

**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. 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

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.

**AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, made on the date indicated below, by CHAPEL OAKS DEVELOPMENT COMPANY, INC., a Missouri Corporation, (hereafter called "Declarant"),

W I T N E S S E T H:

WHEREAS, by a Declaration of Covenants, Conditions and Restrictions, duly recorded on March 8, 1999, in the office of the Recorder of Deeds in and for Jackson County, Missouri, at Independence, as Document Number and at Book and Page Number, 1999I 0018599, declared all that certain property described in that instrument to be subject to easements, restrictions, covenants and conditions, as set forth therein (hereafter called the "Declaration"); and

WHEREAS, by said Declaration Declarant included certain property in the legal description, which Declarant now deems desirable to have removed therefrom; and

WHEREAS, Declarant is the fee simple title owner of the property Declarant desires to remove from the above-referenced Declaration; and

WHEREAS, Declarant, by the provisions of said Declaration, holds the requisite number of votes as a Class C member of the NEWBERRY HOME OWNERS ASSOCIATION, INC., to effect an amendment to the Declaration, to correct the legal description of the property to be affected and controlled by the Declaration; and

WHEREAS, a portion of that property described in the Declaration is now to be dedicated and developed as a condominium project, and requires special conditions, covenants and restrictions that are different from those contained in the Declaration; and

WHEREAS, this Amendment will inure to the benefit and enhance the value of all the property remaining subject to the Declaration after this Amendment.

NOW, THEREFORE, Declarant hereby declares that the Declaration is amended, as

follows:

1. The legal description of the property subject of the Declaration is amended to read as

follows:

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, except that part thereof described as follows:

Commencing at the Northwest corner of Section 16, Township 47 North of the Baseline, Range 31 West of the Fifth Principal Meridian in Lee's Summit, Jackson County, Missouri; thence along the North line of said section South 88 degrees 07 minutes 44 seconds East a distance of 679.83 feet; thence South 1 degree 52 minutes 16 seconds West a distance of 20 feet to a point on the South right of way of Bailey Road as now established and Point of Beginning; thence along said right of way South 88 degrees 07 minutes 44 seconds East a distance of 510.00 feet; thence South 1 degree 52 minutes 16 seconds West a distance of 1302.87 feet to a point on the South line of the North half of the Northwest Quarter of said section; thence along said line North 88 degrees 02 minutes 17 seconds West a distance of 605.00 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, containing 17.54 acres, more or less, subject to easements and restrictions of record.

2. The provisions of said Declaration are further hereby amended as follows:

All references in the Declaration to "Multi-Family Residential Units" are to be disregarded, and all declarations of restrictions, conditions, covenants, rights and obligations reasonably deriving from or related in any way to "Multi-Family Residential Units" are to be deemed deleted and removed from said Declaration, including without limitation such

restrictions, conditions, covenants, rights and obligations related to common areas, common properties and common elements, whether general or limited, Class B Members, annual and special assessments, architectural control, use restrictions, and general provisions. This Amendment shall not, is not intended to, and shall not be deemed to, affect any of the declarations of restrictions, conditions, covenants, rights and obligations in the Declaration otherwise appertaining to the balance of the property described in the Declaration, as amended above, and sometimes referred to in the Declaration as "Single Family" lots, living units or residential units.

In all other respects, the Declaration and all its terms shall remain unchanged, unaffected, and in full force and effect with respect to the property described therein, as said description is amended above.

IN WITNESS WHEREOF, the undersigned, being the duly appointed representative of the Declarant herein, has hereunto set his hand this 14th day of July, 1999.

CHAPEL OAKS DEVELOPMENT COMPANY, INC.
A Missouri Corporation

By: Ross S. Barber
Ross S. Barber, President

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this 14th day of July, 1999, before me, a Notary Public in the above-named county and state, personally appeared Ross S. Barber, to me personally known, who being duly sworn, did say that he is the President of Chapel Oaks Development Company, Inc., a Missouri Corporation, and that said corporation does not have a corporate seal, and that the foregoing instrument was signed and acknowledged by him on behalf of said corporation by authority of its Board of Directors, and said Ross S. Barber acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto set my hand and notarial seal, the day and year written above.

Kimberly S. Massey
Notary Public

My commission expires:

10.30.01

KIMBERLY S. MASSEY
Notary Public – Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires: Oct. 30, 2001

**AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS**

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, made on the date indicated below, by CHAPEL OAKS DEVELOPMENT COMPANY, INC., a Missouri Corporation, (hereafter called "Declarant"),

W I T N E S S E T H:

WHEREAS, by a Declaration of Covenants, Conditions and Restrictions, duly recorded on March 8, 1999, in the office of the Recorder of Deeds in and for Jackson County, Missouri, at Independence, as Document Number 1999I 0018599, as amended, said amendment being duly recorded on August 27, 1999, in the office of the Recorder of Deeds in and for Jackson County, Missouri, at Independence, as Document Number 1999I 0070999 (1-4), Declarant declared all that certain property described in that instrument as amended to be subject to easements, restrictions, covenants and conditions, as set forth therein (hereafter called the "Declaration"); and

WHEREAS, by said Declaration Declarant included certain property in the legal description which Declarant now deems desirable to have removed therefrom; and

WHEREAS, Declarant is the fee simple title owner of the property Declarant desires to remove from the above-referenced Declaration; and

WHEREAS, Declarant, by the provisions of said Declaration, holds the requisite number of votes as a Class C member of the NEWBERRY HOME OWNERS ASSOCIATION, INC., to effect an amendment to the Declaration, to correct the legal description of the property to be affected and controlled by the Declaration; and

WHEREAS, a portion of the property described in the Declaration is now to be dedicated and developed as a not for profit recreation facility to provide services to the members of both

the NEWBERRY HOME OWNERS ASSOCIATION, INC. and NEWBERRY COMMONS CONDOMINIUM OWNERS ASSOCIATION, INC., and requires special conditions, covenants and restrictions that differ from those contained in the declaration; and

WHEREAS, this Amendment will inure to the benefit and enhance the value of all the property remaining subject to the Declaration after this Amendment.

NOW THEREFORE, Declarant hereby declares that the Declaration is amended, as follows:

1. The legal description of the property subject of the Declaration is amended to read as follows:

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, except those parts thereof described as follows:

Commencing at the Northwest corner of Section 16, Township 47 North of the Baseline, Range 31 West of the Fifth Principal Meridian in Lee's Summit, Jackson County, Missouri; thence along the North line of said section South 88 degrees 07 minutes 44 seconds East a distance of 679.83 feet; thence South 1 degree 52 minutes 16 seconds West a distance of 20 feet to a point on the South right-of-way of Bailey Road as now established and Point of Beginning; thence along said right-of-way South 88 degrees 07 minutes 44 seconds East a distance of 510.00 feet; thence South 1 degree 52 minutes 16 seconds West a distance of 1302.87 feet to a point on the South line of the North half of the Northwest Quarter of said section; thence along said line North 88 degrees 02 minutes 17 seconds West a distance of 605.00 feet; thence North 1 degree 52 minutes 16 seconds East a distance of 1050.57 feet; thence South 88 degrees 07 minutes 44 seconds

In all other respects, the Declaration and its terms shall remain unchanged, unaffected, and in full force and effect with respect to the property described therein, as said description is amended above.

IN WITNESS WHEREOF, the undersigned, being the duly appointed representative of the Declarant herein, has hereunto set his hand this 18th day of February, 2000.

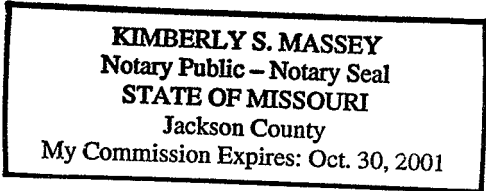
**CHAPEL OAKS DEVELOPMENT COMPANY, INC.
A Missouri Corporation**

By: Ross S Barber
Ross S. Barber, President

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this 18th day of February, 2000, before me, a Notary Public in the above-named county and state, personally appeared Ross S. Barber, to me personally known, who being duly sworn, did say that he is the president of Chapel Oaks Development Company, Inc., a Missouri Corporation, and that said corporation does not have a corporate seal, and that the foregoing instrument was signed and acknowledged by him on behalf of said corporation by authority of its Board of Directors, and said Ross S. Barber acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto set my hand and notarial seal, the day and year written above.



Kimberly S. Massey
Notary Public

My commission expires: 10-30-2001

**AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, made on the date indicated below, by CHAPEL OAKS DEVELOPMENT COMPANY, INC., a Missouri Corporation, (hereafter called "Declarant"),

W I T N E S S E T H:

WHEREAS, by a Declaration of Covenants, Conditions and Restrictions, duly recorded on March 8, 1999, in the office of the Recorder of Deeds in and for Jackson County, Missouri, at Independence, as Document Number and at Book and Page Number, 1999I 0018599, as amended, said amendments being duly recorded on August 27, 1999 (as Document Number 1999I 0070999 (1-4)), and February 24, 2000 (as Document Number 2000I 0010680 (1-4)), in the office of the Recorder of Deeds in and for Jackson County, Missouri, at Independence, Declarant declared all that certain property described in those instruments to be subject to easements, restrictions, covenants and conditions, as set forth therein (hereafter called the "Declaration"); and

WHEREAS, Declarant, by the provisions of said Declaration, holds the requisite number of votes as a Class C member of the NEWBERRY HOME OWNERS ASSOCIATION, INC., to effect an amendment to the Declaration, to change the provisions of the Declaration; and

WHEREAS, Declarant desires to amend the Declaration to change the provisions of ARTICLE IV, VOTING RIGHTS, to strengthen the voting rights of the Declarant under the Declaration, and assure continued protection of property standards and values; and

WHEREAS, this Amendment will inure to the benefit and enhance the value of all the property subject to the Declaration after this Amendment.

NOW, THEREFORE, Declarant hereby declares that the Declaration is amended, as follows:

1. The provisions of ARTICLE IV, VOTING RIGHTS, Section 1., of the Declaration are hereby amended, to eliminate the portion thereof denominated as "Class C." in its entirety, and to substitute the following portion denominated as "Class C." to read as follows:

"Class C. Class C members shall be the declarant/developer. Class C members shall be entitled to three hundred twenty-five (325) votes for each lot or residential unit owned.

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

- (a) when the last lot or residential unit owned by the declarant/developer is sold, or
- (b) on December 31, 2008."

In all other respects, the Declaration and all its terms, as amended, shall remain unchanged, unaffected, and in full force and effect with respect to the property described therein.

IN WITNESS WHEREOF, the undersigned, being the duly appointed representative of the Declarant herein, has hereunto set his hand this 7th day of April, 2000.

CHAPEL OAKS DEVELOPMENT COMPANY, INC.
A Missouri Corporation

By: _____



Ross S. Barber, President

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

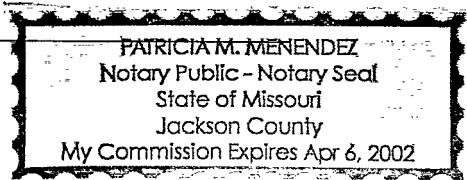
On this 7th day of April 2000, before me, a Notary Public in the above-named county and state, personally appeared Ross S. Barber, to me personally known, who being duly sworn, did say that he is the President of Chapel Oaks Development Company, Inc., a Missouri Corporation, and that said corporation does not have a corporate seal, and that the foregoing instrument was signed and acknowledged by him on behalf of said corporation by authority of its Board of Directors, and said Ross S. Barber acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto set my hand and seal, the day and year written above.

Patricia M. Menendez

Notary Public

My commission expires:



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, except those parts thereof described as follows:

Commencing at the Northwest corner of Section 16, Township 47 North of the Baseline, Range 31 West of the Fifth Principal Meridian in Lee's Summit, Jackson County, Missouri; thence along the North line of said section South 88 degrees 07 minutes 44 seconds East a distance of 679.83 feet; thence South 1 degree 52 minutes 16 seconds West a distance of 20 feet to a point on the South right-of-way of Bailey Road as now established and Point of Beginning; thence along said right-of-way South 88 degrees 07 minutes 44 seconds East a distance of 510.00 feet; thence South 1 degree 52 minutes 16 seconds West a distance of 1302.87 feet to a point on the South line of the North half of the Northwest Quarter of said section; thence along said line North 88 degrees 02 minutes 17 seconds West a distance of 605.00 feet; thence North 1 degree 52 minutes 16

**CORRECTIVE AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS**

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, made on the date indicated below, by CHAPEL OAKS DEVELOPMENT COMPANY, INC., a Missouri Corporation, (hereafter called "Declarant"),

W I T N E S S E T H:

WHEREAS, by amendments to a Declaration of Covenants, Conditions, and Restrictions recorded respectively on February 24, 2000, and April 12, 2000, Declarant made amendments to the Declaration described therein, but each of said amendments contained an erroneous legal description of the property then covered by said Declaration; and

WHEREAS, the Declarant now desires to correct the erroneous legal description of the property covered by said Declaration, and otherwise confirm the amendments contained in the previously recorded amendments; and

WHEREAS, the Declarant, by the provisions of said Declaration, holds the requisite number of votes as a Class C member of the NEWBERRY HOME OWNERS ASSOCIATION, INC., to effect an amendment to the Declaration, to correct the legal description of the property to be affected and controlled by the Declaration; and

WHEREAS, this Corrective Amendment will inure to the benefit and enhance the value of all the property remaining subject to the Declaration after this Amendment.

NOW THEREFORE, Declarant hereby declares that the Declaration is amended, as follows:

1. The legal description of the property subject of the Declaration, and subject of the amendments duly recorded on February 24, 2000 (as Document Number 2000I 0010680 (1-4)), and April 12, 2000 (as Document Number 2000I 0023310 (1-4)), in the office of the Recorder of

Deeds in and for Jackson County, Missouri, at Independence is hereby amended to read as follows:

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, except those parts thereof described as follows:

Commencing at the Northwest corner of Section 16, Township 47 North of the Baseline, Range 31 West of the Fifth Principal Meridian in Lee's Summit, Jackson County, Missouri; thence along the North line of said section South 88 degrees 07 minutes 44 seconds East a distance of 679.83 feet; thence South 1 degree 52 minutes 16 seconds West a distance of 20 feet to a point on the South right-of-way of Bailey Road as now established and Point of Beginning; thence along said right-of-way South 88 degrees 07 minutes 44 seconds East a distance of 510.00 feet; thence South 1 degree 52 minutes 16 seconds West a distance of 1302.87 feet to a point on the South line of the North half of the Northwest Quarter of said section; thence along said line North 88 degrees 02 minutes 17 seconds West a distance of 605.00 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, containing 17.54 acres, more or less, subject to easements and restrictions of record;

and

Common Use Area, described as Tract B, of NEWBERRY HOMES, a subdivision in Lee's Summit, Missouri, according to NEWBERRY 1st Plat, duly recorded in the office of the Recorder of Deeds of Jackson County, Missouri, in Independence, Missouri, subject to covenants, easements and restrictions of record.

This Amendment shall not, is not intended to, and shall not be deemed to, affect any of the declarations of restrictions, conditions, covenants, rights and obligations in the Declaration otherwise appertaining to the balance of the property described in the Declaration, as amended above.

In all other respects, the Declaration, as amended, and all its terms shall remain unchanged, unaffected, and in full force and effect with respect to the property described therein, as said description is amended above.

IN WITNESS WHEREOF, the undersigned, being the duly appointed representative of the Declarant herein, has hereunto set his hand this 19th day of March, 2001.

**CHAPEL OAKS DEVELOPMENT COMPANY, INC.
A Missouri Corporation**

By: Ross S Barber
Ross S. Barber, President

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this 19th day of March, 2001, before me, a Notary Public in the above-named county and state, personally appeared Ross S. Barber, to me personally known, who being duly sworn, did say that he is the president of Chapel Oaks Development Company, Inc., a Missouri Corporation, and that the foregoing instrument was signed and acknowledged by him on behalf of said corporation by authority of its Board of Directors, and said Ross S. Barber acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto set my hand and seal, the day and year written above.



Lynn Hinkle
Notary Public

LYNN HINKLE

MY COMMISSION EXPIRES: 4-26-03
NOTARY PUBLIC - STATE OF MISSOURI
JACKSON COUNTY
MY COMMISSION EXP. APR. 26, 2003

**ASSIGNMENT OF DECLARANT'S AND DEVELOPER'S RIGHTS
AND ACCEPTANCE OF RESPONSIBILITIES**

The undersigned, **Chapel Oaks Development Company, Inc.**, a Missouri corporation, hereby assigns unto **Clear Mountain Properties, L.L.C.**, a Missouri limited liability company, all **P.O. Box 220, Greenwood, MO 64034** rights retained, acquired or otherwise held, maintained or utilized by the undersigned as Declarant or Developer as those terms are defined or understood in the following recorded documents:

- 1) Declaration of Covenants, Conditions and Restrictions filed of record on March 8, 1999 in the office of the Recorder of Deeds for Jackson County, Missouri, at Independence, as Document No. 1999I0018599, as amended; said Amendments being duly recorded on August 27, 1999 as Document No. 1999I0070999, on February 24, 2000 as Document No. 2000I0010680 and on April 12, 2000 as Document No. 2000I0023310, and on October 18, 2001, as Document No. 2001-I-0084705; and
- 2) Articles of Incorporation and ByLaws of the Chapel Oaks Homes Association, as Missouri not-for-profit corporation, originally adopted on the 13th day of July, 1999 and any amendments thereto;

The rights assigned and confirmed hereunder are absolute and unconditional provided, however, such rights are limited to matters only pertaining to the following real property:

[See Schedule "A" attached hereto and incorporated herein.]

The undersigned, Clear Mountain Properties, L.L.C. hereby accepts all responsibilities of the Declarant or Developer as that term is defined under that certain instrument recorded as the Declaration of Covenants, Conditions and Restrictions duly recorded on March 8, 1999 as Document No. 1999I0018599 and any amendments thereto.

IN WITNESS WHEREOF the undersigned assignor, Chapel Oaks Development Company, Inc., and their assignee, Clear Mountain Properties, L.L.C., hereby have set their hands and seal this 19th day of March, 2001.

SCHEDULE A
TO ASSIGNMENT OF DECLARANT'S AND DEVELOPER'S RIGHTS
AND ACCEPTANCE OF RESPONSIBILITIES

The property subject of this instrument is described as follows:

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,

except those parts thereof described as follows:

Commencing at the Northwest corner of Section 16, Township 47 North of the Baseline, Range 31 West of the Fifth Principal Meridian in Lee's Summit, Jackson County, Missouri; thence along the North line of said section South 88 degrees 07 minutes 44 seconds East a distance of 679.83 feet; thence South 1 degree 52 minutes 16 seconds West a distance of 20 feet to a point on the South right-of-way of Bailey Road as now established and Point of Beginning; thence along said right-of-way South 88 degrees 07 minutes 44 seconds East a distance of 510.00 feet; thence South 1 degree 52 minutes 16 seconds West a distance of 1302.87 feet to a point on the South line of the North half of the Northwest Quarter of said section; thence along said line North 88 degrees 02 minutes 17 seconds West a distance of 605.00 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, containing 17.54 acres, more or less, subject to easements and restrictions of record;

and

Common Use Area, described as Tract B, of NEWBERRY HOMES, a subdivision in Lee's Summit, Missouri, according to NEWBERRY 1st Plat, duly recorded in the office of the Recorder of Deeds of Jackson County, Missouri, in Independence, Missouri, subject to covenants, easements and restrictions of record.

CHAPEL OAKS DEVELOPMENT COMPANY, INC.,
a Missouri corporation

By: Ross S Barber

Its Mr. ROSS S. BARBER PRES.

STATE OF MISSOURI)
)ss:
COUNTY OF JACKSON)

On this 19th day of March, 2001, before me, the undersigned, a notary public in and for the aforesaid county and state, personally appeared Ross Barber, to me known to be the person whose name is subscribed to the foregoing instrument, and personally known to me to be the President of **Chapel Oaks Development Company, Inc.**, and acknowledges that he has executed said instrument in the capacity and for the purposes stated, as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year first above written.


Lynn Hinkle
Notary Public

My Commission Expires:
4-26-03



LYNN HINKLE
NOTARY PUBLIC - STATE OF MISSOURI
JACKSON COUNTY

Clear Mountain Properties, L.L.C.,
a limited liability company

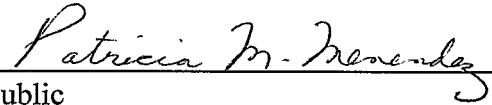
By: 

Glen H. Jones, Member

STATE OF MISSOURI)
)ss:
COUNTY OF JACKSON)

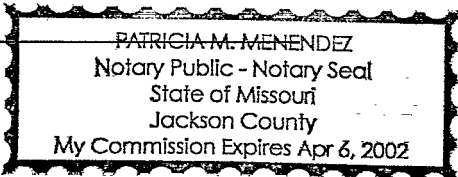
On this 20th day of March, 2001, before me, the undersigned, a notary public in and for the aforesaid county and state, personally appeared Glen H. Jones, to me known to be the same person whose name if subscribed to the foregoing instrument, and personally known to me to be a Member of **Clear Mountain Properties, L.L.C.**, and acknowledges that he has executed said instrument in the capacity and for the purposes stated, as the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year first above written.



Notary Public

My Commission Expires:



**SUPPLEMENTARY DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS SUPPLEMENTARY DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, made on the date indicated below, by CLEAR MOUNTAIN PROPERTIES, L.L.C., a Missouri Limited Liability Company, (hereafter called "Declarant"),

WITNESSETH:

WHEREAS, Declarant owns a certain parcel of real estate which is legally described as follows:

Part of the Northwest Quarter of Section 16, Township 47 North, Range 31 West, in the City of Lee's Summit, Jackson County, Missouri, described as follows: From the Northwest Corner of the Northwest Quarter of Section 16, aforesaid, run thence South 2°22'27" West, along the West line of said Quarter Section, 1321.02 feet; Run thence South 88°02'17" East, 723.42 Feet to the true point of beginning of the tract to be described; Run thence South 42°44'34" East 583.14 Feet; Thence South 9°25'00" East, 100.77 Feet; Thence South 39°22'06" East, 223.44 Feet; Thence South 75°42'12" East, 164.49 Feet; Thence South 34°40'15" East, 386.83 Feet; Thence South 2°03'10" West, 297.08 Feet to a point on the South line of said Quarter Section; Thence South 87°56'50" East, along the South line of said Quarter Section, 953.59 Feet to the Southeast corner of said Quarter Section; Thence North 2°20'19" East, 1325.22 Feet; Thence North 88°02'17" West, 1930.99 Feet to the point of beginning. Contains 40.49 acres, more or less, subject to any existing easements

(hereafter referred to as the "Added Parcel"); and

WHEREAS, by **Declaration of Covenants, Conditions and Restrictions** (hereafter sometimes called the "**Declaration**"), duly recorded on March 8, 1999, in the office of the Recorder of Deeds in and for Jackson County, Missouri, at Independence, as Document Number and at Book and Page Number, 1999I 0018599, as amended, said amendments being duly recorded on August 27, 1999 (as Document Number 1999I 0070999 (1-4)), February 24, 2000 (as Document Number 2000I 0010680 (1-4)), and April 12, 2000 (as Document Number 2000I 0023310 (1-4)), and October 18, 2001 (as Document Number 2001-I-0084705 (1-4)) in the office of the Recorder of Deeds in and for Jackson County, Missouri, at

Independence, Declarant declared all that certain property, described in those instruments, as follows:

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,

except those parts thereof described as follows:

Commencing at the Northwest corner of Section 16, Township 47 North of the Baseline, Range 31 West of the Fifth Principal Meridian in Lee's Summit, Jackson County, Missouri; thence along the North line of said section South 88 degrees 07 minutes 44 seconds East a distance of 679.83 feet; thence South 1 degree 52 minutes 16 seconds West a distance of 20 feet to a point on the South right of way of Bailey Road as now established and Point of Beginning; thence along said right of way South 88 degrees 07 minutes 44 seconds East a distance of 510.00 feet; thence South 1 degree 52 minutes 16 seconds West a distance of 1302.87 feet to a point on the South line of the North half of the Northwest Quarter of said section; thence along said line North 88 degrees 02 minutes 17 seconds West a distance of 605.00 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, containing 17.54 acres, more or less, subject to easements and restrictions of record.

and

Common Use Area, described as Tract B, of NEWBERRY HOMES, a subdivision in Lee's Summit, Missouri, according to NEWBERRY 1st Plat, duly recorded in the office of the Recorder of Deeds of Jackson County, Missouri, in Independence, Missouri, subject to covenants, easements and restrictions of record.

to be subject to easements, restrictions, covenants and conditions, as set forth in the Declaration;
and

WHEREAS, Declarant, by the provisions of ARTICLE II of said Declaration, reserved unto itself and its assigns for ten (10) years from the date of recording of the Declaration the right to add additional real property to be subject to the provisions of the Declaration and made part of the Property covered by the Declaration without regard to assent from any other member and without any vote by the members; and

WHEREAS, ARTICLE I of the Declaration allows and provides for Supplementary Declarations of Covenants, Conditions and Restrictions which may be recorded by the Declarant or Developer containing such complementary provisions in relation to a parcel as are authorized in the Declaration and required for the general welfare of the owners or occupants of lots within the parcel; and

WHEREAS, the Added Parcel of Declarant is adjacent to and adjoining the Property currently covered by the Declaration, Declarant desires to add the Added Parcel to that Property subject of the Declaration, and this instrument is executed and recorded within ten (10) years from the date of recording of the Declaration, and Declarant further desires to adopt and record a Supplementary Declaration of Covenants, Conditions and Restrictions complementary to the provisions of the Declaration in regard to the Added Parcel and required for the general welfare of owners or occupants of lots within the parcel.

NOW, THEREFORE, Declarant hereby declares that all of the property in the Added Parcel 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 Added Parcel or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Declarant hereby adopts, as the **Supplementary Declaration of Covenants, Conditions and Restrictions** (hereafter referred to as the “Supplementary Declaration”) for the Added Parcel, only, in its entirety, and incorporates herein by this reference as though fully set forth, that certain **Declaration of Covenants, Conditions and Restrictions**, duly recorded on March 8, 1999, in the office of the Recorder of Deeds in and for Jackson County, Missouri, at Independence, as Document Number and at Book and Page Number, 1999I 0018599, as amended, said amendments being duly recorded on August 27, 1999 (as Document Number 1999I 0070999 (1-4)), February 24, 2000 (as Document Number 2000I 0010680 (1-4)), and April 12, 2000 (as Document Number 2000I 0023310 (1-4)), in the office of the Recorder of Deeds in and for Jackson County, Missouri, at Independence, and specifically incorporating in their entirety **ARTICLE I** through **ARTICLE X** thereof, except as specifically provided below.

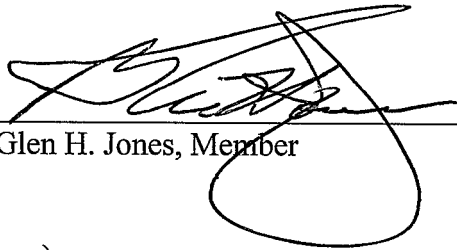
Notwithstanding the generality and inclusiveness of the foregoing provisions, **ARTICLE IX** of the said **Declaration**, entitled “**ADDITIONAL USE RESTRICTIONS APPLICABLE TO RESIDENTIAL LOTS, Section 3. Size Requirements**,” as it shall be included in the Supplementary Declaration and as it pertains to the property contained within the Added Parcel, is hereby amended to delete said “Section 3. Size Requirements” in its entirety, and the following replacement “Section 3. Size Requirements” is hereby adopted and inserted, as follows:

“Section 3. Size Requirements. Any residence consisting of a single level above ground level shall contain a minimum of 1,200 square feet of enclosed floor area. If, however, a single level residence shall contain a basement garage, the minimum enclosed floor area shall be 1,200 square feet. Any residence consisting of two levels above ground level shall contain a minimum of 950 square feet of enclosed floor space on the first level above ground level and an overall minimum of 1,400 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 1200 square feet of total enclosed floor area on the level above ground level and above the garage. 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 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.”

In all other respects, the Declaration and all its terms, as heretofore amended, shall remain unchanged, unaffected, and shall serve as the Supplementary Declaration of Covenants, Conditions and Restrictions with respect to and for the Added Parcel described above.

IN WITNESS WHEREOF, the undersigned, being the duly appointed representative of the Declarant herein, has hereunto set his hand this 20th day of March, 2001.

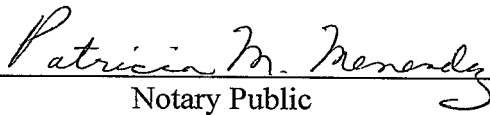
CLEAR MOUNTAIN PROPERTIES, L.L.C.
A Missouri Limited Liability Company

By: 
Glen H. Jones, Member

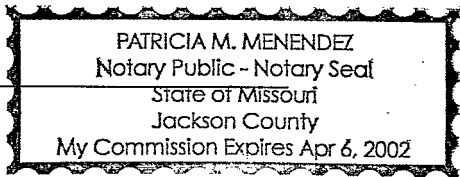
STATE OF MISSOURI)
)ss.
COUNTY OF JACKSON)

On this 20th day of March, 2001, before me, a Notary Public in the above-named county and state, personally appeared Glen H. Jones, to me personally known, who being duly sworn, did say that he is a Member of Clear Mountain Properties, L.L.C., a Missouri Limited Liability Company, and that the foregoing instrument was signed and acknowledged by him on behalf of said limited liability company by authority of its members, and said Glen H. Jones acknowledged said instrument to be the free act and deed of said limited liability company.

In witness whereof, I have hereunto set my hand and seal, the day and year written above.


Notary Public

My commission expires:



**AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made on the date indicated below, by **CLEAR MOUNTAIN PROPERTIES, L.L.C.**, a Missouri limited liability company, successor in title to CHAPEL OAKS DEVELOPMENT COMPANY, INC. (hereinafter called "Declarant").

WITNESSETH:

WHEREAS, by a Declaration of Covenants, Conditions and Restrictions, duly recorded on March 8, 1999, in the office of the Recorder of Deeds in and for Jackson County, Missouri, at Independence, as Document Number and at Book and Page Number 1999I 0018599, as amended, said amendments being duly recorded on August 27, 1999, as Document Number 1999I 0070999 (1-4), and February 24, 2000, as Document Number 2000I 0010680 (1-4), and April 12, 2000, as Document Number 2001I 0023310 (1-4); and

WHEREAS, the undersigned has become the Declarant for the property legally described herein by virtue of the execution and recording of the Assignment of Declarant's and Developer's Rights and Acceptance of Responsibilities, recorded as Document Number 2001I0084706 (1-5) on the 18th day of October, 2001; and

WHEREAS, Declarant Clear Mountain Properties, L.L.C., by virtue of the provisions of the Declaration holds the requisite number of votes as a Class C member of the Newberry Homes Association to effect an amendment to the Declaration, under the provisions of Article X, Section 2, and Declarant further desires to adopt and amend the provisions of Article IX of said Declaration entitled "Additional Use Restrictions Applicable to Residential Lots, Size 3 Size Requirements" as it shall be included in this Supplementary Declaration and as it pertains to property contained within the land legally described herein as follows: and

WHEREAS, Declarant owns a certain parcel of real estate which is legally described as follows:

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,

except that part thereof described as follows:

Commencing at the Northwest corner of Section 16, Township 47 North of the Baseline, Range 31 West of the Fifth Principal Meridian in Lee's Summit, Jackson County, Missouri; thence along the North line of said section South 88 degrees 07 minutes 44 seconds East a distance of 679.83 feet; thence South 1 degree 52 minutes 16 seconds West a distance of 20 feet to a point on the South right of way of Bailey Road as now established and Point of Beginning; thence along said right of way South 88 degrees 07 minutes 44 seconds East a distance of 510.00 feet; thence South 1 degree 52 minutes 16 seconds West a distance of 1302.87 feet to a point on the South line of the North half of the Northwest Quarter of said section; thence along said line North 88 degrees 02 minutes 17 seconds West a distance of 605.00 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, containing 17.54 acres, more or less,

and

Part of the Northwest Quarter of Section 16, Township 47 North, Range 31 West, in the City of Lee's Summit, Jackson County, Missouri, described as follows: From the Northwest Corner of the Northwest Quarter of Section 16, aforesaid, run thence South 2°22'27" West, along the West line of said Quarter Section, 1321.02 feet; Run thence South 88°02'17" East, 723.42 Feet to the true point of beginning of the tract to be described; Run thence South 42°44'34" East 583.14 Feet; Thence South 9°25'00" East, 100.77 Feet; Thence South 39°22'06" East, 223.44 Feet; Thence South 75°42'12" East, 164.49 Feet; Thence South 34°40'15" East, 386.83 Feet; Thence South 2°03'10" West, 297.08 Feet to a point on the South line of said Quarter Section; Thence South 87°56'50" East, along the South line of said Quarter Section, 953.59 Feet to the Southeast corner of said Quarter Section; Thence North 2°20'19" East, 1325.22 Feet; Thence North 88°02'17" West, 1930.99 Feet to the point of beginning. Contains 40.49 acres, more or less,

to be subject to the easements, restrictions, covenants and conditions as set forth in the original Declaration amended herein; and

WHEREAS, a portion of the property described in the Declaration is now dedicated and changing economic conditions require special covenants, restrictions and sizes different from those contained in the Declaration; and

NOW, THEREFORE, notwithstanding the generality and inclusiveness of the foregoing provisions, Article IX of the said Declaration entitled "Additional Use Restrictions Applicable to Residential Lots, Size 3 Size Requirements" as it shall be included in this Declaration, is hereby amended to delete "Section 3. Size Requirements" in its entirety, and the following replacement "Section 3. Size Requirements" is hereby adopted and inserted as follows:

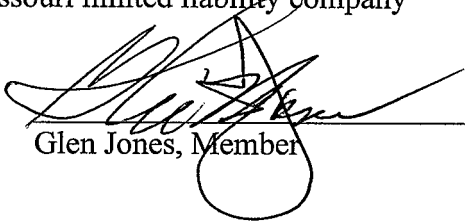
"Section 3. Size Requirements. Any residence consisting of a single level above ground level shall contain a minimum of 1,200 square feet of enclosed floor area. If, however, a single level residence shall contain a basement garage, the minimum enclosed floor area shall be 1,200 square feet. Any residence consisting of two levels shall contain a minimum of 1,200 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 1,200 square feet of total enclosed floor area on the level above ground level and above the garage. 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 the 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 floor area provided herein may be erected on any of said lots within the written consent of the Architectural Review Board, it being intended that the foregoing shall serve as a guide for the Board's consideration."

In all other respects, the Declaration as defined in Article I, Section 15, and all its terms, as heretofore amended, shall remain unchanged, unaffected, and shall serve as the Declaration of Covenants, Conditions and Restrictions for the land legally described above.

IN WITNESS WHEREOF, the undersigned, being the duly appointed representative of the Declarant herein, has hereunto set his hand this 19th day of November 2001.

CLEAR MOUNTAIN PROPERTIES, L.L.C.,
a Missouri limited liability company


By: _____


Glen Jones, Member

STATE OF MISSOURI)
)ss.
COUNTY OF)

On this 19 day of November, 2001, before me, a Notary Public in the above-
maned county and state, personally appeared **Glen Jones**, to me personally known, who being duly
sworn, did say that he is the **Member** of Clear Mountain Properties, L.L.C., a Missouri limited
liability company, and that the foregoing instrument was signed and acknowledged by him on behalf
of said limited liability company by authority of its members, and said **Glen Jones** acknowledged
said instrument to be the free act and deed of said limited liability company.

In witness whereof, I have hereunto set my hand and seal, the day and year written above.


Notary Public

My commission expires:

SHARON R. WALKER
Notary Public - Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires July 22, 2003

**SUPPLEMENTARY DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS SUPPLEMENTARY DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS made on the date indicated below, by **Clear Mountain Properties, L.L.C.**, a Missouri limited liability company, successor in title to Chapel Oaks Development Company, Inc., (hereinafter called "Declarant");

W I T N E S S E T H:

WHEREAS, Declarant is successor in title to that certain parcel of real estate legally described as follows:

Part of the Northwest Quarter of Section 16, Township 47 North, Range 31 West, in the City of Lee's Summit, Jackson County, Missouri, described as follows: From the Northwest Corner of the Northwest Quarter of Section 16, aforesaid, run thence South 2°22'27" West, along the West line of said Quarter Section, 1321.02 feet; Run thence South 88°02'17" East, 723.42 Feet to the true point of beginning of the tract to be described; Run thence South 42°44'34" East 583.14 Feet; Thence South 9°25'00" East, 100.77 Feet; Thence South 39°22'06" East, 223.44 Feet; Thence South 75°42'12" East, 164.49 Feet; Thence South 34°40'15" East, 386.83 Feet; Thence South 2°03'10" West, 297.08 Feet to a point on the South line of said Quarter Section; Thence South 87°56'50" East, along the South line of said Quarter Section, 953.59 Feet to the Southeast corner of said Quarter Section; Thence North 2°20'19" East, 1325.22 Feet; Thence North 88°02'17" West, 1930.99 Feet to the point of beginning. Contains 40.49 acres, more or less, subject to any existing easements.

and

WHEREAS, by a Declaration of Covenants, Conditions and Restrictions (hereinafter called the "Declaration"), duly recorded on March 8, 1999, in the office of the Recorder of Deeds in and for Jackson County, Missouri, at Independence, as Document No. 1999I 0018599, as amended; said amendments being duly recorded on August 27, 1999 as Document No. 1999I 0070999, on February 24, 2000 as Document No. 2000I 0010680, and on April 12, 2000 as Document No. 2000I 0023310 in the office of the Recorder of Deeds in and for Jackson County, Missouri, at Independence, Declarant declared all that certain property described in those instruments to be subject to easements, restrictions, covenants and conditions as set forth in the Declaration; and

WHEREAS, Declarant desires to amend ARTICLE VIII, "USE RESTRICTIONS", of the said Declaration to provide for dual fuel utility service to all lots in the development; and

WHEREAS, Declarant, by the provisions of ARTICLE II of said Declaration, reserved unto itself and its assigns for ten (10) years from the date of recording of the Declaration the right to add additional real property to be subject to the provisions of the Declaration and made part of the Property covered by the Declaration without regard to assent from any other member and without any vote by the members; and

WHEREAS, ARTICLE I of the Declaration allows and provides for Supplementary Declarations of Covenants, Conditions and Restrictions which may be recorded by the Declarant or Developer containing such complementary provisions in relation to a parcel as are authorized in the Declaration and required for the general welfare of the owners or occupants of lots within the parcel; and

WHEREAS, the Added Parcel of Declarant is adjacent to and adjoining the Property currently covered by the Declaration, Declarant desires to add the Added Parcel to that Property subject of the Declaration, and this instrument is executed and recorded within ten (10) years from the date of recording of the Declaration, and Declarant further desires to adopt and record a Supplementary Declaration of Covenants, Conditions and Restrictions complementary to the provision of the Declaration in regard to the Added Parcel and required for the general welfare of owners or occupants of lots within the parcel.

NOW, THEREFORE, Declarant hereby declares that all of the property in the Added Parcel 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 Added Parcel or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

NOW, THEREFORE, the following provision for dual fuel utility service is hereby added to ARTICLE VIII, "USE RESTRICTIONS", of the Declaration of Covenants, Conditions and Restrictions:

Section 6. Easements.

(c) Heat Pump Utility Service. Whereas, the Declarant and Kansas City Power & Light, a private corporation, have agreed that all Lots in the development legally described above shall have a dual fuel utility service known as an "add on heat pump" or there shall be an additional charge of One Thousand Five Hundred Dollars (\$1,500.00) per Lot; and whereas, the Declarant wishes to require each Lot owner to have such dual fuel heat pump service; it is hereby agreed by Declarant and binding upon each Lot owner acquiring title hereunder that in the event said Lot owner does not provide for dual fuel utility ("add on heat pump" service) but purchases and agrees to install a different type utility service, then said Lot owner shall pay to Declarant or his assigns the sum of One Thousand Five Hundred Dollars

(\$1,500.00) within thirty (30) days' written notice from Declarant, and in absence of said payment, a special assessment may be imposed by the Declarant or the Board of Directors of the Homes Association upon any Lot for the purpose of paying said charge if the owner shall have failed or refused to pay the \$1,500.00 contractual agreement and assessment herein. Further, the owner shall be responsible for any costs of collection, including reasonable attorney's fees, in the event they fail to pay said special assessment within thirty (30) days of the date of assessment of same. Said costs shall be payable to Chapel Oaks Development Co., a Missouri corporation, (herein "Declarant") or their assigns.

In all other respects, the Declaration and all its terms shall remain unchanged, unaffected, and in full force and effect with respect to the property described therein.

IN WITNESS WHEREOF, the undersigned, being the duly appointed representative of the Declarant herein, has hereunto set his hand this 19th day of November, 2001.

CLEAR MOUNTAIN PROPERTIES, L.L.C.
a Missouri limited liability company

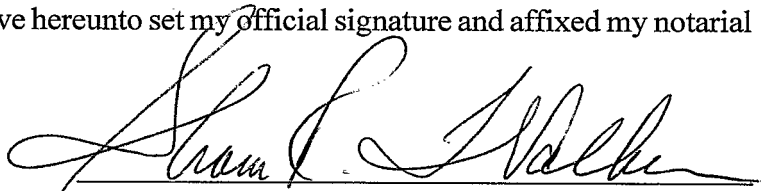
By: 
Glen H. Jones, Member

And: 
Gary Bryan Penrod, Member

STATE OF MISSOURI)
)ss:
COUNTY OF JACKSON)

On this 19 day of November, 2000, before me, a notary public within and for said county and state, personally appeared **Glen H. Jones** and **Gary Bryan Penrod**, to me personally known, who being by me duly sworn, did say that they are Members of **Clear Mountain Properties, L.L.C.**, a Missouri limited liability company, and that said instrument was signed and sealed on behalf of said limited liability company by authority of its Board of Directors, and said Glen H. Jones and Gary Bryan Penrod acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my notarial seal, the day and year above written.



Notary Public

MY COMMISSION EXPIRES:

SHARON R. WALKER
Notary Public - Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires July 22, 2003

**AMENDMENT TO THE DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS**

This amendment to Declaration of Covenants, Conditions, and Restrictions, made on the date indicated below, by Newberry Home Owners Association, Inc., a Missouri Corporation, (hereafter called "Association"),

WITNESSETH:

Whereas, by a Declaration of Covenants, Conditions, and Restrictions, duly recorded on March 8, 1999, in the office of the Recorder of Deeds in and for Jackson County, Missouri, at Independence, as document number and page number, 1999I 0018599, as amended, said amendments being duly recorded on August 27, 1999 (as document number 1999I 0070999 (1-4)), and February 24, 2000 (as document number 2000I 0010680(1-4)) and April 7, 2000 (as document number 2000I 0023310) in the office of the Recorder of Deeds in and for Jackson County, Missouri, at Independence, it was declared that all certain property described in those instruments to be subject to easements, restrictions, covenants, and conditions, as set forth therein (hereafter called the "Declaration"); and

WHEREAS, the undersigned hereinafter referred to as "lot owners" are owners of over 60% of the developed and sold lots of Newberry, lots 1 through 250, a subdivision in Lee's Summit, Jackson County, Missouri, according to the recorded plat thereof, and hereby wish to exercise the power of amendment granted in Article X, Section 2 of the aforesaid Declaration of Covenants to execute an appropriate amendment modifying Section 22 of the recorded Declaration with respect to Fencing, and otherwise reinstating all of the aforesaid Covenants as follows; and

NOW, THEREFORE, the undersigned constituting 60% of the lots owned and subject to said Declaration, do hereby amend the said Declaration as follows:

1. The provisions of Article VIII, Section 22 Fencing, of the Declaration are hereby amended, to eliminate the portion thereof denominated as "Section 22. Fencing." in its entirety, and to substitute the following portion denominated as "Section 22. Fencing." to read as follows:

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 fence of wrought iron, wood, or other material acceptable with the Declarant shall be permitted with a maximum height of six (6) feet.

The terms of this Amended Declaration of Covenants, Conditions, and Restrictions shall be effective as of the date of recording in the Office of Recorder of Deeds of Jackson County, Missouri, and all other provisions of the original Declaration of Restrictions shall remain in full force and effect, except as amended herein.

IN WITNESS WHEREOF, the undersigned being the owners of over 60% of the land subject to the Declaration in Newberry and the officers of Newberry Home Owners Association, Inc. have set their hands and seals this 30th day of July, 2007.

Newberry Home Owners Association, Inc,
A Missouri Corporation

Corporate Seal

By: *Richard Horton*
Richard Horton, President

By: *Dave Estes*
Dave Estes, Vice President

By: *Eric Allee*
Eric Allee, Treasurer

By: *Janet Snook*
Janet Snook, Secretary

By: *Anthony Lomonte*
Anthony Lomonte, ARB Chairman

Notary Seal



Attest: *Andrayana Getchell*
Notary

My commission expires: 19 Sept 2009

ANDRAYANA GETCHELL
Notary Public - Notary Seal
STATE OF MISSOURI
Commission for Jackson County
My Commission Expires Sep. 19, 2009
Commission #05770795

Document Title: Amendment to the Declarations of Covenants, Conditions and Restrictions
Document Date: OCTOBER, 11, 2007
Grantor's Name: Newberry Home Owners Association Members
Grantee's Name: Newberry Home Owners Association, Inc.
Grantee's Statutory Address: P.O. Box 1554
Lee's Summit, Missouri 64063
Legal Description: See Exhibit "A"
Reference Document Nos.: 1999I0018599, 1999I0070999, 2000I0010680, 2000I0023310

**AMENDMENT TO THE DECLARATIONS OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS AMENDMENT TO THE DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Amendment"), is made and entered into on this 11th day of October, 2007 and is hereby executed by, and granted to, the NEWBERRY HOME OWNERS ASSOCIATION, INC. ("Grantee") whose statutory address is P.O. Box 1554, Lee's Summit, Missouri 64063. This Amendment is adopted by the approving signatures of the owners of not less than sixty percent (60%) of the members and owners of property, within the NEWBERRY HOME OWNERS ASSOCIATION, INC. ("Grantors"), pursuant to the requirements of Article X, Section 2 of the Declarations of Covenants, Conditions and Restrictions, dated March 5, 1999 and recorded on March 8, 1999 in the Office of the Director of Records for Jackson County, Missouri, at Independence ("Recorder's Office") as Document No. 1999I0018599 ("Declaration").

RECITALS

WHEREAS:

1. By the Declarations, the Chapel Oaks Development Company ("Declarant"), declared that it was the owner of certain real property ("Initial Property") 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

and that the said Initial Property was thereafter subjected to certain covenants, reservations, restrictions, conditions and limitations as set forth therein.

2. By a document entitled Amendment to Declaration of Covenants, Conditions and Restrictions, dated July 14, 1999, and recorded on August 27, 1999 in the Recorder's Office as Document No. 1999I0070999 ("First Amendment") the Declarant, among other things, amended the Declaration, to remove portions of the Initial Property. The First Amendment thereafter subjected the real property ("Property") legally described on the Exhibit "A", attached hereto and incorporated by reference herein.

3. By a document entitled Amendment to Declaration of Covenants, Conditions and Restrictions, dated February 18, 2000, and recorded on February 24, 2000 in the Recorder's Office as Document No. 2000I0010680 ("Second Amendment") the Declarant made certain other amendments to the Declaration.

4. By a document entitled Amendment to Declarations of Covenants, Conditions and Restrictions, dated April 7, 2000, and recorded on April 12, 2000 in the Recorder's Office as Document No. 2000I0023310 ("Third Amendment") the Declarant made certain other amendments to the Declaration.

5. The Declarant also platted the Property into the following platted subdivisions (collectively referred to herein as the "Newberry Subdivision"):

- a. Newberry 1st Plat—recorded on February 26, 1999 in the Recorder's Office as Document No. 1999I0014913,
- b. Revised Newberry 1st Plat—recorded on May 3, 1999 in the Recorder's Office as Document No. 1999I0035737,
- c. Newberry 2nd Plat—recorded on September 17, 1999 in the Recorder's Office as Document No. 1999I0076018,
- d. Newberry 3rd Plat—recorded on October 18, 2001 in the Recorder's Office as Document No. 2001I0084709,
- e. Newberry 4th Plat—recorded on June 26, 2002 in the Recorder's Office as Document No. 2002I0053930,
- f. Newberry 5th Plat—recorded on March 20, 2003 in the Recorder's Office as Document No. 2003I0032952,
- g. Newberry 4th Plat—recorded on April 4, 2003 in the Recorder's Office as Document No. 2003I0040220, and

6. By a document entitled Amendment to the Declaration of Covenants, Conditions and Restrictions dated July 30, 2007, and recorded in the Recorder's Office on August 7, 2007 as Document No. 2007E0103757 ("Fourth Amendment"), the Grantee attempted to amend Article VIII, Section 22 of the Declarations. A copy of the recorded Fourth Amendment has been attached hereto, and is incorporated by reference herein as Exhibit "B".

7. The Recorder's Office notified the Grantee with concerns over the contents and subsequent indexing of the Fourth Amendment. A copy of the written notification from the Recorder's Office has been attached hereto, and is incorporated by reference herein as Exhibit "C".

8. This Amendment has been drafted in order to address the concerns raised by the Recorder's Office with the Fourth Amendment, and will be recorded to ensure the proper notification and indexing of the same.

9. Article X, Section 2 of the Declarations is entitled Term and Amendment, and provides as follows:

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 percent (60%) 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.

10. By a ballot vote, initiated by the Board of Directors of the Grantee, on JANUARY
10, 2007, at a meeting duly called, and with a quorum of residents present, sixty percent of the Grantors approved a further amendment of the fencing provisions found in Article VIII, Section 22 of the Declaration. The amended language is provided below, within this Amendment. The approval vote for this Amendment is evidenced by the Certification of the Secretary, attached hereto as Exhibit "B" and incorporated by reference herein as if fully set forth.

AMENDMENT

NOW THEREFORE, the Declarations (as amended by the First Amendment, the Second Amendment and Third Amendment) shall hereby be amended and modified as follows:

1. Article VIII, Section 22. Fencing of the Declaration shall be deleted in its entirety and replaced with a new Article VIII, Section 22. Fencing provision to read as follows:

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 fence of wrought iron, wood, or other material acceptable to the Declarant (if then acting, and if not then acting, then by the Association) shall be permitted with a maximum height of six (6) feet.

The terms of this Amendment shall be effective as of the date of recording in the Recorder's Office, and all other provisions of the Declaration (as amended) shall remain in full force and effect, except as otherwise amended herein.

IN WITNESS WHEREOF, the undersigned being the current officers of the Grantee have set their hands and seals this 11th day of October, 2007.

NEWBERRY HOME OWNERS ASSOCIATION, INC.

By: Richard Horton
Richard Horton, President

By: Zoel David Estes
Dave Estes, Vice-President

By: Eric Allee
Eric Allee, Treasurer

Corporate Seal

By: Janet M. Snook
Janet Snook, Secretary

By: Anthony Lamonte
Anthony Lamonte, ARB Chairman
Lamonte

STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

On this 11th day of October, 2007, before me, Andrayana Getchell Notary Public, personally appeared Richard Horton, Dave Estes, Eric Allee, Janet Snook, Anthony Lamonte, to me known, or proven, to be the persons described in and who executed the foregoing Amendment, and acknowledged that they respectively executed the same as their free act and deed in their capacities as the current officers of the Grantee, the Newberry Home Owners Association, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal the day and year last above written.

Andrayana Getchell
Notary Public

My Commission Expires:

September 19, 2009

ANDRAYANA GETCHELL
Notary Public - Notary Seal
STATE OF MISSOURI
Commission for Jackson County
My Commission Expires Sep. 19, 2009
Commission #05770795



Exhibit "A"
Legal Description of Property

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, except that part thereof described as follows:

Commencing at the Northwest corner of Section 16, Township 47 North of the Baseline, Range 31 West of the Fifth Principal Meridian in Lee's Summit, Jackson County, Missouri; thence along the North line of said section South 88 degrees 07 minutes 44 seconds East a distance of 679.83 feet; thence South 1 degree 52 minutes 16 seconds West a distance of 20 feet to a point on the South right of way of Bailey Road as now established and Point of Beginning; thence along said right of way South 88 degrees 07 minutes 44 seconds East a distance of 510.00 feet; thence South 1 degree 52 minutes 16 seconds West a distance of 1302.87 feet to a point on the South line of the North half of the Northwest Quarter of said section; thence along said line North 88 degrees 02 minutes 17 seconds West a distance of 605.00 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, containing 17.54 acres, more or less, subject to easements and restrictions of record.

