

10018599

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made on the date hereinafter set forth, by **CHAPEL OAKS DEVELOPMENT CO.**, a Missouri corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Lee's Summit, County of Jackson, State of Missouri, which is more particularly described as:

Commencing at the Northwest corner of Section 16, Township 47 North, Range 31 West; thence along the North line thereof South 88 degrees 07 minutes 04 seconds East a distance of 25.00 feet; thence South 02 degrees 22 minutes 27 seconds West a distance of 20.00 feet to a point on the South right-of-way of Bailey Road as now established; thence along said right-of-way South 88 degrees 07 minutes 44 seconds East a distance of 655.00 feet to the Point of Beginning; thence continuing South 88 degrees 07 minutes 44 seconds East a distance of 1923.78 feet; thence South 2 degrees 19 minutes 52 seconds West a distance of 310.01 feet; thence South 88 degrees 07 minutes 44 seconds East a distance of 49.50 feet to a point on the East line of the Northwest Quarter of said section; thence along said East line South 2 degrees 19 minutes 52 seconds West a distance of 995.21 feet to a point on the South line of the North half of said Northwest Quarter; thence North 88 degrees 02 minutes 17 seconds West a distance of 2057.81 feet; thence North 1 degree 52 minutes 16 seconds East a distance of 1050.57 feet; thence South 88 degrees 07 minutes 44 seconds East a distance of 95.00 feet; thence North 1 degree 52 minutes 16 seconds East a distance of 251.34 feet to the Point of Beginning.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability

28
JCRB - 05/06/1999

of, and which shall run with, the real property and shall be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. Association. "Association" shall mean and refer to the NEWBERRY HOME OWNERS ASSOCIATION, INC., its successors and assigns.

Section 2. Properties. "Properties" shall mean and refer to that certain real property hereinbefore legally described and such additions thereto as may hereafter be brought within the jurisdiction of the Association and made subject to this Declaration.

Section 3. Common Area. "Common Area" shall mean and refer to any part of the property set aside pursuant to any recorded deed of the property by the developer to the Association for the common use and enjoyment of the members of the Association.

Section 4. Declarant/Developer. "Declarant/Developer" shall mean Chapel Oaks Development Company, a Missouri corporation, and/or an assignee to whom developer or declarant's rights hereunder are assigned by an instrument duly executed and acknowledged by declarant/developer and filed of record.

Section 5. Lot. "Lot" shall mean and refer to any separately numbered plot of land shown upon the recorded plat of the property, together with any and all improvements now or hereafter located thereon, and all easements, rights, appurtenances, and privileges

13CNO - 05/06/1999
66611999

belonging or in any way pertaining thereto, excepting the common area, developer owned acreage, and land devoted to use by Multi-Family residential units.

Section 6. Member. "Member" shall mean and refer to every person or entity who holds a membership in the Association as provided in Article III of this Declaration.

Section 7. Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any lot or other land which is a part of the properties, including contract sellers, but excluding those having an interest merely as security for performance of an obligation.

Section 8. Multi-Family Residential Unit. "Multi-Family Residential Units" shall mean occupied living units situated in a townhouse or other structure which affords residential living space for more than one family on land located within the Properties, whether such units are owned or leased by the occupant. For purpose of this instrument Multi-Family residential floor space shall be considered occupied when it is conveyed by the builder to the first owner who takes title under the Act; the actual occupancy of such units shall not be material.

Section 9. Parcel. "Parcel" shall mean and refer to all platted portions of the Properties consisting of one or more lots or Multi-Family residential units which are subject to the same Supplementary Declaration.

Section 10. Supplementary Declaration. "Supplementary Declaration" shall mean any Declaration of Covenants, Conditions and Restrictions which may be recorded by the

JCR0 - 05/06/1999
666T-08

declarant or developer which contains such complementary provisions in relation to a parcel as are authorized herein and required for the general welfare of owners or occupants of lots or units within the parcel.

Section 11. Living Unit. "Living Unit" shall mean a residential unit intended for occupancy by a single family located on a lot established by plat or Certificate of Survey and subject to this Declaration. There shall be one hundred thirty-one (131) Single-Family Living Units in Newberry 1st Phase and 3rd Phase. Living Unit shall also mean a residential unit intended for occupancy by a single family located within a building and established by a Certificate of Survey within the Multi-Family residential section, which shall have thirty (30) lots and shall be subject to a Supplementary Declaration of Covenants and Restrictions in addition to this Declaration of Covenants.

Section 12. Certificate of Survey. "Certificate of Survey" shall mean a survey of each lot wherein the survey shows each building "as built" and a line extending from the party wall as the division line dividing the lot into five (5) separate parcels, Parcel A, Parcel B, Parcel C and Parcel D, and the building situated thereon into four (4) separate Living Units, and a Parcel E containing Common Area surrounding said Living Units. The Certificate of Survey shall be recorded with the Recorder of Deeds for Jackson County, Missouri, upon the completion of the improvements upon each individual lot contained in the properties.

Section 13. Common Properties. "Common Properties" shall mean and refer to those areas of land designated as common areas, if any, on any recorded subdivision plat, survey

or resurvey of the properties and intended to be devoted to the common enjoyment of the members of the Association, or subject to the control thereof, together with any and all improvements that are now or may hereafter be constructed thereon. In this Declaration common properties shall, without limitation, contain the following:

(a) All yards, trees, landscaping, parking areas, parking spaces and driveways, except as otherwise herein provided;

(b) All installments of central services for the benefit of more than one owner such as mailbox stand, pipes, wires, conduits, sewers, water lines and other public utility lines and facilities thereon; and

(c) All easements, rights and appurtenances belonging thereto necessary to the existence, maintenance and safety of the properties and improvements constructed thereon.

Section 14. Limited Common Elements. "Limited Common Elements" shall mean and include those common elements located in the Multi-Family residential section and subject to the Supplementary Declaration, which are reserved for the exclusive use of an individual Multi-Family unit owner, which shall include, but not be limited to:

(a) Any pipe, bearing wall, bearing column, flue or duct or other fixture lying partially within and partially outside the designated boundaries of a Living Unit to the extent the same serves only that unit. Any portion thereof which serves more than one unit or serves any part of the common elements shall be deemed a part of the general common elements or common properties; and

JCRO - 05/05/1999

(b) Any shutters, awnings, window boxes, patios, decks, balconies, porches and all other exterior doors and windows or other fixtures designed to serve a single unit and serving only one unit but located outside such unit's boundaries shall also be a limited common element.

Section 15. Declaration. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to the properties recorded in the Recorder of Deeds office for Jackson County, Missouri, by declarant; and "Supplementary Declaration" shall mean and refer to any Declaration of Covenants, Conditions and Restrictions which may be recorded by the declarant which may contain complimentary provisions in relation to the parcels as authorized herein and provided for the general welfare of the occupants of the lots within the parcel.

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by the Membership. Annexation of additional property to be made subject to these restrictions shall require the assent of two-thirds (2/3) of Class A and Class B votes cast at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting. The presence of members or of proxies entitled to cast sixty (60%) percent of the votes of each aforesaid class of membership shall constitute a quorum. If the required quorum is not forthcoming at any

meeting, another meeting may be called subject to the notice requirement set forth above, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that the requisite number of votes are not represented, in person or by proxy, members not present may give their written assent to the action taken thereat.

Section 2. Annexation by the Developer. The foregoing notwithstanding, if within ten (10) years of the date of recording of this Declaration, declarant, or their assigns, shall have the right to add additional real estate to be subject to this Declaration and shall be made a part of the property without the assent of any member other than the developer or without any vote by the members.

ARTICLE III

ASSOCIATION MEMBERSHIP

Section 1. Every person or entity that is a record owner of a fee or undivided fee interest in any lot of land where Single-Family or Multi-Family residential units are located, which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not meant to include persons or entities who hold an interest merely as security for the performance of an obligation. Ownership of a lot or Living Unit shall be the sole qualification for membership.

ARTICLE IV
VOTING RIGHTS

Section 1. The Association shall have three (3) classes of voting membership:

Class A. Class A members shall be all owners of Single-Family residential units with the exception of the developer, and shall be entitled to one (1) vote for each lot in which they hold the interest required for membership by Article III. When more than one person holds such an interest in any lot or residential unit, the Class A membership with respect to such lot or residential unit shall be held jointly by all such persons and the vote for such lot or residential unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to such lot or residential unit and in no event shall any fractional votes be cast.

Class B. Class B members shall be all persons or entities owning land upon which Multi-Family residential units have been developed. Class B members shall be entitled to one (1) vote for each Multi-Family residential unit located on the land in which they hold the interest required for membership by Article III. When more than one person holds such an interest in any lot, such person shall all be members and the vote for such lot or residential unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such lot or Multi-Family residential unit.

Class C. Class C members shall be the developer/declarant. Class C members

JCRB - 05/06/1999

shall be entitled to three (3) votes for each lot, residential unit or Multi-Family residential unit owned.

The Class C membership shall cease and be converted to Class A or Class B membership, as appropriate, upon the earliest of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership and Class B membership equals the total votes outstanding in the Class C membership, or
- (b) on December 31, 2008.

ARTICLE V

PROPERTY RIGHTS

Section 1. Members' Easement of Enjoyment. Each member shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every assessed lot or other tract of land, excepting unimproved acreage not owned by the developer, subject to the following provisions:

- (a) The rights of the Association to limit the number of guests of members, other than the developer;
- (b) The right of the Association to charge reasonable admission and other fees for the use of any facility situated upon the Common Area;
- (c) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid

JCRNO - 05/06/1999

thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder unless and until such time as any mortgage shall be foreclosed in accordance with the laws of the State of Missouri, in which case the relative interests of the parties shall be controlled by such laws;

(d) The right of the Association to suspend the voting rights and right to use of the recreational facilities by a member for any period during which an assessment against his lot remains unpaid; and for a period not to exceed ninety (90) days for any infraction of its published rules and regulations;

(e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the members. No such dedication or transfer, other than the dedication of a utilities easement, shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of all eligible votes in each class under the provisions of Article IV has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than thirty (30) days nor more than sixty (60) days in advance;

(f) The right of the Association to make reasonable rules and regulations and impose reasonable restrictions upon such use and enjoyment for the benefit of all members, their guests and assigns;

(g) The right of the developer by Supplementary Declaration to limit access to, or

membership in, club houses and clubs by class of property ownership or lot. Such power to limit membership and access being, however, specifically limited to club houses and clubs;

(h) The rights of the mortgagee under any deed of trust of record at the time this instrument is filed to foreclose pursuant to Missouri law, free of the rights of members of the Association herein created.

Section 2. Delegation of Use. Any member may delegate, in accordance with the ByLaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers.

Section 3. Title to the Common Area. The declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area to the Association, subject to existing encumbrances and liens, upon demand by the Board of Directors of the Association, or at such time as the declarant may wish to make, and the Board of Directors wishes to accept, such a conveyance.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Class A member and owner of any parcel or Living Unit, by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected from time to time as

FORM - 05/06/1999

JCHO - 05/06/1999

hereinafter provided, and (3) annual or special parcel assessments or charges which shall be established and collected as provided herein and in Supplementary Declarations recorded pursuant hereto. The annual, special and parcel assessments, together with interest, costs and reasonable attorneys fees, shall also be the personal obligation of the person who was the owner of such property at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. The annual and special assessments, together with interest thereon, costs of collection thereof and reasonable attorneys fees, as herein provided, shall be a charge on the land and shall be a continuing lien upon the property upon which each such assessment is made.

Section 2. Purpose of Assessments.

(a) Annual Assessments. The annual assessment levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the properties and, in particular, for the improvement and maintenance of the homes situated upon the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area.

(b) Special Maintenance Assessments. Special assessments may be imposed by the Board of Directors upon any lot or other land upon which Multi-Family residential units are located, for the purpose of maintaining the exterior appearance thereof if the owner shall have failed or refused to do so, including but not limited to mowing and cleaning of unsightly brush and debris, painting, repairing, replacing and caring for roofs, gutters,

JCR0 - 05/06/1999

downspouts, and exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements necessary to keep the owner's property from deteriorating or becoming unsightly. For the purpose solely of performing the exterior maintenance authorized by this paragraph, representatives of the Association and its duly authorized agents or employees shall have the right, after reasonable notice to the owner, to enter upon any lot, unit or other property at reasonable hours on any day except Sunday.

(c) Special Assessments for Capital Improvements. In addition to the foregoing, the Association may levy in any assessment year uniform special assessment against lots, units and acreage, by category, applicable to that year and not more than the next two succeeding years, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, providing that any such assessment shall have the assent of the Class C member and be approved by two-thirds (2/3) vote of Class A and Class B members present and voting in person or by proxy at a regular or special membership meeting.

Section 3. Parcel Assessments.

(a) Purpose of Assessment. Annual parcel assessments shall be used for such purposes as are authorized by the Supplementary Declaration for each parcel.

(b) Method of Assessment. The annual assessment for each parcel shall be levied by the Association against lots or units in a parcel, using the basis set forth in the

JCHO - 05/05/1999

Supplementary Declaration for the given parcel, and collected and disbursed by the Association. The Board of Directors, in accordance with each Supplemental Declaration, shall fix the annual parcel assessment for each parcel and the date(s) such assessments become due.

(c) Special Parcel Assessments for Capital Improvement. In addition to the annual parcel assessments authorized above, the Association may levy in any assessment year a special assessment against the lots of a parcel for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the parcel, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the Class A and Class B votes relating to lots or units in the parcel cast in person or by proxy at a meeting of Class A and Class B members owning lots or units within the parcel.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first parcel to an owner, the maximum annual assessment shall be One Hundred Twenty and no/100 (\$120.00) Dollars per residential lot or Multi-Family residential unit, payable annually in advance; provided, however, that assessments for all lots, units and land owned by the Class C member, as defined in Article IV, shall be assessed separately and shall be exempt from annual assessment until first conveyed to a subsequent owner without regard to assessments imposed against other lots, residential units or land.

JCRB - 05/06/1999

(a) From and after January 1, 1999, the annual assessment may be increased each year by not more than ten (10%) percent of the maximum annual assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first parcel to an owner, the annual assessment may be increased above ten (10%) percent by a vote of two-thirds (2/3) of each class of members voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Uniform Rate of Assessment. The amount and time of payment of the regular assessment shall be determined by the Board of the Association pursuant to the Articles of Incorporation and ByLaws of the Association after giving due consideration to the current maintenance costs and needs of the Association. Written notice of the amount of an assessment, regular or special, shall be sent to every owner at least thirty (30) days in advance of the due date and the due date for payment of any assessment shall be set forth in said notice, and may be collected on a monthly basis.

Section 6. Quorum for any Action Authorized Under Sections 2 and 4. At the first meeting called, as provided in Sections 2 and 3 hereof, the presence at the meeting of members or of proxies entitled to cast sixty (60) percent of all votes of Class A and B membership shall constitute a quorum. Written notice of any meeting called for the purpose of taking any action authorized under Sections 2 and 3 shall be sent to all members no less than fifteen (15) days or more than sixty (60) days in advance of said meeting. Said notice

shall be given to the members by mailing a copy of such notice, postage prepaid, to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association or supplied by such member to the Association for purpose of such notice. Such notice shall specify the place, date and hour of the meeting, and in the case of a special meeting, the purpose of the meeting. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum, at any such subsequent meeting, shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Certificate of Payment.

The Association shall, upon demand, furnish to any owners liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether the regular and special assessments on a specified parcel or Living Unit have been paid and the amount of the delinquency, if any. A reasonable charge may be made by the Board of the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association.

Any assessments 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 rate of twelve (12%) percent per annum, and the Association may bring

JCHO - 05/06/1999

an action at law against the owner personally obligated to pay same, or foreclose the lien against the property, and interest, costs and reasonable attorneys fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his parcel or Living Unit or other property.

Section 9. Subordination of Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages. Sale or transfer of any lot or Living Unit or land shall not affect the assessment lien. However, the sale or transfer of any lot or Living Unit which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments therefor which became due prior to such sale or transfer. No sale or transfer shall relieve such lot or Living Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) all properties dedicated to and accepted by a local public authority;
- (b) the common area; and
- (c) all lots or Living Units owned by declarant.

However, no land, lot, Living Unit or Multi-Family residential unit shall be exempt from said assessments once conveyed from declarant to a subsequent owner.

JCHO - 05/06/1999 6661/90/50

Section 11. Additional Plats. At the option of declarant, as additional plats are filed for record with the Recorder of Deeds of Jackson County, Missouri, the owners of the parcels or Living Units and subclass upon acceptance will become eligible for membership in the Association and will be bound by the same terms and conditions of the Covenants and Restrictions herein declared.

ARTICLE VII

ARCHITECTURAL CONTROL

Section 1. The Architectural Review Board. An Architectural Review Board consisting of three (3) or more persons shall be appointed by the Class C members. At such time as the Class C membership shall cease to exist, the Board shall be appointed by the Board of Directors of the Newberry Home Owners Association, Inc.

Section 2. Purpose. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the properties and of the Single-Family residences and Multi-Family units and improvements constructed thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

Section 3. Conditions. No improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work which in any way alters the exterior of any property or the improvements located thereon from its natural or improved state existing on the date such property was first conveyed in fee by the developer to an owner shall be

JCHO - 05/06/1999

made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the Architectural Review Board.

Section 4. Procedures. All approvals and consents of developer or the Architectural Review Board must be in writing and oral approvals or consents shall be of no force or effect. In the event developer or the Architectural Review Board, as applicable, fails to approve, modify, or disapprove in writing an application within thirty (30) days after complete plans and specifications in writing have been submitted to it, in accordance with any procedures adopted at any time or from time to time by developer or the Architectural Review Board, approval will be deemed granted. The applicant may appeal an adverse Architectural Review Board decision to the Board of Directors of the Association, which may reverse or modify such decision by a two-thirds (2/3) vote of such Board of Directors. No appeal may be taken from a decision of developer. Once a set of plans and specifications have been approved by developer, no changes may be made to the exterior of the building during construction until the written approval from the developer is obtained in accordance with the procedures of this Section 4. Developer may, under special situations and circumstances, allow variances or waivers of the requirements or terms set forth in this Declaration, and any variance or waiver granted shall not constitute a waiver of such requirement or term in any other situations or under any other circumstances. Developer or

JCRD - 05/06/1999
the Architectural Review Board may reject any plans and specifications, with or without citing specifics, for any of the following reasons, among others:

- (a) insufficient information to adequately evaluate the design, intent, or extent of the subject of such plans and specifications; or
- (b) poor overall design quality; or
- (c) incompatible design elements; or
- (d) inappropriate design concept or design treatment; or
- (e) a design or concept that violates any provision of this Declaration or that otherwise has an adverse effect on the property or any owners.

By its approval of any plans and specifications, developer or the Architectural Review Board shall not be deemed to have approved the same for engineering design, or for compliance with zoning and building ordinances, and by approving any such plans and specifications, neither developer nor the Architectural Review Board nor the Association, nor their officers, directors, members or other agents or representatives, assumes any liability or responsibility therefor, or for any defects in any structure constructed from such plans and specifications. Approval of any plans and specifications by developer or the Architectural Review Board shall not constitute a representation or warranty that any such plans or specifications comply with applicable governmental ordinances and regulations, including, but not limited to, zoning ordinances and building codes. Any person or entity submitting any such plans and specifications shall be responsible for, and shall comply with, applicable

governmental ordinances and regulations including, but not limited to, zoning ordinances and building codes, in addition to complying with this Declaration and complying with any decisions made pursuant hereto by developer, the Architectural Review Board, or the Board of Directors of the Association. Use restrictions set forth in this Declaration and decisions hereunder by developer or the Architectural Review Board or the Board of Directors of the Association may be more restrictive than applicable zoning ordinances and building codes. In any case in which use restrictions set forth in this Declaration or decisions hereunder by developer or the Architectural Review Board or the Board of Directors of the Association are at variance with any zoning ordinances or building codes, the more restrictive requirement shall govern. Developer, its representatives, or any authorized officer or director of the Association, or any member of the Architectural Review Board, may at any reasonable time enter, without being deemed guilty of trespass, upon any parcel or Living Unit, after reasonable notice to the owner for the purpose of inspecting improvements, constructed or being constructed on such parcel or Living Unit to ascertain that such improvements have been, or are being, built in compliance with plans and specifications approved by developer or the Architectural Review Board or the Board of Directors of the Association and in accordance in all respects with this Declaration.

Section 5. Notice of Violation. In the event of non-compliance with the provisions of this Article, the Architectural Review Board may cause to be placed of record against the property in non-compliance, a notice of violation. A minimum fee of \$75.00 shall be levied

