tree or shrubbery shall be maintained in such a manner as to obstruct the view of vehicular traffic. No tree shall be removed from any of the Property without the express written authorization of the Developer or the Association. The Developer or the Association may adopt and promulgate rules and regulations regarding the requirement of planting trees, preservation of trees and other natural resources and wildlife to protect and encourage the preservation of the ecological balance of the Property. All landscaping which an Owner wishes to have installed must first be approved in writing by the Developer or the Association.

**7.03 New Construction.** All Living Units and other Structures permitted hereby shall be new construction.

**7.04 Uncompleted Structures.** Construction of a Living Unit or any other Structure shall not commence until the ARC has approved in writing the final plans and specification for



such Living Unit or any other Structure. No Living Unit or other Structure shall be permitted to stand with its exterior in an unfinished condition for a period longer than six (6) months after commencement of construction. Extensions for periods beyond six (6) months may be granted by the ARC in its sole discretion. In the event of fire, windstorm or other damage, no Living Unit or other Structure shall be permitted to remain in a damaged condition for more than three (3) months. No Living Unit or other Structure shall be occupied until completed according to the plans and specifications approved by the ARC.

**7.05 Structures.** No temporary building, trailer, tent, garage, barn or other building, whether in the course of construction or otherwise, shall be placed upon any of the Property. No detached Structure for purely ornamental purposes nor swimming pools nor any permanently constructed stoves, grills or ovens may be erected on any part of the Property without the consent of the ARC.

**7.06 Fences.** No fences or walls shall be placed on any of the Property without permission of the ARC.

**7.07 Placement of Signs on Property.** No sign, billboard or other advertising device of any nature shall be placed upon or exhibited in any window of any Living Unit, including property identification signs, except by the Developer and except as provided herein and as are approved by the ARC. The ARC may adopt and promulgate rules and regulations relating to signs which may be used within the Property.

**7.08 Keeping of Animals.** No animals or birds, other than household pets which are specifically approved in writing by the Association Board, shall be kept or maintained in or around any Living Unit. In no event shall any such pets be kept, bred or maintained for any commercial purpose or in such a manner as to constitute a nuisance or cause unsanitary conditions as determined by the Association Board. The ARC shall require that pets shall not be permitted outside of any of the Property except on a leash and accompanied by a responsible person. No animal run, animal house or outside animal shelter shall be permitted on any of the Property. The ARC may from time to time publish and impose other regulations setting forth the type and number of animals that may be kept within the Property.

**7.09 Disposition of Trash and Other Debris.** No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any of the Property, except building materials during the course of construction for a period not to exceed one hundred eighty (180) days (commencing from day one of the first delivery of any of such materials) unless extended by the ARC in its sole discretion, for any approved Structure, unless such materials are screened from view in a manner approved by the ARC. During the course of construction, it shall be the responsibility of each Owner to insure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials, and that construction materials, trailers, shacks and the like are kept in a neat and orderly manner. No burning of any trash, leaves, grass or weeds and no accumulation or storage of litter of any kind shall be permitted on any of the Property. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open, on any day that a pickup is to be made, at such place so as to provide access to persons making such pickup. At all other times such

containers shall be stored in the garage of each residence in such a manner that they cannot be seen from adjacent and surrounding property. All such containers shall be kept in a clean and sanitary condition. The ARC may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on the Property.

**7.10 Parking of Motor Vehicles, Boats and Trailers.** No automobile, truck, commercial vehicle, trailer, commercial trailer house, recreational vehicle, all-terrain vehicle, camper, motorcycle, mobile home, boat, boat trailer, or any other motorized (whether functioning or not) vehicle (collectively, "Motor Vehicles") shall be brought upon, stored or habitually parked in front of any Living Unit or garage, or between any residence or garage and an abutting side street, or upon any street within the Property. All Motor Vehicles shall be parked in the garage of each Living Unit(s). Garage doors on each Living Unit shall remain in the closed position except during the process of ingress and egress from the garage of each Living Unit. This shall not be construed to prohibit the mere Temporary (a maximum of four (4) hours): (a) standing or parking of a trailer, boat, trailer house, recreation vehicle, mobile home, or Motor Vehicle preparatory to take same to some other location for use; or (b) standing or parking of a truck or commercial vehicle for loading, or unloading; or (c) the parking of any operational automobile on any driveway of any Living Unit or on any street abutting any of the Property. The Association, with the written approval of the ARC, may permit such parking for longer than four (4) hours. No Motor Vehicle shall be openly stored or parked in any area other than as may be designated by the ARC. No mechanical maintenance on any vehicle shall be permitted in front of any Living Unit or garage, or between any Living Unit or garage and an abutting side street, or upon any street abutting any of the Property. While nothing contained herein shall be considered to prohibit the use of portable or temporary buildings or trailers as field offices by contractors during actual construction, the use and appearance of such a building or trailer must be specifically approved by ARC prior to its being moved on site.

**7.11 Nuisances.** No noxious or offensive activity shall be carried on upon any portion of the Living Units, nor shall anything be done thereon that may be or become a nuisance or annoyance to any other Owners. No exterior lighting shall be directed outside the boundaries of any Limited Common Property and shall be directed so as to avoid glare and excessive light spillage onto abutting or adjacent Limited Common Property.

**7.12 Antennas, Poles and Projections.** No facilities, including poles and wires for the transmission of electricity, telephone messages, CATV signals and the like shall be placed or maintained above the surface of the ground on any Living Unit, and no external or outside antennas or satellite dishes shall be permitted on any Living Unit, except, however, the ARC may in its discretion permit the installation of satellite dishes which are less than thirty-six (36) inches in diameter. No solar collectors of any kind or type shall be maintained except with the permission of the ARC. No flag poles, poles, nor standards shall be erected or maintained except with the prior written permission of the ARC. All basketball goals including type and color and location must be approved in writing by the ARC prior to installation.



**7.13 Penalties for Violation.** If the ARC determines that provisions of this Article have been violated, the ARC may in its discretion seek appropriate relief at law or in equity to assure that the purposes of this Article and this Declaration are fulfilled.

**7.14 Restrictions for Living Units.** No profession or home industry shall be conducted in or on any part of a Living Unit without the specific written approval of the ARC. The ARC, in its discretion upon consideration of the circumstances in each case, and particularly in consideration of the effect on surrounding Property, may permit a Living Unit to be used in whole or in part for the conduct of a profession or home industry. No profession or home industry shall be permitted, however, unless it is considered by the ARC to be compatible with the neighborhood. Except as provided herein, all Living Units within the Property shall be occupied by the Owner of the Living Unit. Notwithstanding the above, however, leasing of single family or condominium units will be allowed provided that the Owner first register the lessee with the Association, providing such information as the Association may require, including but not limited to a copy of the proposed lease agreement, and if approved, file with the Association a complete copy of the executed lease agreement prior to any occupancy by any lessee.

**7.15 Living Unit Use for Model Home or Real Estate Office.** All else herein to the contrary notwithstanding and as expressly limited herein, any Living Unit may be used for a model home or for a real estate office by the Developer during the Development Period. Such right shall be limited to the Developer and shall extend to no other person, builder, Owner or other developer except as may be permitted by a majority vote of the Association Board.

**7.16 Use of Clothes Hanging Devices and Machinery.** No clothing or any household fabrics shall be hung in the open on or around any Living Unit. No machinery shall be operated upon any of the Property (except such machinery used in the maintenance of a private residence) except with the written approval of the ARC. No machinery shall be placed, parked or stored upon any of the Property unless such machinery is placed, parked or stored within an approved Structure.

**7.17 Additional Use Restrictions Applicable to Living Units.** Living Units shall be subject, in addition to the general provisions set forth herein, to the following use restrictions:

(a) **Land Use.** No Living Unit may be improved, used or occupied for other than single family residential purposes (except for model homes used by the Developer).

(b) **Requirements.** Subject to the imposition of alternate square footage requirements as may be established by the Developer due to location and orientation, the minimum square footage of enclosed floor areas within Living Units and other requirements shall be as set forth in the Development Guidelines.

(c) **Building Materials.** All exterior building materials, to the extent that the same are architecturally compatible with the Development Plan, shall be of the type that are durable, maintenance free and aesthetically consistent and shall be in compliance with the requirements of the Development Guidelines as follows:



(i) The exterior of all Living Units shall be primarily surfaced with a stucco-like or other maintenance free material which shall be subject to the approval by the Developer during the Development Period and, thereafter, by the Association.

(ii) Trim on the Living Units and Structures may be wood, vinyl or similar maintenance free material with aluminum or vinyl gutters and all windows, to the extent practical, shall be maintenance free windows in order to eliminate as much as possible the necessity of painting and upkeep.

(iii) Roofing materials shall be high profile, long life, composition like material or its equivalent which shall be acceptable to the Developer during the Development Period and, thereafter, to the Association.

(iv) All Limited Common Property shall initially be landscaped by the Developer. Thereafter, the landscaping shall be maintained, installed and replaced by the Owner.

(v) Finish paint colors and color schemes shall be subject to the approval of the Developer during the Development Period and thereafter by the Association.

**7.18 Alternatives.** No Owner shall have the right to add to, alter or modify in any way the exterior portion of any Living Unit or the landscape materials within the Limited Common Property without having first obtained the prior written consent of the Developer during the Development Period, and thereafter, by the Association Board.

## ARTICLE VIII

### Construction of Living Units on Lots

**8.01 Construction Standards.** Commencement of construction of a Living Unit shall start within sixty (60) days following the recording of the deed from the Developer to the purchaser. Construction shall proceed in a timely and orderly manner to a prompt completion and shall strictly conform to the Standards set forth in the Development Guidelines

## ARTICLE IX

### Duration And Amendment

**9.01 Duration.** This Declaration and the Restrictions contained herein shall run with, burden and bind the Property, shall inure to the benefit of and shall be enforceable by the Developer (during the Development Period), the Association and any Owner, their respective legal representatives, heirs, successors and assigns, and by any Member until August 1, 2070; after which time the Declaration shall be automatically renewed for successive periods of ten (10) years unless, prior to the commencement of any such renewal period, an instrument terminating this Declaration and the Restrictions contained herein shall be executed by the proper Association

officers and recorded in the appropriate Office of the Recorder of Deeds or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution to such effect approved in writing by not less than two-thirds (2/3) of the total number of Members.

**9.02 Amendment.**

(a) Except as hereinafter specifically provided, this Declaration may not be amended, terminated or modified in any respect except by recording an instrument executed by the proper Association officers and authorized by the Members, subject of course to the rights, if any, of any lienholders of liens on the Property to consent to or approve of such amendment, termination or modification, pursuant to a resolution to such effect approved in writing by not less than two-thirds (2/3) of the total number of Member.

(b) Notwithstanding the foregoing, during the Development Period this Declaration can be abolished, amended, modified or changed in whole or in part by the Developer in order to, among other things, correct deficiencies of this Declaration as determined to exist by the Developer; and, to give effect to all of the rights, obligations and duties created or contemplated herein.

**ARTICLE X**

**Enforcement**

**10.01 Right of Action.**

(a) In the event of a violation or breach of any covenant, restriction or obligation contained in this Declaration, the Association shall give written notice to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions which shall be taken by the Owner to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within the time limit specified in the written notice, then the Association may pursue its Right of Action. The term "Right of Action" as used herein, shall mean the right of the Association, through its agents and employees, to take the actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof. Such action shall not be deemed to be a wrongful act solely by reason of such actions, provided such actions are carried out in accordance with the provisions of this Section. All costs and expenses including reasonable attorneys' fees incurred by the Association or on its behalf in enforcing such Right of Action, shall be a binding personal obligation of such Owner enforceable at law, as well as a lien on such Owner's Living Unit enforceable in accordance herewith. The lien provided under this Section shall not be valid against a bona fide purchaser (or bona fide lienholder) of the Living Unit in question unless a notice of such lien shall have been filed in the appropriate office of the Recorder of Deeds prior to the recordation of the deed in the said office (or lien instrument) conveying the Living

Unit in question to such purchaser (or subjecting the same to such lien). "Right of Action" shall also mean and encompass the right to pursue all remedies herein specified, together with all remedies at law or in equity.

(b) During the Development Period, the Developer may pursue its Right of Action in such cases where in the judgment of the Developer the Association has abused its discretion in electing not to exercise its Right of Action to enforce the provisions of the Declaration and has thereby jeopardized the performance of the obligations of the Developer pursuant to the Development Plan. The Developer's Right of Action shall be subject to the following limitations:

(i) the Developer shall give written notice to the Association identifying the violation which Developer seeks to correct and the steps Developer will take to remedy the condition; and

(ii) the Developer may not commence to exercise its Right of Action less than thirty (30) days nor more than sixty (60) days after giving written notice to the Association.

**10.02 Specific Performance.** Nothing contained herein shall be deemed to affect or limit the rights of the Developer (so long as it is an Owner), the Association, the Members or the Owners, or any one of them, to enforce any of the terms, covenants or conditions of this Declaration by appropriate judicial proceedings. However, the Developer hereby declares that it is impossible to measure in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by this Declaration. Therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof. In any and all such actions, whether at law or in equity, any such beneficiary hereof who is entitled to relief shall also be entitled to recover all costs and expenses, including reasonable attorneys fees, incurred in enforcing such rights.

### **10.03 Enforcement of Liens.**

(a) The Association shall have a lien for Assessments, user fees and charges (herein collectively, "Assessment" or "Assessments") and shall have a lien for the cost of exercising the Right of Action. The amount which may be recovered by the Association shall include the Assessment or costs, together with the cost of such enforcement proceedings, including reasonable attorney's fees and interest. Suits to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving the lien provided for herein.

(b) If any demand for payment or claim of lien or liens is not paid when due, the Association Board or its duly authorized representative may thereafter elect to file and record a claim of lien on behalf of the Association against the Living Unit of the defaulting Owner in the appropriate Office of the Recorder of Deeds. Such claim of lien shall be



executed and acknowledged by any officer of the Association and shall contain substantially the following information:

- (i) the name of the delinquent Owner;
- (ii) the legal description and street address of the Living Unit against which the claim of lien is made;
- (iii) the total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs and reasonable attorney's fees (with any proper offset allowed);
- (iv) that the claim of lien is made by the Association pursuant to this Declaration; and
- (v) that a lien is claimed against said Living Unit in an amount equal to the amount stated; together with all other amounts becoming due from time to time in accordance with this Declaration.

(c) Upon such recordation of the duly executed original or copy of such a claim of lien, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Living Unit against which such Assessment or cost was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except for tax liens for real property taxes and assessments for any Living Unit in favor of any municipal or other governmental unit and except as provided herein.

(d) Any such lien may be foreclosed by appropriate action at law or in the manner provided by law for foreclosure of mortgages or sale by a judgment creditor or in any other manner permitted by the laws of Kansas. The Association Board is hereby authorized to appoint any attorney or any officer or director of the Association for the purpose of conducting such proceeding.

(e) The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners and shall secure payment of all sums set forth in the claim of lien, together with all sums becoming due and payable in accordance with this Declaration after the date of recordation of said claim of lien.

(f) Upon the timely curing of any default for which a notice of claim of lien was filed by the Association Board and the payment of all sums secured by the lien created by the recordation of such claim of lien, the Association Board shall (upon payment by such Owner of reasonable costs by the Owner of the Living Unit subject to the lien) cause an officer of the Association to file and record an appropriate release of such claim of lien in the appropriate Office of the Recorder of Deeds.

(g) No Owner may waive or otherwise escape liability for the Assessments provided for in this Declaration by nonuse of the Common Area, or any part thereof, or

any part of the Property, or abandonment of his Living Unit. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose or otherwise realize on the lien created by recordation of the claim of lien, until the expiration of thirty (30) days after a copy of said claim of lien, showing the date of recordation thereof, has been mailed to the Owner of the Living Unit which is described in such claim of lien.

(h) Each Owner does hereby waive, to the extent legally possible, all defenses to any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, and the benefit of any exemption laws of the State of Kansas now in effect, or in effect from time to time hereafter.

**10.04 No Waiver.** The failure of the Developer, the Association, any Owner, his or its respective legal representatives, heirs, successors and assigns, or any resident, to enforce this Declaration shall in no event be considered a waiver of the right to do so thereafter as to a similar violation or breach occurring prior or subsequent thereto.

**10.05 Additional Rules.** The Developer during the Development Period, and thereafter, the Association Board, and the ARC, each by a majority vote, to the extent specifically provided herein, may adopt, amend, modify, promulgate and rescind or revoke reasonable rules, regulations and procedures regarding the administration, interpretation and enforcement of the provisions of this Declaration; for the ARC in particular, this includes the right of modification, amendment, revocation or rescission of the Development Guidelines. In so adopting, amending, modifying, promulgating, rescinding or revoking such rules, regulations and procedures, or in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association and the ARC shall take into consideration the best interests of the Owners of the Property to the end that the Property shall be preserved and maintained as a community of high quality, and shall seek to achieve the development of the Property in accordance with the standards and objectives set forth in the Development Plan.

**10.06 Successor Developer.** Anything herein mentioned to the contrary notwithstanding, should the Developer lose or divest itself of a substantial legal or equitable interest in the remaining unsold Property:

(a) All of the Developer's rights, powers, duties and obligations under this Declaration (except as to those possessed by each Owner, so long as the Developer remains as Owner) shall pass with such interest in the real property to a new Owner of part or all of such interest in the Property ("New Developer").

(b) Neither the New Developer, the Association, the Members nor the Owners shall assume any liability arising from the Developer's exercise of its rights and powers under this Declaration or its performance of, or failure to perform, its duties and obligations hereunder before the loss or divestiture of the Developer's rights, powers, duties and obligations hereunder. The foregoing sentence shall not be construed so as to relieve a New Developer, wholly or partially, of the obligation to make advances to the



Association pursuant to this Declaration on grounds that any cash deficit of the Association is attributed to the previous action or inaction of the Developer.

## ARTICLE XI

### Miscellaneous

**11.01 No Reverter.** No Restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

**11.02 Invalidity.** The determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof, and to the extent that any term, covenant or condition contained in this Declaration is in conflict with any applicable laws, this Declaration shall be deemed to be amended so as to comply with applicable laws.

**11.03 Violation and Nuisance.** Any act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Developer, the Association or any Owner of a Living Unit.

**11.04 Violation of Law.** Any violation of any federal, state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any of the Property is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

**11.05 Remedies Cumulative.** Each remedy set forth in this Declaration shall be in addition to all remedies whether available at law or in equity and all such remedies, whether or not set forth in this Declaration, shall be cumulative and not exclusive.

**11.06 Limitations.** During the Development Period, the Association may not use its resources nor take a public position in opposition to the general Development Plan or to changes thereto proposed by the Developer. Nothing in this Section shall be construed to limit the rights of Members acting as individuals or in an affiliation with other members of groups.

**11.07 No Personal Liability.** No member of the Association Board, officer of the Association, member of the ARC, member of any committee of the Association, whether such committee is specifically described in this Declaration or hereafter created by the Association, or Manager, if any, or the Developer shall be personally liable to any Owner, Member or to any other party for any damage, loss or prejudice suffered or claimed on account of any act, (including any oral representation regarding any aspect of a Living Unit whatsoever), omission, error, failure to act, or negligence of any such Association Board Member, officer or committee member of the Association, Manager, if any, the Developer, or any Member of the ARC or any real estate agents or realtor representing the Developer in the sale of a Living Unit and, further, neither the ARC nor any member thereof shall be liable to the Association, any Owner or to any other party for any damage, loss or prejudice suffered by or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective, (b) the construction or performance of any work upon the Property, (c) the execution and filing of any estoppel



certificate, whether or not the facts therein are correct, or (d) any other act, action or conduct of such committee. Such limitation of liability shall apply in all cases, provided that such person has, on the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

#### **11.08 Assignability.**

(a) The Association shall be empowered to assign its rights, or any part thereof, to any successor public body, authority, agency, district or not-for-profit corporation (hereinafter referred to as the "Successor Entity"), and upon such assignment the Successor Entity shall have those rights and be subject to those duties assigned thereby and shall be deemed to have agreed to be bound by the appropriate provisions hereof to the same extent as if the Successor Entity had been an original party to the Declaration. Any such assignment shall be accepted by the Successor Entity under a written agreement pursuant to which the Successor Entity expressly assumes the duties and obligations thereby assigned.

(b) If for any reason the Association shall cease to exist without having first assigned its rights hereunder to a Successor Entity, the covenants, restrictions, easements, charges and liens imposed hereunder shall nevertheless continue and any Owner may petition a court of competent jurisdiction to have a trustee appointed for the purpose of organizing a not-for-profit corporation and assigning the rights hereunder with the same force and effect, and subject to the same conditions, as provided in this Section with respect to an assignment and delegation to a Successor Entity.

(c) Any assignment or delegation of rights shall be approved by two-thirds (2/3) of the Members voting in person or by proxy at an Association meeting at which a quorum is present or voting in a referendum called for such purpose after proper notice is given.

(d) The Developer may, at its option, assign any or all or its rights under this Declaration.

**11.09 Headings.** The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

**11.10 Gender.** Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

**11.11 Effect of Violation of Declaration on Mortgage.** No violation of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; provided, however, that any mortgagee in possession or any purchaser at any foreclosure sale or any person in a similar position shall be bound and subject to this Declaration as fully as any other Owner of any portion of the Property.

#### **11.12 Delivery of Notices and Documents.**

(a) Any written notice or other documents addressed to the Association, the Association Board, the ARC, or the Developer relating to or required or permitted by the Declaration may be delivered either personally or by certified or registered mail, return receipt requested. If by certified or registered mail, it shall be deemed to have been given, delivered and received upon receipt thereof by the addressee.

(b) Any written notice or other documents relating to or required or permitted by the Declaration may be delivered to an Owner or Member either personally or by mail unless other requirements are specifically made in any provision hereof. If by mail, it shall be deemed to have been given, delivered and received seventy-two (72) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed to such Owner or Member, to the address of any Living Unit owned, whether in whole or in part, by such Owner or Member, or to any other address last furnished by such Owner or Member to the Association. Each Owner or Member shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address. Any notice given or required to be sent pursuant to this Section shall be deemed to have been properly given, unless other requirements are specifically made in any provision hereof, when mailed, postage prepaid, to the last known address of the person to whom notice is to be given.

**11.13 Laws Not Superseded.** This Declaration shall not be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body, or by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases or this Declaration shall govern and control.

**(Remainder of this page is left intentionally blank)**

(Signature page for Declaration of Covenants)

IN WITNESS WHEREOF, the undersigned sets his hand and seal as of the above date.

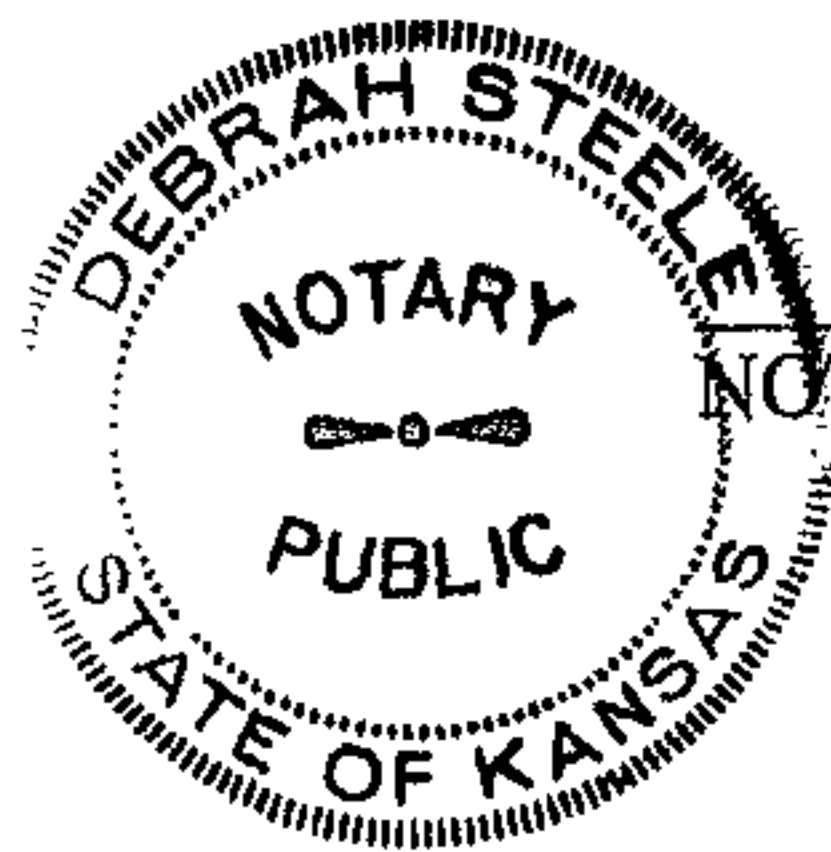
PRICE RESIDENTIAL, INC.,  
A Missouri Corporation

By: [Signature]  
Kent A. Price  
Its President

STATE OF Kansas )  
 ) ss.  
COUNTY OF Johnson )

On this 28 day of September, 2002, before me appeared Kent A. Price, to me personally known, who, being by me duly sworn did say that he is the President of PRICE RESIDENTIAL, INC., a Missouri Corporation, and that said instrument was signed on behalf of said corporation by authority of its President, and said President acknowledged said instrument to be the free act and deed of said corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.



[Signature]  
NOTARY PUBLIC

My Commission Expires:

6-22-03

[SEAL]

\$ 66.00  
\$ 62.00

STATE OF KANSAS }  
COUNTY OF JOHNSON } ss  
FILED FOR RECORD

2002 SEP 30 P 2:20

REBECCA L. DAVIS  
REGISTER OF DEEDS

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**EXHIBIT A**

**Legal Description**

**Lot 1, Deer Creek Reserve, a subdivision in the City of Overland Park, Johnson County, Kansas.**

**EXHIBIT B**

**Limited Common Property**