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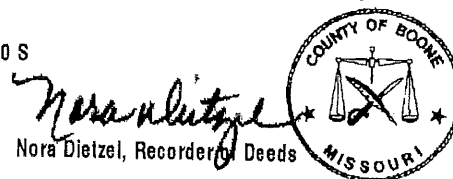
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Title of Document: Declaration of Covenants, Conditions and Restrictions of Heatherhill Estates, a Subdivision in Boone County, Missouri

Date of Document: August 4, 2017

Grantor/Grantee: Beacon Street Properties, LLC, a Missouri limited liability company

Grantee's Mailing Address: 3810 Buttonwood Drive, Suite 101, Columbia MO 65201

Legal Description:

All land and real estate constituting Lots 101 through 128 inclusive; and Lots C1 through C3 inclusive, of the Plat of Heatherhill Estates, a subdivision located in Boone County, Missouri, as shown by the plat thereof recorded in Plat Book 51, Page 52, Records of Boone County Missouri, together with all public streets, rights of way and Common Areas which are contained therein or abut thereon, and which are shown by such Plat and/or which serve the said Lots;

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
HEATHERHILL ESTATES, A SUBDIVISION IN BOONE COUNTY, MISSOURI**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made as of the date on the signature page hereof by Beacon Street Properties, LLC, a Missouri liability company, (herein referred to as "the Developer").

WHEREAS, DEVELOPER is the owner of the real estate described as:

All land and real estate constituting Lots 101 through 128 inclusive; and Lots C1 through C3 inclusive, of the Plat of Heatherhill Estates, a subdivision located in Boone County, Missouri, as shown by the plat thereof recorded in Plat Book 51, Page 52, Records of Boone County Missouri, together with all public streets, rights of way and Common Areas which are contained therein or abut thereon, and which are shown by such Plat and/or which serve the said Lots;

WHEREAS, Developer desires to impose this Declaration upon all of the real estate and/or Lots (as defined in Article 1 below) for its own benefit and for the benefit of all future owners of the Lots referred to herein, and

WHEREAS, Developer desires that this Declaration shall constitute covenants running with the land and the present and all future successive owners of the real estate and/or Lots (as defined in Article 1 below) described herein shall have the right to invoke and enforce the same;

NOW, THEREFORE, BEACON STREET PROPERTIES, a Missouri limited liability company, herein referred to as Developer, does hereby impose the covenants, conditions and restrictions contained herein on all of the above described real estate and Lots and all Lots referred to herein and any improvements now or thereafter located therein. Developer, in its sole and absolute discretion, may elect to annex to the Development all or portions of real estate contained within any other parcels of real estate and any improvements now or thereafter located therein which Developer owns and therein may elect, in its sole and absolute discretion, to subject such other parcels to this Declaration, with or without amended provisions. Said Lots and real estate shall be held, sold and conveyed subject to the covenants, conditions and restrictions contained herein, all of which are for the purpose of enhancing and protecting value, desirability and attractiveness of such real estate, said Lots and all improvements now or hereafter located thereon. These covenants, conditions, and restrictions shall be considered covenants running with the land whether or not the same are mentioned in subsequent conveyances and shall be binding upon the Developer and its successors in title to the real estate and Lots and to its successors and assigns forever, and said covenants, conditions and reservations are as follows:

**ARTICLE I**  
**DEFINITIONS**

BOONE COUNTY MO AUG 04 2017

Section 1. "Amenities" shall mean the any community facilities as the Association deems appropriate.

Section 2. "Architectural Review Committee" shall mean the Developer or the Board of Directors of the Association or a committee appointed by the Developer and/or the Board of Directors with responsibility for overseeing architectural and structural continuity throughout the Development.

Section 3. "Association" shall mean and refer to Heatherhill Estates Community Association, a Missouri non-for-profit corporation to be established as provided for in this Declaration.

Section 4. "Builder" shall mean and refer to a Person who or which purchases a Lot and builds or constructs a house upon such Lot with the intent of immediately selling that house and Lot to a third party without occupying the same. Any Person occupying or leasing a house on a Lot for residential purposes shall cease to be considered a Builder with respect to such Lot immediately upon occupation of the house for residential purposes notwithstanding that such Person originally purchased the Lot for the purpose of constructing improvements for sale to a third party. The Developer may sell a Lot or portions thereof to a Builder other than Developer for purposes of building or constructing improvements located within such Lot. As elsewhere indicated in this Declaration, the Developer may sell a Lot or portions thereof to a Builder other than the Developer without assigning the Class B voting rights as to said Lot.

Section 5. "Certificate of Substantial Completion" shall mean a certificate executed, acknowledged and recorded by the Developer stating that all of the Lots in the Development, as herein described, have been sold by the Developer and the buildings to be constructed thereon are substantially complete.

Section 6. "Class A Member" shall mean a Lot Owner who is a member of the Association, other than the Developer, other than the assignees of the Class B membership rights of Developer, and other than a Class B Member as defined herein; provided however, that if the Developer or such an assignee owns a Lot containing a building held for rental or lease purposes, it shall be deemed to be a "Lot Owner" with respect to such Lot and shall be deemed a Class A Member with respect to such Lot. Immediately upon the renting, leasing or occupancy of a building, whether by the Developer or any assignee of its Class B membership rights, the owner of such Lot shall become a Class A Member of the Association with respect to such Lot and shall, with respect to such Lot, be subject to assessment as a Class A Member. Such Lot shall continue thereafter to be a Lot to which Class A membership rights, duties and obligations attach. The qualifications for Class A membership are more fully set out in this Declaration.

Section 7. "Class B Member" shall mean a member of the Association who is the Developer or any person to whom the Developer shall have assigned all or a portion of its rights as Developer under the terms and provisions of the Declaration or a Builder who has purchased a Lot with the intent of building a house and immediately selling that house to a third party without occupying

the same. A conveyance by Developer by Warranty Deed or otherwise shall not be deemed to be an assignment of any of its rights as the Developer, unless such rights are specifically referred to therein. Such rights can only be assigned by an assignment deed or instrument by the Developer, which specifically refer to the rights of the Developer under this Declaration.

Section 8. "Common Area" shall mean any common lots, common ground or common property as shown by the Plats, together with all other areas contained within the Development designated for the common use of the owners of more than one Lot or all of the Lot owners, together with any other real estate or improvements owned or maintained by the Association or intended for the common use of a number of Lot owners or all of the Lot owners and intended to be maintained by the Association, including but not limited to Lots C1, C2 and C3. This includes the entrance areas, signs, landscape planters, storm water detention areas, Amenities, and any utility facilities. In addition, all areas within the right of way of Boone County streets, including landscaped medians, and other improvements, such as irrigation systems, meters, plantings and retaining walls, shall be included in this definition. Actual maintenance of the street, curbs and drainage systems routinely provided by Boone County are excluded from this definition. Trees, shrubs and plantings placed in the right of way by individual Lot Owners after purchase of their Lot shall not be considered part of the Common Area and shall not be maintained by the Association.

Section 9. "Common Elements" shall mean the Common Area and all structures and improvements erected or constructed thereon or contained herein or thereon, and all rights and appurtenances belonging, and all fixtures and equipment intended for the mutual use, benefit and enjoyment of the Lot Owners, or for the mutual use, benefit and enjoyment of the owners or occupants of several Lot Owners.

Section 10. "Declaration" shall refer to this document.

Section 11. "Development" shall mean all of the real estate contained within the boundary lines of the Plats referred to above, together with any real estate hereafter annexed to the Development as hereinafter provided for in this Declaration, and all improvements now or hereafter situated thereon, and all buildings now or hereafter situated thereon.

Section 12. "Developer" shall mean and refer to Beacon Street Properties, LLC a Missouri limited liability company and its successors, and shall further refer to any person, persons, company or companies or entities to whom such limited liability company shall assign all or any portion of its rights as the Developer under the terms of this Declaration. A conveyance by the Developer by Warranty Deed or otherwise shall not be deemed to be an assignment of any of its rights as the Developer, unless such rights are specifically mentioned as described as such in such deed or conveyance. Such rights can only be assigned by a written deed, instrument or assignment by the Developer, including a specific recital in said document, which specifically refers to the rights of the Developer under this Declaration.

Section 13. "Limited Common Areas" shall mean and include those Common Areas, which are reserved for the use of certain Lots to the exclusion of all other property owners.

Section 14. "Lot" shall mean and include all Lots as shown on the Plats referred to in Section 17, including Lots 101 through 128, inclusive; and all other Lots subject to this Declaration which are platted separately hereinafter and described on a plat recorded in the Records of Boone County, Missouri. In addition, if Developer hereafter elects to annex additional tracts or parcels of real estate to the Development, "Lot" shall further be construed to mean and include all Lots shown on the plat(s) of said annexed tracts or parcels. Each Lot shall contain one single family dwelling, except as otherwise permitted herein. Any platted Lot which is designated by the Plat as "Common Area" or which becomes Common Area or which is declared by the Developer to be Common Area, including but not limited to Lots C1, C2 and C3, shall be excluded from the definition of "Lot". The Developer reserves the right to modify any Plat as to any Lot(s) owned by the Developer.

Section 15. "Lot Owner" shall mean the Person or Persons whose estates or interests individually or collectively aggregate fee simple ownership of a Lot.

Section 16. "Person" shall mean a natural individual, corporation, partnership, limited liability company, trustee or other legal entity capable of holding title to real property.

Section 17. "Plat" shall mean the Final Plat of Heatherhill Estates, as herein described. If Developer makes additional tracts of real estate subject to the terms and conditions of this Declaration, the word "Plat" shall further be deemed to mean and include plats of the additional tracts of real estate so annexed to the Development.

Section 18. "Property" shall mean all the land, property and space comprising a parcel, all improvements and structures erected, constructed or contained therein or thereon, including any buildings, and all easements, rights and appurtenances belonging thereto and all fixtures and equipment intended for the mutual benefit or enjoyment of the Lot Owners.

## **ARTICLE II** **USE RESTRICTIONS**

The Lots and the buildings, structures and dwellings located thereon shall be subject to the following use restrictions:

Section 1. Use of Lots. The Lots shall be used for a residential community as per the Final Plats. There shall be no more than one single family dwelling located per Lot. No camper, trailer or other vehicle shall be used at any time for human habitation, temporarily or permanently. No Lot shall be subdivided by deed, plat, survey or otherwise into smaller Lots, tracts or parcels without the prior written consent of Developer or the Association. No Lot Owner may acquire any combination of Lots and then re-subdivide or reapportion said Lots in any manner without the prior written consent of the Developer or the Association. Nothing herein shall prevent the Developer and others as approved and authorized by the Developer, from using temporary buildings or structures or any dwelling for a sales model, sales office or for storage purposes. The Developer, Builders and Lot Owners shall strive to minimize any clearing of the remaining trees during completion of Lot grading and infrastructure installation.

Section 2. Building Uses. No building shall be used for any purpose other than that permitted by the general zoning ordinances of Boone County, Missouri which are applicable to the property. Specifically, except for the Common Areas, no Lot in the Development shall be used for any purpose whatsoever other than single family residential dwelling uses without prior written approval of the Developer or the Association.

Section 3. Additional Structures. Additional and/or accessory structures or improvements including walls, fences, dog houses, posts, storage sheds or buildings of any nature whatsoever, or similar items of any kind or nature whatsoever may be erected upon any Lot in addition to the basic dwelling, patio, walk, deck, porch and other improvements originally constructed by the Developer, Builder or Owner, if they meet guidelines set forth by the Developer, or the Architectural Review Committee and with prior written approval of the Developer, or the Architectural Review Committee;

Section 4. Parking. No parking shall be permitted along Cresskill Drive between High Point Lane and Teaneck Court within the Development. Operative automobiles, vans, and pick-up trucks which are in good condition and repair and which are used with regular frequency are permitted to be parked on uncovered or non-enclosed parking spaces on any Lot. No more than one operative trailer, bus, van, camper, recreational vehicle, boat/boat trailer, or other mobile apparatus, which is in good condition and repair, may be allowed to be parked on an uncovered or non-enclosed parking space on any Lot if it meets guidelines set forth by the Developer or the Architectural Review Committee and with prior written approval of the Developer or the Architectural Review Committee. No vehicles in disrepair or in an inoperable condition shall be parked, left, or stored outside on any Lot for more than 24 hours. This Section shall not apply so as to interfere with the construction of buildings or the development of any part of the Development.

Section 5. Nuisances. No illegal, noxious, noisy or offensive activities shall be carried on upon the Lots or upon the Common Areas, nor shall anything be done thereon which may be or may become a reasonable annoyance or nuisance to a Lot Owner or occupant of any Lot in the Development.

Section 6. Signs. No sign, other than one reasonable (1) "For Sale" sign shall be displayed on a Lot within the Development, except those identifying a Common Area building or structure, such as a pool, park or trail and those signs used by a Builder or the Developer to advertise property before and during the construction and sale of a home. A "For Sale" sign may not be posted for a period of more than 360 consecutive days. Specifically, but not limiting, no political signs or "For Rent" or "For Lease" signs shall be permitted in the Development.

Section 7. Satellite Dishes, Exterior Wiring, Antennas or Installations. To the maximum extent permitted under applicable Federal laws and regulations, the Developer and/or the Architectural Review Committee shall have the authority to control the type, location and placement of satellite receiver dishes, television receiver dishes, antennas or antennas designed to receive a direct broadcast satellite signals or service. Unless applicable law prevents such restriction, the location of any of the aforementioned dishes and antennas must be approved in advance by the Developer or Architectural Review Committee. No visible exterior wiring shall be permitted on

the exterior portion of any building or improvement situated upon any Lot, except as may be approved in advance by the Developer or Architectural Review Committee. No air-conditioning units or other types of appliance shall be installed or permitted which protrude through the walls, roof or window area of any building on any Lot, except as may be installed by the Owner in the originally approved construction or as may subsequently be approved by the Developer or the Architectural Review Committee.

Section 8. Livestock, Poultry and Pets. No animal, livestock, poultry or pet of any kind shall be raised, bred or kept upon or in any portion of the Development, except: (a) traditional, domesticated pets shall be permitted; and (b) no more than 3 chickens may be permitted. No roosters shall be allowed. No dog, cat, chickens or other permitted household pet shall be kept, bred or maintained in the Development for any commercial purpose. No dog, cat, chickens or other permitted household pet shall be kept in the Development if it becomes a nuisance by reason of unreasonable barking, noise, vicious propensities or other causes. No dog, cat, chickens or other permitted household pet shall be permitted to run at large off the Lot of the pet owner unless such pet is on a leash and under control of a competent person. All dogs, cats, chickens or other permitted household pets must be kept under sanitary conditions. If the Association receives three (3) complaints of a violation of the provisions of this paragraph against a pet owner in regard to any said dog, cat, chickens or other permitted household pet, the Association shall have the right to require removal said dog, cat, chickens or other permitted household pet from the Development.

Section 9. Trash – Storage and Disposal. All trash, rubbish, garbage and other materials being thrown away or disposed of by Lot Owners or tenants on the premises must be placed or contained in bins or containers. All such bins or containers must be fly-tight, rodent proof, non-flammable, reasonably water proof and shall be covered. These bins or containers shall be stored in unobtrusive locations on Lots. The contents of said containers must be removed from the Lot at least once each week. No household trash shall be burned on a Lot. Uncontained trash bags may be placed on the curb of a Lot only for a period not to exceed eight (8) continuous hours in any week so as to facilitate collection by a trash collection service.

Section 10. Temporary Structures. No structure of a temporary character (i.e. shack, shed, tent, locker or other outbuilding) shall be permitted on any Lot, unless included in the plans and specifications of the building as originally approved by the Developer or the Architectural Review Committee. Developer may waive this provision to allow use of temporary construction trailers or buildings on lots during construction of buildings or other improvements, which in no case shall be allowed to be placed on a site more than two weeks prior to beginning construction and shall not remain for more than two weeks after the completion of construction.

Section 11. Open Fires. No open fires shall be permitted within the Development, with the exception of: (a) outdoor fires contained in a grill and used for the preparation of food to be consumed on the premises and/or (b) fires contained in an outdoor fireplace or contained fire pit. No household trash, household garbage or household waste shall be burned within the Development.

Section 12. Garages. All garage or delivery doors shall be kept closed at all times other than when in actual use.

Section 13. Storage and Storage Tanks. The outdoor placement of or storage of materials, equipment or other items on any outside portion of a Lot shall be prohibited, except items such as patios tables and chairs or other outdoor equipment located upon porches, patios or decks shall be permitted. No tank for the storage of fuel or other chemicals may be constructed nor maintained on any Lot without the express prior written consent of the Developer or Architectural Review Committee.

Section 14. Automotive Repair Prohibited. No automotive repair, rebuilding or any other form of automotive maintenance, whether for hire or otherwise, shall be permitted in the Development. Lot Owners may permit ordinary periodic maintenance for their motor vehicles within enclosed garages.

Section 15. External Changes. No significant or substantial external changes shall be made on or with respect to any building or improvements located within the Development or within any Lot, unless approved in advance in writing by the Developer or by the Architectural Review Committee. Any and all environmental and/or land disturbance changes that may arise after the sale of a Lot to a Builder and/or Lot Owner shall be the responsibility of such Builder and/or Lot Owner.

Section 16. Two, Three and Four Wheeled Recreational Vehicles. Golf carts, utility vehicles, powered scooters, mopeds or similar vehicles may be operated within the Development, Common Areas, or within the Lots themselves. Dirt bikes, motor bikes, two-wheel, three-wheel, four-wheel or greater numbered wheel recreational vehicles may not be operated within the Development, Common Areas, or within the Lots themselves for purposes of recreation. All such vehicles must have a suitable muffler so as to provide for quiet operation. All such vehicles must be stored within a garage or other approved structure.

Section 17. Dumping Ground. No Lot shall be used or maintained as a dumping ground. No trash, junk, debris or refuse shall remain on any Lot for a period in excess of seventy-two (72) hours. All equipment used for the storage or disposal of trash, garbage or solid waste shall be kept in a clean and sanitary condition.

Section 18. Maintenance. All portions of Lots, including all landscaping, and all buildings, structures and improvements situated on the Lots shall be maintained in a highly clean, neat, safe, sanitary, debris free attractive and aesthetically pleasing condition. Improvements and buildings shall be maintained in good repair and condition, free and clear of all unsightly conditions. No dead and/or dying vegetation and/or trees shall be permitted within the landscaped and manicured areas of a Lot. No chipped, faded and peeling paint, brick and stone work requiring tuck pointing, roofs requiring repair or lawns requiring mowing, weeding or replacement shall be permitted. In the event any Lot Owner shall fail or refuse to maintain his property in a clean, safe, neat, attractive and aesthetically pleasing condition, or if such standards are disputed by the Lot Owner, the Developer or the Association shall notify the Lot Owner of the condition and advise that the condition must be corrected by the Lot Owner within 14 days of



the date of such notice. If the Lot Owner fails to correct the deficiency within the time period, the Developer or Association may correct the deficiency with the cost of correcting the condition to be borne by the Lot Owner and enforced as provided in Article VI, Section 5 herein below.

Section 19. Swimming Pool. If a swimming pool, bath house, or other facilities are part of the Development and are controlled by the Association, they are intended for the general use of the residents of the Development as shall be maintained and controlled by the Association according to this Declaration and any applicable By-Laws or Rules and Regulations. Developer may or may not plan, develop, construct these common facilities at such time as it deems appropriate, in its sole discretion, and shall maintain these common facilities until such time as it deems appropriate to convey such areas and appurtenances to the Association. Developer may choose to hold all common properties until conveyed as a whole, or may convey these areas on a parcel by parcel or plat by plat basis. The Developer and/or the Board of Directors for the Association may, in its sole discretion, establish admission fees or special use fees and any associated use agreements so that non-residents may use the swimming pool, as may be allowed under any applicable laws and/or ordinances.

Section 20. Other Swimming Pools. In-ground swimming pools may be permitted but shall not be installed without prior written consent of the Architectural Control Committee. Above ground pools are not allowed. However, small, seasonal, kiddie pools may be reasonably located in the yard during swimming season. Hot tubs may be permitted but shall not be installed without prior written consent of the Architectural Control Committee.

Section 21. Mailboxes. Each residence shall have a mailbox that is approved Developer or Architectural Control Committee prior to installation. Purchase, installation, repair and replacement of the mailboxes shall be at the expense of each Builder and/or Lot Owner.

Section 22. Duration Limit on Construction. All construction of a residence on a Lot shall be completed within twelve (12) months after the commencement of construction. No building shall be permitted to stand with its exterior in any unfinished condition for longer than six (6) months after commencement of construction, without prior written consent of the Developer or Architectural Control Committee.

Section 23. Sod and Landscaping. All landscaping shall be completed and in accordance with plans approved in writing by the Architectural Control Committee. All yards shall must be planted with seed and straw, hydro-seeding materials and/or sodded with fine leafed turf-type, tall, fescues, ryes or bluegrasses. All front lawns shall include a minimum of one (1) tree being 2 ½ inches in diameter and a minimum of twelve (12) shrubs no smaller than three (3) gallons each. No tree or shrub shall be maintained in such a manner as to obstruct the view of vehicular traffic. Each Lot Owner shall install an irrigation system that serves any disturbed areas in the front and side yards of each Lot.

Section 24. Sales. Other than the one annual neighborhood garage sale, no garage sales, sample sales or similar activities shall be allowed in the Development.

Section 25. Gardens. Reasonable vegetable and/or general produce gardens are permitted but require written approval by the Architectural Control Committee prior to installation.

Section 26. Residential Use Only. Home offices for the use of occupants of the residence are permitted, provided that they are not discernible from outside the residence; and customers, clients or patients are not received there for business or commercial purposes other than on an incidental basis. Specifically, but not limiting, home day cares are not permitted.

Section 27. Model Homes. Any builder desiring to construct and display a model home (i.e., homes constructed for the sole purpose of showing and sale promotion by a Builder-Buyer and which, generally, are made available and open to the public) must obtain written approval for such from the Developer or Association prior to commencing such building construction.

Section 28. Sidewalks. This Development will not have sidewalks along the roadway as permitted in the Boone County regulations for all subdivisions with Lots of 0.5 acres or larger.

Section 29. Trampolines. Trampolines may be permitted in the Development if they are in good aesthetic and functional condition and are properly secured to the ground. Any trampoline must be placed in a location that is hidden from street view and the view of neighboring homes to the extent possible and require written approval by the Architectural Control Committee prior to installation.

Section 30. Firearms. No firearms of any kind are permitted to be discharged within the Development for recreational purposes.

Section 31. Drainage. It shall be the responsibility of the Lot Owner of each Lot to provide for adequate drainage from such Lot Owner's Property and/or improvements thereon. It shall be required that each Lot Owner must direct all roof drains to permeable surfaces to the extent possible. Neither the Developer, nor any Architectural Review Committee, nor the Association or its Board, shall have any liability, obligation or responsibility under this Declaration or otherwise to assure a Lot Owner of adequate or appropriate drainage of groundwater, surface water or storm water. The responsibility to provide adequate drainage shall be the responsibility of each Builder and/or Lot Owner. Each Lot Owner must proceed reasonably in dealing with drainage of and across his Lot and in dealing with surface water to be drained from and across such Lot Owner's Lot. No Lot Owner shall unreasonably block, interfere with or obstruct the flow of surface water from other Lots and Property across such Lot Owner's Lot.

Section 32. Sanitary Sewer. A pressure sanitary sewer system shall be installed within the Development that will be served by the Boone County Regional Sewer District. Builders and Lot Owners shall be responsible for connection to and maintenance of the pressurized sanitary sewer system on their Lot along with applicable sewer fees for such connection and maintenance. No private on-site sewage disposal system shall be maintained on any Lot.

Section 33. Storm Water Facilities. An agreement shall exist between The Developer and Boone County, Missouri Resource Management Department which dictates the responsibilities of the Developer, its successors and assigns, which shall include the Heatherhill Estates

Community Association, with regard to management of stormwater/BMP facilities and/or stormwater quality treatment within the confines of the Development. Developer and/or Heatherhill Estates Community Association shall be responsible for complying with the terms of said agreement. In connection with these responsibilities, Developer and/or Heatherhill Estates Community Association shall be allowed reasonable access across Lots 107, 108 and 114 to perform maintenance to the neighborhood stormwater facilities located on or near these Lots.

Section 34. Lot Maintenance and Tree Preservation. All Lots must be mowed, trimmed, and maintained by individual Lot Owners regardless of whether or not the dwelling has been constructed thereon. Portions of Lots 101, 104, 111 and 114 are affected by Tree Preservation Easements, within which the owners of such Lots shall not permit any clearing of trees and/or vegetation except the minimal clearing of underbrush and debris.

### **ARTICLE III** **THE ASSOCIATION**

Section 1. Purpose. The Association is responsible for managing the Development, including all common areas, common facilities and common affairs of the Lot Owners.

Section 2. Formation and Articles of Incorporation. The Association shall be formed by the Developer by the filing of Articles of Incorporation for a non-profit corporation in the office of the Secretary of State of Missouri. This new organization shall be called Heatherhill Estates Community Association, or a name similar thereto. The responsibilities of the Association shall be more fully described by the following terms of this Declaration.

Section 3. Membership in the Association. There shall be two classes of membership in the Association: Class A (voting), Class B (voting and non-voting).

#### A. Class A

Each Lot Owner, as herein described in this Declaration, to who title to the Lot has been conveyed by the Developer, its assignees or its successors in ownership, shall automatically be Class A Member of the Association and shall be subject to the jurisdiction of the Association as a Class A Member and shall be subject to assessments levied by the Association under the following provisions of this Declaration, and shall be entitled to the rights and privileges of Class A Member in the Association, as provided herein. Class A membership in the Association shall not be optional. There shall be one (1) Class A membership in the Association appurtenant to the ownership of any one Lot which is subject to assessment by the Association. Once conveyed, Class A membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of a Lot shall be the sole qualification for Class A membership in the Association. Class A membership in the Association cannot, under any circumstances, be partitioned or separated from ownership of a Lot subject to the jurisdiction of the Association and any covenant or agreement to the contrary shall be null and void. No Lot owner or owners shall execute any deed, lease, mortgage or other instrument affecting title to the Lot ownership without including therein both said owner's interest in the Lot and the corresponding membership in the Association, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, lease,

mortgage or instrument purporting to affect the one without including also the other shall be deemed to include the interest so omitted, even though the latter is not expressly mentioned or described therein.

B. Class B

Class B membership is reserved for those lots owned by the Developer and those to whom or to which the Developer assigns all or any part of its rights as the Developer under the terms of this Declaration.

Builders who purchase Lots with the intention of building and reselling homes are deemed to hold Class B non-voting membership rights in the Association, and such membership does not include any voting rights nor are Class B non-voting memberships responsible for paying Association annual assessments.

The Developer and those to which it assigns all or any portion of its rights as the Developer under the terms of the Declaration shall automatically become Class A Members upon and following the termination of Class B memberships as hereinafter provided in this Declaration. Rights of the Developer shall not be deemed to be assigned by any Warranty Deed or other conveyance made or given by the Developer, unless specific reference is made in such Warranty Deed or other conveyance of the rights of the Developer and to Class B voting rights. Otherwise, rights of the Developer can be assigned only by written document, properly recorded, which specifically refers to the rights of the Developer hereunder and assigns all or a portion of such rights. The Developer can assign all or a portion of its Class B voting rights hereinafter set forth to other persons, entities or corporation, but such assignment shall be made solely by a written assignment, or by recital in a Warranty Deed or similar conveyance, which specifically refers to such rights and is properly recorded.

Notwithstanding anything to the contrary hereinabove set forth in the Declaration, in the event a Class A membership has not earlier attached to a Lot under the provisions of this Article, such Class A membership shall attach to such Lot and the Class B membership attributable to such Lot shall terminate upon the earliest to occur of the following events:

1. Such Lot has been conveyed to someone other than Developer, other than the assignees of the Class B membership rights of Developer, and other than a Class B Member as defined above herein;
2. Such Lots owned by Developer or such Lots owned by third parties wherein Developer has assigned its Class B rights as Developer to any third party Lot owners, upon the owner of such lot or lots recording a "Certificate of Substantial Completion," as provided herein,

Upon the termination of a Class B membership attaching to a Lot, a Class A membership shall automatically attach to such Lot. Once a Class A membership has attached to such Lot, such Lot shall thereafter forever be deemed to be a Lot to which a Class A membership attached and the owner or owners of such Lot shall automatically be a Class A Member of the Association.

Section 4. Voting Rights. The Association shall have two (2) classes of voting membership:

A. Class A

Class A members shall have one (1) vote at all meetings of the Association for each Lot in which they hold the interest required for Class A membership as detailed in this Declaration. When more than one (1) person holds such an interest in any Lot all such persons shall be

members and shall have one (1) vote for such Lot which shall be exercisable as the Lot owners may determine, but in no event shall more than one (1) vote be cast with respect to said Lot.

#### B. Class B

There shall be two classes of Class B membership, being Class B (voting), and Class B (non-voting). One (1) Class B vote shall be allocated for each Lot owned by the Developer or its assigns but no assessment of fees or charges shall be made to said Lots. The second type of Class B membership is Class B (non-voting), which designation is reserved for those Lots owned by Builders and the Common Areas owned by the Association. When the Developer sells a Lot to a Builder without assigning the Class B (voting) membership designation, then immediately upon such sale, all Class B (voting) rights shall terminate with regard to such Lot, and the Builder shall gain a Class B (non-voting) membership. A Builder, under the Class B (non-voting) designation, will not be assessed any annual assessments pertaining to the holding of such Lots during the fiscal year in which they purchase the Lot and thereafter, said Lot shall be subject to assessment by the Association. Upon the closing of the sale of a Lot with a home constructed by a Builder, the new Lot Owner shall be considered to hold a Class A membership in the Association. The Association under the Class B (non-voting) designation will not hold any voting rights in the Association or be assessed any annual assessments pertaining to the holding of such Lots. The number of Class B votes may be decreased as follows:

1. The aggregate number of Class B votes shall be reduced by each Class B vote attributed to an individual Lot upon the sale or conveyance of such Lot by the Developer to an owner other than the Developer without assignment of the Class B vote attributable to such Lot;
2. For each Lot which contains a building, the Class B vote attributable to such Lot shall be terminated when the Lot is sold, the building is rented, leased or otherwise disposed of by the Class B Member owning same, and the Class B vote attributable to such Lot shall cease and terminate upon such sale, renting, leasing or other disposition of the Lot;

Section 5. By-Laws. As soon as practical after the Certificate of Incorporation of the Association is issued by the Secretary of State of Missouri, the initial Board of Directors of the Association shall organize and adopt and execute By-Laws which are to serve as the operating documents for the administration of the Association. Such By-Laws shall be in accordance with this Declaration and shall be managed by a Board of Directors elected and constituted as hereinafter provided in this Article.

Section 6. Board of Directors. The Board of Directors shall: (1) have general responsibility to administer the Development; (2) approve the annual budget of the Association; (3) provide for the collection of annual, special, monthly or other assessments from Members; and (4) arrange and direct or contract for the management of the Development, and otherwise administer and promote the Development, and otherwise administer with respect to any matter generally pertaining to enhancing, maintaining, benefitting and promoting the Development. The first Board of Directors shall consist of three (3) Directors elected in the following manner: The members of the first Board of Directors shall be named by the Developer and shall serve until their successors are duly elected and qualified. Thereafter, so long as there are Class B voting rights in existence, a majority of the Directors shall be natural persons (who need not be Lot

owners) elected by the Class B Members with voting rights, and the remaining Directors shall be natural persons holding ownership interests in Lots (other than the Developer) elected by the Class A Members of the Association. (EXAMPLE: If there are three (3) Directors, two (2) Directors shall be natural persons elected by the Developer and one (1) such Director shall be a natural person holding an ownership interest in a Lot, elected by the other Lot Owners who are also Members of the Association.)

Section 7. General Powers and Duties of the Association. The Association, for the benefit of all Lot owners, shall provide for, acquire, and pay for out of the Maintenance Fund the following:

A. Landscaping, water, sewer, irrigation, waste removal, electricity, telephone, and other necessary utility services for any and all Common Areas; including any Amenities; and all maintenance, repair, upkeep, replacement and operation of facilities incidental thereto located in the Development.

B. To decrease personal liability from risks associated with ownership of the Common Areas and any Amenities, the Association is hereby authorized and required to obtain and maintain a policy or policies insuring the Association, its members, and its Board of Directors against any liability to any person, including Lot owners or their invitees or tenants, incidental to the ownership and/or use of the Common Areas and such insurance shall be of the limits determined by the Association's Board of Directors. Such limits shall be reviewed annually by the Association's Board of Directors and may be changed at its discretion. Any casualty insurance proceeds shall be payable to the Association in trust for the benefit of the Lot owners. The Association shall also obtain Workers' Compensation Insurance to the extent necessary to comply with any applicable laws.

C. To manage, operate, and regulate any Amenities of the Development and to ensure benefit to the residents in the Development, from both a perspective of recreational use and financial investment; To maintain such Amenities in superior operating condition meeting all applicable health, safety, and aesthetic standards; To establish rules and regulations for the use of any Amenities and to set membership and fee requirements for access to any Amenities and other common areas, as determined to be appropriate by the Association's Board of Directors.

D. Upon ten (10) days' notice to the manager or the Association's Board of Directors, and upon the payment of a reasonable fee set by the Association's Board of Directors, to furnish to any Lot owner a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing by such Lot Owner.

E. When the Association's Board of Directors, in its discretion, deems it advisable to do so, to retain the services of a professional manager or management firm or managing agent to fulfill the Association's obligations, and to retain the services of such accountants, attorneys and other persons as the Association's Board of Directors shall, in its sole and absolute discretion, deem necessary in order to discharge the Association's duties. The retention and discharge of personnel necessary for the maintenance, repairs and replacements to be performed by the Association shall be made by the Association's Board of Directors, as they direct, or the manager or management firm, if one is employed, or the managing agent, if one is employed. The

Association's Board of Directors shall have the sole and absolute discretion to retain such a manager, management firm or managing agent.

F. To obtain, provide and pay for any materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments which the Association is required to secure or pay for pursuant to the terms of this Declaration or the Association's Bylaws, or by law or which, in the opinion of the Board of Directors, shall be necessary or proper for the maintenance and operation of the Development as a first-class development or for the enforcement of any restrictions set forth in the Declaration, including but not limited to all maintenance items and services requires to serve and keep functional and safe the Common Areas.

G. To provide for the payment of taxes and assessments, general and special, levied against or by reason of the Common Areas.

H. To provide for the cutting of grass within the boundary lines of any Lot or area contained within the Development or for the irrigation of lawns, trees, shrubbery and the like within the boundary lines of any Lot or the Development, or for the landscaping, gardening and maintaining and replacing of all lawns within any Lot or the Development, or for the maintenance or replacing of all driveways, walkways, and parking areas within any Lot or the Development, or for the maintaining or replacing of any sewer lines or other utility lines located within the boundary lines of any Lot or the Development, or for the painting, cleaning or tuck-pointing of the exteriors of any buildings or improvements on any such Lot or the Development, or for replacement or repair of any roofs or roof structures located within the boundary lines of any Lot or the Development, or for the performance of any other maintenance, repair or replacement within the boundary lines of any Lot or the Development, if such maintenance, repair or replacement be necessary, as determined by the Association's Board of Directors, to protect the interests of the Association or its Common Areas, or the owner of any other Lot or Lots, or to protect any part, portion or aspect of the value of the Property or Development, or any portion thereof when the owner or owners of the Lot within the boundary lines who are responsible under the following provisions of this Declaration for the performance of the same have failed or refused to perform such within a reasonable time after written notice has been delivered by the Association's Board of Directors. No such written notice shall be required in the case of an emergency. The Board of Directors shall levy a Special Assessment against all Lots and the owners responsible (under the provisions of this Declaration) for the costs of the performance of the above, which assessment shall constitute a lien upon all such Lots and the improvements located thereon. Until any such lien and Special Assessment is paid, the sums due shall bear interest and be enforceable as described below.

Section 8. Entry into Lots and Common Areas or Building Areas. The Developer and Association shall have, and hereby reserve, the right to locate, erect, construct, maintain and use, or authorize such, easements and right-of-ways as necessary to fully implement this Declaration. The Developer, Association and its agents or its Directors, may enter upon any Lot or unto the exterior portion of any buildings and onto any of the Common Areas when necessary in connection with any cutting of grass, irrigation of lawns, tree, shrubbery, and the like, or any landscaping or gardening, or any painting, cleaning, tuck-pointing, maintenance, decorating,

repair, or replacement for the Common Areas, or for any building for which the Association is responsible, or which it is authorized to perform under this Article or as otherwise provided herein. Such entry shall be made with as little inconvenience to the Lot Owners as reasonably practicable; any damage caused thereby shall be repaired by the Association at the expense of the Maintenance Fund established hereinafter. The Association, by its agents or its Directors, shall be specifically authorized to enter onto any Lot or the exterior of any building located upon any Lot for purposes of performing any lawn mowing, irrigation, landscaping, gardening, painting, cleaning, tuck-pointing, maintenance, decorating, repair, replacement or servicing which the Association shall be authorized to perform under the terms of the Declaration, or which the Association's Board of Directors shall elect to perform under the provisions of this Declaration.

Section 9. Lot Owners' Upkeep of Property. The owners of all Lots shall be jointly and severally obligated to each other and to all other Lot Owners to perform all lawn mowing, fertilization, irrigation, landscaping work and services of any kind or nature whatsoever which are required to cause their Lot and all lawns, trees, shrubs, landscaping, buildings and other improvements located thereon kept and maintained in a clean, safe, neat, attractive and aesthetically pleasing a condition as is reasonably possible. In the event of any dispute over the standards of maintenance, including the standards of cleanliness, safety, neatness, attractiveness and aesthetics and beauty, such dispute shall be resolved either by the Association's Board of Directors acting within its sole, absolute and unmitigated discretion, or by the Developer, if prior to authority by the Board of Directors. Any decisions made by a majority vote of the Board of Directors shall be binding upon all parties.

Section 10. Limitation upon Power of Association and Board of Directors. The powers of the Association and its Board of Directors as herein set forth shall be limited in that they shall have no authority to acquire and pay for out of the Maintenance Fund any capital additions and improvements (other than for the purpose of replacing or restoring any improvements which have been damaged or which reasonably require replacement for any reason) having a total cost in an amount in excess of ten thousand dollars (\$10,000) without obtaining approval of a majority of the Class A Members and Class B (voting) members who cast a vote in person or by proxy in response to such request, nor shall the Association or its Board of Directors authorize any structural alterations, capital additions to or capital improvements to the Common Areas requiring an expenditure in an amount in excess of ten thousand dollars (\$10,000) without, in each case, obtaining the prior approval of a majority of the Class A Members and Class B (voting) members who cast a vote in person or by proxy in response to such request. This Section shall in no way limit, however, the routine maintenance expenditures deemed necessary by the Board of Directors in order to maintain the Development in a first-class manner, or limit the addition to the Development by Developer, at its cost or at the cost of the Association, any additional common areas or improvements thereto which shall ultimately become the responsibility of the Association to maintain.

Section 11. Rules and Regulations. The Association's Board of Directors may adopt and amend administrative rules and regulations and such reasonable rules and regulations as it may deem advisable for the use, operation, maintenance, conservation and beautification of the Common Areas, and as per the requirements and procedures enunciated in the By Laws.



Section 12. Active Business. Nothing herein contained shall be construed to give the Association or its Board of Directors authority to conduct an active business for profit on behalf of the Association or the Lot Owners.

**ARTICLE IV**  
**ARCHITECTURAL CONTROL**

The Architectural Review Committee is responsible for overseeing the architectural and structural continuity of the Development.

Section 1. Architecture Review Committee. The Architectural Review Committee shall be the Developer or the Board of Directors of the Association.

Section 2. Role of the Architecture Review Committee. In no event shall the Board of Directors of the Association as the Architecture Review Committee consent to any exterior addition to, change to, or alteration of: external color or building material; erection or building of any structure; or building or improvement located within a Lot or the Common Areas, unless it is deemed to be in the best interests of the Association and the Development and is deemed to be in harmony with the external design, location, size, and appearance of the surrounding structures and topography and is deemed to be of at least the same quality as the then existing structures within the associated Lots and the Development.

No change shall be made in the exterior appearance of any building or other structures, or portions of structures, within the Development or property until such change has been approved by the Developer, if Class B voting rights are in existence or for so long thereafter as the Developer owns any Lots or other real estate within the Development. Thereafter, the Board of Directors of the Association, as Architecture Review Committee, must approve any change in the type or nature of exterior appearance. It is the intention of this Declaration that the Board of Directors of the Association with its Architecture Review Committee, shall have architectural control over the entire Development following the termination of the Class B voting rights and following the termination of the ownership by the Developer of all real estate within the Development, and that the discretion of such committee shall be unlimited, so long as it exercises good faith. So long as the Developer retains architectural control, as provided by this Declaration, the Developer shall approve plans and specifications, only if it, in its sole and unlimited discretion, deems same to be in the best interests of the Development. The Developer shall have absolute discretion in determining whether to approve plans, specifications and/or changes.

Section 3. Architectural Control by Class B Members. So long as Class B voting rights are in existence and for so long thereafter as the Developer shall own any Lots within the Development or within the boundaries of any real estate made subject to this Development and Declaration, no building, fence, wall or other structure shall be commenced, erected or maintained within the Lots, the Common Areas or at any other location within the Development other than those places thereon by the Developer or its assignees of its rights as Developer, or those constructed under the plans, drawing and specifications which have been previously and expressly approved by the Developer. So long as Class B voting rights exist and for so long thereafter as the Developer shall own any Lots within the Plat or within the boundaries of any real estate made subject to this

Development and/or Declaration, no exterior change in materials shall be made on any completed structure, building, fence, wall or improvement located within a Lot, within the Common Areas or at any location within the Development other than those previously approved by the Developer and no building, fence, wall or other structure shall be commenced, erected or maintained within a Lot until the plans and specifications showing the nature, kind, shape, color, height, materials and location of same have been submitted to and expressly approved by the Developer.

Section 4. Architectural Control by Class A Members. After Class B voting rights have ceased to exist and the Developer no longer owns any Lots or real estate within the Development: no exterior addition to, change to, or alteration of any structure, building or improvement located within the Common Areas shall be made; and no alteration or exterior change in color or exterior building materials shall be permitted on any building, fence, wall or improvements located within the Lots or within the Common Areas; and no change in the exterior appearance of any such building, fence, wall or improvements shall be made; and no building, fence, wall or other structure, temporary or permanent, shall be commenced, erected or maintained within a Lot or within the Common Areas; until the plans and specifications for such addition, alteration, change, change in color, change in materials, or such building, fence, wall or other structure, showing in detail the nature, kind, shape, color, height, materials, and location of the same, have been submitted to and approved in writing as to harmony of external design, external color, external building materials, appearance, size, intended use and location in relation to surrounding structures and topography by the Architectural Review Committee.

Section 5. Duty to Approve. Approval of building plan packets and specifications is at the sole discretion of the Architectural Review Committee or Developer, depending on the phase of development. Plans and specifications approved for one specific Lot does not bind the Architectural Review Committee or Developer to approve the same or similar plans and specifications for any other Lot. The Architectural Review Committee shall strive to approve or disapprove of a proposed design or plan, in writing, within thirty (30) days after said plans and specifications have been submitted to it. If the Architectural Review Committee fails to approve or disapprove a proposed design and plan, in writing, within thirty (30) days after said plans and specifications have been submitted to it, approval per this Article will be deemed not satisfied. The absence of an approval for the plans and specifications results in their disapproval.

Section 6. Minimum Requirements. Whether or not Architectural Control rests with the Developer if Class B voting rights exist, or the Board of Directors / Architectural Review Committee, so long as this Declaration is in full force and effect, the following minimum building standards and architectural controls shall apply, unless expressly waived by Developer or the Board of Directors / Architectural Review Committee, in writing, for good cause shown relating to topography of individual Lots, substrate or soil conditions, or configuration of the Lots or other reason giving justification for such waiver:

A. Each Lot Owner and/or Builder shall refer to the Plot Plan provided by the Developer for each specific Lot in the Development to determine the minimum front, side and rear set-backs required on each Lot. However, Developer and/or the Architectural Control Committee shall encourage each Lot Owner and/or Builder to exceed such minimum

requirements. All driveways and driveway approaches shall be constructed with locations, dimensions and materials that are in compliance with Boone County, Missouri standards.

B. No building shall be erected or maintained on any Lot unless the entire exterior front wall space of the building and the entire side wall and back wall spaces of the building are composed of brick, stone, dryvit stucco, fiber cement siding products or a combination thereof, excluding windows, doors, and garage doors, without the prior written consent of the Developer or Architectural Review Committee. In addition, polypropylene and/or polymer shake products may also be used on the exterior front wall space and/or side wall space of the building if it is used in conjunction with the other materials listed herein above. No vinyl or steel exterior siding shall be used on any dwelling without the prior written consent of the Developer or Architectural Review Committee.

C. All buildings shall have continuous standard foundations and basement walls of poured concrete.

D. Detached accessory buildings and improvements may be permitted. Such buildings or improvements and the plans for such must include allowable exterior finishes as described in Article IV, Section 6B above. Plans for all accessory buildings, fountains, retaining walls, walkways, patios, and other improvements must be submitted to the Developer or Architectural Review Committee for written approval prior to beginning construction or installation to ensure compatibility with local regulations, the Development, Lot topography and any adjoining Lots or properties.

E. Fences may be permitted. Plans for all fences must be submitted to the Developer or Architectural Review Committee for written approval prior to beginning construction or installation to ensure compatibility with local regulations, the Development, Lot topography and any adjoining Lots or properties. No privacy fences shall be permitted without the prior written consent of the Developer or Architectural Review Committee. No chain link fences shall be permitted.

F. Basketball goals are allowed. However, basketball goals may not be attached to the front or sides of the main Building or Dwelling on a Lot, nor may same be installed or kept or used within a street right-of-way.

G. All homes must meet the following minimum size requirements:

1. For ranch style homes, 2,000 square feet of finished living space on the main level and a two (2) car garage, attached or detached;

2. For multi-level homes, 2,500 square feet of finished living space on the main and upper floors combined and a two (2) car garage, attached or detached.

The term "finished living space" as used in this subparagraph shall not include basement area, open porches, screened porches, patios or garages.

H. A building plan packet must be submitted for approval to the Developer or Architectural Review Committee prior to beginning construction and the Developer shall have the right to retain a copy of the packet and plans. The building plan packet shall include:

1. An informational cover page stating the Lot number, Owner name and contact information, Builder name and contact information, time line for building each structure and any other relevant information not otherwise included in this packet;
2. The proposed exterior materials and colors with an elevation drawing for all proposed buildings and structures, also including but not limited to roof pitch and mailbox design;
3. Complete floor plans with dimensions;
4. A plot plan showing:
  - (i) The exact location of the proposed building(s) and other structures, their orientation, and distances to the boundary lines from each side of the building(s);
  - (ii) Driveway, walkway, porch, patio, retaining walls, fences and any parking space locations(s);
  - (iii) The existing tree line, any proposed clearing; and erosion control measures;
  - (iv) Mailbox location;
- (iv) The storm water control plan;
- (iv) The sewer system details, including the location of the tank in relation to the home, driveway and property lines, as well as the elevation of the bottom of the tank and elevation of the driveway at minimum so that the elevation difference between them does not exceed 15 feet; and
- (v) A landscape plan;

Section 7. Enforcement. Any construction, alteration, or other work done in violation of this Article shall be deemed to be non-conforming. Upon written request from the Developer or Architectural Review Committee, the Lot Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the construction, alteration, or other work. Should the Lot Owner fail to remove and restore as required hereunder, the Developer or Architectural Review Committee shall have the right to enter the property, remove the violation, and restore the property to the same condition as existed prior to the construction, alteration, or other work. All costs and interest may be assessed against the affected Lot and collected as a special assessment.

Section 8. Personal Interest. Any personal interests, or alleged personal interests, of any member of the Architectural Review Committee with respect to matters to be submitted to such committee for its determination shall be waived as a disqualification and any member of the Architectural Review Committee shall be permitted to participate in any decisions, whether or not such members has or arguably has an interest in the matter to be decided by the committee. All determinations of the Architectural Review Committee shall be final and binding. The Architectural Review Committee shall have sole, absolute, unlimited and unmitigated discretion with respect to all matters submitted to it for its determination, and no requirement that it be reasonable in its action shall be deemed to be expressed or implied, as all such requirements are waived and eliminated in their entirety.

Section 9. Liability. That notwithstanding any other provisions contained herein, the Architectural Review Committee and the members thereof shall be exempt from, and shall not be

liable for, any claims, actions, causes of action, demands, losses, suits, liability, or expenses of kind, nature or description whatsoever, so long as the committee acted in good faith. The sole requirement shall be that the committee acted in good faith. If the members of the committee acted in good faith, then all determinations made by said members shall subject said members to no liability or responsibility of any kind, nature or description whatsoever, under any circumstances whatsoever. In no event shall any member of the Architectural Review Committee be liable in any action for damages. The sole rights of a party seeking relief against the Architectural Review Committee or a member of the Committee shall be to seek an order of court, or of a tribunal of appropriate jurisdiction, requiring that the Architectural Review Committee or any member thereof take any action which the petitioning party deems to be legally required of the committee of such member. The sole requirement shall be that the Architectural Review Committee, in exercising its sole, absolute, unlimited and unmitigated discretion, act in good faith, and that it not act in an arbitrary, capricious or malicious manner.

**ARTICLE V**  
**ANNEXATION OF ADDITIONAL PARCELS TO SUBDIVISION**

Section 1. Annexation. The Developer may bring additional parcels of real estate under the jurisdiction of the Association and may make same a part of the Development, provided, however, that the following terms and conditions are satisfied:

A. Any such additional parcel made to subject to the jurisdiction of the Association shall be immediately adjacent to or located in the general vicinity of the real estate described aforesaid.

B. Any additional parcel brought under the jurisdiction of the Association shall be so brought under the jurisdiction of the Association either by recorded Supplementary Declaration or by a recital on the Plat of the parcel, which shall provide that the parcel is made subject to this Declaration. The parcel shall, by such Supplementary Declaration or by such a recital on the Plat, be deemed to have been made subject to the assessments by the Association, to this Declaration and to all covenants, conditions, restrictions, liens, charges and assessments provided by the Declaration and all terms, provisions and conditions contained in the Declaration, including any future modifications thereof. The owners of all Lots contained within such additional parcels shall be Class A Members of the Association, if they meet the terms and conditions hereinabove set forth for such Class A Membership, and shall be entitled to those rights and privileges in the Common Areas provided for by this Declaration. All such Lot Owners shall, as members of the Association, be subject to assessments the same as the earlier members of the Association. The provisions set out above herein in regard to Class B members of the Association shall also be applicable to said Lots. All portions of any parcels annexed to the Development shall be subject to the terms, covenants, conditions, reservations, restrictions, assessments, liens and charges established by this Declaration and to all duties established by this Declaration.

C. Lot Owners obtaining or now possessing any ownership interest in a Lot shall be deemed to have automatically consented to annexation to the Development by the Developer of any additional real estate which is immediately adjacent to such real estate or is located in the general vicinity of such real estate. The Developer shall, in its discretion, have the right, but not

the obligation, to cause any additional real estate to be annexed to the Development. The rights of the Developer to annex additional parcels of real estate shall vest exclusively in the Developer, and neither the Association nor assignees of Developer shall have such authority.

**ARTICLE VI**  
**ASSESSMENTS FOR MAINTENANCE FUND AND OTHER EXPENDITURES**

Section 1. Purpose of Assessment. The annual and special assessments established and collected under the terms of this Article shall constitute a fund to be known as the "Maintenance Fund" to be used to pay expenses described in this Declaration and expenses deemed necessary by the Board of Directors. The assessments levied by the Association shall be used exclusively by the Association to discharge its duties and obligations as provided by the Declaration and for the purpose of promoting the enjoyment, health, safety, recreation or welfare of the Lot Owners of the Development and in particular, for the construction, improvement and maintenance of the Property and the services and facilities devoted to this purpose, and for the construction, improvements and maintenance of the Common Areas and the equipment and facilities related to the use and enjoyment of the Common Areas and where applicable under the following provisions of this Declaration, for the improvement and maintenance of the buildings, structures and other improvements situated upon the Lots, as required by the provisions of this Declaration, including, but not limited to, the payment of taxes levied upon and insurance premiums incurred for the Common Areas and for all maintenance, repairs, services and other items to be performed or provided by the Association under the provisions of this Declaration.

Section 2. Amount and Setting of Annual Assessments to be paid to Association. From and after the conveyance of the first Lot to an owner other than the Developer or another Class B Member, whichever shall first occur, the annual assessment upon each Lot, which shall be paid to the Association or to the Developer for remitting to the Association, shall be payable as hereinafter provided. All Class A Members shall be assessed a Five Hundred Dollar (\$500.00) annual assessment fee. This annual assessment may be increased or decreased above or below the assessment for the preceding year by the Association's Board of Directors, without a vote of the membership, if required to meet the established cash requirements described in Section 1 of this Article, provided, however, if such increase increases the sum of the annual assessment by more than twenty-five percent (25%) over the prior year, the Board shall call a meeting of the Class A Members to discuss same before setting the new assessment. Such meeting shall provide advisory input by the Class A Members to the Board regarding the assessment and the Board shall itemize the needs of the Association and expected revenues by presentation. However, final authority to set the assessment shall rest with the Board of Directors of the Association by simple majority vote.

Section 3. Initial Membership Fee. Each time a Lot is conveyed to a Lot Owner and/or Builder by the Developer or any other Person, there shall be an initial membership fee in the amount of Five Hundred Dollars (\$500.00) payable to the Association or to the Developer. The initial membership fee shall be in addition to the annual assessment. Such initial membership fee may be used by the Developer and/or the Association to pay expenses described in this Declaration and expenses deemed necessary by the Board of Directors and/or Developer which are for the purpose of promoting the enjoyment, health, safety, recreation or welfare of the Lot Owners of

the Development and in particular, for the construction, improvement and maintenance of the Property and the services and facilities devoted to this purpose, and for the construction, improvements and maintenance of the Common Areas and the equipment and facilities related to the use and enjoyment of the Common Areas.

Section 4. Uniform Rate of Assessment. In all cases, the rate of assessments provided for in this Article must be uniformly applied to all Lots. Each individual numbered Lot of each plat will be assessed a uniform rate of one assessment per Lot. In the event a Lot Owner owns more than one Lot, such Lot Owner will be assessed the equivalent number of assessments corresponding with each Lot.

Section 5. Special Assessments.

A. Repair, Replacement or Maintenance to be done by Lot Owners.

The Lot Owners are required to provide for all maintenance, repairs, replacements, servicing and upkeep required to maintain their respective Lots and all buildings and improvements located thereon in such condition as fully complies with and satisfies the standards of maintenance set forth in this Declaration. In the event a Lot Owner does not cause to be performed the maintenance, repairs, replacements, servicing and upkeep which he is required to perform under the provisions of this section or under any of the other provisions of this Declaration, then the Association's Board of Directors, in its discretion may (but shall not be required to do so) cause the item of repair, maintenance, replacement, servicing or upkeep to be performed at the expense of the Lot Owner required to perform the same. The cost of such performance as such item of repair, maintenance, replacement, servicing or upkeep and the administrative costs incurred by the Association in performing said work shall automatically become a special assessment against the Lot Owner, and shall constitute a lien upon such Lot and the real estate and improvements thereof. Such special assessments shall bear interest at that rate hereinafter provided for in this Declaration and shall be enforceable against the Lot Owners in that matter hereinafter provided for in this Article, and shall be a lien against the Lot just as are all other assessments provided for by this Declaration.

B. Special Assessments for Replacements or Non-periodic Maintenance.

In the event the need for non-periodic maintenance, repair or replacement for any improvements located within or constituting the Common Areas should occur, or in the event any unexpected replacement or maintenance shall be required with respect to any such improvements, and in the event the annual assessment for Lots shall be insufficient to cover the cost of such repair or replacement or shall not have established a sufficient reserve for such repair or replacement (a requirement that such reserve be established, although advisable, shall not be implied here from), then the entire sum of the cost of such repair, replacement or non-periodic maintenance or repair shall be apportioned equally among all Lots (whether owned by Class A or Class B members), and that portion of such cost apportioned to each such Lot shall constitute a special assessment against each such Lot. Such special assessment shall be used to pay the cost of such repair, replacement or non-periodic maintenance or repair and shall be due and owing from each Lot owner in time to permit timely payment of the cost of such replacement, maintenance or repair. Special assessments provided for in this section shall

constitute liens on the Lots and shall be enforceable in that matter hereinafter provided for in this Declaration for enforcement of all such assessments.

C. Special Assessments for Capital Improvements.

In addition to the annual assessments to the Association as authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or part, the cost of any capital improvements or the cost of any reconstruction or unexpected repair, maintenance or replacement of any capital improvement located within any Common Area or, provided that any such assessment shall have the assent of a majority of the votes of the Board of Directors who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than (10) days nor more than forty (40) days in advance of the meeting setting forth the purpose of the meeting.

D. Special Assessments for Enforcement.

In addition to the special assessments referred to above herein and in addition to any other rights and remedies provided to the Association, the Association may, in the event of a violation of any of the Use Restrictions or other requirements contained herein, in its sole, absolute and unmitigated discretion have the right to impose upon a Lot owned by a Class A Member a special assessment (by way of a fine) in such amount as the Association in its sole, absolute and unmitigated discretion shall deem appropriate during the continuance of the violation of said Use Restrictions or other requirements and such fine shall constitute a special assessment upon the Lot owned by Class A Member, except the amount of such fine for any one violation of the provisions of this document shall not exceed an amount per month which is two times the last annual assessment upon the owned by said Class A member. Such special assessments shall be payable to the Association on demand and shall be added to and become a part of the other assessments and sums for which said Lot or the Class A Member of said Lot is subject and shall be enforceable in the same manner as is provided for the enforcement of the other assessments provided by this document or provided by law.

Section 6. Collection of Assessments. Both annual and special assessments shall be due and payable at such times and in such installments as the Association's Board of Directors shall determine and may be collected on an annual, semi-annual, quarterly or monthly basis.

A. Date of Commencement for Annual Assessments.

All of the annual and special assessments and any other assessments provided for in this Article shall apply to each Lot on the date when Class A membership is affixed to the Lot. The annual assessment provided for herein shall commence on the first day following the sale to any owner other than the Developer. The above provisions of this Section to the contrary notwithstanding, a Lot shall become subject to assessments automatically, should the Class B voting rights attributable to such Lot terminate under any one of the provisions of this Declaration. In the event of such termination, the Lot shall become automatically subject to assessment effective on the date of such termination of the Class B voting rights attributable to such Lot. The first annual assessment described under this Article shall be apportioned on a pro rata basis (i.e. adjusted according to the number of days remaining in the calendar year). The Association's Board of Directors shall fix the amount of the annual assessment against each Lot



at least fifteen (15) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Lot Owner subject thereto. The due date shall be established by the Association's Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing, signed by an officer of the Association, setting forth whether the said annual assessments on a specified Lot have been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

B. Nonpayment of Assessment – Remedies of the Association.

Any assessments hereinabove described in this Article which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the then "Prime Rate," as defined herein, but not less than five percent (5%) per annum. The term "Prime Rate" as used herein shall be deemed to mean the Prime Rate published in *The Wall Street Journal*, being the base rate on corporate loans posted by at least seventy-five percent (75%) of the thirty (30) largest banks in the United States of America. Furthermore, the Association may bring an action at law or in equity against the Lot Owner or other Person obligated to pay the same, or foreclose the lien against the Property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Lot Owner or other obligated Person may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot or Lots.

C. Creation of a Lien and Obligation for Assessments.

The Developer, for each Lot owned within the Subdivision, hereby covenants, and each of the subsequent Lot Owners and/or Builders, by acceptance of a Deed thereof, whether or not it shall be so expressed in any Deed or other conveyance, is deemed to covenant and agree to pay to the Association or the duly authorized officers, representatives or agents of the Association: (1) Annual Assessments to be paid to the Association, as herein provided; (2) Special Assessments for capital improvements hereinafter provided for; (3) Special Assessments for replacements and non-periodic maintenance of Common Areas herein provided for; and (4) any other sums, fees or assessments provided for in this Declaration, such sums, fees and assessments to be fixed, established and collected from time to time as hereafter provided. All such annual and special assessments to be fixed, established and collected from time to time as herein provided. All such annual and special assessments and other sums, fees and assessments, together with interest thereon and costs thereof, as may be herein provided for, shall be a charge on the land and improvements and shall be a continuing lien upon the land and improvements against which each such assessment or charge is made. Each such assessment or charge shall also be the joint and several personal obligation of the Person or Persons who were the Lot Owners of such Lot, land, Property or improvement at the time when the assessment fell due. The personal obligation shall only pass to such Lot Owner's successor in title unless expressly assumed by them.

D. Mortgages.

The lien of assessments provided for herein shall be subordinate to the lien of any mortgage or deed of trust now or hereafter placed upon any Lot and/or Property subject to assessment; provided however, that in the event of default in the payment of any obligation

secured by such mortgage or deed of trust, such subordination shall apply only to the assessments, or installments thereof, which shall become due and payable prior to the sale of such Property pursuant to the power sale under such deed of trust, or prior to a conveyance to the mortgagee or holder of the deed of trust in lieu of foreclosure. Such sale or conveyance in lieu of foreclosure shall not relieve such Property from liability for any assessments, or installments thereof, thereafter becoming due or from the lien of any such subsequent assessments, or installments thereof, thereafter becoming due.

Section 7. Exempt Property. The following Property subject to this Declaration shall be exempt from the assessment created herein: (a) All Lots dedicated to and accepted by a local public authority; (b) All Lots to which Class B (voting and non-voting) membership rights are attached until such Class B memberships have terminated, except to the extent specifically provided to the contrary herein; and (c) the Common Areas.

Section 8. Retroactive Effect and Assessments. If a change in annual assessment provided for by this Article requires approval of the Board of Directors and such approval is not obtained until after the first day of the calendar year within such assessment is to be charged, such new assessment shall be retroactive from the date of approval to the first day of the calendar year and shall apply for the entire calendar year. If installments upon the assessment have been made previously paid prior to such approval, then the sum of any deficiency in such installments shall be due on the due date of that installment which next follows approval of the assessment or, if there is no such installment, shall be immediately due the following such approval.

Section 9. Failure to Set Assessments. In the event an annual assessment provided for by this Article is not set for any year, then the annual assessment in effect for the preceding year shall be in full force and effect for such year.

## **ARTICLE VII**

### **GENERAL PROVISIONS**

Section 1. Enforcement. The Developer, so long as Class B voting rights exist, and the Association at any time, or any Lot Owner, shall have the right to enforce, by any proceeding at law or in equity, any covenants, restrictions, liens, charges or assessments now or hereafter imposed by the provisions of this Declaration. Failure by the Developer, the Association or any Lot Owner to enforce any covenants or restriction herein contained shall, in no event, be deemed to constitute a waiver of the right to do so thereafter. In the event the Developer or the Association seeks to enforce these restrictions by legal proceedings and the Developer or the Association prevails in such legal proceedings, then the Developer or Association shall, in addition to other rights and remedies to which it or they may be entitled, further recover their reasonable costs, expenses, and attorneys' fees incurred in such proceedings.

In addition to the enforcement of the provisions set out here above, the Association shall have the right to deny to any Class A Member, who is in violation of the provisions of this document, the use of the Common Area until said violation has been remedied to the satisfaction of the Association. In addition, the Association shall have the right to enter upon a Lot owned by a Class A Member and abate any violation on said Lot and levy a special assessment on the Lot for the cost of said abatement.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Section 3. Amendments. The covenants, conditions, restrictions, easements, charges and liens of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Developer, the Association or by the Owners of any Lots subject to this Declaration and their respective legal representatives, heirs, successors and assigns during the first twenty (20) year period after this Declaration is recorded in the Office of the Recorder of Deeds of Boone County, Missouri. After such time, they shall automatically be extended for successive periods of ten (10) years unless an instrument, signed by not less than sixty percent (60%) of the Lot Owners, which instrument provides for amending or terminating this Declaration, in whole or in part.

During the first twenty (20) year period of this Declaration, it may be amended in whole or in part only by an instrument signed by the Developer (so long as it holds Class B voting rights and/or any Architectural Control rights), and the Lot Owners of not less than sixty percent (60%) of the Lots, including the Developer as to Lots owned by the Developer. Any amendment so made may not reduce the Developer's Class B voting rights or any of his development rights or Architectural Control rights, and may not otherwise adversely affect the Developer's rights hereunder unless the Developer specifically consents to such an amendment. When the Developer no longer holds Class B voting rights and/or any Architectural Control rights and during any successive ten (10) year periods as described herein above, this Declaration may be amended in whole or in part only by an instrument signed by not less than sixty percent (60%) of the Lot Owners.

Any amendment made according to this Section shall be binding upon all Lot Owners. All amendments to this Declaration must be recorded in the Office of the Recorder of Deeds of Boone County, Missouri in order to be effective.

Section 4. Mediation. If there is at any time a dispute between and among any Lot Owner(s), any Builder(s), the Developer and/or the Association, its Board of Directors, or any member of the Board of Directors or any officer of the Association or any manager or management company employed by the Association or its Board of Directors or between or among any other Person bound by this Declaration regarding any matter arising out of or in any way connected with this Declaration, the relationship of the parties hereunder, and/or the performance or enforcement of the provisions hereunder and such parties cannot independently resolve the issue, then one Mediator shall be appointed by agreement of each party so that the Mediator may resolve the dispute within a reasonable time frame. If the parties cannot agree upon one Mediator, each party shall appoint one independent Mediator and the third independent Mediator shall be appointed by the other two Mediators. The Mediator(s) shall set a mediation date approximately 30 days from the date the final mediator is retained. At which time the parties will present their case to the Mediator(s) and attempt to resolve all issues. Any mediation shall occur in Boone County, Missouri unless the disputing parties agree to mediation elsewhere. No civil action concerning any dispute arising under this Declaration shall be instituted before any court until and after the parties have attempted to settle such disputes through Mediation.

Section 5. Waiver of Jury Trial, Venue and Missouri Law. The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on, or in respect to, any matter whatsoever arising out of or in any way connected with this Declaration, the relationship of the parties hereunder, and/or the performance or enforcement of the provisions hereunder. This Contract shall be enforced under the laws of the State of Missouri with venue only in the State Court having primary jurisdiction over Boone County, Missouri.

Section 6. Notices. Any notice required to be sent to any member or Lot Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a member or Lot Owner on the records of the Association at the time of such mailing.

Section 7. Language Variation. The use of pronouns or of singular or plural as used herein shall be deemed to be changed as necessary to conform to actual facts.

Section 8. Titles and Captions. The titles or captions of the various provisions of this Declaration are not a part of the covenant hereof, but are merely labels to assist in locating paragraphs and provisions herein.

Section 9. Developer's Responsibilities. Until such time as the Association is duly incorporated and its Board of Directors duly elected, all powers vested in said Association shall be retained by Developer, whose authority and responsibilities shall be the same as those of said Board, including indemnification from the Association for any liabilities encountered by the Developer, as would apply to the Association or a Director of the Association. Actions by the Developer in this authority may not be subsequently overruled, changed or amended, except as provided herein and any waiver of any requirement herein by Developer shall be final notwithstanding the existence of any Board of Directors later organized or existing.

Section 10. Extension of Liability. Lot Owners are responsible for reimbursing the Association for any and all property damage and/or other destruction to Common Areas and other common property which is willfully, intentionally, or negligently caused by any Lot Owner or said Lot Owners children, pets, guests, agents and/or assigns.

*-- This Section is intentionally left blank. --*

BOONE COUNTY MO AUG 04 2017

IN WITNESS WHEREOF, BEACON STREET PROPERTIES, LLC, a Missouri limited liability company, with principal offices located in Boone County, Missouri, has caused this instrument to be signed by its Authorized Member the day and year first written above.

BEACON STREET PROPERTIES, LLC  
A Missouri limited liability company

BY: Scott Linnemeyer  
Scott Linnemeyer, authorized member

STATE OF MISSOURI     )  
  ) SS.  
COUNTY OF BOONE     )

On this 4<sup>th</sup> day of August, 2017, before me personally appeared SCOTT LINNEMEYER, a member of Beacon Street Properties, a Missouri limited liability company, known to me to be the person described in an who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed as said Member.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, ay my office in Columbia, Missouri, the date and year fist written above.

Lyle K. Mann  
Notary Public

My commission expires: 11-30-18

LYLE K. MANN  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for Audrain County  
My Commission Expires: November 30, 2018  
Commission Number: 14427098