



Proposed Changes to the Bylaws of

**KELBY CREEK PROPERTY OWNERS' ASSOCIATION**

A Missouri Mutual Benefit Nonprofit Corporation

**These items were approved by vote at the Kelby Creek 2019 Annual Meeting**

Article XII of the By-Laws vests authority in the Board of Directors to make changes to the Baws of the Corporation. It states that "The Board of Directors of the Corporation shall have the power to make, alter, amend and repeal the Bylaws of the Corporation at any regular or special meetings of the Board."

**I. First Amendment:**

Article IV governs Meetings of Members of the Corporation. Paragraph four provides for a quorum. It is proposed that Article IV be amended to increase the percentage necessary for a quorum from one-tenth of the aggregate voting power to one-fourth.

Paragraph 4 would be replaced as follows:

4. **Quorum.** The presence, in person or by proxy, of members at a meeting of the Members representing one-fourth of the aggregate voting power of all Members shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration or these Bylaws. If, however, a quorum shall not be present or represented at any meeting, the Members entitled to vote at that meeting shall have the power to adjourn the meeting from time to time, without notices other than announcement at the meeting, until a quorum is present or represented."

It is suggested that this be noticed to the members and voted on and then ratified by the new Board of Directors at the annual meeting.

**II. Second Amendment:**

Article VII governs the terms of the officers of the Corporation. Paragraph 2 specifically provides that the officers serve at the pleasure of the Board of Directors for one (1) year terms or until a successor is appointed. It is proposed that Article VII Paragraph 2 be amended to have staggered terms.

Paragraph 2 regarding Terms is proposed to be amended as follows:

The existing second sentence of Article VII paragraph 2 of the Bylaws as to Terms is deleted and it shall now read: "**At each annual meeting of the Board of Directors thereafter, the Board of Directors shall elect officers to serve at the pleasure of the Board of Directors for a staggered terms as follows: President for three years; Treasurer for two years, Vice-President for two years, and Secretary for one year all to serve until their successors are duly elected and qualified.**"

It is suggested that this be noticed to the members and voted on and then ratified by the new Board of Directors at the annual meeting.

This would be included in a Resolution of the Board and indicate the vote of the Board and the vote at the annual meeting of members. Thereafter, these changes would be maintained with the original Bylaws.

**BYLAWS**  
**OF**  
**KELBY CREEK PROPERTY OWNERS ASSOCIATION**  
**a Missouri Mutual Benefit Nonprofit Corporation**

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**ARTICLE I**

**Office, Records, Seal**

1. **Registered Office and Registered Agent.** The Corporation shall have and continuously maintain a registered office and registered agent in the State of Missouri. The address of the registered office and the name of the registered agent of the Corporation in the State of Missouri stated in the Articles of Incorporation may be changed from time to time by the Board of Directors of the Corporation in any manner permitted by law.

2. **Records.** The Corporation shall keep correct and complete books and records of account, shall keep minutes of the proceedings of its Board of Directors and of committees having any of the authority of the Board of Directors, and shall keep at its registered office a record giving the names and addresses of the Board of Directors and officers.

3. **Seal.** The corporate seal, which may be altered at pleasure, shall have inscribed thereon the name of the Corporation. The corporate seal may be used by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

**ARTICLE II**

**Definitions**

1. **Properties.** The term "**Properties**" shall mean the Final Plat of Kelby Creek Subdivision, a subdivision in Nixa, Christian County, Missouri, according to the recorded plat thereof, and any other additions thereto to which the Declaration is made applicable, and all the lots and common area therein.

2. **Declaration.** The term "**Declaration**" shall mean that certain Declaration of Restrictions of Kelby Creek Subdivision, dated 7-22, 2009, relating to the Properties and recorded in Book 2009 at Page 11360 in the Office of the Recorder of Deeds for Christian County, Missouri, as the same may be amended or supplemented and made applicable to additional Properties from time to time.

3. **Developer.** The term "**Developer**" shall mean Sundance Valley Development, L.L.C., a Missouri limited liability company, and its successors or assigns.

4. **Lot.** The term "**Lot**" shall mean or refer to any parcel of real property designated as a lot on any recorded subdivision map of the Properties.

5. **Owner.** The term "**Owner**" shall mean the recorded owner, whether one or more persons or entities, of a fee or divided interest in any Lot. The foregoing does not include any persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. Except as stated otherwise in this Declaration, the term "**Owner**" shall not include a lessee or tenant.

6. **Members.** The term "**Members**" shall mean or refer to each Owner entitled to membership in the Corporation.

7. **Common Areas.** The term "**Common Areas**" shall mean all real property, including improvements and fences thereon, owned by the Association, or to which the Association has rights by easement, license or other agreement, or designated or shown as common area, detention basins or drainage areas on the Final Plat, as recorded, or lying outside the Property described on the Final Plat if so designated by the Developer, including any amendment or additions thereto, and intended for the common use and enjoyment of the Owners including, but not limited to, detention basins and the landscaped portion of any street, medians, traffic islands, cul-de-sac islands, or landscaped areas within any public street within the subdivision, any private streets, entry roads, curb and gutter, sidewalks, gates and other improvements as shown on the Final Plat of Kelby Creek Subdivision recorded in the Office of the Recorder of Deeds for Christian County, Missouri, and such other real property as may be transferred to the Association by the Developer.

### ARTICLE III

#### Corporation Membership

1. **Membership.** Every Owner of a Lot shall be a Member of the Corporation.

2. **Voting Rights in the Corporation.** The Corporation shall have two classes of voting memberships, Class A and Class B, as follows:

(a) Every Owner, other than the Developer (who initially shall be a Class B Member), shall be a Class A Member of the Corporation. Class A membership shall be appurtenant to and may not be separated from Lot ownership and the membership shall be deemed to be conveyed by any instrument which transfers title to a Lot to an Owner, regardless of whether such instrument mentions or describes the membership. Class A Members shall be entitled to one (1) vote for each Lot that they own. When more than one person owns any Lot, all such persons shall be Class A Members but shall be entitled to cast only one (1) vote for the Lot, and the vote shall not be fragmented but shall be exercised as the Owners among themselves determine. In the event multiple Owners are unable to determine among themselves as to how the vote shall be exercised, and if more than one person casts differing votes for any one Lot, whether in person or by proxy, then the votes shall be disregarded and the presence of any of the Owners shall be disregarded in determining whether a quorum is present. In no event shall more than one Class A vote be cast with respect to any one Lot.

(b) The Class B Member(s) of the Corporation shall be the Developer. The Class B Member(s) shall be entitled to ~~ten~~ (10) votes for each Lot owned by the Developer.

(c) The Developer owning unplatted property subject to the Declaration will estimate the number of platted lots which could be obtained by the platting of the property. The Class B Member owning the unplatted property will be entitled to additional votes in the amount of ~~ten~~ times the estimated number of platted lots. At such time as the unplatted areas of Kelby Creek Subdivision are platted, the Class B Member's votes will be adjusted to reflect the actual number of platted lots obtained from the previously unplatted area. The Developer shall not be obligated to plat any unplatted areas of Kelby Creek Subdivision.

3. **Surrender of Class B Memberships.** The Class B Memberships of the Developer shall terminate and be converted to Class A membership upon the happening of the first to occur of the following events:

(a) The twentieth (20<sup>th</sup>) anniversary of the date of the Declaration.

(b) The total number of votes entitled to be cast by Class A Members equals or exceeds the total number of votes entitled to be cast by the Class B Members, **provided, however**, that the Class B memberships shall be revived during any period of time occurring before the 20<sup>th</sup> anniversary of the date of the Declaration when, by annexation of additional real property as a part of the Property, additional Lots owned by the

Developer exist that, when added to the other Lots then owned by the Developer, result in the Developer having more than fifty percent (50%) of the votes entitled to be cast by Members assuming the Developer were to have ~~ten~~ votes for each Lot owned by the Developer, rather than a single vote for each Lot owned by the Developer.

(c) The Developer's determination to terminate its Class B membership, which determination may be made in the Developer's sole discretion.

From and after the happening of the first of these events, the Class B Member shall be deemed a Class A Member and shall receive one (1) Class A vote for every ~~ten~~ (10) Class B votes outstanding at the time the Class B membership is terminated.

4. **Excluded from Membership.** Persons who hold an interest in a Lot merely as security for the performance of an obligation are not considered Members of the Corporation.

#### ARTICLE IV

##### Meetings of the Members

1. **Annual Meetings.** The annual meeting of the Members shall be held on the 20th day of May each year, commencing in 2010, at a time and place selected by the Corporation's Board of Directors.

2. **Special Meetings.** Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of one-fifth of all votes of the Members.

3. **Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of the notice, postage prepaid, not less than fifteen (15) days nor more than sixty (60) days before the meeting, to each Member, addressed to the Member's address last appearing on the books of the Corporation or supplied by the Member to the Corporation for notice purposes. The notice shall specify the place, day and hour of the meeting. In the case of a special meeting, the notice shall state the purpose of the meeting.

4. **Quorum.** The presence, in person or by proxy, of Members at a meeting of the Members representing one-tenth of the aggregate voting power of all Members shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration or these Bylaws. If, however, a quorum shall not be present or represented at any meeting, the Members entitled to vote at that meeting shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented.

5. **Proxies.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Corporation's Secretary. Every proxy shall be revocable and shall automatically cease upon transfer by the Member of his Lot.

## **ARTICLE V**

### **Board of Directors**

1. **General.** The business and affairs of the Corporation shall be managed by a Board of Directors of three persons, who need not be Members.

2. **Election.** The initial Board of Directors shall be named in the Articles of Incorporation. Class B Member(s) shall be entitled to elect at least one (1) director, or if the number of directors is greater than three, at least one-third of the directors. Each director other than the initial directors and the directors subsequently elected solely by the Class B Member(s) shall be elected by the vote of Members of all Classes at the annual meeting of the Members. Each director shall hold office for a term of one year or until the director's successor shall be duly elected and qualified.

3. **Vacancies.** Vacancies among the directors resulting from the death, resignation, incapacity or disqualification of any director, or by reason of an increase in the number of directors due to an amendment of the Bylaws, shall be filled by majority vote of the remaining directors. A director elected to fill a vacancy shall serve for the unexpired term of the director's predecessor or until such director's successor shall have been duly elected and qualified.

4. **Compensation.** No director of the Corporation shall receive compensation for any service that the director may render to it or reimbursement for any expenses incurred by the director unless and then only to the extent that such services and reimbursement are necessary to carry out the exempt purposes of the Corporation and are reasonable in amount.

5. **Committees.** The Board of Directors may designate one or more committees that shall consist of two or more directors. Such committees shall be designated by resolution of the Board of Directors and shall have the authority of the Board of Directors in the management of the Corporation to the extent provided in said resolution and permitted by law. The Board of Directors shall create a nomination committee which shall nominate persons for election to the Board of Directors at each annual meeting of the Members. The nomination committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Nominations may also be made from the floor at any annual meeting of the Members.

6. **Executive Committee.** The Board of Directors may, by resolution adopted by a majority of the whole Board of Directors, designate two or more directors to

constitute an Executive Committee, which committee, to the extent provided in said resolution, shall have and may exercise any or all of the authority of the Board of Directors in the management of the Corporation. The members of the committee may take actions by written consents in lieu of meetings and may participate in meetings by means of conference telephone or similar communications equipment in the same manner as the Board of Directors. The Executive Committee shall keep regular minutes of its proceedings, which shall be recorded in the minute book of the Corporation. The Secretary or an Assistant Secretary of the Corporation may act as Secretary for the committee if the committee so requests.

## ARTICLE VI

### Meetings of the Board of Directors

1. **Place of Meeting.** All meetings of the Board of Directors, annual, regular, or special, may be held at any place within or without the State of Missouri as may be determined from time to time by resolution or consent of the Board of Directors.

2. **Annual Meetings.** The annual meeting of the Board of Directors of the Corporation shall be held on the 20th day of March of each year, commencing in 2010, if not a legal holiday, and if a legal holiday, then on the next secular day. At every such annual meeting all directors in office, including any director whose term is expiring, shall fill any vacancies on the Board, whether such vacancy is due to the expiration of a director's term or otherwise. Every director so elected shall serve for the term for which he or she was elected and until election of his or her respective successor. After the election of directors at an annual meeting, the directors shall transact any and all other business which may be brought before the meeting.

3. **Regular Meetings.** Regular meetings of the Board of Directors of the Corporation shall be held at such times as shall be prescribed by resolution from time to time.

4. **Special Meetings.** Special meetings of the Board of Directors of the Corporation may be held at any time, and for any purpose or purposes.

5. **Notice.** Written or printed notice stating the date, place and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than five (5) days nor more than forty (40) days before the date of the meeting, either personally or by mail, by or at the direction of the President, or the Secretary, or the officers or persons calling the meeting, to each member of the Board of Directors. If mailed, such notice shall be deemed delivered when deposited in the United States mail addressed to the member of the Board of Directors at his address, as it appears upon the records of the Corporation, with postage thereon prepaid.

6. **Quorum.** At all meetings of the Board of Directors a majority of the whole Board of Directors shall constitute a quorum for the transaction of business. The act of the majority of the directors present at any such quorum shall be the act of the Board of Directors. Less than a quorum of the Board of Directors may adjourn a meeting successively until a quorum is present.

Unless otherwise provided in the Articles of Incorporation, members of the Board of Directors may participate in any meeting of the Board by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at the meeting.

Any action which is required to be or which may be taken at a meeting of the Board of Directors may be taken without a meeting if all the directors severally or collectively sign a written consent which sets forth the action to be taken. Such consents shall have the same force and effect as the unanimous vote of the directors at a meeting duly held and may be stated as such in any certificate or document executed on behalf of the Corporation. The Secretary shall file such consents with the minutes of the meetings of the Board of Directors.

7. **Waiver.** Any notice required to be given to a director by any provision of these Bylaws, the Articles of Incorporation or any law may be waived in a writing signed by such director, whether before, at or after the time stated therein, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where such director attends the meeting for the express purpose, and so states at the opening of the meeting, of objecting to the transaction of any business because the meeting is not lawfully called or convened.

## ARTICLE VII

### Officers

1. **General.** The officers of the Corporation shall consist of a President, a Secretary and a Treasurer and such other officers as the Board of Directors may designate from time to time. The President of the Corporation shall be a member of the Board of Directors. Any two or more offices may be held by the same person.

2. **Terms.** The initial officers of the Corporation shall be elected by the initial Board of Directors at the first meeting of that body, to serve at the pleasure of the Board of Directors until the first annual meeting of the Board of Directors or until their successors are duly elected and qualified. At each annual meeting of the Board of Directors thereafter, the Board of Directors shall elect officers to serve at the pleasure of the Board of Directors for a term of one (1) year or until their successors are duly elected and qualified.

3. **Removal.** Any officer elected or appointed by the Board of Directors and any employee or agent of the Corporation may be removed or discharged by the Board of Directors whenever in its judgment the best interest of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

4. **Compensation.** No officer of the Corporation shall receive compensation for any service that he or she may render to it or reimbursement for any expenses incurred by him or her unless and then only to the extent that such services and reimbursement are necessary to carry out the exempt purposes of the Corporation and are reasonable in amount. Salaries and compensation of all other agents and employees of the Corporation, if any, may be fixed, increased or decreased by the Board of Directors.

5. **Vacancy.** Vacancies caused by the death, resignation, incapacity, removal or disqualification of an officer of the Corporation shall be filled by the Board of Directors at any regular meeting, or at any special meeting called for that purpose, and such person or persons so elected to fill any such vacancy shall serve at the pleasure of the Board.

6. **Delegation of Authority.** The Board of Directors from time to time may delegate any of the functions, powers, duties and responsibilities of any officer to any other officer or to any agent or employee of the Corporation or other responsible person. In the event of any such delegation, the officer from whom any such function, power, duty or responsibility has been transferred shall be thereafter relieved of all responsibility for the proper performance or exercise thereof.

7. **President.** The President shall be elected from among the members of the Board of Directors and shall preside at all meetings of the Board of Directors. The President shall be the chief executive of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect, execute all documents requiring a seal under the seal of the Corporation and have the general duties, powers and responsibilities of a president of a Corporation. In addition, the President shall have such other or further duties and authority as may be prescribed elsewhere in these Bylaws or from time to time by the Board of Directors.

8. **Vice-President(s).** The Vice-President(s), if one or more are elected, shall work in cooperation with the President, perform such duties as the Board of Directors shall assign to the Vice President(s), and in the absence or incapacity of the President shall be vested with all the powers and perform all the duties of the office of President. The Vice-President(s) shall have the general duties, powers and responsibilities of a vice-president of a Corporation and shall have such other duties and authority as may be prescribed elsewhere in these Bylaws or from time to time by the Board of Directors.

9. **Secretary.** The Secretary shall attend all the meetings of the Board of Directors and shall record or cause to be recorded all votes taken and the minutes of all

proceedings thereof in the minute book of the Corporation to be kept for that purpose. The Secretary shall give or cause to be given notice of all meetings of the Board of Directors, shall be the custodian of all the books, papers and records of the Corporation and of the corporate seal, shall affix the seal when authorized by the Board of Directors or the President to all proper instruments, attesting same, and at such reasonable times as may be requested shall permit an inspection of the books, papers and records of the Corporation by any director. The Secretary shall be the administrative and clerical officer of the Corporation under the supervision of the President and the Board of Directors, and the Secretary shall have such other or further duties or authority as may be prescribed elsewhere in these Bylaws or from time to time by the Board of Directors.

10. **Treasurer.** The Treasurer shall have the responsibility for the safekeeping of the funds and securities of the Corporation and shall keep or cause to be kept full and accurate accounts of receipts and disbursements of the Corporation in books belonging to the Corporation. The Treasurer shall keep or cause to be kept all other books of account and accounting records of the Corporation and shall deposit or cause to be deposited all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse or permit to be disbursed the funds of the Corporation, as may be ordered or authorized generally by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and to the Board of Directors, whenever they may require it, an account of all transactions under the Treasurer's jurisdiction and the financial condition of the Corporation. The Treasurer shall render an annual report of the financial condition of the Corporation to the members of the Board of Directors. The Treasurer shall perform such other duties and shall have such other responsibilities and authority as may be prescribed elsewhere in these Bylaws or from time to time by the Board of Directors and shall have the general duties, powers and responsibilities of a treasurer of a Corporation.

## ARTICLE VIII

### Custodians and Depositories

1. **Depositories and Checks.** The moneys and funds of the Corporation shall be deposited in such manner as the directors shall designate in such banks, trust companies or nonprofit corporations who provide such services as the directors may designate, and shall be drawn out by checks signed in such manner as may be provided by resolution or resolutions adopted by the Board of Directors.

2. **Bond.** Any officer or employee of the Corporation handling money or securities of the Corporation may be bonded at the Corporation's expense in such amounts as may be prescribed by the Board of Directors.

## ARTICLE IX

### Indemnification of Directors, Officers and Others

1. **Direct Action.** The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to or summoned as a witness in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative, legislative, investigative, or of any different kind, other than an action by or in the right of the Corporation, by reason of the fact that such person is or was a director, member, officer, employee or agent of the Corporation, against liability and expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

2. **Derivative Claim.** The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to or summoned as a witness in any threatened, pending or completed action, suit or proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, member, officer, employee or agent of the Corporation against liability and expenses, including attorneys' fees, actually and reasonably incurred by such person in connection with the defense or settlement of such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation.

3. **Expenses.** To the extent that a director, member, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraphs 1 and 2 of this Bylaw or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by such person in connection with the action, suit or proceeding.

4. **Authorization.** Any indemnification under Paragraphs 1 and 2 of this Bylaw, unless ordered by a court, shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, member, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in this Bylaw. Such determinations shall be made by the Board of Directors by a majority vote of a quorum of directors who were not

parties to the action, suit or proceeding, or if such a quorum is not obtainable or, even if obtainable, by independent legal counsel in a written opinion.

5. **Time of Payment.** Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of the action, suit or proceeding as authorized by a majority vote of a quorum of the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the respective director, member, officer, employee or agent to repay such amount unless it shall ultimately be determined that such person is entitled to be indemnified by the Corporation as authorized in this Bylaw.

6. **Cumulative Rights.** The indemnification provided by this Bylaw shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, insurance policy, vote of disinterested directors or otherwise, both as to action in an official capacity and as to action in any other capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person

7. **Additional Indemnification.** The Corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director, officer, employee or agent, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred by such person in connection with such action, suit or proceeding, unless such person's conduct in connection with the matter for which indemnity is sought has been finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful misconduct.

8. **Insurance.** The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, member, officer, employee or agent of the Corporation, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Bylaw.

9. **Rights.** The rights provided to any person by this Bylaw are contractual and shall be enforceable against the Corporation by such person, who shall be presumed to have relied thereon in serving or continuing to serve the Corporation in any of the capacities designated above. The rights provided to any person by this Bylaw shall inure to the benefit of such person's legal representative, and no elimination of or amendment to this Bylaw shall deprive any person of rights hereunder.

## **ARTICLE X**

### **Assessments**

As more fully provided in the Declaration, each Member is obligated to pay to the Corporation assessments that are secured by a continuing lien upon the assessed Lot. The Board of Directors shall have complete discretion and control over all assessments made pursuant to the Declaration. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate set forth in the Declaration, and the Corporation may bring an action at law against the Member personally obligated to pay the same or foreclose the lien against the Lot, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of the assessment. The City of Nixa may also assess the Lots for expenses of maintenance of the Common Areas, if necessary due to the failure of the Corporation to do so, and as more fully set forth in the Declaration. No Member may waive or otherwise escape liability for assessments by non-use of the Common Areas or abandonment of a Lot.

## **ARTICLE XI**

### **Dissolution**

Upon the Corporation's dissolution, and (1) following the discharge of or making provision for the discharge of the Corporation's liabilities and obligations, and (2) the returning, transferring or conveying of assets held by the Corporation on a condition requiring such return, transfer or conveyance upon the Corporation's dissolution, the Corporation shall transfer its remaining assets to the Members on a pro rata basis determined by the number of Lots owned by a Member in relation to the total number of Lots contained in the Corporation.

## **ARTICLE XII**

### **Amendments**

The Board of Directors of the Corporation shall have the power to make, alter, amend and repeal the Bylaws of the Corporation at any regular or special meeting of the Board.

## CERTIFICATE

I, the undersigned, hereby certify that I am the Secretary of Kelby Creek Property owners Association, a Missouri nonprofit Corporation, and the keeper of its corporate records; that the foregoing Bylaws were duly adopted by said Corporation's Board of Directors as and for the Bylaws of said Corporation, effective as of 7-23, 2009; that the foregoing constitute the Bylaws of said Corporation; and that such Bylaws are now in full force and effect.

  
Secretary

Recording Date/Time: 08/01/2018 at 07:55:40 AM

Instr #: 2018L10085

Book: 2018 Page: 9977

Pages: 4

Fee: \$33.00 S



**Electronically Recorded**  
Central Bank of Ozarks

Kelly Hall  
Recorder of Deeds

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**Title of Document:** Certificate of Completion

**Date of Document:** July 31, 2018

**Grantor(s):** Central Bank of the Ozarks f/k/a Empire Bank  
1800 South Glenstone  
Springfield, MO 65804

**Grantee(s):** Kelby Creek Property Owners Association  
P.O. Box 1649  
Nixa, MO 65714

**Mailing Address(s):** When Recorded, please mail to:  
Lee J. Viorel  
901 E. St. Louis Street, 20<sup>th</sup> Floor  
Springfield, MO 65806

**Legal Description:** ALL OF LOT ONE, FINAL PLAT SUNDANCE, a subdivision in the City of Nixa, Christian County, Missouri according to the recorded plat thereof.

**Reference Book and Page(s):** Book 2009 Page 11360 Christian County

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**DECLARATION AND CERTIFICATION OF SUBSTANTIAL COMPLETION**

**THIS DECLARATION AND CERTIFICATION OF SUBSTANTIAL COMPLETION (hereinafter “Declaration”)**, made on the 31st day of July, by Central Bank of the Ozarks f/k/a Empire Bank (hereinafter “Bank”), 1800 S. Glenstone, Springfield, MO 65804 as the Developer under the Declarations of Restrictions of Kelby Creek Subdivision states as follows.

WITNESSETH:

WHEREAS, on or about April 9, 2008 Bank entered into a deed of trust with Sundance Valley Development, LLC (hereinafter “Sundance”) wherein Sundance pledged the real estate described herein to Bank as collateral for certain obligations and which deed of trust was filed of record in the Office of the Recorder of Deeds of Christian County, Missouri, on April 11, 2008 and recorded in Book 2008 at Page 5405 (hereinafter “Deed of Trust”); and

WHEREAS, on or about July 23, 2009 Sundance caused to be recorded certain restrictive covenants wherein Sundance imposed certain restrictions on the real estate for the unified and controlled development of the real estate which restrictive covenants (hereinafter “Restrictive Covenants”) were recorded with the Christian County Recorder in Book 2009 at Page 11360; and

WHEREAS, on April 30, 2013 (hereinafter the “Sale Date”) Bank foreclosed under the Deed of Trust dated April 9, 2008, and Bank was the successful bidder; and

WHEREAS, subsequent to the Sale Date, Bank received all Declarant rights from Sundance and the Assignment was recorded with the Christian County Recorder of Deeds as of June 13, 2013 and recorded in Book 2013 at Page 8054; and

WHEREAS, Bank has sold all of the lots in Phases 1-6 and seeks to record this Declaration and Certificate of Substantial Completion as contemplated in the Restrictive Covenants.

NOW, THEREFORE, exercising its rights as the Developer and Declarant makes and records this Declaration:

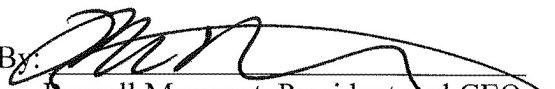
1. Recitals. Bank acknowledges that the recitals are an integral part of this Declaration and adopts the recitals as if fully set forth here.
2. Defined Terms. All terms which are capitalized herein and not further defined have the meaning as set forth in the Restrictive Covenants.
3. Certificate of Substantial Completion. Bank as Developer acknowledges that all of the platted Lots are sold which it owns subject to the Restrictive Covenants and Developer relinquishes its rights under the Covenants and pursuant to their terms with the exception that Bank shall have the right to collect from all lot owners the one-time special assessment of \$1,250.00, and file a lien if not paid as specified in the Board Resolution dated June 29, 2018. [It

is Bank's intent that this Declaration shall have no effect on Preliminary Plat Phase VII and Lot 59 Phase II which are not subject to the Restrictive Covenants and continue to be owned by Bank for future development].

4. Authority. Bank acknowledges and states that it is the holder of Declarant Rights, is the Developer and has the right, power and authority to execute this document to fulfill the terms of the Restrictive Covenants as to substantial completion.

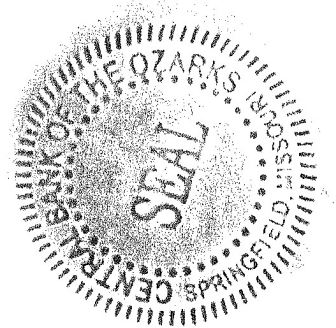
IN WITNESS WHEREOF, the undersigned has set his hand and seal this 31st day of July, 2018.

CENTRAL BANK OF THE OZARKS  
f/ka/ EMPIRE BANK

By:   
Russell Marquart, President and CEO

(Corporate Seal)


Attest: 



STATE OF MISSOURI     )  
  )     ss.  
COUNTY OF GREENE    )

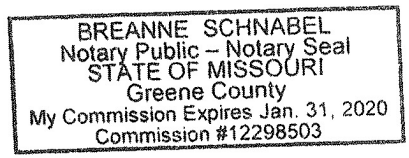
On this 31 day of July, 2018, before me appeared **Russell Marquart**, to me personally known, who, being by me duly sworn did say that he is the President and CEO of Central Bank of the Ozarks f/k/a Empire Bank, and that said instrument was signed and sealed on behalf of said corporation or association by authority of its board of directors or trustees, and said Russell Marquart acknowledged said instrument to be the free act and deed of said corporation or association and that said corporation has no corporate seal.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in Springfield, Missouri, the day and year first above written.

  
Breanne Schnabel, Notary Public

My Commission expires: Jan. 31, 2020

Exhibit "A"



ALL OF LOT ONE, FINAL PLAT SUNDANCE, a subdivision in the City of Nixa,  
Christian County, Missouri according to the recorded plat thereof.