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**CERTIFIED-FILED FOR RECORD**  
**Barbara J. Hall**  
Recorder of Deeds  
St. Charles County, Missouri  
BY:MKIMBLE \$117.00

File #: \_\_\_\_\_

RECORDING DOCUMENT IDENTIFICATION SHEET

TITLE: AMENDED AND RESTATED DECLARATION OF RESTRICTION AND  
INDENTURE CREATING HOMEOWNERS ASSOCIATION AND ESTABLISHING  
RESTRICTIONS FOR WILLOW WALK ESTATES

DATE: July 8, 2013

GRANTOR: Board of Governors of Willow Walk Estates, Payne Family Homes at Willow  
Walk Estates, LLC, David and Sandra Howell, John Springer, Ruth Rogers,  
Stephen and Brenda Mercier, Christopher and Kimberly Mercier, and Payne  
Family Homes, LLC

ADDRESS: 10407 Baur Blvd., Suite B, St. Louis, MO 63132

GRANTOR: Willow Walk Estates Homeowners Association

ADDRESS: 10407 Baur Blvd., Suite B, St. Louis, MO 63132

LEGAL DESCRIPTION: All of Willow Walk Estates, according to the plat thereof recorded in  
Plat Book 44, pages 387-388 of the St. Charles County Recorder of Deeds office.

Reference Book and page Number: Book 4824, page 1499

Note: The labels and designations set forth on this cover page are for purposes of permitting  
recording only and shall not amend or change the substance of the document.

JERRY DUEPNER  
CALL 314-996-0341



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**AMENDED AND RESTATED DECLARATION OF RESTRICTION  
AND INDENTURE CREATING HOMEOWNERS ASSOCIATION  
AND  
ESTABLISHING RESTRICTIONS FOR WILLOW WALK ESTATES  
COUNTY OF ST. CHARLES  
STATE OF MISSOURI**

This Amended and Restated Declaration of Restriction and Indenture Creating Homeowners Association and Establishing Restrictions for Willow Walk Estates is made as of the 31<sup>st</sup> day of July, 2013, by Scott Kerns, John O'Connell, and Jerry Duepner, not individually, but as the Board of Governors of Willow Walk Estates, Payne Family Homes at Willow Walk Estates, LLC, a Missouri limited liability company ("Payne") and David A. Howell, Sandra A. Howell, John R. Springer, Ruth C. Rogers, Stephen D. Mercier, Brenda L. Mercier, Christopher S. Mercier, Kimberly A. Mercier, and Payne Family Homes, LLC.

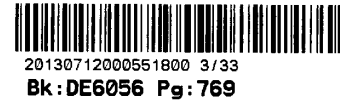
**RECITALS**

A. First Land Company of St. Charles County, Inc., a Missouri corporation ("First Land") executed that certain Declaration of Restriction and Indenture Creating Homeowners Association and Establishing Restrictions for Willow Walk Estates dated August 17, 2007 and recorded the same in the office of the St. Charles County Recorder of Deeds in Book 4824, page 1499 (the "Original Declaration"), encumbering property legally described therein as "All of Willow Walk Estates, according to the plat thereof recorded in Plat Book 44, pages 387-388 of the St. Charles County Recorder of Deeds office", and which consisted of Lots 71-100, inclusive, Common Ground "A" and Common Ground "B", WILLOW WALK ESTATES PLAT ONE, according to the plat thereof recorded in Plat Book 44, pages 387-388 of the St. Charles County Recorder of Deeds office (the "Subdivision").

B. Payne has acquired all of the Lots in the Subdivision with the exception of Lots 71, 72, 83, 87, and 90 (the "Non-Payne Lots") and thus owns more than two-thirds of the Lots in the Subdivision and, in connection with such acquisition, acquired the rights of First Land under the Original Declaration.

C. The individuals identified on Exhibit A, attached hereto and incorporated herein by reference own the Non-Payne Lots (collectively, the "Homeowners").

D. Article VI of the Original Declaration provides that two-thirds of the owners of lots in the Subdivision, subject to the approval of a majority of the Board of Governors, may modify, amend or change the terms of the Original Declaration or eliminate one or more of the Lots or parts thereof from the coverage of the Original



Declaration by giving written consent thereto.

E. Under Article VI, First Land reserved the right to amend the Original Declaration in any manner whatsoever, without notice, so long as First Land retained legal ownership of a Lot in the Subdivision and recorded the amendment in the office of the St. Charles County Recorder of Deeds.

F. Payne, the Board of Governors and the Homeowners desire to amend and restate the Original Declaration by replacing the Original Declaration with the terms of this Amended and Restated Declaration, terminating the Original Declaration and releasing the Subdivision from the force and effect of the Original Declaration while subjecting the Subdivision to the terms, conditions and provisions of this Amended and Restated Declaration.

NOW, THEREFORE, Payne, the Board of Governors and the Homeowners hereby amend and restate the Original Declaration by replacing the Original Declaration with the terms of this Amended and Restated Declaration, terminating the Original Declaration and releasing the Subdivision from the force and effect of the Original Declaration, subjecting the Subdivision to the terms, conditions and provisions of this Amended and Restated Declaration, and declaring that the Subdivision and any and all parts thereof, shall be held, sold, conveyed, occupied, and developed subject to the following easements, reservations, restrictions, covenants, conditions, charges, and liens which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in all or any portion of the Subdivision, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.

#### ARTICLE I DEFINITION OF TERMS

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

1. "Architectural Control Committee" shall have the meaning set forth in Article VII hereof.
2. "Association" shall mean the Willow Walk Estates Homeowners Association, a Missouri non-profit corporation, its successors and assigns.
3. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.
4. "Common Area" shall mean (i) all real property (including the



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improvements thereto), easements, licenses, and other rights presently or hereafter owned by the Association, for the common use, benefit, and enjoyment of the members of the Association, subject, however, to the uses, reservations, limitations, easements, conditions, and restrictions hereinafter provided in this Amended and Restated Declaration, (ii) such real property designated as common area or common ground, including, without limitation, Common Ground "A" and Common Ground "B", WILLOW WALK ESTATES, PLAT ONE, according to the plat thereof recorded in Plat Book 44, pages 387-388 of the St. Charles County Recorder of Deeds office.

5. "Declarant" shall mean and refer to Payne, its successors and assigns, and such other individuals, corporations, partnerships, or limited liability companies, or other entities to whom or which Payne may assign all or part of its rights as Declarant under this Declaration in an instrument executed and acknowledged by it and recorded in the office of the St. Charles County Recorder of Deeds.

6. "Lot" shall mean and refer to any separately designated and numbered area of land, with the exception of Common Area, contained within the Subdivision and shown on the Plat or any re-subdivision plat of a Lot, including, without limitation, Lots 71-100, inclusive, WILLOW WALK ESTATES, PLAT ONE, according to the plat thereof recorded in Plat Book 44, pages 387-388 of the St. Charles County Recorder of Deeds office.

7. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot, except that, where a Lot is being sold on a contract for deed and the contract vendee is in possession of the Lot, then the vendee and not the vendor shall be deemed the "Owner".

8. "Plat" shall mean WILLOW WALK ESTATES, PLAT ONE, according to the plat thereof recorded in Plat Book 44, pages 387-388 of the St. Charles County Recorder of Deeds office and shall also include any additional subdivided property that may be made subject to this Amended and Restated Declaration from time to time by amendment as provided herein.

9. "Residence" or "residences" shall mean the detached single-family homes constructed upon Lots located within the Subdivision.

10. "Subdivision" shall have the meaning set forth in Recital A, and if any additional real property is made subject to this Amended and Restated Declaration, shall include all real property added thereto.

## ARTICLE II MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION



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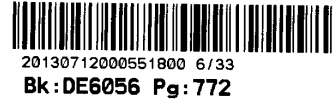
1. Membership. Every Owner of a Lot shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

2. Votes. All Owners shall be entitled to one vote in the Association for each Lot owned by such Owner and in no event shall more than one vote in the Association be cast with respect to any Lot. If any Owner consists of more than one person, the voting rights of such Owner shall be exercised as if the Owner consisted of only one person.

3. Proxies. At all meetings of the Association, any member may vote in person or by proxy. All proxies shall be in writing, signed by the giver of the proxy, state that the giver of the proxy is appointing the proxy holder to vote for the proxy giver at a designated meeting or meetings, and be filed with the Board. Every proxy shall be revocable and shall automatically cease upon the conveyance by the giver of the proxy of such proxy giver's Lot.

4. Association Meetings. Meetings of the Association shall be held at a location in St. Charles County, Missouri, as may be specified in the written notice of the meeting. The first annual meeting of the Association shall be called by the Board at such time as the Board deems appropriate, but in any event no later than sixty (60) days after Declarant sells the last Lot in the Subdivision to an Owner, and thereafter the annual meeting of the Owners shall be held on the same day of each year on the anniversary date of the first annual meeting called by the Board at the same hour or at such other date or hour specified in the written notice of such meeting. Special meetings of the Owners may be called by the President of the Board, a majority of the Board, or by Owners having at least three-fourths (3/4ths) of the votes in the Association. Written notice of the place, day and time of the annual meeting and all special meetings shall be delivered not less than five days before such meetings to all Owners and Directors, if such Directors are not Owners and to those institutional holders of a first mortgage or first deed of trust on any Lot that have requested such notice by written notification to the Board no fewer than ten days prior to any such meeting. Any Owner or holder of a first mortgage or first deed of trust shall have the right to designate a representative to attend all annual and special meetings. If sent by mail, notice shall be deemed delivered when deposited in the United States mail, with postage thereon prepaid, addressed to the person or entity entitled to notice at his or her last known address.

5. Quorum. A quorum of Owners for any meeting shall consist of Owners holding ten percent of the votes in the Association, whether present in person or by written proxy submitted to the Board at or before the meeting. Unless otherwise provided herein, the decision of a majority of a quorum shall be valid as the act of the Association. If a quorum is not present at any meeting, another meeting shall be called as provided above, and business may be conducted at said second meeting if at least



Owners holding five percent of the votes in the Association attend in person or by proxy.

### ARTICLE III BOARD OF DIRECTORS

1. Number and Term. The Board of Directors of the Association shall, except as otherwise provided herein, consist of three (3) persons, and each Director shall hold office for a term of three years and, in any event, until his successor shall be elected (or appointed, as the case may be) and qualified. The first Board of Directors shall consist of Scott Kerns, John O'Connell, Jerry Duepner, who shall serve and whose terms as Directors shall continue until new Directors are elected by Owners as provided herein.

At the point in time at which fifty percent of the Lots are owned by Owners other than Declarant, then within ninety days of such date (or at such earlier time as Declarant may elect) the Board shall call a special election for the Association through which one Director shall be elected by a majority vote of a quorum of Owners and the remaining two Directors shall be appointed by Declarant. The Directors so elected and appointed pursuant to this provision shall serve as Directors until new Directors are elected and appointed and qualified as provided below.

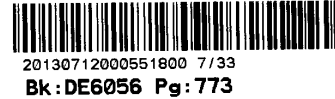
At the point in time at which ninety-five percent of the Lots are owned by Owners other than Declarant, then within one hundred eighty (180) days of such date (or at such earlier time as Declarant may elect) the Board shall call a special election of the Association through which two Directors shall be elected by a majority vote of a quorum of Owners and the remaining Director shall be appointed by Declarant. The Directors elected and appointed pursuant to this provision shall serve as Directors until new Directors are elected and qualified as provided below.

At the point in time at which one hundred percent of the Lots are owned by Owners other than Declarant, then within thirty (30) days of such date (or at such earlier time as Declarant may elect) the Board shall call a meeting of the Association (be it a special meeting or the first annual meeting) at which all three Directors shall be elected by a majority vote of a quorum of Owners.

Notwithstanding any provision contained herein to the contrary, Declarant shall have the sole right and authority to remove, replace and/or fill the vacancy of the original Directors named hereinabove and appoint successor Directors.

Notwithstanding the foregoing provision for three year terms, the first fully



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independently elected Board shall serve the following staggered terms: one Director to serve for a three (3) year term and until a qualified successor shall be elected, one Director to serve for a two (2) year term and until a qualified successor shall be elected and one Director to serve for a one (1) year term and until a qualified successor shall be elected. Thereafter, each subsequent Director shall be elected and hold office for a term of three (3) years and until a qualified successor shall be elected.

2. Election of Directors by Mail. Notwithstanding any provision of this Declaration to the contrary, elections of persons to the Board of Directors may be conducted by mail. In order to conduct an election by mail, the Board shall send a notice for each Lot to the Owner(s) of such Lot, addressed to the address of the Owner(s) then on file with the Board, notifying the Owner(s) of the election and requesting nominations for the Board of Directors. The notice shall specify that nominations will be received for a period of three (3) weeks from the date set forth on the notice. Any Owner wishing to submit a nomination of an individual shall notify the Board of Directors in writing of the name of the nominee; the nominee shall consent to such nomination in writing on the letter containing such nomination and the nominee shall also sign the letter setting forth the nomination of the nominee. After receiving nominations, the Board shall prepare a ballot containing the names of all nominations validly submitted to the Board in accordance with the requirements hereof within the time limit established in the notice. The ballot shall have typed upon it the address of the Board to which the ballot must be returned and the date by which the ballot must be received by the Board in order to constitute a valid vote. The date by which ballots must be received shall be such date as the Board of Directors, in its sole discretion, selects, provided, in no event shall such date be sooner than ten (10) days or later than twenty (20) days after the mailing of the ballots to the Owner(s). The Board shall mail one ballot for each Lot to the Owner(s) of such Lot, addressed to the address of the Owner(s) then on file with the Board. Together with each ballot, the Board shall send an envelope, upon the outside of which is typed the name of the Owner(s) to whom the ballot is sent. After voting for the nominees by marking the ballot, the Owner shall place the ballot within the envelope accompanying the ballot and shall sign the outside of the envelope next to the typewritten name of the Owner(s). This envelope must then be placed in an envelope addressed to the Board of Directors at the address set forth on the ballot and be personally delivered to such address or delivered to such address after being deposited in the United States Mail, postage prepaid, within the required time limit. All ballots received within the required time limit, properly marked and sealed within the accompanying signed envelopes, shall be counted by the Board and results shall be announced to the Owner(s) by the Board mailing notice within seven (7) days after the deadline for receiving ballots to all Owner(s) at the addresses of the Owner(s) then on file with the Board.

3. Qualifications. Except for Directors identified hereinabove or otherwise appointed by the Declarant, Directors shall be elected from among the Owners and shall be Owners. Except as otherwise provided herein, if a Director shall cease to meet



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such qualifications during his term, he shall immediately cease to be a Director and his place on the Board shall be deemed vacant.

4. Vacancies. Except as provided for the first Board of Directors or those appointed by Declarant, any vacancy occurring in the Board shall be filled by the remaining Directors, with the successor elected by the Owners at the next annual meeting or at a special meeting of Owners called for such purpose or by mail as set forth in Section 2 above.

5. Meetings. An annual meeting of the Board shall be held immediately following the annual meeting of Owners and at the same place. Special meetings of the Board shall be held upon call by a majority of the Directors on not less than forty-eight (48) hours notice in writing to each Director, delivered personally or by mail or telegram. Any Director may waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action of the Board without a meeting.

6. Removal. Except for the first Board of Directors or those Directors otherwise appointed by Declarant, Owners holding three-fourths of the votes in the Association may remove any Director from office.

7. Quorum. A majority of the number of Directors fixed by this Declaration as the full Board of Directors shall constitute a quorum for the transaction of business and the act of a majority of the Directors at a meeting at which a quorum is present shall be the act of the Directors. In the absence of a quorum, a majority of the Directors present at a meeting, or the Director, if there be only one present, may successively adjourn the meeting from time to time, not to exceed thirty days in the aggregate, until a quorum is obtained, and no notice other than an announcement at the meeting need be given of such adjournment.

8. Actions without Meetings. Any action, which is required to or may be taken at a meeting of the Board of Directors, may be taken without a meeting if consents in writing, setting forth the actions so taken, are signed by all of the Directors of the Board of Directors. The consents shall have the same force and effect as the unanimous vote at a meeting duly held.

9. Compensation. Directors shall receive no compensation for their services, unless expressly provided for in resolutions duly adopted by the Owners.

10. Powers and Duties. The Board of Directors of the Association shall manage the Subdivision and affairs of the Association. The Board of Directors shall have and is vested with all powers and authorities, except as may be expressly limited by law or this Declaration, to: (i) supervise, control, direct, and manage the Subdivision, affairs, and activities of the Association; (ii) determine the policies of the Association; (iii) enforce the rights and obligations given them under the Declaration; (iv) do or cause to



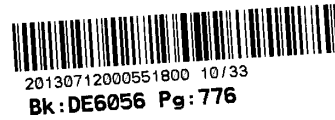


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be done any and all lawful things for and on behalf of the Association; (v) exercise or cause to be exercised any and all of the Board's powers, privileges or franchises; and (vi) seek the effectuation of the Board's objects and purposes. Without limiting the generality of the foregoing, the Board of Directors may:

- (a) administer the affairs of the Association and of the Subdivision;
- (b) engage, if deemed necessary or appropriate, the services of a professional managing agent who shall manage and operate the Subdivision for all of the Owners, upon such terms and for such compensation and with such authority as the Board may approve;
- (c) formulate policies for the maintenance, management, operation, repair and replacement of the Subdivision and improvements therein, to construct, maintain, operate, repair, and replace any other amenities and facilities to serve the Subdivision, and to obtain such other services that provide for the public health, safety and welfare of thereof as the Directors in their sole discretion, may consider advisable from time to time;
- (d) adopt and enforce administrative rules and regulations governing the maintenance, management, operation, repair and replacement of the Subdivision, facilities, amenities, and improvements, and to amend such rules and regulations from time to time;
- (e) provide for the maintenance, management, operation, repair and replacement of the Common Areas, facilities, amenities, and improvements, including, without limitation, mowing, landscaping, planting, seeding, pruning and care of shrubbery, removal of plants, maintenance, repair and replacement of street lights located within or adjacent to street right of ways (unless such maintenance, repair and replacement shall be performed by the City of O'Fallon, Missouri or a public utility company), and maintenance, repair and replacement of pavement, storm sewers (unless the same are dedicated to the public) and other private Association improvements located within the Common Area;
- (f) provide for payments for all maintenance, management, operation, repair and replacement of the Subdivision and improvements and also the payment of any assessment pursuant to this Declaration, and to approve payment vouchers or to delegate such approval to the officers or the managing agent;
- (g) provide for the grass cutting and maintenance of the lawns and



landscaping on the Common Area and snow removal for the streets and cul de sacs (if not performed by the City of O'Fallon, Missouri);

- (h) provide for the designation, hiring and removal of employees and other personnel, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Subdivision and improvements, and to delegate any such powers to a managing agent (and any such employees or other personnel that may be the employees of said managing agent);
- (i) estimate the amount of the annual budget, provide for such reserves as the Board deems appropriate, and provide the manner of assessing and collecting from the Owners their respective shares of such common expenses, as hereinafter provided;
- (j) grant easements and rights-of-way over the Common Areas to such utility companies, public agencies or others as the Board shall deem necessary or appropriate and to make rules and regulations, not inconsistent with the law and this Declaration, for the use and operation of the Common Areas and in every and all respects governing the operation, funding and usage thereof;
- (k) receive, hold, convey, dispose and administer, in trust, for any purpose mentioned in the Declaration, any gift, grant, conveyance or donation of money or real or personal property;
- (l) make all contracts and incur all liabilities necessary, related or incidental to exercise the Board's power and duties hereunder;
- (m) dedicate any private streets, drives, walkways or rights-of-way, or portions thereof to appropriate agencies and to vacate or abandon easements in accordance with applicable legal procedures;
- (n) obtain, in the Board's discretion, adequate liability and hazard insurance on the Common Areas, as well as insurance protecting the Directors from any and all claims for damages arising out of any decision, act, or failure to act, of the Directors acting in their capacity as Directors;
- (o) exercise all other necessary or appropriate powers and duties commonly exercised by a Board of Directors and all powers and duties of the Directors as stated in the Declaration;



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- (p) purchase a fidelity bond for any person or persons handling funds belonging to the Association or Owners;
- (q) enforce the Declaration, and any and all restrictions governing the Subdivision and to take any and all necessary steps to secure the enforcement and compliance of the same; and
- (r) exercise any and all other powers or acts as are authorized by the Declaration or conferred upon a non-profit corporation under Chapter 355RSMo.

11. Records. The Directors shall cause to be kept records in chronological order of the receipts and expenditures affecting the Lots and Common Areas, specifying and itemizing the common expenses incurred. Such records and the vouchers authorizing the payments of such expenses shall be available for examination by the Owners, and by the holders of a first mortgage or first deed of trust on any Lot, at convenient hours on week-days. Payment vouchers may be approved in such manner as the Directors may determine.

#### ARTICLE IV BUDGET, ASSESSMENTS AND SUBDIVISION LIEN

1. Creation of the Subdivision Lien. Each Owner of a Lot is deemed to covenant and agree to pay to the Board, acting on behalf of the Association: (1) regular assessments and charges ("Assessments"), (2) special assessments ("Special Assessments") for capital improvements, such assessments to be established and collected as hereinafter provided. The Assessments and Special Assessments together with interest, costs, and attorneys' fees, shall be a charge on each Lot and improvements thereon and shall be, upon levying of the same, a continuing lien upon the Lot against which the Assessment or Special Assessment is made. Each such Assessment or Special Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the Assessment or Special Assessment was levied. Notwithstanding any term, condition or provision of this Declaration to the contrary, any Lots owned by Declarant shall be exempt from Assessments and/or Special Assessments for such period of time as any of the same are owned by Declarant.

2. Purpose of Assessment. The Assessments levied by the Board on behalf of the Association shall be used exclusively to promote the health, safety, and welfare of the residents of the Subdivision, for the improvement and maintenance of the Subdivision, and otherwise to fulfill and perform the Board's rights, duties, obligations, and functions pursuant to this Declaration.

3. Establishment of Budget and Assessments.

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a. Unless the Directors otherwise decide, the fiscal year of the Association shall be a calendar year. On or before the end of each Assessment Year, the Directors shall cause to be prepared an estimated annual budget for the next Assessment Year. Such budget shall take into account the estimated expenses and cash requirements for the Assessment Year, including, without limitation, salaries, wages, payroll taxes, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power, water, and other common utilities, management fees, reserves, expenses associated with the Subdivision, and other common expenses (as distinguished from individual mortgage payments, real estate taxes and individual telephone, electricity, gas, and other individual utility expenses billed or charged to the separate Owners on an individual or separate basis rather than a common basis). The annual budget may provide for a reserve for contingencies for the Assessment Year and a reserve for replacements, in reasonable amounts as determined by the Directors. To the extent that the Assessments and other cash income collected from the Owners during the preceding years shall have been more or less than the actual expenditures for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account.

b. Until commencement of the first Assessment Year after Declarant has transferred control of the Board pursuant to Article III, Section 1 hereof, the Owners of each Lot shall pay, on or before the 1st day of each Assessment Year, as such Lot's respective annual Assessment, such Lot's proportionate share of the estimated annual budget for each Assessment Year as estimated by the Declarant and approved by the Directors.

c. Upon commencement of the first Assessment Year after Declarant has transferred control of the Board pursuant to Article III, Section 1 hereof, the Directors shall prepare the annual Budget and shall fix the Assessment, provided that the Assessment may be increased by more than ten percent (10%) in any given Assessment Year only by approval by Owners having at least a majority of a quorum of the votes in the Association at an Association meeting and by a vote in accordance with the voting procedures set forth herein. Copies of the estimated annual budget shall be furnished by the Board to the Owners not later than thirty (30) days prior to the beginning of such Assessment Year. Any institutional holder of a first mortgage or first deed of trust on any Lot shall receive at no cost, if it so requests in writing, said statement from the Board. On or before the first day of each succeeding Assessment Year, and without further notice, the Owners of each Lot shall pay, as the respective annual Assessment for such Lot, such Lot's share of the expenses for such Assessment Year as shown by the annual budget. In the event that the Board shall not approve an estimated annual budget or shall fail to determine new Assessments for any Assessment Year, or shall be delayed in doing so, the Owners shall continue to

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pay each year the annual Assessment as last determined. All Owners shall pay the annual Assessments to the managing agent or as may be otherwise directed by the Board.

d. The Board shall cause to be kept a separate account for each Lot showing the respective Assessments charged to and paid by the Owners of such Lot, and the status of such account from time to time. Upon ten (10) days written notice to the Board, and the payment of a reasonable fee therefor, any Owner or holder of a first mortgage or first deed of trust on any Lot shall be furnished a statement of the respective account for such Lot setting forth the amount of any unpaid Assessments that may be due and owing.

e. In the event that during the course of any Assessment Year, it shall appear to the Board that the annual Assessment, determined in accordance with the estimated annual budget for such Assessment Year, are insufficient or inadequate to cover the estimated common expenses for the remainder of such Assessment Year, then the Board shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of such year. Copies of such supplemental budget shall be made available to each Owner and, notwithstanding any provision hereof to the contrary, any additional Assessment necessary to cover such deficiency shall be levied in a fair and equitable manner within the sole discretion of the Board.

f. Notwithstanding any provision of this Declaration to the contrary, if the assessments levied in any year are insufficient to support all budgeted expenses, Declarant may but shall not be obligated to advance funds to the Board 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 a reasonable rate determined by the Board.

4. Special Assessments for Capital Improvements. In addition to the Assessments authorized above, the Board may levy, in any Assessment Year, a Special Assessment applicable to that Assessment Year only, for the purpose of paying in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas including fixtures and personal property related thereto, provided that Special Assessments shall be approved by a vote of Owners having at least two-thirds of a quorum of the votes of the Association at a meeting at which a quorum is present.

5. Uniform Rate. Assessments and Special Assessments must be fixed at a uniform rate for all Lots (subject to the exemption provided for hereinabove for any Lots owned by Declarant and as otherwise provided in this Declaration).

6. Commencement of Annual Assessments. Each Owner shall pay his first



annual Assessment upon the closing of the purchase of his Lot, adjusted according to the number of months remaining in the Assessment Year. Thereafter, annual Assessments shall be paid as provided herein.

7. Capitalization and Transfer Fee. In addition to the annual Assessment and, if applicable, any Special Assessment, each Owner purchasing a Lot shall pay an initial capitalization fee to the Association of One Hundred Fifty and 00/100s Dollars (\$150.00) at the closing of such purchase and, upon each subsequent sale of such Lot, the Owner thereof shall pay the Association at the closing of such sale a transfer fee of One Hundred and 00/100ths Dollars (\$100.00) to defray costs associated with administering the records of the Association and facilitating and responding to inquiries from the seller, purchaser, lender(s) and title company in connection with such sale (collectively, the "Sale Fees"). The Sale Fees shall be the personal obligation of the applicable Owner and shall, if unpaid at such closing, be a lien on such Lot, without the necessity of filing any further evidence of such lien, and enforceable by the Association as otherwise provided in Article IV, Section 9 hereinbelow for the collection of Assessments and enforcement of liens in connection therewith. Notwithstanding any provision of the foregoing to the contrary, the amount of any such Sale Fees shall be uniform for all Lots and may not vary over time.

8. Willful or Negligent Acts of Owners. If the Board performs repair, maintenance, and replacement work on Residences because of an Owner's failure to maintain the same, as determined by the Board in its sole discretion, then the Board may assess the entire cost of such work against such Owner so that such assessment becomes not only the personal obligation of such Owner but also a lien upon such Owner's Lot.

9. Non-payment of Assessments. Any Assessment or Special Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of ten percent (10%) per annum, or (ii) the maximum rate per annum allowed by law. The Board, acting on behalf of the Association, shall have the authority to exercise and enforce any and all rights and remedies as provided in this Declaration or as otherwise available at law or in equity, including, but not limited to, the right to foreclose the lien against the defaulting Owner's Lot in like manner as a mortgage on real estate or a power of sale under Chapter 443, R.S.Mo. In addition to the foregoing, the Board shall have the right to suspend any Owner's voting rights and the right of such Owner, his family, guests and invitees to use any part of the Common Areas for any period during which any assessment against such Owner's Lot remains unpaid. No Owner may waive or otherwise escape liability for the Assessments and Special Assessments established herein by non-use or abandonment of such Owner's Lot or the Common Area.

10. Unexpended Assessments and Special Assessments. All funds paid from time to time by Owners for Assessments and Special Assessments, from time to time





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on hand and unexpended shall be deemed to be owned equally and in common by the Owners.

11. Subordination of the Lien to Mortgages. The liens of the Assessments or Special Assessments provided for herein shall be subordinate to the lien of any first purchase money mortgage or first purchase money deed of trust encumbering the Lot. Sale or transfer of any Lot shall not affect the liens for Assessments or Special Assessments; however, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessment or Special Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments or Special Assessments thereafter becoming due or from the lien thereof.

## ARTICLE V EASEMENTS

1. Owners' Easements. Each Owner and each Owner's family, guests and invitees shall have an exclusive, perpetual right and easement of ingress, egress, use and enjoyment over, across, upon, in and to the Common Area, which easement shall include, without limitation, the right of access to and from, and use of, such Common Area, and the right to use utility, water, sewer, drainage, and ponding easements therein.

The foregoing rights and easements shall be appurtenant to and shall pass with the title to each Lot, shall not be severable therefrom, and shall be subject to:

- (i) the rights of the Declarant, Board, and Association as set forth in the Declaration;
- (ii) the right of each Owner and such Owner's family, guests, and invitees, to use that part of the Common Area as may be reasonably necessary for ingress and egress to such Owner's Residence;
- (iii) the easements, uses, limitations, conditions, reservations, and restrictions provided in this Declaration;
- (iv) the right of the Board, on behalf of the Association, to exercise any and all rights and obligations reserved to them in this Declaration, including, without limitation, maintaining and keeping the Common Area in good order and repair, and negotiating with any public agency for the dedication or conveyance of all or any part of the Common Area, for any public purpose, and to execute such instruments as may be necessary for such purpose, subject to the proceeds of any such conveyance being held by the Association in trust for the Owners.

2. Delegation of Use. Any Owner may delegate such Owner's right of use and enjoyment to the Common Area to such Owner's family, guests and invitees.

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3. Use of Easements. Each Owner and such Owner's family, guests, and invitees shall use and exercise their easement rights over the Common Area in a reasonable manner so as not to endanger or harm others, create a nuisance for others, or cause any obstruction or impediment to the use of the easements created by this Declaration by others authorized to use them.

4. Association Right to Grant Easements and Association's Easements Over Subdivision. The Association shall have the right to grant permits, licenses, and easements over the Common Area for utilities, roads, and other purposes necessary for the proper operation of the Subdivision.

Each Lot shall be subject to a perpetual easement in gross in favor of the Board, on behalf of the Association, its successors and assigns, for ingress and egress to perform its rights and obligations as provided by this Declaration. Should it be necessary or desirable, in the sole opinion of the Board, to enter a Residence or Lot to maintain, service, improve, repair, or replace any improvements, landscaping, or equipment, then any contractors, subcontractors, employees, or agents of the Board and their respective agents, subcontractors, and employees shall be entitled to enter in, upon or about the Residence and Lot for such purpose. The Board and any contractors, subcontractors, employees, or agents of the Board and their respective agents, subcontractors, and employees shall specifically have the authority to enter any Lot for the fulfillment of the Board's rights and obligations specified herein, including, without limitation, enforcing the provisions of this Amended and Restated Declaration, repairing any neglected improvements or abating any nuisance.

5. Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. 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 of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement areas shown on the Plat and all improvements in it shall be maintained continuously as provided in this Amended and Restated Declaration, except for those improvements for which a public authority or utility company is responsible.

6. Temporary Construction Easement. Until the last Residence in the Subdivision is sold and conveyed to an Owner, the Lots and Common Area shall be subject to an easement allowing Declarant, and its respective employees, agents, contractors and subcontractors to enter upon, under, over, and through all or any portion of them for the purpose of (i) grading, installing utilities and improvements therein, (ii) constructing Residences within the Subdivision, (iii) parking vehicles and equipment, and (iv) storing or stock piling materials or equipment. Under no circumstances shall any such activities be deemed a nuisance or subject to restriction



by the Owners, it being expressly understood that such activities are deemed necessary for the completion of the Subdivision.

7. Effect of Easements. Except as otherwise provided herein, all easements and rights herein established shall run with the land and inure to the benefit of and be binding on Declarant, and any owner, purchaser, mortgagee, or other person having an interest in any portion of the Subdivision, whether or not such easements are mentioned or described in any deed of conveyance.

## ARTICLE VI RESTRICTIONS

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

1. Maintenance. Except as otherwise provided herein, each Owner shall maintain his Lot and Residence in good order and repair, in compliance with all applicable zoning ordinances and subdivision regulations of the City of O'Fallon, Missouri. To the extent that the City of O'Fallon, Missouri, or any other governmental authority shall require permits for the erection of any improvements upon a Lot, including, without limitation, fences, decks or other structures or improvements, the Owner of such Lot shall be responsible for obtaining the same. Each Owner shall maintain and keep his Lot and Residence free of trash, rubbish, toys, tools, debris, crates, or discarded items and shall do nothing that would be in violation of law.

2. Setbacks. No Residence, garage or outbuilding shall be located closer than the permitted setback requirements, nor shall the height of any such structure exceed the height requirements, established by the zoning and subdivision regulations applicable for the Subdivision.

3. Permits and Construction. Subject to any applicable municipal ordinances or regulations of the City of O'Fallon, Missouri, no Owner, except Declarant with respect to Lots owned by Declarant, shall cause any construction on a Lot without first submitting the plans and specifications for such construction to the Architectural Control Committee as provided in Article VII below and obtaining approval for such construction as provided therein.

4. Exterior Materials. The exterior walls of all Residences shall be constructed of wood or wood products, clay, brick, rock, stone, cementitious siding, or vinyl siding, in an attractive manner and of good workmanship, provided however, that if the exterior walls of any Residence are constructed of wood or wood products, the same shall be painted or stained.



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5. Obstructions. There shall be no obstruction of any portion of the Common Area or any storage, construction, or planting thereon by an Owner, except as expressly permitted by the Architectural Control Committee. No clothes, laundry, or other articles or equipment shall be placed, hung, exposed or stored in any portion of the Subdivision.

6. Animals. No animals, rabbits, livestock, fowl, or poultry of any kind shall be raised, bred, or kept in any Residence or on any Lot, except that a total of no more than three (3) dogs, cats, and other household pets may be kept in Residences, subject to rules and regulations adopted by the Board, provided that they are not kept, bred, or maintained for any commercial purpose; and provided further that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Residence upon three (3) days' written notice from the Board. No pet shall be permitted to run at large or be leashed to a fixture upon the Common Area; however, owners may walk their pets upon and in the Subdivision provided their pets remain on a leash at all times and the Owners responsibly remove all fecal matter left by their pets.

7. Signs. No signs, advertisements, billboards, or advertising structures of any kind may be erected, maintained, or displayed on any Lot or be hung or displayed in the windows or on the outside walls of any Residence. Notwithstanding the foregoing, subject to the approval of the Architectural Control Committee, the following signs are permitted: (i) one sign of not more than five square feet may be placed thereon for each Residence that may be for sale or rent, (ii) one sign of not more than one square foot warning people of dangerous animals located in the Residence, and (iii) one sign not exceeding one square foot notifying people of the presence of an alarm or home security system located in the Residence. Nothing herein shall prohibit signs erected or displayed by Declarant in connection with the development of the Subdivision, the construction of the Residences, and the marketing and sale of Residences therein.

8. Window Coverings. All window coverings in the Residences shall be lined or made of materials or dyed or painted such that the side to the exterior of the Unit is white or other neutral color.

9. 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 garage/driveway 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.

10. Television Antennae. No exterior television or radio antenna, towers, 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

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Committee; 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.

11. Satellite dish installation preferences. To the extent that the reception of an acceptable signal would not be impaired, the following policy is established with regard to the installation and maintenance of satellite dishes in the development. Each Owner shall consider three factors, namely, Location, Height, and Screening ("Installation Preferences"), in making a decision regarding the placement of any satellite dish device, which consideration shall be accomplished by the completion of a checklist confirming the consideration of the following placement preferences:

A. Location. Placement at the closest distance from the rearmost corner of the home on the rear wall that a signal can be obtained, or, if no suitable signal may be obtained, then placement on the next closest distance from the rearmost corner of the home on the side wall that adjoins the garage.

B. Height. Placement within four feet from the ground and if no suitable signal can be obtained, then under an eave of the home.

C. Screening. Concealment of the device by shrubbery or other natural landscaping elements otherwise allowable within the restrictions of the development, concealment of the device by an opaque surface such as a wall or fence otherwise allowable within the restrictions of the development, or concealment of the device by a natural or manmade object otherwise allowable within the restrictions of the development.

Any Owner of a Lot upon which a satellite dish has been placed must be able to provide a completed a checklist upon a review of the satellite dish location as evidence of its consideration of the Installation Preferences or the Owner will be presumed not to have complied with the Installation Preferences. These placement preferences shall be enforced to the extent that such enforcement does not violate the provisions of 37 C.F.R. Part 1, Subpart 5, Section 1.4000 or any successor provision promulgated under the Telecommunications Act of 1996, as amended from time to time.

12. No Above-Ground Exterior Tanks. No tank, bottle or container of fuel shall be erected, placed or permitted above the surface level of any Lot.

13. Water/Sewage Disposal. All water and sewage from household uses shall be disposed of through the public sanitary sewer system. No outside toilet or latrine shall be constructed on any lot in the subdivision, except during the original home construction phase.

14. No Temporary Structures. No structure of a temporary character, trailer, mobile home, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a temporary or permanent residence.

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15. Vehicle Parking. No motor vehicle requiring what is commonly called a "commercial license" under the laws of the State of Missouri, County of St. Charles and/or City of O'Fallon, Missouri, trailer, boat trailer, boat (motorized or unmotorized), canoe, camping truck, camper, motorcycle, motor tricycle, ATV, recreational vehicle (RVs), sled, recreational motor vehicle, dirt bike, minibike, tractor, truck-tractor, house trailer, or any other similar vehicles shall be parked (i) on the streets of the Subdivision for more than a four (4) hour period between the hours of 5:00 p.m. of any one day to 8:00 a.m. of the following day; (ii) on any driveway serving any Lot or easement for ingress and egress in the Subdivision unless such vehicles are garaged in an enclosed garage; or (iii) on any other part of a Lot or the Common Area at any time for any reason. Garage doors shall be kept closed except when a vehicle is entering or leaving a garage or in connection with the loading of a vehicle. Vehicles, which are not garaged and garage doors left open are subject to enforcement procedures by the Board.

16. Large Vehicles. No truck or other such vehicle in excess of 40,000 pounds shall be permitted on the private streets, driveways, and easements or otherwise within the Subdivision at any time for any reason. The Board may levy a special assessment against the Lot of any Owner for any resulting damage caused by an Owner, or such Owner's family, friends, agents, guests, or invitees who permit such a truck or vehicle upon the private streets, driveways, easements, or Common Area. If the Board, in their discretion, decide that a waiver of this restriction is required to prevent an unintended injustice, the Board may allow a limited exception, in writing, provided the petitioning Owner posts, in advance, a bond of a sufficient amount to cover any and all damages in conjunction with the proposed use of such a truck or vehicle exceeding the 40,000 pound limit.

17. No Business Use. No Residence shall be used for any business or commercial purpose, and each Residence shall be used solely for residential purposes except (i) for use pursuant to home occupations not in violation of any zoning ordinances affecting the Subdivision, and (ii) Residences or portions of Residences may be used by Declarant for temporary offices, display or model homes and/or entrance monuments, provided however, that in no event shall any Residence be conveyed or transferred in any manner to a civic, religious, charitable, or fraternal organization, or any person or persons other than for the exclusive use of an individual family.

18. No Nuisance. No Lot or Residence or any portion thereof shall be used for any noxious or offensive activity or for any purpose prohibited by law or ordinance or which may become an annoyance or nuisance, in the judgment of the Board, to other Owners or inhabitants of Residences.

19. Lawn Maintenance/Upkeep. Each Owner shall maintain his Lot in a neat attractive manner, including without limitation, maintenance of the lawn and shrubbery. No Owner shall permit the lawn upon such Owner's Lot, whether grass, legume or ivy,





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to grow in excess of or otherwise fail to comply with the requirements of the City of O'Fallon.

20. Fences. Every fence shall be constructed in a substantial, workmanlike manner and of substantial material suited for the purpose for which the fence is intended. The type of material and color shall be wrought iron, PVC or other material, all in colors and style approved by the Architectural Control Committee pursuant to the provisions of Article VII. Chain link, electric, barbed, or ribbon wire or similar wire material of any kind shall not be permitted as fencing material or as an attachment to any fence. The Architectural Control Committee may, at its option, choose to limit materials and styles of fencing in the Subdivision to a limited number of styles and materials; each applicant must inquire of the Committee regarding any such limitations prior to preparing plans for any fence. The maximum height for any approved fence shall be six feet (6').

21. Minimum Square Footage. No one story main building shall be erected with a total area of less than Twelve Hundred (1200) square feet excluding garage and porches, said measurements to be made at the outside wall and provided that no building having two finished levels, one above the other, shall be erected with a total area of less than Eighteen Hundred (1800) square feet excluding garage and porches, said measurement to be made at the outside wall.

22. Garages; Outbuildings. Each Residence must include at least a two-car garage, which must be attached to the Residence unless otherwise approved by the Architectural Control Committee. No more than one storage building or other outbuilding shall be permitted on any Lot and then only if the exterior material of such storage building or outbuilding coordinates with the exterior of the Residence and is approved by the Architectural Control Committee.

#### ARTICLE VII

#### ARCHITECTURAL AND ENVIRONMENTAL CONTROL

1. Architectural Control Committee. The Subdivision shall have an Architectural Control Committee consisting of three persons. Prior to the transfer of Declarant control of the Board, the Architectural Control Committee shall consist of three individuals selected by Declarant, who may be the same as the individuals appointed by Declarant to the Board of Directors. During the period of Declarant control of the Board, Declarant may replace any such individuals at any time and from time to time in Declarant's sole discretion. Upon transfer of control of the Board by the Declarant, the Board shall appoint three individuals from the Subdivision to serve on the Architectural Control Committee in place of the individuals appointed by Declarant, each of whom shall serve for one year terms and who may also serve as Directors. In the event any member of the Board resigns, moves from the Subdivision or otherwise becomes unable or unwilling to serve, the Board shall appoint an individual to serve out



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the remainder of such individual's term. The Committee shall select from among themselves an individual who shall serve as chairman of the Committee and another individual who shall keep minutes of all Committee proceedings and votes of the Committee.

2. Approval Required. If any Owner (other than Declarant) desires to:

- (i) add, remove, or alter an addition, deck , patio, hot tub, pool, exterior wall, or fence on their Lot or Residence;
- (ii) otherwise effect a change (structural or nonstructural), improvement, or addition that in any manner affects the appearance of the exterior of the Residence or Lot;
- (iii) substantially change, grade, or affect the slope of any part of the Lot;
- (iv) attach any item, apparatus, or device to a Residence or the Common Area; or
- (v) change the color or other exterior appearance of any part of the Residence or any structure or other improvement in the Common Area;

then such Owner must obtain the prior written consent for the same from the Architectural Control Committee before commencing any work on the same.

3. Procedure for Obtaining Consent. The Owner desiring to do any of the foregoing items set forth in Section 2 hereof that require approval of the Architectural Control Committee shall submit to the Committee reasonably detailed plans and specifications showing the degree, nature, kind, shape, size, square footage, height, elevation, materials, colors, type, location, and configuration of the same. Such submission shall also contain an explanation of the intended project, reason for the project, proposed contractor(s) performing the work, cost of the project, and schedule for completion. All of such items shall be delivered in triplicate to the Chairman of the Committee, either by messenger or by deposit with all required postage prepaid, in the United States mail, certified mail, return receipt requested, addressed to the Chairman of the Committee. After said submission, the Architectural Control Committee shall have ninety (90) days to approve or disapprove all or any part of such proposed project. If the Architectural Control Committee fails to approve or disapprove any such proposed project, including, without limitation, the nature, kind, shape, design, materials, colors, location, size, area, height, elevation, configuration, cost estimate, contractor(s), cost, or schedule for the project within ninety (90) days after all the entire package of required materials have been so 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.

4. Fees and Deposits. 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 and to require a deposit of up to \$1,500 to ensure completion of the work and repair of any Common Areas that may be damaged



in connection with the project. Any such deposit shall be made payable to the Board and shall be administered by the Board; the Board may, in its sole discretion, return the same after completion of the project or apply the same to repair or replacement of the Common Area not restored to their original condition by the Owner upon completion of the project.

5. Intent of Architectural Control. 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. In acting hereunder, the Architectural Control Committee 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 be considered a reversal of any past request for similar approval. Exterior finishes and elevations once approved shall not be altered without the express consent of the Architectural Control Committee.

6. Waiver of Liability. No member of the Architectural Control Committee, whether a Director or not, shall be held personally liable for any act or omission in the course of performing or attempting to perform his or her duties on the Architectural Control Committee.

7. Declarant Exempt. Notwithstanding any term, condition or provision of this Amended and Restated Declaration to the contrary, the Declarant shall not be required to submit or obtain the approval of the Architectural Control Committee for any proposed Residence, improvement, structure, fence or building constructed by or on behalf of Declarant.

#### ARTICLE VIII EXTERIOR MAINTENANCE

1. Owner Responsibility. The respective Owners and not the Board shall be responsible for maintenance, repair, or replacement of their respective Residences, including without limitation, the exterior building elevation, walls, siding, brick, tuck pointing, windows, frames, sills, cornices, steps, decks, screened decks, covered decks, porches whether covered or uncovered, patios; stoops, roofs, shingles, gutters, chimneys, exterior glass windows and doors; courtyards and courtyard walls and gates, if any, driveways, any sidewalks and the landscaping and lawn.

2. Association Right to Perform Maintenance. If the Board determines, in its sole opinion, that an Owner has failed or refused to properly maintain, repair, or replace any such items set forth in Section 1 hereinabove or is otherwise in violation of any of the terms of this Declaration, then the Board may, in its sole discretion, after giving ten

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days written notice to the Owner, addressed to the address of the Lot owned by such Owner, elect to perform maintenance, repair or replacement work and assess the entire cost of such work against such Owner so that such assessment becomes not only the personal obligation of such Owner but also a lien upon such Owner's Lot and Residence.

3. Right of Entry. The Board may exercise the aforesaid rights through its contractors, agents, and employees, and enter upon and within said Residence to repair, maintain, and restore the Residence and Lot, including, but not limited to, painting, removing, repairing or replacing improvements, removing rubbish, debris, and any and all landscaping deemed appropriate by the Board. The Board or their agents or employees shall not be held liable for any manner of trespass that might arise under this Article.

4. Payment; Lien. The cost of such all such maintenance, repairs, and replacements shall be due upon presentation by the Board of an invoice to the Owner for payment thereof. In the event said costs are not paid on or before fifteen days after presentation of the invoice therefor, the Board shall be entitled to all remedies provided in the Declaration for non-payment, including, without limitation, imposition of a lien on said Owner's Lot and foreclosure thereof.

#### ARTICLE IX 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.

Furthermore, and in addition to the above described enforcement provisions, the Board may enforce any of these covenants by means of establishing and enforcing a reasonable fine policy and appeal procedure whereby the Board would have the authority to levy a reasonable fine upon an Owner, on either a per diem basis and/or a per occurrence basis, until said Owner takes sufficient action to become compliant. Such fine shall be the personal obligation of the subject Owner, shall be a lien upon the subject Residence and shall be subject to the collections procedures hereunder for assessments.

2. Actions by Board. The Board is authorized to act through a representative; provided, however, that all acts of the Board shall be agreed upon by at least a majority of the Board. No Director shall be held personally responsible for his or her wrongful acts, and no Director shall be held responsible for the wrongful acts of others. No



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Director shall be held personally liable for injury or damage to persons or property by reason of any act or failure to act of the Directors, collectively or individually.

3. Adjoining Tracts. The Board is authorized and empowered to cooperate and contract with trustees or directors of associations 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, including, without limitation, the Association..

4. Amendments. Until all of the Residences have been completed by the Declarant and conveyed to the respective Owners at closing, the provisions of this Amended and Restated Declaration may only be amended, modified, or changed by Declarant; any such amendment shall be made in the Declarant's sole discretion and without the consent of any Owner, mortgagee, or holder of a deed of trust. Declarant may from time to time effect any such amendment, modification, or change 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 Owners holding a majority of votes in the Association, 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 initiated by the Owners shall reduce or modify the obligations or rights granted to or imposed upon the Board or eliminate the requirement that there be a Board unless some person or entity is substituted for the Board 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 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. Headings of sections and articles herein are for convenience only and shall not limit the content thereof.

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

7. Assignment by Declarant. The rights, powers, and obligations granted to Declarant may be assigned or transferred by Declarant, its successors and assigns, in whole or in part, to any other person or entity or persons or entities designated by Declarant in an instrument executed and acknowledged by Declarant and recorded in the office of the St. Charles County Recorder of Deeds.

8. Rights During Construction and Sale. Notwithstanding any provision contained in this Declaration to the contrary, until all Lots authorized to be developed and Residences authorized to be built in the Subdivision have been sold and conveyed for residential use, Declarant and its successors and assigns shall have the right and

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privilege to (i) erect and maintain advertising signs, sales flags and other sales devices and banners for the purpose of aiding the sale of Lots and Residences in the Subdivision; (ii) maintain sales, business, and construction offices in display homes or trailers in the Subdivision (including without limitation, the Common Area); and (iii) park and to allow any employees, subcontractors and agents to park trucks and stock pile and store materials on any Lot(s) or on the Common Area. Any construction activities shall not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself, and its employees, agents, and contractors to conduct the activities enumerated in this Section until all of the Residences have been completed and conveyed to the respective Owners at closing.

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 Subdivision for a term of fifty years from the date of recording of this Declaration, after which said covenants and restrictions shall be automatically extended for successive periods of ten years each, unless an instrument signed by the then Owners holding a majority of the votes in the Association has been recorded agreeing to terminate this Declaration as of the end of any such ten year period, but in no event prior to the vacation of all plats of the Subdivision. No such agreement of termination shall be effective unless made and recorded one 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 days in advance of any action taken.

10. Reservation of Expenditures. Declarant reserves the right to receive any money consideration which may be refunded or allowed on account of any sums previously expended or subsequently provided by Declarant for joint main sewers, sanitary sewers, storm sewers, gas pipes, water pipes, conduits, poles, wires, street lights, roads, streets, traffic signals, recording fees, subdivision fees, consultation fees, or any fees, charges and expenses incurred with respect to the development and creation of the Subdivision.

11. Additions to Subdivision. The Declarant may cause additional property or properties as described on the attached Exhibit B to be made subject to this Amended and Restated Declaration and become part of the Subdivision by executing and recording an amendment to this Amended and Restated Declaration, all without the consent of any Owner, mortgagee or holder of any deed of trust encumbering the Subdivision. The property or properties thus added may include areas and facilities which are to constitute a portion of the Common Area. An amendment to this Amended and Restated Declaration which adds Common Area to the Subdivision may contain special covenants and restrictions as to such Common Area. Any improvements or amenities constructed in such Common Area shall be owned, managed and kept in good order and repair by the Association upon such Common Area being added to the Subdivision. In the alternative, the Declarant may develop such property or properties and elect, in its sole discretion, not to add such property to the Subdivision but, at the





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Declarant's sole option, allow Owners to use amenities built by Declarant in such other property upon such terms and conditions as Declarant may elect, including, without limitation, requiring any Owner that desires to use such amenity to enter into a license or membership agreement in form satisfactory to Declarant, pay a non-refundable capital contribution fee, pay other annual ongoing maintenance and use fees, and agree that non-payment of such fees shall cause such fees to be a lien on such Owner's Lot.

IN WITNESS WHEREOF, the undersigned have set their hands as of the date and year first above written.

PAYNE FAMILY HOMES AT WILLOW WALK  
ESTATES, LLC

By: [Signature]  
Its: President

[Signature]  
Scott Kerns

[Signature]  
John O'Connell

[Signature]  
Jerry Duepner

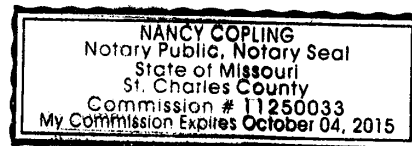
STATE OF MISSOURI            )  
  ) SS.  
COUNTY OF ST. CHARLES    )

On this 8<sup>th</sup> day of July, 2013, before me personally appeared Kenneth R. Kruse, the President of Payne Family Homes At Willow Walk, LLC and that said instrument was signed and sealed in behalf of said corporation, by authority of its members; and said President, acknowledged said instrument to be the free act and deed of said company.

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.

My term expires: 10/4/15

Nancy Copling  
Notary Public





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

On this 8<sup>th</sup> day of July, 2013, before me personally appeared Scott Kerns, John O'Connell and Jerry Duepner, 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 hereunto set my hand and affixed my official seal in the County and State aforesaid the day and year first above written.

My term expires: 10/4/15

Nancy Copling  
Notary Public





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Lot 71 Owners

\_\_\_\_\_  
David A. Howell

\_\_\_\_\_  
Sandra A. Howell

Lot 72 Owner

\_\_\_\_\_  
*John R. Springer*  
John R. Springer

Lot 83 Owner

\_\_\_\_\_  
Ruth C. Rogers

Lot 87 Owners

\_\_\_\_\_  
*Stephen D. Mercier*  
Stephen D. Mercier

\_\_\_\_\_  
*Brenda L. Mercier*  
Brenda L. Mercier

Lot 90 Owners

\_\_\_\_\_  
*Christopher S. Mercier*  
Christopher S. Mercier

\_\_\_\_\_  
*Kimberly A. Mercier*  
Kimberly A. Mercier

Lot 99 Owner

Payne Family Homes, LLC

By: \_\_\_\_\_  
*Kenneth R. Kruse*

Print Name: *Kenneth R. Kruse*

Title: *President*



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Bk : DE6056 Pg : 796

State of Missouri )  
 ) SS  
 County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_ in the year, 2013, before me, a Notary Public in and for said state, personally appeared David A. Howell and Sandra A. Howell, known to me to be the persons who executed the within Amended and Restated Declaration, and acknowledged to me that they 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.

My term expires: \_\_\_\_\_  
 Notary Public

State of Missouri )  
 St Charles ) SS  
 County of ~~St Louis~~ )

On this 27<sup>th</sup> day of June 2013 in the year, 2013, before me, a Notary Public in and for said state, personally appeared John R. Springer, known to me to be the person who executed the within Amended and Restated Declaration, 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.

My term expires: 10/4/13  
 State of Missouri )  
 ) SS  
 County of St Charles )

*Nancy Copling*  
 Notary Public

On this \_\_\_\_ day of \_\_\_\_\_ in the year, 2013, before me, a Notary Public in and for said state, personally appeared Ruth C. Rogers, known to me to be the person who executed the within Amended and Restated Declaration, and acknowledged to me that she 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.

My term expires: \_\_\_\_\_  
 Notary Public

**RECORD AS IS**



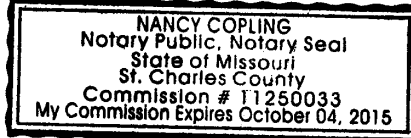
State of Missouri )  
 )  
County of St. Charles ) SS

On this 27<sup>th</sup> day of June in the year, 2013, before me, a Notary Public in and for said state, personally appeared Stephen D. Mercier and Brenda L. Mercier, known to me to be the persons who executed the within Amended and Restated Declaration, and acknowledged to me that they 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.

My term expires: 10/4/15 Nancy Copling  
Notary Public

State of Missouri )  
 )  
County of St. Charles ) SS

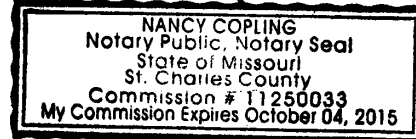


On this 27<sup>th</sup> day of June in the year, 2013, before me, a Notary Public in and for said state, personally appeared Christopher S. Mercier and Kimberly A. Mercier, known to me to be the persons who executed the within Amended and Restated Declaration, and acknowledged to me that they executed 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.

My term expires: 10/4/15 Nancy Copling  
Notary Public

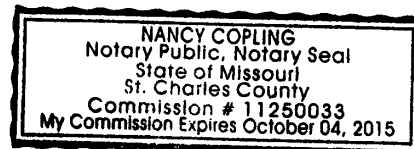
State of Missouri )  
 )  
County of St. Louis ) SS



On this 8<sup>th</sup> day of July in the year 2013, before me, a Notary Public in and for said state, personally appeared Kenneth R. Kruse of Payne Family Homes, LLC, a Missouri limited liability company, known to me to be the person who executed the within Amended and Restated Declaration on behalf of said limited liability company 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.

My term expires: 10/4/15 Nancy Copling  
Notary Public





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Exhibit A

Homeowners - Non-Payne Lots

Lot No.	Name
71	David A. Howell and Sandra A. Howell
72	John R. Springer
83	Ruth C. Rogers
87	Stephen D. Mercier and Brenda L. Mercier
90	Christopher S. Mercier and Kimberly A. Mercier
99	Payne Family Homes, LLC





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Exhibit B  
[Legal Description Additional Property]

A TRACT OF LAND BEING PART OF FRACTIONAL SECTION 17, TOWNSHIP 46 NORTH, RANGE 2 EAST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF O'FALLON, ST. CHARLES COUNTY, MISSOURI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A STAKE MARKING THE INTERSECTION OF THE SECTION LINE BETWEEN FRACTIONAL SECTION 17 AND FRACTIONAL SECTION 16 WITH THE NORTHERN LINE OF U.S. SURVEY 417; THENCE ALONG THE SAID NORTHEAST LINE OF U.S. SURVEY 417 AND THE NORTHEAST LINE OF U.S. SURVEY 418, NORTH 40 DEGREES 17 MINUTES 34 SECONDS WEST 2354.52 FEET TO A POINT ON THE SOUTH LINE OF PROPERTY CONVEYED TO THE WEYGANDT JT RLT BY DEED RECORDED IN BOOK 5856, PAGE 2082 OF SAID RECORDS; THENCE ALONG THE SAID SOUTH LINE OF THE WEYGANDT PROPERTY, NORTH 89 DEGREES 01 MINUTES 11 SECONDS EAST 44.77 FEET TO A POINT ON THE EAST LINE OF THE SAID WEYGANDT PROPERTY; THENCE ALONG THE SAID EAST LINE OF THE WEYGANDT PROPERTY AND CONTINUING ALONG THE SAID EAST LINE OF PROPERTY CONVEYED TO CHRIS AND ANGELA WILKES BY DEED RECORDED IN BOOK 2361 PAGE 705 OF THE SAID RECORDS, NORTH 01 DEGREES 57 MINUTES 08 SECONDS WEST 554.64 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF DIEHR ROAD, 60 FEET WIDE; THENCE ALONG THE SAID SOUTH LINE OF DIEHR ROAD THE FOLLOWING COURSES AND DISTANCES, SOUTH 71 DEGREES 57 MINUTES 57 SECONDS EAST 1096.10 FEET; SOUTH 57 DEGREES 16 MINUTES 31 SECONDS EAST 72.62 FEET; ALONG A CURVE TO THE RIGHT WHOSE CHORD BEARS SOUTH 34 DEGREES 08 MINUTES 01 SECONDS EAST 165.85 FEET AND WHOSE RADIUS POINT BEARS SOUTH 32 DEGREES 43 MINUTES 29 SECONDS WEST 211.00 FEET FROM THE LAST MENTIONED POINT, AN ARC DISTANCE OF 170.45 FEET; SOUTH 10 DEGREES 59 MINUTES 31 SECONDS EAST 157.20 FEET; ALONG A CURVE TO THE LEFT WHOSE CHORD BEARS SOUTH 30 DEGREES 18 MINUTES 31 SECONDS EAST 166.06 FEET AND WHOSE RADIUS POINT BEARS NORTH 79 DEGREES 00 MINUTES 29 SECONDS EAST 251.00 FEET FROM THE LAST MENTIONED POINT, AN ARC DISTANCE OF 169.24 FEET; SOUTH 49 DEGREES 37 MINUTES 31 SECONDS EAST 93.40 FEET; ALONG A CURVE TO THE LEFT WHOSE CHORD BEARS SOUTH 60 DEGREES 28 MINUTES 51 SECONDS EAST 94.54 FEET AND WHOSE RADIUS POINT BEARS NORTH 40 DEGREES 22 MINUTES 29 SECONDS EAST 251.00 FEET FROM THE LAST MENTIONED POINT, AN ARC DISTANCE OF 95.11 FEET TO A POINT ON THE WEST LINE OF PROPERTY CONVEYED TO MCBRIDE WYNDGATE, LLC BY DEED RECORDED IN BOOK 5906 PAGE 2458 AND PAGE 2462 OF THE SAID RECORDS; THENCE ALONG THE SAID EAST LINE OF THE MCBRIDE WYNDGATE, LLC PROPERTY, SOUTH 01 DEGREES 19 MINUTES 42 SECONDS EAST 1430.74 FEET TO THE POINT OF BEGINNING, CONTAINING 38.670 ACRES.