

**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".

W I T N E S S E T H:

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

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

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

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

(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 ($\frac{2}{3}$) 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

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

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. E a c h 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

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,

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

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.

(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 (½) 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

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.

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

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

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

by the Association against the property if such notice is filed. Such fee, together with attorneys fees, legal and other costs, reasonably expended by the Association to bring the property into compliance, shall be added to and shall become part of the property assessment and may be enforced as a lien against the property.

Section 6. Rules and Regulations. The Architectural Review Board may from time to time adopt and promulgate such rules and regulations regarding the form and content of the plans and specifications to be submitted for approval, and may publish or record such statements of policy, standards, guidelines, or establish such criteria relative to architectural styles or details, colors, setbacks, materials or other matters relative to the architectural control and protection of the environment, as it may consider necessary or appropriate. No such rules, regulations, criteria or the like shall be construed as a waiver of the provisions of this Article or any other provision or requirement of law or of this Declaration. The decisions of the Architectural Review Board shall be final, except that any member who is aggrieved by any action or forbearance from action by the Board may appeal the decision of the Architectural Review Board to the Board of Directors and, upon the request of such member, shall be entitled to a hearing before the Board, which, upon two-thirds (2/3) vote, may reverse or modify the Board's action.

ARTICLE VIII

USE RESTRICTIONS

Section 1. Use of Land. No lot or parcel may be improved, used, or occupied

other than as a Single-Family residential unit or four-unit residential building in accordance with the R-1, R-3 Zoning, Final Site Plan, Final Plat, Building Elevations, Building Materials and Landscape Plan approved for the property by the City. Lease or rental of a parcel or any building thereon for residential purposes shall not itself constitute a violation of any provision of this Declaration. No structure of a temporary character, trailer, tent, mobile home, prefabricated home, modular home, detached garage, shack, barn, storage shed, or other outbuilding shall be erected or maintained on any parcel. No basement or garage shall be used at any time in and of itself as a residence, either temporarily or permanently. No parcel may be improved, used, or occupied for purposes other than as provided by applicable zoning laws and restrictions filed of record in relation thereof. Notwithstanding any other provisions of this Article, it shall be expressly permissible for developer and its contractors and subcontractors to maintain, during the period of construction of any improvements upon any parcel or otherwise within the property, such equipment and facilities as in the sole of opinion of developer may be reasonably required, convenient, or incidental to the construction of such improvements.

Section 2. Insurance. Every Multi-Family residential unit owner must carry adequate fire and casualty insurance on the building on his parcel in an amount covering the full replacement value of the building with no higher than a \$1,000 deductible per occurrence. Every owner must carry liability insurance, including insuring tenants and other guests and invitees, for the building in an amount of not less than \$1,000,000 per occurrence

and \$3,000,000 aggregate annually. Such insurance policies shall name developer or the Association once created as an additional insured and every owner agrees to indemnify and hold developer or the Association harmless from any liability, loss, damages and costs that are or could be covered by any insurance policy described in this Section 2. Such insurance shall contain a provision that it will not be canceled without thirty (30) days prior written notice to the Association (or developer prior to creation of the Association).

Section 3. Leasing. The declarant and Association have determined that Multi-Family property should be occupied by the owner of the property. The unit, however, may be rented as an exception to such policy, securing for approval for such rental from declarant or the Newberry Homes Association Board of Directors. Each Multi-Family residential unit owner shall be permitted to lease the residential Living Units within that owner's building but may not lease less than the whole of a single residential unit. The form and terms of any lease entered into by an owner must have the prior written consent of the Association (or the developer prior to creation of the Association). Every lease shall be in writing, and a copy of such lease, as and when executed, shall be furnished to the Association (or the developer prior to creation of the Association). Every such lease shall provide that the lessee shall be bound by and subject to all of the obligations under this Declaration, or the owner making such lease, for failure to do so, shall be in default under the Declaration. The owner making such lease shall not be relieved thereby from any of the obligations under the Declaration.

Section 4. Commercial Activity Prohibited. No commercial or business activity

of any kind shall be conducted on any parcel or any other part of the property, but nothing herein shall prohibit or interfere with the carrying on of promotional activities by the developer for the sale of lots, parcels and residential units or the resale or lease of lots, parcels and residential units by developer or other owners thereof, nor shall anything herein be deemed to prohibit or interfere with the construction and maintenance of the infrastructure on the property or the buildings on lots by developer or other builders, and developer hereby reserves an easement over the property for that purpose.

Section 5. Incomplete Structures. No building shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after commencement of construction. In the event of fire, windstorm, or other damage, no building shall be permitted to remain in a damaged condition longer than three (3) months. No building shall be occupied until the exterior shall have been completed and a certificate of occupancy or occupancy permit or similar certificate issued by applicable governmental authorities.

Section 6. Easements.

(a) Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are and will be reserved and granted by developer as shown on the recorded plat of the property. Developer may also grant such easements for installation and maintenance of utilities and drainage facilities over, across and under common areas by document separate from the recorded plat for the property at any time. Such easements shall include the right to ingress and egress for construction and maintenance purposes. Within

these easements, no structure, planting, or other material shall be placed or permitted to remain that may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each parcel and all improvements in it shall be maintained continuously by the Association except for those improvements for which a public authority or utility company is responsible. Water, gas, electricity, telephone and other utilities shall be located underground on each residential lot and other tracts of land, except perimeter lots and tracts.

(b) Landscape Easements. Easements for the installation and maintenance of landscape plantings, visual screening, berms, and the like are and will be dedicated, created, granted, and reserved by developer as more particularly set forth on the recorded plat(s) of the property (therein and herein referred to as "Landscape Easements"). Developer may also grant such landscape easements over, across and under common areas by document separate from the recorded plat for the property at any time. Such landscape easements shall include the right of ingress and egress for construction and maintenance purposes. No owner shall, within these landscape easements, erect, install, or maintain any structure, fence, or other improvement. The area within any such landscape easements shall be maintained, replaced, and cared for by the Association.

Section 7. Motorcycles. No motorcycles, motorbikes, motor scooters or other

similar vehicles shall be operated in or on the property except for the sole purpose of transportation directly from a residential unit in the property to a point outside the property or directly from a point outside the property to a residential unit in the property.

Section 8. Nuisances. No noxious or offensive activity shall be carried on upon any portion of the property, nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood nor shall any parcel or Living Unit be used in any way for any purpose that might endanger the health or safety of any owner or resident of a building.

Section 9. Utilities. Water, gas, lights, telephone and other utilities shall be located underground on each parcel.

Section 10. New Construction. All buildings permitted on parcels shall be initially new construction. No building or structure shall be moved onto any parcel.

Section 11. Animals Prohibited. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any parcels, except that dogs, cats or other common household pets not to exceed two (2) in number may be kept inside the building on each parcel (not outside of the building) provided they are not kept, bred, or maintained for any commercial purpose. In no event shall such animals be kept on any parcel if they unreasonably disturb the owner or residents of any other parcel. All animals will be confined inside the building on the owner's parcel, except when on a leash or when in direct and constant control of the owner thereof or a member of his family. The construction, placement, or erection on any

parcel of any structure, enclosure, cage, dog pen, dog run, or other devise used to confine or house dogs, cats or other animals is prohibited.

Section 12. Signs. No advertising signs (except one of not more than nine (9) square feet "For Sale" or "For Lease" sign per parcel), billboards, unsightly objects, or nuisances may be erected, placed, or permitted to remain on any parcel, provided however, that the foregoing covenants shall not apply to signs and billboards of the developer during the construction and sale period.

Section 13. Yards. No permanent or temporary structures, buildings, apparatus, trash cans or storage piles shall be kept outside of any building, except that Multi-Family residential units may have one (1) average sized barbecue grill to be kept on the rear patio of each Multi-Family residential unit in each building. No clothes lines shall be permitted and no trash burning shall be permitted on any lot or any Multi-Family residential unit.

Section 14. Lawns and Landscaping. Lawn areas of parcels and lots shall be fully sodded to all outside front and side boundary lines and to within 25 feet of the building on all rear yards and to the curb of all streets adjacent to the front, rear, or sides of the parcel, and otherwise landscaped in accordance with the landscape plan for the property approved by the City.

Section 15. Antennas Prohibited. No exterior television or radio antennas of any sort shall be placed, allowed, or maintained on any portion of any building or parcel. However, applications for satellite dishes measuring less than one meter (39.6 inches) in diameter shall

be considered for approval on all parcels where the property is within the exclusive ownership and control of the antenna user. The application shall specify the specific location and specific size of the unit. Masts for use as antennas with respect to installation of dishes over 12 feet in height are prohibited. Dishes are suggested to be black or gray in color. In the event the resident or installation company demonstrates these guidelines restrict reception, the Architectural Review Board will promptly work with the applicant to arrive at a workable solution for the location of antenna or dish.

Section 16. Storage Tanks. No tank for the storage of fuel may be maintained on any parcel above or below the surface of the ground except one five (5) gallon propane tank per each residential unit in a building for the sole purpose of operating a barbecue grill.

Section 17. Automotive Repair Prohibited. No automotive repair or rebuilding or any other form of automotive manufacture, whether for hire or otherwise, shall occur on any parcel nor in common areas or public streets.

Section 18. Garages. Each Multi-Family residential building shall have a private one-car garage. Each residential lot shall have an attached or basement private garage for not less than two (2) nor more than three (3) cars. The driveway on each lot shall contain sufficient paved area for the off-street parking of at least two (2) cars. All garages facing any street must be equipped with doors which shall be kept closed as much as possible to preserve the appearance of the elevation of the building fronting the street.

Section 19. Parking and Storage of Vehicles Prohibited. There shall be no

parking of motor vehicles or any other things on the public streets of the property and the only place where parking will be allowed is within the garage and on the driveways. No school or other buses, tractors, trucks over 1-ton, recreational vehicles, motor homes, boats, unmounted campers, trailers, unlicensed, inoperable or partially disassembled automobiles, motor vehicles or trailers, shall be parked on any lot unless within an enclosed garage.

Section 20. Trash. No trash, refuse, grass clippings, or ashes shall be thrown, dumped, or placed upon any undeveloped portions of the property or in common areas. All trash and garbage collected in the residential units shall be kept in sanitary containers and shall be removed from the property once each week on the same day of the week by the same trash company for each residential unit per contract entered into by the Association.

Section 21. Common Areas.

(a) To the extent and solely for the purposes that any common areas are established upon the property, every owner shall have a right and easement of enjoyment to such common areas, which right and easement shall be appurtenant to the title of each parcel and be subject to any recorded restrictions, reservations, encumbrances, utility and drainage easements over said common areas. The developer (and not the Architectural Review Board) shall have authority to establish reasonable rules and regulations governing the use of the common areas, which rules and regulations shall be a restriction upon every owner's right and easement of enjoyment to such common areas. No common areas shall be mortgaged or conveyed without the written consent of the developer. In the event that any ingress or

egress to or from any parcel within the property is through any such common areas, any conveyance or encumbrance of such common areas shall be subject to an easement for ingress or egress appurtenant to such parcel. After construction of the last building in the property, developer shall transfer ownership by Quit Claim Deed to the Association of all common areas designated on the plat of the property.

(b) Any owner may delegate his right of enjoyment to the common areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 22. Fencing. No fencing may be erected on a Multi-Family residential lot except for privacy fences around patios or decks which shall be constructed on each parcel and for each Living Unit. On Single-Family residential lots a four (4') foot yard fence of wrought iron, wood or other material acceptable with declarant shall be permitted and six (6') foot fences shall be permitted around private pools and along residences when a residence's backyard adjoins a collector street.

Section 23. Leasing. Each residential unit owner shall be permitted to lease the residential units within that owner's building, but may not lease less than the whole of the single residential unit. The form and terms of any lease entered into by an owner shall provide that the lessee shall be bound by and be subject to all of the obligations under this Declaration and any rules propounded by the Association with respect to use of the common area, and the owner making such lease shall not be relieved thereby from any obligations

under the Declaration. Every lease shall be in writing and a copy of such lease when executed shall be furnished to the Association or to the developer prior to the creation of the Association.

ARTICLE IX

ADDITIONAL USE RESTRICTIONS APPLICABLE TO RESIDENTIAL LOTS

Section 1. Land Use. None of said lots may be improved, used or occupied for other than private residence purposes (except for model homes used by the developer or commercial builders) and no flat or apartment house, although intended for residential purposes, may be erected thereon. Any residence erected or maintained on any of said lots shall be designed and used for occupancy by a single family.

Section 2. Height Limitation. Any residence erected on any of said lots shall not be more than two (2) levels in height, above ground, provided that a residence more than two (2) stories in height may be erected on any of said lots with the written consent of the Architectural Review Board.

Section 3. Size Requirements. Any residence consisting of a single level above ground level shall contain a minimum of 1,400 square feet of enclosed floor area. If, however, a single level residence shall contain a basement garage, the minimum enclosed floor area shall be 1,600 square feet. Any residence consisting of two levels above ground level shall contain a minimum of 1,000 square feet of enclosed floor on the first level above ground level and an overall minimum of 1,600 square feet of enclosed floor area in the two

levels above ground level. Any residence consisting of a level or part of a level below ground level with a garage beneath a part of the living area, sometimes referred to as a "split-level" or a "split foyer", shall have a minimum of 1,400 square feet of total enclosed floor area on the level above ground level and above the garage. It shall have an additional 250 square feet of enclosed floor area either above or below the principal living area, for a total minimum enclosed floor area of 1,650 square feet. The words "enclosed floor area" as used herein shall mean and include areas of the residence enclosed and finished for all year occupancy, computed on outside measurements of the residence, and shall not mean or include any patio areas, basements, garages, carports, porches or attics. A residence containing less than the minimum enclosed floor area provided herein may be erected on any of said lots with the written consent of the Architectural Review Board, it being intended that the foregoing shall serve as a guide for the Board's consideration.

Section 4. Building Lines. No part of any residence shall be located on any lot nearer to the front street or the side street than is the front building line or the side building line shown on the recorded plat. However, a residence or part of any residence may be located on any lot nearer than the said building line shown upon said plat with the written consent of the Architectural Review Board.

Section 5. Exterior Maintenance. Each owner shall be responsible for the exterior maintenance, including paint, of his residence and of plantings and the like belonging to him and not part of the Common Properties. In the event that a need for necessary and obvious

maintenance, mowing, watering or the like is caused by or through the willful or negligent act of an owner, his family, guests or invitees, and the owner fails and refuses to correct such need after fifteen (15) days written notice, the cost of such additional maintenance, utilities or materials paid by declarant or the Association shall become an assessment within thirty (30) days after written demand from the developer or the Association, and shall be enforceable and secured by a lien on the property. In the event the Association or declarant seeks to enforce such a lien in court, the declarant or Association shall be entitled to recover the amount of money owed, reasonable attorney's fees and court costs, together with interest.

Section 6. Fencing. No fencing shall be permitted upon any of the lots unless such fencing shall be wooden, plastic or other approved material, and built with methods and materials which harmonize with the external design of the residences in Newberry Subdivision and legally described above.

Section 7. Driveways and Sodding. All constructed houses shall have external driveways consisting exclusively of properly constructed concrete surfaces; all lots regardless of house location thereon shall be fully sodded, unless in the opinion of declarant or the Association, soil, lighting or topographical conditions would make sodding impractical or unreasonably expensive, and provided further that no duty to clear any tract of trees, bushes, shrubs or natural growths, which are kept reasonably attractive, shall be implied. Further, declarant shall notify Association and lot owner that the natural trees, located along the east of the development and owned by the adjacent owner, shall not be disturbed or cut without

prior written notice and approval from the declarant and notice to the adjoining landowner.

Section 8. Exterior Lighting and Decorations. No exterior Christmas lights or decorations may be erected or maintained on any of the lots hereby restricted, except during a sixty (60) day period beginning November 1st of each calendar year.

Section 9. Foundations. All portions of foundations exposed and protruding more than twelve (12) inches from the ground shall be painted the same color as the principal structure.

Section 10. Dog Run. A single "dog run" may be constructed only with the express written approval, on a case-by-case situation, by the declarant or his assigns or the Architectural Review Board, pursuant to guidelines to be published by said declarant or the Architectural Review Board.

Section 11. Roof Materials and Paint Colors. All residences shall have laminated shingles colored "weather gray" or equivalent, consisting of Owen Corning, Oakridge, Timberline or equivalent, with twenty-five (25) year warranty, being woodlike in appearance. Tile, stucco or concrete roofs may be approved with prior written approval of the declarant or the Architectural Review Board. No residence shall be painted, or allowed to be painted, a color or colors that do not harmonize with the surrounding residences in Newberry. Said color shall be approved pursuant to guidelines to be developed by declarant and/or Architectural Review Board. It is agreed that if the owner of any residence fails or refuses to comply with this provision, the declarant or Association shall have the right to have the

residence painted in a harmonizing color or colors, and the cost thereof to be taxed as a lien against the lot, in the event the owner fails to repaint same upon demand by the Association or declarant. In the event the declarant or Association seeks to enforce said lien on the lot in Court, the declarant or Homes Association, or their assigns, shall be entitled to recover the cost of such lien, plus reasonable attorney's fees and court costs together with interest.

ARTICLE X

GENERAL PROVISIONS

Section 1. Enforcement. Enforcement of the covenants, conditions, restrictions, reservations, easements, liens, and charges set forth in this Declaration shall be as herein provided or otherwise by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenants, conditions, restrictions, reservations, easements, liens, and charges, either to restrain violation or to recover damages or both, and against the land to enforce any lien or charge created by this Declaration. Except as otherwise provided in this Declaration, any such action may be initiated by developer, any affected or aggrieved owner, or the Association created and referred to herein. Failure by developer, any owner, or the Association to enforce any covenants, conditions, restrictions, reservations, easements, liens, or charges herein contained, or any delay in such enforcement, shall in no event be deemed a waiver of the right to do so thereafter. Developer reserves the right, in developer's sole discretion, to assign or delegate any rights or obligations of developer under this Declaration.

Section 2. Term and Amendment.

The provisions of this Declaration shall run with and bind the property for a term of twenty (20) years, commencing on the date hereof, after which period the provisions of this Declaration shall be automatically extended for successive terms of ten (10) years. The provisions of this Declaration may be amended during the initial twenty (20) year period by an instrument signed by owners of not less than sixty (60%) percent of all votes which may be cast by members, and following such initial twenty (20) year period, by an instrument signed by owners of not less than two-thirds (2/3) of all parcels or Living Units. Any such amendment shall be effective upon the date that such instrument shall be properly executed, acknowledged, and filed of record in the office of the Recorder of Deeds for Jackson County, Missouri.

Section 3. Mortgaging or Conveyance of the Common Area.

The common area cannot be mortgaged or conveyed without consent of at least two-thirds (2/3) of the Living Unit owners. Provisions of this Section shall not be applicable to the declarant.

Section 4. Rights of Ingress and Egress.

If ingress and egress to any Living Unit subject to these restrictions is through any common area, then any conveyance or encumbrance referred to in Section 3 above shall be subject to Living Units' easement of ingress and egress.

Section 5. Severability.

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

