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ROBERT A DIXON, RECORDER
OF TANEY COUNTY, MO, DO HEREBY
CERTIFY THAT THE WITHIN
INSTRUMENT OF WRITING, WAS
ON 08/22/2006 AT 04:06:29PM
DULY FILED FOR RECORD AND IS
RECORDED IN THE RECORDS OF
THIS OFFICE BOOK: 497
PAGE: 2347-2376

WHEREOF, I HAVE HEREUNTO
SET MY HAND AND AFFIXED MY
OFFICIAL SEAL AT FORSYTH, MO,
Sammi Jo Nowlin DEPUTY



MPI
800 Hwy 248
Bldg 3
Branson 65616

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR EMORY CREEK RANCH PHASE 1**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR EMORY CREEK RANCH PHASE 1 is made this 21st day of August, 2006, by Emory Creek Ranch, LLC, a Missouri corporation (hereinafter "Developer");

WITNESSETH:

WHEREAS, Developer owns approximately 283.48 acres of real property in Taney County, Missouri, more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Development Property"); and

WHEREAS, the Development Property is (or will be) a planned development consisting of single-family residential housing; and

WHEREAS, Developer has executed and filed with the Recorder of Deeds for Taney County, Missouri a plat for the subdivision of Emory Creek Ranch, Phase 1 to be known as Emory Creek Ranch Subdivision (the "Emory Creek Ranch Subdivision");

WHEREAS, Developer desires to provide for the orderly development of the Development Property by placing certain restrictions on the Development Property which shall be for the use and benefit of the Developer, its future grantees, successors and assigns; and

WHEREAS, the Developer desires to provide for the preservation and enhancement of value when and as the Development Property is improved and desires to subject the Development Property and Emory Creek Ranch Subdivision to certain covenants and restrictions as hereinafter set forth, each and all of which are hereby declared to be for the benefit of the Development Property and Emory Creek Ranch Subdivision and each and every owner of any and all parts thereof; and

WHEREAS, the Developer has deemed it desirable, for the efficient preservation of the value and amenities in the Development Property, to create an entity to which should be delegated and assigned the power and authority of holding title to and maintaining and administering certain Common Areas (as hereinafter defined), administering and enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement; and

WHEREAS, the Developer has caused or will cause to be incorporated under the laws of the State of Missouri, the Emory Creek Ranch Property Owners' Association, Inc., a Missouri nonprofit corporation, for the purpose of exercising the above functions and those which are more fully set out hereafter;

NOW, THEREFORE, in consideration of the foregoing recitals, Developer, for itself and for its successors and assigns, and for its future grantees, hereby agrees and declares that the Development Property and the Emory Creek Ranch Property, including all Lots and Common Areas as shown on the Plat (all of which are defined hereinafter), shall be, and they hereby are, restricted as to their use and otherwise in the manner hereinafter set forth and shall be subject to the covenants, conditions, easements and changes set forth below, which shall run with the land and shall be binding on all present and future owners, and shall inure to the benefit of each owner of a Lot, the Developer and the Association.

ARTICLE I DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the following meanings:

1.1 "Development Property" shall mean the Emory Creek Ranch Subdivision consisting of approximately 283.48 acres and more particularly described on Exhibit "A."

1.2 "Additional Development Parcel" shall mean a tract of the Development Property designated as a new or additional commercial, residential, condominium or timeshare phase by the Developer.

1.3 "Additional Development Parcel Association" shall mean a Missouri non-profit corporation formed by the Developer for the purpose of holding title to and maintaining and administering common areas of an Additional Development Parcel, administering and enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement.

1.4 "Architectural Control Committee" shall mean (i) prior to the end of the Control Period, the Developer (or its designees or assignees from time to time) and (ii) on and after the end of the Control Period, the Board (or its designees in accordance with the Bylaws).

1.5 "Association" shall mean and refer to the Emory Creek Ranch Property Owners' Association, Inc., its successors and assigns.

1.6 "Board" shall mean the Board of Directors of the Association.

1.7 "Builder" shall mean any builder, contractor, investor, or other person or entity who purchases a Lot for the purpose of constructing improvements thereon for immediate resale, excluding the Developer.

1.8 "Common Area" shall mean (i) private street right-of-ways, (ii) private streets and street islands, (iii) trail systems, (iv) gateways, entrances, monuments and other ornamental areas and related utilities, street lights, sprinkler systems and landscaping constructed or installed by or for the Developer at or near the entrance of any street or along any street within the Development Property, and any easements related thereto, (v) any and all storm water drainage or detention areas, bio-filtration or other, as shown on the Plat, (vi) low pressure sewer STEP system within the Development Property, and (vii) all other property, including any and all green space, parks, improvements, pools, fences or other structures within the designated Common Area, which are intended for the use and benefit of all of the Owners, as may be designated within the Development Property or shown on the Plat or any amendment thereto.

1.9 "Control Period" shall mean that period of time during which Developer controls issues related to the Development Property, including, without limitation the Architectural Control Committee and the operation of the Association. The duration of the Control Period will be up to fifteen (15) years after title to all of the Lots (including any additional Lots created pursuant to Section 2.2) have been conveyed to Owners. Unless shortened or terminated in the Developer's absolute discretion.

The rights reserved to Developer during the Control Period are intended to preserve the orderly buildout and sellout of the Development Property, which is ultimately for the benefit of the Owners.

1.10 "Corner Lot" shall mean any Lot which abuts or adjoins more than one street within the Emory Creek Ranch Subdivision other than at its rear boundary line.

1.11 "County" shall mean the County of Taney, Missouri.

1.12 "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Emory Creek Ranch, Phase 1 as the same may be amended from time to time, together with any and all Supplemental Declarations which may be recorded by Developer from time to time.

1.13 "Developer" shall mean Emory Creek Ranch, LLC, a Missouri corporation, its successors or assigns.

1.14 "Exterior Structure" shall mean any structure or other improvement erected or maintained on a Lot other than the main residential structure, and shall include without limitation, any deck, gazebo, greenhouse, doghouse or other animal shelter or run, outbuilding, fence, patio wall, privacy screen, boundary or retaining wall, bridge, patio enclosure, tennis court, basketball court, swimming pool, hot tub, basketball goal, swing set, trampoline, sand box, playhouse, tree house or other recreational or play structure.

1.15 "Lot" shall mean any parcel or portion of the Emory Creek Ranch Property designated as a lot on any recorded plat of the Emory Creek Ranch Subdivision, or any additions thereto, with the exception of the Common Areas.

1.16 "Mortgage" means a security interest, deed of trust, or lien granted by an Owner in and to, or against, a Lot and improvements thereon to secure the repayment of a loan, and duly filed for record in the Office of the Recorder of Deeds of Taney County, Missouri.

1.17 "Mortgagee" means the person who holds a Mortgage as security for repayment of a debt.

1.18 "Owner" shall mean the record owner in fee of any Lot, whether one or more persons or entities, including the Developer, and for purposes of all obligations of the Owner hereunder, shall include, where appropriate, all family members and tenants of such Owner and all of their guests and invitees. The foregoing does not include any persons or entities who hold an interest in a lot merely as security for the performance of an obligation.

1.19 "Person" shall mean a natural individual or any other legal entity.

1.20 "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or installation of any improvement on any Lot, or other proposal for the same, including but not limited to those indicating size, shape, location, configuration or materials, all site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to the improvement or proposal in question.

1.21 "Plat" shall mean that final plat of the Emory Creek Ranch Property, dated the 17th day of August, 2006, and filed of record in the Office of the Recorder of Deeds of Taney County, Missouri, covering and describing any or all of the Emory Creek Ranch Property referred to in this Declaration and any Plat to be recorded in the future in the Office of the Recorder of Deeds of Taney County, Missouri pertaining to the Emory Creek Ranch Subdivision.

1.22 "Public Purchaser" shall mean the Person who initially becomes an Owner of any Lot other than the Developer or a Builder.

1.23 "Rules" shall mean and refer to those rules and regulations as passed and promulgated by the Association, or the Board acting on behalf thereof, under the authority granted by this Declaration, by a Supplemental Declaration, the Articles of Incorporation or the Bylaws of the Association.

1.24 "Single-family Residence" shall refer to a structure containing one (1) dwelling unit only and occupied by not more than one (1) family.

1.25 "Supplemental Declaration" shall mean any amendment to this Declaration or any separate or additional declaration of covenants, conditions and restrictions pertaining or applicable to the Emory Creek Ranch Property which may hereafter be recorded pursuant to the terms of this Declaration.

1.26 "Emory Creek Ranch Property" shall mean and refer to the real property more fully described on Exhibit A attached hereto and incorporated herein by reference, and any additional real property which may be made subject to this Declaration by amendment hereto.

1.27 "Visible from Neighboring Property" shall mean, with respect to any given object, that such object located on a Lot is or would be visible to a person six (6) feet tall, standing on any part of an adjoining Lot at an elevation no greater than the elevation of the base of the object being viewed.

The definitions in this Declaration shall apply equally to both the singular and plural forms of the terms defined.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Property Subject to Declaration.** The Development Property is and shall be held, transferred, sold, conveyed, encumbered and occupied subject to this Declaration. Each grantee of a portion of the Emory Creek Ranch Property and each Owner of a Lot, by accepting a deed thereto, agrees to, acknowledges and accepts all terms contained in this Declaration and the Bylaws of the Association as the same may be amended from time to time.

2.2 **Development of Development Property.** The procedure for future development of the Development Property under the Declaration shall be as follows:

(a) Developer, at its sole discretion, may designate an Additional Development Parcel within the Development Property for commercial, residential, condominium, timeshare or other use as allowed by the Planned Development District. Developer may, at its sole discretion, form an Additional Development Parcel Association for the Additional Development Parcel. The Owners of any lots within the Additional Development Parcel shall be subject to either the Additional Development Parcel Association or the Association, or both, as designated by Developer upon filing the Supplemental Declaration related thereto. The Association may enter into leases or other

contractual relationships with the Additional Development Parcel Association for the shared use of Common Areas and the allocation of costs associated therewith.

(b) An Additional Development Parcel shall be designated by the Developer filing of record in the Office of the Recorder of Deeds of Taney County, Missouri, a Supplemental Declaration describing the Additional Development Parcel and a final plat showing and describing the Additional Development Parcel which identifies the lots and common areas contained therein. Thereafter, the owners of any lot within the Additional Development Parcel, including the Developer, shall immediately be entitled to all privileges and be subject to all of the obligations of this Declaration, as amended from time to time, to the extent of and in accordance with the terms set forth in such Supplemental Declaration.

(c) Any plat or Supplemental Declaration filed with respect to an Additional Development Parcel shall specifically designate whether the common areas therein shall be subject to the control, ownership and maintenance of the Association or the Additional Development Parcel Association, or both.

2.3 Additional Property. Additional land may be subjected to this Declaration in the following manner:

(a) The Developer, or its successors and assigns, shall have the right, but not the obligation, to subject additional land to the terms of this Declaration regardless of whether said land is presently owned by Developer or subsequently acquired from time to time. Under no circumstances shall this Declaration, or any Supplemental Declaration, bind the Developer, its successors or assigns, to subject additional land to this Declaration or to adhere to any plan of development in any subsequent phase of development to any additional or adjoining land, or in any way preclude the Developer, or its successors or assigns, from conveying any land owned by Developer which may adjoin the Development Property and which has not been made subject to this Declaration, or Supplemental Declaration as provided herein, free and clear of this Declaration or any Supplemental Declaration.

(b) Additional land may be subjected to this Declaration by the Developer filing of record in the Office of the Recorder of Deeds of Taney County, Missouri, a Supplemental Declaration describing the additional land and a final plat showing and describing the additional land which identifies the lots and common areas contained therein, which right shall include any re-plat or amended plat of the Emory Creek Ranch Subdivision. Thereafter, the Owners of any Lot within the additional land, including the Developer, shall immediately be entitled to all privileges and be subject to all of the obligations of this Declaration, as amended from time to time, to the extent of and in accordance with the terms set forth in such Supplemental Declaration.

2.4 Covenants Running with Land; Enforcement. The agreements, restrictions and reservations herein set forth are, and shall be, covenants running with the land into whosoever hands any of the Development Property shall come, for the benefit of all land therein. The Developer, its

successors and assigns, the Owner of any Lot and the Association shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the agreements, restrictions and reservations herein set forth, in addition to any action at law for damages. The failure to enforce any of the agreements, restrictions or reservations herein set forth at the time of its violation shall in no event be deemed to be a waiver of the right to do so thereafter.

**ARTICLE III
COMMON AREA**

3.1 Grant of Easement. The Developer and its successors, assigns and grantees, the Owners of Lots and the Association shall have the right and easement of enjoyment in and to all of the Common Areas and the improvements thereon, but only for the intended use or uses thereof. Such right and easement in favor of the Owners and the Developer shall be appurtenant to, and shall automatically pass with, the title to each Lot. All such rights and easements shall be subject to the rights (including ownership) of any governmental authority or any utility therein or thereto, this Declaration, any Supplemental Declaration, the Articles of Incorporation and the Bylaws of the Association, and any Rules adopted by the Association as amended from time to time. Each Owner uses Common Areas and related amenities (e.g. swimming pool) at Owner's own risk and by purchasing a Lot, each Owner releases and holds Developer and the Association harmless with respect to any damages suffered by such Owner related to the use of the Common Areas and related amenities.

3.2 Conveyance of Common Areas. The Developer covenants and agrees to convey all of its right, title and interest in the Common Areas (except any part thereof that is within any Lot) to the Association, without any cost to the Association, not later than one month after the end of the Control Period. In the event Developer shall fail to execute and record a separate deed conveying the Common Areas to the Association within thirty (30) days following the end of the Control Period, this Article III of the Declaration shall be deemed a conveyance of all of the Developer's right, title and interest in and to the Common Areas to the Association. Any improvements to be constructed by Developer on the Common Areas shall be constructed on a timeframe determined by Developer, at Developer's sole discretion.

3.3 Maintenance of Common Areas. The Association, by and through the Board, shall have the authority and the responsibility, for the term of this Declaration and all renewals or extensions thereof, to provide for the maintenance and repair of the Common Areas (including the purchase of liability insurance providing coverage to the Common Areas and the payment of real estate taxes assessed to the Common Areas), to contract with such firms or Persons as it deems necessary and desirable, and to hire Persons to perform such functions, including management, clerical and administrative duties, as it deems necessary and desirable for the maintenance and repair of the Common Areas, in accordance with the terms of this Declaration, the Bylaws, the Planned Development District and the requirements of the County. The Association is granted an easement of access and entry to every Lot and Common Area to perform maintenance, enforce architectural and use restrictions and to perform any other duties required of the Association. This includes, but is

not limited to, the Association's responsibility to maintain the individual step tanks and pumps that make up the low pressure sewer system within the Development Property.

3.4 Utility Easements. Notwithstanding any term or provision of this Article III to the contrary, the right and easement of enjoyment of the Owners as to any Common Area shall be subject to the right of the Developer to convey sewer, water, drainage, maintenance, access, utility or other easements over, under, upon and through the Common Area or any portion thereof, as is necessary for the proper operation and development of the Development Property. Companies, both public and private, furnishing utility services to the Development Property are granted an easement over the Emory Creek Ranch Property for ingress, egress, meter reading, installation, maintenance, repair or replacement of utility lines and equipment and for other purposes proper and necessary to provide utility services to the Development Property. The terms of any such easement in favor of a utility company shall, however, be subject to the approval of the Board.

3.5 Sewer Services. Developer has entered into an Agreement with Ozarks Clean Water Company for said Company and its successors and assigns (hereinafter "Operator") to own and operate the sewer system within the subdivision and to provide sewer services to the lots within the subdivision. Said Agreement has been recorded of record and all terms and conditions of said Agreement are incorporated herein by this reference and shall be binding upon all owners of lots within the subdivision and their successors and assigns. Said Agreement grants to Operator a perpetual utility easement for access to any portion of the lots on which storage tanks or other sewer facilities are added, including that property located within twenty (20) feet from the edges of all such sewer facilities comprising the system sufficient for Operator to operate and maintain the sewer system and to provide sewer services to the lot owners. Said Agreement obligates property owners to make written application for sewer services with Operator and to timely pay all fees for sewer services provided by Operator. Said Agreement further provides for the termination of sewer services from Operator for non-payment by the property Owner and also grants the Operator the right to disconnect water service to the property Owner for failure to pay for sewer services provided by Operator. Operator is granted the right to terminate the Agreement upon thirty (30) days written notice of termination to the Developer. In the event Operator elects to terminate the Agreement, or in the event Operator fails to continue to provide sewer service for any reason, the Association shall assume all responsibility for the operation, maintenance, repair, and upkeep of the sewer system and, in such event, Developer grants to the Association the right of subrogation against Operator.

Basic fees for sewer services will be based on the amount of water usage attributable to the Owner of each lot based on rates established by Operator; provided, however, that Operator will initially charge the Owner of each lot a flat monthly rate of Twenty-eight dollars and fifty-three cents (\$28.53).

The sewer system on each lot will utilize a 1,200-gallon Aquatech STEP tank and sewage effluent pump and corresponding control panel (or equivalent system). The Owner of each lot shall be responsible for payment of the cost (including installation) of the components of the STEP system on the Owner's lot, including the collection line running to the street.

**ARTICLE IV
ASSESSMENTS FOR MAINTENANCE
OF COMMON AREAS**

4.1 Obligation and Lien for Assessments. Except for the Developer, each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges as set forth in this Declaration and the Bylaws of the Association and as the Association may fix and determine from time to time; and (b) such special assessments as the Association may fix and determine in accordance with the terms of this Declaration and the Bylaws of the Association. The annual and any special assessments, together with interest thereon, costs of collection and attorney fees incurred in the collection thereof, shall be the personal obligation of the Owner of each Lot at the time when each such assessment is due and payable. Such personal obligation for such assessments shall not pass to such Owner's successors in title unless expressly assumed by such successors. However, each such annual and special assessment, together with interest accruing thereon, costs of collection and attorney fees incurred in the collection thereof, shall to the full extent permitted by law, be a charge on each Lot and shall be a continuing lien upon each Lot against which each such assessment is made. During the Control Period, Lots owned by the Developer are not subject to any assessments until such Lots are transferred to a Public Purchaser.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used for the maintenance, repair and upkeep of the Common Areas and for promoting the general benefit, recreation, health, safety, property values and welfare of the residents in the Emory Creek Ranch Subdivision (including any additions thereto). Such purpose shall include (in addition to the rights and powers set forth in this Declaration and in the Association's Bylaws) provisions for the improvement, construction, repair, maintenance, care, upkeep and management of the Common Areas and the improvement and facilities thereon, including Common Area fences within and along the perimeter of the Emory Creek Ranch Subdivision, maintenance of any private Emory Creek Ranch Subdivision roads, operation, maintenance, repair and upkeep of the sewer system if required by Section 3.5, the payment of any taxes and assessments by any governmental agency, the payment of insurance premiums on the Common Areas and any improvements thereon, and all other costs and expenses related to the management and maintenance of the Common Areas. Nothing contained herein shall limit the Association's rights and powers granted in this Article or granted elsewhere in this Declaration and the Bylaws of the Association.

4.3 Annual Assessment. In order to provide the Association with a general fund with which to exercise the powers, maintain the Common Areas and improvements located thereon, and to render the services provided for herein and under the Association's Bylaws, all Lots, other than Lots then owned by the Developer or Builders, shall be subject to an annual assessment to be paid to the Association as set forth in the Association's Bylaws. The annual assessment for 2006 and thereafter (unless amended by the Association) shall be Two Hundred Dollars (\$200.00).

4.4 Special Assessments. In addition to the annual and annexation assessment provided for above, the Association may levy, in any assessment year, a special assessment for capital improvements to the Common Areas or for such emergency purposes or otherwise as the Board may recommend and the Association may approve. Any special assessment shall require the affirmative vote of a majority of the Owners, one vote per Lot. The Developer shall not be considered an Owner for purposes of approval of any special assessment nor shall Developer or any Lots then owned by Developer have any liability for any special assessment. Special assessments are due on the date stated in the notice of assessment.

4.5 Commencement of Assessments. The annual and annexation assessment per Lot shall be made at the time the initial Public Purchaser of each Lot receives a deed from Developer or a Builder for their respective Lot and shall be due at the time of delivery of the deed to each initial Public Purchaser, provided, however, the same shall be prorated as of the date the deed is recorded, and provided further, the Board may, at its discretion, allow or permit such annual assessment or any special assessment to be paid in quarterly installments. All annual assessments thereafter shall be paid on or before the 31st day of January in the year for which the assessment applies (e.g. 2007 annual assessment is due and payable on or before January 31, 2007). In the event additional annexation assessments are required, they will be paid in the same manner. In January of each year, the Board shall send a notice to each Owner providing for the amount then due, as well as the address to which payment should be made.

4.6 Remedies. In the event any Owner fails to pay any assessment as and when the same shall be due (a "Delinquent Owner") the Association may take such action as the Board may determine necessary for collection of the same including suit for collection and foreclosure of the lien for assessments provided for herein and imposition of a fine. In the event the Board employs an attorney for collection of any unpaid assessment or foreclosure of such lien, the Delinquent Owner shall, in addition to the amount of unpaid assessments then due, also pay all reasonable attorney fees and costs of collection or foreclosure incurred by the Association in connection therewith. Each assessment that remains unpaid for a period of more than thirty (30) days shall, at the election of the Board, bear interest at the rate of twelve percent (12%) per annum, or the highest rate allowable under applicable law. The Board may also suspend the Delinquent Owner's right to vote on Association matters and the Delinquent Owner's right to use Common Areas and the amenities relate thereto. The remedies provided for herein are not exclusive and are in addition to any and all other remedies available at law or in equity.

4.7 Foreclosure of Lien. Each Owner, by accepting a deed to such Owner's respective Lot, acknowledges that a continuing lien with power of sale is hereby created for securing payment of any and all assessments due with respect to such Lot, together with any and all interest accrued upon a delinquent assessment and all costs of collection, including all reasonable attorney fees incurred by the Association in collection of such delinquent assessment or foreclosure of the lien provided for herein. At any time after thirty (30) days from the date any assessment shall be due, the Board may, but shall not be required, to make written demand for payment to the Delinquent Owner, setting forth the amount then due. If such amount is not paid within ten (10) days after delivery of such demand, the Board may then cause a Notice of Delinquent Assessment to be recorded in the

Office of the Recorder of Deeds for Taney County, Missouri with copies thereof to be delivered by the Board to the then Owner of such Lot. The Notice of Delinquent Assessment shall be executed and acknowledged by a member of the Board and shall state the following:

- (1) The name and last known address of the Delinquent Owner;
- (2) The legal description and street address of the Lot to which such delinquent assessment pertains;
- (3) The amount due as of the date such Notice is executed and acknowledged; and
- (4) That a lien exists against the Lot in favor of the Association pursuant to this Declaration for which the Association may foreclose pursuant to the power of sale granted herein.

Following the recording of the Notice of Delinquent Assessment, the Board may proceed with foreclosure of the lien provided for herein in the same manner as provided by the laws of the State of Missouri for foreclosure of a mortgage or deed of trust with power of sale, or by appropriate action for judicial foreclosure and sale. At any such sale the Association may purchase the Lot and the Delinquent Owner shall remain liable for any deficiency resulting from any sale by foreclosure.

4.8 **Subordination of Lien for Assessments.** The lien for assessments provided for herein shall be subordinate to the lien of any deed of trust or mortgage granted by the Owner for the purchase of such Owner's respective Lot, provided, however, no sale, grant of a deed of trust or mortgage or other transfer of any interest in any Lot shall relieve such Lot from liability for any assessments then or thereafter becoming due or from the lien therefore.

ARTICLE V USE AND BUILDING RESTRICTIONS

5.1 **Single-family Residence Use.** Each Single-family Residence Lot shall be used, improved and devoted exclusively for single-family residential use in accordance with the restrictions, conditions and covenants set forth in this Declaration. No duplex, flat, boarding house, rooming house, apartment house or other multi-family or multi-unit residential structures, or any nonresidential structures or other improvement (except Exterior Structures approved by the Architectural Control Committee as set forth herein) may be erected on any Single-family Residence Lot. No more than one (1) single-family residence shall be located on any Lot and no such residence shall exceed two (2) stories in height. Each such residential structure shall have an attached garage for not less than two motor vehicles and shall have a driveway at least 18 feet wide. All residential structures shall be of new construction on-site; no residential building or structure which has previously been at another location shall be moved onto any Lot, and no "prefabricated", "modular", or "manufactured" or otherwise pre-assembled or pre-constructed homes or structures of any nature or kind whatsoever (except Exterior Structures approved by the Architectural Control Committee) shall be erected, stored or placed on any Single-family Residential Lot. The front exterior face (side

facing roadway) on all buildings shall be comprised of at least forty percent (40%) brick, stone, stucco or other material specifically approved by the Architectural Control Committee. Vinyl materials will be allowed only on the sides and rear exterior of any building. No camper, trailer, mobile home, vehicle, tent, outbuilding, Exterior Structure or any other apparatus or structure whatsoever except a permanent residence (the Plans and Specifications for which have been approved by the Architectural Control Committee as set forth herein) shall at any time be used for human habitation, temporarily or permanently, nor shall any residence or other structure or improvement of a temporary character be erected, moved onto or maintained upon any Single-family Residential Lot or any Common Areas. Notwithstanding the foregoing, nothing herein shall prevent or prohibit the Developer or its designees authorized by the Developer from placing and using temporary buildings, structures or any residence for model, office, sales or storage purposes prior to the end of the Control Period. Further, nothing herein shall be deemed to prevent the leasing of any single-family residence from time to time by the Owner thereof, subject to all of the provisions of this Declaration.

5.2 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept and maintained provided that they not be kept, bred or maintained for any commercial purposes. Household pets shall be maintained in a clean and sanitary situation and shall not be noxious or a nuisance to the surrounding owners. Each household shall be limited to not more than three (3) dogs and/or cats. Dogs must be considered tame. No reptiles shall be kept as pets. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether a particular animal is a common household pet, a nuisance, or whether the number of animals kept on any Lot is reasonable. Any decision rendered by the Board on such matters shall be as enforceable and in the same manner as any other restriction contained herein. No pet or animal shall be allowed to run loose or unsupervised within the Emory Creek Ranch Subdivision.

5.3 Antennas. No television antenna, dish, radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of any dwelling or other structure within the Emory Creek Ranch Subdivision without the approval of the Architectural Control Committee; nor shall radio, television signals, nor any other form of electromagnetic radiation be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals upon any other Lot or Common Area, provided, however, that digital satellite system receivers not more than 18 inches in diameter shall be allowed provided they are not visible from the street.

5.4 Construction of Residence, Improvements and Alterations. No building, residence, fence, wall, swimming pool, drive, Exterior Structure or other structure or improvement shall be commenced, constructed, improved or altered, without the prior written approval of the Architectural Control Committee as set forth herein.

5.5 Trailers and Motor Vehicles. All vehicles, and equipment, owned by lot owners, shall be parked only in the lot owner's garage or driveway. Recreational vehicles and equipment, including but not limited to boats, motor homes, travel trailers, campers and the like shall not be

parked or stored within the subdivision. Small boats may be stored in owner's garage or behind privacy fence as long as boat is not visible by neighbors or not visible from the street. The Board may provide in the Rules such other and further restrictions, prohibitions and conditions pertaining to the storage, maintenance, keeping and use of such motor vehicles, trailers, boats and watercraft which shall be deemed incorporated herein by reference and as effective and binding as set forth expressly herein.

5.6 Inoperative Vehicles. No vehicle, bus, tractor, or other conveyance or rig, other than a lawn grass apparatus, shall be left inoperative on any lot for a period of more than 3 days.

5.7 Common Area Lawns and Plantings. Developer or the Association shall have the right at any time, to plant, replace, maintain, and cultivate shrubs, trees, grass, and plantings within the Common Areas and on such easements as may be granted to or reserved by the Developer or the Association over and across each Lot. No Owner or other Person shall remove, alter, injure or interfere in any way with such shrubs, trees, grass and plantings without the prior approval of the Developer or the Board. The Developer or the Association shall have the right to enter any Lot at any reasonable time, for the purpose of maintaining, placing or replacing such shrubs, trees, grass and plantings.

5.8 Nuisances.

(a) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereupon which may be or may become an annoyance or a nuisance to the neighborhood. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or noxious fumes shall be permitted to emanate therefrom so as to render any Lot, or portion thereof, unsanitary, unsightly, offensive or detrimental to any other Lot or its occupants. Without limiting the generality of the foregoing, no exterior speakers, excessive exterior lights, horns, whistles, bells or other sound devices, except those designed solely for security purposes, shall be used, placed or located on any Lot. The Board in its sole discretion shall have the right to determine whether any of the foregoing conditions or circumstances not specifically described herein constitutes a nuisance to any other Lot or the Emory Creek Ranch Subdivision and may require the removal or remediation of such condition. Any such Board decision shall be conclusive.

(b) Grass, trees and various vegetation shall be kept neatly cut and maintained. Lawns shall not be allowed to exceed six (6) inches from the ground surface. Fences or other outside structures or outdoor decorations shall be maintained so as not to become unsightly or an annoyance or a nuisance to the neighborhood. Upon owner's failure to comply with this subsection, the Association may perform, or have performed, the necessary action to remedy the problem, and shall be entitled to recover the expense associated with such remedial action from the offending owner.

5.9 Repair and Maintenance of Buildings. No building, residence or structure within any Lot shall be permitted to fall into a state of disrepair and the same shall at all times be kept in good condition and repair and adequately painted. The Board may determine violations of this

Section to constitute a nuisance within Section 5.8 above subject to remediation by the Association in the manner provided for in Section 5.8(a).

5.10 Trash Containers and Collection. No garbage or trash shall be placed, permitted or kept on any Lot except in covered containers of a standard residential type. Such containers shall not be visible from Neighboring Property except at such time as to make the same available for collection and then only for the time reasonably necessary to allow for such collection. All rubbish, trash and garbage shall be removed from each Lot least once per week either by or on behalf of each Owner.

5.11 Clothes Drying Facilities. The hanging of laundry from any area within or outside a residence, which places the laundry within public view, is prohibited.

5.12 Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of eight (8) feet, without the prior approval of the Architectural Control Committee. No fence, wall, hedge or shrub, which obstructs sight lines at intersections within the Emory Creek Ranch Subdivision, shall be permitted.

5.13 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of the improvements on such Lot, and except that which Developer or the Association may require for the operation and maintenance of the Common Area.

5.14 Restrictions on Further Subdivision. Except as specifically authorized by the County or the Planned Development District, no Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest herein, shall be conveyed or transferred by an Owner without the prior written approval of the Board.

5.15 Signs. No signs, either permanent or temporary, of any kind, shall be placed or erected on any property, without the consent of the Architectural Control Committee unless signage upon property advertises the same for sale or rent, and does not exceed 2 square feet in area. Provided, however, that the Builders or Developer may erect signs to advertise the Emory Creek Ranch Subdivision and model homes.

5.16 Dwelling Size. The Architectural Control Committee shall exercise its best judgment to see that all structures, as to size, conform to and harmonize with the existing surroundings and structures. No permanent residence to be constructed on a Lot shall contain less than 1,600 square feet of heated and cooled living space, without approval of Developer.

5.17 Building Location. No building shall be erected on any Lot nearer than: (1) 25 feet to the front lot line; (2) 10 feet to the rear lot line; (3) 7 feet to the interior side lot line. For the

purposes of this Covenant, eaves, steps and open porches shall not be considered as part of the building, providing, however, this shall not be construed to permit any portion of the building on a Lot to encroach upon another Lot. Should any building setback lines shown upon the Plat vary from the setback requirements required herein, the building setback lines shown upon said plat shall control and take precedence over those stated herein. Variances to the setback requirements established herein as may from time to time be permitted by the County shall take precedence and be controlling.

5.18 Fences. The approval requirements outlined in subsection 5.1 for approval of structures shall also apply to fences. Fencing of front yards is prohibited. Fencing on corner lots may extend to, but not beyond, the exterior side setback lines established herein. No fences shall exceed 6 feet in height. All fences shall be 6 feet wood privacy fences. All fences shall be shadow box style fences. The Architectural Control Committee shall approve all fencing materials. Supporting structures on all fences shall be placed on the side of the fence facing the property of the Owner building the fence. Chain link and other forms of wire fencing are specifically prohibited.

5.19 Easements. Perpetual easements have been reserved, as shown on the Plat, for the construction and maintenance of utilities and drainage, and no permanent structure of any kind shall be erected or maintained upon or over said easements.

5.20 Soil Removal. Soil may not be removed from any Lot or Common Area without consent of the Developer or the Architectural Control Committee.

5.21 Garage Doors. The doors of all garages shall be kept closed at all times except when necessary for ingress and egress. The doors of all garages shall be installed with electric or battery powered opening and closing devices.

5.22 Improvements. Each Owner shall, within one (1) year after the date of commencement of construction of any improvements on their Lot, complete said improvements. If said improvements are not completed within said one (1) year period, the Developer shall have the option to repurchase said Lot (including any improvements constructed thereon) for a sum equal to the original purchase price of the Lot.

5.23 Outside Lighting. Except as may be initially installed by a Builder or Developer, no spotlights, floodlights or similar type high intensity lighting (including mercury vapor or sodium vapor lighting) shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereon or upon the Common Areas or any part thereof without the written authorization of the Architectural Control Committee. Other types of low intensity lighting which do not cast excessive light onto adjoining Lots are allowed. No lighting shall be installed on or around the Common Area, except that deemed necessary by the Developer. Christmas lights must be removed from houses by January 31st of each year.

5.24 Mailboxes. To enhance the appearance of the Emory Creek Ranch Subdivision as much as possible with United States Postal Service regulations, mailboxes in the Emory Creek

Ranch Subdivision will be located as required by the United States Postal Service. A decorative mailbox shall be supplied and installed by the Builders (of design materials and specifications approved by the Architectural Control Committee) within 2 feet of the nearest property line. All mailboxes will be the same. With respect to Lots with frontage on a cul-de-sac, Developer may, in its discretion, require that one or more residences located on such Lots locate their respective mailbox on a common pedestal or structure shared with other mailboxes for other residences located on such cul-de-sac.

5.25 Roofs. All roofs shall have an exterior surface that shall be approved by the Architectural Control Committee, in its sole discretion. All roofs must have a pitch of at least 6:12 and consist of architectural roofing shingles or other roofing material specifically approved by the Architectural Control Committee. Thirty year GAF or equivalent composition or better multi-tab is required.

5.26 Swimming Pools. Accessory buildings, in-ground swimming pools, cabana structures and gazebos may be built within the building area on any Lot subject to the approval of the Architectural Control Committee. The approval requirements outlined in subsection 5.2 for buildings shall apply to these structures. Permanent and semi-permanent above-ground swimming pools shall be prohibited.

5.27 Solar Collectors. The construction, installation and location of solar collectors shall be permitted only upon advance approval by the Architectural Control Committee.

5.28 Building Limitations. The building codes of the County, as they presently exist or are herein after amended, shall be and are hereby made applicable to all Lots. All dwellings and other improvements shall comply with said ordinances as they exist on the date of such construction. Any conflict between such ordinances and the provisions of these Covenants shall be resolved in favor of the more restrictive provisions.

5.29 Home Occupations. Home occupations and professions shall be prohibited, notwithstanding the allowance of such by the County or other governmental authority.

5.30 Temporary Structures. No trailer, tent, shack, garage, barn, or other outbuilding or structure erected on a building site within the Emory Creek Ranch Subdivision shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation. This restriction does not prohibit the Builders from placing temporary construction trailers and/or storage facilities on Lots as deemed necessary.

5.31 Building Materials. No building material of any kind or character shall be placed or stored upon any lot until the owner is ready to commence construction of the improvements requiring such materials. Building materials shall not be placed or stored in the street or between the curb and property lines. Upon completion of the improvements requiring such materials, all remaining building materials and refuse shall be removed from the subdivision.

5.32 Sound Devices. No exterior speaker, horn, whistle, bell or other sound device which is unreasonably loud or annoying, except security devices used exclusively for security purposes, shall be located, used or placed upon Lots. The playing of loud music from porches or decks shall be considered offensive, obnoxious activity constituting a nuisance.

5.33 Basketball Goals. The placement and quality of all basketball goals must be approved by the Association.

5.34 Garage Sales. Garage sales shall only be held annually and only as a neighborhood event. The dates of the sale will be determined by the Association.

5.35 Propane Tanks. No above ground gas or propane storage tank shall be permitted upon any Lot, except small portable propane tanks used for barbeque grills.

5.36 Driveways & Culverts. All driveways shall be constructed of concrete, asphalt or other material approved by the Architectural Control Committee. The color is subject to approval by the Architectural Control Committee. Each Owner is required, at its expense, to install a culvert under the driveway. Developer will determine the size of the CMP pipe for the culvert but in no event will it be smaller than 15 inches. Each Owner shall also install, at its expense, concrete bulkheads on each end of the culvert. The culvert on each lot will be a minimum of 24 feet wide.

5.37 Tree Removal. Trees with a diameter of twelve (12) inches or more may not be cut or removed without approval of the Architectural Control Committee.

5.38 Utilities. All utilities shall be installed beneath the surface and shall be an "underground utilities." Developer shall provide utilities (electric, telephone, water and wastewater) in the utility easement along the street in front of each tract.

5.39 Remedies. In the event that an Owner (or guest, invitee, licensee, tenant, lessee, family member, agent or employee thereof) shall violate, or permit to be violated, any of the provisions set forth in this Article, the Board shall cause to be delivered to said Owner a written Notice of Violation. Said Notice of Violation shall set forth the nature of the alleged violation and shall request that the violation be voluntarily terminated and remedied within a reasonable time as determined by the Board from the mailing of said notice. If, after a reasonable time has lapsed from the date of said Notice, the violation has not been voluntarily terminated by the Owner, the Board shall have the authority to pursue and effect any and all procedures which may be calculated as reasonably necessary to remove and/or terminate the cause of said violation. This authority shall include, but shall not be limited to, the power to employ laborers to enter upon the premises of said Owner for the purpose of removing and/or terminating said violation, the collection of said expenses so incurred may be effected in the manner provided in Article IV for the collection and enforcement of assessments and shall also include the right to impose a fine of up to \$100.00 per day for each day the violation continues, beginning on the fifth (5th) day following delivery of the Notice of Violation. For purposes of administering this Section, the determination of whether a violation has been, or is being committed, and the determination of what time period constitutes a Reasonable time

allowable for voluntary termination of the same, shall be made by the Board after taking into consideration the facts and circumstances surrounding the particular violating situation, condition or occurrence. In the event that the Board does not elect to exercise its authority of enforcement as set forth above, then the Developer or any other Owner or Owners shall have the right to pursue, at law or in equity, any remedy for enforcement of these covenants which remedy is hereby specifically granted by this section. In the event that it is necessary for the Association, Developer or any Owner or Owners to retain the services of legal counsel in an attempt to enforce these covenants, the enforcing parties or party shall be entitled to reimbursement of all litigation costs, including reasonable attorneys fees and court costs, with such reimbursement being awarded by way of judgment against the Owner or Owners responsible for any such violation or violations.

5.40 **Subordination of the Lien to Mortgages.** The lien provided for in Article IV, shall subordinate to the lien of any first mortgage. The sale or transfer of any Lot shall not affect said lien and it shall run with the land.

ARTICLE VI ARCHITECTURAL CONTROL COMMITTEE

6.1 **Membership.** From the date of this Declaration to the end of the Control Period the Developer shall be the Architectural Control Committee. The Developer may appoint such person or persons to act as the Architectural Control Committee on its behalf during the period in which the Developer is the Architectural Control Committee. Thereafter, the Board shall comprise the Architectural Control Committee unless the Board shall see fit to delegate this function to a Committee appointed by the Board which shall be comprised of three (3) Owners.

6.2 **Architectural Control Function.** No structure, whether a residence, Exterior Structure, accessory building, mailbox, awning, swimming pool, fence, wall, lot, drainage works, exterior area lighting or any other improvement whatsoever shall be constructed, reconstructed, repaired or maintained upon any Lot, and no alteration to the exterior of a structure shall be undertaken unless complete Plans and Specifications and site plans (scale 1" = 20' or larger) therefore showing the exterior design, height, building material and color scheme thereof, the location of the structure on the Lot plotted horizontally and vertically, the location of driveways and fencing, shall have been approved in writing by the Architectural Control Committee and a copy of such Plans and Specifications and plot plans as finally approved shall be deposited with the Architectural Control Committee. The Architectural Control Committee shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on the properties conform to and harmonize with the existing surroundings and structures.

6.3 **Liability.** The Architectural Control Committee shall not be liable for damages to any person who has submitted a request for approval by reason of any action, failure to act, approval or disapproval, or failure to approve or disapprove such request. No approval of Plans and Specifications by the Architectural Control Committee shall be construed to mean that such Plans

and Specifications are technically correct from an architectural or engineering perspective or comply with applicable governmental requirements.

6.4 Restrictions on Builders. The Developer reserves the right to implement and enforce such rules, regulations and policies as may be reasonable and necessary during the developmental stage of the Emory Creek Ranch Subdivision regarding the original construction of improvements within the Emory Creek Ranch Subdivision. Any Builder constructing improvements within the Emory Creek Ranch Subdivision shall be bound by such rules, regulations and policies, including, without limitation, the following:

(a) Each Builder shall remove rubbish and debris and otherwise clean each Lot on which it is constructing a residence at least one (1) time each week;

(b) Builder shall construct, at its earliest convenience, a gravel driveway or approach, the purpose of which shall be to prevent Builder's employees, agents, subcontractors and others under its control from transferring soil and mud from a Lot to the Emory Creek Ranch Subdivision streets and roads; and

(c) Builder shall prevent its employees, agents, subcontractors and all others under its control from parking on a portion of the Lot not specifically designed for parking (e.g. gravel driveway). Unless Builder has constructed an appropriate gravel driveway or approach, Builder and its employees, agents, subcontractors and others under its control shall park only on the paved roadway adjoining the Lot on which Builder is constructing the residence.

ARTICLE VII PERMITTED USE AND RESTRICTIONS AS TO COMMON AREAS

7.1 Maintenance by Association. The Board of the Association may, at any time, as to any Common Area owned, leased or otherwise controlled by it, take the following actions without any approval of the Owners being required.

(a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area in accordance with (1) the last plans thereof approved by the Board, (2) the original plans for the improvements, or (3) if neither of the foregoing is applicable and if such improvement was previously in existence, then in accordance with the original design, finish or standard of construction of such improvement as same existed.

(b) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a private road, street, walk, driveway, or parking area.

(c) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes.

(d) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof.

(e) Do all such other and further acts which the Board deems necessary to preserve and protect the property and the beauty thereof, in accordance with the general purposes specified in this Declaration.

(f) The Board shall be the sole judge as to the appropriate maintenance of all grounds within and improvements upon the Common Area, including common area fences.

7.2 Damage or Destruction of Common Area by Owners. In the event any Common Area is willfully or maliciously damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or members of his family, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a workmanlike manner in conformance with the original plans and specifications for the area involved or as the area may have been modified or altered subsequently by the Association. The cost for such repairs shall be paid by said Owner, upon demand, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

**ARTICLE VIII
EMORY CREEK RANCH PROPERTY OWNERS' ASSOCIATION**

8.1 Organization.

(a) The Association shall be a not-for-profit corporation organized and existing under the not-for-profit corporation law of the State of Missouri, charged with the duties and invested with the powers prescribed by law and set forth in its Articles of Incorporation, Bylaws, this Declaration and any Supplemental Declarations. Neither the Articles nor the Bylaws shall, for any reason, be amended, or otherwise changed or interpreted so as to be inconsistent with this Declaration, or any amendments thereto.

(b) The affairs of the Association shall be conducted by a Board of Directors, and such Officers as the Directors may elect or appoint, in accordance with the Articles of Incorporation and the Bylaws.

8.2 Powers and Duties of the Association. The Association shall have the power and obligation to provide for the maintenance, repair, replacement, administration, insuring and operation of the Emory Creek Ranch Subdivision and Common Areas as herein provided and as provided in the Bylaws.

8.3 Rules. By majority vote of the Board, the Association may from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations covering the use of any Common Area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that such rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of such rules as they may from time to time be adopted, amended or repealed, shall be made available to each Owner, at said Owner's request. Upon enactment, said rules shall have the same force and effect as if they were set forth in and were part of this declaration.

8.4 Personal Liability. No member of the Board of Directors or any committee of the Association, or any officers of the Association shall be personally liable to any Owner, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board or any other representative or employee of the Association or the Architectural Control Committee, or any other committee, or any Officer of the Association, provided that such person has, upon the basis of such information as may be possessed by such person, acted in good faith, without willful or intentional misconduct.

8.5 Responsibility for Common Areas. The Association shall have the responsibility for maintaining and insuring the Common Areas and the Common Area improvements, and shall be responsible for the payment of taxes (if any) and insurance on the Common Areas.

8.6 Indemnification of Developer by Association. The Association hereby agrees and covenants to indemnify the Developer from any and all claims for personal or property damage which may result from the use, ownership, possession, control or maintenance of the Common Areas, including any drainage detention area, and hold Developer harmless therefrom on a continuing basis.

8.7 Insurance. The cost of insurance for the Common Areas is a cost of the Association. The Association shall be named as an insured on all policies. The Association shall, through its Board, maintain the following insurance policies:

(a) Insurance on all improvements in Common Areas which have insurable value against loss or damage by fire or by any and all other risks insured by standard extended coverage policies in use in the State of Missouri, with such endorsements as the Board deems advisable, but in any event in an amount not less than the full insurable replacement cost thereof.

(b) Comprehensive general liability insurance, including medical payments insurance, against claims for personal injury or death (minimum coverage of One Million Dollars (\$1,000,000.00) per occurrence) and property damage (minimum coverage of Two Hundred Thousand Dollars (\$200,000.00) per occurrence) suffered by the public or any Owner, the family, agent, employee, or invitee of any Owner, occurring in, on, or about any

Common Area. Any policy obtained pursuant to this Subsection (b) shall, if possible and practical considering the cost thereof, contain a cross-liability endorsement whereby the rights of a named insured shall not prejudice his, her, or their action or actions against another named insured, and shall contain a "severability of interest" type of endorsement precluding the insurer from denying a claim of an Owner or the Association because of the negligent acts of other Owners, or the Association.

(c) Director's and Officer's liability insurance for the directors and officers of the Association against any liability arising out of such party's status as a director or officer is suggested, but not required.

(d) Such other insurance as the Board deems appropriate to protect the Association and the Owners.

All insurance provided for in this Article shall be obtained from responsible insurers authorized to do business in the State of Missouri.

8.8 Board of Directors. The initial Board, to consist of three (3) members, shall be designated by the Developer and shall serve until the end of the Control Period. Thereafter, the Owners shall elect the Board. Elections of the Board by the Owners shall be held in accordance with the Bylaws. The Board's responsibilities, as set forth herein and in the Bylaws, shall include the following:

(a) During the first week in December of each year, the Board shall meet and establish a budget for the next succeeding calendar year for the maintenance of the Common Areas and other obligations of the Association as described herein and in the Bylaws. Each annual budget shall be effective the first calendar month of the succeeding year unless Owners (eligible to vote) holding at least a majority of the votes in the Association, in writing or by a majority at any regular or special meeting of the Owners, reject the budget; provided, however, that if a budget increase is ten percent (10%) or less, from one year to the next, then the budget shall be effective the first calendar month of the succeeding year unless Owners (eligible to vote) holding at least seventy-five (75%) of the votes in the Association, in writing or by a majority at any regular or special meeting of the Owners, reject the budget. The Owners' right to reject a budget shall not apply during the Control Period.

(b) After each budget is established, the Board shall determine the annual assessment required to be paid by each Owner, which shall be paid in accordance with Subsection 4.5 hereof.

**ARTICLE IX
MEMBERSHIP AND VOTING RIGHTS**

9.1 **Membership.** Every Owner, either of a fee or undivided interest of a Lot, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment of the Association. A Builder shall have no vote in the affairs of the Association.

9.2 **Voting Rights.** Each Owner shall be entitled to one vote for each Lot owned by such Owner. Developer shall be entitled to twenty (20) votes for each Lot owned by Developer. If more than one person owns an interest in a Lot which qualifies them for membership, then all such persons shall be members, but shall only be entitled to one vote for each Lot owned. The vote for each such Lot shall be cast as they, among themselves, may determine, but in no event shall more than one vote be cast with respect to any Lot. In the event an agreement is not reached as to how joint owners of a Lot will vote, the joint owners of such Lot shall have no vote as to such matter.

9.3 **Management of Association.** Owners shall have no rights to manage the business affairs of the Association except as provided in the Articles of Incorporation and Bylaws. The management of the Association shall be vested entirely in the Board as provided in said Articles of Incorporation and Bylaws.

**ARTICLE X
GENERAL PROVISIONS**

10.1 **Enforcement.** The Association, Developer, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and any subsequently recorded Supplemental Declarations. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.2 **Severalty.** Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

10.3 **Amendment.**

(a) The covenants and restrictions of this Declaration shall run with and bind the land, in perpetuity, or if not permitted by operation of law to run in perpetuity, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless otherwise amended as herein provided or terminated by the unanimous vote of all of the then existing members of the Association.

(b) This Declaration may be amended in whole or in part at any time during the Control Period by an instrument in writing executed by Developer, its successors or assigns. Developer may release and relinquish its right to amend this Declaration earlier than the ten (10) year period set forth in the preceding sentence, by a writing recorded in the deed records of Taney County, Missouri.

(c) This Declaration may be amended at the end of the above-mentioned ten (10) year period (or earlier, if Developer relinquishes its amendment rights early) by an instrument in writing executed by the Association, with the approval of a majority of the votes of the members voting in person or by proxy at a meeting called for that purpose.

(d) No amendment shall be effective until it is recorded in the deed records of Taney County, Missouri.

10.4 Violations and Nuisances. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Developer, the Association, or any Owner. However, any other provision to the contrary notwithstanding, only Developer, the Association, the Board, or the duly authorized agent of any of the above, may enforce by self-help any of the provisions of these restrictions.

10.5 Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Emory Creek Ranch Subdivision is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

10.6 Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

10.7 Delivery of Notices and Documents. Any written notices or other document relating to or required by these restrictions may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered the day after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows:

(a) If the Architectural Control Committee, to Emory Creek Ranch, LLC, 800 State Highway 248, Building 3, Branson, MO 65616.

(b) It to an Owner, to the address of the Lot, owned, in whole or in part, by him or to any other address last furnished by an Owner to the Developer.

(c) If to the Developer, to Emory Creek Ranch, LLC, 800 State Highway 248, Building 3, Branson, MO 65616.

Provided, however, that any such address may be changed at any time by the party concerned by furnishing a written notice of change of address to the Developer. Each Owner of a Lot shall file the correct mailing address of such Owner with the Developer and shall promptly notify the Developer in writing of any subsequent change of address.

10.8 **The Declaration.** By acceptance of a deed or by acquiring any ownership interest in any of the real property, included within this Declaration, each person or entity, for himself, herself or itself, and their heirs, personal representatives, successors, transferees and assigns, binds them and the subject lot(s) to the covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby.

10.9 **Mortgagee Protections.** This Declaration may not be amended in a manner that materially affects the rights or security interest of a Mortgagee without the Mortgagee's consent. Notwithstanding Developer's right to amend this Declaration, unless at least fifty-one percent (51%) of the Mortgagees in the Emory Creek Ranch Subdivision have given prior written approval, neither the Owners nor the Association shall be entitled to abandon or terminate the legal status of the Emory Creek Ranch Subdivision and Emory Creek Ranch Property. Approval is implied if Mortgagee fails to respond within thirty (30) days of written request, sent by certified or registered mail. If a Mortgagee requests from the Association compliance with the guidelines of an underwriting lender, the Board, without approval of the Owners or Mortgagees, may make reasonable amendments to this subsection to meet the requirements of the underwriting lender.

IN WITNESS WHEREOF, the undersigned, being the Developer herein, has hereunto set its hand and seal this 21st day of August, 2006.

EMORY CREEK RANCH, LLC

By: Missouri Partners, Inc., its Managing Member



Robert J. Allen, President

STATE OF MISSOURI)
)
) SS.
COUNTY OF ~~TANEY~~)
Stone)

On this the 21st day of August, 2006, before me, Robert J. Allen, the undersigned officer, personally appeared Robert J. Allen, who acknowledged himself to be the President of Missouri Partners, Inc., which is the Managing Member of Emory Creek Ranch, LLC, a Missouri limited liability company and that he, as such President, being authorized so to do, executed the foregoing instrument on behalf of said corporation and duly acknowledged the execution of same to be the free act and deed of said company by authority of its Managing Member, and the said Robert J. Allen acknowledged said instrument to be the free act and deed of said corporation.

In Witness Whereof I hereunto set my hand and official seal.

Mary J. Jones
Notary Public

My commission expires:
Aug. 19, 2008

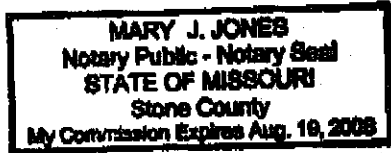


EXHIBIT "A"EMORY CREEK RANCH PHASE I
LEGAL DESCRIPTION

A TRACT OF LAND SITUATED IN THE E1/2 OF THE SW1/4, AND THE SE1/4 OF SECTION 25, THE SE1/4 OF THE NE1/4 OF SECTION 35, AND THE N1/2 OF SECTION 36 ALL BEING IN TOWNSHIP 24 NORTH, RANGE 22 WEST, AND THE S1/2 OF LOT 2 OF THE FRACTIONAL NW1/4, AND THE N1/2 OF LOT 2 OF THE FRACTIONAL SW1/4 OF SECTION 31, TOWNSHIP 24 NORTH, RANGE 21 WEST, TANEY COUNTY, MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT AN EXISTING STONE MARKING THE SOUTHWEST CORNER OF THE E1/2 OF THE SW1/4 OF SECTION 25; THENCE N 00°02'12" W, ALONG THE WEST LINE OF THE E1/2 OF THE SW1/4, A DISTANCE OF 218.88 FEET; THENCE N 49°36'13" E, LEAVING SAID WEST LINE, A DISTANCE OF 837.58 FEET; THENCE N 57°31'20" E, A DISTANCE OF 312.82 FEET; THENCE N 81°27'33" E, A DISTANCE OF 151.98 FEET; THENCE S 13°15'40" E, A DISTANCE OF 445.42 FEET; THENCE NORTHEASTERLY ALONG A NON-TANGENT 3.1669 DEGREE SEGMENT OF A CURVE TO THE LEFT 50.15 FEET (SAID SEGMENT HAVING A CHORD BEARING AND DISTANCE OF N 81°05'25" E, 50.14 FEET, AND HAVING A RADIUS OF 1809.19 FEET); THENCE N 13°15'40" W, A DISTANCE OF 445.09 FEET; THENCE N 19°42'04" E, A DISTANCE OF 843.75 FEET; THENCE N 07°04'02" E, A DISTANCE OF 366.20 FEET; THENCE N 29°47'44" E, A DISTANCE OF 265.81 FEET; THENCE N 47°25'43" E, A DISTANCE OF 501.06 FEET, TO A POINT ON THE NORTH LINE OF THE SE1/4 SECTION 25; THENCE N 87°46'08" E, ALONG SAID NORTH LINE, A DISTANCE OF 1143.90 FEET; THENCE S 13°45'01" E, A DISTANCE OF 1054.75 FEET; THENCE S 10°00'51" E, A DISTANCE OF 513.58 FEET; THENCE S 07°01'51" W, A DISTANCE OF 50.00 FEET; THENCE S 17°51'30" W, A DISTANCE OF 449.50 FEET; THENCE S 06°21'34" W, A DISTANCE OF 338.26 FEET; THENCE S 24°45'44" E, A DISTANCE OF 1503.85 FEET; THENCE S 16°28'15" E, A DISTANCE OF 1099.93 FEET; THENCE S 01°58'21" E, A DISTANCE OF 1627.80 FEET, TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF AIRPORT ROAD; THENCE N 81°57'17" W, ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 50.77 FEET; THENCE N 01°58'21" W, LEAVING SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 1618.60 FEET; THENCE S 87°59'42" W, A DISTANCE OF 943.47 FEET; THENCE N 49°15'42" W, A DISTANCE OF 1253.22 FEET, TO A POINT ON THE SOUTH LINE OF THE NW1/4 OF THE NE1/4 SECTION 36; THENCE S 88°08'22" W, A DISTANCE OF 887.21 FEET, TO THE SOUTHEAST CORNER OF THE NE1/4 OF THE NW1/4 SECTION 36; THENCE S 88°50'08" W, A DISTANCE OF 1314.88 FEET, TO EXISTING 3/8" IRON PIN MARKING THE SOUTHEAST CORNER OF THE NW1/4 OF THE NW1/4 OF SAID SECTION 36; THENCE S 88°28'51" W, ALONG THE SOUTH LINE OF SAID NW1/4 OF THE NW1/4, A DISTANCE OF 742.28 FEET; THENCE S 11°34'53" W, LEAVING SAID SOUTH LINE, A DISTANCE OF 11.64 FEET; THENCE SOUTHWESTERLY ALONG A 45.8366 DEGREE CURVE TO THE RIGHT 161.41 FEET (SAID CURVE HAVING A RADIUS OF 125.00 FEET), TO A POINT OF REVERSE CURVATURE; THENCE SOUTHWESTERLY ALONG A 32.7404 DEGREE CURVE TO THE LEFT 66.52 FEET (SAID CURVE HAVING A RADIUS OF 175.00 FEET); THENCE S 63°47'20" W, A DISTANCE OF 50.21 FEET; THENCE SOUTHWESTERLY ALONG A 14.0441 DEGREE CURVE TO THE LEFT 162.22 FEET (SAID CURVE HAVING A RADIUS OF 407.97 FEET); THENCE S 41°00'24" W, A DISTANCE OF 243.56 FEET; THENCE SOUTHWESTERLY ALONG A 32.7404 DEGREE CURVE TO THE RIGHT 57.84 FEET (SAID CURVE HAVING A RADIUS OF 175.00 FEET); THENCE S 59°56'34" W, A DISTANCE OF 8.80 FEET; THENCE SOUTHWESTERLY ALONG A 229.1831 DEGREE CURVE TO THE LEFT 35.89 FEET (SAID CURVE HAVING A RADIUS OF 25.00 FEET), TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF M.S.H.D. #248; THENCE NORTHWESTERLY, ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, ALONG A NON-TANGENT 16.5595 DEGREE SEGMENT OF A CURVE TO THE LEFT 93.55 FEET (SAID SEGMENT HAVING A CHORD BEARING AND DISTANCE OF N 30°03'26" W, 93.26 FEET, AND HAVING A RADIUS OF 346.00 FEET); THENCE SOUTHEASTERLY, LEAVING SAID NORTHEASTERLY RIGHT-OF-WAY LINE, ALONG A NON-TANGENT 229.1831 DEGREE CURVE TO THE LEFT 35.89 FEET (SAID CURVE HAVING A CHORD BEARING AND DISTANCE OF S 78°55'47" E, 32.89 FEET, AND

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HAVING A RADIUS OF 25.00 FEET); THENCE N 59°56'34" E, A DISTANCE OF 8.80 FEET; THENCE NORTHEASTERLY ALONG A 45.8366 DEGREE CURVE TO THE LEFT 41.31 FEET (SAID CURVE HAVING A RADIUS OF 125.00 FEET); THENCE N 41°00'24" E, A DISTANCE OF 243.56 FEET; THENCE NORTHEASTERLY ALONG A 12.5108 DEGREE CURVE TO THE RIGHT 182.10 FEET (SAID CURVE HAVING A RADIUS OF 457.97 FEET); THENCE N 63°47'20" E, A DISTANCE OF 50.21 FEET; THENCE NORTHEASTERLY ALONG A 25.4648 DEGREE CURVE TO THE RIGHT 85.53 FEET (SAID CURVE HAVING A RADIUS OF 225.00 FEET), TO A POINT OF REVERSE CURVATURE; THENCE NORTHEASTERLY ALONG A 76.3944 DEGREE CURVE TO THE LEFT 96.85 FEET (SAID CURVE HAVING A RADIUS OF 75.00 FEET); THENCE N 11°34'53" E, A DISTANCE OF 297.40 FEET; THENCE N 58°14'40" E, A DISTANCE OF 211.85 FEET; THENCE N 53°00'40" E, A DISTANCE OF 174.25 FEET; THENCE N 44°02'40" E, A DISTANCE OF 134.90 FEET; THENCE N 49°17'45" E, A DISTANCE OF 395.83 FEET, TO A POINT ON THE WEST LINE OF THE NE1/4 OF THE NW1/4 OF SECTION 36; THENCE N 01°23'31" W, A DISTANCE OF 463.81 FEET, TO THE POINT OF BEGINNING. CONTAINING 283.48 ACRES OF LAND, MORE OR LESS, SUBJECT TO ANY ROAD RIGHT-OF-WAY TAKEN FOR ROAD PURPOSES AND ANY EASEMENTS OR RESTRICTIONS OF RECORD.