

### **RECORDING MEMORANDUM**

Instrument: Declaration of Planned Community for  
Woodlyn Crossing Subdivision

Grantor: Board of Trustees of Woodlyn Crossing Subdivision  
\_\_\_\_\_  
\_\_\_\_\_

Grantee: Woodlyn Crossing Homeowners' Association  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 2020

Legal Description: See Exhibit "A," which is attached hereto and incorporated herein  
by reference

County: St. Louis County, Missouri

Reference: Book 8043, Page 421

Return To: The Community Association Lawyers &  
Sandberg, Phoenix & von Gontard, P.C.  
600 Washington Ave., 15th Floor  
St. Louis, MO 63101

This cover page is attached solely for the purpose of complying with the requirements stated in Mo. Rev. Stat. §§ 59.310.2 and 59.313.2 (2000). The information provided on this cover page shall not be construed as either modifying or supplementing the substantive provisions of the attached instrument. In the event of a conflict between the provisions of the attached instrument and the provisions of this cover page, the attached instrument shall control.

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**DECLARATION OF PLANNED COMMUNITY FOR  
WOODLYN CROSSING HOMEOWNERS' ASSOCIATION**

**(Supersedes Woodlyn Crossing Indenture of Trust and Restrictions)**

**SAINT LOUIS COUNTY, MISSOURI**

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**DECLARATION OF PLANNED COMMUNITY FOR  
WOODLYN CROSSING HOMEOWNERS' ASSOCIATION**

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## **DECLARATION OF PLANNED COMMUNITY FOR WOODLYN CROSSING HOMEOWNERS' ASSOCIATION**

THIS DECLARATION of Planned Community is made this \_\_\_\_ day of \_\_\_\_\_, 2020 by the Owners of Lots comprising Woodlyn Crossing Subdivision.

WHEREAS, Woodlyn Crossing Subdivision ("Subdivision") is a residential community created and existing under the "Woodlyn Crossing Indenture of Trust and Restrictions" as recorded in Book 8043, Page 421, as amended, in the records of St. Louis County, Missouri and is referred to herein as the "Original Indenture" or "Indenture;" and

WHEREAS, certain real property ("Property") was subjected to the Original Indenture as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference ("Plats"), and such Property was subdivided into individual Lots and Common Ground by virtue of such Plats; and

WHEREAS, it was the purpose and intention of the Original Indenture to preserve the Property as a restricted neighborhood to the mutual benefit of all Owners and residents; and

WHEREAS, the Subdivision consists of Owners of Lots within the Property; and

WHEREAS, the Owners are authorized to amend the Original Indenture by approval of two-thirds of the votes in the Association; and

WHEREAS, the Owners desire to restate the Original Indenture to foster effective and efficient governance of the Subdivision, as more particularly set forth below.

NOW THEREFORE, the Original Indenture is hereby released in its entirety from the records of St. Louis County, Missouri, and this "Declaration of Planned Community for Woodlyn Crossing Subdivision" is substituted in lieu thereof as follows:

*This space intentionally left blank.*

## **PART ONE: INTRODUCTION**

*The objective of this Declaration is to foster effectiveness and efficiency in the performance of the Subdivision's functions, to balance the rights and responsibilities of the Owners, to have reasonable restrictions on use, contemporary community standards, and standards for architectural design review, and to provide reasonable flexibility for adapting to changing circumstances in the future. The result is this Declaration and separate By-Laws which preserve the plan of the Subdivision and property rights under the Original Indenture, while updating many of the provisions of that document.*

### **ARTICLE I DEFINITIONS**

**1.1 "Association"** means Woodlyn Crossing Homeowners' Association and its successors and assigns.

**1.2 "Board of Directors" or "Board"** means the body designated to act on behalf of the Association.

**1.3 "By-Laws"** means the By-Laws of the Association and any amendments.

**1.4 "Common Expenses"** means expenses or financial liabilities of the Association, including: (a) expenses of administration of the Association, (b) maintenance, repair, improvements, or replacements on the Common Ground, including improvements thereon; (c) expenses relating to implementation and enforcement of the Governing Documents; (d) expenses declared to be Common Expenses by this Declaration; (e) expenses agreed upon as Common Expenses by the Association; and (f) such reasonable reserves as may be established by the Association.

**1.5 "Common Ground"** means all the common areas and easements as depicted on the Plat, all improvements on the Common Ground, and such other common areas as the Association may acquire in the future. The Common Ground shall be held and operated for the common use and enjoyment of the Owners and residents of the Subdivision.

**1.6 "Declaration"** means this instrument, as may be amended.

**1.7 "Documents" or "Governing Documents"** means this Declaration, Plat, Articles of Incorporation, By-Laws, and Rules, and any amendments.

**1.8 "Guest"** means an invitee or licensee of a Resident or Owner of a Residence.

**1.9 "Lot"** means a separate parcel of land, including a Residence and other improvements thereon, the location and dimensions of which are depicted on the Plat.

**1.10 “Member”** means the record Owner of a Lot in the Subdivision.

**1.11 “Member in Good Standing”** means a Member that is current on any monies owed to the Association including any fines levied after notice and opportunity to be heard, and is not engaged in a pending judicial or administrative proceeding adverse to the Association.

**1.12 “Nonprofit Corporation Act” or “NCA”** means the Missouri Nonprofit Corporation Act, Mo. Rev. Stat., Chapter 355, as may be amended.

**1.13 “Ordinance”** means any applicable ordinance of /MUNI, Missouri, or its successor(s), St. Louis County, Missouri, or such local government as may have jurisdiction in the future.

**1.14 “Original Indenture”** means the instrument described in the Recitals.

**1.15 “Owner”** means any Person who has a recorded fee simple title to a Lot in the Subdivision, not including any person having a Security Interest in the Lot, which shall be determinative upon review of the records of St. Louis County, Missouri.

**1.16 “Person”** means a natural person, corporation, business trust, estate trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity; provided, however that in the case of a land trust, “person” means the beneficiary of the trust rather than the trust or the trustee.

**1.17 “Plat”** means the Plats of Woodlyn Crossing Subdivision described in the Recitals and Exhibit “A.”

**1.18 “Property”** means the land, improvements, easements, rights and appurtenances, more particularly described in the Plat and in Exhibit “A” attached hereto, and subjected to the Original Indenture.

**1.19 “Residence”** means the building on a Lot designed and intended for independent residential occupancy.

**1.20 “Resident”** means a Person that occupies a Residence.

**1.21 “Rules”** means rules and regulations adopted by the Board pursuant to the Governing Documents.

**1.22 “Security Interest”** means an interest in any Lot in the Subdivision created by contract or conveyance, which secures payment or performance of an obligation.

**1.23 “Subdivision,” “Community” or “Woodlyn Crossing”** means the Owners and Property that are subject to this Declaration.

## **ARTICLE II**

### **LOCATION, LOTS, BOUNDARIES, ALLOCATED INTERESTS**

**2.1 Location.** The Subdivision is located in St. Louis County, Missouri, and consists of the Property.

**2.2 Number of Lots.** There are [REDACTED] Lots in the Subdivision. The Lots in the Subdivision are numbered and described more particularly on the Plat.

**2.3 Property Taxation.** Each Lot constitutes for all purposes a separate parcel of real estate, and shall be separately assessed and taxed. The Common Ground shall not be subject to separate assessment or taxation.

**2.4 Subdividing, Converting and Relocating Lot Boundaries.** After the effective date of this Declaration, the subdivision of a Lot is prohibited.

**2.5 Allocated Interests.** The rights of the Owners shall be exercisable and appurtenant to and in conjunction with their ownership of a Lot, based upon the following allocated interests:

**2.5.1 Right to Use and Enjoyment.** Each Owner shall have a nonexclusive easement and right to use the Common Ground, subject to the provisions of the Governing Documents.

**2.5.2 Common Expense Liability.** Common Expense Liability is each Lot's share of the Common Expenses which shall be allocated on the basis of equality, subject to Section 7.2.

**2.5.3 Votes.** Votes in the Association for all purposes are allocated on an equal basis, i.e. the Owner of each Lot having one vote of equal weight.

**2.6 St. Louis County.** The Subdivision is subject to the Ordinances of St. Louis County or its successors.

## **PART TWO: COMMUNITY GOVERNANCE**

### **ARTICLE III**

#### **ASSOCIATION**

*The Subdivision's success as a residential community is dependent on the support and participation of the Owners. This Declaration establishes the Association as the mechanism by which each Owner is able to provide that support and participation. While certain powers and responsibilities are vested in the Association's Board of*

*Directors, significant decisions are reserved for the Association's membership -- the Owners.*

**3.1 Creation, Name.** There shall be a homeowners' association, the name of which shall be "Woodlyn Crossing Homeowners' Association" ("Association").

**3.1.1 Successor in Interest.** The Association shall be deemed the legal successor in interest to the Trustees named in the Original Indenture and their successors. Upon the Effective Date of this Declaration, the Owners ratify that all assets and liabilities of the Trustees, including title to all Common Ground has been transferred and assigned to the Association. The Common Ground shall hereunder be held and remain used and maintained for the common benefit of all of the Owners for the duration of the Subdivision, and thereafter title to the Common Ground shall thereupon vest in the then Owners of the recorded plat of the Subdivision as tenants in common.

**3.1.2 Nonprofit Corporation.** The Association is and shall remain to be organized as a Missouri nonprofit corporation under the NCA unless a different form of organization is approved as may be provided in the By-Laws. In the event the Association is not organized as a nonprofit corporation, it nevertheless shall have full authority to exercise its rights and responsibilities under the Governing Documents.

**3.2 Membership.** Each Owner of a Lot is automatically a Member of the Association by virtue of such ownership. Membership at all times shall consist exclusively of all the Owners or, following condemnation under Section 15.4 or termination of the Subdivision under Section 15.5, of all former Owners entitled to distributions of proceeds, or their heirs, successors or assigns.

**3.3 Management.** Operation of the Subdivision is vested in the Association.

**3.4 Authority.** No Owner, except an officer of the Board, shall have any authority to act for or on behalf of the Association, unless authorized in writing by the Board.

**3.5 Board of Directors.** There shall be a Board of Directors ("Board") which shall act on behalf of the Association in all matters except as expressly limited by Governing Documents, and shall be deemed to be the board of directors under the NCA. The number of Directors shall be set in the By-Laws, but shall not be less than three (3). The qualifications to serve as a director, their election and indemnification are provided for in the By-Laws.

**3.6 By-Laws.** The Association shall be administered under the By-Laws, which need not be recorded.

**3.7 Indemnification.** Except as may be otherwise provided in the NCA, or the Governing Documents, and except for their willful misconduct, the Members of the Association, the Board and Officers, acting within their authority, shall not be

individually, or personally liable for the debts, liabilities, or obligations of the Association, except to the extent of their Common Expense liability as Members of the Association.

To the extent permitted by the NCA and all applicable laws, the Association shall indemnify every Director, officer, employee, agent, volunteer, and any other person that serves at the request of the Association as a manager, director, officer, employee, volunteer, or fiduciary against any liability asserted against or incurred by such person in any such capacity or arising out of that person's capacity as such. The indemnification permitted under this Section shall be to the maximum extent permitted by law.

#### **ARTICLE IV**

#### **ASSOCIATION POWERS AND DUTIES**

*The Association is the entity responsible for governance and administration of the Subdivision, for performance of certain maintenance responsibilities, enforcement of covenants and restrictions, and otherwise for implementation of the Governing Documents. The powers and duties of the Association, acting by and through the Board except for such matters reserved exclusively for the Owners, shall include those set forth in the Governing Documents and NCA, and as inferable therefrom. The Association shall be entitled to exercise any of the rights conferred upon it and shall be subject to all of the obligations imposed upon it under law and the Governing Documents.*

The Association shall have the following powers:

**4.1 Budgets.** The power to adopt and amend budgets for the income and Common Expenses of the Association, and to levy and collect annual and special assessments from the Owners.

**4.2 Maintenance.** The powers to maintain, repair, replace, and improve the Common Ground and improvements thereon.

**4.3 Easements & Dedication.** The power to establish and grant easements for public utilities and private service providers in addition to any shown on the Plat in, over and through the Common Ground, and to release same, and the power to dedicate any portion of the Common Ground to a political subdivision of the State of Missouri or utility provider. The Board is authorized to enter into such easements and dedication of Common Ground by a majority vote of the Board and without Owner approval.

**4.4 Contracting.** The power to enter into contracts and make liabilities for the maintenance, management, operation, repair, replacement, improvement and servicing of the Common Ground and administration of the Association including a community manager, or management company.



**4.5 Rulemaking.** The power to adopt and amend Rules to carry out the intent and purposes of the Governing Documents including use of the Common Ground. Any Rules with respect to restrictions on use (Article IX), community standards (Article X), and design review (Article XI) shall be subject to notice and opportunity to comment for the Owners prior to final adoption. All Owners, their families, tenants, occupants, guests and invitees, and mortgagees, shall be subject to the Rules.

**4.6 Standing.** The power to institute, defend or intervene in litigation or administrative proceedings in its own name and on behalf of itself or two or more Owners on matters affecting the Property, the Association, or the community as a whole.

**4.7 Penalties.** The power to impose interest and charges for late payment of assessments, and, after notice and opportunity to be heard, the power to levy reasonable fines and/or penalties for a violation of any provision of the Governing Documents.

**4.8 Neglected Lots and Residences.** The power and right of access to a Lot, after notice and opportunity to be heard (except in an emergency as may be determined by the Board), to correct neglected conditions on any Lot; such access shall not constitute a trespass. The Owner shall be charged with the reasonable expenses so incurred, including reasonable attorney's fees, which shall be collectable in the same manner as assessments.

**4.9 Administrative Charges.** The power to impose reasonable charges to a particular Lot for the preparation of resale certificates, information for transfer of ownership or occupancy, statements of unpaid assessments, and such other matters as may be requested or required of the Association by an Owner. In the event any professional services are required by the Association in connection with a request by an Owner, the fees incurred for such services shall be paid by or assessed against the Lot of said Owner.

**4.10 Insurance.** The power to purchase and maintain in force such insurance as deemed appropriate by the Board and to the extent reasonably available, including but not limited to property insurance covering improvements on the Common Ground, comprehensive general liability insurance, directors' and officers' liability insurance, and fidelity insurance all as set forth in the By-Laws, and such other coverage as deemed appropriate by the Board, and the power to provide for the indemnification of the Directors and officers of the Board, and the Members of the Association.

**4.11 Borrowing.** The power to borrow funds to carry out the Association's purposes, including to encumber Association assets and to assign its rights to future income (including the right to receive assessments), provided that the Owners approve by via the Ratification Process as provided in Section 7.3 below.

**4.12 Trash and Recycling.** The power to contract for community-wide trash, garbage and recycling services for the entire Subdivision to the extent such services are not provided by or through local government.

**4.13 Community Activities.** The power to provide social, educational, wellness, environmental, and other community programs and activities.

**4.14 Change Use of Common Ground.** The power to change, or improve, the use of any portion of the Common Ground provided that the Owners approve by via the Ratification Process as provided in Section 7.3 below.

**4.15 Conveyance of Common Ground.** The power to convey or subject a Security Interest in the Common Ground (or portions thereof) with approval of at least 80% of the votes in the Association.

**4.16 Enforcement of Restrictions.** The power to enforce the provisions of the Governing Documents.

**4.17 Resale Certificate.** The power to issue a resale certificate (or Trustee's Letter) upon written request by an Owner, including, at minimum, a copy of the Governing Documents, current certificate of the Association's insurance, current annual budget, most recent annual financial statement, amount of any unpaid assessments or other charges against the Lot, a statement of any unresolved violation by the Owner of the Lot, and a statement of any unsatisfied judgment against the Association, and a statement of the status of any pending litigation against the Association. The Board shall have at least ten (10) business days to provide the Resale Certificate.

**4.18 Merger and Consolidation.** The power for the Subdivision to be merged or consolidated with one or more subdivisions into a single subdivision by agreement approved by at least 80% of the Owners.

**4.19 Interpretation.** The power to interpret and construe the Governing Documents, and to implement and to carry out the purposes and intentions of the Governing Documents.

**4.20 Limitations on Board.** The Board shall not have any power to amend this Declaration or the By-Laws (except as expressly provided herein), or to terminate the Association or the Subdivision, or to elect Directors or determine Board qualifications, powers and duties or terms of office of Directors (except to fill vacancies), or to take any other action expressly reserved to the Owners.

**4.21 General.** The power to exercise such other powers as may be provided under law, the Governing Documents, and the NCA, and to exercise all other powers that may be exercised in Missouri by legal entities of the same type as the Association and any other powers necessary and proper for governing the Association in the best interests of the community as a whole.

## **PART THREE: PROPERTY RIGHTS AND RESPONSIBILITIES**

### **ARTICLE V** **MAINTENANCE RESPONSIBILITIES**

*Effective maintenance, repair and replacement of the improvements in the Subdivision are vital to preserving an attractive appearance and property values in the community. The provisions of this Article allocate the responsibilities for maintenance, repair and replacement to the Association and the individual Owners.*

**5.1 Maintenance and Control of Common Ground.** The Association shall maintain, repair and replace the Common Ground and any improvements thereon. The Board shall exercise its business judgment as to the manner, schedule, costs and other matters to carry out this responsibility. Regardless of dedication to a public body, the Association is authorized to regulate the activities upon the Common Ground. The Association has no duty or obligation to mitigate natural flow of storm water runoff.

**5.2 Maintenance of Lot and Owner Responsibilities.** Each Owner at his own expense shall maintain, repair and replace his respective Lot, Residence and improvements and landscaping on the Lot, including all utilities, lateral sewer lines and surface drainage servicing the Lot. The Association is not responsible for storm water runoff and its impacts upon the use and enjoyment of a Lot.

Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

**5.3 Failure to Maintain.** In the event an Owner fails to fulfill any responsibility set forth in this Article or causes damage to his Lot or Residence, or property of another Owner or the Common Ground, the Board may notify the Owner of the particular condition and prescribe an appropriate corrective measure and reasonable schedule for the corrective work to be completed. In the event the Owner fails to comply with said notice, the Board, after opportunity to be heard, may access the Lot as provided in Section 4.8 and take the corrective measures and assess all costs against the defaulting Owner, which shall be collectable in the same manner as assessments.

**5.4 Title to Common Ground.** Any interest in the Common Ground held by the Trustees by virtue of the Original Indenture shall be deemed conveyed in fee simple to the Association upon the Effective Date of this Declaration and organization of the Association as a nonprofit corporation as provided in Section 3.1 above, to the same extent and effect as if this Declaration were a deed of conveyance.

## **ARTICLE VI EASEMENTS**

**6.1 Easement Appurtenant.** Perpetual easements for the use and enjoyment of the Common Ground are hereby established appurtenant to all Lots for use by the Owners thereof, their families, guests and invitees.

**6.2 Easements in Gross.** The Property shall be subject to a perpetual easement in gross to the Association for ingress and egress, to perform its obligations and duties as required by the Governing Documents.

**6.3 Existing Easements.** Easements as shown on the Plat are established and dedicated for streets and roads, electricity, gas, water and telephones and for all other public and private utility purposes, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, drainage, gas mains, telecommunications wires and equipment and electrical conduits and wires on the Common Ground.

**6.4 Effect of Easements.** All easements and rights herein established shall run with the land and inure to the benefit of and be binding on the Association, its successors and assigns, and any Owner, purchaser, mortgagee, holder of a Security Interest, or other person having an interest in any portion of the Property herein described, whether or not such easements are mentioned or described in any deed of conveyance.

## **PART FOUR: FINANCIAL MATTERS**

### **ARTICLE VII COMMON EXPENSE ASSESSMENTS, BUDGET**

*The objectives of this Article are to foster financial stability of the Association, establish a budget process to meet the reasonable and necessary expenses of the Association with oversight by the Owners, and to provide flexibility to meet unanticipated circumstances.*

**7.1 Covenant to Pay.** Each Owner, regardless of the manner in which he acquired title to his Lot, including without limit, purchase at foreclosure or judicial sale, covenants to pay and shall be personally liable for all assessments and other charges coming due while he is Owner.

**7.2 Common Expenses Attributable to Fewer than all Lots.** Notwithstanding the allocation of Common Expense Liability stated in Section 2.5:

**7.2.1 Services Provided by Association.** Any Common Expense for services provided by the Association to an individual Lot at the request of the Owner,

and beyond the Association's duties expressed herein or assumed, shall be assessed against the Lot which benefits from such service.

**7.2.2 Increase in Insurance Premium.** Any increase in the Association's insurance premium attributable to a particular Lot by virtue of activities in or construction on the Lot shall be assessed against such Lot.

**7.2.3 Damages to Lot, Residence or Common Ground.** Any Owner, after notice and opportunity to be heard, shall be liable for any damages to any other Lot or Residence, or to the Common Ground, caused intentionally, negligently or by his failure to properly maintain, repair or make replacements to his Lot or Residence, or in connection with construction activities on the Lot.

**7.2.4 Enforcement.** Fees, charges, expenses, costs of correcting or abating a violation, late charges, fines, collection costs, interest, charges imposed under Section 4.9, damages under Section 5.2 and Article XI, court costs and other expenses of litigation, and reasonable attorney's fees, charged against an Owner pursuant to the Governing Documents, are enforceable as an assessment under this Article.

**7.3 Preparation and Adoption of Budget.** The Board shall prepare a proposed annual budget, including an estimate of the income and Common Expenses of the Association and each Owner's assessment to provide for the Common Expenses for the forthcoming year. The budget shall include a schedule of late fees and interest to be charged on delinquent accounts under the By-Laws.

The Board shall deliver the proposed budget to the Owners and set a date for a meeting of the Owners to consider ratification. Unless a majority of all Members in Good Standing reject the budget, the budget is ratified. A quorum is not required. In the event the proposed budget is rejected, the most recent budget shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board; this paragraph shall be referred to as "Ratification Process."

**7.4 Certificate of Payment.** The Association, within ten business days after receipt of written request by an Owner, shall furnish to him a statement setting out the amount of unpaid assessments and other charges against the Lot.

**7.5 Payment Schedule.** All assessments shall be due and payable annually. The Board may require a periodic payment schedule, but not more frequently than monthly.

**7.6 Accounting.** Within 90 days after the preceding fiscal year, the Board shall furnish to the Owners a statement of income and expenses of the preceding year. At the Board's discretion, any or all surplus funds remaining after payment of Common Expenses shall be provided for anticipated Common Expenses for the next year and for reserves.

## **ARTICLE VIII**

### **COLLECTION AUTHORITY**

*Assessments are the lifeblood of the Association, necessary to provide insurance, maintenance of Common Ground, administration and enforcement of the Governing Documents, and to foster preservation of property values. The provisions in this Article relate to payment by the Owners and authority of the Association to collect unpaid assessments, fines, fees and other charges.*

**8.1 Personal Liability of Owners.** The Owner at the time an assessment is due shall be personally liable for same, together with such charges as may be imposed under this Declaration. Personal liability for said assessment shall not pass to a successor in title unless he agrees to assume the obligation.

**8.2 No Waiver of Liability.** Liability for assessments shall be an independent and affirmative covenant and may not be avoided by waiver of the use of the Common Ground or services, or by abandonment of the Lot, or by reliance upon any claim against the Association, Board, another Owner or any third party.

**8.3 Interest and Late Fees.** Interest and late fees shall be applicable in such amounts as provided in the By-Laws.

**8.4 Lien for Assessments.** In addition to each Owner's personal liability under Section 7.1, the Association has a lien against a Lot for any assessment or fine from the time the assessment or fine becomes due, including all fees and charges under Section 7.2.

**8.4.1 Lien Priority.** Prior to the Effective Date, a lien in favor of the Association shall have the same priority as under the Original Declaration. For any liens executed after the Effective Date, a lien under this Section is prior to all other liens and encumbrances on a Lot (including any mortgage or deed of trust) except for liens for real estate taxes and other governmental assessments or charges against the Lot. The lien is not subject to the provisions of Mo. Rev. Stat. §513.475 (2000)(homestead exemption).

**8.4.2 Perfection of Lien.** The Association's lien for unpaid assessments and other charges shall be deemed perfected upon the Effective Date of this Declaration. A notice of the Association's lien, in the Board's discretion, may be recorded in the records of St. Louis County, Missouri.

**8.4.3 Bankruptcy.** If an Owner of a Lot subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until 30 days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

**8.4.4 In rem and In personam.** The Association may also initiate suit to recover sums for which Section 8.4 creates a lien and take a deed in lieu of foreclosure.

**8.4.5 Foreclosure by Publication.** The Association's lien may be foreclosed by judicial proceeding or by publication in like manner as a mortgage on real estate or power of sale under Mo. Rev. Stat. §§ 443.290 to 443.440 (2010).

**8.4.6 Notice to Lien Holders.** In the case of any foreclosure of the Association's lien, the Association may give notice of its action to each lien holder whose interest would be affected.

**8.5 Acceleration.** In the event that a delinquency in excess of 60 days occurs in the payment of any assessment that is payable in installments, the full amount of such assessment may be accelerated and collected as provided in this Article.

**8.6 Costs and Attorney's Fees.** A judgment or decree in any action brought under this Article shall include all costs, attorney's fees (including costs and fees incurred in executing the judgment), and other charges owed to the Association for the prevailing party.

**8.7 Enforcement.** A judgment or decree in any action brought under this Article shall be enforceable by execution of the judgment.

**8.8 Exemptions.** The Common Ground and any Lot exempt from taxes under the laws of the State of Missouri shall be exempt from the assessments, charges and liens created herein.

**8.9 Priority of Mortgages.** Nothing contained in this Article shall abridge or limit the rights or responsibilities of mortgagees as set forth in the Governing Documents.

**PART FIVE:**  
**RESTRICTIONS ON USE; COMMUNITY STANDARDS,**  
**ARCHITECTURAL COVENANTS**

**ARTICLE IX**  
**RESTRICTIONS ON USE & LEASING**

*This Article contains certain restrictions on the Lots in the Subdivision that are deemed reasonable for the preservation of an attractive residential neighborhood over time. These restrictions are applicable upon the Effective Date of this Declaration. Existing uses on the Effective Date shall not be deemed to be in violation of this Declaration, but violations existing under the Original Indenture may be enforced pursuant to the provisions of said document after the Effective Date of this Declaration. The use of Lots and Residences shall also comply with all applicable Ordinances.*

**9.1 One Residence Per Lot.** No more than one Residence shall be located on each Lot.

**9.2 Residential Use.** Each Lot and Residence thereon shall be used solely for single family residential purposes, including unrelated persons living together as a single family unit. No Residence, or any other structure, shall be used for a purpose other than the purpose for which it was originally designed. Further, no Residence, structure, or other building, or any portion of a Lot, shall be used in violation of any Ordinance, law, or result in an increase in the rate of insurance of the Association.

**9.3 Occupancy.** The number of occupants shall comply with the occupancy limitations of applicable Ordinances and standards of the Fair Housing Amendments Act of 1988 and the Missouri Human Rights Act. An entity, or trust, shall designate the person authorized to occupy the Residence.

**9.4 Leasing.** The Association deems it to be in the best interests of the community as a whole to preserve the Subdivision as a community in which the Lots are occupied predominantly by the Owners. Accordingly, the purpose of this Section 9.4 is to foster Owner-occupancy and thereby improve stability among residents, inhibit transiency and protect property values.

**9.4.1 Definitions.** For purposes of this Section:

**9.4.1.1 “Direct Family Member”** means children, parent, grandchildren, grandparent, caregiver, in-laws, stepchildren, or siblings of the Owner.

**9.4.1.2 “Lease”** means any agreement for the exclusive possession of the Lot that creates a relationship of landlord-tenant or lessor-lessee in which the record Owner does not occupy the Lot.

**9.4.1.3 “Owner-Occupied”** means that the resident of the Lot is the record Owner, his or her siblings, parents, children, grandchildren, grandparents (and their families). In the event the Lot is owned by a trust, the Lot shall be deemed to be owner-occupied if the Lot is occupied by a beneficiary of the trust, as long as the beneficiary is also the grantor of the trust, or the Lot is occupied by the spouse or direct family member of the grantor of the trust.

**9.4.2 Lease Regulations.** Any lease permitted under this Section 9.4 and executed or renewed on or after the Effective Date shall be evidenced by a written lease agreement (“Lease”) and, whether or not expressly set forth in the Lease, shall be deemed to include the regulations contained in this Section.

**9.4.2.1 Copy of Lease.** The Owner shall furnish to the Board, at least ten (10) days before the commencement date, a copy of the executed Lease and a lease addendum if required by the Association (“Addendum”), as well as the names and contact information of the tenant and all occupants. The Lease shall comply with



the Governing Documents.

**9.4.4.2 Persons Subject to Governing Documents.** The Lease, Owner and tenant(s)/occupant(s) are subject to the provisions of the Governing Documents.

**9.4.2.3 Term of Lease.** The Lease shall have an initial term of at least six (6) but not more than twelve (12) months. Any renewal or extension of the Lease, and any sublease of the Lot or assignment of the Lease, shall be in writing and a copy submitted to the Board at least ten (10) days prior to its commencement date. Further, any lease renewal or extension may not exceed twelve (12) months at a time.

**9.4.2.4 Short Term Rentals.** No Lot may be leased on a nightly or monthly basis, or for transient or hotel purposes including home exchange, swap or via Airbnb®, VRBO® or their functional equivalent. Not less than the entire Lot may be leased. If a lease is voluntarily terminated within 90 days of commencement, the Lot may not be leased for 90 days after the date of termination.

**9.4.2.5 Certification.** The Owner certifies that he/she obtained a background check and provided a copy of the Governing Documents to tenant, and tenant certifies that he/she received said Documents, prior to signing the Lease.

**9.4.2.6 Assignment of Rights.** The Owner assigns to tenant all rights and privileges related to occupancy of the Lot. The Owner retains the right to vote, the duty to pay assessments, fines and other charges by the Association, and the obligation to maintain the Lot and carry a personal insurance policy on the Lot.

**9.4.3 No Time-Share.** No Lot may be conveyed under a time-sharing plan.

**9.4.4 Rulemaking.** The Board may adopt such rules, regulations, and forms as it deems reasonable and necessary to implement the provisions of this Section.

**9.4.5 Reasonable Restraint on Alienation.** The leasing limitations of this Section shall be deemed a reasonable restraint on alienation and not a change in the use of Lots, which shall continue to be used for single-family residential purposes under Section 9.2.

**9.4.6 Enforcement.** The Association is authorized to enforce any violation by tenant or occupant (regardless of relationship to Owner) of the Governing Documents, except for nonpayment of rent, and may deem such violation a default of the Lease and shall have the right, after notice to the Owner and opportunity to cure, to terminate the Lease by judicial proceeding, and shall have all other remedies under the Governing Documents. In the event the Owner fails to pay any assessment and related charges and fees for 60 days or more, the Board, upon written notice, may direct the tenant to pay rent directly to the Board which shall be applied to the Owner's account until the delinquency is paid in full; otherwise, however, the foregoing shall not impose any direct

liability on a tenant to pay any general or special assessment on behalf of the Owner.

## **ARTICLE X**

### **COMMUNITY STANDARDS**

*This Article contains community standards that are deemed reasonable for conduct in the Subdivision to preserve an attractive residential neighborhood. These standards are applicable upon the Effective Date of this Declaration. Existing conduct on the Effective Date shall not be deemed to be in violation of this Declaration, but violations existing under the Original Indenture may be enforced pursuant to the provisions of said document after the Effective Date of this Declaration. Conduct of Owners shall also comply with all applicable Ordinances.*

**10.1 Pets.** Residents with pets shall be responsible for their pets and shall be courteous to other residents to ensure pets do not disturb other residents' use and enjoyment within the Subdivision including keeping pets leash in-hand and proper disposal of pet waste. No structure or enclosure for a pet shall be kept outside of a Residence. The Owner shall be responsible for any damage to any persons or property caused by a pet kept on his or her Lot.

**10.1.1 Permitted Animals.** A Resident may only keep dogs, cats, and other small animals (must not exceed five (5) pounds adult weight) which are normally kept in a cage, aquarium, or similar appropriate container so long as the animal is not venomous, poisonous, dangerous, or overly disruptive. Prohibited animals include those prohibited by law, including Ordinance, pigs, horses, chickens, and goats.

**10.1.2 Service Animal.** A service animal for an Owner having a disability under the federal Fair Housing Amendments Act of 1988 or the Missouri Human Rights Act shall not be a pet under this Section 10.1.

**10.1.3 Limitation of Liability.** The Association shall not be liable for injury or damage to persons or personal property caused by a pet, service animal, or any other animal even if such pet was not permitted under this Section 10.1.

**10.1.4 Pets on Effective Date.** Any animal kept by a Resident on the Effective Date that does not comply with this Section shall not be considered a violation; provided, however, that after such non-complying animal dies or is removed from the Subdivision, the Resident shall strictly comply with the provisions of this Section.

**10.2 Signs.** Signs that may be displayed under this Section shall be subject to such Rules as the Board may adopt regulating size, location, duration and related matters. Signs shall be temporary in nature, maintained in good condition, and are only permitted as follows:

**10.2.1 Open House.** One (1) sign advertising an "open house" located adjacent to the front entrance of the Subdivision, which shall not be kept for more than

four hours before the open house and must be removed not more than two hours after the open house. In addition, one (1) yard sign advertising “for sale,” with the sign not to exceed 18 inches by 24 inches in dimensions.

**10.2.2 Public Notice.** Notices required by the Ordinances or any court or governmental body or agency may be posted on a Lot, Residence or Common Ground; and

**10.2.3 Association Signs.** The Board may place appropriate signs on the Common Ground.

**10.2.4 Political Signs.** Pursuant to Mo. Rev. Stat. §442.404, the Board is authorized to adopt reasonable rules regulating political signs without the necessity of notice and comment as otherwise required herein.

**10.3 Vehicles and Parking.** Vehicles within the Subdivision are subject to the following limitations:

**10.3.1 Impermissible Visible Vehicles.** No Person shall not park or store any derelict, abandoned or unlicensed vehicle, or truck equal to or over three-quarter (3/4) ton, a camper, mobile home, recreation vehicle, boat or boat trailer, utility or similar trailer, lawn equipment, or commercial vehicle within the Subdivision unless it is parked or stored within an enclosed garage. The term “commercial vehicle” means any vehicle that displays advertising of a business to the public to such an extent that over twenty percent (20%) of the surface area of the vehicle (excluding windows and wheels) is covered and/or has commercial tools, equipment, or materials in the bed, or on top or side, of such vehicle visible to the public.

**10.3.2 Maintenance and Repairs.** Except for emergency repairs, repairs lasting twenty-four (24) hours or less in duration, and washing, no other maintenance or repairs shall be conducted within the Subdivision unless done so in an enclosed garage.

**10.3.3 Vehicle Sightlines.** No fence, wall, tree, hedge or shrub planting shall be maintained in such manner as to obstruct sight lines for vehicular traffic, including but not limited to cul-de-sac areas.

**10.3.4 Other Motorized Vehicles.** Use of go-kart, golf-cart, all-terrain vehicle (ATV), dirt bike or any other type of motorized vehicle is not permitted. Lawn mowers shall not be considered to be a motorized vehicle.

**10.3.5 Dumpsters and Storage Containers.** No Person shall park or keep a Dumpster® or Portable Storage Unit (such as a PODS®) on his Lot without prior consent of the Board. Permitted use of Portable Storage Unit or Dumpster shall not exceed fourteen (14) days unless approved by the Board for Alterations (as defined in Article XI below) to the Residence or Lot. Application for approval shall be made under the provisions of Article XI.

**10.3.6 Rulemaking.** The Board may adopt reasonable rules and regulations regulating parking with the Subdivision including limiting parking in certain areas of the Common Ground or on one side of a street, and may prohibit (or limit) location of dumpsters and storage containers from being kept on a street within the Community.

**10.3.7 Remedies.** Any violation of this Section may be enforced, after notice and opportunity to be heard (except for emergencies), by levying a reasonable fine and/or towing of the offending vehicle or other object, at the expense of the Owner and/or other violating person. Owner shall be responsible for any fine incurred by such violating person associated with such Lot. Said remedies shall be supplemental to any relief and remedies otherwise provided in the Governing Documents, the Ordinances and laws of the State of Missouri.

**10.3.8 Limitation of Liability.** The Association shall not be liable for injury or damage to persons or personal property caused by a vehicle even if such vehicle was not permitted to be used or kept within the Subdivision.

**10.4 Commercial Activities.** A Resident may maintain a home occupation in his or her Residence, but only if it is incidental to residential use (such as home office and telecommuting) and does not involve interference with parking, physical alteration of the Residence, observable business activity such as signs or advertising displays, an unreasonable number of deliveries or of pedestrian or vehicular traffic, or create a nuisance or in any way impair the rights of any Resident or Owner. Such home office use shall be in strict compliance with the Ordinances. No Residence, or any portion of the Common Ground may be used for any commercial or business purpose except as provided in this Section.

**10.5 Obstructions.** No Owner may place improvements or obstructions on the Common Ground, alter the Common Ground, or dispose of landscape waste or other waste on the Common Ground without prior written consent of the Board or in accordance with regulations adopted by the Board regarding these provisions.

**10.6 Drones.** The commercial use of drones is permitted subject to rules as may be adopted by the Board. The Board may adopt rules regulating, or prohibiting, recreational use of drones. The Association shall not be liable for injury or damage to persons or personal property caused by a drone even if the drone was not permitted under this Section 10.

**10.7 Nuisances.** No noxious or offensive activity shall be conducted or permitted by any Owner or resident nor shall anything be done which would become an annoyance or a nuisance to other Owners or residents. No Owner shall permit or suffer anything to be done or kept in or on his Lot which obstructs or interferes with the rights of other Owners or residents, or disturbs them by unreasonable conduct or otherwise

permit any nuisance or illegal act on his Lot, Residence or on the Common Ground. Discharge of water from a Residence onto an adjacent Lot shall constitute a nuisance.

**10.8 Satellite Dishes, Antennas:** Subject to prior written input of the Board with respect to safety considerations and aesthetics, an Owner may install a satellite dish or antenna that is one meter or less in diameter for receipt and transmission of data; such dish or antenna shall be located on the Residence, or other location as designated by the Board so long as such placement does not result in significant increase in cost of installation. The Owner shall be responsible for the quality and workmanship of any installation, and shall promptly remove any dish or antenna that is no longer in use. No other satellite dishes or antennas are permitted.

**10.9 Additional Structures and Storage.** So long as otherwise compliant with Ordinance, additional structures are permitted so long as prior approval is obtained pursuant to Article XI.

**10.10 Garage/Estate Sales.** The Board is authorized to adopt reasonable rules and regulations related to garage and estate sales including restricting the number of sales, duration, hours of operation and regulating vehicle access.

**10.11 No Unlawful Use.** No portion of the Subdivision shall be used for any purpose prohibited by law or Ordinance.

**10.12 Hazardous Materials.** Excluding customary household materials, no flammable, toxic or other hazardous materials may be kept or stored within the Subdivision. Hazardous materials, including customary household materials, may not be improperly disposed on the Lots, or disposed of in any manner on the Common Ground or streets.

**10.13 Abusive Behavior.** No Owner, Resident or Guest shall engage in Abusive Behavior, which may include the use of profanity, or acting in an abusive, harassing, intimidating, or aggressive manner as to actually, or intend to, interfere with the duties and obligations of the Association including interfering with a service provider, vendor, or employee of the Association. The Association shall not be liable for Abusive Behavior of any Owner, Resident or Guest to the fullest extent permissible at law and equity.

**10.14 No Subdividing a Lot.** No Lot shall be subdivided or re-subdivided, nor shall a fractional part of any Lot be sold.

**10.15 Trash.** Trash, rubbish or garbage receptacles shall be stored out of sight from the public street. Trash, rubbish or garbage receptacles shall be placed outside of a Residence for pick-up, and removed when empty in accordance with Ordinances. The Board is authorized to adopt reasonable rules, taking into consideration the community standards deemed to preserve an attractive residential neighborhood while also accommodating Owners for reasonable limitations for compliance thereto.

**10.16 Landscaping on Lots.** All Lots shall be kept free of rubbish and debris. Trees and shrubbery shall be trimmed and maintained in a manner consistent with the generally acceptable standards in the Subdivision as determined by the Board and applicable Ordinances. Dead trees or shrubbery shall be promptly removed.

## **ARTICLE XI**

### **DESIGN REVIEW AND ARCHITECTURAL COVENANTS**

*This Article contains the procedure for review and approval of new construction of Residences and exterior alterations of the Lots and Residences. The purpose of this review is to maintain the quality and aesthetics of exterior architectural design for the best interests of the community as a whole. This Article shall apply to all applications submitted for approval after the Effective Date of this Declaration; however, violations existing under the Original Indenture may be enforced pursuant to the provisions of said document after the Effective Date of this Declaration. Each Owner is also responsible for compliance with applicable Ordinances.*

#### **11.1 Definitions.** For purposes of this Article:

**11.1.1 “Alteration”** means any addition to, or removal, modification, or change affecting an existing Residence and its Lot; by way of example only, a list of alterations is provided within the standards and conditions contained in the “Architectural Standards and Conditions,” which is attached hereto marked Exhibit B and incorporated herein by reference (“ASC”).

**11.1.2 “Committee”** means the committee that the Board may establish from time to time comprised of at least three disinterested Owners to assist the Board in carrying out the functions of this Article.

**11.1.3 “New Construction”** means a type of Alteration whereby a new Residence is constructed on a Lot, or the replacement of such Residence is greater than 50% of the existing Residence.

**11.2 Review Procedures.** No Person shall commence any Alteration to the exterior of an existing Residence or Lot, or commence New Construction, without the prior written consent of the Board in accordance with this Article. The procedures for application, review and determination by the Board are as follows:

**11.2.1 Application.** An Owner shall submit a written application to the Board for approval of any Alteration or New Construction (“Application”), including a copy of plans and specifications for each director (or Committee Member), anticipated timing of work, and all details as may be necessary for the Board to adequately review the plans in accordance with these Documents. A copy of all information submitted for local government approval shall be included with the application. Information required to be submitted on such Application may be altered from time to time at the discretion of

the Board. Payment of such application fee as the Board may adopt under Section 11.4 shall be included.

**11.2.2 Board Action.** Within thirty (30) days of receipt of a completed Application, the Board may approve or reject an application, or approve with conditions such as (1) deposits and fees described in Section 11.4, (2) proof of appropriate insurance coverage by the Owner and/or contractor protecting the Association and Subdivision, (3) proof that applicable local governmental permits have been obtained, (4) measures to protect adjacent Lots and Residences, Common Ground, and the streets, and (5) a reasonable schedule for commencement and completion. Any rejection of an application shall state the basis for such rejection. If the Board rejects an application, the Board shall advise the applicant of the reasons for such rejection.

**11.2.3 Failure to Respond.** If the Board (or the Committee) fails to respond to the Application within the thirty (30) days as provided in Section 11.2.2, the Application shall be deemed rejected. If a completed Application was sent via certified mail, postage pre-paid or receipt of the Application was acknowledged in writing by the Board (or the Committee) and the Board (or the Committee) fails to respond within the thirty (30) days as provided in Section 11.2.2, the Application shall be deemed accepted.

**11.2.4 Appeal of Rejection or Approval with Conditions.** An Owner may, upon written demand sent via regular and certified mail, postage prepaid, appeal a rejection or appeal an approval with conditions. The Association and Owner shall meet to discuss to attempt voluntary resolution. If voluntary resolution is unsuccessful, the Association shall engage a mediation firm with the mediator selected in accordance with such firm's rules and practices. If mediation fails to reach a resolution, the Owner must obtain a judgment against the Association authorizing the Application prior to proceeding with the Alteration.

**11.2.5 Owner's Failure to Obtain Approval.** If an Alteration occurs without the written consent of the Association, such alteration shall constitute a per se violation of this Declaration, and, if the Association files suit to enforce this Article, then the Owner agrees to enter into a judgment in favor of the Association and against the Owner whereby the Owner agrees: (1) to restore the Lot to its condition prior to the unauthorized Alteration, (2) make payment of all attorney's fees and costs actually incurred by the Association, (3) make payment of any outstanding fines (including late fees and interest), and (4) if the Court finds that the Owner knowingly commenced the Alteration without approval or in contravention of the process provided in this Section 11.2, the Court shall award punitive damages. Further, the Owner acknowledges, understands and agrees to waive all defenses including the validity of any provision of the Governing Documents, waiver, changed circumstances, authority of the Association to bring suit and enforce the Governing Documents, or that the Board (or Committee) applied such provisions in an arbitrary, capricious or discriminatory manner.

**11.2.6 Inspection Rights.** The Board (or Committee, or its authorized

agent) shall have the right to periodically inspect the Exterior Alterations or New Construction for compliance with the Application and Documents. Access to the Lot shall be pre-arranged between the Board (or Committee) and Owner and not be reasonably denied. Failure of an Owner to comply with this Section shall constitute a revocation of Approval subject to enforcement under these Documents, including under Section 11.2.5.

**11.3 Standards of Review of Applications.** This Section is intended to provide guidance to Owners, contractors, engineers, architects and others providing services on behalf of the Owners on the standards the Board (or Committee) shall consider generally in review of an Application.

**11.3.1 General Criteria.** The Board shall consider the following general criteria: harmony of exterior design and appearance with existing Residences, including architectural design, scale, mass, color, location, topography, grade, drainage, color and quality of construction, and quality of exterior materials and detail.

**11.3.2 Effect on Adjoining Lots.** The Board shall consider potential impacts on surrounding Lots and may provide an opportunity for the Owners of such Lots to review and comment on the plans and specifications.

**11.3.3 Aesthetics.** Decisions may be made based on purely aesthetic considerations. The Board shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall be upheld so long as made in good faith and in accordance with the procedures contained herein.

**11.3.4 Variations in Approvals.** Owners understand, acknowledge and agree that opinions on aesthetic matters, as well as interpretation and application of review standards and conditions contained in this Article, will vary. Accordingly, it is not always possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Board may refuse to approve similar proposals in the future. Approval of applications or any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, specifications, or other matters subsequently or additionally submitted for approval.

**11.3.5 Variance.** The Board may grant variances from compliance with any of the standards and conditions in this Article when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. No variance shall be effective unless in writing. The granting of a variance shall not preclude the Board from denying a variance in other similar circumstances. The inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

**11.3.6 Standards for Alterations.** The Board shall consider conformance



with the standards and conditions contained in the ASC. The guidelines in the ASC may be more restrictive than the Ordinances, and may be amended, and made more or less restrictive than contained in the ASC in the same manner as an amendment to the By-Laws as provided in Article 13.

**11.4 Application Fee, Security Deposit, Performance Bond.** The Board may require that an Owner submitting an application provide any or all of the following in connection with applications, review, and conditions on approval:

**11.4.1 Application Fee.** A reasonable application fee payable with the application, which shall be nonrefundable.

**11.4.2 Professional Review.** A reasonable deposit for fees incurred for independent architects or engineers engaged to review the plans and specifications.

**11.4.3 Security Deposit.** A security deposit to secure removal of all debris from the site and from adjacent Lots, the streets and Common Ground, and that any damaged areas of the Lot, adjacent Lots, the streets or Common Ground shall be repaired and restored to their prior condition. Any unused portion of the security deposit shall be refunded upon satisfactory completion of all work and all restoration and cleanup.

**11.4.4 Performance Bond.** A bond to secure completion of all work.

**11.5 Damage.** Notwithstanding payment of a security deposit or performance bond under Section 11.4, any Owner who causes damage to another Lot or Residence, or to the Common Ground, shall be responsible to the full extent of such damage, and shall restore any such damaged area to its prior condition, and shall keep the streets clean and free of debris due to construction activities. In the event an Owner fails to comply with this provision, the Board may, after notice and opportunity to be heard, make such repairs and assess the Owner in which case the Association shall have the authority to recover such costs in the same manner as assessments, together with the Association's costs and attorney's fees. Nothing herein shall limit the right of any Owner whose property is damaged by another Owner or his agents or employees available under Article XII.

**11.6 Certificate of Compliance.** Any Owner may request that the Board issue a certificate of architectural compliance for his completed New Construction or Alteration certifying that there are no known violations of this Article. The Board shall either grant or deny such request within 45 days after receipt of a written request and may charge a reasonable fee for issuing such certificate. Issuance of such a certificate shall preclude the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

**11.7 Approval by Governmental Agency.** Approval by a political subdivision of the State of Missouri does not constitute approval of an Alteration under this Article.

**11.8 Rulemaking.** The Board may adopt and amend Rules at any time to implement the provisions of this Article. Such Rules and amendments shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved New Construction or Alteration has commenced. There shall be no limitation on the scope of amendments to such Rules, and amendments may remove requirements previously imposed or otherwise make the Rules less restrictive.

**11.9 Limitation of Liability.** The Association, Board and Committee shall have no responsibility or duty for ensuring the structural integrity or soundness of any Alterations or New Construction, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all Residences are of comparable quality, value or size, or of similar design, or aesthetically pleasing or otherwise acceptable to Owners of neighboring properties. The provisions of this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the community; they do not create any duty to any person.

Further, the Association has no responsibility for soil conditions, drainage or other general site work, any defects in plans revised or approved hereunder, any loss or damage (including but not limited to consequential damages and attorney's fees) arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents, or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved New Construction or Alteration. In all matters, the Directors shall be defended and indemnified by the Association to the extent available under the Governing Documents.

## **PART SIX: GENERAL PROVISIONS**

### **ARTICLE XII** **RELIEF AND REMEDIES**

*The authority and procedures for enforcement of the Governing Documents, and the corresponding rights of the Owners, are provided in this Article.*

**12.1 Alternative Dispute Resolution.** By agreement, any parties subject to the Governing Documents may agree to mediation, arbitration, binding arbitration, and any other alternative dispute resolution process.

**12.2 Board Discretion in Enforcement.** The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case: (1) the Association's position lacks sufficient strength to justify taking any or further action, (2) the covenant, restriction or Rule being enforced is, or is likely to be construed as, inconsistent with applicable law, (3) although

a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources, or (4) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision under this Section 12.2 shall not be construed as a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or Rule.

The Association, by contract or other agreement, may enforce applicable Ordinances, and permit the local governmental authorities to enforce its Ordinances within the Community for the benefit of the Association and its Members.

**12.3 Relief & Remedies.** The person, or class of persons, has a claim for relief if he or she is adversely affected by a failure to comply with the Governing Documents of the Association.

The prevailing party shall be entitled to recover its reasonable attorney's fees, costs and expenses incurred in enforcing any provision of the Governing Documents, whether the matter is finally adjudicated. In the event the Association prevails in defense of any claim, it shall be entitled to recover its reasonable attorney's fees, costs and expenses incurred.

### **ARTICLE XIII**

#### **AMENDMENT OF DECLARATION AND BY-LAWS**

**13.1 Declaration.** Except as otherwise provided in this Declaration, this Declaration may be amended at any time with substantial compliance of the following procedures: One, the Association shall send a copy of the proposed amendment to each Owner subject to this Declaration with a ballot. Two, the Owner shall have a minimum of thirty days from the date the proposed amendment is sent to cast a ballot on the proposed amendment. Three, unless one-third of the votes in the Association reject the proposed amendment, the Amendment shall be deemed approved by the Owners.

An amendment may change or eliminate any restriction in the Declaration or add new and/or more burdensome restrictions; however, no amendment can: (1) eliminate the requirement that there be an Association, (2) eliminate the power of the Association to levy assessments unless adequate substitution is made, and, unless unanimous consent is obtained, change each Lot's allocated interests, or change a Lot's restricted use (single-family residential).

**13.2 Limitation of Challenges.** No challenge to the validity of an amendment adopted by the Association pursuant to this Section may be brought more than one year after the amendment is recorded; otherwise, such amendment shall be presumed to

have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provision of this Declaration.

**13.3 Recordation of Amendments.** Each amendment shall be recorded in St. Louis County and effective upon recording unless otherwise expressly stated therein.

**13.4 Execution of Amendments.** Each amendment shall be executed, certified and recorded on behalf of the Association by officers designated in the By-Laws for that purpose or, in the absence of designation, executed by the President and certified by the Secretary.

**13.5 By-Laws.** The By-Laws may be adopted and amended at any time by the following procedure: One, the Association shall send a copy of the proposed amendment to each Owner subject to this Declaration with a ballot. Two, the Owner shall have at minimum thirty days from the date the proposed amendment is sent to cast a ballot on the proposed amendment. Third, unless a majority of the votes in the Association reject the proposed amendment, the Amendment shall be deemed approved by the Owners.

An amendment to the By-Laws shall become effective upon recordation (if recorded), or upon execution (if not recorded), or, in either case, upon a later date if so specified therein. Any challenge to an amendment must be made within six months after the effective date; otherwise, the amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provision of the By-Laws.

**13.6 Board Amendments.** Notwithstanding anything to the contrary, the Board is authorized to amend this Declaration and the By-Laws, without further approval, to correct technical or clerical errors or to bring the Association and Governing Documents into compliance with conditions imposed by agencies providing government-insured or guaranteed loans.

## **ARTICLE XIV**

### **MORTGAGEE PROVISIONS**

*The provisions of this Article are for the benefit of holders, insurers and guarantors of first Security Interests on Lots in the Subdivision, and shall apply to the Governing Documents. The term "Eligible Mortgagee" means any institutional holder, insurer, or guarantor of a first Security Interest in a Lot which provides a written request to the Association, stating the name and address of such holder, insurer or guarantor and the Identifying Number of the Lot to which its Security Interest relates.*

**14.1 Right to Grant Security Interest.** Each Owner shall have the right to grant one or more Security Interests against his Lot.

**14.2 Notice of Actions.** The Association shall give timely written notice to each Eligible Mortgagee of: (1) any delinquency in the payment of assessments or charges owed by an Owner whose Lot is subject to a Security Interest held, insured or guaranteed by such Eligible Mortgagee, which remains unsecured for a period of 60 days, or any other violation of the Governing Documents relating to such Lot, of the Owner or occupant, which is not cured within 60 days, (2) lapse, cancellation or material modification of any insurance policy maintained by the Association; and (3) other notices as permitted or required by the Governing Documents.

**14.3 No Priority for Certain Proceeds.** No provision of the Governing Documents gives or shall be construed to give any Owner or other party priority over any rights of a holder, insurer or guarantor of a first Security Interest of any Lot in the case of distribution of insurance proceeds or condemnation awards for losses or a taking of the Common Ground.

**14.4 Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder, insurer or guarantor of any first Security Interest encumbering such Owner's Lot.

**14.5 Right to Cure Default.** If any Owner fails to pay any amount required under the provisions of any Security Interest against such Owner's interest, the Association shall have the right to cure such default by paying the amount so owing to the party entitled thereto and shall thereupon have all rights to recover same as provided in Article VIII. The holder of a first Security Interest against any Lot shall give notice of default under such Security Interest to the Association at the same time as to the defaulting Owner. The foregoing shall not be construed to require the holder of a first Security Interest to receive permission from the Association to foreclose the lien of its Security Interest.

## **ARTICLE XV**

### **GENERAL PROVISIONS**

**15.1 Validity.** The following provisions are to protect the integrity of the Governing Documents:

**15.1.1 Severability.** Invalidity of any one of the provisions of the Governing Documents, by judgment, order or decree shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

**15.1.2 Rule Against Perpetuities.** The rule against perpetuities shall not be applied to defeat any provision of the Governing Documents.

**15.1.3 Recitals.** Recitals are incorporated as if fully stated within this Declaration.

**15.1.4 Compliance With Nonprofit Corporation Act; Conflicts.** The Governing Documents are intended to comply with the requirements of the NCA. In the event of any conflict between any provision of the Governing Documents and any provision of the NCA, the provisions of the Governing Documents shall govern unless expressly prohibited by the NCA. In the event of any conflict between any provision of this Declaration and the By-Laws, the provisions of this Declaration shall govern.

**15.2 Interpretation.** The provisions of the Governing Documents shall be liberally construed to effectuate their purpose of creating a uniform plan for the Subdivision and for operation of the Association. Whenever the context so requires, the use of any gender shall be deemed to include all genders, the use of plural shall include the singular and the singular shall include the plural. The captions contained in the Governing Documents are inserted only as a matter of convenience, reference, and context, and in no way define, limit, or describe the scope of this Declaration or the intent of any provision thereof.

**15.3 Persons Bound by the Documents.** All Owners, tenants, Guests, Residents, and invitees, and mortgagees are bound by and shall comply with the Governing Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or occupancy of a Lot constitutes agreement that the provisions of the Governing Documents are accepted and ratified by each such person. All provisions of the Governing Documents recorded in the Office of Recorder of Deeds of St. Louis County, Missouri, are covenants running with the land and shall bind any Persons having at any time any interest or estate in the Property.

**15.4 Condemnation.** The following provisions apply in the event of the exercise of eminent domain in the Community.

**15.4.1 Acquisition of Lot.** If a Lot is acquired by eminent domain, or if part of a Lot is acquired by eminent domain leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award shall compensate the Owner for his Lot and its Allocated Interests, whether or not any Common Ground is acquired. Upon acquisition, unless the decree otherwise provides, that Lot's Allocated Interests are automatically reallocated to the remaining Lots, but the Allocated Interests in Section 2.5 shall not be modified. Any remnant of a Lot remaining after part of a Lot is taken is thereafter part of the Common Ground.

**15.4.2 Reallocations.** Except as provided in Section 15.4.1, if a part of a Lot is acquired by eminent domain, the award shall compensate the Owner for the reduction in value of the Lot and its interest in the Common Ground, whether or not any Common Ground is acquired.

**15.4.3 Acquisition of Common Ground.** In the event any public agency acquires all or any part of the Common Ground, the Association, acting through the Board, is hereby authorized to negotiate with such agency for such acquisition and to

execute instruments necessary to that purpose. Only the Association need be made party, and any proceeds received shall be paid to the Association.

**15.4.4 Recording.** The court decree shall be recorded in St. Louis County, Missouri.

**15.5 Termination of Subdivision.** Except in the case of a taking of all the Subdivision by eminent domain, the Subdivision may be terminated or sold only by agreement of at least 80% of the Members in Good Standing. In the event of termination, fee simple title to the Common Ground shall remain vested in the Association until sold. None of the authority of the Association or Board shall be affected by such termination. No such agreement of termination or sale shall be effective unless made and recorded at least one year in advance of the effective date of such termination or sale, and unless written notice of the proposed agreement of termination or sale is sent to every Owner at least 90 days in advance of any action taken.

**15.6 Term.** Except where permanent easements or other permanent rights or interests are herein created, this Declaration shall run with the land and bind the Property until the Subdivision is terminated or sold, or acquired by eminent domain.

**15.7 Effective Date.** Except as may otherwise be expressly provided, this Declaration shall be effective upon approval by the Owners and its recordation in the records of St. Louis County, Missouri.

**15.8 Applicability.** This Declaration shall be applicable to events and circumstances occurring after the Effective Date in Section 15.7 except as may be otherwise expressly provided.

IN WITNESS WHEREOF, the Board of Directors of Woodlyn Crossing Homeowners' Association hereby execute the foregoing and, by their signatures, certify that the Owners have approved the foregoing in accordance with the amendment provisions in the Original Indenture, and hereby execute this Declaration on the day and year first above written.

*This space is intentionally left blank.*

WOODLYN CROSSING HOMEOWNERS'  
ASSOCIATION

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its President

[No Seal]

Attest: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its Secretary

STATE OF MISSOURI                    )  
  ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020 before me  
\_\_\_\_\_ appeared \_\_\_\_\_, to me  
personally known, who, being by me duly sworn, did say that he/she is the President of  
the Board of Trustees, k/n/a Board of Directors of Woodlyn Crossing Homeowners'  
Association, a Missouri nonprofit corporation, which has no seal, and that said  
instrument was signed on behalf of said association, and that said person  
acknowledged said instrument to be his/her free act and deed and the free act and deed  
of the corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official  
seal in the County and State aforesaid, the day and year first above written.

My Commission Expires:

\_\_\_\_\_  
Notary Public



**EXHIBIT "A"**  
**WOODLYN CROSSING SUBDIVISION**  
**LEGAL DESCRIPTION**

Woodlyn Crossing, a subdivision, according to the plat thereof as recorded in Plat Book 256, Page 67 of the records of St. Louis County, Missouri

Woodlyn Crossing, Plat 2, a subdivision, according to the plat thereof as recorded in Plat Book 274, Page 25 of the records of St. Louis County, Missouri

**EXHIBIT "B"**  
**WOODLYN CROSSING SUBDIVISION**  
**ARCHITECTURAL STANDARDS AND CONDITIONS**

The following architectural standards and conditions shall apply to all Lots in the Subdivision as authorized in Article XI of the Declaration. Architectural Standards and Conditions may exceed the applicable Ordinance, but in no instance shall be less than whether or not such Exterior Alteration or New Construction is addressed within these Documents.

When reviewing an Application, in many instances, the role of the Board (or Committee) is to ensure that the Alteration does not adversely impact the community during, and after, the Alteration is made, such as parking, trash and debris removal, and ensuring timely completion.

The following architectural standards and conditions shall apply to all Lots in the Subdivision as authorized in Article XI of the Declaration. Architectural Standards and Conditions may exceed the applicable Ordinance, but in no instance shall be less than whether or not such Exterior Alteration or New Construction is addressed within these Documents.

When reviewing an Application, in many instances, the role of the Board (or Committee) is to ensure that the Alteration does not adversely impact the community during, and after, the Alteration is made, such as parking, trash and debris removal, and ensuring timely completion.

**Section 1. Examples of Exterior Alterations Requiring Approval.** The Community has complimentary architectural styles that are to be maintained, although it is not the intention that all of the Residences within the Community are identical.

Exterior Alteration shall not include exterior color of a Residence or landscaping so long as such landscaping does not impede sight lines for vehicles. Such considerations shall equally apply to the components of New Construction.

There are two categories of alterations: minor alterations and major alterations. This distinction between Minor and Major Alterations is in the scope of the review by the Association with Minor Alterations limited to the Association facilitating that the project be carried out with nominal impact on the community such as: (a) siding replacement, (b) any replacement, addition, removal, enlargement or reduction in a driveway, sidewalk, or walkway, (c) relocation or addition of any exterior HVAC, pool, or generator equipment, (d) roof (shingle) replacement, (e) tree removal if such removal requires approval by Ordinance, (f) exterior lighting to prevent direct or excess ambient light pollution onto adjacent Lots, Common Ground, or the street, (g) utility relocation, (h) water discharge pipes from sump pump, water retention wells, downspouts (including installation or replacement of new gutters and/or downspouts), and (i) grading or landscape drainage changes.

Minor exterior alterations will be routinely approved by the Directors, unless unusual circumstances apply. The intent of the approval process is to assure that the logistics of completing the alterations are satisfactory.

Examples of Major Exterior Alterations requiring approval are: (a) changes to roof lines or other profile of the house, (b) demolition of any structure or portion thereof, (c) replacement, addition, removal, enlargement or reduction of any hardscape such as patios, stonewalls, and decks, and (d) any work performed within the Lot that requires a permit by a political subdivision of the State of Missouri, with the exception of work wholly contained to the interior of the Residence.

As provided above, any Owner desiring to undertake exterior alterations must apply to the Board as provided in Article XI of the Declaration.

**Section 2. Residence Size and Placement.** No lot or building erected thereon shall be used for any purpose except a single family residence. All Residences shall have a minimum square footage of living space equal to, or in excess of, the existing Residence excluding any garage (originally constructed), decks, porches, and basement. The Residence shall not exceed two (2) stories in height (excluding walk-out basements in making this determination)

No Residence, building or other structure shall be erected within any setbacks as set forth on any Plat or by Ordinance. All Residences and alterations thereto shall be constructed onsite.

**Section 3. Additions.** As most exteriors are finished with brick and/or siding, any additions shall have substantially the same characteristics as the Residence, including, but not limited to, materials, scale, and design. All portions of any addition shall comply with all applicable Ordinances. Any Owner desiring to undertake exterior additions must apply to the Board as provided in Article XI of the Declaration.

**Section 4. Permits.** Exterior Alterations and New Construction shall be in compliance with all applicable Ordinances. Regardless of whether made a condition of approval, the Owner shall provide a copy of all permits issued by a political subdivision of the State within five (5) days upon written request from the Board.

**Section 5. Storage Sheds or other outbuildings.** Sheds and other outbuildings are not permitted.

**Section 6. Fences.** Fences are permitted. Fences are not allowed in front yards and may only be located within rear or side yards. On corner lots, fences may not be located in front or side yards facing the street. Fencing must be located entirely on the homeowner's property.

With respect to materials, fences shall be wood, vinyl, or wrought iron or aluminum wrought iron. Chain link is not permitted.

With respect to color, wood fences shall be painted or stained a natural wood color, vinyl fences shall be neutral in color, and wrought iron shall be black. With respect to heights, the fences shall not be between four (4) feet and six (6) feet in height.

With respect to location, the fence shall enclose the entire rear of the yard (perpendicular from the corner of the Residence to the Lot's boundary) or enclose an approved in-ground pool.

The fence application shall include detailed information as to: (1) the location of any existing fences, utility boxes, etc., (2) the name of the company installing the fence, and (3) whether the applicant has discussed the fence with their adjoining lot owners. For a fence for an in-ground pool, the fence application shall include the planned discharge of water, and approval shall be contingent upon the construction of an in-ground pool; said construction of the fence may not commence until substantial completion of construction of the associated in-ground pool.

No existing fence may be changed, altered, or replaced without prior written permission of the Board, and shall not be altered in such a manner that results in an increase in height, dimension, or length.

Gardening and decorative fencing are permitted so long as the fencing is black or white and does not exceed sixteen (16) inches in height.

With respect to invisible Fences/Animal Retention Systems, invisible fences have a required setback of five (5) feet from any boundary line of the property and from any sidewalk available for use by the public. Invisible fences must be entirely within the homeowner's property and are not allowed on common ground or utility easements.

**Section 7. Roofs.** No Residence or other structure shall be erected with a flat roof or false flat roof. All portions of the roof, including additions or roofs located over a patio or deck, of the Residence shall be of similar color.

**Section 8. Pools & Hot Tubs.** Only fully in-ground pools are permitted and the application shall include the required information related to fencing. Inflatable "kiddie pools" are permitted so long as they do not exceed 18" in depth. In addition to the plans submitted under Article XI, the application shall include proposed alterations adjacent to the pool to ensure there is no impact on drainage of storm water to adjacent lots.

Hot tubs are permitted so long as they are properly screened and located in its entirety no further than twenty (20) feet away from the exterior of the Residence, and no closer than ten (10) feet from the lot's boundary.

**Section 9. Electric Charging Stations.** Electric Charger Stations located outside of the Residence, such as the driveway or along the street, are prohibited. Electric Charging Stations are permitted within an enclosed garage. The use of a cord from a

permitted Electric Charging Station to a vehicle in a driveway shall not be a violation of this Section.

**Section 10. Batteries/Generators.** Home batteries or home generators are permitted so long as they are a fixture of the lot and are appropriately screened. Portable generators may only be used during times of loss of electricity and shall be stored within the Residence in accordance with the manufacturer's guidelines.

**Section 11. Solar Panels & Shingles.** This Section is intended to foster use of solar energy within the Community by providing guidance to Owners, contractors, engineers, architects and others providing services on behalf of Owners while preserving the architectural theme and restrictions of the community.

**(a) Review Process.** Any Owner desiring to install a solar energy system ("System") on his or her home must apply to the Board as provided in Article XI of the Declaration.

**(b) Application.** Prior to installing any System, the Owner shall apply to the Board for approval using such form as the Board may prepare and modify from time to time ("Application"). The Application shall include plans and specifications depicting (i) the location, design, dimensions, materials, and colors of the proposed System, (ii) construction drawings showing the number of collectors, attachment to the roof structure, and location of any exterior components, (iii) a sample or illustrated brochure of the proposed System, and (iv) calculations showing the number and area of the collectors planned ("Plans").

**(c) Review by Board.** The Board shall approve or reject the Application within 90 days after receipt of a complete Application and Plans. The Board shall state its decision in writing. A rejection shall state the reasons, and the Owner may make a new Application. If the Board does not act within the allotted time, the Application shall be deemed approved. Board determinations shall be upheld so long as made in good faith.

**(d) Criteria.** The following criteria apply to installation of Systems:

1. Panels (or shingles) and related fixtures shall be firmly secured in accordance with the manufacturer's recommendations, industry standards and local governmental building codes.

2. A copy of all applicable local governmental building permits, approval from electric utility and approval by the Fire Protection District/Department ("FPD") shall be provided to the Board before any work begins.

3. A copy of the contractor's certificate of insurance evidencing current general liability insurance of at least one million dollars and workers' compensation

insurance in accordance with the laws of the State of Missouri shall be provided to the Board before any work begins.

4. Installers shall comply with such reasonable regulations as may be adopted by the Board with respect to hours of operation, parking of workers' vehicles, storage of equipment and materials on site, etc.

5. Panels shall be installed flush with the roof of the home. A roof on the side of the home facing a street is not a rear roof.

6. Panels shall be mounted square to the roof and shall be no closer than two (2) feet to the edge of the roof.

7. To the extent possible, panels, trim and framing materials of the System shall be color treated to match the roofing material.

8. To the extent possible, trim and frame materials shall not be reflective.

9. To the extent possible, conduit, pipes, wiring, and equipment related to the System shall be hidden from view (by locating under the panels or inside the envelope of the home) or, if visible, shall be color treated to match the roofing material or exterior walls, as the case may be.

10. To the extent possible, components mounted on the exterior of the home such as inverters and switches shall be placed at inconspicuous locations and approved by FPD.

**(e) Work Change and Completion.** Installation of any System shall comply with the Plans approved by the Board, and shall be completed within six months of the date of approval. Any material change in the approved Plans shall be submitted for prior approval of the Board.

**(f) Certification.** Within three months after installation of the System is complete, the Owner shall provide the Board a Certificate of Operation indicating that the System is operational. The Board may, not more than once in a calendar year, request a new certificate that the System is operational. If the System is no longer operating, the Owner shall have sixty (60) days to repair and restore the System or shall remove the System and restore the Lot to its prior condition.

**(g) No Waiver.** Approval of an Application and Plans shall not waive the right to withhold approval of similar applications or plans submitted in the future for approval.

**(h) Variances.** An Owner may request a variance for any of the criteria and procedures in this Section by written request to the Board. The request for a variance shall be published to all Owners within ten (10) days of receipt to provide each Owner an opportunity to comment within thirty (30) days to the Board. After the comment

period has ended, the Board shall make a determination on the application pursuant to Section (b). If granted, the variance shall be in writing and does not preclude the Board from denying a variance in other circumstances. The inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

**(i) Obstructions.** The Association has no obligation to ensure the System is free from obstructions, such as trees from adjacent property or the common ground.

**(j) Enforcement.** Any noncompliance with this Section may be enforced as provided in Declaration.