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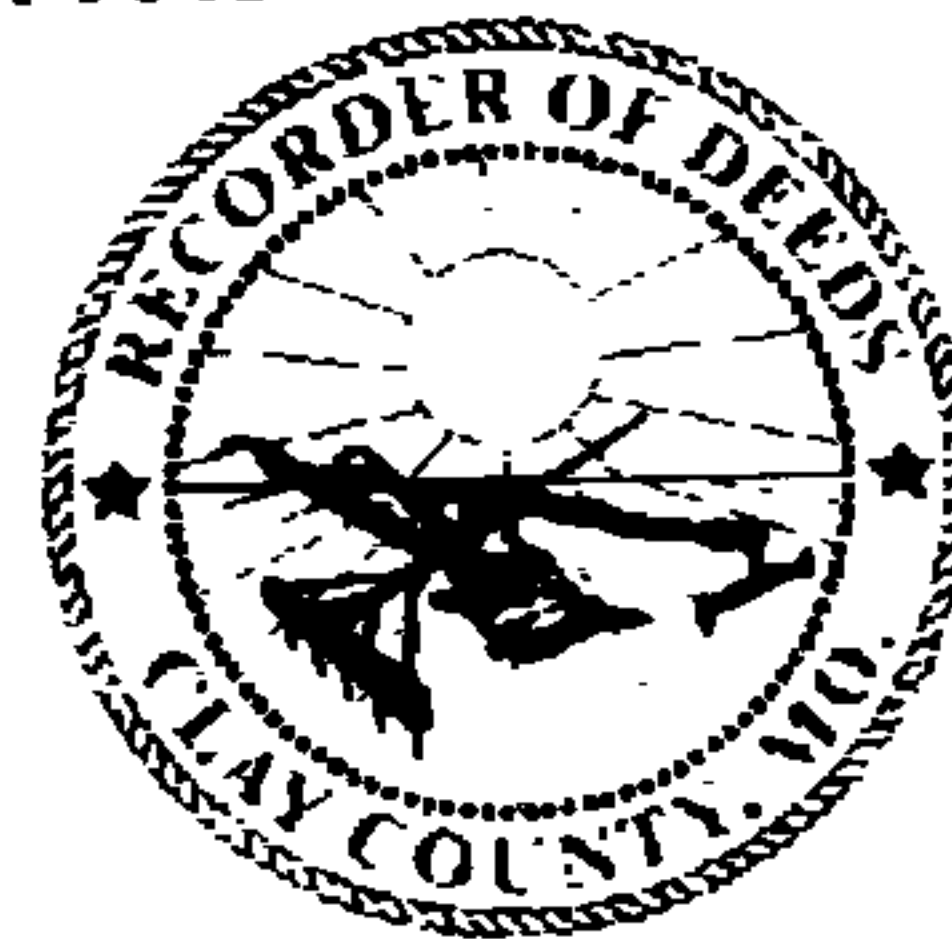
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Grantee **BROWFIG DEVELOPMENT CO**

COVER PAGE

DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS
FOR
MANDERLEY

Grantor: Brownfig Development Company, L.L.C.

Grantee: Brownfig Development Company, L.L.C.

Mailing address: 2112 Kara Court, Liberty MO 64068

Legal description: MANDERLEY, a subdivision of land in Kansas City, Clay County,
Missouri.

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**DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS**

FOR

MANDERLEY

**BROWNFIG DEVELOPMENT COMPANY, LLC
2112 KARA COURT
LIBERTY, MISSOURI 64068**

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

MANDERLEY

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made as of the date on the signature page hereof by Brownfig Development, L.L.C., a Missouri limited liability company qualified to do business in the State of Missouri (the "Declarant").

Whereas, Declarant is the owner in fee simple of certain real property located in Clay County, Missouri, known by official plat designation as Manderley, pursuant to a plat recorded in Plat Cabinet 6, at Sleeve 144, in the office of the Recorder of Deeds of Clay County, Missouri, on the 10th day of , 2007, including Units 1 to 52 inclusive, Manderley, a Subdivision of land in Clay County, Missouri, and as shown in Exhibit "A" hereto.

*Doc # 2008000964

This Declaration imposes upon the Subdivision (as defined in Article I below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Subdivision and establishes a flexible and reasonable procedure for the overall development, administration, maintenance, and preservation of the Subdivision. In furtherance of such plan, this Declaration provides for the creation of the Manderley Property Owners Association, Inc., as a Missouri nonprofit corporation, to own, operate, and maintain the Common Areas and to administer and enforce the provisions of this Declaration, the By-Laws, and the Design Guidelines.

Declarant hereby declares that all of the property described in Exhibit A and any additional property subjected to this Declaration by supplemental Declaration shall be held, sold, used, and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Subdivision, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Subdivision.

ARTICLE I: DEFINITIONS

The following words, when used in this Declaration, shall have the following meanings (unless the context clearly indicates otherwise):

- 1.01 "Association" shall mean and refer to the Manderley Property Owners Association, Inc., which either has been or will be incorporated as a Missouri nonprofit corporation, and its successors and/or assigns.
- 1.02 "Common Area(s)" shall mean all real and/or personal property which the Association and/or the Declarant owns for the non-exclusive common use and enjoyment of the owners of Units in the Subdivision. The lake and surrounding areas (identified as "Tract D") shown on north end of the Plat of Manderley is not included and is reserved to the private ownership and use of the Declarant.

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- 1.03 “Declarant” shall mean Brownfig Development, L.L.C., its successors and assigns, if any.
- 1.04 “Unit” shall mean any Unit shown on the Community Unit Plan or Plat of Manderley together with any Unit added to this Declaration as provided in Article II hereof, as well as any improvements or structures added to such Units.
- 1.05 “Member” shall mean every person or entity holding membership in the Association, and shall include all owners of Units in the Subdivision.
- 1.06 “Out-building” shall mean an enclosed or covered structure not directly attached to the residence to which it is appurtenant.
- 1.07 “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, including Declarant, and including any individual(s), corporation(s), or entity(ies) acquiring title by foreclosure or other process of law.
- 1.08 “Subdivision” shall mean Manderley, a subdivision of land in Clay County, Missouri, according to the recorded plat thereof, together with any real property added to this Declaration as provided in Article II hereof.
- 1.09 “Manderley” shall mean and refer to all such existing properties as set forth in the attached Exhibit A, and additions thereto, as are subject to this Declaration and any supplemental Declaration or Declarations added under the provisions of Article II hereof, and shall include the real property described therein.

ARTICLE II: PROPERTY SUBJECT TO THIS DECLARATION

- 2.01 Description of property subject to this Declaration. The real property which is and shall be conveyed, hypothecated, encumbered, transferred, leased, rendered, held, used, occupied, improved, and sold subject to this Declaration is located in Clay County, Missouri, and comprises all of the Units, tracts, and easements shown and/or platted within or upon the property legally described as: All of Units 1 through 52 inclusive, Manderley, a Subdivision of land in Clay County, Missouri, according to the recorded plat thereof.
- 2.02 Platting and re-platting by Declarant. The Declarant shall be entitled at any time, and from time to time, to plat and/or re-plat any or all of the property subject to this Declaration, and to file Subdivision restrictions and/or amendments thereto, with respect to any underdeveloped portion or portions of, or additions to, Manderley.
- 2.03 Additional land added to this Declaration. Declarant may, but shall have no obligation to, add at any time or from time to time, to the scheme of this Declaration, additional land, provided only that:
- (a) Any portion of the additional land from time to time shall be contiguous to the property then subject to this Declaration;
 - (b) Any portion of such additional land shall be platted as single family residential Units and/or Common Areas;

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- (c) Any Common Areas included shall be transferred to the Association on or before the date the last Unit is sold by Declarant.
- (d) Upon the addition of additional land, the owners of the property therein shall be and become subject to this Declaration and shall have all the privileges and obligations set forth in this Declaration, including assessment by the Association for their pro-rata share of Association dues and expenses.
- (e) The addition at any time, or from time to time, of all or any portion of additional land to the scheme of this Declaration shall be made and evidenced by the filing in the office of the Recorder of Deeds of Clay County, Missouri, a supplementary Declaration with respect to that portion of the additional land to be added. Declarant reserves the right to so amend and supplement this Declaration with respect to that portion of the additional land to be added. Declarant reserves the right to so amend and supplement this Declaration without the consent or joinder of the Association or any owner or mortgagee of the land in the Subdivision.

ARTICLE III: PERSONS BOUND BY THIS DECLARATION

All persons, corporations, or entities who now own or shall hereafter acquire any interest in the above-described Subdivision or any Unit or part thereof shall be taken to hold and agree and covenant with the owner of said Units and with its successors and assigns to conform to and observe the herein-stated covenants, conditions, restrictions and stipulations as to the use thereof and the constructions of residences and improvements thereon.

ARTICLE IV: USE RESTRICTIONS

- 4.01 Residential use only. The property subject to these covenants and restrictions shall be used for single-family residential living units and for no other purpose, provided however, that the Declarant reserves the right to maintain a residential real estate sales office upon any of the herein restricted Units owned by it for the purpose of promoting, advertising for sale, showing and selling Units, either improved or unimproved, within Manderley. No trailers, mobile homes, vans, tents, shacks, tanks, temporary or accessory building or structure shall be erected or permitted to remain on any Unit or Common Area without the written consent of the Declarant, or, after the Declarant has conveyed the last Unit which Declarant owns in Manderley, the written consent of the Association. No trailer, mobile home, van, tent, shack, or tank shall at any time be used as a residence, temporary or permanent.
- 4.02 Lease. No residence or part thereof shall be purchased or constructed for the purpose of using the residence as rental property. No residence or part thereof shall be rented or leased for any duration without the written consent of the Declarant, or, after the Declarant has conveyed the last Unit which Declarant owns in Manderley, the written consent of the Association. As a condition precedent to approval of such a lease, the lessee shall agree to be bound by the conditions of this Declaration as if he were an Owner subject thereto. Any approval of such a lease must be in writing in order to be valid, and will only be valid for the term of the lease approved. Any additional term, change in lessee, or other material change to the terms of the lease agreement must be approved in writing by Declarant or, after the end of the Class B Membership Period, by the Association.

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- 4.03 **Fuel storage tanks.** No fuel storage tank shall be erected on any Unit, either above or below the surface of such Unit, under any circumstances.
- 4.04 **Business/commercial use.** No business or commercial-type structure shall be erected on the land contained within said Subdivision or any part thereof. An in-home office, business, or profession shall be permitted on the land contained within said Subdivision provided the majority of the business activity of such office or profession is conducted off the premises and outside the Subdivision itself, and provided such activity does not violate any federal, state, county, or city ordinances or laws. No signs may be erected for any such business within the Subdivision. Model homes, constructed by the Declarant or others approved by Declarant, shall be permitted and the Declarant reserves the right to locate, construct, or move onto any Unit in the Subdivision, a temporary residential real estate office to be used as such during the period of original showing for sale and promotion of the Units within said Subdivision, whether improved or unimproved.
- 4.05 **Signs, advertisements, billboards, etc.**
- (i) One sign not more than three feet high or three feet wide, not to exceed a total of six square feet, may be maintained offering the residence for sale. For newly-constructed homes offered for sale, a separate sign for the builder may be used, subject to the same size limitations. No signs offering a residence for rent shall be allowed in the Subdivision.
 - (ii) One political sign per candidate or issue, limited to no more than three total signs, each sign not more than three feet high or three feet wide, not to exceed a total of six square feet per sign, is permitted on the Unit for up to three weeks before the election but must be removed within 24 hours after the election.
 - (iii) No sign shall be placed or maintained in any Common Areas without the approval of the architectural control committee.
 - (iv) Nothing in this section shall be construed to prohibit the erection of the Subdivision entrance structures by the Declarant, its grantees, assigns, or licensees at such place or places as it may determine, which structures may or may not display and name of the Subdivision.
- 4.06 **Keeping of animals/pets.** No animals, livestock or poultry may be raised, bred, kept or maintained upon any of the Units; household pets not to exceed three (3) in number may be kept but must be restrained on a leash or in a fenced backyard, provided that they are not kept, bred, or maintained for any commercial purpose. No dog run, dog house, kennel, or other animal, domestic animal, or household pet, pen, enclosure, housing or shelter facility shall be constructed or maintained upon any Unit, except that household pet pens may be erected, with the written approval of the Architectural Control Committee, provided that the pens are constructed from the same masonry materials as the residence and any out-buildings. **No animal shall be allowed to run at large within the Subdivision.**
- 4.07 **Vehicles.**
- a) Automobiles and non-commercial trucks and vans shall be parked only in the garages or

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in the driveways, if any, serving the Units unless otherwise approved by the Architectural Control Committee; provided, however, that Declarant and/or the Association may designate certain on-street parking for visitors or guests subject to reasonable rules. No automobile or non-commercial truck or van may be left upon any portion of the Subdivision, except in a garage, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from the Subdivision at the expense of the Owner. No motorized vehicles shall be permitted on pathways, sidewalks, or Common Areas except for public safety vehicles authorized by the Board.

- b) Recreational vehicles shall be parked only in the garages or outbuildings, if any, serving Units; provided, however, that guests of an Owner or occupant may park a recreational vehicle on the driveway serving such Owner's Unit for a period not to exceed seven days in total within any calendar year. The term "recreational vehicles," as used herein, shall include, without limitation, motor homes, mobile homes, boats, trailers, other towed vehicles, motorcycles, mini-bikes, jet skis or other watercraft, scooters, go-carts, golf carts, campers, buses, commercial trucks, and vans. Any recreational vehicle parked or stored in violation of this provision in excess of two days shall be considered a nuisance and may be removed from the Subdivision at the expense of the Owner. The Declarant and/or the Association may designate certain parking areas within the Subdivision for recreational vehicles subject to reasonable rules and fees, if any. Trucks with mounted campers which are an Owner's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and that the camper is stored out of public view.
- c) No repairs or maintenance of any vehicle shall take place on any Unit except inside any garage or outbuilding that serves that Unit. All vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt.

4.08 Air conditioning and other unsightly projections. No air conditioning, heating, or cooling apparatus or other unsightly projections shall be attached or affixed in any manner to the front of any residence, nor shall any unsightly projections be installed or maintained in such a manner so as to be visible from any street.

4.09 Antennas, satellites, etc. No radio or television aerial or antennae of any kind may be kept or maintained on any of the Units hereby restricted except within the confines of a dwelling unit erected thereon. One satellite or microwave dish per Unit may be installed and maintained only upon the written approval of and in the sole discretion of the architectural control committee.

4.10 Front lawn use. The land between any allowable structure and the front street line shall be used solely for lawn and residence-related purposes, driveways, and walks. Within 90 days of substantial completion of any residence, or, if not practicable, as early as otherwise permitted by weather conditions, Owner must install landscaping and lawn materials consistent with ACC-approved plans. Also, prior to issuance of a permanent occupancy permit, Owner must install trees per the Kansas City, Missouri-approved street tree-planting schedule. Additional landscaping and tree-planting requirements are detailed in the Design Guidelines.

4.11 Construction of buildings, fences, shrubs, etc. No building, fence, wall, shrub, hedge,

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outbuilding, pool house, gazebo, or other structure or planting shall be erected, constructed, planted, or maintained on any of the Units hereby restricted without prior written approval as to material, design, shape, location, style, species, and height by the architectural control committee. All outbuildings shall be constructed of the same masonry exterior as the appurtenant dwelling. Said architectural control committee shall have complete discretion with regard to any such approval. Final approval and placement of all jungle gyms, play structures, or other equipment will be at the discretion of the Architectural Control Committee. Placement of such equipment shall be at the sole risk of Owner.

- 4.12 Swimming pools. No above-ground swimming or other pool shall be permitted to be constructed or installed on any Unit in the Subdivision. An in-ground pool shall be permitted only with prior express written approval of the architectural control committee as to the size, type, location, elevation, specifications, construction, and fencing of such in-ground pool. All swimming pools and hot tubs shall be fenced or screened in accordance with these Declarations and all applicable ordinances. All pools and hot tubs shall be kept clean and maintained in operational condition at all times.
- 4.13 Rubbish and waste storage. No rubbish, trash, garbage, grass, or other waste materials shall be kept, stored, or otherwise permitted upon any Unit or Common Area except in sanitary containers located in appropriate places and concealed from public view. No trash, refuse, or garbage can or receptacle shall be visibly placed on any Unit outside a residence, except after sundown of the day before or upon the day for regularly-scheduled trash collection.
- 4.14 Clotheslines and poles. No exterior clotheslines or poles may be erected or maintained on any of the Units hereby restricted.
- 4.15 Nuisances. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any Unit, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. In the event of a dispute or question as to what may be or become a nuisance, such dispute or question shall be submitted to the architectural control committee, which shall render a decision, in writing, which decision shall be dispositive of such dispute or question.
- 4.16 Weeds and unsightly growth. No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain on any Unit or any Common Area. The lawn of each Unit shall be kept in good condition at all times by the Owner; the lawn shall be uniformly mowed with a length of grass not to exceed four inches.
- 4.17 Holiday lighting. No exterior holiday lighting or decorations shall be erected or maintained on any Unit except during a 75-day consecutive period beginning November 15th of each calendar year.
- 4.18 Common Area alterations. Nothing shall be altered in, constructed upon, or removed from any of the Common Areas except upon written consent of Declarant or the Association.

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- 4.19 Artificial vegetation. No artificial flowers, trees or other vegetation shall be permitted on the exterior of any residence or in the yard.
- 4.20 Recreation and play equipment. All basketball goals shall be either white or glass and shall be placed or installed only in the rear yard, unless otherwise approved by the Architectural Control Committee. No “home-made” basketball backboards or supports shall be permitted. All recreation and play equipment shall be located in the rear yard of the Unit, unless otherwise approved by the Architectural Control Committee.
- 4.21 Temporary structures. Any temporary covering of a swimming pool, tennis court, patio, or otherwise, of a rigid or “bubble” type shall be deemed a Structure that is subject hereto.
- 4.22 Window coverings. No window shall contain any reflective material such as aluminum foil.
- 4.23 Firewood. All firewood stacks in excess of two cords of wood shall be screened from view from neighboring Units.
- 4.24 Yard decoration. All forms of sculpture or “yard art” must first be approved by the Architectural Control Committee prior to installation.
- 4.25 Telecommunications cabling. All dwellings built on any Unit shall meet or exceed the inside minimum grade 1 requirements of the Residential Telecommunications Cabling Standard, ANSI/TIA/EIA-570-A (or current standard), for low voltage wiring.
- 4.26 Alteration of Structures Installed by Declarant. No fence, boundary wall or other Structure installed by or for the Declarant or Association anywhere in the Subdivision may be removed or altered by any Owner or other person without the prior written consent of the Declarant, or following the date Declarant transfers its rights to the Board as provided herein, then the Board.
- 4.27 Garage doors closed. Garage doors shall remain closed at all times except when necessary for ingress and egress.
- 4.28 Exterior lighting. No lights or other illumination (other than street lights) shall be higher than the residence. Exterior holiday lights shall be permitted only as set forth in Section 4.17. Except for such holiday lights, all exterior lighting shall be white and not colored. All exterior landscaping lighting must be approved in advance by the Architectural Control Committee.
- 4.29 Garage sales. No garage sales, sample sales or similar activities shall be held within the Subdivision except twice a year during a weekend specified by the Board for Subdivision-wide garage sales.
- 4.30 Exterior sound devices. No speaker, horn, whistle, siren, bell or other sound device shall be located, installed or maintained upon the exterior of any residence or in any yard, except intercoms, devices used exclusively for security purposes, and stereo speakers used in accordance with any rules specified by the Board.
- 4.31 Service utilities underground. All residential service utilities shall be underground, except with

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the approval of the Declarant.

- 4.32 **Damage to other Units or Common Areas.** No Owner shall do or allow to be done any act which causes or threatens to cause any damage, encroachment or disrepair to the Common Areas, street rights-of-way, the residence, or Unit of any other Owner. Specifically, each Owner shall repair any damage sustained to any other Unit, Common Areas or street right-of-way in connection with the construction of Structures on such Owners' Unit, including, but not limited to, damage to lawn areas, landscaping and sprinkler systems as a result of the installation of sanitary sewer or heat pump lines or other construction or excavation activities. Owners are hereby advised that the DIG SAFE service offered through the Missouri One Call program, which may be consulted in advance of excavation to locate existing utility lines, does not identify sprinkler system lines which have been installed.
- 4.33 **Modular buildings.** No prefabricated or modular buildings will be permitted to be constructed or installed on any Unit without the prior written approval of the Architectural Control Committee. Detached garages, storage buildings, and other buildings constructed on a Unit shall be constructed with the same exterior materials as the residence and must be approved by the Architectural Control Committee.
- 4.34 **Excavations.** No excavations shall be permitted on any Unit without written permission of the Architectural Control Committee.
- 4.35 **Dumping, Erosion Control, Etc.** All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. There shall be no dumping of grass clippings, leaves or other debris; rubbish, trash or garbage, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond or lake within Manderley, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff. Declarant may limit the amount and type of fertilizer and other chemicals that may be used on any Unit adjacent to a Common Area, conservation or mitigation area, or body of water. Declarant and Builders authorized in advance by Declarant may dump and bury rocks and trees removed from a building site on such building site. Without Declarant's written authorization, no trash, ashes, dirt, rock or other refuse may be thrown or dumped on any Unit or any building site.

Upon purchase of a Unit, Owner is responsible for installing and maintaining erosion control measures required by any approved plans or specifications, and/or mandated by any public entity. Owner must comply with Declarant's Erosion Control Policy, which is incorporated by reference herein and is included as part of the Design Guidelines.

- 4.36 **Storage of materials and rubbish on Unit.** No lumber, metals, bulk materials, refuse, trash or other similar materials shall be kept, stored, or allowed to accumulate outside the buildings on any Unit, except during the initial construction period of the improvements to the Unit. No building materials of any kind or character shall be placed or stored upon any building site more than thirty (30) days before the commencement of construction of a residence or improvements, and then such materials shall be placed within the property lines of the building site upon which they are to be erected and shall not be placed in the street or between the curb and property line. The building materials on any Unit shall be placed and kept in an orderly fashion. Declarant may set forth additional conditions, rules, and regulations regarding the storage of construction materials in the Design Guidelines.

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Owner shall not allow trash or debris from its activities to be carried in the wind or otherwise scattered in the Subdivision. Each Owner shall keep all roadways, easements, and other portions of the Subdivision clear of silt, construction materials, and trash from its activities at all times. Trash and debris during initial construction of a residential dwelling shall be contained in standard size dumpsters or other appropriate trash receptacles and removed regularly from Units and shall not be buried or covered on the Unit. Any Unit on which construction is in progress shall be policed at least prior to each weekend, and during the weekend all materials shall be neatly stacked or placed any trash or waste materials shall be removed. Any cleanup performed as a result of Owner's failure to comply with this provision will be at Owner's expense.

- 4.37 Fences not to extend past front of residence; removal of dead plants. No fence, masonry wall, hedge or mass planting shall be permitted to extend to or past the front of a residence on a Unit unless approved by the Architectural Control Committee. No hedge, shrub, mass planting or tree shall be allowed by the Owner to obstruct sight lines at any corner. Trees, shrubs and other plants which die shall be promptly removed from the Subdivision by Owner.
- 4.38 No division of Units. Except as authorized by the Declarant, no platted Unit shall be split or divided into more than one Unit or building site, but more than one contiguous Unit may be used as a building site for one dwelling with the express written approval of Declarant. No Unit or boundary line shall be changed without the express written approval of Declarant. Declarant, however, hereby expressly reserves the right to replat any Unit or Units which it owns. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.
- 4.39 No disturbance of waterways. No lake, pond, stream or water drainage facilities, natural or erected, within the Common Areas, shall be disturbed other than by Declarant or the Board. Any use of the Common Areas shall be in strict compliance with the rules and regulations adopted from time to time by the Board. Fishing is not permitted in any body of water within the Common Areas.
- 4.40 Drainage of Units; Notice. Notice is hereby given to anyone acquiring a Unit that due to the grading and drainage of such Unit (which is necessary to enhance the views from residences, particularly those with "walk-out" or "view-out" basements), at times following considerable amounts of rainfall, water may encroach into the yard areas within such Unit. Water may accumulate in areas of the Unit, which has been graded at lower elevations to provide drainage, or if the Unit is adjacent to a lake, stream or other waterway, water from such areas may spill over into the Unit as a result of such rainfall. Depending upon how much water accumulates on the Unit and how long it remains, damage could occur to the residence, yard, trees, vegetation, fences, gazebos, patios, playground equipment or other improvements. Some Units may have previously been located in a designated flood plain, in which situations the Declarant, or another party, has caused the same to be removed from the flood plain by increasing the elevation thereof with fill as required by the City, the Missouri Department of Natural Resources and the Federal Emergency Management Agency. Prior to construction of a residence or other structures on any such Unit, the Owner thereof is encouraged to verify, through its contractor, compliance with the requirements of such City and agencies, consider inherent risks and determine whether to obtain and maintain flood insurance. Neither Declarant, the Architectural Control Committee, Board, Association (or members thereof) contractors or brokers involved in the sitework and

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development of the residential area or initial sale of the Unit shall have any liability or responsibility for any such damage resulting from such water encroachment. This provision is not intended to absolve a builder of a residence of liability for damage to the residence.

- 4.41 Bodies of Water. Notwithstanding the proximity of lakes or other amenities to the Common Areas and/or Subdivision, ownership of a Unit in the Subdivision and/or membership in the Manderley Property Owners Association shall not entitle any Owner/Member to any right of access, use or enjoyment of any lakes or other land reserved to the Declarant. The bodies of water located in Tract A and Tract B are intended for decorative purposes only. No fishing, swimming, or other activities shall take place in such waterways.
- 4.42 Guns. The discharge of firearms and any other weapons on the Properties is prohibited. The terms "firearms" and "weapons" includes without limitation "B-B" guns, fireworks, slingshots, archery equipment, pellet guns, and firearms of all types. The Board shall have no obligation to take action to prevent or stop such discharge.
- 4.43 Combustible Liquid. There shall be no storage of gasoline, heating or other fuels, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

ARTICLE V: BUILDING RESTRICTIONS AND ARCHITECTURAL CONTROL

- 5.01 General. No structure shall be placed, erected, or installed upon any Unit, and no improvements (including, but not limited to, staking, clearing, excavation, grading, and other site work, exterior alteration of existing improvements, installation of mailboxes, antennae, pools, walls or fences, including invisible fences, and planting or removal of landscaping materials) shall take place except in compliance with this Article and the Design Guidelines and with the written approval of the architectural control committee.

Any Owner may remodel, paint, or redecorate the interior of structures on his Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a structure visible from outside the structure shall be subject to approval.

All dwellings constructed within the Subdivision shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer and shall be constructed by a builder who has executed a Participating Builder Agreement with Declarant. Additional requirements regarding design and engineering may be set forth in the Design Guidelines.

This article may not be amended without Declarant's written consent, so long as the Declarant owns property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by Declarant.

- 5.02 Composition of Architectural Control Committee. The Architectural Control Committee shall be comprised of at least three, but no more than seven, members. The architectural control

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committee shall initially consist of three members, namely: Christopher T. Brown, Adam J. Brown, and Heather R. Brown Wolesky. Until 100% of the Units in the Subdivision have been developed and conveyed to Owners other than Builders, the Declarant retains the right to appoint all members of the Committee who shall serve at Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Declarant may appoint members of the Committee at any time. Such appointment need not be recorded.

Upon expiration of Declarant's right to appoint the members of the architectural control committee, members of the architectural control committee shall be appointed by the Board of Directors of the Association, shall be members of the Association, and shall serve at the pleasure of the Board of Directors of the Association.

- 5.03 Procedures, Approval/Disapproval of plans. The architectural control committee may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the Committee in having any application reviewed by architects, engineers, or other professionals. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the architectural control committee for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping, and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines. In reviewing each submission, the Committee may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations. Decisions of the Committee may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary.

While the Committee shall endeavor to review plans in a timely fashion, no delay in the approval or rejection of plans and specifications submitted to the architectural control committee shall make the Committee liable in any way for costs, expenses, or damages associated with the improvement of any Unit. In no event shall an application be deemed approved as a result of the Committee's inaction.

Any Owner or potential owner may submit plans and specifications for comment and preliminary review prior to purchasing a Unit.

Notwithstanding the above, the Committee by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

- 5.04 No waiver of future approvals. Approval of proposals, plans, and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.
- 5.05 Variance. The Committee may authorize variances from compliance with any of its guidelines

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and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate, and no variance shall (a) be effective unless in writing; or (b) stop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain the approval of a governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

5.06 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Board, the Association, the Architectural Control Committee, or any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit. Owners are strongly encouraged to seek the advice of a licensed engineer in planning the construction of the residence, including the grading of the Unit. In all matters, the Committee, Board, Association, Architectural Control Committee, and their members shall be indemnified by the Association.

5.07 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed nonconforming. Upon written request from the Committee, an Owner shall, at the Owner's cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, any authorized agent of the Committee or the Board shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs associated with this restoration, including administrative costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment. In addition, the Committee or the Board shall have the right to exercise any means of enforcement set forth in this Declaration.

Unless otherwise specified in writing by the Committee, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association or the Committee shall be authorized, but not required, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

Neither the Committee nor any member of the Committee or the Association, the Declarant, or their officers or directors shall be held liable to any Person or Entity for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the Committee from the Subdivision, subject to the notice and hearing procedures contained in the By-Laws.

In addition to the foregoing, the Association shall have the authority and the standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Committee.

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5.08 **Square footage requirements.** Square footage requirements shall be set forth in the Design Guidelines, specific to each Unit in the Subdivision. The Declarant may, in its sole discretion, set higher square footage requirements for certain Units. The Architectural Control Committee may also, in its sole discretion, grant variances to the square footage requirements set forth in the Design Guidelines, or it may, but is under no obligation to, give credit for certain finished portions of a basement servicing a reverse one and one-half story home. The square footage requirement for each Unit shall be set forth on the Design Guidelines for such Unit, which are incorporated herein and need not be separately recorded.

5.09 **Building material requirements.**

(a) All residences and all appurtenances thereto constructed or installed on any Unit shall be constructed in such a manner and with such materials as set forth in the Design Guidelines. Roofs shall be covered with an "Approved Composite" 40 year asphalt shingle, weathered wood blend in color, or such other material that the Architectural Control Committee shall approve. No flat roof shall be permitted except with the written permission of the Architectural Control Committee. The Guidelines may establish in writing a list of the specific types, colors and other aesthetic factors of the materials to be used for composite, slate, tile, clay and concrete roofs within the Subdivision (whether as part of new construction or reroofing). The Guidelines may generally specify the characteristics of the permitted roofing materials and/or specifically approve certain products by manufacturer name and product name, color, etc. The Committee shall have the right to establish and to alter the Guidelines (by addition or deletion) from time to time in its discretion. No supplemental recording shall be required for the Guidelines to be effective.

Notwithstanding the foregoing provisions of this subsection (a), requiring or prohibiting specific building materials or products, any building materials or products that may be or come into general or acceptable usage for dwelling construction of comparable quality and style in the area, as determined by the Committee in its absolute discretion, shall be acceptable upon written approval by the Committee. In the event the City or other government agency with jurisdiction and authority requires specific building materials not authorized above or requires that Owners have additional choices of building materials not authorized above, the Committee shall have the right, in its absolute discretion, to establish and regulate in writing the specific types, colors and other aesthetic features of such new or additional building materials.

(b) The exterior of each residence shall be finished in an architectural finish on all sides. All applicable exterior components (excluding roofs, brick, stone, stucco and similar components) shall be covered with a workmanlike finish of two coats of high quality paint (which may include a primer coat) or stain. All exterior basement foundations and walls, which are exposed in excess of 12 inches above final grade, shall be painted the same color as the residence or covered with siding or other approved material compatible with the structure.

(c) No metal or other pipe shall be exposed on the exterior of any fireplace or fireplace flue, and all fireplace flues shall be capped with a black or color-conforming metal rain cap.

(d) Except as otherwise permitted by the Committee in writing, all residences shall have a house number plate in the style(s) approved by the Committee, which plate shall be located in a clearly visible location approved by the Committee.

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(e) All driveways and sidewalks shall be concrete, patterned concrete, bomanite, interlocking pavers, brick or other permanent stone finishes. Crushed gravel, asphalt and natural driveways and sidewalks are prohibited. No driveway shall be constructed in a manner as to permit access to a street across a rear property line. Each Unit shall have off-street driveway parking for at least four (4) automobiles.

(f) All residences shall have at least a two-car garage. Additional requirements regarding the position and orientation of garages are set forth in the Design Guidelines. No carports are permitted, but porte cocheres may be permitted at the sole discretion of the Committee.

5.10 Set Backs. No residence, or any part thereof (exclusive of stoops, balconies, bay and other windows, eaves, chimneys and other similar projections), or Structure, or any part thereof, shall be nearer the street line or the rear boundary Unit (or property) line than the building set back lines shown on the Plat for such Unit; provided, however, that the Committee shall have the right to decrease, from time to time and in its absolute discretion, the set back lines for a specific Unit, to the extent they are greater than the minimum set backs required by the City, by filing an appropriate instrument in writing at the Recording Office. Set back distances shall be established by the Guidelines and such Owner shall strictly comply therewith.

5.11 Commencement and Completion of Construction. Unless the following time periods are expressly extended by the Declarant in writing, construction of the residence and related appurtenances on a Unit shall be commenced within 120 days following the date of delivery of a deed from the Declarant to the purchaser of such Unit. If, upon consent of Declarant, construction does not begin within 120 days of delivery of a deed, the Owner shall immediately, or as soon as practicable, plant and maintain a grass lawn, not to exceed four inches in length, covering the entire Unit until such time as construction begins. In any event, construction of the residence and related appurtenances on a Unit shall be completed within twelve (12) months after such construction commences. No dwelling erected upon any Unit shall be occupied until fully completed.

In the event of fire, windstorm, or other damage, no building or other structure shall be permitted to remain in the damaged condition longer than six (6) months. Any owner of a structure in violation of this section may, in the discretion of the Committee, be assessed a fine between \$1.00 and \$100.00 per day for every day the violation continues. Such fine, if not paid when due by said Owner, shall become a lien upon the real estate upon which the structure in violation of this Section is located.

In the event such construction is not commenced within such 120 day period (or written extension thereof, if any, signed by Declarant), the Declarant shall have, prior to commencement of construction, the right (but not the obligation) to repurchase such Unit from such purchaser at 95% of the original purchase price of the Unit. If such repurchase right is exercised by the Declarant, the Owner of the Unit in violation of this construction commencement provision shall not be entitled to reimbursement for taxes, interest or other expenses paid or incurred by or for such Owner.

5.12 Sodding of yards. Each Unit shall be sodded with grass within a twenty-five (25) foot radius from the exterior of any residence erected thereon. Such grass sodding shall be planted at the

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earliest possible time after construction of a dwelling on said Unit as weather will permit, and in no instance will seeding or plugging be considered a substitute for such original sodding without the express written consent of the architectural control committee.

5.13 **Prohibited Conditions.** The following conditions, structures, or activities are prohibited within the Properties unless prior approval in writing is obtained from the Committee by the Owner or occupant:

(a) **Tree Removal.** No trees of more than a 3 inch caliper shall be removed without the prior written consent of the Committee; provided however, any trees, regardless of their diameter, that must be removed to complete construction of a structure approved by the Committee, or any diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons may be removed. The Committee may adopt or impose requirements for, or condition approval of tree removal upon, the replacement of any tree removed.

(b) **Lighting.** Exterior lighting visible from the street shall not be permitted except for (i) approved lighting as originally installed on a Unit or subsequently approved by the Committee; (ii) one approved decorative post light, (iii) street lights in conformity with an established street lighting program for the Subdivision; (iv) seasonal decorative lights as set forth in Section 4.17, or (v) front house illumination of model homes.

(c) **Utility Lines.** No overhead utility lines, including lines for cable television, shall be permitted within the Properties, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

5.14 **Mailboxes.** The Committee reserves the right to approve the style, design, color and location prior to any original installation or replacement of any mailbox. Application shall be made to the Committee prior to installation or replacement. By accepting a deed to a Unit, each Owner gives the Committee the right to remove any unapproved mailbox in a reasonable manner; all costs for same shall be paid by Owner of such Unit, and all claims for damages caused by the Committee are waived. The Declarant may determine a uniform style of mailbox and install same on each Unit, or as directed by the U.S. Postmaster General.

ARTICLE VI: COMMON AREAS

6.01 **Legal title and reservations by Declarant.** Declarant may retain the legal title to Common Areas so long as Declarant owns at least one (1) Unit in the Subdivision. On or before conveyance by the Declarant of the last Unit in the Subdivision, Declarant shall convey the Common Areas to the Association, subject to taxes for the year of conveyance, and subject to the restrictions, conditions, limitations, reservations, and easements of record; subject however, to a reservation hereby perpetually reserved to the Declarant, its successors and assigns, of the right to use and enjoy the same non-exclusive common utility easements, easements of drainage, easements of ingress and egress, and use easements for the benefit of additional lands owned or to be owned by Declarant which are added to Manderley as provided in Article II hereof. Until such time as Declarant conveys the Common Areas to the Association, Declarant may assess maintenance costs to the Association on a monthly (or less frequent) basis in a pro rata amount based upon the number of Units sold to members of the Association.

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- 6.02 **Right to Use of Common Areas.** The Owners of Units in the Subdivision as it may exist from time to time shall have the exclusive right to the use of all Common Areas as designated on the plat of Manderley or as may be designated on subsequent plats thereof, or as may be created by separate document filed for that purpose with the Recorder of Deeds of Clay County, Missouri. The Association shall have the right and power to make reasonable rules and regulations which shall govern the use, care, and maintenance of said Common Areas. No land shall be entitled to any of the benefits, improvements, or services provided by the Association unless the Owner or Owners thereof shall have subjected their land to the terms of this Declaration and to the assessments herein provided for.
- 6.03 **No partition.** There shall be no judicial partition of the Common Areas. No Person and no Owner shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

ARTICLE VII: MEMBERSHIP AND VOTING RIGHTS

- 7.01 **Membership.** Every Owner shall be a Member of the Association. There shall only be one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation, and shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, or trustee, or by any individual designated from time to time by the Owner in a written instrument delivered to the secretary of the Association.
- 7.02 **Voting.** The Association shall have two classes of membership, Class "A" and Class "B." The Board of Directors for the Association shall be the sole judge of the qualifications of Members of the Association.
- (a) Class "A." Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 7.01; provided, however, there shall be only one vote per Unit and no vote shall be exercised for a property which is exempt from assessment under Section 9.09. All Class "A" votes shall be cast as provided in Section 7.02(c) below. The consent of a Mortgagee shall not be required for any Member to exercise his vote, and all Mortgagees holding Mortgages which are subordinate to this Declaration waive their right, if any, to require such consent privileges, any terms in the Mortgages notwithstanding.
- (b) Class "B." The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws, and the Articles, are specified in relevant sections of this Declaration, the By-Laws, and the Articles. The Class "B" Member shall have two equal votes for each Unit in which it holds the interest for membership required under Section 7.01. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Period, which shall continue until the first to occur of the following:

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- (i) when 100% of the total number of Units permitted by the recorded plat for Manderley as described on Exhibit A, as the plat may be amended from time to time, have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders; or
 - (ii) when, in its discretion, the Class "B" Member voluntarily relinquishes such right in writing which shall be recorded with the Recorder of Deeds by the Association.
- (c) Class "B" Member to approve actions of the Board. Upon termination of the Class "B" Period, the Class "B" Member shall have a right to approve actions of the Board as provided in the By-Laws. The Class "B" membership shall terminate upon the earlier of:
- (i) two years after the expiration of the Class "B" Period; or
 - (ii) when in its discretion, the Declarant so determines and declares in an instrument filed with the Recorder of Deeds.
- (d) Declarant remains a Class A Member. Upon voluntary termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns. The Declarant may, by supplemental Declaration, create additional classes of membership for the owners of Units within any additional property made subject to this Declaration pursuant to Article II, with such rights, privileges, and obligations as may be specified in such supplemental Declaration, in recognition of the different character and intended use of the property subject to such supplemental Declaration.
- (e) Exercise of voting rights; multiple Owners. Where one or more persons or entities own a single Unit, they shall decide among themselves who shall be entitled to cast the vote for said Unit. In no event shall more than one vote be cast per Unit. In the event joint owners are unable to agree as to who shall be entitled to cast the vote attaching to the Unit, no vote for that Unit shall be counted.

ARTICLE VIII: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

The Association shall have the following rights and obligations which it may exercise or perform whenever in its discretion it may deem them necessary or desirable, to-wit:

- 8.01 Enforcement of Declaration and Restrictions. To enforce, either in its own name or in the name of any Owner within the Subdivision, any or all use restrictions and building restrictions, or other covenants, conditions, obligations, or restrictions which may have been heretofore or may hereafter be imposed upon any of the land in said Subdivision, either in the form as originally placed thereon or as modified subsequently thereto; provided, however, that this right of enforcement shall not serve to prevent such changes, releases, or modifications as are permissible in the deeds, Declarations, or contracts in which such restrictions or reservations are set forth, nor shall it serve to prevent the assignment of those rights by the proper parties, wherever and whenever such rights of assignment exist. The expenses and costs of any enforcement

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proceedings shall be advanced out of the general fund of the Association as herein provided until such time as said expenses and costs can be collected from the offending Owner responsible for the need to institute the enforcement proceeding. Nothing contained herein shall be deemed or construed to prevent any Owner having the contractual right to do so from enforcing in his or her own name any such restrictions.

- 8.02 **Manage public places and Common Areas.** To manage, control, operate, maintain, construct, reconstruct, and care for as trustee for its members all public streets, sidewalks, and other public places and improvements thereon, provided that such management and control of said places and improvements shall at all times be subject to the rules, ordinances, and laws exercised by any city, county, and state authorities, or any of them, in which said places and improvements are located. The Association shall provide for the maintenance of swimming pools, playgrounds, tennis courts, recreational facilities, public and private streets, parking areas, walks, pedestrian ways, gateways, entrances, drinking fountains, and any ornamental features now existing or which may hereafter be erected or created in any public or private street, Common Area, parking area, or other public place shown on the plat or created by separate instrument from land included as part of Manderley or as designated Common Area on the plat of any additional land which may be later added to the Subdivision as provided herein.
- 8.03 **Rules and regulations of Common Areas.** To make reasonable rules and regulations which shall govern the use of Common Areas, including but not limited to, restricting the use of Common Areas from those individuals or Members who refuse to comply with the Association's reasonable rules, provided, however, that no restriction as to use shall impair that Member's right to vote in the Association, and no restriction as to use shall relieve that Member's obligation to pay common assessments which are provided for in this Declaration.
- 8.04 **Collection and disposal of rubbish.** To provide for the collection and disposal of rubbish and garbage, when adequate services of that type are not available from any publicly-available source.
- 8.05 **Trees.** To care for, spray, trim, protect, and replant trees on all streets and other public places where trees have once been planted, when such services are not available from any public source.
- 8.06 **Vacant, unimproved properties.** To mow, care for, maintain, and remove all rubbish from vacant and unimproved property and to do any other things necessary or desirable in the judgment of the officers of the Association to keep any vacant and unimproved property and the area in front of any property in the Subdivision neat in appearance and in good order.
- 8.07 **Snow removal.** To provide for the plowing and removal of snow from sidewalks and streets when such services are not available from any public source.
- 8.08 **Lighting.** To provide such lights as the Association may deem advisable on streets, parking Units, pedestrian ways, gateways, entrances or other features, and in all other public and Common Areas, when such facilities are not available from any public source.
- 8.09 **Cleaning and repair of streets, sewers, etc.** To provide for the cleaning of streets, gutters, catch basins, sidewalks and pedestrian ways, and for the repair and maintenance of storm sewers and appurtenant drainage facilities, when such services are not available from any public source.
- 8.10 **Signs.** To erect and maintain signs for the marking of streets and safety signs for the protection

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of children and other persons when such signs are not available from any public source.

- 8.11 Easements. To exercise control over such easements as it may require from time to time.
- 8.12 Acquire real estate; pay taxes. To acquire and own title to such real estate as may be reasonably necessary in order to carry out the purposes of the Association and to pay taxes and special assessments on such real estate as may be owned by it; and to pay such taxes and assessments as may be assessed against lands in streets, Common Areas, and other public or semi-public places within the Subdivision.
- 8.13 Levy and collect assessments. To levy and collect assessments which are provided for in this Declaration.
- 8.14 Insurance. To obtain such insurance as required by Article XV, including but not limited to fire and extended coverage, covering the full insurable replacement value of the Common Areas; liability insurance insuring the Association against any and all liability to the public, to any Owner, or to the invitees, guests, or tenants of any owner arising out of their occupation and/or use of the Common Areas; and workmen's compensation insurance to the extent it may be necessary.
- 8.15 Hire/employ others. To hire or employ such individuals, firms, agents, independent contractors, management companies or other companies which the Association shall deem appropriate to carry out the duties of the Association, including but not limited to repair, maintenance, accounting and legal services, and to delegate such responsibilities as it deems advisable.
- 8.16 Indemnify Board and Committee. To the fullest extent permitted by law, the Association will indemnify, defend, and hold harmless the Board, the Architectural Control Committee, and agents and employees of any of them from and against any claims, damages, losses, and expenses arising out of or resulting from the Board and/or the Committee's exercise of their rights and obligations under this Declaration.

ARTICLE IX: ASSESSMENTS

- 9.01 Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments: (a) General Assessments to fund Association expenses for the general benefit of all Units including, but not limited to, general expenses of property maintenance and services contracted for by the Association through the Board such as security, lawn care, and utility maintenance; (b) Special Assessments as described in Section 9.16; and (c) Specific Assessments as described in Section 9.17. Each Owner, by accepting a deed or entering into a contract for sale of any Unit within the Subdivision, is deemed to covenant and agree to pay these assessments.
- 9.02 Transfer of title. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment is due. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

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- 9.03 **Statement of Payment.** The Association shall, upon written request, furnish to any Owner liable for any type of assessment a written statement signed by an Association officer setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.
- 9.04 **Interest on delinquent assessments.** In the event of the failure of any owner to pay the assessment on or before the first day of February following the making of such assessment, or within thirty (30) days of the making of the assessment if such assessment is made on a date other than January 1, then such assessment shall bear interest at the rate of ten percent (10%) per annum beginning with the first day the assessment is levied. If an assessment is paid before February 1, or within thirty (30) days of the date levied, then no interest shall be charged.
- 9.05 **Enforcement of delinquent assessments.** On or after February 1 of each year, or within thirty (30) days from the date of levying an assessment if such assessment is payable on some date other than February 1, the assessment shall become delinquent and payable as to both principal and interest as described above and may be enforced as a lien on said real estate, in a proceeding in any court in Clay County, Missouri, having jurisdiction of suits for the enforcement of such liens. It shall be the duty of the Association to bring suit to enforce such liens before the expiration thereof. The Association may at its discretion file a certificate of non-payment of assessments in the office of the Recorder of Deeds whenever any such assessments are delinquent. For each certificate so filed, the Association shall be entitled to collect from the owner or owners of the property therein described a fee of twenty-five dollars (\$25.00), which fee shall also constitute a lien upon the real estate so described and shall be treated the same as a lien for nonpayment of the assessment itself as described above, provided that such lien shall be inferior and subordinate to the lien of any valid first mortgage or Deed of Trust now existing or which may hereafter be placed on said real estate. Such fee shall be collectable in the same manner as the original assessments provided for herein. In addition to the interest and principal thereon, the Association shall be entitled to recover its reasonable attorney's fees from the owner or owners of the property, jointly and severally, upon which the lien is enforced.
- All such liens provided for in this Declaration shall continue for a period of five (5) years from the date of delinquency, and not longer, unless within such time suit shall have been instituted for the collection of the assessment and any interest and costs, including reasonable attorney's fees, associated with said collection, in which case the lien shall continue until the termination of the suit and until the sale of the property under execution of judgment establishing same.
- 9.06 **Affect of foreclosure upon lien.** In the event of Trustee's sale or foreclosure of the lien of any valid first mortgage or Deed of Trust now existing or which may hereafter be placed on said real estate or Unit therein, such sale and/or foreclosure shall discharge the lien for assessments provided in this Article. However, nothing in these restrictions shall prevent the Association from instituting or prosecuting an action for collection of assessments directly against the record owner or owners of the property at the time the assessment was due, whether or not the lien provided for in this Article has expired.
- 9.07 **No exemption from assessment.** No Owner may exempt himself from liability for assessments by non-use of Common Area. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or form some function required of it, or for inconvenience or discomfort arising from the making of

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repairs or improvements, or from any other action it takes.

- 9.08 **“In kind” contributions.** The Association is specifically authorized to enter into subsidy contracts or contracts for “in kind” contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of any assessment set forth in Section 9.01.
- 9.09 **Declarant’s Obligation for Assessments.** So long as the Declarant owns property which is subject to this Declaration or which may be unilaterally subjected to this declaration by the Declarant, Properties or Units owned by Declarant shall be exempt from any assessments of the Association.
- 9.10 **Computation of General Assessment.** At least 30 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 9.15.
- 9.11 **General Assessments levied equally against all Units.** General Assessments shall be levied equally against all Units subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the budgeted Common Expenses, including reserves. In determination of the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.
- 9.12 **Declarant may pay subsidy.** So long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials, which may be treated as either a contribution or an advance against future assessments due from the Declarant, or a loan, in the Declarant’s discretion. Any such anticipated payment or contribution by the Declarant shall be conspicuously disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years and the treatment of such payment shall be made known to the membership, unless otherwise provided in a written agreement between the Association and the Declarant.
- 9.13 **Notice of budget and General Assessment.** The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Owner at least 30 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Voting Delegates representing at least 67% of the total Class “A” votes in the Association and by the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant. There shall be no obligation to call a meeting of the purpose of considering the budget except as provided for in the By-Laws. If a meeting is held, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective

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date of the budget if the budget is not disapproved at such meeting.

- 9.14 **Failure to determine a budget.** If the proposed budget is disapproved, or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Board shall send a copy of the revised budget to each Owner at least 30 days prior to it becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.
- 9.15 **Reserve Budget and Capital Contribution.** The Board shall annually prepare reserve budgets for general purposes which take into account the number and nature of replaceable assets within the Common Areas and public spaces, the expected value of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual General Assessments over the budget period.
- 9.16 **Special Assessment.** In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses. Special Assessments shall be allocated equally among all Units subject to such Special Assessment. Any Special Assessment shall become effective unless disapproved at a meeting by at least 67% of the total Class "A" votes allocated to Units which will be subject to such Special Assessment and by the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.
- 9.17 **Specific Assessments.** The Association shall have the power to levy Specific Assessments against a particular Unit or Units as follows:
- (a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, janitorial service, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and
 - (b) to cover costs incurred in bringing the Unit(s) into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-laws, before levying any Specific Assessment under this subsection (b).

ARTICLE X: MISCELLANEOUS PROVISIONS

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- 10.01 **Covenants running with the land; Enforcement.** The agreements, restrictions, reservations and other provisions herein set forth are, and shall be, covenants running with the land and shall be binding upon all subsequent grantees of all parts of the Subdivision. The Declarant, and its successors, assigns and grantees, and all parties claiming by, through or under them, shall conform to and observe such agreements, restrictions, reservations and other provisions; provided, however, that neither the Declarant, the Association nor any other person or entity shall be obligated to enforce any such agreements, restrictions, reservations or other provisions. By accepting a deed to any of the Units, each future grantee of any of the Units shall be deemed to have personally consented and agreed to the agreements, restrictions and reservations set forth herein as applied to the Unit owned by such Owner. No agreement, restriction, reservation or other provision herein set forth shall be personally binding upon any Owner, except with respect to breaches thereof committed during his ownership; provided, however, that: (i) the immediate grantee from the builder of the residence on a Unit shall be personally responsible for breaches committed during such builder's ownership of such Unit; and (ii) an Owner shall be personally responsible for any breach committed by any prior Owner of the Unit to the extent notice of such breach was filed of record, as provided in Section 13.01.
- 10.02 **Interpretation of restrictions.** In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners of the Subdivision. It is not the intent of this Declaration to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of buildings or premises; nor is it the intention of this Declaration to interfere with or abrogate or annul easements, covenants or other agreements between parties; provided, however, that where this Declaration imposes a greater restriction upon the use or occupancy of any residence site or upon the construction of buildings or Structures, or in connection with any other matters that are imposed or required by such provisions of law or ordinances or by such rules, regulations or permits, or by such covenants, easements and agreements, then, in that case, the provisions of this Declaration shall control.
- 10.03 **Construction and validity of restrictions.** All of the restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such restrictions, conditions, covenants, reservations, liens or charges, or any part thereof, are invalid or for any reason become unenforceable, no other restriction, condition, covenant, reservation, lien or charge, or any part thereof, shall be affected or impaired.
- 10.04 **Waiver and exceptions.** The failure by the Association, Declarant, any Owner or any other person to enforce any of the restrictions, conditions, covenants, reservations, liens or charges to which the Subdivision or any part thereof is subject, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other restriction, condition, covenant, reservation, lien or charge.
- 10.05 **Titles and Headings.** All titles and headings used in this Declaration are intended solely for convenience of reference, and the same shall not affect that which is set forth in the terms and conditions of this Declaration nor the meaning thereof.

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- 10.06 **Singular and plural, masculine and feminine.** The singular shall include the plural and the plural the singular, unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine and neuter, as the context requires.
- 10.07 **Exclusion of applicability.** The Declarant and its assigns shall have the power at any time to waive any or all of the restrictions or covenants contained herein as to the Units which are unimproved and under its ownership or the ownership of its assigns or licensed residential construction contractors at the time of such waiver. The Declarant specifically reserves the right to carry on its business in the Subdivision, so long as it owns a Unit, including, but not limited to, maintaining sales offices, model homes, business offices and other facilities necessarily convenient for the business of Declarant.
- 10.08 **Providing grading information to Owner; Enforcement.** The Committee shall designate one or more members to meet with new Owners for the purposes of informing the new Owners regarding grading and drainage matters concerning the Units. Such educational process is vital in order to avoid water drainage problems within the Subdivision. This process, and the Owner's obligations regarding same, are set forth in the Design Guidelines. The Association shall strictly enforce the grading and drainage requirements provided for in this Declaration and the Design Guidelines.
- 10.09 **Electrical retail wheeling.** While not applicable as of the date hereof, it is possible in the future that either the Declarant or the Association shall contract with an electrical supplier to supply electricity to all Units and the Common Areas. It is anticipated such a contractual arrangement will require that all residences on the Units solely utilize electricity supplied from such supply source for the duration of such contract and each Owner shall comply with such requirements. Additionally, in the event the electrical supplier, as part of its supply contract with either the Declarant or the Association, pays Declarant or the Association any funds, then the Association shall reimburse the Declarant for any deposits or payments paid by Declarant to permit or arrange for electrical services to the Subdivision and any excess funds shall be remitted or retained by the Association. In addition, Declarant may require Owners to install specific power devices in order to obtain a refund of deposits paid by Declarant under such contract. Owner's obligations regarding such specific devices are detailed in the Design Guidelines.
- 10.10 **Notice of Association address.** The Association shall notify all owners of land in the Subdivision, insofar as the addresses of such owners are listed with the Association, of the official address of said Association, and the place and time of regular meetings of the Association, and the place where payment shall be made and any other business in connection with the Association may be transacted, and shall notify Members of any changes thereto.
- 10.11 **Notice of Members' addresses.** Owners shall list with the Association their official mailing address, and if none is listed, notices from the Association shall be mailed to the street address shown on the Owner's residence within the Subdivision. A written or printed notice, deposited in the care of United States Post office, with sufficient postage thereon prepaid, and addressed to the respective owners as provided above, shall be deemed to be sufficient and proper notice for any purpose of this Declaration where notice is required.
- 10.12 **Declarant to perform Association duties.** Prior to the organization and incorporation of the Association contemplated by the terms of this Declaration, Declarant shall have the right, at its option, to perform the duties, assume the obligations, levy and collect the assessments, and

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otherwise exercise all the powers herein conferred upon the Association, in the same way and manner as though all of such powers, duties, and obligations were hereby given directly to Declarant. Declarant may, by appropriate agreement made expressly for the purpose, assign or convey to any person or corporation all of the rights, reservations and privileges reserved by it in this section or elsewhere in this Declaration, and by such assignment or conveyance being made, its assigns or grantees may at their option exercise, transfer or assign such rights at any time or times, in the same way and manner as though directly reserved by them or it in this instrument.

- 10.13 Observance of all laws. The Declarant and the Association shall at all times observe state, county and other laws.
- 10.14 Organization of Association Corporation. Declarant shall at any time prior to such time as Declarant transfers title to the final Unit owned by Declarant within the Subdivision, organize, form and duly qualify the necessary corporation for the Association to begin operation. Declarant shall keep said corporation in good standing under the laws of the State of Missouri until such time as the Declarant no longer owns any Unit within the Subdivision at which time the Association, acting through its Board of Directors, shall be responsible for keeping said corporation in good standing.
- 10.15 Conflict in Declarations. In the event of any conflict between the provisions of this Declaration and those contained in the Association By-Laws, the terms hereof shall control.
- 10.16 Assignment of Declarant's Rights. The Declarant shall have the right and authority, by written agreement made expressly for that purpose, to assign, convey and transfer to any person(s) or entity(ies), all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Declarant, and upon such assignment the assignee shall then for all purposes be the Declarant hereunder with respect to the assigned rights, benefits, powers, reservations, privileges, duties and responsibilities. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties, and responsibilities of the Declarant hereunder. Upon recording of such assignment in the Recording Office, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.
- 10.17 Notice of Amenity Financing. Notice is hereby given that Declarant may obtain conventional mortgage secured financing in order to pay the cost of installing or constructing amenities within the Common Areas for the use and benefit of the Members. Assessments collected by the Association under the Declaration shall be utilized for repayment of such financing in accordance with the terms of such financing.
- 10.18 Release or Modification of Restrictions.
- (a) The provisions of this Declaration shall remain in full force and effect for twenty years from the execution date and shall automatically be continued thereafter for successive periods of ten years each; provided, however, that the Owners of at least a majority of the Units within the Subdivision as then constituted may release the Subdivision, from all or part of such provisions as of expiration date, or at the expiration of any extension period, by executing (in one or more counterparts), acknowledging and recording in the

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Recording Office an appropriate agreement in writing for such purpose, at least one year prior to expiration, or to a subsequent expiration date, whichever is applicable.

- (b) If the rule against perpetuities is applicable to any right, restriction or other provision of this Declaration, such right, restriction or other provision shall terminate (if not earlier terminated) upon lapse of 20 years after the death of the last survivor of the now-living children and grandchildren of the individuals signing this Declaration on behalf of the Declarant as of the date of such execution.

- 10.19 Easements for Public Utilities and Drainage; Drainage Maintenance; All Easements Not Shown on Plat. The Declarant shall have, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of drains, pipelines, sanitary and storm sewers, gas and water lines, electric and telephone lines, television cables and other utilities, for surface drainage and to give or grant rights-of-way or easements therefor, over, under, upon and through all easements and rights-of-way shown on any recorded plat of the Subdivision or any Common Areas. All utility easements and rights-of-way shall inure to the benefit of all utility companies, for purposes of installing, maintaining or moving any utility lines or services and shall inure to the benefit of the Declarant, all Owners, and the Association as a cross easement for utility line or service maintenance.

The Declarant shall have and does hereby reserve for itself and its successors and assigns and the Association and its successors and assigns, an easement over and through all unimproved portions of each Unit in the Subdivision for the purpose of performing the powers and duties of the Association and maintaining any Common Areas. Any physical damage caused in the exercise of such easement shall be repaired by and at the expense of the party exercising the easement right.

In the event Declarant has placed a sign on a Unit or the Common Areas, following the transfer of title to any such Unit or the Common Areas, Declarant shall have an easement for such sign to remain on any such Unit or Common Areas until Declarant surrenders its powers under this Declaration to the Association, at which time the easement shall pass to the Association.

- 10.20 Use of Easements. No building or other permanent structure shall be erected or maintained on any part of any area indicated as "easement" on the plat of Manderley or otherwise, but the Owner of said Unit may erect a fence or hedge along the property line within such easement, subject to the approval of the architectural control committee and subject at all times to the prior right to use such area for public or quasi-public purposes or to access other property owned by Declarant. The right is reserved to locate, construct, erect and maintain or cause to be located, constructed, erected and maintained within the areas indicated for such purposes on the plat as "easements," sewers or other pipelines, conduits, wires, and any other method of conducting or performing any public or quasi-public utilities, including cable television service, with the right of access at any time to the same for the purpose of repair and maintenance. Such easements, and Owner's obligations related thereto, may be further detailed in the Design Guidelines.

ARTICLE XI: ASSOCIATION BOARD OF DIRECTORS

The affairs of the Association shall be managed by a Board of Directors consisting of five (5) directors, elected by the members as provided in the Articles of Incorporation of the Association. As long as the Declarant owns one or more Units in the Subdivision, Declarant shall have the right to appoint three (3) persons to the Board of Directors. All directors, except those appointed by the Declarant, must be

Members of the Association.

ARTICLE XII: LIMITS ON ASSOCIATION EXPENDITURES

The Association shall at no time spend more money within any one year than the total amount of the assessments for that particular year, plus any surplus which it may have had from previous assessments; nor shall the Association enter into any contract whatsoever binding the assessment of any future year to pay for any such obligation, and no such contract shall be valid or enforceable against the Association except for contracts for utilities, it being the intention that the assessment for each year shall be applied as far as practicable toward the payment of the obligations of that year, and the Association shall have no power to make a contract affecting the assessment of any future or subsequent year except for utilities.

ARTICLE XIII: ENFORCEMENT OF DECLARATION

13.01 Notice. Whenever the Declarant or the Board determines that a violation of this Declaration has occurred and is continuing with respect to a Unit, the Declarant or the Association may serve the Owner responsible for the violation, via certified U.S. Mail, notice of the breach. The Declarant or the Association may also file with the Office of the Recorder of Deeds for Clay County, Missouri a certificate setting forth public notice of the nature of the breach and the Unit involved. No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of this Declaration shall impair any of such rights or remedies; nor shall any such delay or failure be construed as a waiver of that or any other violation.

13.02 Waiver effective only if in writing. No waiver of any violation shall be effective unless in writing and signed and delivered by the person or entity entitled to give such waiver, and no such waiver shall extend to or affect any other violation or situation, whether or not similar to the waived violation. No waiver by one person or entity shall affect any rights or remedies that any other person or entity may have; provided, however, that a duly authorized, executed and delivered waiver by the Association, acting upon a decision of the Board, respecting a specific violation, shall constitute and be deemed as a waiver of such violation by all other persons and entities (other than the Declarant).

The failure of the Declarant, the Association or their grantees or assigns to enforce any of the restrictions or provisions herein at the time of breach or violation of such restrictions or provisions shall not, in any event, be deemed to be a waiver of the right to do so thereafter. All costs associated with any legal action instituted to enforce the restrictions or provisions herein contained, including reasonable attorney's fees, shall be paid by the owner or person found to be in violation of the terms of this Declaration and such costs shall constitute a lien against any Unit or Units such person may own in the Subdivision until paid. Such lien shall be in favor of the person or entity which brought such legal action and it may be enforced in any court in Clay County, Missouri, having jurisdiction over suits for the enforcement of liens.

13.03 Enforcement and arbitration.

- (a) THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PERSONS REFERENCED HEREIN.
- (b) The Declarant, the Owner or Owners of any of the Units and the Association shall have

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the right to seek enforcement of and/or to prevent the breach of the terms and conditions set forth herein and any Guidelines, rules or regulations established as permitted herein. Any action relating to any rights and obligations arising under, or in connection with, (i) this Declaration, including, but not limited to, an action to seek enforcement of and/or to prevent the breach of any of the covenants and restrictions contained herein, (ii) pertaining to a Unit or all or any portion of the Common Areas, or the condition thereof, and (iii) any claim asserted by the Association, an Owner or Owners, former Owner(s), contract purchasers, any real estate broker, agent or sales person participating in the sale of a Unit, against Declarant, for any reason, shall be resolved solely and exclusively by arbitration in accordance with the procedure set out below. However, the provisions of this Section shall not either prevent a party from obtaining a temporary injunction from a court of general jurisdiction pending designation of the arbitrator, from foreclosure or enforcement of any liens established pursuant to this Declaration, or from enforcement of any order or decision of the arbitrator as provided herein. After the arbitrator has been selected and has accepted such appointment, any temporary injunction order by the court of general jurisdiction shall be dissolved, and the arbitrator shall have exclusive power to resolve the subject matter of such injunction. The arbitration procedure is as follows:

- (i) With respect to the scope of such binding arbitration as stated above, neither party shall have the right to file a suit or proceeding in any court of competent jurisdiction, either State or Federal, except that a party may seek injunctive relief as set forth above, and therefore the parties acknowledge and agree that binding arbitration as described herein is their exclusive remedy for claims arising under this Declaration.
- (ii) Either party ("Demanding Party") may make written demand on the other party that a dispute has arisen under this Declaration, which demand shall include a concise but specific statement of the matter or matters in controversy.
- (iii) Not less than 10 nor more than 30 days after the giving of such written demand to the other party, the Demanding Party shall (if at all) file an application with the Circuit Court of Clay County, Missouri, to appoint an arbitrator ("Arbitrator").
 - (A) Such Arbitrator must be a licensed Missouri attorney having an office in either Clay County, Jackson County or Platte County.
 - (B) Such Arbitrator must also devote a portion of his or her practice to real estate and/or construction law.
 - (C) Once the Arbitrator is so selected, the Circuit Court of Clay County shall have no further jurisdiction over the dispute except to confirm the Arbitrator's award.
 - (D) If the Circuit Court of Clay County determines the written demand for arbitration to be premature, it shall dismiss the application at the sole cost of the Demanding Party.

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(iv) **General Rules.**

- (A) The Arbitrator is authorized to employ a competent stenographic reporter to take and transcribe the testimony at the arbitration hearing.
- (B) The Arbitrator is authorized to apportion and charge the costs of the proceedings between the parties, or to either party, as the Arbitrator may deem just (including, without limitation, the filing with the Circuit Court of Clay County by which the Arbitrator was appointed as well as the cost of the Arbitrator [based upon his or her reasonable and customary hourly rate as an attorney at law], but specifically excluding attorney's fees incurred by either party as the parties shall bear their own attorney's fees).
- (C) In the event either party fails to appear or submit testimony in the form required after due notice of the time and place of hearing has been given, the Arbitrator shall proceed to settle the case and render the Arbitrator's decision in accordance with the evidence before him or her.
- (D) The Arbitrator shall appoint a time and place for hearing in Clay County, Missouri and such hearing shall be held on not less than 10 days' advance notice.
- (E) **Discovery.** The parties are authorized to conduct depositions pursuant to the Missouri Rules of Civil Procedure. No more than three depositions shall be taken by any party without specific authorization from the arbitrator. The parties are also authorized to send written discovery to any party pursuant to the Missouri Rules of Civil Procedure. The arbitrator shall resolve any disputes regarding such discovery.
- (F) **Proceedings.** The Arbitrator is authorized to administer oaths and affirmations. All testimony shall be given under oath. At the discretion of the arbitrator, cases may be presented through oral testimony, tangible exhibits and the submission of formal discovery. Arguments of counsel may also be made at the discretion of the arbitrator but are not evidence. The scope and duration of the hearing shall be within the discretion of the arbitrator.
- (G) The aforesaid arbitration hearing shall be concluded within 60 days after the Arbitrator was initially appointed by the Circuit Court of Clay County. Within 30 days after the hearing, the Arbitrator will prepare a written decision/award and Record of Hearing, which shall be dated, signed by the Arbitrator in that capacity and served upon the respective parties. The decision/award will clearly and concisely state the caption

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of the case; name or names of the prevailing parties; the parties against whom it was rendered; the precise amount of money and other relief awarded, including equitable relief, and a written opinion explaining the reasons for the decision/award.

- (H) Nothing contained herein shall be deemed to give the Arbitrator any authority, power or right to alter, change, amend, modify, add to or subtract from any of the rights or obligations of the parties expressed herein or in the By-Laws or any other rules. The parties agree that the award made by the Arbitrator shall be final and conclusive on the parties hereto and their heirs, successors and assigns. The award shall be in writing and signed by the Arbitrator.
- (I) The parties agree that the award made by the Arbitrator shall be final and conclusive on the parties hereto and their heirs, successors and assigns.

ARTICLE XIV: AMENDMENT OF THIS DECLARATION

- 14.01 Right of Declarant to amend. As long as the Declarant, its successors, and assigns own one or more Units within the Subdivision, this Declaration of covenants, conditions and restrictions may be amended, modified, or terminated, in whole or in part, only by written instrument executed by the Declarant or Declarant's successors or assigns. The right of Declarant to so amend, modify, or terminate this Declaration may be assigned by Declarant at any time, but such right of Declarant must be forfeited upon the sale or transfer by Declarant of the final Unit owned by Declarant within the Subdivision.
- 14.02 Amendment by Owners. After such time as the Declarant has sold or otherwise transferred the final Unit owned by Declarant within the Subdivision, this Declaration may then be amended or modified only by a written instrument signed by those persons who, on the date such instrument is recorded, are the owners of sixty-seven percent (67%) or more of the Units in the Subdivision. Any instrument so amending or modifying these restrictions shall become effective only upon recording in the Recorder of Deeds Office of Clay County, Missouri. After such time as the Declarant has sold or otherwise transferred the final Unit owned by Declarant within the Subdivision, this Declaration may then be terminated, and all of the land now or hereafter affected may be released from all of the terms and provisions thereof, by the owners of all the Units than subject thereto executing and acknowledging an appropriate agreement or agreements for that purpose and filing the same for record in the office of the Recorder of Deeds of Clay County, Missouri.

ARTICLE XV: INSURANCE AND CASUALTY LOSSES

- 15.01 Association Insurance.
 - (a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are

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reasonably available:

- (i) Blanket property insurance covering “risks of direct physical loss” on a special form basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other public spaces to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then “broad form” coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;
- (ii) Commercial general liability insurance on the common areas and public spaces, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;
- (iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;
- (iv) Directors and officers liability coverage;
- (v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board’s best business judgment but not less than an amount equal to one-sixth of the annual General Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and
- (vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance, boiler and machinery insurance, and building ordinance coverage.

In the event that any portion of the Common Area is or shall become located in an area identified by the Federal Emergency Management Agency (“FEMA”) as an area having special flood hazards, a “blanket” policy of flood insurance on the Common Area must be maintained in the amount of 100% of current “replacement cost” of all affected improvements or the maximum limit of coverage available, whichever is less. Premiums for all insurance on the common areas and public spaces shall be Association Expenses and shall be included in the General Assessment.

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- (b) **Policy Requirements.** The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in Kansas City, North of the River. All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association.

The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of this Declaration. In the event of an insured loss, the deductible shall be treated as an Association Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after the notice and opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and such Units pursuant to the provisions of this Declaration.

- (i) All insurance coverage obtained by the Board shall:
- (A) be written with a company authorized to do business in the State of Missouri, which satisfied the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
 - (B) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;
 - (C) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
 - (D) contain an inflation guard endorsement; and
 - (E) include an agreed amount endorsement, if the policy contains a co-insurance clause.
- (ii) In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners, as a class, as additional insureds and provide:
- (A) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;
 - (B) a waiver of the insurer's rights to repair and reconstruct instead of paying;
 - (C) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual

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Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

- (D) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
 - (E) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
 - (F) a cross-liability provision; and
 - (G) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, relating to the loss.
- (c) **Damage and Destruction.** Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repairs or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless at least 67% of the total Class "A" voters in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct. However, neither the Association nor the Class "B" Member may opt out of repairing or reconstructing any areas designated for conservation or mitigation, or any plantings required under the City of Kansas City, Missouri's Street Tree Planting Schedule for the Subdivision.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended for a reasonable time until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and therefore shall be maintained by the Association in a neat and attractive, landscaped condition consistent with other provisions of this declaration.

Any insurance proceeds remaining after paying the costs of repair or reconstruction shall

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be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Association, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 12.1 (a).

- 15.02 Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable Improvements on his or her Unit, less a reasonable deductible. If any Owner fails to meet this obligation, the Association may, but is not required to, obtain insurance on the Owner's behalf. In the event the Association obtains any insurance coverage on behalf of and Owner, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner thereof pursuant to Section 9.17.

Each Owner further covenants and agrees that in the event of damage to destruction of structure on or comprising his Unit, the Owner shall proceed promptly to repair to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved by the Committee. The Owner shall pay any costs which are not covered by insurance proceeds. For purposes of this section, the Association is deemed an Owner and the Common Areas are deemed a Unit. The Association shall have the same duty to promptly repair damage to Common Areas as any Owner would have to repair damage to a Unit.

ARTICLE XVI: ANNEXATION AND WITHDRAWAL OF PROPERTY

- 16.01 Annexation Without Approval of Membership. Until 25 years after the recording of this Declaration in the Public Records, Declarant may from time to time unilateral subject to the provisions of this Declaration all or any portion of any real property now hereafter owned by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of the owner of such annexed property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Nothing in this Declaration shall be construed so that real property owned by the Declarant and not described in Exhibit A is encumbered by this Declaration unless and until the filing of such in Supplemental Declaration amending Exhibit A to include any of such real property.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any additional real property owned by the Declarant in any manner whatsoever.

- 16.02 Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Voting Delegates representing a Majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the written consent of the Declarant so long as Declarant owns any property which is subject to this Declaration of which may be unilaterally

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subjected to this Declaration by the Declarant.

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IN WITNESS WHEREOF, Brownfig Development Company, LLC, by authority of its Members, has caused these presents to be executed by its Managing Member on the day and year first above written.

By: Christopher Brown

Attest:

Karen Imhoff

STATE OF MISSOURI)

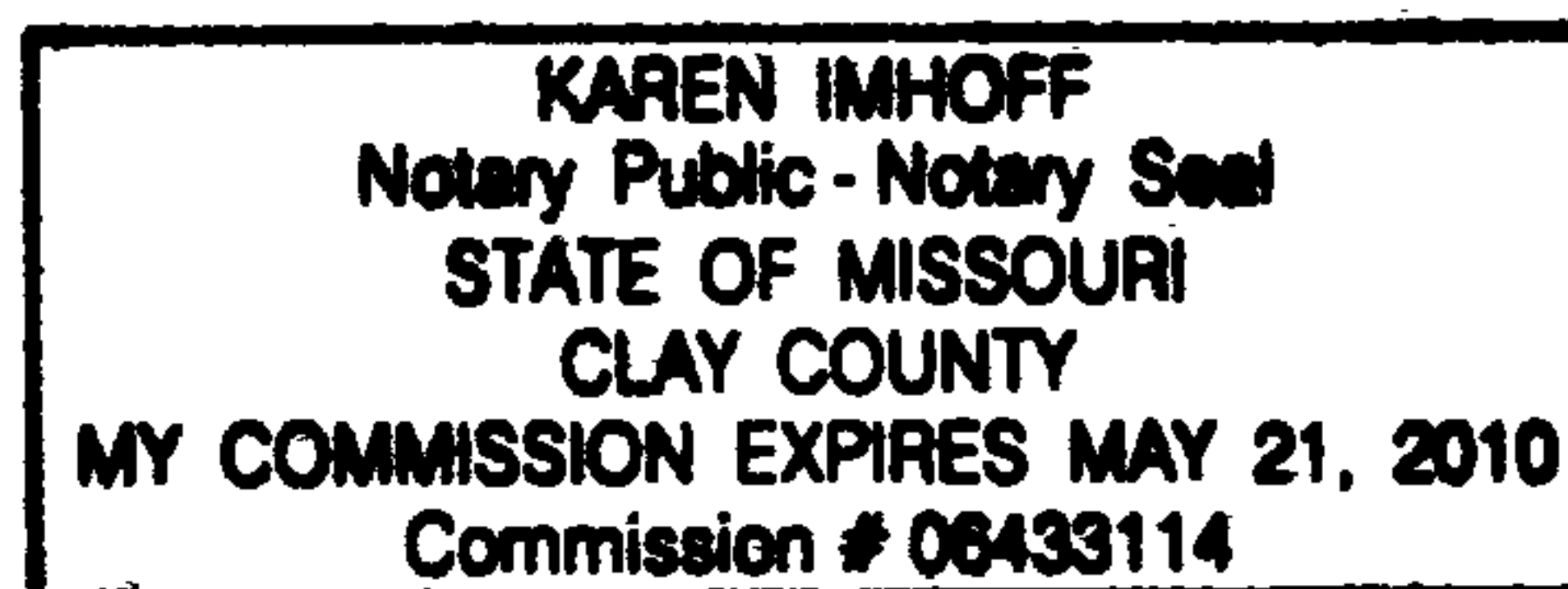
COUNTY OF CLAY) ss.
)

On this 11 day of July, 2007, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Christopher T. Brown, to me personally known, who being by me duly sworn did say that he is the Managing Member of Brownfig Development Company, LLC, and that said instrument was signed in behalf of said Limited Liability Company by authority of its Members.

Witness my hand and notarial seal subscribed and affixed in said county and state the day and year in this certificate above written.

Karen Imhoff
Notary Public

My Commission Expires: 5-21-10



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EXHIBIT A

PROPERTY DESCRIPTION:

All that part of the Southeast Quarter and all that part of the Southwest Quarter of Section 25, Township 52, Range 32, Kansas City, Clay County, Missouri, being described as follows: Beginning at the Northwest corner of the Southeast Quarter of said Section 25; thence South 89°45'06" East, along the North line of said Southeast Quarter, 538.91 feet to a point 950.00 feet West of the Northeast corner of the West 90 acres of said Southeast Quarter; thence South 0°31'22" West, parallel with the East line of said West 90 acres, 800.00 feet; thence North 89°45'06" West, parallel with the North line of said Southeast Quarter, 538.91 feet to a point on the East line of the Southwest Quarter of said Section 25; thence South 0°31'22" West, along said East line, 1829.69 feet to the Southeast Corner of said Southwest Quarter; thence North 89°26'39" West, along the South line of said Southwest Quarter, 1321.82 feet to the Southwest Corner of the East one half of said Southwest Quarter; thence North 0°32'09" East, along the West line of said East one half 2623.42 feet to the Northwest Corner of said East one half; Thence South 89°42'56" East along the North line of said Southwest Quarter, 1321.23 feet to the Point of Beginning. Containing 89.58 acres, more or less. Except that part on the South being used for road right-of-way.

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ADDENDUM A

RESTRICTED ACCESS TO TRACT D

The area represented on the Plat of Manderley as Tract D includes a private lake and its surrounding areas. The entirety of Tract D will be reserved to the private use of the Declarant, its heirs and assigns. The purchase of any Unit in Manderley does not entitle the Owner of that Unit, or its heirs and assigns, to any rights of access to Tract D. No Unit Owner or other person may enter upon, access, or use Tract D in any manner except with the express written consent of Declarant, its heirs and assigns. Acceptance of this restriction is a condition precedent to any agreement to sell or purchase a Unit within Manderley.