

Recorded in Christian County, Missouri

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Instr #: 2016L14193

Book: 2016 Page: 14047

Pages: 12

Fee: \$57.00 S



Electronically Recorded  
Central Bank of Ozarks

Kelly Hall  
Recorder of Deeds

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**Title of Document:** Restated Everwood Roadway Maintenance Agreement

**Date of Document:** August 31, 2014

**Grantor(s):** Central Bank of the Ozarks f/k/a Empire Bank  
P.O. Box 3397  
Springfield, MO 65808

**Grantee(s):** Central Bank of the Ozarks f/k/a Empire Bank & Other lot owners

**Mailing Address(s):** WHEN RECORDED PLEASE MAIL TO:  
Lee J. Viorel  
c/o Lowther Johnson, Attorneys at Law, LLC  
901 St. Louis Street, 20<sup>th</sup> Floor  
Springfield, MO 65806

**Legal Description:** See Page 2 for Descriptions of roadway and lots encumbered

**Reference Book and Page(s):** Instrument #2014L06470  
Book 2014 Page 6410 (Christian County)

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**THIS DOCUMENT SUBJECT TO ANNUAL ASSESSMENTS**

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RESTATED EVERWOOD ROAD MAINTENANCE AGREEMENT

THIS RESTATED EVERWOOD ROAD MAINTENANCE AGREEMENT (hereinafter "Agreement") made and entered into this 31st day of August, 2016, by **Central Bank of the Ozarks f/k/a Empire Bank** (hereinafter "Bank") which is the owner of lots (3, 4, 13, 14 and 16 Phase III Kelby Creek), and **Bill and Karen Robertson** (Lot 12 Phase III Kelby Creek), **Austin and Brandee Arndt** (Lot 11 Phase III Kelby Creek), **Adam and Kacey Elmore** (Lot 10 Phase III Kelby Creek), **Katherine A. Pankiewicz, Trustee of the Katherine A. Pankiewicz Declaration of Trust U/T/A dated February 3, 1999** (Lots 8 and 9 Phase III Kelby Creek), **Dan and Susan Carter** (Lot 7 Phase III Kelby Creek), **Paul H. Peckman and Gail S. Steuerwald Peckman as trustees of the Paul H. Peckman and Gail S. Steuerwald Peckman Revocable Trust dated May 7, 2008** (Lot 6 Phase III Kelby Creek), **Paul and Lisa Yutelser** (Lot 2 Phase III Kelby Creek), **Dennis and Glenda M. Boesiger** (Lot 17 Phase III Kelby Creek) **Andrew and Sabrina Morgan** (Lot 15 Phase III Kelby Creek), **Joshua Stewart and Breanne Stewart** (Lot 5 Phase III Kelby Creek), **Camela Cave Porter** (Lot 1 Phase III Kelby Creek) and **Keith and Stacey Webb** (Lot 18 Phase III Kelby Creek) (hereafter "Parcel Owners" too include subsequent successors and assigns).

**RECITALS:**

WHEREAS, Everwood Way is a private road situated in Kelby Creek, a planned unit development which is platted as Kelby Creek Phase III and recorded with the Recorder of Deeds for Christian County in Plat Book H Page 705 Slide 3374 and located in Nixa, Christian County, Missouri; and

WHEREAS, Everwood Way is legally described as follows:

**ALL OF LOT CA6 IN KELBY CREEK PHASE 3, A SUBDIVISION IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.**

WHEREAS, the Parcel Owners listed above are the owners of **Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of Kelby Creek Phase 3, a subdivision in the City of Nixa, Christian County, Missouri according to the recorded plat thereof** and are users of the "Roadway Property" commonly known as Everwood Way and described on the Kelby Creek Phase III plat (Lot CA6) recorded with the Christian County Recorder's Office, it being the intent that all such lots be bound hereby even if the specified lots may have other roadway access; and

WHEREAS, the lot owners along Everwood Way desire to enter into this Agreement regarding the costs of maintenance and improvements to Everwood Way in the future and to make future owners aware of this Agreement; and

WHEREAS, it is agreed that future parcel owners will be bound by this Agreement in that Everwood Way is a private road and that any successor shall be so notified and bound by this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged the parties agree as follows:

1. Vehicle and Pedestrian Access Easement. The Roadway Property shall be subject to a perpetual, nonexclusive easement for ingress and egress granting access to all the Parcel Owners and their occupants, agents, employees, guests, services and emergency vehicles.

2. Utility Easements. The Roadway Property shall be subject to a perpetual, nonexclusive public utility easement for the purpose of permitting above and below ground public utilities to be installed and maintained as to the Parcel Owners abutting the Roadway Property.

3. Road Committee. A Road Committee of up to three persons shall be elected by a majority of the Parcel Owners, and will serve a term as agreed to by the Parcel Owners and can be replaced or renewed at any time by a simple majority vote of the Parcel Owners. The Road Committee shall be responsible for monitoring the condition of the road surface and initiating maintenance activities as needed to maintain the minimum road surface standards. The Committee shall keep all records for the Parcel Owners including but not limited to bank records and payment records for assessments.

4. Road Maintenance. Road maintenance and road improvements will be undertaken and made whenever necessary to maintain the road in good operating condition at all times and to insure the provision of safe access by emergency vehicles. A majority vote of Parcel Owners is required for any road improvements and to accept the bid for any road improvement contract. Before authorizing the expenditures for future road improvements, Parcel Owners will be notified by the Road Commission Agent, cost estimates will be provided, and a majority agreement will be required. If any Parcel Owner performs improvements, maintenance, repairs or replacements without the approval of the other lot owners abutting the Roadway Property prior to performing such work, the lot owner performing such work shall be liable for the entire cost thereof, unless such work is deemed an emergency. However, where emergency repairs are necessary neither majority vote nor prior approval is necessary before making such improvements or undertaking such maintenance.

5. Parking. For the safety of the Parcel Owners, no machinery, trailers, vehicles or other property may be stored or parked upon the private road except parking of vehicles for limited periods of time (not to exceed twelve hours) in length.

6. Cost Sharing. Road maintenance, snowplowing and road improvement costs shall be shared on a pro-rata basis between the Parcel Owners having access to and abutting the Roadway Property. Each Parcel Owner's share of costs incurred shall be determined as follows: Pro-rated cost share will be based upon the number of lots abutting the Roadway Property. To offset any cost and to provide a fund to be first used for such repairs and maintenance, each Parcel Owner shall pay an initial \$100 fee at the time of purchase of the lot (including builders where no construction has been done) and thereafter an annual payment of \$100 per year. The sums shall be maintained in a non-interest bearing account and entitled the "Everwood Road Account" for the express use of this Agreement. The initial fee shall be collected when a lot is sold by the title company and disbursed to the Everwood Road Account. Bank agrees that it will pay for the initial repair and sealing of the roadway which shall be completed during 2016. The \$100 per lot annual dues will begin in January of 2017 for each lot owner, including any bank owned lots and new lot purchases. It is the intention that any repairs be paid from monies in the account before there is any assessment on the Parcel Owners on a pro rata basis. If there is a major assessment at some point and a lot is sold any such major assessment shall be pro-rated.

7. Prepayment. Payment of the \$100 dollar annual fee for maintenance, snowplowing and improvement costs will be made to the Everwood Road Account by each Parcel Owner. Annually on or before a date as specified by the Road Commission Agent, each Parcel Owner will contribute their annual payment. The Road Commission Agent shall send each Parcel Owner a two week notice of the annual payments due.

8. Definition of Parcel. A parcel is defined as a land entity having a platted subdivision number abutting the Roadway Property. Each parcel is assessed and granted one vote regardless of the number of owners. If a parcel is owned by more than one person, all of the owners of the parcel will collectively be referred to as the "parcel owner" for purpose of this Agreement and will be entitled to one collective vote.

9. Snow Plowing. The Roadway Property shall be snowplowed as necessary so as to permit year round access. The cost shall be paid from the Everwood Road Account. Individual driveway snowplowing, if desired, will be invoiced to the parcel owners directly by the snow plow contractor.

10. Checking Account. The Road Commission Agent shall establish and maintain the Everwood Road Account with a local bank, and will prepare and distribute to the Parcel Owners an annual income and expense report and a year-end balance sheet, accounting for all funds received and disbursed.

11. Effective Term. This Agreement shall be perpetual, and shall encumber and run with the land as long as the road remains a private roadway. This Agreement shall be recorded and shall be disclosed to any subsequent purchaser and each purchaser shall acknowledge such at closing and that they are bound by this Agreement and pay their initial \$100 dollar deposit which shall be collected at close.

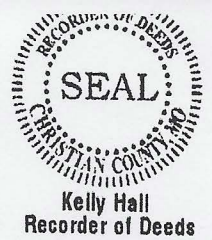
12. Binding Agreement. This Agreement shall be binding upon the parties hereto, their respective heirs, executors, administrators and assigns of lot owners along Everwood Way.

13. Amendment. This Agreement may be amended only by a two-thirds majority vote of all of the land owners abutting the Roadway Property.

14. Enforcement. This Agreement may be enforced by a majority of the Parcel Owners by recording a lien against any non-paying Parcel Owners and foreclosure of the same as with the statutory provisions for power of sale foreclosure, the Road Commission Agent to act as trustee. If a court action or lawsuit is necessary to enforce this Agreement, the party commencing such action or lawsuit shall be entitled to reasonable attorney fees and costs, if the party prevails.

15. Disputes. If a dispute arises over any aspect of the improvements, maintenance, repair, damages to the roadway during construction or replacement, a third party arbitrator shall be appointed to resolve the dispute. Disputes and recovery for damages shall include but not be limited to any damages created by a Parcel Owner's contractor or subcontractor that impact the roadway and the use of the roadway. When such damage occurs the Parcel Owner or their contractor is then liable for said damages. The decision of the arbitrator shall be final and binding on all of the lot owners abutting the Roadway Property. In selecting the arbitrator each lot owner shall be entitled to one vote and the person receiving a majority of votes shall be the arbitrator. All parties shall share in the cost of any arbitration. The prevailing party shall have the right to collect attorney fees and costs

EVERETT ISAACS



WARRANTY DEED BY LIMITED LIABILITY COMPANY


KNOW ALL MEN BY THESE PRESENTS:

That Kelly Investment Properties, LLC, of the County of Greene in the State of Missouri, a Corporation organized and existing under the laws of the State of Missouri, Grantor, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, to it by paid Kelby Creek Property Owners Association, of the County of Christian in the State of Missouri, whose mailing address is 1312 South Kelby Parkway, Nixa, MO 65781, Grantee, the receipt of which is hereby acknowledged, and by virtue and pursuance of a Resolution of the Members of Grantor, does by these presents Grant, Bargain, Sell, Convey and Confirm unto the said Grantee, its heirs and assigns, the following described lots, tracts, or parcels of land, lying, being and situate in the County of Greene and State of Missouri, to-wit:

ALL COMMON AREAS SET FORTH IN THE FINAL PLAT OF KELBY CREEK PHASE 6 A SINGLE FAMILY RESIDENTIAL PLANNED DEVELOPMENT DISTRICT IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI RECORDED AT BOOK 1, PAGE 318, SLIDE 4675 IN THE CHRISTIAN COUNTY RECORDER'S OFFICE, IN CHRISTIAN COUNTY, MISSOURI.

TO HAVE AND TO HOLD the premises aforesaid, with all and singular the rights, privileges, appurtenances, and immunities thereto belonging or in anywise appertaining unto the said Grantee, and unto its heirs and assigns, forever. The said Grantor hereby covenanting that it is lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that it has good right to convey the same; that the said premises are free and clear of any encumbrance done or suffered by it or those under whom it claims; and that it will warrant and defend the title to the said premises unto the said Grantee and unto its heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, Kelly Investment Properties, LLC, the said Grantor has caused these presents to be signed this the 30 day of September, 2024.

BY:   
Sean Collins, Member  
Kelly Investment Properties, LLC.

1/2

STATE OF MISSOURI )  
 ) ss.  
COUNTY OF Gasconade )

On this 1<sup>st</sup> day of ~~September~~ <sup>October</sup>, 2024, before me personally appeared Sean Collins, to me personally known, who being duly sworn, did say that he is a member of Kelly Investment Properties, LLC, that the said instrument was signed and sealed on behalf of the limited liability company by authority of its Member, and acknowledged said instrument to be the free act and deed of said limited liability company.

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

Brianne Keene  
Notary Public

My Commission Expires:  
February 5, 2028

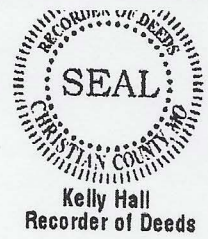
BRIANNE KEENE  
Notary Public - Notary Seal  
STATE OF MISSOURI  
Taney County  
My Commission Expires: Feb. 05, 2028  
Commission #24944484

PAGE 6 DEED

Book: 2024 Page: 12943

Pages: 2  
Fee: \$27.00 S 20240013482

EVERETT ISAACS



WARRANTY DEED BY LIMITED LIABILITY COMPANY

KNOW ALL MEN BY THESE PRESENTS:

That Kelly Investment Properties, LLC. of the County of Greene in the State of Missouri, a Corporation organized and existing under the laws of the State of Missouri, Grantor, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, to it by paid Kelby Creek Property Owners Association, of the County of Christian in the State of Missouri, whose mailing address is 1312 South Kelby Parkway, Nixa, MO 65781, Grantee, the receipt of which is hereby acknowledged, and by virtue and pursuance of a Resolution of the Members of Grantor, does by these presents Grant, Bargain, Sell, Convey and Confirm unto the said Grantee, its heirs and assigns, the following described lots, tracts, or parcels of land, lying, being and situate in the County of Greene and State of Missouri, to-wit:

ALL COMMON AREAS SET FORTH IN THE FINAL PLAT OF KELBY CREEK PHASE 6 A SINGLE FAMILY RESIDENTIAL PLANNED DEVELOPMENT DISTRICT IN THE CITY OF NIXA, CHRISTIAN COUNTY, MISSOURI RECORDED AT BOOK 1, PAGE 318, SLIDE 4675 IN THE CHRISTIAN COUNTY RECORDER'S OFFICE, IN CHRISTIAN COUNTY, MISSOURI.

TO HAVE AND TO HOLD the premises aforesaid, with all and singular the rights, privileges, appurtenances, and immunities thereto belonging or in anywise appertaining unto the said Grantee, and unto its heirs and assigns, forever. The said Grantor hereby covenanting that it is lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that it has good right to convey the same; that the said premises are free and clear of any encumbrance done or suffered by it or those under whom it claims; and that it will warrant and defend the title to the said premises unto the said Grantee and unto its heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, Kelly Investment Properties, LLC, the said Grantor has caused these presents to be signed this the 30 day of September, 2024.

BY: *Sean Collins*  
Sean Collins, Member  
Kelly Investment Properties, LLC.

1/2

DATED: \_\_\_\_\_



THE UNDERSIGNED BUYERS OF LOT \_\_\_\_\_ KELBY CREEK PH VI  
DO HEREBY STATE AND AFFIRM UNDER OATH THAT THEY HAVE RECEIVED A FULL COPY  
AND HAVE READ AND FULLY UNDERSTAND THIS ROADWAY MAINTENANCE  
AGREEMENT AND HOW IT AFFECTS THE PROPERTY THEY ARE PURCHASING

\_\_\_\_\_  
BUYER BUYER

SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

Recorded in Christian County, Missouri  
Recording Date/Time: 07/09/2021 at 08:06:36 AM

Instr #: 2021L12639  
Book: 2021 Page: 12534

Pages: 5  
Fee: \$36.00 S



Electronically Recorded  
Choice Escrow and Land Title, LLC

Kelly Hall  
Recorder of Deeds

**Title of Document:** Roadway Maintenance Agreement

**Date of Document:** 7/9/21

**Grantor(s):** Kelly Investment Properties, LLC  
143 State Highway CC, Suite E  
Nixa, MO 65714

**Grantee(s):** Kelly Investment Properties, LLC

**Mailing Address(s):** WHEN RECORDED PLEASE MAIL TO:  
David A. Fielder  
c/o Lowther Johnson, Attorneys at Law, LLC  
901 St. Louis Street, 20<sup>th</sup> Floor  
Springfield, MO 65806

**Legal Description:** Declan Court a private drive as shown on  
The Plat of Kelby Creek Phase VI a Planned Unit Development  
In Plat Book [ ] at Page 318 Slide 4675

**Reference Book and Page(s):** Plat Book [ ] Page 318 Slide 4675

**STREET MAINTENANCE AGREEMENT**

THIS STREET MAINTENANCE AGREEMENT (hereinafter "Agreement") made and entered into this \_\_\_ day of \_\_\_\_\_, by and between the undersigned owners.

**RECITALS:**

WHEREAS, Declan Court is a private road situated in Kelby Creek, a planned unit development which is platted as Kelby Creek Phase VI and recorded with the Recorder of Deeds for Christian County in Plat Book 1, Page 318, Slide 4675 and located in Nixa, Christian County, Missouri (hereinafter "Roadway Property"); and

WHEREAS, the undersigned parcel owners are the owners or users of the roadway property commonly known as Declan Court and described on the Kelby Creek Phase VI plat recorded with the Christian County Recorder's Office; and

WHEREAS, the parties desire to enter into this Agreement regarding the costs of maintenance and improvements to Declan Court into the future; and

WHEREAS the parties desire to enter into this Agreement regarding the ownership and control of Declan Court into the future; and

WHEREAS, it is agreed that all future parcel owners will be bound by this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged the parties agree as follows:

1. **Ownership and Control.** The undersigned parcel owners hereby convey and dedicate the roadway property known as Declan Court to the Kelby Creek Property Owners Association.
2. **Vehicle and Pedestrian Access Easement.** The Roadway Property shall be subject to a perpetual, nonexclusive easement for ingress and egress granting access to all the parcel owners and their occupants, agents, employees, guests, services and emergency vehicles.
3. **Utility Easements.** The Roadway Property shall be subject to a perpetual, nonexclusive public utility easement for the purpose of permitting above and below ground public utilities to be installed and maintained as to the parcels abutting the Roadway Property.
4. **Road Commission Agent.** A Road Commission Agent shall be elected by a majority of the property owners that abut the Roadway Property, will serve a term as agreed to by the property owners that abut the Roadway Property and can be replaced or

renewed at any time by a simple majority vote of the property owners that abut Roadway Property. The Road Commission Agent shall be responsible for monitoring the condition of the road surface and initiating maintenance activities as needed to maintain the minimum road surface standards.

5. Road Maintenance. Road maintenance and road improvements will be undertaken and made whenever necessary to maintain the road in good operating condition at all times and to insure the provision of safe access by emergency vehicles. A majority vote of property owners that abut the Roadway Property is required for any road improvements and to accept the bid for any road improvement contract. Before authorizing the expenditures for future road improvements, parcel owners will be notified by the Road Commission Agent, cost estimates will be provided, and a majority agreement will be required. If any parcel owner performs improvements, maintenance, repairs or replacements without the approval of the other lot owners abutting the Roadway Property prior to performing such work, the lot owner performing such work shall be liable for the entire cost thereof, unless such work is deemed an emergency. However, where emergency repairs are necessary as more particularly noted in paragraph 13 below, neither majority vote nor prior approval is necessary before making such improvements or undertaking such maintenance.

6. Parking. For the safety of the residents, no machinery, trailers, vehicles or other property may be stored or parked upon the private road except parking of vehicles for limited periods of time (not to exceed twelve hours) in length.

7. Cost Sharing. Road maintenance, snowplowing and road improvement costs shall be shared on a pro-rata basis between the parcel owners having access to and abutting the Roadway Property. Each parcel owner's share of costs incurred shall be determined as follows: Pro-rated cost share will be based upon the number of lots abutting the Roadway Property.

8. Prepayment. Prepayment of maintenance, snowplowing and improvement costs will be made to the road maintenance account by each property owner. Annually on or before a date as specified by the Road Commission Agent, each parcel owner will contribute their pro-rated share of the estimated annual cost for road maintenance, road improvements, and annual snow removal. The Road Commission Agent shall send each parcel owner a two week notice of the annual payments due.

9. Definition of Parcel. A parcel is defined as a land entity having a platted subdivision number abutting the Roadway Property. Each parcel is assessed and granted one vote regardless of the number of owners. If a parcel is owned by more than one person, all of the owners of the parcel will collectively be referred to as the "parcel owner" for purpose of this Agreement and will be entitled to one collective vote.

10. Snow Plowing. The Roadway Property shall be snowplowed so as to permit year round access. The cost shall be shared by the parcel owners as indicated in paragraph 7.

Individual driveway snowplowing, if desired, will be invoiced to the parcel owners directly by the snow plow contractor.

11. **Checking Account.** The Road Commission Agent shall establish and maintain a bank checking account with a local bank, and will prepare and distribute to the property owners that abut Roadway Property an annual income and expense report and a year end balance sheet, accounting for all funds received and disbursed.
12. **Effective Term.** This Agreement shall be perpetual, and shall encumber and run with the land as long as the road remains a private roadway.
13. **Binding Agreement.** This Agreement shall be binding upon the parties hereto, their respective heirs, executors, administrators and assigns.
14. **Amendment.** This Agreement may be amended only by a two-thirds majority vote of all of the land owners abutting the Roadway Property, and express written consent of both the City of Nixa and the Kelthy Creek Property Owners Association.
15. **Enforcement.** This Agreement may be enforced by a majority of the parcel owners abutting the Roadway Property. If a court action or lawsuit is necessary to enforce this Agreement, the party commencing such action or lawsuit shall be entitled to reasonable attorney fees and costs, if the party prevails.
16. **Disputes.** If a dispute arises over any aspect of the improvements, maintenance, repair or replacement, a third party arbitrator shall be appointed to resolve the dispute. The decision of the arbitrator shall be final and binding on all of the lot owners abutting the Roadway Property. In selecting the arbitrator each owner shall be entitled to one vote and the person receiving a majority of votes shall be the arbitrator. All parties shall share in the cost of any arbitration.
17. **Notices.** Parcel owners under this Agreement shall be notified by mail or in person. If an address or a parcel owner is not known, a certified notice will be mailed to the address to which the parcel owner's tax bill is sent.
18. **Invalidity.** Should any provision of this Agreement be deemed to be invalid or unenforceable, the remainder of the Agreement shall not be affected and each term and condition shall be valid and enforceable to the extent permitted by law.
19. **Other Agreements.** This Agreement replaces all previous road agreements regarding Declan Court.
20. **Successors and Assigns.** It is the intent of the parties that this Agreement shall run with the land and shall bind all of the parcel owner's successors and assigns.

21. Recording. Original and amended copies of this document including signature pages shall be recorded and provided to the Recorder of Deeds for Christian County, Missouri.

The undersigned property owners agree to the terms of this document the date set forth above.

Kelly Investment Properties, LLC

By: \_\_\_\_\_  
Sean Collins, Managing Member

[SIGNATURES CONTINUED ON THE NEXT PAGE]

STATE OF MISSOURI     )  
  ) ss  
COUNTY OF GREENE    )

On this 15th day of July 2021 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Sean Collins, to me personally known, who being by me duly sworn, did say that he is the Managing Member of Kelly Investment Properties, LLC, a Missouri Limited Liability Company, and that said instrument was signed on behalf of said Limited Liability Company, and said Sean Collins acknowledged said instrument to be the free act and deed of said Limited Liability Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in Springfield, Missouri the day and year set out above.

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

My Commission Expires: \_\_\_\_\_

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6/25/21



Image# 004305920030 Type: LAN  
Recorded: 08/04/2009 at 03:16:25 PM  
Total Amt: \$111.00 Page 1 of 30  
Christian County Recorder  
Roy Meadows Recorder of Deeds  
File# 2008-00011444

BK **2009** PG **11360**



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Title of Document:           **DECLARATION OF RESTRICTIONS  
KELBY CREEK SUBDIVISION**

Date of Document::           July 23, 2009

Description:                   **DECLARATION OF RESTRICTIONS  
for KELBY CREEK SUBDIVISION**

Reference Book and Page(s): \_\_\_\_\_

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Grantor: Kelby Creek Subdivistan ; Sundance Valley Development, L.L.C.

Grantee: To Whom it May Concern

Legal Description on page 28-29

## DECLARATION OF RESTRICTIONS

**THIS DECLARATION OF RESTRICTIONS OF KELBY CREEK SUBDIVISION** (the "*Declaration*") is made as of the 23<sup>rd</sup> day of July, 2009, by **SUNDANCE VALLEY DEVELOPMENT, L.L.C.**, a Missouri limited liability company (the "*Developer*"), and CITIZENS NATIONAL BANK, (the "*Bank*").

### WITNESSETH:

**WHEREAS**, the Developer has executed and filed with the Recorder of Deeds of Christian County, Missouri a plat of the subdivision known as **Kelby Creek Subdivision** (the "*Subdivision*"); and

**WHEREAS**, the Subdivision is composed of the following described property, to wit:

SEE EXHIBIT A ATTACHED HERETO AND  
INCORPORATED HEREIN BY REFERENCE

**WHEREAS**, Developer as the present owner and developer of the above-described property, desires to place certain restrictions on such property to preserve and enhance the values, desirability and attractiveness of the development and improvements constructed thereon, and all of said restrictions shall be for the use and benefit of Developer and its future grantees, successors and assigns;

**WHEREAS**, the Bank is the holder of one or more promissory notes secured by one or more deeds of trust (the "*Deeds of Trust*") on the Property from Developer, and joins in this Declaration for the purpose of subordinating the Deeds of Trust to the legal operation and effect of this Declaration.

**NOW THEREFORE**, in consideration of the premises contained herein, Developer, for itself and for its successors and assigns, and for its future grantees and the Bank, hereby

agrees and declares that all of the above-described property shall be, and it hereby is, restricted as to its use and otherwise in the manner hereinafter set forth.

## **ARTICLE I**

### **Definitions**

For purposes of this Declaration, the following definitions shall apply:

(a) The term "**Board**" shall mean the Board of Directors of the Property Owners' Association.

(b) The term "**Certificate of Substantial Completion**" shall mean a certificate executed, acknowledged and recorded by the Developer stating that all, or at the Developer's discretion, substantially all, of the Lots in the District (as then composed or contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are substantially completed; *provided, however*, that the Developer may execute and record a Certificate of Substantial Completion or similar instrument in lieu thereof in its discretion at any time and for any limited purpose hereunder.

(c) The term "**Common Areas**" shall mean (1) any entrances, monuments, berms and other similar ornamental areas and related utilities, lights, sprinkler systems and landscaping constructed or installed by or for the Developer at or near the entrance of any street or along any street, and any easements related thereto, (2) all landscape easements that may be granted to the Developer and/or the Property Owners Association, for the use, benefit and enjoyment of all Owners within the District, (3) all storm water detention areas, lakes, ponds, and drainage easements located within the District, (4) the Recreational Facilities, (5) private roads, (6) walking trails, and (7) all other similar areas and places, together with all improvements thereon and thereto, the use, benefit or enjoyment of which is intended for all of the Owners within the District, whether or not any "Common Area" is located on any Lot.

(d) The term "**Condominium**" shall mean any multi-family condominium developments constructed by or for the Developer on property adjacent to or in close proximity to the District.

(e) The term "**Design Guidelines**" shall mean the guidelines adopted by the Design Review Board, as amended from time to time.

(f) The term "**Design Review Board**," with respect to the District or any portion thereof as may be designated by the Developer, shall mean a committee comprised of up to five (5) members whose duty shall be to review, approve and/or disapprove submitted plans and specifications for all improvements on any Lot, subject to the provisions of Article XIV below.

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

(h) The term "**District**" shall mean all of the above-described lots of the Subdivision, all Common Areas, and all additional property which hereafter may be made subject hereto in the manner provided herein.

(i) The term "**Exterior Structure**" shall mean any structure erected or maintained on a Lot other than the main residential structure or any structural component thereof, and shall include, without limitation, any deck, gazebo, greenhouse, doghouse or other animal shelter or run, outbuilding, fence, patio wall, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, hot tub, basketball goal, swing set, trampoline, sandbox, playhouse, treehouse or other recreational or play structure.

(j) The term "**Lot**" shall mean any lot as shown as a separate lot on any recorded plat of all or part of the District; *provided, however*, that if an Owner, other than the Developer, owns all or part of one or more adjacent lots upon which only one residence has been, is being, or will be erected, then such adjacent property under common ownership shall be deemed to constitute only one "Lot."

(k) The term "**Master Association**" shall mean the Missouri not-for-profit corporation which may be formed by or for the Developer for the purpose of serving as an association for the residential and non-residential portions of development in the District or adjacent property.

(l) The term "**Owner**" shall mean the record owner(s) of title to any Lot, including the Developer, and for purposes of all obligations of the Owner hereunder, shall include, where appropriate, all family members and tenants of such Owner and all of their guests and invitees.

(m) The term "**Property Owners' Association**" or "**Association**" shall mean the Missouri not-for-profit corporation to be formed by or for the Developer for the purpose of serving as the Property Owners association for the District and, if applicable, other nearby subdivisions.

(n) The term "**Recreational Facilities**" shall mean the swimming pool, tennis court(s), clubhouse and any similar facilities constructed by the Developer, if any, within the District or on property near the District, the size, number and components of which shall be determined by the Developer in its absolute discretion.

## ARTICLE II

### Use of and Improvement to Land

Except as otherwise expressly provided herein, none of the Lots may be improved, used or occupied for other than single-family, private residential purposes by anyone other than the Developer. No trailer, outbuilding or Exterior Structure shall at any time be used for human habitation, temporarily or permanently, nor shall any residence of a temporary character be erected, moved onto or maintained upon any of the Lots or any Common Areas or used for human habitation; *provided, however*, that nothing herein shall prevent the Developer or others (including, without limitation, Developer's builders and real estate sales agencies) authorized by

the Developer or the Design Review Board from using temporary buildings or structures or any residence or clubhouse for model, office, sales or storage purposes during the development of the District. The Developer may construct multi-family dwellings in accordance with the recorded plats of the District.

### **ARTICLE III**

#### **Building Material Requirements**

The street facades of all residences and all appurtenances thereto shall be faced with brick, stone, or stucco, except as otherwise approved in writing by the Design Review Board. The side and rear facades (other than a side facade facing a street) may be faced with brick, stone, stucco, wood siding, batt siding, masonite, glass blocks, or any combination thereof. All windows shall be constructed of glass, wood, metal clad and wood laminate, or any combination thereof. All exterior doors, louvers, downspouts and gutters shall be constructed of wood, metal clad and wood laminate, colored metal (other than silver) and glass, or any combination thereof. Roofs shall be covered with architectural shingles. Notwithstanding the foregoing provisions of this **Article III** requiring specific building materials or products, the Design Review Board shall determine whether any building material or product will be allowed or required, and all improvements shall be made or constructed in conformity with the Design Guidelines adopted by the Design Review Board, as amended from time to time, including guidelines for acceptable building and roofing materials.

### **ARTICLE IV**

#### **Approval of Plans and Post-Construction Changes**

(a) Notwithstanding compliance with the provisions of **Article III** above, no residence or Exterior Structure may be erected upon or moved onto any Lots unless and until the building plans, specifications, exterior materials, location, elevations, lot grading and drainage plans, general landscaping plans, and exterior color scheme have been submitted to and approved in writing by the Design Review Board in the manner set forth in the Design Guidelines. No change or alteration in such building plans, specifications, exterior materials, location, elevations, lot grading plans, general landscaping plans or exterior color scheme shall be made unless and until such change or alteration has been submitted to and approved in writing by the Design Review Board. All building plans and plot plans shall be designated to minimize the removal of existing trees and shall designate those trees to be removed. An erosion control plan must be provided with the building plans.

(b) Following the completion of construction of any residence or Exterior Structure, no general landscaping change, significant exterior color change or exterior addition or alteration shall be made thereto unless and until the change, addition or alteration has been submitted to and approved in writing by the Design Review Board. All replacements of all or any portion of a completed structure because of age, casualty loss or other reason, including, without limitation, roofs and siding, shall be of the same materials, location and elevation as the original structure

unless and until the changes thereto have been submitted to and approved in writing by the Design Review Board.

(c) No changes in the final grading of any Lot shall be made without the prior written approval of the Design Review Board and, if necessary, the city or county within which the Lot is situated.

#### **ARTICLE V Set Backs**

No residence, or any part thereof (exclusive of porches, porticoes, stoops, balconies, bay and other windows, eaves, chimneys and other similar projections), or Exterior Structure, or any part thereof, shall be nearer the street line or the boundaries of the Lot than the building set-back lines shown on the recorded plat for such Lot; *provided, however*, that the Design Review Board shall have the right to increase or decrease, from time to time and in its absolute discretion, the set-back lines for a specific Lot by filing an appropriate instrument in writing in the office of the Recorder of Deeds of Christian County, Missouri, provided that the set backs as so changed shall comply with any applicable city or county ordinance or other regulation.

The Design Review Board shall have the right to require that residences or Exterior Structures are constructed farther from boundaries of a Lot than the minimum setback allowed on the final plat. The Design Review Board shall designate such Lots and make the required buffer distances available to owners of said Lot.

#### **ARTICLE VI Commencement and Completion of Construction**

The following terms and conditions shall apply to all owners of property within the District, except the Developer:

(a) Unless the following time periods are expressly extended by the Developer or the Design Review Board in writing, plans and specifications for the construction of a residence on a Lot shall be submitted to the Design Review Board within a reasonable time following the date of delivery of a deed from the Developer to the purchaser of such Lot. In the event the time limitations outlined in this Article are not complied with, the Developer shall have, prior to commencement of construction, the right (but not the obligation) to repurchase such Lot from such purchaser at its original sale price. Furthermore, the Developer shall have, after commencement of construction, the right (but not the obligation) to repurchase such Lot and partially constructed residence from such purchaser at the original sale price of the Lot plus any costs of construction that the builder can prove have been expended and paid with regard to the Lot. If such repurchase right is exercised by the Developer, the Owner of the Lot in violation of this provision shall not be entitled to reimbursement for taxes, interest or other expenses incurred by or for such Owner.

(b) Construction of the residence must begin within three years following the date of delivery of a deed from the Developer to the Owner. The exterior shall be completely finished within six (6) months of the start of construction; the interior shall be completely finished within twelve (12) months of the start of construction; and the landscaping shall be completed at the time of final inspection, provided that the landscaping period may be extended by the Design Review Board if such extension is made necessary by weather conditions. No residence shall be occupied until the Design Review Board has made its final inspection and approval, as set forth in the Design Guidelines, and any appropriate county occupancy permit is obtained.

(c) During all construction activities, the Lot shall be kept clean of trash and miscellaneous building debris on a regular basis. The Design Review Board and the Property Owners Association will monitor all construction activities for compliance. A solid-sided waste container with a minimum capacity of twenty cubic yards is required on all building sites and shall be emptied when full. With approval of the Board, placement of the dumpster on Common Areas will be allowed if necessary to facilitate access. Otherwise, all building activities and materials shall be restricted to the Lot for which the building permit was issued. Neither the road right-of-way nor the Common Areas shall be used as a staging area for building materials unless prior approval has been obtained from the Design Review Board. No ready-mix concrete trucks will be washed out on any property owned by the Developer, any other Owner, or the Property Owners Association. This property includes roads, ditches, road rights-of-way, Common Areas and adjoining Lots. Any washout which is necessary should be performed on the Lot where the construction is being done.

(d) The builder must comply with the erosion control plan submitted to the Design Review Board, and must provide gravel construction access to the Lot. Dirt, mud and/or debris from the construction site shall be promptly removed from Common Areas and roads. Any clean-up costs incurred by others may, at the discretion of the Property Owners Association, be billed to the Owner/builder. The Owner or builder shall be given three (3) working days within which to remove such debris prior to any action being taken by another party. Prior to commencement of construction, each Owner, other than the Developer, shall deposit with the Property Owners Association the sum of One Thousand Dollars (\$1,000.00) to secure compliance with this paragraph. If the Property Owners Association or any other entity incurs expenses for the clean-up of the Owners' Lot, adjacent Lots and Common Areas resulting from the Owners' construction activity, the entity incurring the expense may be reimbursed by the Property Owners Association from the clean-up security deposit. Following the completion of construction and the final cleanup of any debris, then the remaining balance of such clean-up security deposit shall be refunded to the Owner.

(e) No Common Areas or facilities thereon shall be used by construction workers or material suppliers. Construction crews and material suppliers shall not park in areas other than the site on which the construction is being done or as otherwise designated by the Design Review Board. On-street parking shall be allowed provided it is on the same side of the street as the construction and only on one side of the street, and provided the vehicle is not left overnight.

(f) Excess materials must be hauled away from the District to an appropriate legal dump site immediately following completion of construction. If blasting is necessary on any Lot, the Design Review Board must be informed and approve of the blasting schedule at least thirty (30) working days in advance of the scheduled blasting time. The Design Review Board may require the Owner or builder to procure a pre-blast survey on any structures within 300 feet of the blast location. Each Owner or builder will be responsible for the conduct of all people working directly or indirectly on any construction on his or her lot. All flammable materials shall be properly disposed of, and at least one dry chemical fire extinguisher shall be maintained on the Lot at all times during the construction period. No pets shall be allowed on any Lot during the construction of any improvement on the Lot.

(g) All matters with regard to workmanship, quality or conformity with contractual specifications of any construction shall be resolved between the Owner and the contractor/builder, and neither the Developer nor the Design Review Board shall be responsible or liable for any defects. No action of the Design Review Board, including the issuance of permits, inspection, and approval of construction, shall constitute or be deemed to be an approval of the quality, safety, desirability, or suitability of any design or construction, and no warranty or representation shall be made or inferred with regarding to such matters.

(h) Construction activity of all types, including but not limited to, grading, planting, boring and building, shall be limited to the hours between 7:00 a.m. and 6:00 p.m., Monday through Saturday. Construction activity on Sunday shall be strictly prohibited. Requests for variance of the designated hours of construction will be reviewed on a case-by-case basis and approved or disapproved by the Design Review Board. Written notification and approval is required from adjacent Property Owners for any proposed variance seven (7) days in advance of such activity.

(i) Owner and the builder shall maintain liability and workers compensation insurance, in appropriate amounts, on the Lot and the construction activities occurring thereon.

## **ARTICLE VII**

### **Exterior Structures**

(a) No Exterior Structure shall be erected upon, moved onto or maintained upon any Lot except (1) with and pursuant to the prior written approval of the Design Review Board as to the applicable building plans, specifications, exterior materials, location, elevations, lot grading plans, general landscaping plans and exterior color scheme, and (2) in compliance with the additional specific restrictions set forth in **Paragraph (b)** below or elsewhere in this Declaration; *provided, however*, that the approval of the Design Review Board shall not be required for (A) any Exterior Structure erected by or at the request of the Developer or Design Review Board, or (B) any Exterior Structure that (i) has been specifically approved by the Developer or Design Review Board prior to the issuance of a temporary or permanent certificate of occupancy as part of the residential construction plans approved by the Design Review Board, and (ii) has been built in accordance with such approved plans.

(b) All fences on the perimeter of a Lot shall be constructed of wrought iron or other ornamental materials approved by the Design Review Board, and shall not exceed four (4) feet in height. No privacy screens in the interior of a Lot shall be permitted, except as approved by the Design Review Board or as specified in the Design Guidelines. Developer and the Association have the right to construct a six (6) foot perimeter screening fence on the boundary of the Subdivision, to screen the Lots from adjacent properties, and the Owners of said Lots hereby grant Developer and Association an easement for the boundary fence and for access to install, maintain, replace and repair the boundary fence.

(c) All mailboxes constructed upon a Lot shall be built using a design and materials approved by the Design Review Board as set forth in the Design Guidelines. Any plans submitted for the approval of the Design Review Board shall include the approved mailbox in the plans, and shall show the location of the mailbox on the Lot. Each Lot shall have exactly one mailbox constructed contemporaneously with the main structure on the Lot by the builder of the main structure.

(d) Gas and electric meters shall be appropriately screened with landscape plant materials. All air conditioning and heating equipment and soft water tanks must be screened from view and be insulated for sound attenuation. Window or roof mounted air conditioning units are prohibited.

(e) All other requirements shall be set forth in the Design Guidelines as adopted and amended, from time to time, by the Design Review Board.

#### **ARTICLE VIII**

##### **Inherent Risk Accepted**

By acceptance of a deed for a Lot, each Owner, for himself, the members of his family, his guests and his invitees ("**Releasing Parties**"), shall be deemed to have released and agreed never to make a claim against the Developer, its successors and assigns, or any of its or their officers, directors, guests, patrons, owners and invitees, stockholders, employees, agents, principals, members, managers, partners or contractors ("**Released Parties**"), for any injury, death or property damage (including diminution in value) that may ever be suffered or incurred by any of the Releasing Parties while on any Lot, the Common Areas or any Recreational Facilities, and each of the Releasing Parties shall be deemed to have waived any and all claims and causes of action that any of the Releasing Parties may ever had against any of the Released Parties for damages, equitable relief or otherwise.

#### **ARTICLE IX**

##### **Buildings or Uses Other Than for Residential Purposes; Noxious Activities; Miscellaneous**

(a) Except as otherwise provided in **Article II** above, no residence or Exterior Structure, or any portion thereof, shall ever be placed, erected or used for business, professional,

trade or commercial purposes on any Lot; *provided, however*, that this restriction shall not prevent an Owner from maintaining an office area in his residence in accordance with any applicable city or county ordinances.

(b) No noxious or offensive activity shall be carried on with respect to any Lot; nor shall any grass clippings, trash, ashes or other refuse be thrown, placed or dumped upon any Lot or Common Area; nor shall anything be done which may be or become an annoyance or a nuisance to the District, or any part thereof.

(c) Each Owner shall properly maintain his Lot in a neat, clean and orderly fashion at all times, including before, during and after construction. All residences and Exterior Structures shall be kept and maintained in good condition and repair at all times.

(d) Unlicensed or inoperative motor vehicles are prohibited, except in an enclosed garage. Overnight parking of motor vehicles of any type or character in public streets, Common Areas or vacant lots is prohibited. Motor vehicles shall be parked overnight in garages or on driveways only.

(e) Trucks or commercial vehicles with gross vehicle weight of one ton or over are prohibited in the District except during such time as such truck is actually being used for the specific purpose for which it is designed.

(f) Recreational motor vehicles of any type or character are prohibited except:

(1) Storing in an enclosed garage;

(2) Temporary parking for the purpose of loading and unloading (maximum of eight consecutive hours);

(3) With prior written approval of the Board.

(g) Except as provided in Paragraph (f) above, no vehicle (other than a passenger automobile or van), truck, bus, boat, trailer, camper or similar apparatus shall be left or stored over night on any Lot, except in an enclosed garage. In the event of a violation of this paragraph, the Board shall give written notice to the Owner of the Lot that the offending vehicle must be removed immediately. If the vehicle shall not be removed within such time period, the Board shall impose a fine against the Owner in the amount of Fifty Dollars (\$50.00) for each day that the violation continues, and such fine shall be added to and constitute part of such Owner's annual assessment as discussed in Article XVIII.

(h) No radio, citizens' band, or short wave antenna, clothes line or pole, or other unsightly projection shall be attached to the exterior of any residence or Exterior Structure or erected in any yard, and no lights or other illumination (other than street lights) shall be higher than the residence; *except that*, prior to written approval of the Design Review Board, solar

collectors may be integrated into the structures of landscaping on a Lot if they are not visible from the roadways, Common Areas, or other Lots.

(i) No television antenna, satellite dish or other device for television signal reception shall be attached to the exterior of any residence or Exterior Structure or erected in any yard without the prior written approval of the Design Review Board. A request for such approval shall be deemed to include authority for the Design Review Board to enter the requesting Owner's Lot to identify the best locations for placement of the desired device(s) which allows for acceptable reception. Any such request for approval shall be addressed immediately. The Design Review Board shall be entitled to establish rules and regulations with regard to the location, size, landscaping and other aesthetic aspects of such devices so as to reasonably control the impact on the District; however, such rules and regulations shall not unreasonably delay or prevent installation, maintenance and use of such devices and shall not unreasonably increase the cost of such installation, maintenance and use. Any such rules and regulations may be applied on a Lot-by-Lot basis as necessary, in the sole discretion of the Design Review Board.

(j) No speaker, horn, whistle, siren, bell or other sound device, except intercoms and those used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any residence or in any yard.

(k) All residential service utilities shall be underground, except with the approval of the Design Review Board.

(l) In the event of vandalism, fire, windstorm or other damage, no residence or Exterior Structure shall be permitted to remain in damaged condition for longer than three (3) months.

(m) No shed, barn, detached garage or other storage facility shall be erected upon, moved onto or maintained upon any Lot without the prior written approval of the Design Review Board.

(n) No outside or underground fuel storage tanks of any kind shall be permitted.

(o) No driveway shall be constructed in a manner as to permit access to a street across a rear lot line.

(p) Temporary signs are prohibited on all properties with the exception of any signs placed on any Lot or Common Areas by or at the direction of Developer, and realtor, contractor or builder signs placed on a Lot during the construction period. Without limiting the foregoing, no real estate signs, open house signs, or similar signs shall be permitted on the Common Areas. Contractor and/or builder signs shall be removed at completion of construction. All such signs will be designed by Developer, and purchased from a supplier of Developer's choosing.

(q) No garbage or trash shall be placed or kept on any property within the District except in covered containers. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection, and then only for

the shortest time reasonably necessary to effect such collection. All rubbish, trash, and garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot, and no burning in the open will be permitted.

(r) Garage doors shall be electric or battery powered and shall remain closed at all times except when necessary for ingress and egress.

(s) No water from any roof, downspout, swimming pool, basement or garage drain or surface drainage shall be placed in or connected to any sanitary sewer line.

(t) No Lot shall be subdivided into two or more Lots, and no boundary lines of any Lot shall be changed.

(u) All basketball goals shall be free standing and shall not be attached to the residence or installed without written approval of the Design Review Board. Portable or movable basketball goals shall be stored in an enclosed garage when not in use. There shall be no more than one basketball goal per Lot. The Property Owners' Association shall be entitled to adopt rules and regulations with regard to the hours of use of basketball goals within the District.

(v) All playground equipment, as approved by the Design Review Board, shall be located in a rear yard. No metal swing sets shall be allowed.

(w) Unreasonably loud or offensive noises shall be prohibited.

(x) No exterior Christmas lights or other Christmas decorations may be erected or maintained on any Lot except during a 60-day period beginning November 15<sup>th</sup> of each calendar year. Outside decorations for other holidays may be displayed only during the appropriate holiday season and only for periods of thirty (30) days or less.

(y) Fireworks are prohibited within the District except with the written authorization of the Board.

(z) Firewood stored on any Lot shall not be excessive and shall be stacked neatly with sensitivity to the views from neighboring properties and roadways.

(aa) No above-ground or above-grade swimming pools shall be allowed.

Any complaints with regard to non-compliance with this Declaration or any other rules and regulations adopted by the Property Owners Association or the Design Review Board shall be made in writing to the Board or the Design Review Board, as the case may be.

## **ARTICLE X**

### **Animals**

No animals of any kind shall be raised, kept or maintained on any Lot except that up to three (3) dogs, cats and other common household pets may be raised, bred, kept or maintained so long as they are not raised, bred, kept or maintained for commercial purposes and do not constitute a nuisance to the District, or any part thereof. Any animal which delivers more than two litters of offspring in any 12-month period shall be deemed to be kept for commercial purposes in violation of this **Article X**. All pets shall be confined to the Lot of the Owner except when on a leash controlled by a responsible person. In the event that a pet is routinely not confined to the Lot of its Owner and becomes, in the opinion of a majority of the Board, a nuisance to the District, then the Board shall have the option to require the pet's owner to remove the pet from the District, upon seven (7) days' notice to the pet's owner. The Owner shall remove from any Common Areas any solid waste of the pet(s).

## **ARTICLE XI**

### **Lawns, Landscaping and Gardens**

Prior to construction, all Lots shall be regularly mowed and trimmed, and kept in a neat and orderly fashion. Prior to occupancy, all lawns, including all areas between each residence and any adjacent street, regardless of the existence and location of any fence, monument, berm, sidewalk or right-of-way line, shall be fully sodded and irrigated and shall remain fully sodded at all times thereafter, *provided, however*, that the Owner of a Lot may leave or subsequently create a portion of the Lot as a natural area with the express written permission of the Design Review Board. All lawns shall be sodded with varieties of grass which maintain their color and appearance throughout the year. Concurrently with the completion of the residence and before occupancy, the Owner shall landscape the Lot to the same standards set forth in the Design Guidelines, as then applicable, and in accordance with the plans approved by the Design Review Board, unless such time period is extended as provided in **Article VI(b)**. An in-ground sprinkler system shall be installed, and properly maintained, throughout the Lot. All vegetable gardens shall be located behind the rear corners of the residence and at least five feet (5') away from the boundary of the Lot. No vegetable garden(s) shall exceed one hundred (100) square feet in size on any Lot except with the prior written consent of the Design Review Board. Any vegetable garden visible from the Common Areas or any street, trail or publicly accessible area, must be screened in a manner that is approved by the Design Review Board. The Owner of each Lot shall keep the lawn uniformly mowed and clipped with a length of grass not to exceed four inches (4") and shall properly maintain and replace all trees and landscaping.

The Design Review Board shall have the power to except certain Lots, or a portion thereof, from some or all of the provisions of this Article. Such exceptions may be set forth in the Design Guidelines, or may be considered at the request of the Owner.

## ARTICLE XII

### Easements

(a) **Public Utilities.** The Developer shall have, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of drains, pipelines, sanitary and storm sewers, gas and water lines, electric and telephone lines, television cables and other utilities, and to give or grant rights-of-way or easements therefor, over, under, upon and through all easements and rights-of-way shown on any recorded plat of the District or Common Area. All utility easements and rights-of-way shall inure to the benefit of all utility companies, for purposes of installing, maintaining or moving any utility lines or services and shall inure to the benefit of the Developer, all Owners, and the Property Owners' Association as a cross easement for utility line or service maintenance.

(b) **Maintenance Easement.** The Developer shall have and does hereby reserve for itself and its successors and assigns and the Property Owners' Association and its successors and assigns an easement over and through all unimproved portions of each Lot in the District for the purpose of performing the duties of the Property Owners' Association and maintaining any Common Area.

(c) **Drainage.** Every Lot and the Common Areas shall be burdened with easements for natural drainage of storm-water runoff from other portions of the District; *provided that*, no person shall alter the natural drainage of any Lot so as to materially increase the drainage of storm water onto adjacent portions of the District without the consent of the Owner of the affected property.

(d) **Fencing.** The Developer shall have, and does hereby reserve, the right to locate, erect, construct, and maintain, or authorize the location, erection, construction and maintenance of community fencing along any boundary between the Common Area and any Lot, within a 6-foot interior border along the perimeter of any such Lot, and within a 6-foot interior border along the perimeter of the Common Areas, and within a 6-foot interior border along the perimeter of any Lot adjacent to the boundary of the Subdivision, and the Developer, its successors and assigns, shall have a perpetual easement of access over and through such areas for the purpose of construction and maintenance of such fencing.

## ARTICLE XIII

### Common Areas

(a) The Developer and its successors, assigns, and grantees, the Owners, and the Property Owners' Association shall have the right and easement of enjoyment in and to all of the Common Areas, but only for the intended use of such Common Areas. Such right and easement in favor of the Owners shall be appurtenant to, and shall automatically pass with the title to each Lot. All such rights and easements shall be subject to the rights of any governmental authority or any utility therein or thereto.

(b) The Developer covenants and agrees to convey by special warranty deed all of its rights, title and interest in the Common Areas to the Property Owners' Association, without any cost to the Property Owners' Association, at such time(s) as the Developer, in its discretion, may determine, but in all events not later than one month after the Developer has recorded the Certificate of Substantial Completion. Notwithstanding the actual date of transfer, except as otherwise provided in an agreement with the Developer, the Property Owners' Association shall at all times, from and after the date of its formation and at its expense, be responsible for properly repairing, replacing, maintaining, operating and insuring, as applicable, all Common Areas (except any part thereof that is within any Lot and has not been landscaped or otherwise improved by the Developer or the Property Owners' Association), subject to any control there-over maintained by any governmental authority, utility or similar person or entity. Any transfer of title by the Developer shall not constitute an assignment by the Developer of any of its rights, as the developer of the District, pursuant to this Declaration or any other instrument, contract or declaration; however, the Developer will specifically assign to the Property Owners' Association its obligations under any continuing agreement with regard to the property within the District, including but not limited to, any continuing agreement with the City of Nixa, Missouri, or subdivision or agency thereof. The Property Owners' Association shall accept any such assignment and become bound by the terms of the assigned agreement as if it were an original party thereto. The Property Owners' Association shall maintain insurance of at least One Million Five Hundred Thousand Dollars (\$1,500,000.00) with regard to the Common Areas and shall cause the Developer to be named as an additional insured on the insurance coverage until the recording of the Certificate of Substantial Completion. The Property Owners' Association shall indemnify and hold the Developer harmless from and against any claim arising from the use of any Common Area subsequent to the transfer of title to such Common Areas.

(c) The Property shall also be subject to the rights of the City of Nixa to serve notice upon the Owners of any failure to maintain the Common Area, to enter upon the Common Area and maintain the same, and assess the Owners, the Association or both for reasonable expenses incurred by such maintenance. Such expenses of the City shall become a charge on Properties, the Common Areas, and the Lots, and constitute a lien thereon, and such charge shall be paid by the owners of said properties within thirty (30) days after receipt of same. These provisions may not be amended, deleted, or in any other manner otherwise modified without the express, written consent of the City Council of Nixa, Missouri.

(d) The ownership by the Property Owners Association of any Common Area and the right and easement of enjoyment of the Owners in the District as to any Common Area shall be subject to the right to the Developer to convey sewage, water, drainage, pipeline, maintenance, electric, telephone, television and other utility easements over, under, upon and through such Common Area, as provided in **Article XII** above.

(e) No Owner shall improve, destroy or otherwise alter any Common Area without the express written consent of the Design Review Board.

(f) Subject to the foregoing, the Developer and the Property Owners Association shall have the right from time to time to make, revoke, and enforce additional rules, regulations and restrictions pertaining to the use of any Common Area.

(g) The Property Owners Association shall pay its pro rata share (as defined below) of all operating expenses (as defined below) (net of operating income) and of all post-construction capital expenditures (as defined below) relating to the Common Areas and Recreational Facilities, if any.

(h) At such time as any portion of the Common Areas is transferred to the Property Owners Association, as described in Paragraph (b) of this Article, the Property Owners Association shall become solely liable for all taxes, expenses and liabilities with regard to such portion, and the Developer shall be released from all responsibility therefor and all liability arising therefrom.

(i) For purposes hereof, the "*operating expenses*" of the Recreational Facilities shall generally have the meaning attributed thereto under generally accepted accounting principles, consistently applied, but shall not include (1) any costs of the Developer of acquiring, developing, improving, constructing or erecting the Recreational Facilities or the site on which such facilities are located, (2) any depreciation or amortization of the costs described in clause (1) above, (3) any financing or debt service expenses related to the costs described in clause (1) above, or (4) any costs attributable or allocable to the use of the Recreational Facilities or any part thereof by the Developer, any construction company, any real estate agent or any other similar party as an office, meeting place or storage facility.

(j) For purposes hereof, "*post-construction capital expenditures*" shall mean any expenditures made or incurred after the completion of the initial (as specified by the Developer) Recreational Facilities for equipment, furniture, or other capital assets, including the expansion of any facilities, and any other expenditures that would be capitalized under generally accepted accounting principles, consistently applied.

(k) For purposes hereof, the Property Owners Association's "*pro rata share*" for any year shall be determined by dividing the number of Lots which are then obligated to pay annual Property Owners Association dues by the total number of residential units within and outside the District which are entitled to use of the Recreational Facilities and multiplying such fraction by the aggregate expenses for the period; *however*, in computing such pro rata share (which shall be done by the Developer), there shall be taken into account any Lots that were subject to payment of Property Owners Association dues for only part of the year.

(l) If at any time prior to the recording of the Certificate of Substantial Completion, the Property Owners Association shall not have sufficient funds available to pay any tax, expense or liability relating to the Common Areas, the Developer may pay such tax, expense or liability on behalf of the Property Owners Association. Such payment shall constitute a loan from the Developer to the Property Owners Association which will be repaid to the Developer,

with interest at the rate of ten percent (10%) per annum unless otherwise agreed, from surplus funds of the Property Owners Association as soon as such surplus shall exist.

#### **ARTICLE XIV Design Review Board**

(a) The Design Review Board will initially be composed of up to five (5) individuals appointed to the Design Review Board by the Developer. At such time as Developer no longer owns any of the Lots, then the members of the Design Review Board shall be elected by the Board of the Association from time to time, as it sees fit. Any member of the Design Review Board may be removed and replaced by the entity that has the right to select the board at any time.

(b) The Design Review Board shall meet as necessary to consider applications with respect to any improvements that require the approval of the Design Review Board as provided in this Declaration or in the Design Guidelines. A majority of the members of the Design Review Board shall constitute a quorum for the transaction of business at a meeting and every act or decision made by a majority of the members present at a meeting at which a quorum is present shall be regarded as the act or decision of the Design Review Board. Any application that is not acted upon by the Design Review Board within forty-five (45) days of the date on which it is filed shall be deemed to have been approved.

(c) At each meeting, the Contractor who will construct the residence shall present the application to the Design Review Board, and shall describe the project to and answer questions posed by the Design Review Board. The Design Review Board shall consider and act upon applications that have been submitted to it for approval in accordance with this Declaration and the Design Guidelines. In making its decisions, the Design Review Board may consider any and all aspects and factors that the individual members of the Design Review Board, in their absolute discretion, determine to be appropriate to establish and maintain the quality, character and aesthetics of the District, including, without limitation, the building plans, specifications, exterior color scheme, exterior materials, location, evaluation, lot grading plans, general landscaping plans and use of any proposed residence or Exterior Structure. All decisions of the Design Review Board shall be in writing and delivered to the applicant, who shall be responsible for keeping the same. The Design Review Board may establish in advance and change from time to time certain procedural and substantive guidelines and conditions that it intends to follow in making its decisions. Such Design Guidelines, as amended from time to time, shall have the same force and effect as this Declaration and shall be binding upon each Owner.

(d) Any applicant or other person who is dissatisfied with a decision of the Design Review Board shall have the right to appeal such decision to the Board provided such appeal is filed in writing with a member of the Board within seven (7) days after the date the Design Review Board renders its decision. Any decision rendered by the Board on appeal of a decision of the Design Review Board shall be final and conclusively binding on all parties and shall be deemed to be the decision of the Design Review Board for all purposes under this Declaration.

The Board from time to time may adopt, amend and revoke rules and regulations respecting appeals of decisions of the Design Review Board, including, without limitation, requiring payment of a reasonable fee by the appealing party.

#### **ARTICLE XV**

##### **No Liability for Approval or Disapproval**

Neither the Developer, nor the Property Owners Association, nor any member of the Design Review Board or the Board shall be personally liable to any person for any approval, disapproval or failure to approve any matter submitted for approval, for the adoption, amendment or revocation of any rules, regulations, restrictions or guidelines or for the enforcement of or failure to enforce any of the restrictions contained in this Declaration or any other declaration or any such rules, regulations, restrictions or guidelines.

#### **ARTICLE XVI**

##### **Property Owners Association Membership**

(a) Membership in the Property Owners Association shall be limited to the Owners of Lots within the District, and every such Owner shall be a member. The Property Owners Association shall have two classes of membership: **Class A**, consisting of all Owners other than the Developer, and **Class B**, consisting of the Developer. The Class B membership shall cease upon the recording of the Certificate of Substantial Completion. Members may vote in person or by written proxy duly filed with the secretary of the Property Owners Association. Each member of Class A shall have one vote for each Lot of which he is the Owner and upon which he shall not be delinquent in the payment of any assessment; *provided, however*, that when more than one person is an Owner of any particular Lot, all such persons shall be members and the one vote for such Lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one vote be cast with respect to such Lot. The Class B member shall be entitled to one vote for each Lot owned by it, plus one vote for each Lot owned by a Class A member, as described in the Bylaws of the Property Owners Association.

(b) During any period in which a Member is in default in the payment of any assessment levied by the Property Owners Association under this Declaration, the voting rights of such Member shall be suspended until such assessment has been paid in full.

(c) Subject to the foregoing, the Property Owners Association shall be the sole judge of the qualifications of each Owner to vote and their rights to participate in its meetings and proceedings.

(d) The Affairs of the Property Owners Association shall be conducted by the Board as herein provided and in accordance with the articles of association of the Property Owners Association and the Property Owners Association's Bylaws. The Board shall be composed of three (3) individuals elected pursuant to the procedures set forth in the Property Owners Association's bylaws.

## **ARTICLE XVII**

### **Powers and Duties of the Property Owners Association**

(a) In addition to the powers granted in the Property Owners Association's Bylaws, by other portions of this Declaration or by law, but subject to all of the limitations set forth in this Declaration, the Property Owners Association shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by the Board to carry out and effectuate the purposes of this Declaration, including, without limitation:

(1) To enforce, in its own name, any and all building, use or other restrictions, obligations, agreements, reservations or assessments which have been or hereafter may be imposed upon any of the Lots; *provided, however*, that this right of enforcement shall not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the parties having the right to make such waivers, changes, releases or modifications under the terms of the deeds, declarations or plats in which such restrictions, obligations, agreements and reservations are set forth. The expense and cost of any such enforcement proceedings by the Property Owners Association shall be paid out of the general fund of the Property Owners Association except as herein provided, and the Property Owners Association prevails in any such proceeding. Nothing herein contained shall be deemed or construed to prevent in any such proceeding. Nothing herein contained shall be deemed or construed to prevent the Developer or any Owner from enforcing any building, use or other restrictions in its or his own name.

(2) To acquire and own title to or interests in, to exercise control over, and to improve and maintain the Common Areas, subject to the rights of any governmental authority, utility or any other similar person or entity therein or thereto.

(3) To maintain public liability, workers' compensation, fidelity, fire and extended coverage, director and officer liability, indemnification and other insurance with respect to the activities of the Property Owners Association and the property within the District.

(4) To levy the assessments which are provided for in this Declaration and/or the Property Owners Association's Bylaws and to take all steps necessary or appropriate to collect such assessments.

(5) To enter into and perform agreements from time to time with the Developer and other parties regarding the performance of services and matters benefiting both the Developer and the Property Owners Association and its members and the sharing of the expenses associated therewith.

(6) To enter into and perform agreements with the Developer, other developers, other homes associations and other parties relating to the joint use, operation

and maintenance of any recreational facilities and other similar common areas, whether in or outside the District, and the sharing of expenses related thereto.

(7) To engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the Property Owners Association, including, without limitation, keeping of books and records, and operation and maintenance of Common Areas.

(8) To engage the services of a security guard or security patrol service.

(9) To provide the collection and disposal of rubbish and garbage; to pick up and remove loose material, trash and rubbish of all kinds in the District; and to do any other things necessary or desirable in the judgment of the Board to keep any property in the District neat in appearance in good order.

(10) To exercise any architectural and aesthetic control and authority given and assigned to it in this Declaration or in any other deed, declaration or plat relating to all or part of the District.

(11) To make, amend and revoke reasonable rules, regulations, restrictions and guidelines (including, without limitation, regarding the use of Common Areas) and to provide means to enforce such rules, regulations and guidelines for the purpose of adequately and properly carrying out the provisions and purposes to this Declaration

#### **ARTICLE XVIII** **Annual Assessments**

(a) For the purpose of providing a general fund to enable the Property Owners Association to exercise the powers, render the services and perform the duties provided for herein, all Lots in the District shall be subject to an annual assessment to be paid to the Property Owners Association by the respective Owners thereof as provided in this **Article XVIII(a)**. The initial annual assessment, as of the date of this Declaration, shall be Five Hundred Dollars (\$500.00) per year for each Lot which is not owned by the Developer or by the Bank by virtue of foreclosure under the Deeds of Trust or by having received a deed in lieu of foreclosure from Developer. The Board shall have the authority to thereafter increase the annual assessment by fifteen percent (15%) per year. Any proposed increase in the annual assessment of more than fifteen percent (15%) shall be approved at meeting of the members of the Property Owners Association held in accordance with the provisions of the Bylaws of the Property Owners Association.

(b) The rate of annual assessment upon each Lot in the District may be increased (1) by the Board from time to time, without a vote of the members, by up to ten percent (10%) over the rate of annual assessment in effect on the preceding January 1<sup>st</sup>, or (2) by up to one hundred percent (100%) over the rate of annual assessment in effect on the preceding January 1<sup>st</sup>, by a vote of the members at a meeting of the members called (in whole or in part) for that

purpose and of which notice is duly given, and if a majority of the members present at such meeting and entitled to vote thereon authorize such increase by an affirmative vote therefor; **provided, however**, that the Board, without a vote of the members, shall always have the power to set the rate of annual assessment at an amount that will permit the Property Owners Association to perform its duties as specified herein.

(c) The annual assessments provided for herein shall be based upon the calendar year (commencing in 2009) and shall be due and payable on January 1<sup>st</sup> of each year; **provided however**, that the first assessment for each Lot shall be due and payable upon the date of delivery of the deed of such Lot from the Developer to the Owner and shall be equal to the prorated annual assessment as of the date thereof in addition to an initial special assessment determined at the time of delivery of the deed. If the effective date of any increase in the rate of assessment is other than January 1<sup>st</sup>, the prorated portion (as determined by the Board) of the amount of such increase for the remainder of such year shall be due and payable on such effective date. No Lot shall be entitled to receive any services to be provided by and through the Property Owners Association until such time as the first annual assessment has been paid with respect thereto.

#### **ARTICLE XIX**

##### **Special Assessments and Fines**

(a) In addition to the annual assessments provided for above, each Lot shall be subject to a one-time initial assessment in the amount of \$500.00, which shall be due and payable upon the issuance of an occupancy permit for any residential structure on the Lot. The Initial Assessment shall be used by the Association for the operation and maintenance of the Common Areas, including to reimburse the Developer for the costs of operating and carrying the Common Areas in the Subdivision.

(b) In addition to the annual and initial assessments provided for herein, the Board (a) shall have the authority to levy from time to time a special assessment against any Lot and its Owner to the extent the Property Owners Association expends any money (for services or materials) to correct or eliminate any breach by such Owner of any agreement, obligation, reservation or restriction contained in any deed, declaration of plat covering such Lot (including, without limitation, to maintain or repair any Lot or improvement thereon), and (b) shall levy from time to time special assessments, in an amount up to and including the annual assessment per Lot, against each and every Lot (other than any Lot then owned by the Developer or by an individual home builder for the purpose of resale and not occupancy ) in an equal amount that is sufficient, when aggregated, to enable the Property Owners Association to perform its duties as specified herein that require any expenditure during any period in an amount in excess of the general funds of the Property Owners Association available therefor. Any proposed assessment in excess of the annual assessment per Lot shall be approved at a meeting of the members of the Property Owners Association held in accordance with the provisions of the Bylaws of the Property Owners Association.

(c) The Board of the Association may impose a fee upon any Owner of a Lot who breaches any provision of this Declaration, and fails to cure such breach as required by the Declaration. Such fees shall be a lien on the Lot and shall be collectible in the same manner as the Annual Assessments.

## **ARTICLE XX**

### **Delinquent Assessment**

(a) Each assessment shall be a charge against the Owner and shall automatically become a lien in favor of the Property Owners Association on the Lot against which it is levied as soon as the assessment becomes due. Should any Owner fail to pay an assessment within thirty (30) days of the due date thereof, then thereafter such assessment shall be delinquent and bear interest at the maximum rate then allowable by law from the due date until paid, which interest shall become part of the delinquent assessment and the lien on the Lot. Should it become necessary to engage the services of an attorney to collect any assessment hereunder, all costs of collecting such assessment, including court costs and reasonable attorneys' fees, shall, to the extent permitted by applicable law, be added to the amount of the assessment being collected and the lien on the Lot. Each assessment, together with interest thereon and collection costs, shall also be the personal obligation of the Owner of the Lot at the time when the assessment became due.

(b) All liens on any Lot for assessments provided for herein shall be inferior and subordinate to the lien of any valid purchase money first mortgage now existing or which may hereafter be placed upon such Lot. A foreclosure sale thereunder or a deed given to a lender in lieu of foreclosure shall extinguish the lien hereunder for such assessments to the extent applicable to periods prior to such foreclosure or deed given in lieu of foreclosure but shall not release such Lot from liability for any assessment applicable to periods thereafter. If an Owner desires to refinance a Lot or further encumber a Lot, such owner shall first pay all delinquent assessments and release the lien on the Lot.

(c) Payment of a delinquent assessment may be enforced by judicial process against the Owner personally or against the Lot, including through lien foreclosure proceedings in any court having jurisdiction of suits for the enforcement of such liens. The Property Owners Association may file certificates of nonpayment of assessments in the office of the Recorder of Deeds of Christian County, Missouri, and/or the office of the Clerk of the Circuit Court for Christian County, Missouri, whenever any assessment is delinquent, in order to give public notice of the delinquency. For each certificate so filed, the Property Owners Association shall be entitled to collect from the Owner of the Lot described therein a reasonable fee, including attorneys fees, which fee shall be added to the amount of the delinquent assessment and the lien on the Lot.

(d) The Property Owners Association may cease to provide any or all of the services (including use of the Recreational Facilities) to be provided by or through the Property Owners Association with respect to any Lot during any period that the Lot is delinquent on the payment

of an assessment due under this Declaration, and no such cessation of services shall result in a reduction of any amount due from Owner before, during or after such cessation. No Owner may waive or otherwise avoid liability for any assessment by not using any Common Areas or declining any services provided through the Property Owners Association.

#### **ARTICLE XXI**

##### **Notices**

(a) The Property Owners Association shall designate from time to time the place where payment of assessments shall be made and other business in connection with the Property Owners Association may be transacted.

(b) All notices required or permitted under this Declaration shall be deemed given on the date deposited in the United States Mail if sent postage prepaid and addressed, if to an Owner, to the person or last known person entitled to such notice at the address of the Lot. Notice to one co-Owner shall constitute notice to all co-Owners.

#### **ARTICLE XXII**

##### **Covenants Running with Land; Enforcement**

The agreement, restrictions and reservations herein set forth are, and shall be, covenants running with the land into whosoever hands any of the property in the District shall come. The Developer, and its successors, assigns and grantees, and all parties claiming by, through or under them, shall conform to and observe such agreements, restrictions and reservations; *provided, however,* that neither the Developer, the Property Owners Association nor any other person or entity shall be obligated to enforce any such agreements, restrictions and reservations. No agreement, restriction or reservation herein set forth shall be personally binding upon any Owner except with respect to breaches thereof committed during his seisin of title to such Lot; *provided, however,* that (a) the immediate grantee from the building of the residence on a Lot shall be personally responsible for breaches committed during such builder's ownership of such Lot, and (b) an Owner shall be personally responsible for any breach committed by any prior owner of the Lot to the extent notice of such breach was filed of record, as provided in the third paragraph of this **Article XXII**, prior to the transfer of ownership.

The Developer, the Property Owners Association and each Owner shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the agreements, restrictions and reservations set forth, in addition to any action at law for damages. The prevailing party in any such action shall be entitled to recovery of its costs and expenses, including reasonable attorneys' fees.

Whenever the Developer or the Board determines that a violation of this Declaration has occurred and is continuing with respect to a Lot, the Developer or the Property Owners Association may file with the office of the Recorder of Deeds of Christian County, Missouri a certificate setting forth public notice of the nature of the breach and the Lot involved.

No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of this Declaration shall impair any of such rights or remedies; nor shall any such delay or failure be construed as a waiver of that or any other violation.

No waiver of any violation shall be effective unless in writing and signed and delivered by the person or entity entitled to give such waiver, nor shall such waiver extend to or affect any other violation or situation, whether or not similar to the waived violation. No waiver by one person or entity shall affect any rights or remedies that any other person or entity may have; *provided, however*, that a duly authorized, executed and delivered waiver by the Property Owners Association respecting a specific violation shall constitute and be deemed as a waiver of such violation by all other persons and entities (other than the Developer).

### **ARTICLE XXIII**

#### **Assignment of Developer's Rights**

The Developer shall have the right and authority, by appropriate agreement made expressly for that purpose, to assign, convey, transfer and set over to any person(s) or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Developer, and upon such assignment, the assignee shall then for all purposes be the Developer hereunder with respect to the assigned rights, benefits, powers, reservations, privileges, duties and responsibilities. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers reservations, privileges, duties, and responsibilities of the Developer hereunder.

### **ARTICLE XXIV**

#### **Release or Modification of Restrictions**

(a) The provisions of this Declaration, as it may be amended pursuant to the terms hereof, shall remain in full force and effect for ten (10) years from the date hereof, and shall automatically be continued thereafter for successive periods of ten (10) years each, unless terminated by the Developer or Owners, as the case may be, in accordance herewith.

(b) The provisions of this Declaration may be amended, modified or terminated, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by (1) the Owners of at least two-thirds (2/3) of the Lots within the District as then constituted, if subsequent to the recording of the Certificate of Substantial Completion, or (2) the Developer, if prior to the recording of the Certificate of Substantial Completion.

(c) Any amendment of the provisions of this Declaration as contemplated above which would change any obligation of either the Developer or the Property Owner's Association to maintain or operate the Common Areas shall require the written approval of the City of Nixa,

Missouri. No amendment shall be effective until it has been recorded in the Office of the Recorder of Deeds of Christian County, Missouri.

(d) Anything set forth in this **Article XXIV** to the contrary notwithstanding, the Developer shall have the absolute, unilateral right, power and authority to modify, revise, amend or change any of the terms and provisions of this Declaration, all as from time to time amended or supplemented, if either the Veteran's Administration or the Federal Housing Administration or any successor agencies thereto shall require such action as a condition precedent to the approval by such agency of the District or any part of the District or any Lot in the District, for federally-approved mortgage financing purposes under applicable Veteran's Administration or Federal Housing Administration or similar programs, laws and regulations.

#### **ARTICLE XXV**

##### **Extension of District**

The Developer shall have, and expressly reserves, the right from time to time, to add to the existing District and to the operation of the provisions of this Declaration such other adjacent lands (without reference to any street or right-of-way) as it may now own or hereafter acquire by executing, acknowledging and recording an appropriate written declaration or agreement subjecting such land to all of the provisions hereof as though such land had been originally described herein and subject to the provisions hereto; *provided however*, that such declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable; and *provided further* that any such extension of the District and modification of this Declaration must be approved by the City of Nixa, Missouri.

#### **ARTICLE XXVI**

##### **Annexation**

A portion of the District is located outside the city limits of Nixa, Missouri. In the event the Developer seeks to have any additional portion of the District annexed into the City of Nixa, Missouri, each Owner irrevocably consents to such annexation in accordance with any terms and conditions agreed to by the Developer and the City of Nixa, Missouri.

#### **ARTICLE XXVII**

##### **Master Association**

At any time prior to the recording of the Certificate of Substantial Completion, the Developer may cause the formation of a Master Association and may delegate to such Master Association any or all of the powers, rights and duties of the Property Owners Association as designated herein.

## **ARTICLE XXVIII**

### **Street Lights**

The Developer has provided certain street lights and poles for use by the City of Nixa, Missouri in the Subdivision. The City will provide all standard city maintenance on the street lights and poles within the Subdivision. In the event of a natural disaster, the City of Nixa will replace up to, but not exceeding, a total of ten street lights and poles of the same kind. The City will seek relief from FEMA or any other governmental agency in an effort to cover all replacement costs to be covered by the City. If however, the costs for the Subdivision's unique street lights and poles is over and above the cost of the City's standard street lights and poles plus any available disaster relief assistance, the Association shall reimburse the City for the difference, and such charge shall be a special assessment as provided in this Declaration.

## **ARTICLE XXIX**

### **Severability**

Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgment or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions, or any part thereof, but they shall remain in full force and effect.



THE BANK:

Citizens National Bank  
A \_\_\_\_\_

ATTEST:

Dennis R. Merriam  
Secretary

By: [Signature]  
Name: Craig E. Dunn  
Title: Senior Vice President

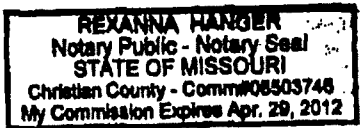
STATE OF MISSOURI )  
COUNTY OF Greene ) SS.

On this 23rd day of July, 2009, before me personally appeared Craig E. Dunn to me personally known, who being by me duly sworn did say that [he/she] is the [President/Vice-President] of Citizens National Bank National Bank, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said Craig E. Dunn acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have set my hand and affixed my official seal on the day and year first above written.

My Commission Expires:  
4-29-12

[Signature]  
Notary public in and for said County and State  
[Please type, print or stamp the Notary's name below his or her signature.]



**EXHIBIT A**  
**LEGAL DESCRIPTION**

THAT CERTAIN PARCEL OR TRACT OF LAND BEING A PART OF THE SOUTHEAST QUARTER (SE1/4) OF SECTION 26 AND A PART OF NORTHEAST QUARTER (NE1/4) OF SECTION 35, ALL IN TOWNSHIP 27 NORTH, RANGE 22 WEST, CHRISTIAN COUNTY, MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN EXISTING IRON PIN AT THE NORTHWEST CORNER OF THE WEST ONE-HALF (W1/2) OF THE NE1/4 OF SAID SECTION 35; THENCE N00°02'15"E (N01°52'11"E DEED), ALONG THE WEST LINE OF THE SOUTHWEST QUARTER (SW1/4) OF THE SE1/4 OF SAID SECTION 26 ALSO BEING THE EAST LINE OF AUTUMN RIDGE ESTATES, A SUBDIVISION IN CHRISTIAN COUNTY, MISSOURI, A DISTANCE OF 671.50 FEET (653.16' DEED) TO AN EXISTING IRON PIN AT THE NORTHWEST CORNER OF THE SOUTH ONE-HALF (S1/2) OF SAID SW1/4 OF THE SE1/4 SAID POINT ALSO BEING THE SOUTHWEST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 127 AT PAGE 95 IN THE CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE N89°15'38"E (S89°16'47"E DEED), ALONG THE NORTH LINE OF SAID S1/2 OF THE SW1/4 OF THE SE1/4 ALSO BEING THE SOUTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 127 AT PAGE 95, A DISTANCE OF 1340.92 FEET (1341.59' DEED) TO AN EXISTING IRON PIN AT THE NORTHEAST CORNER OF SAID S1/2 OF THE SW1/4 OF THE SE1/4 SAID POINT ALSO BEING THE SOUTHEAST CORNER OF SAID TRACT OF LAND; THENCE N00°02'10"W (N01°48'45"E DEED), ALONG THE WEST LINE OF THE NE1/4 OF THE SE1/4 AND THE NORTH ONE-HALF (N1/2) OF THE SW1/4 OF THE SE1/4 ALSO BEING THE EAST LINE OF SAID TRACT OF LAND AND THE EAST LINE OF A TRACT OF LAND DESCRIBED IN BOOK 290 AT PAGE 1247 IN SAID CHRISTIAN COUNTY RECORDER'S OFFICE, A DISTANCE OF 1571.84 FEET (1577.63' DEED) TO AN EXISTING IRON PIN AT THE SOUTHWEST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 115 AT PAGE 367 IN SAID CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE N89°00'03"E (S89°15'51"E DEED), ALONG THE SOUTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 115 AT PAGE 367, A DISTANCE OF 183.00 FEET (183.03' DEED) TO AN EXISTING IRON PIN AT THE SOUTHEAST CORNER OF TRACT OF LAND; THENCE N00°02'10"W, ALONG THE EAST LINE OF SAID TRACT OF LAND, A DISTANCE OF 450.00 FEET TO THE NORTHEAST CORNER OF SAID TRACT OF LAND SAID POINT BEING ON THE NORTH LINE OF SAID NE1/4 OF THE SE1/4; THENCE N89°00'03"E, ALONG THE NORTH LINE OF SAID NE1/4 OF THE SE1/4, A DISTANCE OF 984.38 FEET TO AN EXISTING IRON PIN ON THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 160, AS IT NOW EXISTS; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE THE FOLLOWING SIXTEEN (16) COURSES: 1) THENCE S77°37'53"W, A DISTANCE OF 40.27 FEET; 2) THENCE S01°11'05"E, A DISTANCE OF 30.00 FEET TO AN EXISTING RIGHT-OF-WAY MARKER ON THE APPARENT SOUTH RIGHT-OF-WAY LINE OF ROSEDALE ROAD AS IT NOW EXISTS; 3) THENCE S78°58'54"E, A DISTANCE OF 146.64 FEET TO AN EXISTING RIGHT-OF-WAY MARKER AT STATION 295+10; 4) THENCE S14°07'00"E, A DISTANCE OF 195.82 FEET TO AN EXISTING RIGHT-OF-WAY MARKER AT STATION 297+00; 5) THENCE S00°46'47"W, A DISTANCE OF 156.72 FEET TO AN EXISTING RIGHT-OF-WAY MARKER; 6) THENCE S05°17'58"W, A DISTANCE OF 495.05 FEET TO AN EXISTING RIGHT-OF-WAY MARKER; 7) THENCE S13°57'27"E, A DISTANCE OF 116.18 FEET TO AN EXISTING RIGHT-OF-WAY MARKER; 8) THENCE S00°42'28"W, A DISTANCE OF 231.26 FEET TO AN EXISTING RIGHT-OF-WAY MARKER; 9) THENCE S00°43'36"W, A DISTANCE OF 306.07 FEET TO AN EXISTING RIGHT-OF-WAY MARKER; 10) THENCE N00°40'21"W, A DISTANCE OF 848.98 FEET TO AN

EXISTING RIGHT-OF-WAY MARKER; 11) THENCE S12°31'01"W, A DISTANCE OF 102.65 FEET TO AN EXISTING RIGHT-OF-WAY MARKER; 12) THENCE S00°38'58"W, A DISTANCE OF 349.12 FEET TO AN EXISTING RIGHT-OF-WAY MARKER AT STATION 322+98.5 (STATION 323+00 PLAN); 13) S00°38'04"W, A DISTANCE OF 498.81 FEET TO AN EXISTING RIGHT-OF-WAY MARKER AT STATION 328+00; 14) THENCE S11°44'00"W, A DISTANCE OF 201.94 FEET TO AN EXISTING RIGHT-OF-WAY MARKER AT STATION 330+00; 15) THENCE S12°07'40"E, A DISTANCE OF 307.79 FEET TO AN EXISTING IRON PIN AT STATION 333+00; 16) THENCE S00°50'15"W, A DISTANCE OF 184.14 FEET TO AN EXISTING IRON PIN ON THE SOUTH LINE OF THE NE1/4 OF THE NE1/4 OF SAID SECTION 35 SAID POINT BEING THE NORTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 190 AT PAGE 482 IN SAID CHRISTIAN COUNTY RECORDER'S OFFICE; THENCE S89°18'04"W (N89°01'01"W DEED), ALONG THE SOUTH LINE OF SAID NE1/4 OF THE NE1/4 ALSO BEING THE NORTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 190 AT PAGE 482, A DISTANCE OF 1289.78 FEET (1277.02' DEED) TO AN EXISTING IRON PIN AT THE SOUTHWEST CORNER OF SAID NE1/4 OF THE NE1/4 SAID POINT ALSO BEING THE NORTHWEST CORNER OF SAID TRACT OF LAND DESCRIBED IN BOOK 190 AT PAGE 482; THENCE S40°02'09"W, A DISTANCE OF 366.53 FEET TO AN IRON PIN SET; THENCE S11°44'02"W, A DISTANCE OF 482.28 FEET TO AN IRON PIN SET; THENCE N71°18'27"W, A DISTANCE OF 313.10 FEET TO AN IRON PIN SET; THENCE N43°42'26"W, A DISTANCE OF 424.30 FEET TO AN IRON PIN SET; THENCE N47°45'54"W, A DISTANCE OF 321.52 FEET TO AN IRON PIN SET; THENCE N89°25'47"W, A DISTANCE OF 175.00 FEET TO AN IRON PIN SET ON THE WEST LINE OF THE SW1/4 OF THE NE1/4; THENCE N00°34'13"E (N01°52'11"E DEED), ALONG THE WEST LINE OF SAID SW1/4 OF THE SE1/4 AND THE WEST LINE OF THE NW1/4 OF THE NE1/4, A DISTANCE OF 1448.69 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS 189.848 ACRES (MORE OR LESS) AND IS SUBJECT TO ANY EASEMENTS, RIGHTS-OF-WAY, AND RESTRICTIONS OF RECORD.