

DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
WATERFORD VILLAS (BOSCHERT TRACT)  
CITY OF LAKE ST. LOUIS, ST. CHARLES COUNTY, MISSOURI

THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR WATERFORD VILLAS (the "Declaration"), made and entered into this 25<sup>th</sup> day of November, 1998, by and between THE JONES COMPANY CUSTOM HOMES, INC., a Missouri corporation (hereinafter referred to as "First Party"), and DEBRA J. LOWERY, KENNETH P. STRICKER and CHAS. D. JONES, all of St. Louis County, Missouri, hereinafter collectively referred to as "Trustees."

WITNESSETH THAT:

WHEREAS, First Party is the owner of a tract of real property (the "Property") located in the City of Lake St. Louis, St. Charles County, Missouri, as more particularly described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, First Party has or will cause the Property to be platted and subdivided as "Waterford Villas" (sometimes hereinafter referred to as the "Subdivision"), and has caused or will cause the record plat(s) of the Subdivision to be recorded in the St. Charles County Records; and

WHEREAS, the Subdivision is intended and shall be deemed to be deemed an "Area Association" under and within the meaning of Article VI of the Lake Saint Louis Declaration of Covenants and Restrictions dated June 21, 1967, and recorded in Book 476 Page 726 of the St. Charles County Records, as amended (the "Master Indenture"); and

WHEREAS, common land has been or will be reserved on the plat(s) of the Subdivision, and there has been and will be designated, established and recited on such plat(s) certain streets, common land and easements which are for the exclusive use and benefit of the residents of the Subdivision, except those streets or easements which are or may hereafter be dedicated to public bodies and agencies and which have been provided for the purpose of constructing, maintaining and operating sidewalks, sewers, pipes, poles, wires, storm water drainage, parks and other facilities and public utilities for the use and benefit of the residents of the Subdivision; and

WHEREAS, it is the purpose and intention of this Declaration to preserve and protect the value and utility of said tract of land, subdivided as aforesaid, and to apply the plan contained in this Declaration to all of said land described herein, including all common land, and mutually to benefit, guard and restrict future residents of the Subdivision and to foster their health and safety; and

WHEREAS, all reservations, limitations, conditions, easements and covenants herein contained (all of which are sometimes hereafter termed "restrictions") are jointly and severally for the benefit of all persons who may purchase, hold, own or reside upon the tract covered by this instrument.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, covenants and agreements made by the parties hereto each to the other, the receipt and sufficiency of which is hereby acknowledged, the parties hereto COVENANT and AGREE to and

with each other, collectively and individually, for themselves, their heirs, successors and assigns, and for and upon behalf of all persons who may hereafter derive title to or otherwise hold through them, together with their heirs, successors or assigns, any of the Lots or Living Units in the Subdivision, all as hereinafter set forth:

## ARTICLE I

### DEFINITION OF TERMS

In addition to the definitions contained in the recitals to this Declaration, as used herein the following terms shall have the following meanings:

1. "Architectural Control Committee" shall have the meaning set forth in Article VI hereof.

2. "Common Ground" or "Common Land" or "Common Property" (or the plural of any thereof) shall mean and refer to all real property and the improvements thereon owned by the Trustees and all easements, licenses and other rights held by the Trustees for the common use and enjoyment of all Owners, including, without limitation, parks, open spaces, cul-de-sac islands, recreational facilities, lakes, streets, paths, trails, walkways, storm water (including retention basins) and sanitary sewers and drainage facilities, retaining walls, subdivision entrance ways and monuments, street lights, and other such areas and facilities as may be shown on the record plat(s) of the Subdivision. Nothing hereinabove contained shall be deemed a representation that any of the enumerated facilities are or will be included in the Subdivision or that any such facilities will be constructed upon Common Ground.

3. "Consumer Price Index" shall mean and refer to the Consumer Price Index For All Urban Consumers, All Items, St. Louis, Missouri (1993-95=100) published by the Bureau of Labor Statistics, United States Department of Labor.

4. "Declaration" shall mean and refer to this Declaration of Covenants and Restrictions for Waterford Villas (Boschert Tract), City of Lake St. Louis, St. Charles County, Missouri, as from time to time amended.

5. "First Party" shall mean and refer to The Jones Company Custom Homes, Inc., a Missouri corporation, its successors and assigns, including, but not limited to, any builder or developer who purchases vacant Lots or parcels of land constituting a portion of the Property for the purpose of building residences thereon for sale to third persons.

6. "Living Unit" shall mean and refer to any structure constituted upon a Lot in the Subdivision designed and intended for independent residential use.

7. "Lot" shall mean and refer to any plot of land, with the exception of Common Ground, shown on the recorded subdivision plat of the Property.

8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit, including contract sellers but excluding those

having such interests as security for the performance of an obligation and excluding First Party.

9. "Trustees" shall mean and refer to those persons designated in the preamble to this Declaration, and their successors and assigns as appointed or elected in accordance with the provisions of Article IV hereof.

## ARTICLE II

### DURATION OF DECLARATION

This Declaration shall continue in force and effect until such time as the plat(s) of the Subdivision may be vacated by the City of Lake St. Louis, Missouri, or its successors, after which period of time fee simple title to the Common Property shall vest in the then record Owners of all Lots constituting a part of the Subdivision, as tenants in common. The rights of said tenants in common shall only be appurtenant to and in conjunction with their ownership of Lots in the Subdivision, and any conveyance or change of ownership of any Lot shall carry with it ownership in Common Property so that none of the Owners of Lots and none of the owners of the Common Property shall have such rights of ownership as to permit them to convey their interest in the Common Property except as is incident to the ownership of a Lot, and any sale of any Lot shall carry with it without specifically mentioning it all the incidents of ownership of the Common Property; provided, however, that all of the rights, powers and authority conferred upon the Trustees shall continue to be possessed by said Trustees.

## ARTICLE III

### RESERVATION OF EXPENDITURES

First Party reserves the right to receive and retain any money consideration which may be refunded or allowed on account of any sums previously expended or subsequently provided for sewers, gas pipes, water pipes, conduits, poles, wires, street lights, roads, streets, recording fees, subdivision fees, consultation fees, or fees, charges and expenses incurred with respect to the Property and the Subdivision.

## ARTICLE IV

### DESIGNATION AND SELECTION OF TRUSTEES AND MEETINGS OF LOT OWNERS

1. Original Trustees. The original Trustees shall be Debra J. Lowery, Kenneth P. Stricker and Chas. D. Jones, who, by their signatures hereto, consent to serve in such capacity until their successors are elected or appointed as hereinafter provided. Should an original Trustee or a successor Trustee appointed by First Party resign, refuse to act, become disabled or die, First Party shall have the power to appoint, by duly written, recorded instrument, a successor Trustee who shall serve until his successor is elected by the Owners in the manner hereinafter provided.

2. Election of Trustees. At such time as thirty-one (31) of the Lots in the Subdivision have been sold and conveyed to Owners for residential use, or at such previous time as First Party may determine, First Party shall cause the resignation of one (1) of

the original Trustees, and a successor Trustee shall be elected by the then Owners. At such time as fifty-nine (59) of the Lots have been sold and conveyed to Owners for residential use, or at such previous time as First Party may determine, First Party shall cause the resignation of a second original Trustee, and a successor Trustee shall be elected by the then Owners. The two (2) Trustees elected by the Owners pursuant to the foregoing provisions shall serve until such time as all Lots in the Subdivision have been sold and conveyed to Owners for residential use, or until such previous time as First Party may determine, when the term of such elected Trustees shall expire and First Party shall cause the resignation of the third original Trustee then serving hereunder, and the then Owners shall elect three (3) successor Trustees, one (1) of which shall be elected to serve for one (1) year, one (1) of which shall be elected to serve for two (2) years, and one (1) of which shall be elected to serve for three (3) years from the date of election. Thereafter, all Trustees shall be elected for terms of three (3) years each.

3. Manner of Conducting Elections; Meetings of Owners. All elections by Owners shall be preceded by notice signed by the Trustees then in office, or should there be no Trustees, then by three (3) such Owners, sent by mail to or personally served upon all Owners at least ten (10) days before the date fixed for the meeting to be held for the purpose of electing Trustees. The said notice shall specify the time and place of meeting which shall be in St. Charles County. At such meeting or at any adjournment thereof, the majority of the Owners attending such meeting, in person or by proxy, shall have the power to elect such Trustees, who shall thereupon serve until their successors have been duly appointed or elected and qualified. At such meeting, each Owner, whether attending in person or by proxy, shall be entitled to one (1) vote, which, when the Owner constitutes more than one person or entity, shall be cast as they among them shall determine; in no event shall more than one (1) vote be cast with respect to any Lot. The result of any election of Trustees shall be certified by the persons elected as chairman and secretary at such meeting, and their certification shall be acknowledged and recorded. Any business relevant or pertinent to the affairs of the Subdivision may be transacted at any meeting of Owners called in conformity with the procedure described above. Twenty-five percent (25%) of the Owners shall constitute a quorum for the purpose of electing Trustees and for the purpose of conducting any other business coming before a meeting.

4. Qualification of Trustees. Any Trustee elected under the provisions of this Article shall be an Owner in the Subdivision, or an officer or agent of a corporate Owner, and if such Owner sells his or her Lot or resigns, refuses to act, becomes disabled or dies, the remaining Trustees shall appoint an Owner to act as the successor for the unexpired portion of the term of the Trustee no longer acting. Where the provisions of this instrument cannot be fulfilled by reason of unfilled vacancies among the Trustees, the City Council of the City of Lake St. Louis, Missouri, or its successor may, upon the petition of any concerned resident or Owner in the Subdivision, appoint one or more Trustees to fill the vacancies until such time as Trustees are elected or selected in accordance with this Declaration. Any person so appointed who is not an Owner within the Subdivision shall be allowed a reasonable fee for his/her services by the order of appointment, which fee shall be levied as a special assessment against the Lots and shall

not be subject to any limitations on special assessments contained in this Declaration or elsewhere.

## ARTICLE V

### TRUSTEES' DUTIES AND POWERS

The Trustees shall have the rights, powers, duties and authorities described throughout this Declaration and the following rights, powers, duties and authorities:

1. Acquisition, Disposition, Etc. of Common Property. To acquire, receive, hold, convey, dispose of and administer the Common Property in trust and in accordance with and pursuant to the provisions of this Declaration, and to otherwise deal with the Common Property as hereinafter set forth. Without limiting the generality of the foregoing, during the period in which First Party retains the right under Article XIV, Section 4 of this Declaration to amend this Declaration, upon request of First Party, the Trustees shall cooperate with First Party in its development of the Subdivision, and, to facilitate such development, shall have the right, in their discretion, to adjust and reconfigure the Common Property and to convey and exchange portions thereof to the from time to time owners of adjoining Lots.

2. Control of Common Property. To exercise such control over the easements, streets and roads, sidewalks (except for those easements, streets and roads and sidewalks, if any, which are now or may hereafter be dedicated to public bodies or agencies), entrances and entrance markers, retaining walls, lights, gates, park areas, lakes, cul-de-sac islands, medians, shrubbery, storm water sewers, sanitary sewer trunks and lateral lines, pipes and disposal and treatment facilities constituting Common Property as may be shown on the record plat(s) of the Subdivision, as is necessary to maintain, repair, rebuild, supervise and insure the proper use of said easements, streets and roads, etc., by the necessary public utilities and others, including the right (to themselves and others to whom they may grant permission) to construct, operate and maintain on, under and over said easements and streets, sidewalks, sewers, pipes, poles, wires and other facilities and public utilities for services to the Lots and Living Units, and the right to establish traffic rules and regulations for the usage of driveways, streets and parking lots in the Subdivision.

3. Maintenance of Common Property. To exercise control over the Common Property and easements for the exclusive use and benefit of residents of the Subdivision, and to pay real estate taxes and assessments on said Common Property out of the general assessment hereinafter authorized; to maintain (which shall include snow removal from all streets and common walkways) and improve the Common Property with shrubbery, vegetation, decorations, buildings, recreational facilities of any kind or description, other structures, and any and all other types of facilities in the interest of the health, welfare, safety, morals, recreation, entertainment, education, and general use of the Owners and residents in the Subdivision, all in conformity with applicable laws; and to prescribe by reasonable rules and regulations the terms and conditions of the use of Common Property, all for the benefit and use of the Owners and residents in the Subdivision and according to the discretion of the Trustees.

4. Maintenance of Lots and Exterior of Living Units. To maintain the Lots and to maintain, repair, replace and improve the exterior surfaces of all Living Units in the Subdivision. The maintenance, repair, replacement and improvement authorized herein shall include the maintenance and preservation of the Lots and the landscaping and gardening thereon and the painting, repairing and replacing the exterior surfaces of the Living Units, but shall not relieve any Owner from his personal responsibility to maintain and preserve the interior surfaces of his Living Unit. No Owner shall make any improvements to or otherwise alter the Lots or the portions of the Living Units which are to be maintained by the Trustees; provided, however, notwithstanding the foregoing, in the event that an Owner shall, with the permission of the Architectural Control Committee and in accordance with the provisions of this Declaration, enclose, decorate or landscape any balcony, patio, terrace or other portion of his Lot, such Owner shall be and remain responsible for the repair and maintenance of the interior surfaces of such enclosure as well as for the repair, maintenance and preservation of the enclosed areas, and the Trustees shall be responsible for the maintenance of the exterior surfaces but shall have the right to impose a special charge therefor which shall be added to and become a part of the assessment levied upon the Lot.

In performing the foregoing, the Trustees may, in their sole discretion, perform any or all of the following:

a. Provide exterior maintenance and repair for each Living Unit as follows: periodic painting of exterior building surfaces; repair, maintenance and, if necessary, replacement of roofs, gutters, downspouts and all exterior building surfaces (excluding glass surfaces) for normal usage and wear and tear (excluding, for example, damage due to vandalism, fire or other casualty), in accordance with rules established from time to time by the Trustees.

b. Maintain (which may include providing snow removal), repair and replace all walkways and driveways located on the Lots.

c. Furnish grass cutting and ground, tree and shrub maintenance (including replacement when necessary) for unenclosed portions of the Lots. Should any Owner, after receiving proper authorization, enclose any portion of his Lot by a fence, wall or other obstruction, the Trustees may, in their sole discretion, provide grass cutting and ground, tree and shrub maintenance services for the enclosed portion of the Lot, and impose a special charge therefor based upon the additional cost of rendering such services. Any such charge will be added to and become a part of the assessment levied upon such Lot.

d. Designate an exclusive refuse hauler for the Subdivision, and provide trash and refuse collection to and for the Living Units.

e. Include in the annual assessments levied under Section XII of this Declaration a sum to be held in a repair and replacement or other such reserve account for payment of the cost of any major maintenance and repairs (such as regular exterior painting) required in the Subdivision so that such maintenance and repairs can be undertaken without special assessment; provided, however, in the event that the need for any maintenance or repair is caused by the wilful or negligent act of any Owner or his family, guests or

invitees, the cost thereof shall be added to and become a part of the assessment upon such Owner's Lot.

5. Dedication. To dedicate to public use any private streets constructed or to be constructed in the Subdivision whenever such dedication would be accepted by a public agency.

6. Easements. To grant easements for public streets, sewers, utilities and cable television on and over the Common Property. The Trustees shall also have authority in their discretion to grant Owners easements to install and maintain electronic fences on the Common Property. Notwithstanding anything contained in this Declaration to the contrary, if required in connection with First Party's or its successors' or assigns' development of property adjacent to the Property, the Trustees shall grant First Party and such public or quasi-public utilities and authorities as First Party may direct, and their respective successors and assigns, the perpetual right and easement to enter the Common Property at any time and from time to time to erect, install, maintain, repair, rebuild and operate water, sewer, gas, telephone, power and cable television pipes, lines, poles and conduits including the right to clear the right-of-way for such pipes, lines, poles and conduits, and to keep it clear of brush and trees. The provisions of this Article V, Section 6, shall not be amended, modified or deleted without the prior written consent of First Party.

7. Enforcement. To prevent, as Trustees of an express trust, any infringement and to compel the performance of any restriction set out in this Declaration, established by law, or contained in any rules or regulations issued by said Trustees governing the use of the Common Property or matters relating thereto. This provision is intended to be cumulative and not to restrict the right of any Owner to proceed in his own behalf, and the power and authority herein granted to the Trustees is intended to be discretionary and not mandatory.

8. Vacant and Neglected Lots. To clean up rubbish and debris and remove grass and weeds from and to trim, cut back, remove, replace and maintain trees, shrubbery and flowers upon any vacant or neglected Lots or parcels of land in the Subdivision, and to charge the Owners thereof with the reasonable expenses so incurred. The Trustees, their agents or employees, shall not be deemed guilty or liable for any manners of trespass or otherwise for any such act, injury, abatement, removal or planting.

9. Plans and Specifications. As more specifically provided in Article VI hereof, to consider, approve or reject any and all plans and specifications for any and all buildings or structures or additions or exterior renovations thereto, fences, satellite dishes, swimming pools, hot tubs, tennis courts, playground equipment and landscaping proposed for construction, erection or installation on any Lot. In acting hereunder, the Trustees shall consider and apply the limitations and parameters established in this Declaration and shall otherwise use their discretion in determining what is best for the Subdivision as a whole, and in no event shall a decision to allow or disallow any item constitute precedent for any similar future request, nor shall such a decision be considered a reversal of any past request for similar approval.

10. Deposits. To require a reasonable deposit in connection with the proposed erection of any building, structure, fence, swimming pool, tennis courts, or other improvement on or to any of

the Lots or Living Units in order to assure that upon completion of the project, all debris shall be removed from the site and from adjacent Lots and parcels, and that any and all damages to subdivision improvements shall be repaired.

11. Insurance. To purchase and maintain in force such insurance as they may deem appropriate, including, but not limited to, property insurance and liability insurance protecting the Trustees and the Owners from any and all claims for personal injuries and property damage arising from use of the Common Property and facilities and worker's compensation insurance.

12. Employment. In exercising the rights, powers and privileges granted to them and in discharging the duties imposed upon them by the provisions of this Declaration, from time to time to enter into contracts, employ agents, servants and labor as they may deem necessary or advisable, and to defend suits brought against them individually or collectively in their capacity as Trustees.

13. Condemnation. In the event it shall become necessary for any public agency to acquire all or any part of the Common Property for a public purpose, the Trustees are hereby authorized to negotiate with such public agency for such acquisition and to execute instruments necessary to that purpose. Should acquisition by eminent domain become necessary, only the Trustees need be made parties, and any proceeds received shall be held by the Trustees for the benefit of those entitled to the use of said Common Property.

14. Variances. To grant variances from the provisions of this Declaration where, in the sole discretion of the Trustees, due cause therefor is demonstrated by an Owner.

#### ARTICLE VI

##### ARCHITECTURAL AND ENVIRONMENTAL CONTROL

From and after such time as a Lot becomes subject to assessment as provided in Article XII of this Declaration, no building, fence, wall, driveway or other structure, swimming pool, hot tub, tennis courts, deck, patio, patio enclosure, screened porch or other improvement shall be commenced, erected, installed or maintained on such Lot, nor shall any exterior addition to, removal from, or exterior change or alteration (structural or nonstructural) in any improvement on such Lot be made, nor shall any tree with a three inch (3") or greater caliper be removed, nor shall the grade or slope of any Lot be changed, nor shall any item, apparatus or device be attached to or the color or other exterior appearance of any structure upon any such Lot be changed until the plans and specifications showing the degree, nature, kind, shape, size, square footage, height, elevation, materials, colors, location and configuration of the same shall have been submitted to and approved in writing by the Trustees, or, if so appointed by the Trustees in their sole discretion, by an architectural control committee composed of three (3) or more representatives. Reference herein to "Architectural Control Committee," shall refer either to the aforesaid committee, if appointed and constituted, or to the Trustees, whichever happens to be acting at the time. In the event the Architectural Control Committee fails to approve or disapprove any design, materials, colors or location within sixty (60) days after all required plans and specifications have been submitted



the Lots or Living Units in order to assure that upon completion of the project, all debris shall be removed from the site and from adjacent Lots and parcels, and that any and all damages to subdivision improvements shall be repaired.

11. Insurance. To purchase and maintain in force such insurance as they may deem appropriate, including, but not limited to, property insurance and liability insurance protecting the Trustees and the Owners from any and all claims for personal injuries and property damage arising from use of the Common Property and facilities and worker's compensation insurance.

12. Employment. In exercising the rights, powers and privileges granted to them and in discharging the duties imposed upon them by the provisions of this Declaration, from time to time to enter into contracts, employ agents, servants and labor as they may deem necessary or advisable, and to defend suits brought against them individually or collectively in their capacity as Trustees.

13. Condemnation. In the event it shall become necessary for any public agency to acquire all or any part of the Common Property for a public purpose, the Trustees are hereby authorized to negotiate with such public agency for such acquisition and to execute instruments necessary to that purpose. Should acquisition by eminent domain become necessary, only the Trustees need be made parties, and any proceeds received shall be held by the Trustees for the benefit of those entitled to the use of said Common Property.

14. Variances. To grant variances from the provisions of this Declaration where, in the sole discretion of the Trustees, due cause therefor is demonstrated by an Owner.

#### ARTICLE VI

##### ARCHITECTURAL AND ENVIRONMENTAL CONTROL

From and after such time as a Lot becomes subject to assessment as provided in Article XII of this Declaration, no building, fence, wall, driveway or other structure, swimming pool, hot tub, tennis courts, deck, patio, patio enclosure, screened porch or other improvement shall be commenced, erected, installed or maintained on such Lot, nor shall any exterior addition to, removal from, or exterior change or alteration (structural or nonstructural) in any improvement on such Lot be made, nor shall any tree with a three inch (3") or greater caliper be removed, nor shall the grade or slope of any Lot be changed, nor shall any item, apparatus or device be attached to or the color or other exterior appearance of any structure upon any such Lot be changed until the plans and specifications showing the degree, nature, kind, shape, size, square footage, height, elevation, materials, colors, location and configuration of the same shall have been submitted to and approved in writing by the Trustees, or, if so appointed by the Trustees in their sole discretion, by an architectural control committee composed of three (3) or more representatives. Reference herein to "Architectural Control Committee," shall refer either to the aforesaid committee, if appointed and constituted, or to the Trustees, whichever happens to be acting at the time. In the event the Architectural Control Committee fails to approve or disapprove any design, materials, colors or location within sixty (60) days after all required plans and specifications have been submitted

(and fees, if required, have been paid), approval will not be required, and this provision will be deemed to have been fully complied with. The Architectural Control Committee is authorized where it deems appropriate to charge a review fee for any submission to defray the costs of reviews it conducts or authorizes.

It is the intent of this Declaration that all buildings and structures within the Subdivision shall be constructed of attractive exterior materials of high quality. In its review of submissions, the Architectural Control Committee shall evaluate the construction standards and building materials for all proposed construction to insure that they are in conformance with such objectives. Exterior finishes and elevations once approved shall not be altered without the express consent of the Architectural Control Committee.

#### ARTICLE VII

##### SEWERS AND DRAINAGE FACILITIES

1. Trustees' Responsibility - Common Property. The Trustees shall be responsible for the maintenance, repair and replacement of any private sanitary and storm sewers, retention basins and other drainage facilities located on and servicing any Common Property or improvements thereon.

2. Owners' Responsibility. Except as may otherwise be provided in Article VIII, Section 3 of this Declaration, each Owner shall be responsible for the maintenance, repair and replacement of the lateral sewage line or lines servicing such Owner's Lot.

#### ARTICLE VIII

##### PARTY WALLS/UTILITY CONNECTIONS

1. General rules of Law to Apply. Each wall, including fence walls and common garage walls, which is built as a part of the original construction of a Living Unit within the Subdivision and placed on the dividing line between Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

2. Encroachments. Should any portion of any Living Unit or other improvement constructed on any Lot by First Party overhang or encroach on an adjacent Lot or the Common Property, the Owner of such Living Unit shall have an easement on such adjacent Lot or the Common Property, as the case may be, to permit such overhang or encroachment to remain in the same state and location as when the Living Unit was first occupied for residential use. Although this provision is intended primarily to pertain to overhanging gutters, eaves and similar items of construction, it shall nevertheless be construed broadly to include all forms of overhangs and construction.

3. Easements. In addition to all other easements established in this Declaration or on the plat(s) of the Subdivision, easements are hereby established in favor of the Trustees, the Owners and the applicable utility companies to construct, reconstruct, repair, replace and maintain any sanitary or storm sewers, water, electric, gas, cable television or telephone lines or connections, and to

enter upon the Lots or Common Property to repair, replace and generally maintain said connections. Notwithstanding any other provision of this Declaration, if the Trustees deem the repair, replacement or maintenance of any such connection to be an emergency, the Trustees shall have the right in their discretion to repair, replace or maintain such connection and assess the cost thereof against the Living Units served thereby, and each Owner covenants to pay any such assessment upon demand. If not paid when due, such assessment shall be and become a continuing lien on the assessed Lot and the personal obligation of the Owner, and shall be subject to collection in the manner set forth in Article XII hereof.

4. Joint House Connections. If any joint house connections of storm and sanitary sewers or water, electricity, gas, cable television or telephone lines serving more than one Living Unit are installed in the Subdivision, the Owners of each Living Unit served thereby shall be entitled to the full use and enjoyment of the portion of said connection serving their Unit.

5. Damage or Destruction - Fault. In the event any party wall or any of the aforesaid connections or lines is damaged, obstructed or destroyed through the wilful or negligent act of any Owner served thereby or his agents, guests or members of his family, such Owner shall forthwith repair or replace the same without cost to the other Owners served by said wall, connection or line. In addition to his obligation under this Section 5, the Owner responsible to repair or replace a damaged or destroyed wall, connection or utility line as aforesaid, shall, at his sole cost and expense, repair any damage resulting therefrom to and restore to its original condition any Lot or Living Unit affected thereby.

6. Damage or Destruction - No-Fault. In the event any party wall or any of the aforesaid connections or lines is damaged, obstructed or destroyed through ordinary wear and tear or deterioration from lapse of time and other than by the willful act or negligence of any Owner served thereby or his agents, guests or members of his family, all Owners served thereby shall proceed forthwith to replace or repair said wall, connection or line at their joint and equal expense.

7. Arbitration of Party Wall Disputes. Notwithstanding any provision of this Article VIII to the contrary, if an Owner fails to timely repair or replace any wall, connection, line, Lot or Living Unit pursuant to Section 5 hereof or fails to contribute pursuant to Section 6 hereof, the other affected Owner(s) may effectuate such repairs or replacements and may thereafter pursue an action for reimbursement or contribution from the other Owner(s). All such claims and any other disputes, controversies or differences that may arise under this Article VIII shall be settled by binding arbitration pursuant to Chapter 435 R.S.Mo. 1996, as amended, and the rules and procedures of the American Arbitration Association; provided, however, in rendering an award, the arbitrator(s) in any such proceeding shall apply Missouri substantive law.

#### ARTICLE IX

#### EASEMENTS

1. Encroachment. Perpetual easements are hereby established for the maintenance of any encroachments upon the Lots or Common

Property resulting from original construction, settlement or shifting; provided, however, no easement shall be deemed created hereunder or shall otherwise exist for any such encroachment resulting from the willful or wanton conduct of the Owner.

2. Easements Appurtenant. Perpetual easements are hereby established, running with the land, appurtenant to all Lots for use by the Owners thereof, their families and guests, invitees and servants, of the Common Ground. Each Owner is further granted a perpetual easement, running with the ownership of his Lot, to use and occupy the balcony, terrace, patio, sidewalks, driveways and garage, if any, which are part of the Living Unit, should there be any encroachment on the Common Ground or any other Lot; provided, however, that except as herein expressly authorized, No Owner shall enclose, decorate or landscape any such balcony, terrace, patio, sidewalks, driveways or garage without the prior written consent of the Architectural Control Committee or contrary to any rules or regulations established by the Trustees. Without limiting the generality of the foregoing, it is hereby acknowledged that the Subdivision has been designed in such fashion that the driveways and front sidewalks for the Living Units will be constructed upon Common Ground, and, although maintained by the Trustees pursuant to Article V, Section 4 of this Declaration, the easements therefor established in this Article IX, Section 2, shall be for the exclusive use and benefit of the Owners of the appurtenant Lot; provided, however, such Owners' use shall be subject to all of the restrictions contained in this Declaration.

3. Easements in Gross. The Properties shall be subject to a perpetual easement in gross to the Trustees for ingress and egress to perform their obligations and duties as required by this Declaration. Should it be necessary to enter a Lot or Living Unit to effect a necessary repair, employees, agents and workmen shall be entitled to entrance by exhibiting to the Owner an order from the Trustees.

4. Effect of Easements. All easements and rights herein established shall run with the land and inure to the benefit of and be binding on First Party and any Owner, purchaser, mortgagee or other person having an interest in any portion of the Property, whether or not such easements are mentioned or described in any deed of conveyance.

#### ARTICLE X

##### INSURANCE; DAMAGE OR DESTRUCTION

1. Purchase of Insurance. The Owners shall at all times maintain insurance on their respective Lots and Living Units with the coverage contained in Section 3 of this Article X, together with such other insurance as the Trustees deem necessary, in a company with an "A" rating or better by Best's & Company authorized to do business in the State of Missouri. The premiums for such coverage and other expenses in connection with said insurance shall be paid by the Owners, and the Trustees, as agent for the Owners shall be named as additional insureds.

2. Mortgagees. Provision shall be made for the issuance of mortgagee endorsements and memoranda of insurance to mortgagees, but all such policies shall provide that payments by the insurer for losses thereunder shall be made to the insurance trustee.

(a) Casualty. All Living Units and other improvements in the Subdivision shall be insured in an amount equal to their maximum insurable replacement value, excluding excavation costs, and shall afford protection against:

(i) Loss or damage by fire or other hazards covered by a standard extended coverage endorsement; and

(ii) Such other risks as from time to time shall be customarily covered with respect to improvements similar in construction, location and use as those to be insured hereunder including, but not limited to, earthquake, vandalism and malicious mischief.

(b) Public liability, including medical payments insurance, in such amounts and with such coverage as shall be required by the Trustees, including, but not limited to, hired automobile and non-owned automobile coverages.

(c) Such other insurance as the Trustees shall from time to time determine to be desirable.

4. Insurance Trustee; Shares of Proceeds. All insurance policies purchased by the Owners pursuant to Section 3 of this Article X shall be for the benefit of the Trustees and the Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to a bank or other competent and appropriate financial institution designated by the Trustees to serve as an insurance trustee hereunder. The insurance trustee shall not be liable for payment of premiums, the renewal or sufficiency of policies or the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

5. Distribution of Proceeds. Proceeds of insurance policies received by the insurance trustee shall be distributed in the following manner:

(a) Expense of the Trust. All expenses of the insurance trustee shall be paid first or provision made therefor.

(b) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as herein elsewhere provided. Any proceeds remaining after paying such costs shall be distributed to the beneficial Owners thereof.

(c) Certificate. All distributions to Owners and their mortgagees shall be payable jointly, and the insurance trustee may rely upon a certificate of the Trustees as to their names and respective shares of the distribution.

6. Trustees as Agents. The Trustees are hereby irrevocably appointed agents for the Owners, the holders of mortgages or other liens upon the Lots and Living Units, and for each owner of any other interest in the Subdivision, with power to adjust all claims arising under insurance policies purchased pursuant to this Article X and to execute and deliver releases upon the payment of claims.

7. Owner's Obligation. If any Owner shall fail to purchase the insurance required hereunder, the Trustees may purchase insurance for such Owner, and each Owner, for himself, his heirs, successors and assigns, covenants to reimburse the Trustees the cost thereof. If not paid when due, all unreimbursed costs shall be and become a continuing lien on the Lot and Living Unit and the personal obligation of the Owner, and shall be subject to collection in the manner set forth in Article XII hereof.

## ARTICLE XI

## RECONSTRUCTION OR REPAIR AFTER CASUALTY

1. Reconstruction or Repair. If any part of the Subdivision is damaged by casualty, it shall be reconstructed or repaired as herein in this Article XI provided. If the proceeds of insurance carried under Article X of this Declaration are insufficient to repair or reconstruct any damaged Unit or Units, the Owner(s) of the affected Living Unit or Units shall contribute the additional sums necessary to pay the cost of reconstruction or repair.

2. Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the original plans and specifications for the improvement, or, if not, in accordance with the plans and specifications approved by the Trustees, the Architectural Control Committee and, if a Living Unit or Living Units, by the Owner(s) thereof.

3. Responsibility. If the damage is only to portions of a Living Unit(s) for which the Owner(s) have maintenance responsibility, the Owner(s) shall be responsible for reconstruction and repair. In all other instances, the responsibility for reconstruction and repair shall be the Trustees.

4. Estimate of Costs. As soon as reasonably practicable following the occurrence of a casualty, the Trustees shall obtain detailed estimates of the cost to rebuild or repair.

5. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Trustees, or if at any time during or upon completion of reconstruction or repair the funds prove to be insufficient, the Trustees shall levy assessments against the Owners of the damaged Living Units or, in the case of damage to the Common Property, all Owners, in an amount sufficient to pay such costs. Assessments for damage to Living Units hereunder shall be in proportion to the portion of such cost attributable to their Living Units, and assessments for Common Property shall be in proportion to the Owners' shares in the Common Property.

6. Construction Funds. Funds held by the insurance trustee and funds collected by the Trustees from assessments hereunder shall be disbursed in the following manner:

(a) Trustees. If the total assessments made by the Trustees exceed \$5,000.00, the sums collected shall be deposited with the insurance trustee. In all other cases, the Trustees shall hold and disburse such funds in payment of the costs of reconstruction and repair.

(b) Insurance Trustee. All sums collected by or deposited with the insurance trustee shall constitute a construction fund

which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(i) Trustees - Minor Damage. If the estimated cost of reconstruction and repair for which the Trustees are responsible is less than \$25,000.00, the construction fund shall be disbursed in payment of such costs upon the order of the Trustees.

(ii) Trustees - Major Damage. If the estimated cost of reconstruction and repair for which the Trustees are responsible is more than \$25,000.00, the construction fund shall be disbursed in payment of such costs upon direction by the Trustees and approval of an architect qualified to practice in Missouri employed to supervise the work.

(iii) Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with an Owner shall be paid by the insurance trustee to the Owner and his mortgagee, if any, jointly.

(iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of reconstruction and repair, such balance shall be distributed to the beneficial Owners of the funds in the manner elsewhere stated.

## ARTICLE XII

### ASSESSMENTS

1. General. In addition to the assessments payable under Article V of the Master Indenture, First Party, for each Lot or Living Unit within the Subdivision, hereby covenants, and each Owner of any Lot or Living Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay annual and special assessments, if any, from time to time fixed, levied and assessed in accordance with the provisions of this Declaration. The annual and special assessments levied hereunder together with interest thereon and costs of collection thereof shall be a charge on and continuing lien against the Lot or Living Unit against which assessed. Each such assessment, together with interest thereon and cost of collection thereof, shall also be the personal obligation of the person who was the Owner of the Lot or Living Unit at the time the assessment fell due.

2. Purpose. The assessments levied under this Article shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Subdivision and in particular for the rendering of services in the furtherance of such purposes, including the carrying out of all functions herein authorized, the payment of taxes on the Common Property and for the acquisition, improvement, maintenance and operation of the Common Property and all facilities thereon and easements established herein or on the plat(s) of the Subdivision and the maintenance of the Lots and Living Units as elsewhere in this Declaration provided.

3. Annual Assessments. (a) By December 1st of each year, or as soon thereafter as reasonably practicable, the Trustees shall

estimate the total amount necessary to pay wages and for materials, insurance, water, sewer charges, services and supplies which it anticipates will be required during the ensuing calendar year together with an amount which they consider necessary as a reserve for any future needs and contingencies. On or about December 15 of each year, or as soon thereafter as reasonably practicable, the Trustees shall notify the Owner of each Lot and Living Unit in writing as to the amount of such estimate, which shall then be uniformly assessed against the Owners of the Lots and Living Units. On the first day of each month thereafter, each Owner shall be obligated to pay the Trustees one-twelfth (1/12th) of the assessment made hereunder. The entire annual assessment levied hereunder shall be deemed delinquent if any monthly installment is not received by the Trustees on or before the fifth day of the month in which due.

(b) In the event the Trustees shall at any time during the year determine that their initial estimate is insufficient to meet current operating expenses, the Trustees may revise the budget for the balance of the calendar year to such an amount as is actually necessary to pay such operating expenses and to fund a reserve for future needs and contingencies, and, within fifteen (15) days thereafter, shall notify the Owner of each Lot and Living Unit, in writing, as to the amount of the revised budget, which shall be uniformly assessed against the Owners of each Lot and Living Unit. On the first day of each month thereafter, each Owner shall be obligated to pay the Trustees an amount equal to a fraction of the revised assessment made under this clause (b), the numerator of which shall be one (1) and the denominator of which shall be the number of months remaining in the then current year.

(c) Notice of each levy under this Article XII, Section 3, shall be given by first class mail addressed to the last known or usual post office address of each Owner and deposited with the United States Postal Service, postage prepaid, or by posting of a notice of the assessment upon the Lot against which it applies.

4. Storm Water Facilities. In addition to the foregoing, the Trustees are authorized to and shall make separate annual assessments in an amount not to exceed Fifteen and 00/100 Dollars (\$15.00) upon and against each Lot for the purpose of contributing to the maintenance and repair of the storm water storage, disposal or sewer facilities located within the Locksley Manor Subdivision; provided, however, Trustees may increase such assessment for any year by the amount of increase in the CPI from the corresponding assessment date in the prior year or on the date of recordation of this Declaration, as the case may be; and, provided further, the separate power granted to the Trustees by this Section 4 shall expire with the calendar year following the acceptance of any such storm water facilities for public maintenance. Any assessment made under authority granted in this, Section 4, shall be assessed and collected in the same manner as the assessments under Section 3 above, and the Trustees shall have the same powers of collection and lien rights against the Lots as provided in Section 7 of this Article XII.

5. Special Assessments. If other than as provided in Section 3(b) of this Article XII, the Trustees at any time consider it necessary to make any expenditure requiring an assessment additional to the annual assessment, they shall submit a written outline of the contemplated project and the amount of the assessment required to the then Lot Owners. If such assessment is



approved, either at a meeting of the Owners called by the Trustees, by a majority of the votes cast in person and by proxy, or on written consent of a majority of the total votes entitled to vote thereon, the Trustees shall notify all Owners of the additional assessment; provided, however, that in determining such required majority, each Owner shall be entitled to one (1) full vote, except that only those who have paid all assessments theretofore made shall be entitled to vote. Notice of any special assessment hereunder shall be given in the same manner as notices of annual assessments are given, with such assessment becoming delinquent thirty (30) days after the date of such notice.

6. Prorations. Should a Lot become subject to assessments after January 1 in any year, and should an annual or special assessment have been levied for that year, then such assessment shall be adjusted so that such Lot shall be charged with a portion of the assessment prorated for the balance of that year.

7. Interest and Liens. All assessments shall bear interest at the rate of one percent (1%) over the from time-to-time publicly announced floating prime rate of interest charged by NationsBank N.A., St. Louis, Missouri, or its successors (the "Prime Rate"), from the date of delinquency, and such assessment, together with interest and costs of collection, shall constitute a lien upon the Lot against which it is assessed until the amount, together with interest and charges, is fully paid. As an assessment becomes delinquent, the Trustees may execute and acknowledge an instrument reciting the levy of the assessment and cause the same to be recorded in the office of the Recorder of Deeds for St. Charles County, Missouri, and thereafter institute any appropriate legal action to enforce such lien. Should an Owner pay an assessment after the recording of a notice thereof, the Trustees shall cause a release of said lien to be executed and recorded (at the expense of the Owner of the affected Lot).

The lien of the assessments provided for herein shall be subordinate to the lien of any institutional (bank, savings and loan association, pension or retirement fund, insurance company or federally insured mortgage) first mortgage now or hereafter placed upon any Lot with respect to which assessments have become due and payable prior to a sale or transfer of such Lot pursuant to foreclosure or transfer in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. As used herein, the term "mortgage" or "mortgages" shall include deed or deeds of trust.

8. Exemptions. The following properties subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

- (i) All Common Property;
- (ii) All properties exempted from taxation under the laws of the State of Missouri; and
- (iii) All Lots owned by First Party until occupied or until title to the Lot has been transferred to the first purchaser thereof at retail (as distinguished from sales in bulk or at wholesale to others for development or resale). No Lot devoted to residential use shall be exempt from assessment hereunder.

Notwithstanding any provision of this Declaration to the contrary, if the assessments levied in any year under Section 3 of this Article XII are insufficient to support all budgeted expenses, First Party may but shall not be obligated to advance funds to the Trustees for such purposes, and, if it does so, shall have the right to be repaid the amount of all such advances with interest thereon at the rate of one percent (1%) over the Prime Rate.

9. Keeping of Funds. The Trustees shall deposit the funds coming into their hands as Trustees in a bank protected by the Federal Deposit Insurance Corporation, the treasurer being bonded for the proper performance of his duties in an amount fixed by the Trustees.

10. Ordinance Compliance. Notwithstanding any other conditions herein, the Trustees shall make suitable provisions for compliance with all subdivision and other ordinances, rules and regulations of the City of Lake St. Louis, Missouri, and the County of St. Charles, Missouri including, but not limited to, maintenance and operation of street lights, easements and roadways (except for those easements and roadways as are dedicated to public bodies or agencies).

#### ARTICLE XIII

#### RESTRICTIONS

In addition to the limitations and restrictions imposed by the Master Indenture and by the other provisions of this Declaration, the following restrictions are imposed upon and against the Subdivision and each Lot and Living Unit now or hereafter existing therein:

1. Building Use. No building or structure shall, without the approval of the Trustees, be used for a purpose other than that for which the building or structure was originally designed.

2. Building Location. No building or structure shall be located on any Lot nearer to the street(s) upon which such Lot fronts or by which such Lot is bordered or the side or rear Lot lines than the front building line or side or rear set-back lines shown on the plat(s) of the Subdivision.

3. Resubdivision. No Lot shall be resubdivided nor shall a fractional part of any Lot be sold without the consent of the Trustees, which consent shall not be unreasonably withheld. In the event either of the foregoing is approved, then the assessment attributable to the Lot so subdivided shall be pro-rated between the resulting Lots.

4. Commercial Use. Except for the promotional activities conducted by First Party in connection with the development of the Subdivision and the marketing and sale of residences therein and the conduct of a home occupation in strict accordance with the provisions of the applicable zoning ordinances, no commercial activities of any kind shall be conducted on any Lot or within any Living Unit.

5. Leases. No Living Unit shall be rented by the Owner thereof for transient purposes, and all leases of the Living Units shall be of at least one (1) year duration and expressly made subject to the provisions and conditions of this Declaration and of

any rules and regulations adopted by the Trustees. Further, no lease of any Living Unit shall be effective unless and until a copy thereof identifying the lessee thereunder and containing the terms herein required has been delivered to the Trustees.

6. Nuisances. No loud, noxious or offensive activity shall be carried on or within any Living Unit or upon any Lot or Common Ground in the Subdivision, nor shall anything be done therein or thereon that may be or become a nuisance or annoyance to the neighborhood. Without limiting the generality of the foregoing, no motorized vehicles, including, but not limited to, cars, go-carts, trailers, recreational vehicles (RVs), sleds, snow mobiles, trucks, vans, all-terrain vehicles (ATVs), motorcycles, dirt bikes, minibikes, tractors, truck-tractors, campers, or house trailers shall be operated, driven, ridden, stored or otherwise placed on, in or about the Common Ground. No exterior lighting shall be directed outside the boundaries of a Lot or other parcel.

7. Maintenance. Each Owner shall maintain and keep the portion of his Lot or Living Unit not maintained by the Trustees in good order and repair, and shall do nothing which would be in violation of law. Without limiting the generality of the foregoing, each owner shall, at his own cost and expense, maintain, repair and replace the air conditioning and heating equipment, hot water heaters and all other appliances and equipment (including any facility and connections required to provide utility service to serve the Living Unit and no other) serving his Living Unit; paint, decorate and finish interior surfaces of perimeter walls, interior walls, ceilings and floors of his Living Unit, and the surface, concrete floors and interior surfaces of the exterior wall of the balcony and/or patio adjoining or a part of his Living Unit; replace all screens, windows and plate glass installations (including glass doors) forming a portion of the perimeter of his Living Unit; and pay for any utilities which are separately metered to his Living Unit; provided, however, that no Owner shall make any alteration, decoration, repair, replacement, change or paint, nor place any screens or other enclosures on balconies or patios or any other parts of his Lot or Living Unit without the prior written approval of the Architectural Control Committee. Further, no trash, rubbish, toys, tools, cases, crates or discarded items shall be left in the front or back yard of any lot overnight, and no exterior front yard appurtenances such as sculptures, bird baths or similar items not permanently affixed to or made a part of the realty shall be placed in the front yard of any Lot.

8. Obstructions. There shall be no obstruction of any portion of the Common Property or any storage or construction or planting thereon by an Owner. No clothes, laundry or other articles or equipment shall be placed, hung, exposed or stored in any portion of the Common Property or in any portion of the exterior or yard area of any Lot or on or about the exterior of any building.

9. Animals. No animals, reptiles, birds, horses, rabbits, fowl, poultry, cattle or livestock of any kind shall be brought onto or kept in the Subdivision, except that no more than two dogs, cats, or other household pets (except house pets with vicious propensities) may be kept or maintained in a Living Unit, provided such pets are not kept for any commercial purpose and provided that when outside such Living Unit, such pets are at all times to be leashed (except when enclosed in an in-ground electric fence, approved by the Architectural Control Committee as provided in

Section 20 of this Article XIII) and attended and no "runs" or other outside structures are erected or installed therefor. The keeping of any pet which by reason of its noisiness or other factor is a nuisance (as determined by the Trustees in their sole judgment) or annoyance to the neighborhood is prohibited.

10. Trucks, Boats, Etc. No trucks (other than pick-up trucks not exceeding 3/4 ton) or commercial vehicles, boats, motorcycles, campers, house trailers, boat trailers or trailers of any other description shall be permitted to be parked or stored on any Lot or on the Common Property (including private streets of the Subdivision) unless parked or stored in an enclosed garage or in such other enclosure (open or otherwise) approved by the Architectural Control Committee, except only during periods of approved construction on the Lot. Further, no motor vehicle or equipment shall be repaired or otherwise serviced in front of or adjacent to any residence in the Subdivision.

11. Abandoned Vehicles. No abandoned cars, motorcycles, jeeps, trucks or motor vehicles of any kind whatsoever that are unable to move under their own power may be stored or suffered to remain upon any of the Common Property or on any Lot. If any such motor vehicle is so stored or remains on the aforesaid premises, the Trustees may take the necessary steps to remove the same at the Owner's expense.

12. Vehicular Sight Lines. No fence, wall, tree, hedge or shrub planting shall be maintained in such manner to obstruct sight lines for vehicular traffic. Except as may be required to comply with the prior sentence, no live tree shall be removed without the approval of the Architectural Control Committee.

13. Outbuildings. No temporary structure, trailer, tent, shack, garage, barn, shed or other outbuilding shall be erected or installed on any Lot at any time.

14. Signs. No signs, advertisements, billboards, or advertising structures of any kind may be erected, maintained or displayed on any Lot nor be hung or displayed in the windows or on the outside walls of any Living Unit, and, without prior permission of the Architectural Control Committee, no awnings, canopy or shutter shall be affixed to or placed upon an exterior wall or roof; provided, however, that nothing herein shall prohibit signs erected or displayed by First Party in connection with the development of the Property and the marketing and sale of residences therein.

15. Window Coverings. All window coverings in the Living Units shall be lined or made of materials or died or painted such that the side to the exterior of the Living Unit is white or other neutral color.

16. Garbage. No trash, garbage, rubbish, refuse, debris, trash cans or trash receptacles of any type shall be stored in the open on any Lot, but shall be kept secured within the improvements located on each Lot; provided, however, after sunrise on any day designated for trash pick-up, trash, garbage, rubbish, refuse and debris secured within appropriate trash cans or receptacles may be placed at the street curbing for pick-up; and, provided, further, that trash cans or receptacles shall be removed and secured within the improvements on each Lot prior to sundown of the same day.

17. Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage facilities are established in this Declaration and are and/or will be reserved as shown on the recorded plats of the Subdivision. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

18. Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot or portion of the Subdivision, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot or portion of the Subdivision. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or portion of the Subdivision.

19. Cul-De-Sac, Etc. No above-ground structure, other than required street lights, may be erected upon a cul-de-sac, divided street entry island, or median strip.

20. Fences. No fences or screening of any kind shall be erected or maintained on any Lot without the prior written consent of the Architectural Control Committee as to location, material and height, and the decision of such committee to approve or reject a fence shall be conclusive. Further, with the consent of and, if required, grant of an easement by the Trustees under Article V, Section 6 of this Declaration, electronic fences may be installed on the Lots and Common Ground. Nothing herein contained shall prevent placement of fences by the Trustees on the Common Ground.

21. Television Antennae. No exterior television or radio antenna, towers, direct broadcast satellite dishes or antennas used to receive multichannel multipoint distribution (wireless cable) signals may be installed in the Subdivision without the prior approval of the Architectural Control Committee under Article VI of this Indenture; provided, however, in reviewing a request for approval of any such device, the Architectural Control Committee shall comply with all Federal, State and local laws, ordinances and regulations, and shall not impose any restriction which will preclude an Owner's receipt of an acceptable quality signal.

#### ARTICLE XIV

##### GENERAL PROVISIONS

These general provisions shall apply to the foregoing Declaration:

1. Enforcement. Enforcement of any of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any such covenants and may be brought to restrain any such violation and/or to recover damages therefor together with reasonable attorney's fees and court costs.

2. Actions by Trustees. The Trustees are authorized to act through a representative, provided, however, that all acts of the Trustees shall be agreed upon by at least a majority of said Trustees. No Trustee shall be held personally responsible for his

wrongful acts, and no Trustees shall be held responsible for the wrongful acts of others. No Trustee shall be held personally liable for injury or damage to persons or property by reason of any act or failure to act of the Trustees, collectively or individually. The Trustees from time to time serving hereunder, except Trustees appointed pursuant to Article IV, Section 4 hereof, shall not be entitled to any compensation or fee for services performed pursuant to this Declaration.

3. Adjoining Tracts. The Trustees named hereunder shall be the Trustees of the Property and are authorized and empowered to cooperate and contract with Trustees of adjoining or nearby tracts in the development and maintenance of facilities inuring to the benefit and general welfare of the inhabitants of the entire area.

4. Amendments. Until all Lots authorized to be developed in the Property have been sold and conveyed for residential use, the provisions of this Declaration may only be amended, modified or changed by First Party by recording an instrument of amendment in the Office of the Recorder of Deeds for St. Charles County, Missouri. Thereafter, the provisions hereof may only be amended, modified or changed by the written consent of two-thirds (2/3rds) of all the Owners, with any such amendment, modification or change being recorded in the Office of the Recorder of Deeds for St. Charles County, Missouri. No amendment, modification or change shall reduce or modify the obligations or rights granted to or imposed upon the Trustees or eliminate the requirement that there be Trustees unless some person or entity is substituted for the Trustees with their responsibilities and duties.

5. Severability, Etc. All covenants and agreements herein are expressly declared to be independent and not interdependent. No laches, waiver, estoppel, condemnation or failure of title as to any part of the Subdivision or any Lot in the Subdivision shall be of any effect to modify, invalidate or annul any grant, covenant or agreement herein with respect to the remainder of the Subdivision, saving always the right to amendment, modification or repeal as hereinabove expressly provided.

6. Invalidation. Invalidation of any one of the covenants of this Declaration shall in no way affect any other provision hereof.

7. Assignment by First Party. The rights, powers and obligations granted to First Party may be assigned or transferred by First Party, in whole or in part, to any other person or entity or persons or entities to whom First Party sells, transfers or assigns all or any of the Lots in the Property.

8. Rights During Construction and Sale. Notwithstanding any provision contained in this Declaration to the contrary, until all Lots authorized to be developed in the Subdivision have been sold and conveyed for residential use, First Party and its successors and assigns shall have the right and privilege (i) to erect and maintain advertising signs, sales flags and other sales devices and banners for the purpose of aiding the sale of Lots and Living Units in the Subdivision, and (ii) to maintain sales, business and construction offices in display homes or trailers in the Subdivision (including without limitation, the Common Ground) to facilitate the completion of development of the Subdivision and construction and sale of the Living Units. First Party's construction activities shall not be considered a nuisance, and First Party hereby reserves the right and privilege for itself and

its successors and assigns to conduct the activities enumerated in this Section until all Lots in the Subdivision have been sold and conveyed for residential purposes. The provisions of this, Article XIV, Section 8, shall not be amended, modified or deleted without the prior written consent of First Party.

9. Term. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the Property for a term which is the longer of: (i) thirty (30) years from the date of recordation of this Declaration, after which said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots subject hereto has been recorded agreeing to terminate this Declaration as of the end of any such ten (10) year period, but in no event prior to the vacation of all plats of the Subdivision; or (ii) as to any subdivision of the Property, for the duration of the subdivision encumbered hereby unless continued in effect by the vote of two-thirds (2/3) of the Lots in such subdivision by an appropriate instrument filed of record prior to the vacation of the plats of such subdivision as aforesaid. No such agreement of termination shall be effective unless made and recorded one (1) year in advance of the effective date of such termination, and unless written notice of the proposed agreement of termination is sent to every Owner at least ninety (90) days in advance of any action taken.

IN WITNESS WHEREOF, First Party has executed this Declaration this 25<sup>th</sup> day of November 1998.

FIRST PARTY: THE JONES COMPANY CUSTOM HOMES, INC., a Missouri corporation

BY: *Howard Chilcutt*  
 ITS: President

TRUSTEES:

*Debra J. Lowery*  
 Debra J. Lowery

*Kenneth P. Stricker*  
 Kenneth P. Stricker

*Chas D Jones*  
 Chas. D. Jones

STATE OF MISSOURI )  
 ) SS  
 COUNTY OF ST. LOUIS )

On this, 25<sup>th</sup> day of November, 1998, before me appeared Howard Chilcutt, to me personally known, who, being by me duly sworn, did say that he is the President of The Jones Company Custom Homes, Inc., a corporation of the State of Missouri, and that the foregoing instrument was signed in behalf of said

Corporation, by authority of its Board of Directors; and said Howard Chilcote acknowledged said instrument to be the free act and deed of said Corporation.

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

Susan DeWinter  
Notary Public

SUSAN DeWINTER  
NOTARY PUBLIC-NOTARY SEAL  
STATE OF MISSOURI  
ST. LOUIS COUNTY  
MY COMMISSION EXPIRES: JAN 29th, 2000

STATE OF MISSOURI        )  
                                  ) SS  
COUNTY OF ST. LOUIS    )

On this 25<sup>th</sup> day of November, 1998, before me personally appeared Debra J. Lowery, Kenneth P. Stricker and Chas. D. Jones, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

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

Susan DeWinter  
Notary Public

SUSAN DeWINTER  
NOTARY PUBLIC-NOTARY SEAL  
STATE OF MISSOURI  
ST. LOUIS COUNTY  
MY COMMISSION EXPIRES: JAN 29th, 2000



LEGAL DESCRIPTION

WATERFORD VILLAS PLAT I

STATE OF MISSOURI  
COUNTY OF ST. CHARLES  
RECORDER OF DEEDS  
FILED FOR RECORD

DEC 14 1998

By Barbara J. Hall  
Time 8:41 AM

**END OF DOCUMENT**

State of Missouri }  
County of St. Charles }

I hereby certify that this instrument was  
FILED FOR RECORD and is RECORDED on  
the Date and Time and in the Book and Page as  
Stamped hereon

Barbara J. Hall  
BARBARA J. HALL  
Recorder of St. Charles County

By Mary Brown  
Deputy

U.S.T. - MISC

3-21

BOOK 2564 PAGE 245

AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS FOR WATERFORD VILLAS (BOSCHERT TRACT)

35355

THIS AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS FOR WATERFORD VILLAS (BOSCHERT TRACT) made this 25<sup>th</sup> day of April, 2001, by The Jones Company Custom Homes, Inc., a Missouri corporation ("Jones"), pursuant to authority reserved in Article XIV, Section 4 of the Declaration of Covenants and Restrictions for Waterford Villas (Boschert Tract) dated Nov. 25, 1998, and recorded in Book 2174 Page 23 of the St. Charles County Records (the "Declaration"; capitalized terms used but not otherwise defined in this Amendment shall have the meanings ascribed in the Declaration).

WITNESSETH, THAT:

WHEREAS, Jones is the developer of Waterford Villas, a residential subdivision of the real property described on Exhibit A attached hereto and incorporated herein by reference (the "Property"), and the "First Party" under the Declaration; and

WHEREAS, all Lots in the Property have not been sold and conveyed for residential use, and pursuant to the above cited authority, Jones does hereby intend to amend the Declaration as hereinafter provided.

NOW, THEREFORE, in consideration of the premises and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Jones does hereby amend the Declaration as follows:

Section 1 of Article V is hereby deleted, and the following is hereby substituted in its place:

"1. Acquisition, Disposition, Etc. of Common Property. To acquire, receive, hold, convey, dispose of and administer the Common Property in trust and in accordance with and pursuant to the provisions of this Declaration, and to otherwise deal with the Common Property as hereinafter set forth. Without limiting the generality of the foregoing, during the period in which First Party retains the right under Article XIV, Section 4 of this Declaration to amend this Declaration, upon request of First Party, the Trustees shall cooperate with First Party in its development of the Subdivision, and to facilitate such development, shall have the right, in their discretion, to adjust and reconfigure the Common Property; to convey and exchange portions of the Common Property to First Party and the from time to time Owners of adjoining Lots; and to grant First Party and the from time to time Owners of adjoining Lots easements over the Common Property for appurtenances (including, but not limited to, patios, decks, driveways and sidewalks) to their Living Units. The provisions of this Article V, Section 1, shall not be amended, modified or deleted without the prior written consent of First Party."

2. Section 6 of Article V is hereby deleted, and the following is hereby substituted in its place:

“6. Easements. To grant easements for public streets, sewers, utilities and cable television on and over the Common Property. The Trustees shall also have authority in their discretion to grant First Party and the Owners easements to install and maintain electronic fences, patios, decks, driveways, sidewalks and similar such improvements on the Common Property. Notwithstanding anything contained in this Declaration to the contrary, if required in connection with First Party’s or its successors’ or assigns’ development of property adjacent to the Property, the Trustees shall grant First Party and such public or quasi-public utilities and authorities as First Party may direct, and their respective successors and assigns, the perpetual right and easement to enter the Common Property at any time and from time to time to erect, install, maintain, repair, rebuild and operate water, sewer, gas, telephone, power and cable television pipes, lines, poles and conduits including the right to clear the right-of-way for such pipes, lines, poles and conduits and to keep it clear of brush and trees. The provisions of this Article V, Section 6, shall not be amended, modified or deleted without the prior written consent of First Party.”

3. Except as hereby amended, the Declaration shall remain in full force and effect, and shall be binding and enforceable in accordance with its terms as hereby amended.

IN WITNESS WHEREOF, Jones has executed this Amendment in the County of St. Louis, State of Missouri, the day and year first above written.

THE JONES COMPANY CUSTOM HOMES, INC.,  
a Missouri corporation

BY: Howard Chilcutt  
ITS: President

STATE OF MISSOURI     )  
  ) SS  
COUNTY OF ST. LOUIS    )

On this 25<sup>th</sup> day of April, 2001, before me personally appeared Howard Chilcutt, President of The Jones Company Custom Homes, Inc., a Missouri corporation, known to me to be the person who executed the foregoing in behalf of said corporation and acknowledged to me that he executed the same for the purposes therein stated.

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

Susan DeWinters  
Notary Public

