



# **Fox Creek**

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**A HUNT MIDWEST COMMUNITY**

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**DECLARATION OF HOMES  
ASSOCIATION  
AND  
COVENANTS, CONDITIONS,  
RESTRICTIONS  
AND  
EASEMENTS  
OF  
FOX CREEK**

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Document Title: Declaration of Homes Association and Covenants, Conditions, Restrictions and Easements of Fox Creek

Document Date: September 9, 2005

Grantor Names: Hunt Midwest Real Estate Development, Inc.

Grantee Names: N/A

Statutory Address: Suite 100, 8300 N.E. Underground Drive, Kansas City, Missouri 64161

Legal Descriptions: See EXHIBIT A attached

Reference Book and Page: N/A

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DECLARATION OF HOMES ASSOCIATION

AND

COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

OF

FOX CREEK

HUNT MIDWEST REAL ESTATE DEVELOPMENT, INC.

("Developer")

Dated as of: September 9, 2005

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DECLARATION OF HOMES ASSOCIATION  
AND  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF  
FOX CREEK

THIS DECLARATION OF HOMES ASSOCIATION AND COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF FOX CREEK (this "Declaration") is made and executed as of 12-5-05, 2005, by HUNT MIDWEST REAL ESTATE DEVELOPMENT, INC., a Missouri corporation (the "Developer"), with its principal office and mailing address at Suite 100, 8300 N.E. Underground Drive, Kansas City, Missouri 64161.

**RECITALS:**

A. The Developer owns the real property located in Platte County, Missouri (the "County"), legally described as set forth on EXHIBIT A attached hereto (the "Property"), which it intends to develop into a townhome residential subdivision known as "Fox Creek".

B. On 12-5, 2005, the subdivision plat entitled "FOX CREEK TOWNHOMES FIRST PLAT", covering a portion of the Property and platting the same into the Lots, Tracts, Common Areas and Restricted Common Areas, if any, shown thereon (sometimes herein also referred to as the "First Plat Property"), was approved by the County and was recorded on 12-5, 2005, in Book 20 at Page 125, in the Office of the Recorder of Deeds for Platte County, Missouri, at Platte City. The platted legal description of the First Plat Property is also shown on EXHIBIT A attached hereto.

C. The Developer desires to create, establish, maintain and preserve a quality townhome residential development project on the Property and adjacent ground and possessing features of more than ordinary value.

D. From time to time after the date of this Declaration, the Developer shall cause (or permit) Townhomes to be built within certain Lots of the Tract(s) shown on any such plat (or any similar tracts or lots added as Expansion Property) and cause building lots (one (1) per Townhome) to be created by replat, lot split certificate of survey, minor subdivision or otherwise within the boundaries of such Lots and such Tract(s) (or any Expansion Property containing similar tracts or lots for Townhomes). The Developer desires to and hereby does subject the Property to the covenants, conditions, restrictions and easements set forth in this amended and restated Declaration from and after the date hereof.

**DECLARATION**

In consideration of the foregoing and the promises and benefits set forth herein, and to provide the means and procedures to achieve them, the Developer hereby subjects the Property to the following covenants, conditions and restrictions, including charges and Assessments. Such covenants, conditions and restrictions are hereby granted and imposed for the purpose of protecting the value and desirability of the Property, as a whole, and shall run with the land and be binding upon, and inure to the benefit of, the Developer and its successors, transferees and assigns and the heirs, personal representatives, successors, transferees and assigns of the Developer's transferees and assigns and all other persons and entities, who or which have, at any time, any right, title or interest in all or any part of the Property including all existing Owners of Lots in the Subdivision and their transferees, assigns, heirs and personal representatives. Each future Owner, by accepting a deed and taking title to a Lot, acknowledges, agrees to and accepts the provisions of this Declaration with respect to such Lot and any Townhome thereon.

**ARTICLE 1  
DEFINITIONS**

When used in this Declaration or in any Supplemental Declaration, the following words shall have the meanings set forth below.

1.1 "Articles" mean the Articles of Incorporation of the Association, as amended from time to time.

1.2 "Assessments" means the Monthly Townhome, Special Townhome and Default Assessments levied pursuant to Article 6 hereof.

1.3 "Association" means The Fox Creek Homes Association, a Missouri mutual benefit nonprofit corporation, and its successors and assigns.

1.4 "Association Documents" means this Declaration, the Articles, the Bylaws, all Supplemental Declarations and all procedures, rules, regulations and policies adopted under such documents by the Association.

1.5 "Board of Directors" means the governing body of the Association.

1.6 "Bylaws" means the Bylaws adopted by the Association, as amended from time to time.

1.7 "Common Area" means all recreational areas, all trail, landscape, open or green space areas, all entrances, monuments, berms, street islands and other ornamental areas and related utilities, lights, sprinkler systems and landscaping, all storm water drainage or detention facilities and improvements and easements therefor, all utility easements and all similar or other places or areas other than Lots which are owned by the Association and dedicated to, or set aside for, the general, non-exclusive use of all Owners or which may, with appropriate consent, be used by all Owners or reserved to the Association's use pursuant to easements and all property of a similar character brought within the jurisdiction of this Declaration by all Supplemental Declarations.

1.8 "Common Expenses" means all costs and expenses including, without limitation, wages, utility charges, legal, accounting and other fees, taxes, insurance (including that required by Article 5.3 hereof), interest, supplies, parts, and management or service fees, incurred by the Association (a) to administer, service, conserve, manage, maintain, repair, renovate and replace the Common Area, Restricted Common Areas, and all improvements thereon, (b) to provide landscaping and care of grounds, (c) to provide snow removal, (d) to provide exterior repair and maintenance of Townhomes as set forth below, (e) to operate recreational and other facilities operated for the general benefit of the Owners, (f) to manage and conduct the affairs of the Association, (g) to repay funds borrowed by the Association, (h) to pay any deficit remaining from a previous assessment period, (i) to create a reasonable contingency or other reserve or surplus fund for maintenance, repairs, and replacement of Townhomes and improvements within the Common Area and Restricted Common Area on a periodic basis, (j) which are expressly declared to be common expenses by this Declaration, any Supplemental Declaration or the Bylaws or (k) which the Board of Directors determines to be common expenses of the Association.

1.9 "Declaration" means this Declaration of Homes Association and Covenants, Conditions, Restrictions and Easements of Fox Creek, as it may be amended or supplemented from time to time.

1.10 "Default Assessment" has the meaning set forth in Article 6.4 hereof.

1.11 "Developer" means Hunt Midwest Real Estate Development, Inc., a Missouri corporation, and its successors and assigns. If the Developer assigns less than all of its rights, obligations and interest to one or more Successor Developers, the term "Developer" shall thereafter refer to both the Developer and all Successor Developers unless the context clearly means otherwise.

1.12 "Expansion Property" has the meaning set forth in Article 13.1 hereof.

1.13 "Fine" and "Lien Fee" have the meanings set forth in Article 6.6 hereof.

1.14 "Improvements" has the meaning set forth in Article 10.2 hereof.

1.15 "Lot" or "Townhome Lot" means a building lot that is created either by a plat by the Developer (or a builder or other person to whom the Developer sells such building lot), by replat, lot split certificate of survey, minor subdivision or otherwise, together with all appurtenances and Improvements now, or in the future, on such Lot, including a Townhome.



1.16 "Manager" means a person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Board of Directors may authorize from time to time pursuant to Article 4.5 hereof.

1.17 "Member" means a member of the Association as set forth in Article 3.1 hereof.

1.18 "Monthly Townhome Assessment" has the meaning set forth in Section 6.2 hereof.

1.19 "Mortgage" means any mortgage, deed of trust, contract for deed or other security document pledging or conveying in trust any Lot or interest therein as security for payment of a debt or obligation.

1.20 "Mortgagee" means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

1.21 "Owner" or "Townhome Owner" means the owner of record, whether one or more persons or entities, of fee simple title to any Lot, including the Developer and the purchaser under a contract for deed. The term shall not include any person or entity having any interest in a Lot merely as security for the performance of an obligation, including a Mortgagee or a trustee or beneficiary under a deed of trust, unless and until such person has acquired fee simple title to the Lot pursuant to foreclosure or other proceedings.

1.22 "Owner's Proportionate Share" means a fraction, the numerator of which is the number of Lots then owned by such Owner within the Property, and the denominator of which is the total number of Lots (i.e. all Townhome Lots) then within the Property, as it may be expanded.

1.23 "Party Wall" means any wall which separates or divides two (2) Townhomes and includes any exterior wall of a Townhome with five (5) inches or less of airspace between it and the exterior wall of an adjacent Townhome whether or not utilities run within such airspace.

1.24 "Property" and "First Plat Property" means and refers to the real property on Exhibit A attached to this Declaration and "Property" also includes all additional property, if any, brought within the jurisdiction of this Declaration by all Supplemental Declarations.

1.25 "Proposed Construction" has the meaning set forth in Article 10.2 hereof.

1.26 "Restricted Common Area" means any Common Area owned by the Association on or over which, with the approval of the Review Committee, are located specific Improvements or features including, but not limited to, driveways, sidewalks, landscaping features and air conditioning units or other items, which are intended to and in fact do serve or service the needs and interests of a single Townhome Lot and the Townhome thereon.

1.27 "Review Committee" has the meaning set forth in Article 10.1 hereof.

1.28 "Special Townhome Assessment" has the meaning set forth in Article 6.3 hereof.

1.29 "Street" shall mean any roadway, street, court, circle, terrace, drive, alley or other right-of-way designated for vehicular traffic shown on any plat of any part of the Property or the Subdivision.

1.30 "Subdivision" means, collectively, the Lots, the Common Areas, the Restricted Common Areas, all other parts of the Property and all Expansion Property.

1.31 "Successor Developer" means any person or entity to whom the Developer assigns or transfers all, or any part, of its rights, obligations or interests as the developer of the Property, as evidenced by an assignment or deed of record in the Office of the Recorder of Deeds for Platte County, Missouri, at Platte City, designating such person or entity as a Successor Developer.

1.32 "Supplemental Declaration" means an instrument which amends or modifies this Declaration, as more fully provided for herein, including any which includes or adds Expansion Property.

1.33 "Townhome" means a residential dwelling constructed on any one (1) Townhome Lot with one or more Party Walls attaching it to one or more other Townhomes and having bedrooms on the second story or level.

1.34 "Turnover Date" means the earlier of: (i) the date as of which only four (4) of the Lots in the Subdivision (as then composed or as contemplated to be expanded into Unplatted Land by the Developer) remain owned by and not sold by the Developer with no Townhomes constructed thereon; or (ii) the date the Developer, in its sole and absolute discretion, selects as the Turnover Date for the Property then covered by and subject to this Declaration; or (iii) December 31, 2025.

1.35 "Unplatted Land" means that portion of the Property which has not been subdivided pursuant to a recorded plat.

1.36 "Working Capital Fund Contribution" or "Townhome Working Capital Fund Contribution" shall have the meaning set forth in Article 6.5 hereof.

## ARTICLE 2 PERSONS AND PROPERTY BOUND BY DECLARATION

The benefits and burdens of this Declaration shall run with the land and shall inure to the benefit of, and be binding upon, the Developer, all Owners of Lots in the Subdivision and all persons or entities who shall hereafter acquire any interest in the Lots or other property within the Subdivision. The Developer and all persons who take any interest in a Lot shall, by taking such interest, be deemed to agree and covenant with all other Owners, the Association and the Developer, and their respective heirs, personal representatives, successors, transferees and assigns, to conform to, and observe, the covenants, conditions and restrictions in this Declaration, all Supplemental Declarations and the other Association Documents for the term hereof.

## ARTICLE 3 MEMBERSHIP; VOTING; OPERATIONS

3.1 Membership in The Association. The Owner of each Lot within the Subdivision shall be a Member of the Association. If a Lot is owned by more than one Owner, all Owners of the Lot, collectively, shall be deemed the Member of the Association for such Lot. The Association shall be the sole judge of the qualifications of its Members and of their right to participate in its meetings and proceedings.

3.2 Classes of Members. Members shall be either Class A Members or Class B Members. Class A Members shall be all Owners of Townhomes except the Developer during the period of its Class B Membership. Class B Members shall be the Developer and all Successor Developers, if any, who own any Lot for the purpose of development and sale. All Class B Memberships shall terminate and automatically be converted to Class A Memberships upon the Turnover Date. Upon termination of the Class B Membership, the Developer and all Successor Developers, if any, which own any Lots at the time shall, for all purposes, be automatically converted to Class A Members for each Townhome Lot it (or they) then owns.

3.3 Meetings. Annual and special meetings of the Members or any Class of Members shall be called, held and conducted in the manner provided in the Bylaws or, in the absence of any provision in the Bylaws, as provided by applicable Missouri law.

3.4 Voting Rights. Except as otherwise provided herein, including in Article 3.9 below, all Owners shall be entitled to vote on Association matters requiring a vote under this Declaration. On all matters to be voted on by the Members, Class A Members each shall have one (1) vote for each Lot owned and Class B Members shall have twenty (20) votes for each Lot owned and twenty (20) votes for each one-quarter (1/4) of an acre (or fraction thereof) of Unplatted Land it owns. If more than one (1) Owner exists for any Lot, the vote for such Lot shall be exercised as the Owners determine among themselves and as they notify the Secretary of the Association in writing. Fractional votes shall not be permitted and there shall be only one (1) vote cast with respect to any Lot. Any person may be appointed as the proxy of an Owner by written appointment delivered to the Secretary of the Association before or at the Meeting at which the vote for which the proxy is being exercised. Proxies may be revoked at any time in writing delivered to the Secretary of the Association and shall not, under any circumstance, be valid for more than three (3) years from the

original date thereof. Unless specifically provided herein to the contrary, all matters requiring a vote of the Members under this Declaration shall be approved by the affirmative vote of a majority of the Members present at an annual or special meeting duly called where a quorum is present. A quorum shall be the presence of Members having ten percent (10%) of the votes entitled to be cast on a matter at the meeting, in person or by proxy; provided, however, that, unless one - third (1/3) or more of the Members having voting power are present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of Members are those matters described in the meeting notice.

**3.5     Transfer of Membership.** Membership is appurtenant to, and may not be separated from, ownership of any Lot. An Owner may not transfer, pledge or alienate membership in the Association in any way except in connection with the sale or encumbrance of the Lot and then only to the purchaser or Mortgagee of the Lot. Upon the sale of a Lot, the membership associated with the Lot shall automatically transfer to the purchaser of the Lot, or the purchaser's Mortgagee if so designated by the purchaser.

**3.6     Books and Records.** The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records and financial statements of the Association. The Association may charge a reasonable fee for copying such materials.

**3.7     Association as Successor Developer.** On the termination date of the Class B Membership (i.e. the Turnover Date), the Association shall succeed to all of the duties and responsibilities of the Developer under this Declaration. The Association shall not, however, succeed to any easements or rights of the Developer or others reserved in the Association Documents or pertaining to any other real property adjacent to the Subdivision which is owned by the Developer.

**3.8     Implied Rights and Obligations.** The Association may exercise all rights and privileges expressly granted to the Association in the Association Documents and all other rights and/or privileges reasonably implied from those expressly granted or reasonably necessary to effect any such duties and obligations expressly imposed upon the Association by the Association Documents.

**3.9     Developer's Control of Association Prior to Turnover Date.** Notwithstanding anything in this Article 3 or elsewhere in this Declaration to the contrary, until the Turnover Date, the Developer shall maintain absolute and exclusive control over the Association and the Review Committee, including appointment, election and removal of all directors and officers of the Association and all members of the Review Committee. Until the Turnover Date, only the Developer shall be entitled to cast any votes with respect to the election and removal of Association directors and officers and members of the Review Committee or any other matters requiring the vote or approval of Members or Owners. The Developer may (but shall not be required to) at any time relinquish all or any part of the Developer's control and rights under this Article 3.9.

#### **ARTICLE 4**

##### **POWER AND AUTHORITY; CASUALTY INSURANCE**

**4.1     General Power and Authority of The Association.** Subject to any limitations in applicable laws and regulations and the Articles and Bylaws, the Association has the power and authority to take all action, and to refrain from taking all action, on behalf of the Association, it deems reasonably necessary to protect the rights and to fulfill the obligations of the Association under the terms of this Declaration. Such power and authority includes, without limitation, the following, which the Association may (but shall not be obligated or required to except for (w), (x) and (y) below) exercise in its discretion:

(a)     Accept by conveyance from the Developer and own the Common Area, the Restricted Common Areas and any other areas of the Property to be held for the general benefit of the Owners;

(b)     Enforce, either in the Association's name or in the name of any Owner within the Subdivision, the covenants, conditions, restrictions and easements imposed upon the Lots, the Common Area, the Restricted Common Areas or other parts of the Property as are in effect from time to time. The expenses and costs of any enforcement proceedings shall be paid out of the general funds of the Association. Nothing

herein contained shall prevent the Developer, or any Owner having the right to do so, from enforcing in their own name any such covenants, conditions, restrictions or easements;

(c) Levy and collect all of the Assessments and all of the Working Capital Fund Contributions for Townhomes which are provided for in this Declaration and to charge reasonable admission fees, service charges and other amounts for the use of the Common Area;

(d) Manage and control as trustee and attorney-in-fact for all Members, all improvements upon and to the Common Area, the Restricted Common Areas and other areas of the Property owned by the Association or held for the general benefit of the Owners;

(e) Maintain, repair and replace all pedestrian ways, gateways, entrances, fountains, gardens, water run-off detention areas, ponds or basins, lakes, lighting, water sprinkling systems, trails, landscaped areas within the Common Area or rights-of-way or platted landscape easements, fences and ornamental features, Subdivision identification signs and monuments and any other amenities;

(f) Provide and maintain lights on Streets, parks, parking, pedestrian ways, gateways, entrances or other features, and in other public places, semi-public places or the Common Area;

(g) Erect and maintain signs for marking of Streets, and safety signs for protection of children and other persons, after such signs are approved by appropriate public authorities;

(h) Exercise control over easements (including any for water drainage control) it acquires from time to time or has pursuant to the initial or any subsequent plat for the Subdivision;

(i) Acquire and own title to such real estate as is reasonably necessary in order to carry out the purposes of the Association and promote the health, safety, welfare and recreation of Owners in the Subdivision, pay taxes on real estate and facilities owned by it and pay taxes assessed against the Common Area or other land in public or semi-public places within the Subdivision;

(j) Enter into such agreements with other homes associations, municipalities or other governmental agencies, individuals or corporations in order to implement the purposes of the Association, and to provide such improvements for the benefit of the Owners and Members of the Association within the intent of this Declaration;

(k) Acquire, provide and maintain insurance for the protection of the Association, the Members, the Common Area and the Restricted Common Areas including, without limitation, comprehensive public liability, officers and directors, workers compensation, fidelity insurance and bonds to protect against dishonest acts on the part of the Association's officers, directors, trustees, employees and agents and such other insurance against risks of a similar or dissimilar nature as the Board of Directors deems appropriate with respect to the Association's responsibilities and duties, including contractual liability for the indemnification set forth in Article 17.6 below;

(l) Subject to the voting requirements of Article 16.2 herein for amendment of this Declaration, dedicate, sell, subdivide or transfer all or any part of the Common Area to any public or private agency, authority, person or entity, but only with the prior consent of the Developer prior to the Turnover Date;

(m) Create, grant and convey easements upon, across, over, through and under the Common Area for ingress or egress or installation, replacement, repair and maintenance of all utilities or other such facilities including, but not limited to, water, sewers, natural gas, telephones, electricity and television cable systems;

(n) Establish and publish rules and regulations to regulate and control the Owners' use and enjoyment of the Common Area as well as such other activities which effect the Members' quiet and peaceful use of the Lots within the Subdivision;

(o) Employ or provide duly qualified officers for the purpose of providing police or security protection as the Board deems necessary or desirable in addition to that rendered by public authorities;

(p) Borrow money from any person, including the Developer, for the proper conduct of the Association's affairs, and the exercise of its powers and authority and the fulfillment of its obligations, subject to any limitations set forth in the Bylaws;

(q) Suspend the voting rights and other privileges of any Class A Member during any period in which such Member is in default on payment of any Assessment or after notice and hearing for a period not to exceed ninety (90) days for infraction of published rules and regulations, unless such infraction is ongoing, in which case the rights and privileges may be suspended during the period of the infraction and for up to ninety (90) days thereafter;

(r) Fine and impose Lien Fees against any Class A Member for infraction of any of the provisions of this Declaration or any published rules or regulations in amounts as may be determined and changed from time to time by the Board of Directors;

(s) Provide for cleaning of Streets, gutters, catch basins, sidewalks and pedestrian ways;

(t) Provide for, or manage, the collection and disposal activities of rubbish, trash and garbage in the Subdivision;

(u) Care for, spray, trim, protect, plant and replant trees, shrubbery, grass and sod along all Streets and in the Common Area and other areas within the Subdivision set aside for the general use of Owners or on landscaped easements where the maintenance thereof is for the general welfare and benefit of the Members;

(v) Mow, care for, maintain and remove rubbish from vacant and unimproved Lots or other parts of the Property and to do any other things reasonably necessary or desirable to keep any vacant and unimproved property in the Subdivision neat in appearance and in good order;

(w) Perform exterior maintenance and repair on each Townhome located on any Townhome Lot including, without limitation, painting, repairing, replacing and caring for roofs, gutters, down spouts, exterior building surfaces and other exterior improvements as elsewhere required in this Declaration and, if the need for such maintenance or repair is caused by the wasteful, negligent or intentional act or omission of an Owner of a Townhome, such Owner's family, guests, invitees, agents, licensees or authorized representatives, the cost thereof shall become an Assessment due from such Townhome Owner, alone, to the Association, and may be collected and enforced in the same manner as the collection and enforcement of the Monthly Townhome Assessment;

(x) Acquire, provide and maintain casualty and property insurance coverage on the Townhomes and their respective exteriors;

(y) Provide for the mowing of lawns, maintenance of trees, shrubs and other plantings and the plowing and clearing of snow from driveways or sidewalks of or pertaining to the Townhomes and related Common Area or Restricted Common Areas;

(z) Exercise all rights, power and authority granted to the Association by this Declaration; and

(aa) Engage a Manager to perform such duties, powers or functions of the Association as the Board of Directors may authorize from time to time as set forth in Article 4.5 below.

**4.2 Exercise of Authority.** Unless specifically reserved to the Members by this Declaration, the Bylaws, the Articles or applicable law, all powers and authority of the Association shall be exercised by the Board of Directors, acting within its sole discretion. Although the Association may exercise the powers and authority granted in Article 4.1 hereof, the mere existence of such powers and authority shall not require the Board to exercise such powers or authority

except for Article 4.1 (w), (x) and (y) which shall be performed by the Association. For example, although the Association has the power to provide for collection and disposal of rubbish, trash, refuse and garbage in the Subdivision, the Board may, in its discretion, choose not to exercise that power and, in lieu thereof, require the Owners to contract with the City or private haulers to dispose of their trash. The Association shall exercise such powers and authority in the discretion of its Board of Directors, unless otherwise specifically required or permitted herein or in the Articles or Bylaws to be exercised by the Members.

**4.3 Casualty Damage Insurance on Townhomes.** The Board of Directors shall obtain and maintain in full force and effect casualty insurance on the Townhomes and other insurable improvements on the Townhome Lots (including, unless the Board of Directors directs otherwise, the fixtures initially installed therein and replacements thereof up to the value of those initially installed therein by or for the Owners, but not including furniture, wall coverings, improvements, additions or other personal property supplied or installed by the Owners), together with all heating, ventilation, air conditioning equipment and other service machinery and utilities contained therein and covering the interests of the Owners and their Mortgagees, as their interests may appear. The insurance shall be carried in an amount also equal to the full replacement value (i.e. one hundred percent (100%) of the current replacement cost exclusive of land, foundation, excavation and other items normally excluded from coverage), without deduction for depreciation (such amount to be re-determined periodically by the Board of Directors with the assistance of the insurance company affording such coverage). Such insurance shall afford protection against loss or damage caused by fire, windstorm, hail and other hazards covered by the standard extended coverage policy or endorsement including debris removal, demolition, vandalism, malicious mischief and water damage. At the election of the Board of Directors, the insurance required under this Article 4.3 may be in the form of a "master" or "blanket" policy. In contracting for the policy or policies of insurance obtained pursuant to this Article 4.3, the Board of Directors shall be required to make reasonable efforts to secure coverage which provides the following:

(a) The following endorsements (or equivalent): (i) "cost of demolition"; (ii) "contingent liability from operation of building laws or codes"; (iii) "increased cost of construction"; and (iv) "agreed amount" or elimination of co-insurance clause; and

(b) A provision that any "no other insurance" clause shall expressly exclude individual Owners' policies from its operation so that the casualty damage policy or policies purchased by the Board of Directors shall be deemed primary coverage and any individual Owners' policies shall be deemed excess coverage.

Prior to obtaining any policy of casualty damage insurance or any renewal thereof, and at such other intervals as the Board of Directors may deem advisable, the Board of Directors may obtain an appraisal from an insurance company, or such other source as the Board may determine, of the then current replacement cost of the Townhomes (exclusive of the land, excavations, foundations and other items normally excluded from such coverage) subject to insurance carried by the Association, without deduction for depreciation, for the purpose of determining the amount of casualty damage insurance to be secured pursuant to this Article 4.3. A certificate of such insurance, together with proof of payment of premiums and any notice issued as set forth above, shall be delivered to any Mortgagee requesting the same. The Mortgagee of a Townhome shall be notified promptly of any event giving rise to a claim under such policy arising from damage to such Townhome. The premiums for such casualty damage insurance shall be a Common Expense to be paid by the Monthly Townhome Assessments levied by the Association.

Each Townhome Owner shall be responsible for the deductible under the Association's insurance with respect to property damage or casualty loss to such Owner's Townhome. The amount of such deductible shall be uniform for all Townhomes and shall be set by the Board of Directors from time to time in a reasonable amount.

**4.4 Insurance Requirements Generally.** All insurance coverage obtained by the Association shall be comply with the following terms and conditions:

(a) The Developer shall be an additional named insured on all such policies as long as it owns any Lot;

(b) The insurance coverage maintained by the Association shall not be brought into contribution with insurance purchased by the Owners or their Mortgagees;

(c) Coverage under the policies shall not be prejudiced by (i) any act or neglect of any Owner, or their tenants, servants, agents, invitees, and guests when such act or neglect is not within the control of the Association, or (ii) any act, neglect or failure of the Association with respect to any portion of the Property over which the Association has no control;

(d) The policies shall contain a waiver of subrogation by the insurer as to all claims against the Developer, the Board of Directors, the Association, the Manager and the Owners and their respective agents, employees, tenants, agents and household members, and of all defenses based upon co-insurance or upon invalidity arising from the acts of the insured and contain contractual liability coverage for the indemnity set forth in Article 17.6 hereof;

(e) All policies shall be written by insurers licensed to do business in Missouri and holding a rating of B/VI or better in the financial category as established by A.M. Best Company, Inc., if reasonably available, or, if not reasonably available, the most nearly equivalent rating; and

(f) All liability insurance shall also include a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another insured.

**4.5     Manager.** Any powers, duties or rights of the Association created pursuant to this Declaration, or of the Board, as provided by law and herein, may be delegated to a Manager under a management agreement, which Manager may or may not have a relationship to the Developer or its principals or affiliates; provided, however, that no such delegation shall relieve the Association of its obligation to perform such delegated duty.

**4.6     Townhome Owners' Insurance.** Each Townhome Owner and its occupants shall obtain insurance against liability for events occurring within such Owner's Townhome, losses with respect to personal property and furnishings and similar matters of the type and nature of coverage commonly referred to as "tenants' improvements and betterments" or an "HO6" policy. Each Townhome Owner or its occupants may carry such insurance, in addition to that provided by the Association, as that Owner or occupant may determine, subject to the provisions hereof, and provided that no Townhome Owner or occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the blanket insurance carried pursuant hereto by the Association. In the event any Townhome Owner or an occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Townhome Owner who acquired or whose occupant acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and directors, and all other Townhome Owners and their respective occupants.

**ARTICLE 5  
COMMON AREA**

**5.1     Property Rights in the Common Area.** Subject to the other provisions hereof, every Member shall have a non-exclusive right and easement of enjoyment in and to the Common Area and such right and easement shall be appurtenant to and shall pass with the title to every Lot.

**5.2     Maintenance of the Common Area.** The Association shall own, manage, repair, maintain, replace, improve, operate and deal with the Common Area and keep it, and all improvements thereon, in good condition. The cost of performing these duties shall be a Common Expense. The Board of Directors may employ or contract with a Manager or third parties to render such services with respect to the Common Area.

**5.3     Insurance.** The Association may provide and maintain insurance for the protection, repair and replacement of the Common Area as set forth above.

**5.4     No Partition.** The Common Area shall be owned by the Association, and no Owner, group of Owners, or the Association shall bring any action for partition or division of the Common Area.

ARTICLE 6  
ASSESSMENTS, FINES, LIEN FEES AND WORKING CAPITAL FUND CONTRIBUTIONS

**6.1     Obligation: Purpose.**

(a)     The Association may assess against Class A Members owning Lots (and each such Owner of a Townhome Lot, by acceptance of a deed to such Owner's Lot, hereby agrees to pay to the Association all) Monthly Townhome Assessments, Special Townhome Assessments and Default Assessments. No Assessments or Working Capital Fund Contributions shall be levied or assessed against any Lots or Unplatted Land owned by Class B Members.

(b)     For purposes hereof, (i) "Monthly Townhome Assessments" are Assessments imposed and levied by the Board of Directors against each Townhome Owner in accordance with such Owner's Proportionate Share which are necessary to meet the Common Expenses, (ii) "Special Townhome Assessments" are Assessments against Townhome Owners for capital improvements to the Common Areas and the Restricted Common Area and other purposes as stated in Article 6.3 of this Declaration, and (iii) "Default Assessments" are Assessments assessed against a Lot as the result of the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents.

(c)     The Assessments shall be used for the benefit of the Owners and occupants of the Subdivision as set forth herein.

(d)     No Assessments or Working Capital Fund Contributions of any kind shall be imposed or levied against Unplatted Land included within the Property and no Monthly Townhome Assessments, Special Townhome Assessments or Working Capital Fund Contributions shall be imposed or levied against any Lots owned by the Class B Members.

**6.2     Monthly Townhome Assessments.** Subject to the limitations set forth herein and any in the Articles and Bylaws, the Board of Directors, in its sole discretion, shall establish Monthly Townhome Assessments based upon the estimated Townhome Common Expenses for the subsequent fiscal year of the Association. Until modified as provided herein, the Monthly Townhome Assessments shall be in amounts as determined by the budgets established by the Board of Directors from time to time. The first Monthly Townhome Assessment for a Townhome Lot shall be made on the closing date for the purchase of such Townhome Lot by an Owner other than a builder building for resale. The Monthly Townhome Assessments shall be made by the Board of Directors on or before January 1<sup>st</sup> of each year and shall be due and payable in equal monthly installments on or before the first day of each month. If the Board of Directors fails to timely make any Monthly Townhome Assessment for any fiscal year, the amount of such Monthly Townhome Assessment for the year shall automatically be the same as the Monthly Townhome Assessment for the immediately prior year. Prior to the Turnover Date, the Board of Directors may increase the Monthly Townhome Assessments as such Board shall determine appropriate. After the Turnover Date, the Monthly Townhome Assessments made by the Board of Directors may not exceed (a) one hundred and twenty percent (120%) of the Monthly Townhome Assessments for the immediately preceding year without the approval of a majority of the Class A Members only present at a meeting duly called or (b) one hundred fifty percent (150%) of the Monthly Townhome Assessments for the immediately preceding year without the approval of sixty-six and 2/3 percent (66 2/3%) of the Class A Members only present at a meeting duly called. The Board of Directors may, but shall have no obligation to, make pro rata refunds of any Monthly Townhome Assessments in excess of the actual Townhome Common Expenses incurred in any fiscal year or may hold the same in reserve.

**6.3     Special Townhome Assessments.** Except as limited or prohibited by the Articles or Bylaws, the Board of Directors may levy in any fiscal year one or more Special Townhome Assessments, payable over any period as it determines, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair, renovation or replacement of damaged Townhomes or improvements in the related Restricted Common Areas or Common Area or for any other expenses incurred by the Association in fulfilling its obligations to all Townhome Owners under this Declaration or otherwise imposed upon the Association. In imposing any Special Townhome Assessment, the Board of Directors shall specifically refer to this Article 6.3. The Board of Directors shall promptly give the Townhome Owners written notice of the amount of all Special Townhome Assessments and the time for



payment thereof. No payment of all or part of any Special Townhome Assessment shall be due less than thirty (30) days after such notice is given. This Article 6.3 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses related to the Townhomes and the related Restricted Common Areas authorized by other sections of this Declaration.

**6.4     Default Assessments.** The Board of Directors may assess Default Assessments against any Member or any Owner of a Townhome at any time. Notice of the amount and due date of each Default Assessment shall be sent to the Member or the Owner subject to such Assessment at least thirty (30) days prior to the due date. Each Default Assessment shall become a lien against such Member's or such Owner's Lot when due and may be foreclosed or otherwise collected as provided in this Declaration.

**6.5     Working Capital Fund Contributions.** The Developer shall require the first Owner of a Townhome Lot (other than the Developer or a builder building on the Lot for resale) to make a nonrefundable contribution to the townhome working capital fund of the Association in an amount equal to three (3) times the monthly installment of the Monthly Townhome Assessment against such Townhome Lot then in effect (a "**Working Capital Fund Contribution**"). The Association shall maintain all such Working Capital Fund Contributions in its account(s) for the use and benefit of the Association in carrying out its duties hereunder including, without limitation, paying Townhome Common Expenses or meeting unforeseen Townhome expenditures. Such Working Capital Fund Contribution shall not relieve a Townhome Owner from making payments of the Assessments as they become due and is in addition thereto and nonrefundable in all events.

**6.6     Fines; Lien Fees.** The Board of Directors may assess and impose a Fine of Twenty Dollars (\$20) per month (or such other amount as the Board of Directors shall determine appropriate from time to time) for each month in which any infraction of any of the provisions of this Declaration, the Articles, Bylaws or any rules or regulations promulgated by the Board is committed by any Owner of a Townhome or any tenant of any such Owner. The Board of Directors may promulgate and change from time to time rules or regulations setting forth procedures for appealing Fines. Fines shall be imposed only after notice and an opportunity to be heard before the Board of Directors. Cause for Fines shall not be for frivolous reasons but for those actions which violate the security of Owners, endangers occupants, cause a nuisance to Owners or their tenants or interfere with the quiet enjoyment of their Townhomes, the Common Area or the Restricted Common Areas by other Owners or their tenants. Recourse to Fines will occur when situations are not corrected or continue to occur after written notice is given to an Owner. Warnings and recourse to Fines shall be as determined by the Board of Directors. Owners shall be responsible for the acts and omissions of tenants, guests or visitors who create such violations or infractions. Additionally, in connection with any Delinquency which constitutes a lien as set forth below, the Board of Directors may assess and impose a separate Lien Fee of One Hundred Fifty Dollars (\$150)[or such other amount as the Board of Directors shall determine appropriate from time to time] to cover administrative time and expense in connection therewith.

**6.7     Effect of Nonpayment; Liens.** Any Monthly Townhome Assessment, Special Townhome Assessment or Default Assessment or any Fine or Lien Fee (individually, the "**Delinquency**" and, collectively, the "**Delinquencies**") that is not paid within thirty (30) days after its due date shall be delinquent. Upon a Delinquency becoming delinquent, the Board of Directors, in its sole discretion, may take any or all of the following actions:

- (a) Assess a late charge for each Delinquency in an amount established by the Board of Directors;
- (b) Assess an interest charge from the date of delinquency of one and one-half percent (1½%) per month (18% APR) for each month, or portion thereof until paid in full, or such other rate as the Board of Directors may establish, but in no event a rate that is usurious under Missouri law;
- (c) Suspend the voting rights and other privileges of the Owner during any period of a Delinquency;
- (d) Accelerate all remaining Assessment installments so that unpaid Assessments and other Delinquencies shall be immediately due and payable;
- (e) Bring an action at law against any Owner personally obligated to pay the Delinquency;

- (f) File a statement of lien with respect to the Lot; and
- (g) Proceed with foreclosure of liens for the Delinquency.

Each Delinquency (which, as defined above, includes any unpaid Monthly Townhome, Special Townhome or Default Assessment, Fine or Lien Fee) shall constitute a lien on the Lot, including the Townhome thereon and any other Improvements, and shall attach on the due date for the Delinquency. Such lien shall also secure all late charges, interest and costs of collection, including reasonable attorneys' fees. After first giving the applicable Owner of the Lot at least ten (10) days' written notice of the Delinquency and intent to assert a lien, the Association may evidence the lien by filing a certificate of lien with the Office of the Recorder of Deeds for Platte County, Missouri, at Platte City. The certificate of lien, which shall be signed and acknowledged by the President, any Vice President or the Secretary of the Association, or on behalf of the Association by any Manager appointed by it, shall set forth (i) the name and address of the Association, (ii) the amount of the Delinquency, (iii) the amount of accrued interest, penalty and other amounts due, (iv) the name of the Owner of the Lot and (v) the legal description of the Lot. Simultaneously with its filing thereof, the Association or its Manager shall mail a copy of the certificate of lien to the Owner at the address of the Lot or to such other address as the Association has in its files for the Owner. At any time thirty (30) or more days after filing the certificate of lien, the Association may institute foreclosure proceedings against the affected Lot in the manner for foreclosing a deed of trust by private sale on real property under the laws of the State of Missouri and recover the amounts of all Delinquencies, late charges, interest and costs of collection, including reasonable attorneys' fees, as a part thereof. Each Owner of a Lot by its acceptance of a deed thereto hereby consents to such foreclosure mechanism. In the event of any such foreclosure, the Owner shall be liable for the amount of all unpaid Delinquencies, all penalties, late charges and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien and all reasonable attorneys' fees and expenses incurred in connection with the enforcement of the lien, including foreclosure. The Association shall have the power to bid on a Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. All liens for Delinquencies shall continue for a period of five (5) years from the date of attachment and no longer, unless within such time suit is commenced to collect the Delinquency against persons personally liable for such amount or foreclosure proceedings are instituted. In such cases the lien shall continue until termination of the suit and sale of the Lot upon execution of any judgment obtained or until completion of foreclosure proceedings. It is the intent hereof that all Delinquencies, late charges, interest and costs of collection, including reasonable attorneys' fees, be lienable and collectible as set forth above.

**6.8 Personal Obligation.** The amount of any Delinquency chargeable against any Lot shall be a personal and individual debt of the Owner of the Lot at the time the Assessment became due. No Owner may exempt himself from liability for the Delinquency by abandonment of his Lot or by waiver of the use or enjoyment of all, or any part of, the Common Area or the Restricted Common Areas. All successors to the fee simple title of a Lot shall be jointly and severally liable for all unpaid Delinquencies, interest, late charges, penalties, costs, expenses and reasonable attorneys' fees against such Lot with the Owner who owned the Lot at the time the unpaid Delinquency first became due. Nothing contained herein shall prejudice any such successor's rights to recover from any prior Owner amounts paid by such successor. The liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Lot. The successor may rely on the statement of status of Delinquencies by, or on behalf of, the Association under Article 6.11 below. The Association may bring suit against the Owner or any successor to recover unpaid Delinquencies any penalties and interest thereon, the cost and expenses of such proceedings and, if allowed by law, all reasonable attorneys' fees and expenses in connection therewith, without foreclosing or waiving the Delinquency lien provided in this Declaration.

**6.9 Priority of Lien.** The lien for Delinquencies provided for in this Declaration shall be subordinate to (a) liens for real estate taxes and special governmental assessments and (b) Mortgages recorded prior to the due date for any such Delinquency. The lien for Delinquencies shall be superior to and prior to any homestead exemption provided now or in the future under the laws of the State of Missouri which all present and future Owners waive by taking title to Lots. Except as specifically set forth herein or provided by law, no sale or transfer of a Lot shall release it from the lien of any Delinquency. The amount of any extinguished lien for a Delinquency may, at the direction of the Board of Directors, be reallocated and assessed to all Townhome Lots as a Common Expense.

**6.10 Notice to Mortgagee.** Upon written notice by a Mortgagee to the Association of a Mortgage and written request for notice of unpaid Delinquencies, the Association shall report to the Mortgagee all Delinquencies remaining unpaid for longer than sixty (60) days after the due date. Any Mortgagee holding a lien on a Lot may pay any

unpaid Delinquency, together with all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Lot for the amounts paid with the same priority as the lien of the Mortgage.

**6.11 Statement of Status.** Upon written request of any prospective Mortgagee or purchaser of a Lot and payment of a reasonable fee established by the Board of Directors, the Board of Directors of the Association shall issue a written statement setting forth the amount of all unpaid Delinquencies, if any, with respect to such Lot. The amount set forth on such statement from the Association shall be binding on the Association if the prospective purchaser purchases the Lot; provided, however, the Owner of the Lot during the time when such Delinquency became due and owing shall remain liable for all unpaid Delinquencies. If the Association does not issue a written statement within thirty (30) days of its receipt of the request and fee payment, the prospective purchaser may make an additional written request. If the Association does not issue a written statement within ten (10) days of the second request, the lien for the unpaid Delinquencies shall be released automatically upon the prospective purchaser's acquisition of the Lot. A statement shall be deemed issued by the Association upon deposit in the U.S. Mails or tender of delivery to the prospective purchaser.

**6.12 Notification of Association's Address.** The Association shall notify each Owner, at their address listed with the Association, of the Association's address, and all changes thereto, where payments shall be made and other Association business may be conducted.

**6.13 Pledge of Assessment Rights as Security.** The Association shall have the power to pledge the right to exercise its assessment powers and rights as security for any obligations of the Association; provided, however, any such action shall require, prior to the Turnover Date, the assent of the Developer and, after the Turnover Date, a majority vote of all Members of the Association. Such power shall include the ability to make an assignment of Assessments then payable to, or which will become payable to, the Association, which assignment may be then presently effective but allows such Assessments to continue to be paid to the Association and used by it unless and until the Association shall default on its obligation secured by the assignment.

**6.14 Optional Developer Loans to Association.** In the event that, at any time or from time to time, the Assessments (including the Monthly Townhome Assessments and the Special Townhome Assessments) and the Working Capital Fund Contributions are not sufficient for the Association to pay all Common Expenses or otherwise permit the Association to perform its duties and obligations under this Declaration, the Developer may (but shall not be obligated to) make loans or advances to the Association to enable it to meet such deficiency or deficiencies in funding. Any such loan or advance made by the Developer to the Association shall bear simple interest at a per annum rate equal to two percent (2%) above the prime rate of interest shown in the *Money Rates* section of *The Wall Street Journal* on the date such loan or advance is made and shall accrue until the loan or advance, with accrued interest, is paid in full. As soon as reasonably practicable, the Board of Directors shall increase the Assessments in amounts sufficient to pay off the principal and interest of such loans or advances made by the Developer to the Association.

## ARTICLE 7 INSURANCE LOSS; CONDEMNATION

**7.1 Association as Attorney-in-Fact.** Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any damage or other loss in connection with the Common Area which is covered by insurance written in the name of the Association or a complete or partial taking of the Common Area in condemnation. Each Owner also hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any damage or other loss in connection with the Townhomes or the related Restricted Common Areas which is covered by insurance written in the name of the Association or a complete or partial taking of the related Restricted Common Areas in condemnation. Acceptance by a grantee of a deed or other instrument of conveyance from the Developer or any other Owner conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact for such purposes. The Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver, settlement or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted hereby to the Association as attorney-in-fact.

**7.2 Repair of Damaged Townhomes.** In the event of damage to or destruction of all or part of any Townhome covered by insurance written in the name of the Association pursuant to Article 4.3 above, the Board of Directors shall arrange for and supervise the prompt repair and restoration of the damaged property including, without

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limitation, any damaged Townhomes and the fixtures and appliances initially installed therein by or for the Owners thereof, any replacements thereof installed by such Owners up to the value of those initially installed by or for them, but not including any furniture, furnishings, fixtures, equipment or other personal property supplied or installed by such Owners in the Townhomes unless covered by insurance obtained by the Association (the "Association Insured Property"). Notwithstanding the foregoing, each Owner shall have the right to supervise the redecorating of all but the exterior maintenance area of such Owner's Townhome, as applicable. The following shall apply in such event:

(a) As soon as practicable after an event causing damage to or destruction of any part of the Association Insured Property, the Board of Directors shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction", as used in this Article 7.2, shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

(b) As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage or destruction to the Association Insured Property and no consent or other action by any Owner shall be necessary. Assessments and Fines of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

(c) The proceeds received by the Association from any casualty or hazard insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association Insured Property.

(d) The insurance proceeds held by the Association, and the amounts received from any Special Townhome Assessments provided for below, constitute a fund for the payment of the costs of repair and reconstruction after casualty.

(e) It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds and the balance from the Special Townhome Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as a Special Townhome Assessment, then in equal shares per Lot, first to the Mortgagees and then to the Owners, as their respective interests appear.

**7.3 Repair of Damaged Common Area or Restricted Common Areas.** Except as provided herein to the contrary, the Association shall use the proceeds of all insurance for the Common Area or the Restricted Common Areas to repair or replace any part of the Common Area or the Restricted Common Areas, having a fair market value of more than \$5,000.00, damaged by an insured occurrence.

**7.4 Special Townhome Assessments if Insurance Proceeds Insufficient.** If the insurance proceeds are insufficient to pay the costs of repair or replacement as set forth in Articles 7.2 and/or 7.3 above, the Association may, pursuant to Article 6.3 above, levy, assess and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Townhome Assessment sufficient to provide funds to pay the additional cost of such repair or replacement. If the aggregate of any Special Townhome Assessment for expenses relating to such repair or replacement exceeds \$5,000.00 with respect to the Common Area or \$50,000 with respect to Townhomes or the related Restricted Common Areas, then the Special Townhome Assessment may be made only upon (i) prior to the Turnover Date, approval of the Developer, and (ii) after the Turnover Date, approval of the Board of Directors and approval of the Developer if it then still owns a Lot. Further levies may be made in like manner if the amounts collected prove insufficient to complete any such repair or replacement.

**7.5 Condemnation.** Except as provided herein, if any portion of the Common Area or the Restricted Common Areas on which Improvements have been constructed is taken by any condemnation or similar proceeding, the

Association shall restore or replace such Improvements on the remaining land included in the Common Area or the Restricted Common Areas. If the condemnation award is insufficient to pay the costs of restoring or replacing the taken Improvement, the Association may, pursuant to Article 6.3 above, levy, assess and collect in advance from the Owners, without the necessity of a special vote of such Owners, a Special Townhome Assessment sufficient to provide funds to pay the additional cost of such restoration or replacement. If the aggregate of any Special Townhome Assessment for expenses relating to such restoration or replacement exceeds \$10,000.00, then such Special Townhome Assessments may be made only upon (i) prior to the Turnover Date, approval of the Developer and (ii) after the Turnover Date, approval of a majority of the Class A votes possible to be cast under this Declaration and approval of the Developer if it then owns a Lot. Further levies may be made in like manner if the amounts collected prove insufficient to complete such restoration or replacement.

**7.6 Decision Not to Rebuild or Replace.** Prior to the Turnover Date, if the Developer decides, and after the Turnover Date, if Owners representing at least sixty-six and two-thirds percent (66 2/3%) of the Class A votes possible to be cast under this Declaration agree by vote at a meeting or in writing, not to repair or replace any part of the Common Area or the Restricted Common Areas damaged by an insured occurrence and do not authorize alternative improvements to such part of the Common Area or the Restricted Common Areas, the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Area or the Restricted Common Areas by the Association in a neat and attractive condition. Prior to the Turnover Date, the Developer and, after the Turnover Date, Owners representing at least sixty-six and two-thirds percent (66 2/3%) of the Class A votes possible to be cast under this Declaration may elect not to restore or replace any improvements comprising a part of the Common Area or the Restricted Commons Areas taken by condemnation. In either case, the Board of Directors shall, in its sole discretion, either retain all unused insurance proceeds or condemnation awards (or any awards in excess of the cost of restoring or replacing the taken improvements) in reserve or distribute such proceeds to the Owners in accordance with each Owner's Proportionate Share. Notwithstanding the foregoing, the Developer and the Owners may not agree, vote or elect not to repair, reconstruct or restore any recreational facilities, trails, lights, sprinkler systems or storm water detention facilities or any other facilities required by any plat, agreement with the County or required by County ordinance or code without first obtaining the written consent of the County pursuant to Section 16.4 below and, with respect to storm water facilities, taking adequate alternative storm water drainage control measures.

## ARTICLE 8 TOWNHOME MAINTENANCE SERVICES TO BE PROVIDED BY THE ASSOCIATION

**8.1 General.** Subject to the provisions of Article 9 below, in addition to the maintenance upon the Common Area and upon the Restricted Common Areas provided for elsewhere in this Declaration, and as allowed or required by the Association under this Declaration, the Association shall provide (or arrange for provision of) the following services to each Townhome and the Townhome Lot on which it is located, which is subject to the Monthly Townhome Assessment hereunder in as nearly a uniform manner as may be reasonably possible, and each Townhome Owner shall be obligated to accept and participate in the Association's provisions of such services by such Owner's acceptance of a deed to such Owner's Lot.

**8.2 Exterior Maintenance.** The Association shall provide exterior maintenance upon each Townhome which is subject to the Monthly Townhome Assessments hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces and other exterior Improvements. The foregoing shall not include any responsibility on behalf of the Association to repair or replace exterior building surfaces or foundations arising or resulting from: (i) a Townhome Owner's failure to properly and adequately provide routine general maintenance and protection from the elements or other care to such Owner's Townhome; or (ii) fire, windstorm, vandalism or other casualty loss covered by fire and extended coverage loss provisions of a standard form of homeowner's insurance policy. Such exterior maintenance shall not include driveways, sidewalks, decks or patios, glass surfaces, windows, window frames, window hardware, screens, light bulbs, garage doors or doors (which shall be each such Owner's responsibility). No change in the color of the exterior surfaces of any Townhome or any vinyl deck railing, screen or fence between the Townhomes shall be made by the Association or any Owner from the original colors used without such change being first considered and recommended by the Review Committee. Prior to the Turnover Date, the Developer must approve any such recommendations. After the Turnover Date, such recommendations shall be submitted to the Class A membership for acceptance, which acceptance shall require a vote of sixty-six and two-thirds percent (66 2/3%) of the Class A Members of the Association present at a meeting called to consider such proposal at which a quorum is present.

**8.3 Lawn and Landscaping Care; Snow Clearing.** The Association shall provide lawn and landscaping care consisting of mowing, edging, fertilizing, weed control and reseeding of all grass areas and trimming and replacing of trees, bushes, shrubbery and plantings on the Townhome Lots and the related Restricted Common Areas (other than those which are a Townhome Lot Owner's responsibility as set forth in Article 8.2 above). The Association also shall provide for snow clearing from the Townhomes driveways and sidewalks (and related public streets if approved by the Board of Directors).

**8.4 Townhome Owner's Responsibility for Sewer Lines.** Each Townhome Owner shall be responsible for the maintenance, repair and replacement of the sewer line from the Townhome to the public sewer system, including any collectors, and is hereby granted an easement across that portion of the Common Area or the related Restricted Common Areas in which such sewer line or any collector is located for such purpose.

**8.5 Uniformity of Service.** The Association shall arrange and provide for a uniform method of providing the foregoing services to the Townhomes. The Association shall have authority to determine the exact method of providing for such services by virtue of the powers set forth in Article 4 of this Declaration and, toward that end, shall have authority to contract with one or more providers of such services on behalf of all the Townhome Owners to provide such services to the Townhomes within the Subdivision.

**8.6 Exclusivity.** No Townhome Owner shall do any act or take any action on such Owner's part which shall interfere or conflict with the Association's sole responsibility to provide the services set forth herein, and particularly shall not seek to provide such services to such Owner's own Townhome unless the Association fails to provide such service, after written notice to the Association demanding such services be reasonably provided, to the Townhome Owner who can establish such services are not being provided to such Owner's Townhome, in a uniform manner with the other Townhomes within the Subdivision.

**8.7 Townhome Owner's Responsibility for Driveways, Sidewalks, Patios and Decks.** Anything contained above to the contrary notwithstanding, each Owner of a Townhome shall be responsible for using due care in the usage and utilization of and for the repair and replacement of any driveway and/or sidewalk areas dedicated to such Owner's Townhome. The foregoing responsibility shall include, but not be limited to, each such Owner's obligation to protect and preserve the surface of such driveway and sidewalk from: (i) loads, weights or vehicles heavier than that which residential construction practices would customarily be designed to handle; (ii) frequent, continuous or undue exposure to salts, snow or ice melt or removal products or other chemicals, compounds or substances whose properties or characteristics are harmful, damaging, caustic or otherwise deleterious to the finished surface of such driveway or sidewalk. The repair of any damage or destruction caused to or the replacement of any such driveway or sidewalk, for any cause or any reason, shall be the responsibility of such Owner, and if such Owner fails to do so, the Association shall be authorized to repair such damage or to make any necessary replacement at the cost and expense of such Owner and to collect the same, together with all other costs and expenses of the Association associated with the enforcement of the Association's rights hereunder. If, in the course of installing, maintaining or repairing Improvements located on the related Restricted Common Areas or Townhome Owner, or such Owner's contractor, agent or employee, damages, destroys or harms any Improvement located within the Common Area or the related Restricted Common Areas, it shall be such Owner's responsibility to repair, renovate or correct any such damage, destruction or harm. Each Townhome Owner also is responsible for all maintenance, repair and replacement of any patio or deck pertaining to such Owner's Townhome and the Association shall have no responsibility therefor.

## ARTICLE 9 TOWNHOME PARTY WALLS AND RELATED MATTERS

**9.1 Boundary Line Between Townhomes.** The boundary line between two (2) Townhomes shall be deemed to be the center line of the airspace between the exterior walls of the two (2) Townhomes which abut such airspace (the "Party Walls") or, if there is no such airspace, where the Party Walls abut, notwithstanding the fact that the common boundary line for the Townhome Lots may not be located precisely upon said center line of the Party Walls. The Owner of each Townhome Lot from time to time shall have the full rights of ownership, use and occupancy of the Townhome located primarily upon such Townhome Lot and the Owner of one (1) Townhome shall not have any right, title or interest in any part of the other Townhome located primarily upon the adjacent Townhome Lot.

**9.2 Repair and Maintenance of Party Walls.** Subject to the provisions of Articles 9.5 and 9.6 below, the Owners of the Townhomes from time to time shall, at their respective sole cost and expense, make all repairs and perform all maintenance required upon the surface and non-structural elements of the portion of the Party Walls which serves as an interior/exterior wall of the Townhome owned by such Owner; provided, however, that if and to the extent that any such repairs or maintenance are necessitated by reason of the negligence or wrongful act of one (1) Townhome Owner (or such Owner's tenants, agents, employees, guests or invitees), then, subject to the provisions of Article 9.6 below, such repairs and maintenance shall be made and performed at the sole cost and expense of the Owner whose (or whose tenant's, agent's, employee's, guest's or invitee's) negligence or wrongful act necessitated such repairs or maintenance.

**9.3 Repairs and Maintenance of Utilities in and Structural Elements of Party Walls.** Subject to the provisions of Articles 9.5 and 9.6 below, the Owners of the Townhomes from time to time shall make or cause to be made all repairs and maintenance to all utilities to the extent common to such Townhomes including, but not limited to, sewer, water and electrical utilities and to the structural elements of such Owner's portion of the Party Walls, with the cost of any such common repairs or maintenance to be paid equally by each applicable Owner; provided, however, that if and to the extent that any such repairs or maintenance are necessitated by reason of the negligence or wrongful act of one (1) Owner (or such Owner's tenants, agents, employees, guests or invitees), or they are applicable only to one (1) Owner's portion of the Party Walls, then, subject to the provisions of Article 9.6 below, such repairs and maintenance shall be made and performed at the sole cost and expense of the Owner whose (or whose tenant's, agent's, employee's, guest's or invitee's) negligence or wrongful act necessitated such repairs or maintenance or whose portion is affected.

**9.4 Repairs/Maintenance in Compliance with Laws.** Any and all repairs and maintenance which a Townhome Owner, or all Townhome Owners jointly, shall be required to perform hereunder or shall elect to perform shall be done in a good and workmanlike manner and in full compliance with all laws, ordinances, statutes, rules and regulations of any Federal, State, County or local government or governmental agency or authority. Any such repairs and maintenance, once commenced, shall thereafter be diligently pursued to completion. Each such Owner shall have a reciprocal easement across the other applicable Owner's Lot to allow reasonable access for the purpose of making inspections and performing any maintenance or repairs. Such easement rights shall be exercised in such a manner as to avoid, to the extent reasonably practicable, unnecessary interference with the use and occupancy of the other Owner's Lot.

**9.5 Insurance.** The casualty and property damage insurance required to be carried by the Association as set forth in Article 4.3 above shall expressly cover casualty damage or destruction of the Party Walls.

**9.6 Waiver of Liability.** Notwithstanding anything to the contrary herein, each Owner of a Townhome hereby releases the Association, the Developer, the other applicable Townhome Owner(s) and their respective tenants, agents, employees, guests or invitees from all liability for damage due to any act or neglect of the Association, the Developer, such other Owners or their respective tenants, agents, employees, guests or invitees (except as herein provided) occurring to the Townhome which is or might be incident to or the result of a fire or any other casualty which is or would be covered by the casualty insurance policy described in Article 4.3 above or which is covered by any other insurance policy actually maintained by such Owner or such Owner's tenants or other occupants; provided, however, that the releases herein contained shall not apply to any loss or damage occasioned by the willful act or omission of any such Owner.

**9.7 Limitation on Alterations to Party Walls.** No Owner of a Townhome shall have the right, except with the prior written consent of the other applicable Townhome Owner(s), to (i) make any alterations or additions to any Party Wall or any part thereof, except non-structural, interior alterations made within the living unit of such Owner's Townhome, or (ii) take any action which will adversely affect the structural integrity or sound transmission prevention qualities of the Party Walls. To the extent any such Owner shall make any alterations or additions to the Party Walls, (a) such Owner shall, at such Owner's sole cost and expense, keep and maintain such alterations or additions in good condition and repair and (b) in the event of any fire or other casualty, the restoration and repair of such alterations or additions shall be at the sole cost and expense of such Owner.

**9.8 Exterior of Party Walls - Colors and Materials.** The exterior portions of any Party Wall visible outside a Townhome shall be of the same color and/or materials as the exterior walls thereof or only such other colors and/or materials as are approved in advance by the Review Committee.

**9.9 Lien Rights.** Should a Townhome Owner fail or refuse to pay any costs or expenses as provided in this Article 9, the non-defaulting adjacent Owner(s) shall be entitled to a lien on the Lot of the Owner so failing or refusing to pay to the extent of such costs or expenses. Payment of such costs or expenses may be enforced as a mechanic's lien on such Lot through proceedings in any court in Platte County, Missouri, having jurisdiction of suits for the enforcement of such liens. Such non-defaulting Owner(s) may also file a certificate of nonpayment of such costs or expenses against the defaulting Owner's Lot in the office of the Recorder of Deeds for Platte County, Missouri, at Platte City. Such liens shall continue for a period of five (5) years from the date of nonpayment of the costs or expenses, unless suit shall have been instituted for collection of the costs or expenses, in which case the lien shall continue until payment in full of such costs or expenses or termination of the suit against the defaulting party.

**9.10 State Law Governs.** To the extent not inconsistent with the provisions of this Article 9, the laws of the State of Missouri regarding the Party Walls shall be applicable with respect to each Party Wall.

## ARTICLE 10 ARCHITECTURAL CONTROL AND CONSTRUCTION STANDARDS

**10.1 Architectural Review Committee.** An Architectural Review Committee (the "Review Committee"), consisting of three (3) or more persons, shall be established to exercise the powers granted by this Article 10. At all times prior to the Turnover Date, the Developer shall have the power to appoint all members of the Review Committee, who shall serve until they resign or are removed by the Developer. After the Turnover Date, the Board of Directors shall appoint the members of the Review Committee, who shall serve terms of one (1) year or until their earlier resignation or removal by the Board of Directors. All decisions of the Review Committee shall be made by a majority of its members.

**10.2 Architectural Control.** To preserve the harmony of the construction, location and exterior design and appearance of the Lots, the Townhomes and other Improvements on the Lots, (a) all Townhomes, buildings, walls, fences, structures and other appurtenances or Improvements of any kind to be constructed or located on any Lot (collectively, the "Improvements"), (b) all additions, changes and alterations to any Improvement which impacts its exterior design or appearance and (c) all changes to the topography of any Lot (collectively, the "Proposed Construction"), shall be approved, in writing, by the Review Committee before such Proposed Construction is commenced. Except as provided in Article 10.4 hereof, the Review Committee shall not approve any Proposed Construction which does not fully comply with the requirements hereof including, without limitation, Article 10.5 below, or where the exterior design or appearance (including exterior color) of the Proposed Construction is not, in the sole discretion of the Review Committee, in harmony with the existing Townhomes in the Subdivision, the topography and overall design and appearance of the Subdivision, the Developer's intended design and appearance of the Subdivision or otherwise detracts from the design and appearance of the Subdivision in the sole opinion of the Review Committee. The Review Committee also shall have the power and right to designate certain areas within the Property as Restricted Common Areas.

**10.3 Application for Approval.** The Owner shall apply, in writing, to the Review Committee for approval of all Proposed Construction. The application shall include plans, drawings, specifications and information (including all construction drawings and site plans) showing, as and if applicable, (a) the front, rear and side elevations, (b) proposed grading and drainage from the Lot, (c) floor plan with total square footage, (d) height of all Improvements, (e) exterior materials, (f) method of construction, (g) exterior color scheme, including samples, manufacturers name and product numbers, (h) landscaping and (i) all other information reasonably required by the Review Committee. The Review Committee may request additional information from an Owner at any time within thirty (30) days after its last receipt of information from the Owner or his or her representatives. The Review Committee may establish and publish such other rules and regulations regarding approval of Proposed Construction as the Review Committee determines are reasonable. If the Review Committee does not act upon an Owner's application within thirty (30) days after submission of all information required by the Review Committee, approval of the Proposed Construction as submitted shall be deemed to have been given and the requirements of this Article 10.3 fully satisfied. The provisions of this Article 10.3 shall not be construed or interpreted to imply any ability of an Owner to modify, alter, change or otherwise improve the exterior of any Townhome.

**10.4 Modification of Requirements: Appeal of Review Committee Decision.** Except as specifically provided herein to the contrary, by unanimous decision, the Review Committee may, for good cause shown, waive any



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of the requirements set forth herein, including those set forth in Article 10.5 hereof. Any waiver granted shall not be effective and may not be acted upon until eleven (11) days after the date on which the Review Committee renders its decision. The Owner submitting an application may appeal any decision of the Review Committee which denies that application for Proposed Construction. An Owner of any Lot may appeal any decision of the Review Committee which waives any of the requirements set forth herein. All appeals shall be to the full Board of Directors. All appeals to the Board of Directors shall be made in writing and submitted to the Secretary of the Association within ten (10) days after the Review Committee renders its decision which is the subject of the appeal. If the Board of Directors does not act upon an appeal within sixty (60) days of it being timely submitted, the relief requested in the appeal shall be deemed granted. In deciding an appeal, the Board of Directors can take only such actions as the Review Committee was originally empowered to take. All decisions on appeals shall be made by a majority of the Board of Directors, acting in the sole discretion of the members of the Board, and shall be final and not subject to further appeal, including to the Owners, or subject to judicial review. Pending final decision on appeal, the waiver requested shall be held in abeyance and may not be acted upon.

**10.5 Construction Standards Applicable to Townhomes.** In addition to compliance with all ordinances, codes and restrictions enacted by the City which are applicable to a Townhome Lot, each Townhome constructed on any Townhome Lot shall conform to the following:

- (a) Except for model Townhomes, temporary model Townhomes or other sales trailers or centers or as otherwise specifically provided herein, no building other than a Townhome may be constructed on any Townhome Lot. All Townhomes must be constructed on Lots platted and/or created only for Townhomes. Under no circumstance, even with Review Committee or Board of Director approval, shall any commercial, retail or other business building be constructed on any Lot which is subject to this Declaration.
- (b) All Townhomes shall be erected or located on each Townhome Lot as shown on the replat, lot split certificate of survey, minor subdivision or other document creating the same and any requirements of any County code or regulation. The Review Committee shall approve the orientation of the Townhomes on the Townhome Lots.
- (c) The finished floor area of each Townhome shall be at least 1,200 square feet of total finished floor area. For purposes of calculating the foregoing minimum, the area of any attics, porches and any portion thereof that is not enclosed and finished for all-year occupancy, shall not be included. The Review Committee may, in its sole discretion, require greater square footage for any Townhome as a condition of approval of any Proposed Construction.
- (d) No Townhome may exceed two (2) stories in height in the front without prior unanimous approval of the Review Committee.
- (e) All exterior surfaces of any Townhome shall be constructed only of wood covered with vinyl siding at a minimum of .042 inch panel thickness, brick, stone, masonry or such other materials as approved by the Review Committee or a combination of the foregoing materials, and be of a color or colors required by the Review Committee, which colors may not be changed by any Owner. The Review Committee may limit use of vinyl siding to only certain Townhomes in certain areas of the Subdivision.
- (f) Any portion of a foundation or crawl space structure protruding more than twelve inches (12") above the ground shall be painted the same color as the body of the Townhome.
- (g) All Townhomes shall have wood, wood clad, vinyl or aluminum windows and may have aluminum or other metal storm windows and screens.
- (h) All Townhomes shall be roofed with a minimum of a 30-year composition roof or such other materials as shall be allowed by the Review Committee.
- (i) During construction, no Townhome or any addition to or remodeling thereof shall stand with an unfinished exterior for longer than six (6) months.

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(j) All water, gas, electricity, sewer, telephone, cable television and other utilities or services shall be located and run underground on or to each Townhome Lot.

(k) All driveways shall be constructed of asphalt or concrete. No rock or gravel driveways shall be permitted. Each Owner of a Townhome shall maintain such Owner's driveway in good condition and replace the same when necessary. No driveway may be constructed in a manner which permits an additional vehicle to be parked on such driveway without impeding the direct access of any other vehicle to any portion of the garage, any such determination to be made in the sole discretion of the Review Committee.

(l) All yards initially shall be sodded with the following perennial turf grasses: blue grass, fine blade fescue or fine blade rye. Zoysia grass may be used in certain areas but only as approved in advance by the Review Committee. Use of bermuda grass shall not be permitted. Sodding shall not be required in locations where the Review Committee determines the soil, light, topography or costs would make sodding impractical or unreasonably expensive.

(m) Unless otherwise approved by the Review Committee, each Townhome shall have a garage for no less than one (1) vehicle and the walls of such garage shall be finished in a quality manner.

(n) No vegetable or herb gardens shall be permitted except within an area five feet (5') from the rear of a Townhome and flower gardens shall be permitted only within five feet (5') of the foundation in the front, rear or on any side thereof.

(o) A hot tub or spa may be constructed at the rear of a Townhome but within the Lot lines for personal, non-commercial use by the Owner thereof with the Review Committee's prior approval. The Review Committee may require screening of such items.

(p) No basketball goals, whether permanent or portable, shall be erected, installed, used, placed or permitted to remain on any Townhome or any part or portion thereof or on or in any related Restricted Common Areas adjacent thereto (i.e. driveways or sidewalks).

(q) No sport court nor any playground equipment may be installed or used on or in any Restricted Common Areas adjacent or nearby to any Townhome.

(r) No fencing of any type shall be erected or installed on the Common Area or the Restricted Common Areas by an Owner or Townhome Owner;

(s) Construction of a Townhome shall be fully completed within nine (9) months after excavation is started.

(t) In the event of any conflict between the provisions of this Article 10.5 and/or other provisions of this Declaration, the provisions of this Article 10.5 shall control.

## ARTICLE 11 USE RESTRICTIONS

11.1 **General.** Unless the Board of Directors, acting in its sole discretion, unanimously waives the application thereof (which waiver may not be granted if contrary to any specific prohibition set forth herein), the following restrictions are hereby placed on the Property.

11.2 **Townhome Use Only.** Except as specifically provided herein, each Townhome shall be used strictly as a family dwelling. No business shall be conducted, or carried on, in or from any Lot or Townhome except: (a) marketing or sales activities by the Developer, or its agents, and builders authorized to have model Townhomes may be conducted from model Townhomes or sales trailers and (b) with the approval of the Review Committee, conduct of a profession or home industry which does not involve: (i) employees working at the Townhome who are not permanently residing therein and (ii) customers regularly visiting to conduct business. Even if the foregoing are satisfied, the Review

Committee may withhold its approval if it determines, in its sole discretion, the commercial activity is not compatible with the Subdivision for any reason, such as, without limitation, a daycare business which is prohibited.

**11.3 Prohibited Buildings and Structures.** Except as provided below, no mobile home or trailer (with or without wheels), basement (without a Townhome above it), moved house, manufactured house, tent, shack, barn, storage or utility shed, gazebo, permanent cooking grill or oven or other outbuilding or structure shall be constructed or located on any Lot, Common Area or Restricted Common Areas at any time.

**11.4 Fencing Limitations.** Except for and excluding any vinyl fence or screen installed between the Townhomes in the rear in locations approved by the Review Committee, no fences shall be permitted on any Lot.

**11.5 Mail Boxes.** If mail delivery via centralized boxes is available, no other mailboxes shall be located on the Lots or the Restricted Common Areas. If such centralized mail delivery is unavailable, the Review Committee shall approve the design, appearance and location of all mailboxes erected or located on any Lot or the Restricted Common Areas.

**11.6 Antennas and Other Projections.** No television, radio, citizen's band, short wave or other antenna, satellite dish, solar panel, clothes line, pole, flagpole, ornamental light fixtures or other unsightly projection shall be visible from the exterior of any Townhome, including any such item attached thereto or located in a yard, the Restricted Common Areas or the Common Area. The Review Committee may, in its sole discretion, approve satellite dishes which are twenty inches (20") or less in diameter or otherwise in size attached to a Townhome permitted by applicable laws and regulations subject to all conditions which the Review Committee attaches to such approval, including the location and applicable screening of the satellite dish, which conditions shall comply with all applicable laws and regulations. To the extent that this restriction may be inconsistent with the regulations of the Federal Communications Commission (the "FCC"), as amended from time to time, this restriction shall be deemed modified to the extent necessary to comply with such FCC regulations and still provide such limitations as are consistent with the intent of this restriction.

**11.7 Garages.** No garage may be improved for use as living area. All doors of garages of Townhomes which are visible from the curb shall be kept closed except when removing motor vehicles or other items from, or the cleaning of, such garage.

**11.8 Holiday Decorations.** Christmas and other holiday lights and decorations may be displayed on the exterior of a Townhome only during the period beginning forty-five (45) days prior to and ending twenty-one (21) days after such holiday and they must be removed at the expiration of such period. The method and means of installation of such lights and decorations shall be only as established or permitted by the Review Committee.

**11.9 Septic Tanks.** No septic tanks or other individual sewage disposal system may be constructed on any Lot or elsewhere on the Property.

**11.10 Storage Tanks.** No tank for storage of oil or other product may be maintained in any Townhome garage or on any Lot, whether above or below the surface of the ground.

**11.11 Refuse.** No trash, ashes or other refuse may be thrown, dumped, stored or burned on any Lot, the Common Area or any of the Restricted Common Areas, except during construction of a Townhome or any addition thereto or remodeling thereof. The storage or burning of trash, garbage, old appliances, junk or other refuse is prohibited on the Property outside of a Townhome, except such items may be set out for collection after 6:00 p.m. on the day before the scheduled collection day. If there is an alley in the rear of a Townhome, such items set out for collection shall be placed along such alley.

**11.12 Signs; Advertising.** Except as provided below, no signs, billboards or advertising structures of any kind may be placed on any Lot or in or on any Townhome or be visible from the interior of any Townhome or building on the Lot. Signs advertising the lease or sale of an individual Lot, which do not exceed five (5) square feet in size, may be erected or placed on the Lot (or in the Common Area nearest such Lot) being sold or leased. The Developer may erect or place "bill board" type signs related to the Subdivision on any Lot owned by it or on any Common Area or Restricted Common Areas.

11.13 **Nuisances.** No activity shall be carried on in, on or from any Lot or Townhome which is noxious or offensive or an annoyance or nuisance to the neighborhood. The Owner shall be responsible for all activity carried on in, on or from a Lot or a Townhome whether or not the Owner is involved in, or has knowledge of, such activity.

11.14 **Animals.** At no time shall pit bulls, animals with vicious propensities by breed, bees, cows, horses, swine, goats, sheep, poultry, other domesticated farm animals, undomesticated (wild) animals, exotic animals or animals requiring special permits from the State of Missouri or United States of America be kept at any time in any Townhome or on any Lot or in any Restricted Common Areas or the Common Area. Except as otherwise prohibited herein, dogs, cats and other household pets (i) may be kept in a Townhome (provided such pets are not kept for breeding or other commercial purposes), (ii) are limited to no more than three (3) in total number and (iii) the keeping of such pets does not create any unsanitary condition. Doghouses or similar animal shelters shall be located for a Townhome on a patio or deck in the back thereof and shall only be of such size, design and materials as approved in advance by the Review Committee and painted the same color as the main structure.

11.15 **Vehicles.** Except as provided below, no boats or motor vehicles, including automobiles, buses, campers, trailers, recreational vehicles, tractors, semi-tractors, semi-trailers, trucks or motorcycles, may be parked, stored or kept on any Lot, Common Area or Restricted Common Areas (including driveways) except in an enclosed garage. However, one (1) passenger vehicle (i.e. automobile or pickup truck not larger than 3/4 tons) in operable, drivable condition may be parked on a driveway at any time. Any other passenger vehicles, trucks, recreational trailers, campers, motorcycles and recreational vehicles not exceeding twenty (20) feet in total length which are owned by a person not permanently residing in a Townhome on the Lot may be parked in the driveway or at the curb but for no more than twenty-four (24) consecutive hours and during no more than any portion of seven (7) out of fourteen (14) consecutive days. No major repair work shall be performed on any vehicle or boat while parked on the driveway or in the yard outside the garage or on any Street or on any portion of the Common Area or the Restricted Common Areas. All vehicles that are not drivable, whose presence makes an unsightly appearance or create a nuisance or that are a hazard to life, health or public safety, shall not be parked or kept on any driveway, yard, Common Area, Restricted Common Areas or at the curb for more than twenty-four (24) consecutive hours.

11.16 **Occupancy; Repair.** No Townhome shall be occupied until it is fully completed, except for exterior painting and minor trim details. In the event of fire, windstorm or other damage, no Townhome shall be permitted to remain in a damaged condition longer than three (3) months.

11.17 **Storage of Construction Materials.** No building material of any kind or character shall be placed or stored on any Lot, the Common Area or the Restricted Common Areas until the Owner thereof has received required approval from the Review Committee for the project and is ready to commence construction. All material permitted to be stored on a Lot shall be placed only within the property lines of the Lot or Lots upon which the approved Improvements are to be constructed or on portions of the Common Area or Restricted Common Areas approved in advance by the Review Committee.

11.18 **Landscaping Easement.** Except as permitted by any plat of the Subdivision and the Review Committee or elsewhere herein, no Improvement or personal property of any Owner shall be located in any trail area, landscape or open green space or buffer strip shown on any plat affecting the Property or in any of the Restricted Common Areas or the Common Area.

11.19 **Easements.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the plat or plats of the Subdivision or by separate recorded instruments. No structure, except driveways, paved areas and approved fences, may be placed or permitted to remain within any utility easement which interferes with the construction or reconstruction and the proper, safe and continuous maintenance of the such utility easement. No structure, planting or other material shall be placed or permitted to remain on any drainage easements which (a) damages or interferes with the installation, use or maintenance of the easement, (b) changes the direction of flow of drainage channels in the easements, (c) obstructs or retards the flow of water through drainage channels or its collection in detention ponds or basins in the easements. The Association also is hereby granted an easement to go on and, if necessary, maintain or replace, any shrubs or other plantings, located on the Lots therefor if the Owners fail to maintain the same and charge such Owner for the costs thereof.

11.20 **No Subdividing.** No Lot may be subdivided.

**11.21 No Mining Activities.** No portion of the Property shall be used, at any time, for mining, boring, quarrying, drilling, refining or other operations involving, or related to, the extraction or exploitation of any subsurface natural resource of any kind. The prohibitions of this Article 11.21 may not, under any circumstances, be waived or amended by the Review Committee, the Board of Directors, the Owners or Members.

**11.22 No Hunting, Firearms or Archery Use Permitted.** No hunting or use of air rifles, air pistols, firearms, bows, crossbows, arrows or bolts or other archery equipment, spears, blowguns or similar devices shall be permitted or conducted by any Owner, or by any Owner's guests, tenants or invitees, at any time on any Lot or any other portion of the Subdivision or the Property, including the Common Area and the Restricted Common Areas.

## ARTICLE 12

### DEDICATION AND USE OF STREETS, COMMON AREA AND RESTRICTED COMMON AREAS

**12.1 Streets.** The Streets are shown on plats for the Subdivision. All Streets shall be used only for their intended purposes as free and clear roadways for ingress and egress purposes and no Owner of any Lot shall block passage, damage or abuse any Street. All Streets have been dedicated to the County, are under its control and no work is permitted thereon without the prior approval of the County.

**12.2 Common Area and Restricted Common Areas.** To the extent not previously dedicated, the Developer hereby dedicates the Common Area and the Restricted Common Areas to the Association. The Developer will convey to the Association, by special warranty deed, the Common Area and the Restricted Common Areas in their then present condition, upon the completion of the initial construction of any facilities or Improvements on any Common Area or Restricted Common Areas. Thereafter, the Developer shall have no further responsibility or obligation of any kind with respect to such Common Area or Restricted Common Areas. The Common Area and the Restricted Common Areas shall be used only for their intended purposes. Private open areas, areas for trails, recreational areas, areas for monuments, signs or similar structures and any detention facility areas are shown on the plats for the Subdivision and limited to such uses and are not an extension of any Lot.

**12.3 Maintenance of Common Area and Restricted Common Areas.** Except as otherwise specifically provided herein (including Articles 8.4 and 8.7 above), the Association shall maintain, manage, operate, replace, repair and improve all Common Area and Restricted Common Areas, including all Improvements thereon. Any Owner damaging or abusing the Common Area or the Restricted Common Areas shall be responsible to the Association for all costs and expenses incurred by it to repair such damage, including full replacement of the damaged property. The Association may, but shall not be required to, maintain, manage, operate, replace, repair and improve all property located within the right-of-way of any Street including, without limitation, street lights and sidewalks, if the Board of Directors determines, in its sole discretion, that it would be in the best interest of the Association and the Owners that the Association undertake such activities. The Association may contract with a Manager or third parties to carry out all activities permitted by this Article 12.3.

## ARTICLE 13

### EXPANSION OR REDUCTION OF PROPERTY

**13.1 Reservation of Right to Expand.** By amendment or supplement to this Declaration, the Developer hereby reserves the absolute right to unilaterally expand the Property, from time to time, to include additional Lots, Common Area, Restricted Common Areas and other property in the Subdivision and other property that has not yet been subdivided or platted (collectively, the "Expansion Property").

**13.2 Declaration Operative to Expansion Property.** The addition of Expansion Property shall be done by the Developer filing one or more Supplemental Declarations of record in the Office of the Recorder of Deeds for Platte County, Missouri, at Platte City. Such Supplemental Declaration shall describe the Expansion Property, together with any covenants, conditions, restrictions and easements particular thereto. Expansion Property may be added in stages by successive supplements or in one (1) supplemental expansion. The Expansion Property shall be subject to all of the terms and conditions of this Declaration.

**13.3 Expansion of Definitions.** If the Property included in the Subdivision is expanded as provided in this Article 13, all definitions used in this Declaration shall be automatically expanded to include such additional

property. For example, "Lot" shall mean the Lots described in the existing plats for the Subdivision plus all additional Lots added by or pursuant to Supplemental Declarations and supplemental plats, and "Declaration" shall mean this Declaration as supplemented.

**13.4 Reservation of Right to Remove.** By amendment or supplement to this Declaration, the Developer hereby reserves the absolute right at any time to unilaterally remove from the effect and control of this Declaration any portion of the Property which the Developer has not sold or conveyed, whether platted or unplatted (the "Removed Property"). Any such removal shall be by Supplemental Declaration filed of record in the manner set forth above and shall be effective on the date so filed of record. Provided, however, that no platted portion of the Property nor any part thereof not yet platted but subject to a development plan previously approved by the County may be removed without the prior written consent of the County pursuant to Section 16.4 below.

## ARTICLE 14 PROPERTY RIGHTS OF OWNERS

**14.1 Owner's Easement of Enjoyment.** Subject to the other terms of this Declaration, every Owner has a non-exclusive right in and easement of enjoyment of the Common Area (exclusive of areas set aside as the Restricted Common Areas). Such easement shall be appurtenant to, and pass with, title to every Lot.

**14.2 Recorded Easements.** The Property shall be subject to all easements as shown on any recorded plat affecting the Property and to all other easements of record, or of use, as of the date this Declaration is recorded or as subsequently granted by the Association over or through the Common Area.

**14.3 Developer's Rights Incident to Construction and Enforcement of Declaration.** The Developer, for itself and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Area and the Restricted Common Areas, together with the right to store materials on the Common Area and the Restricted Common Areas, and to make such other use of the Common Area and the Restricted Common Areas as is reasonably necessary or incident to the construction of Townhomes on the Lots or other Improvements on the Property or other real property owned by the Developer or to permit enforcement of the provisions of this Declaration. The Developer may not exercise the foregoing rights in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Lots or the Subdivision by the Owners.

**14.4 Reservation of Easements, Exceptions and Exclusions.** The Developer reserves and hereby grants to the Association the concurrent right to establish, from time to time, by declaration or otherwise, utility and other easements, permits or licenses over the Common Area, for any purpose including, without limitation, to Streets, paths, walkways, drainage, recreation areas and parking areas, and to create other reservations, exceptions and exclusions for the best interest of all Owners and the Association. In exercising such right, the Association shall do so in order to serve all the Owners within the Subdivision.

**14.5 Emergency Access Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon all Streets and upon the Property in the proper performance of their respective duties.

**14.6 View.** No Townhome Owner has any right to an unobstructed view beyond the boundaries of such Owner's Lot. No Owner shall be entitled to prevent the construction or location of any structure, fence, planting material or other item on or in any other part of the Subdivision, which is permitted by this Declaration, because such structure, fence, planting material or other item obstructs any view from the affected Lot.

**14.7 Delegation of Use.** Any Townhome Owner may, in accordance with and subject to the limitations of the Association Documents, delegate such Owner's right of enjoyment to the Common Area to the members of the Owner's family, guests, tenants and invitees.

## ARTICLE 15 INCIDENTS OF OWNERSHIP IN THE SUBDIVISION

**15.1 Inseparability.** Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Lot, including the Townhome and other Improvements thereon, shall be presumed to be a gift, devise, bequest, transfer, encumbrance or other conveyance, respectively, of the entire Lot, including all easements, licenses and all other appurtenant rights (including rights to the Restricted Common Areas and Improvements therein related thereto) created by law or by this Declaration.

**15.2 No Partition.** The Common Area and the Restricted Common Areas shall be owned by the Association and no Owner, group of Owners or the Association shall bring any action for partition or division of the Common Area or the Restricted Common Areas.

**15.3 Limited Property Rentals.** A Townhome may be used for permanent or temporary occupancy by the Owner and the Owner's family. After the Owner has owned the Townhome for a period of at least three (3) years, such Owner may rent such Townhome for a term of one (1) year or more, subject to all the terms hereof, including those prohibiting the use thereof for commercial purposes. Rentals of Townhomes for periods of time less than one (1) year are not permitted.

## ARTICLE 16 DURATION OF DECLARATION; AMENDMENT

**16.1 Term.** The covenants, conditions, restrictions and easements set forth in this Declaration shall run with and bind the Property until December 31, 2030, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated at the expiration of any such period by a vote of the Members as set forth in Article 16.3 below.

**16.2 Amendment.** Except as otherwise provided herein, at all times prior to the Turnover Date, this Declaration may be amended, altered or modified by a Supplemental Declaration signed by the Developer and, after the Turnover Date, signed by the Class A Members holding a majority of votes possible to be cast under this Declaration and the Developer if it then owns any Lots. Except as otherwise provided herein, at all other times, this Declaration may be amended by a Supplemental Declaration by an instrument signed by the Class A Members holding at least sixty-six and two-thirds percent (66 2/3%) of the votes possible to be cast under this Declaration. Proper approval of all amendments shall be shown by a certificate of the Secretary of the Association, attached to the Supplemental Declaration to be recorded, certifying that the signature of the Developer or, if required, the signatures of a sufficient number of Class A Members approving the amendment, are on file in the office of the Association. No amendment shall be effective until the Supplemental Declaration setting forth the approved amendment is recorded in the Office of the Recorder of Deeds for Platte County, Missouri, at Platte City. Such amendments may amend, alter or modify the terms of this Declaration as it effects all existing Townhome Lots, including terms which impose additional covenants, conditions, restrictions and easements on such Lots, and may add provisions if single family residences, villas, patio homes or other types of homes are to be constructed on areas within the Subdivision. Any amendment that effects less than all existing Townhome Lots in the Subdivision shall be effective only as to those such Lots where the Owners thereof agree to such amendment. In no event shall any amendment reduce, interfere with or impair the Association's or its Directors' ability to establish and collect Assessments.

**16.3 Revocation; Termination.** This Declaration shall not be revoked or terminated at any time without the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the votes of the Class A Members possible to be cast under this Declaration and the approval of the Developer at all times prior to the Turnover Date or while it owns any Lot. Such revocation or termination shall be evidenced and effective in the same manner as set forth in Article 16.2 above for amendments hereof.

**16.4 Amendments Requiring County Consent.** Notwithstanding any other provision herein, no modification, alteration or amendment of this Declaration which conflicts with (a) any plat of any portion of the Subdivision, (b) any agreements entered into by the Developer and the County concerning the Subdivision, or (c) any County ordinance or code, may be made or become effective without the prior written consent of the County.

16.5 **Amendments for Landscaping/Fencing Restrictions.** In connection with the platting of any portion of the Property, the Developer may, and hereby reserves the right, by Supplemental Declaration or otherwise, to impose landscaping, buffering, fencing and other restrictions on such portion of the Property.

## ARTICLE 17 GENERAL PROVISIONS

17.1 **Enforcement.** Except as otherwise provided herein, the Association or the Board of Directors, the Developer and every Owner of a Townhome Lot has the right and power to enforce, by a proceeding at law or in equity, all conditions, covenants, restrictions and easements set forth in this Declaration. Failure of the Association or the Board of Directors, the Developer or any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so at a subsequent time. Any person successfully enforcing any terms of this Declaration shall, in the discretion of a court of competent jurisdiction, be entitled to recover its reasonable attorneys' fees and costs from the person against whom this Declaration was enforced. In the event that the Developer, the Association or its Board of Directors fail to enforce this Declaration, any Owner or Member may take such action to enforce the same by proceedings in a court of competent jurisdiction.

17.2 **Severability.** If any provision of this Declaration, or the application hereof to any circumstance, is held to be invalid or unenforceable to any extent, the remainder of this Declaration and its application to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

17.3 **Rule Against Perpetuities.** Notwithstanding anything in this Declaration to the contrary, the creation of all interests under this Declaration shall vest, if at all, within the period of time measured by the life of the survivor of the now living children of Prince Charles, Prince of Wales, plus twenty-one (21) years.

17.4 **Developer's Right to Assign.** The Developer may, by appropriate agreement made expressly for that purpose, assign or convey to a Successor Developer all, or any part, of the rights, reservations and privileges herein reserved by the Developer. Upon recording of the assignment in the Office of the Recorder of Deeds of Platte County, Missouri, at Platte City, the Developer's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document. Every Successor Developer shall have the rights of the Developer, including the right to transfer such rights set forth in this Article 17.4.

17.5 **Release of Liability.** None of the Developer, the Association, the Board of Directors or the members of the Review Committee, nor their respective officers, directors, stockholders, members, employees or agents, shall be liable to any Owner, Member or other person for any discretionary action taken or not taken under the terms hereof including, without limitation, approval, disapproval or failure to approve of any application or enforcement or non-enforcement of the terms hereof.

17.6 **Indemnification.** To the fullest extent permitted by law, every director and officer of the Association, the members of the Review Committee and the Developer (to the extent a claim may be brought against the Developer by reason of its election, appointment, removal or control over directors of the Association Board, its officers or members or the Review Committee) shall be indemnified by the Association, and every other person serving as an employee or direct agent of the Association or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board of the Association, be indemnified by the Association against all liabilities, damages, costs and expenses, including reasonable attorneys' fees and costs, incurred by or imposed upon him or her in connection with any proceeding or any settlement thereof to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having served in such capacity on behalf of the Association (or, in the case of the Developer, by reason of having elected, appointed, removed or controlled, or failed to control, officers or directors of the Association or members of the Review Committee) whether or not he or she is a director, an officer or a member of the Review Committee, or serving in such other specified capacity at the time such expenses are incurred; provided, however, that prior to agreeing to any such indemnification, the Association's Board shall determine, in good faith, that such officer, director, member of the Review Committee or other person, or the Developer, did not act, fail to act or refuse to act, willfully, or with gross negligence, or with fraudulent or criminal intent, in the performance of his, her or its duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise. Appropriate contractual liability insurance shall be obtained pursuant to Article 4 above to cover any liability exposure by virtue of the foregoing indemnification.



IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed by its duly authorized officers as of the day and year first above written.

\*ALL SIGNATURES MUST BE IN BLACK INK

DEVELOPER:

HUNT MIDWEST REAL ESTATE DEVELOPMENT, INC.

{Corporate Seal}

By:

*Ora H Reynolds*

Ora H. Reynolds, Vice President and General Manager  
of Residential Development

ATTEST:

By:

*Donald K. Hagan*

Donald K. Hagan, Secretary

ACKNOWLEDGMENT

STATE OF MISSOURI )  
) S.S.  
COUNTY OF CLAY )

On this 9th day of September, 2005, before me, the undersigned Notary Public in and for said County and State, personally appeared Ora H. Reynolds, who, being by me first duly sworn, did say that she is the Vice President and General Manager of Residential Development of Hunt Midwest Real Estate Development, Inc., a Missouri corporation, that she executed the foregoing instrument on behalf of said corporation under and with the authority of its Board of Directors and that she acknowledged that she so executed the same as the free act and deed of said corporation for the purposes therein stated.

DONNA K. WILLIS  
Notary Public - Notary Seal  
(Notary Seal Stamp)  
STATE OF MISSOURI  
County of Clay  
My Commission Expires November 1, 2005

*Donna K. Willis*  
Signature of Notary  
DONNA K. WILLIS  
Notary Public - Notary Seal  
STATE OF MISSOURI  
County of Clay  
Type or Printed Name of Notary  
My Commission Expires November 1, 2005

My Commission expires:

11/1/05

**EXHIBIT A  
TO  
DECLARATION OF HOMES ASSOCIATION  
AND  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF  
FOX CREEK**

**LEGAL DESCRIPTIONS OF PROPERTY COVERED BY AND SUBJECT TO THIS DECLARATION**

All that part of the Northeast Quarter and all that part of the Southeast Quarter of Section 18, Township 52, Range 34, Platte County, Missouri, being described as follows

Beginning at the Southwest corner of said Northeast Quarter; thence North 00°21'37" East, along the West line of said Northeast Quarter, 247.06 feet; thence North 89°56'22" East, 1,115.15 feet to a point on the Westerly right-of-way line, of Interstate Route 435, as now established; thence South 09°15'00" West, along said Westerly right-of-way line, 1252.77 feet to the South line of the North 60 acres of said Southeast Quarter; thence South 89°53'31" West, along said South line, 921.56 feet to a point on the West line of said Southeast Quarter; thence North 00°21'37" East, along said West line, 990.01 feet to the Point of Beginning. Containing 28.91 acres, more or less.

**PLATTED LEGAL DESCRIPTION OF PORTION OF PROPERTY**

Tract 1 and Lots A, B, C and D, FOX CREEK TOWNHOMES FIRST PLAT, a major subdivision in Platte County, Missouri, according to the recorded plat thereof.

13  
4

15  
17

STATE OF MISSOURI  
COUNTY OF PLATTE SS  
I CERTIFY INSTRUMENT RECEIVED

2006 DEC 27 P 2:15 PM

RECORDED BOOK 1095 PG. 868  
IDA COX, PLATTE CO. RECORDER

Mary Ching  
Cox

(ABOVE SPACE RESERVED FOR RECORDER OF DEEDS' USE) KANSAS CITY TITLE

Document Title:	First Supplement to Declaration of Homes Association and Covenants, Conditions, Restrictions and Easements of Fox Creek
Document Date:	December 20, 2006
Grantor Names:	Hunt Midwest Real Estate Development, Inc.
Grantee Names:	N/A
Statutory Address:	Suite 100, 8300 N.E. Underground Drive, Kansas City, Missouri 64161
Legal Description:	See Exhibit A attached hereto
Reference Book and Page:	Declaration of Homes Association and Covenants, Conditions, Restrictions and Easements of Fox Creek, Document No. 022703, Book 1072, Page 453

**FIRST SUPPLEMENT TO  
DECLARATION OF HOMES ASSOCIATION AND  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF FOX CREEK**

THIS FIRST SUPPLEMENT TO DECLARATION OF HOMES ASSOCIATION AND COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF FOX CREEK (this "Supplemental Declaration") is made and executed as of December 20, 2006, by HUNT MIDWEST REAL ESTATE DEVELOPMENT, INC., a Missouri corporation (the "Developer"), with its principal office and mailing address at Suite 100, 8300 N.E. Underground Drive, Kansas City, Missouri 64161.

**RECITALS:**

A. On December 5, 2005, the Developer executed that certain subdivision plat entitled "FOX CREEK TOWNHOMES FIRST PLAT" (the "Plat"), covering the real property formerly legally described as shown therein and on EXHIBIT A attached thereto and to the Declaration defined below) and platting the same into the Lots, Tracts, Common Areas and Restricted Common Areas, if any, shown and marked thereon (the "Platted Property"). The Plat was approved by Platte County, Missouri (the "County") and was recorded on December 5, 2005, in Book 20, at Page 125, in the Office of the Recorder of Deeds of Platte County, Missouri, at Platte City.

B. The Developer has executed that certain Declaration of Homes Association and Covenants, Conditions, Restrictions and Easements of Fox Creek, dated September 9, 2005, which was recorded on December 5, 2005, under Document No. 022703, in Book 1072, at Page 453, in such Recorder of Deeds' Office (the "Declaration"), pursuant to which the Developer subjected the real property therein described (the "Property") [which includes the Platted Property] to certain covenants, conditions, restrictions and easements for the purposes of protecting the value and desirability of the Property.

C. Pursuant to Article 16.2 of the Declaration, the Developer reserved to itself the right to amend and supplement the Declaration prior to the Turnover Date (as therein defined), which has not yet occurred.

**KANSAS CITY TITLE**

D. The Developer desires to exercise its right to amend and modify certain provisions of the Declaration as set forth below.

NOW, THEREFORE, in consideration of the premises, the Developer states and declares as follows:

1. Amendment to Article 15.3. Article 15.3 of the Declaration is hereby amended to read as follows:

*"15.3 Limited Property Rentals. A Townhome may be used for permanent or temporary occupancy by the Owner and the Owner's family. For a period of one (1) year after the date on which a permanent certificate of occupancy is issued for a Townhome, such Townhome may not be rented. Thereafter, the Owner thereof (whether the original or a subsequent Owner) may rent such Townhome for a term of one (1) year or more, subject to all the terms hereof including those prohibiting the use thereof for commercial purposes. Rentals of Townhomes for periods of time less than one (1) year are not permitted. An Owner who leases a Townhome must provide to the Association a true copy of each signed lease or rental agreement. Each lease or rental agreement shall clearly set forth the name(s) of the tenant(s) and the landlord's and tenant's responsibilities with respect to the Townhome including maintenance, repair and upkeep. Each change in tenant(s) shall be reported by the Owner to the Association together with a true copy of the signed lease or rental agreement with such new tenant(s). Signs advertising a Townhome for lease or rental shall only be of such type and size and be placed only at such locations as are approved in advance by the Association."*

2. Ratification of Declaration. The Developer, on behalf of itself and as the holder of a majority of the votes possible to be cast under the Declaration, hereby ratifies, affirms and confirms all covenants, conditions, restrictions and easements contained in the Declaration, which covenants, conditions and provisions shall run with the land and be binding upon the Owners, including the Developer, and their respective heirs, personal representatives, successors, transferees and assigns and all other persons or entities having, at any time, any right, title or interest in all, or any part of, the Property or any Lots, Tracts, Common Areas or Restricted Common Areas otherwise subject to the terms hereof.

IN WITNESS WHEREOF, the Developer has caused this Supplemental Declaration to be executed by its duly authorized officers as of the day and year first above written.

DEVELOPER:

HUNT MIDWEST REAL ESTATE DEVELOPMENT, INC.

{Corporate Seal}

By: Ora H. Reynolds, V.P.  
Ora H. Reynolds, Vice President and General Manager  
of Residential Development

ATTEST:

By: Donald K. Hagan  
Donald K. Hagan, Secretary

**EXHIBIT A**  
**TO**  
**FIRST SUPPLEMENT TO DECLARATION OF**  
**HOMES ASSOCIATION AND COVENANTS, CONDITIONS,**  
**RESTRICTIONS AND EASEMENTS OF**  
**FOX CREEK**

**LEGAL DESCRIPTION OF PROPERTY COVERED BY AND SUBJECT TO THE DECLARATION**

All that part of the Northeast Quarter and all that part of the Southeast Quarter of Section 18, Township 52, Range 34, Platte County, Missouri, being described as follows

Beginning at the Southwest corner of said Northeast Quarter; thence North 00°21'37" East, along the West line of said Northeast Quarter, 247.06 feet; thence North 89°56'22" East, 1,115.15 feet to a point on the Westerly right-of-way line, of Interstate Route 435, as now established; thence South 09°15'00" West, along said Westerly right-of-way line, 1252.77 feet to the South line of the North 60 acres of said Southeast Quarter; thence South 89°53'31" West, along said South line, 921.56 feet to a point on the West line of said Southeast Quarter; thence North 00°21'37" East, along said West line, 990.01 feet to the Point of Beginning. Containing 28.91 acres, more or less.

**LEGAL DESCRIPTION OF PLATTED PROPERTY**

Tract 1 and Lots A, B, C and D, FOX CREEK TOWNHOMES FIRST PLAT, a major subdivision in Platte County, Missouri, according to the recorded plat thereof.

KANSAS CITY TITLE  
201 W. LEXINGTON, #301  
INDEPENDENCE, MO 64050

KANSAS CITY TITLE  
RETURN TO: *West Midwest*  
*8300 NE Underground Dr.*  
*KC Mo 64161*  
FILE NO. *Acron 58336*  
*attn: Kim Gilling*

(ABOVE SPACE RESERVED FOR RECORDER OF DEEDS' USE)

Document Title: Second Supplement to Declaration of Homes Association and Covenants, Conditions, Restrictions and Easements of Fox Creek  
Document Date: January 31, 2007  
Grantor Names: Hunt Midwest Real Estate Development, Inc.  
Grantee Names: N/A  
Statutory Address: Suite 100, 8300 N.E. Underground Drive, Kansas City, Missouri 64161  
Legal Description: See Exhibit A attached hereto  
Reference Book and Page: Declaration of Homes Association and Covenants, Conditions, Restrictions and Easements of Fox Creek, Document No. 022703, Book 1072, Page 453

**SECOND SUPPLEMENT TO DECLARATION OF HOMES ASSOCIATION AND  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF FOX CREEK**

THIS SECOND SUPPLEMENT TO DECLARATION OF HOMES ASSOCIATION AND COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF FOX CREEK (this "Supplemental Declaration") is made and executed as of January 31, 2007, by HUNT MIDWEST REAL ESTATE DEVELOPMENT, INC., a Missouri corporation (the "Developer"), with its principal office and mailing address at Suite 100, 8300 N.E. Underground Drive, Kansas City, Missouri 64161.

**RECITALS:**

A. On December 5, 2005, the Developer executed that certain subdivision plat entitled "FOX CREEK TOWNHOMES FIRST PLAT" (the "Plat"), covering the real property formerly legally described as shown therein and on EXHIBIT A attached thereto and to the Declaration defined below) and platting the same into the Lots, Tracts, Common Areas and Restricted Common Areas, if any, shown and marked thereon (the "Platted Property"). The Plat was approved by Platte County, Missouri (the "County") and was recorded on December 5, 2005, in Book 20, at Page 125, in the Office of the Recorder of Deeds of Platte County, Missouri, at Platte City.

B. The Developer has executed that certain Declaration of Homes Association and Covenants, Conditions, Restrictions and Easements of Fox Creek, dated September 9, 2005, which was recorded on December 5, 2005, under Document No. 022703, in Book 1072, at Page 453, in such Recorder of Deeds' Office, as amended by a First Supplement thereto dated December 20th, 2006 (the "Declaration"), pursuant to which the Developer subjected the real property therein described (the "Property") [which includes the Platted Property] to certain covenants, conditions, restrictions and easements for the purposes of protecting the value and desirability of the Property.

C. Pursuant to Article 16.2 of the Declaration, the Developer reserved to itself the right to amend and supplement the Declaration prior to the Turnover Date (as therein defined), which has not yet occurred.

D. The Developer desires to exercise its right to amend and modify certain provisions of the Declaration as set forth below.

NOW, THEREFORE, in consideration of the premises, the Developer states and declares as follows:

1. Further Amendment to Article 15.3. Article 15.3 of the Declaration is hereby further amended to read as follows:

**"15.3 Limited Property Rentals.** A Townhome may be used for permanent or temporary occupancy by the Owner and the Owner's family. An Owner may rent such Townhome for a term of one (1) year or more, subject to all the terms hereof including those prohibiting the use thereof for commercial purposes. Rentals of Townhome for periods of time less than one (1) year are not permitted. An Owner who leases a Townhome must provide to the Association a true copy of each signed lease or rental agreement. Each lease or rental agreement shall clearly set forth the name(s) of the tenant(s) and the landlord's and tenant's responsibilities with respect to the Townhome including maintenance, repair and upkeep. Each change in tenant(s) shall be reported by the Owner to the Association together with a true copy of the signed lease or rental agreement with such new tenant(s). Signs advertising a Townhome for lease or rental shall only be of such type and size and be placed only at such locations as are approved in advance by the Association."

2. **Ratification of Declaration.** The Developer, on behalf of itself and as the holder of a majority of the votes possible to be cast under the Declaration, hereby ratifies, affirms and confirms all covenants, conditions, restrictions and easements contained in the Declaration, which covenants, conditions and provisions shall run with the land and be binding upon the Owners, including the Developer, and their respective heirs, personal representatives, successors, transferees and assigns and all other persons or entities having, at any time, any right, title or interest in all, or any part of, the Property or any Lots, Tracts, Common Areas or Restricted Common Areas otherwise subject to the terms hereof.

IN WITNESS WHEREOF, the Developer has caused this Supplemental Declaration to be executed by its duly authorized officers as of the day and year first above written.

DEVELOPER:

HUNT MIDWEST REAL ESTATE DEVELOPMENT, INC.

{Corporate Seal}

By: Ora H. Reynolds, VP  
Ora H. Reynolds, Vice President and General Manager  
of Residential Development

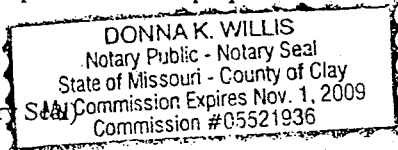
ATTEST:

By: Donald K. Hagan  
Donald K. Hagan, Secretary

**ACKNOWLEDGMENT**

STATE OF MISSOURI )  
 ) S.S.  
COUNTY OF CLAY )

On this 31st day of January, 2007, before me, the undersigned Notary Public in and for said County and State, personally appeared Ora H. Reynolds, who, being by me first duly sworn, did say that she is the Vice President and General Manager of Residential Development of Hunt Midwest Real Estate Development, Inc., a Missouri corporation, that she executed the foregoing instrument on behalf of said corporation under and with the authority of its Board of Directors and that she acknowledged that she so executed the same as the free act and deed of said corporation for the purposes therein stated.

(Notary Seal) 

My Commission expires:

11/1/09

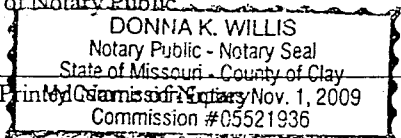
Donna K. Willis  
Signature of Notary Public  
  
Typed or Printed Name of Notary  
Commission #05521936

EXHIBIT A  
TO  
SECOND SUPPLEMENT TO DECLARATION OF  
HOMES ASSOCIATION AND COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS OF  
FOX CREEK

LEGAL DESCRIPTION OF PROPERTY COVERED BY AND SUBJECT TO THE DECLARATION

All that part of the Northeast Quarter and all that part of the Southeast Quarter of Section 18, Township 52, Range 34, Platte County, Missouri, being described as follows

Beginning at the Southwest corner of said Northeast Quarter; thence North 00°21'37" East, along the West line of said Northeast Quarter, 247.06 feet; thence North 89°56'22" East, 1,115.15 feet to a point on the Westerly right-of-way line, of Interstate Route 435, as now established; thence South 09°15'00" West, along said Westerly right-of-way line, 1252.77 feet to the South line of the North 60 acres of said Southeast Quarter; thence South 89°53'31" West, along said South line, 921.56 feet to a point on the West line of said Southeast Quarter; thence North 00°21'37" East, along said West line, 990.01 feet to the Point of Beginning. Containing 28.91 acres, more or less.

LEGAL DESCRIPTION OF PLATTED PROPERTY

Tract 1 and Lots A, B, C and D, FOX CREEK TOWNHOMES FIRST PLAT, a major subdivision in Platte County, Missouri, according to the recorded plat thereof.

KANSAS CITY TITLE  
201 W. LEXINGTON, #301  
INDEPENDENCE, MO 64050

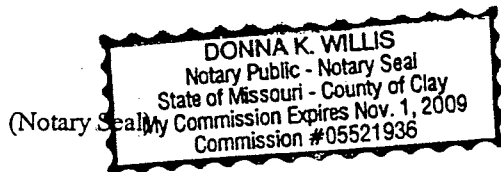
KANSAS CITY TITLE  
RETURN TO: Shirley M. J. West RE  
8300 N.E. Underground Dr.  
Ki Mo  
FILE NO. \_\_\_\_\_

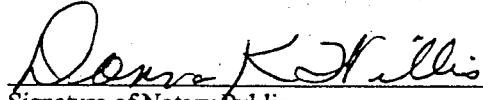


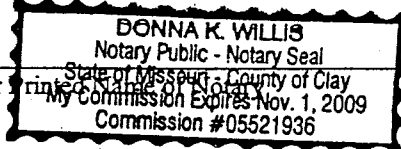
ACKNOWLEDGMENT

STATE OF MISSOURI   )  
                                  ) S.S.  
COUNTY OF CLAY     )

On this 20<sup>th</sup> day of December, 2006, before me, the undersigned Notary Public in and for said County and State, personally appeared Ora H. Reynolds, who, being by me first duly sworn, did say that she is the Vice President and General Manager of Residential Development of Hunt Midwest Real Estate Development, Inc., a Missouri corporation, that she executed the foregoing instrument on behalf of said corporation under and with the authority of its Board of Directors and that she acknowledged that she so executed the same as the free act and deed of said corporation for the purposes therein stated.



  
\_\_\_\_\_  
Signature of Notary Public

Typed or  Printed Name of Notary Public  
\_\_\_\_\_  
Typed or Printed Name of Notary Public

My Commission expires:

11/1/09