

AMENDED AND RESTATED

DECLARATION

OF

COVENANTS AND CONDITIONS

FILED<sup>2</sup>

APR 02 2007

Missouri Public  
Service Commission

This Declaration, made by Folsom Ridge, LLC, a Colorado limited liability company certified to do business within the State of Missouri, hereinafter referred to as Declarant.

WHEREAS, Declarant is the owner of certain property in Camden County, State of Missouri which is located within the property more particularly described on Exhibit "A" attached hereto, hereinafter referred to as the "Property"; and

WHEREAS, Declarant desires to declare and establish certain covenants and conditions regarding water service and sewer service and related equipment, now owned by Declarant, to serve such Property; and

WHEREAS, Declarant wishes to allow certain additional property to utilize such water and sewer systems on the terms and conditions set forth herein; and

WHEREAS, Declarant recorded that certain Declaration of Covenants and Conditions affecting the real property described on Exhibit "A" attached hereto and additional real estate, which Declaration was recorded April 14, 2000 at Book 494, Page 577, and Declarant wishes to amend and replace such prior recorded Declaration in its entirety with this Amended and Restated Declaration of Covenants and Conditions.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of allowing owners of the Property, or portions thereof, to use the Water System and Sewer System on the terms and conditions set forth hereinbelow, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I.

DEFINITIONS

Section 1. "Access Easements" shall mean and refer to those access easements upon the Property or Lots necessary to perform the duties and functions of the Association so as to permit it to operate the Water System and Sewer System. All such rights, privileges and easements shall be non-exclusive easements over and across the Lots for the purpose of permitting the operation of the Water System and Sewer System.

Section 2. "Articles" shall mean and refer to the articles of incorporation of the Association and any supplements or modifications thereto.

Section 3. "Association" shall mean and refer to Big Island Homeowners Association, Inc., a Missouri nonprofit corporation, its successors and assigns.

Order Exhibit No. 45  
WC-2006-0082-2701  
Case No(s) 20 2007-0277  
Date 2-28-07 Rptr XF

**Section 4.** "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

**Section 5.** "Bylaws" shall mean and refer to the Bylaws of the Association adopted August 19, 1998 and any supplements or modifications thereto.

**Section 6.** "Common Expenses" shall mean and include all expenses of administration, operation, maintenance, repair, replacement, utilities and taxes incurred by the Association pursuant to this Declaration related to the construction, improvement, maintenance and care of the Water System and Sewer System, all insurance premiums for the insurance carried by the Association, all expenses incurred in connection with enforcement of this Declaration, all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws or future vote of the Association's Board of Directors, all sums lawfully assessed against the Lots by the Board of Directors of the Association, all other expenses which the Association is entitled to incur pursuant to the provisions of this Declaration, the Articles, or the Bylaws, and in performance of the operation, care, maintenance, and other duties, rights and obligations under this Declaration.

**Section 7.** "Declarant" shall mean and refer to Folsom Ridge, LLC, a Colorado limited liability company certified to do business within the State of Missouri, its successors and assigns.

**Section 8.** "Declaration" shall mean and refer to this document and all Supplemental Declarations (if any), together with all exhibits attached thereto.

**Section 9.** "Lot" shall mean and refer to any plot of land and improvements thereon designated as a Lot on any subdivision filings or for purposes of the purchaser constructing residential improvements, and for which a connection to the Water and/or Sewer System is intended and shall include any portion of the Property conveyed by Declarant or other real property which is added, in the future, to the terms of this Declaration by ratification or other document whereby such other property is intended to be bound by the terms of this Declaration.

**Section 10.** "Managing Agent" shall mean and refer to the person employed by the Board to perform the management and operational functions of the Association.

**Section 11.** "Mortgage" shall mean and refer to any mortgage, deed of trust or other document pledging a Lot or Property (or the Water System and Sewer System in the case of the Association) as security for the payment of a debt or obligation.

**Section 12.** "Mortgagee" shall mean and refer to any person, corporation, partnership, trust, company, association or other legal entity which takes, owns, holds or receives a Mortgage.

**Section 13.** "Owner" or "Owners" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 14.** "Property" shall mean and refer to that certain real property described on Exhibit "A" attached hereto and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

"Covenants" or "Bylaws" came into existence almost 2 yrs. after existing property owners purchased lots. - this was not a part of the original agreement!

\* Need to define Member?

Section 15. "Water System and Sewer System" shall mean the now existing water lines, and related improvements and equipment and future additions and modifications thereto, and the now existing sewer plant, pods, sewer lines, and related improvements and equipment and future additions and modifications thereto. If the term "Water System" is used separately, such term shall apply only to those improvements and equipment and future additions and modifications thereto, which are used solely for providing water services. If the term "Sewer System" is used separately, such term shall apply only to those improvements and equipment and future additions and modifications thereto, which are used solely for providing sewer services.

## ARTICLE II

### PURPOSES AND RESTRICTIONS

Section 1. The purpose of this Declaration and the Association is to provide for the Water System and Sewer System to serve the Lots and the Property.

Section 2. Mechanic's Lien Rights and Indemnification. No labor performed or materials furnished and incorporated with the consent of or at the request of the Owner thereof or his agent, or his contractor or sub-contractor, shall be the basis for filing of a lien against any other Lot or Property or the Water System and Sewer System where the Owner of any other Lot, or the Association in the case of the Water System and Sewer System, has not expressly consented to or requested the same. Each Owner consenting to or requesting such labor or materials shall indemnify and hold harmless each of the Owners of other Lots or Property and the Association from and against all liability arising from the claim of any lien against any other Lot or the Water System and Sewer System for construction performed, or for labor, materials, services or products incorporated in an Owner's Lot at such Owner's express or implied consent or request. Notwithstanding the foregoing, any first Mortgagee of a Lot who shall become the Owner of such Lot pursuant to a lawful foreclosure sale or the taking of a deed in lieu of foreclosure shall not be under any obligation to indemnify and hold harmless any Owners of Lots or the Association against liability for claims arising prior to the date such first Mortgagee becomes an Owner, but such first Mortgagee shall be under such obligation for any such claims for work performed or materials furnished thereafter at the request of the Mortgagee.

Section 3. Unlawful Activity Prohibited. No unlawful use shall be made of the Water System and Sewer System, or any property or improvements in which the Association owns an interest, nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having authority over the Property shall be observed.

## ARTICLE III

### ADMINISTRATION AND MANAGEMENT OF THE WATER SYSTEM AND SEWER SYSTEM

Section 1. Association as Administrator. The administration of the Water System and Sewer System shall be governed by this Declaration, the Articles, the Bylaws, and Rules and Regulations. An Owner of a Lot shall become a member of the Association upon conveyance to him of his interest in a Lot and shall remain a member for the period of his ownership.

→ this conveyance has not taken place -  
"NO disclosures" @ real estate closings.

The Association shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the Water System and Sewer System and to perform all of the duties required of it. Notwithstanding the above, unless the Owners of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be empowered or entitled to:

(A) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Water System and Sewer System or other property owned, directly or indirectly, by the Association (except that the granting of easements for public utilities or other public purposes consistent with the intended use of such property by the Association or Owners shall not be deemed a transfer within the meaning of this clause), or to terminate the Water System and Sewer System;

(B) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(C) use hazard insurance proceeds for loss to any Association property for other than repair, replacement or reconstruction of such Water System and Sewer System.

The Association shall grant to each first Mortgagee of a Lot the right to examine the books and records of the Association at any reasonable time at the expense of the Mortgagee.

#### Section 2. Reservation for Access - Maintenance, Repair and Emergencies.

The Association shall have the irrevocable right to have access to each Lot from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any portion of the Water System and Sewer System, or undertaking such repairs and maintenance the Association is obligated, or elects, to perform or at any time for making emergency repairs therein necessary to prevent damage to the Water System and Sewer System or to another Lot caused by, or threatened to be caused by, the Water System and Sewer System. Damage to any part of a Lot or Property resulting from the maintenance, repair, emergency repair or replacement of any portion of the Water System and Sewer System, or as a result of emergency repairs to another Lot, at the instance of the Association shall be a Common Expense of all of the Owners unless caused by the negligence or acts of a specific Owner or its contractors, invitees, or permittees. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of a governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the actions or negligence of any Owner, then such Owner shall be solely responsible for the costs and expense of repairing such damage.

#### Section 3. Maintenance and Service Responsibility.

(A) Owner. Each Owner shall maintain and keep in repair the connections to the Water System and Sewer System lying within the interior of his Lot, including pipe connections to the Water System and Sewer System. No owner shall do an act, or fail to do an act, that will impair the Water System and Sewer System or impair any easement or hereditament which may affect the Water System and Sewer System. All connections, maintenance and repairs to an owner's pipe connections and to the Water System and Sewer System shall be performed in accordance with applicable laws and regulations and also in accordance with standards acceptable to the Association. No

at present the "majority" of lots  
is owned by developer, "Folsom Ridge."

connection shall be made unless inspected and approved by the Association through its designated representatives. In the event an Owner fails to keep their water and sewer connection to the Water System and Sewer System, and/or their water and sewer systems located on their Lot or Property maintained in accordance with such standards, the Association shall have the right to perform such maintenance on behalf of the Owner of such Lot and on his account, and the cost thereof shall be an additional assessment secured by the lien for Common Expenses against such Lot and due and payable by its Owner upon presentation by the Association of written statements therefor, provided however, that the assessment lien for such additional sum shall always be subordinate to the lien of the first Mortgagee.

(B) Association:

(1) The Association shall have the duty of maintaining and repairing all of the Water System and Sewer System to the property boundary of a Lot once a Lot is connected to the Water System and Sewer System and the cost of said maintenance and repair shall be a Common Expense of all of the Owners unless caused by the actions or negligence of a particular Owner, and for which such Owner shall be liable. This maintenance obligation includes making reasonable safety inspections and immediate follow-up maintenance to correct unsafe conditions upon the Water System and Sewer System. The Association shall not need the prior approval of its members to cause such maintenance or repairs to be accomplished, notwithstanding the cost thereof; provided, however, there shall be no additions, alterations or improvements of or to the Water System and Sewer System requiring cumulative expenditures for such items in excess of Fifteen Thousand and NO/100 (\$15,000.00) in any one calendar year without the prior approval of the Owners representing a majority of the Lots. Such limitation shall not be applicable to the replacement, repair, maintenance or obsolescence of all or any portion of the Water System and Sewer System, or the undertaking of repairs the Association is obligated to perform.

(2) The Association shall provide to the Owners the following services which shall be paid from the Common Expense assessment, to wit:

(a) maintenance, repair and restoration of the Water System and Sewer System;

(b) administration and management of the Water System and Sewer System;

(c) insurance coverages as deemed prudent by the Board;

(d) enforcement of the covenants and conditions set forth in the Declaration, and enforcement of all obligations owed to the Association by the Owners; and

(e) performing all other acts required by this Declaration, the Articles and the Bylaws.

Notwithstanding the above, the Association reserves the right to hire one or more persons or entities, including a Managing Agent, contractors, and employees to perform such services, provided, however, that any such contracts shall not be for a term in excess of one (1) year and shall provide that the same may be terminated on not more than ninety (90) days written notice, with or without cause, at any time by either party and without payment of any termination fee.

(3) All complaints by the Owners, and other authorized users, concerning the use and administration of the Water System and Sewer System, shall be submitted in writing to the Board and the Managing Agent. A written response to such complaint shall be made within thirty (30) days of receipt of such complaint. This section shall not limit the Association's obligation to take immediate maintenance action to correct unsafe conditions.

(C) Water and Sanitary Sewer Lines and Fees. Except to the extent that any such lines are maintained and repaired by a governmental agency responsible therefor, the Owner of a Lot shall be responsible for undertaking and paying the cost of maintenance and repair of water and sanitary sewer lying within his Lot, and the Association shall be responsible for undertaking and paying the cost of maintenance and repair of water and sanitary sewer lines lying outside the boundary of a Lot unless the maintenance or repair is necessitated by the actions or negligence of a particular Owner and for which such Owner shall be liable. The Association, and the Owner of each Lot, respectively, shall promptly pay all water and sanitary sewer charges imposed thereon.

(D) Responsibility for Expenses Solely Attributable to Water System or Sewer System. Notwithstanding anything to the contrary set forth, to the extent that an expense is incurred, or to be incurred, by the Association solely to maintain or benefit only the Water System or only the Sewer System, (and to the extent such expense can be reasonably established as benefiting only the Water System or the Sewer System), such expense shall only be allocated among and chargeable to those Owners connected to the system for which the expense was incurred or to be incurred, (e.g. if a cost is incurred solely for repairing a water line, such cost shall be allocated only among those Owners connected to the Water System).

#### ARTICLE IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

##### Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Lot owned within the Property and each Owner of a Lot ratifying this Declaration, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association for each Lot connected to the Water System and Sewer System: (i) annual assessments or charges, and (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, shall become the personal obligation of the Owner of such Lot at the time when the assessment fell due, and his successors in title. If a Lot is owned by more than one person or entity, the Owners shall be jointly and severally liable for all assessments or charges against such Lot.

##### Section 2. Purpose of Assessments.

The assessments levied by the Association shall be used exclusively to promote the purposes of the Association as set forth in this Declaration and for the construction, improvement and maintenance of the Water System and Sewer System.

##### Section 3. Working Capital Deposit.

The Owners of each Lot or Property connected to the Water System and Sewer System, shall maintain on deposit with the

existing property owners  
did not sign/ratify this Declaration

people are  
not psychic -  
how disclosed if not  
deed and on these  
covenants in  
not presented?

Folsom Ridge's lots

Cathy O'Brien issue of water/sewer in same  
trench - mandated by DNR in settlement agreement  
to be corrected - but still Folsom Ridge responsibility?

Association a sum set from time to time by the Board, and as approved by the affirmative vote of two-thirds (2/3) of the Owners, as operating capital for the Association. Each Owner acknowledges that this deposit is for the purpose of providing operating funds for the Association, and not as reserves for improvement, unless specifically designated as part of the capital improvement reserves by the Board. The amount of such deposit shall be adjusted annually as of the time the annual assessments are determined. All additional sums due to, or to be refunded by, the Association shall be paid, or refunded, within thirty (30) days after the determination. The Association shall not be required to pay interest on such deposits. At the time of each conveyance of a Lot or Property, such deposit shall not be returned to the selling Owner, but the selling Owner shall be entitled to a credit from his purchaser to the extent of the selling Owner's current balance of such deposit.

**Section 4. Special Assessment for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement under the following terms:

A. With regard to the original Water System and/or Sewer System, any such special assessment for construction, reconstruction, repair or replacement under this section shall have the assent of two-thirds (2/3) of the Owners and (1) who are connected to the Water System and/or Sewer System, as applicable, or (2) who have membership rights by virtue of their ownership of a Lot, or (3) who are entitled to use such original Water System and Sewer System by virtue of having paid a tap fee but who have not yet connected to the original Water System and Sewer System), who are voting in person or by proxy at a meeting duly called for this purpose. The initial Sewer System is designed to serve 80 homes (included in this number are homes which are entitled to connect to the original Sewer System by virtue of having paid a tap fee but have not yet established a connection).

B. With regard to any expansion of the Water System and/or Sewer System to serve Lots beyond the original 80 Lots intended to be served by the original Water System and Sewer System shall be paid by Declarant or its successors. . For a period of five (5) years from September 1, 2000, with regard to the Water System and Sewer System presently in existence and installed by Folsom, and such additional systems or additions thereto (expansion) that may be installed in the future by Folsom, Folsom warrants the Water System and Sewer System were installed in accordance with customary installation procedures and to the best of Folsom's knowledge were installed in accordance with applicable laws and regulations. In the event a defect is discovered within the warranty period, for (a) the water and sewer lines installed by Folsom and/or (b) the sand beds installed by Folsom serving the sewer system, Folsom commits to repair defects at its sole cost. Such warranty does not cover defects and damages occasioned due to acts of God and damages caused by circumstances beyond Folsom's control. If any of the materials used in the Water System or Sewer System are found to be defective or if the installation is found to be defective, Folsom shall be entitled to any claim and recovery against the manufacturer concerning the materials used in the Sewer System and Water System, and against the original installer for any defective installation.

C. In order to alleviate the impact of the cost of unforeseen expenses and/or capital improvements, the Association by the assent of two-thirds (2/3) of the Owners may establish a reserve account, and monthly assessments to fund such reserve account.

**Section 5. Notice and Quorum for any Action Authorized Under Section 4.A.** Written notice of any meeting called for the purpose of taking any action authorized under Section 4.A. shall be sent to all members not less than thirty (30) days nor more than

Folsom  
Ridge currently  
owns "more  
property -  
therefore  
controlling  
the vote."

"lot owner" ratifies by signature this document? - because these docs. came 2 yrs. after the fact.

Sept. 2005 - assoc. membs.  
receive liability for system

Folsom Ridge has been counting "non-members" in attendance to get their quorum - can't do?

ninety (90) days in advance of the meeting. At each such meeting called, the presence of members or of proxies entitled to cast a simple majority of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, but never less than twenty-five percent (25%) of all votes eligible to be cast. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots on a prorata basis based on the number of connections to the Water System and Sewer System and shall be collected on a monthly basis. The liability for assessments shall become effective upon connection to the Water System and/or Sewer System, as applicable.

The Association may establish a lesser common expense assessment and assessment for reserving for those Owners of Lots which have obtained a commitment for a tap to the Water System and/or Sewer System, but which Lot has not yet connected to such system(s).

Notwithstanding anything to the contrary set forth, to the extent that an expense is incurred, or to be incurred, by the Association solely to maintain or benefit only the Water System or only the Sewer System, (and to the extent such expense can be reasonably established as benefiting only the Water System or the Sewer System), such expense shall only be allocated among and chargeable to those Owners connected to the system for which the expense was incurred or to be incurred, (e.g. if a cost is incurred solely for repairing a water line, such cost shall be allocated only among those Owners connected to the Water System).

Section 7. Date of Commencement of Annual Assessments: Due Dates. Except as set forth in Section 6 for non-connected Lots, the annual assessments provided for herein shall commence as to all Lots connected to the Water System and Sewer System (and those Lots ratifying this Declaration) on the first day of the month following such Lot's connection to the Water System and Sewer System. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot connected to the Water System and Sewer System at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The assessment due dates shall be established by the Board of Directors. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within then (10) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Water System and Sewer System or abandonment of his Lot, unless agreed to in a writing signed by the Association.

To evidence such lien for unpaid assessments, the Association shall prepare a written notice setting forth the amount, the name of the Owner of the Lot and a

refer to "David Lees" Mr. Folsom Ridge that was used by Folsom Ridge @ time existing property owners purchased "Taps" & "No Fees"

...only if a member to the assoc. by signing/ratifying this document



description of the Lot. Such notice shall be signed on behalf of the Association by an officer of the Association and shall be recorded in the records of Camden County, Missouri. Such lien shall attach from the due date of the assessment, and may be enforced by foreclosure by the Association of the defaulting Owner's Lot in like manner as mortgages on real property. The lien provided herein shall be in favor of the Association and for the benefit of all of the Owners who are members of the Association, and, in furtherance thereof, the Association shall have the absolute right and power to sell such Lot. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs, expenses and attorney's fees for filing the notice or claim of lien, and all reasonable attorney's fees in connection with such foreclosure. The Owner shall also be required to pay to the Association the assessment for the Lot during the period of foreclosure and the Association shall be entitled to a receiver to collect the same. Pursuant to a foreclosure, the Association on behalf of the Owners shall have the power to bid for the Lot at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same. The Association shall send to the first Mortgagee of such Lot a copy of the Notice of Lien provided for herein. Any person holding a lien on a Lot may, but shall not be required to, pay any unpaid Common Expense payable with respect thereto, and upon such payment such person shall have a lien on such Lot for amounts so paid of the same rank as such encumbrance's lien.

**Section 9. Subordination of the Lien to First Mortgages.** The lien securing the payment of the assessments provided for herein shall be subordinate to the lien of any first Mortgage. However, to the extent allowed by law, the lien of such assessments shall be superior to any homestead exemption as now or hereafter may be provided by Federal or Missouri law, and the acceptance of a deed or contract for deed to land subject to this Declaration shall constitute a waiver of the homestead exemption as against the said assessment lien. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a first Mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE V

### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

**Section 1. Membership.** Every Owner of the Property and/or a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Property and/or Lot, except by mutual written agreement of the Association and the Owner.

**Section 2. Voting Class.** The Association shall have one class of voting membership which shall be all Owners and shall be entitled to one vote for each Lot owned or connected to either the Water System or the Sewer System. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to each Lot.

**Section 3. Bylaws.** The Association shall establish its own bylaws for the conduct of its affairs which shall include reasonable notice to each member prior to any meeting. Decisions of the Association shall be by majority of votes cast at any meeting, except as otherwise provided hereinabove.

**Section 4. Board of Directors.** The Board of Directors shall consist of five (5) Directors, who shall be members of the Association or an officer, director, manager or

Folsom Ridge owns  
more property/lots & also has  
3 members on the board; with only  
2 members representing other  
property owners

this must be a "unilaterally" agreed to:  
just because developer "wishes" it to be  
sq. doesn't make it so? (this is unilateral)

partner of an Owner or its partner, or an employee, manager or designee of Declarant. For a period ending September 1, 2006, Folsom Ridge, LLC, or its successors, shall be entitled to appoint three (3) Directors of the Board of Directors.

**Section 5. Rules and Regulations.** The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Lots covered by the Declaration and any Lots later bound by this Declaration by ratification or consent and the use of the Water System and Sewer System which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Prior to any decision to suspend voting rights, or to impose monetary penalties, the Board shall grant notice and hearing pursuant to procedures adopted by the Board from time to time.

## ARTICLE VI

### RESERVED RIGHTS OF DECLARANT

**Section 1. Rights.** Declarant shall have the right to sell or create additional Lots being portions of the Property, and the Owner of such additional Lots shall have the right to obtain a tap and be served by the Water System and Sewer System subject to the terms of this Declaration.

**Section 2.** Declarant shall be entitled to recover from the Owner of any Lot connecting to the Water System and/or Sewer System in the future, any tap fee paid by such owner until such time as Declarant has received tap fees equal to the cumulative sum of \$300,000.00 plus 8 percent per annum interest from May 1, 2000.

## ARTICLE VII

### GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, or any Owner or Declarant, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner or Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by all of the Owners of not less than two-thirds (2/3) of the Lots. Each amendment must be recorded.

Notwithstanding the foregoing, any amendment to this Declaration which changes or restricts Declarant's rights set out herein shall required the written assent of Declarant.

**Section 3. Registration by Owner of Mailing Address.** Each Owner shall register his mailing address with the Association, and except for periodic statements and other routine notices, all other notices or demands intended to be served upon an Owner

shall be sent by either registered or certified mail, postage prepaid and addressed in the name of the Owner to such registered mailing address. All notices, demands or other notices intended to be served upon the Association shall be sent by certified mail, postage prepaid, to Big Island Homeowners Association, Inc., P.O. Box 536, Roach, MO 65787 until such address change duly recorded in the records of Camden County, Missouri.

Section 4. Acceptance of provisions of all Documents. The conveyance or encumbrance of a Lot shall be deemed to include the acceptance of all of the provisions of this Declaration, the Articles and the Bylaws, and Rules and Regulations of the Association, and shall be binding upon each grantee without the necessity or inclusion of such express provision in the instrument of conveyance or encumbrance.

Section 5. General.

(A) If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstance shall be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or work in any other circumstances shall not be affected hereby.

(B) Whenever used herein, unless the context shall otherwise provide, the plural, the singular, and the use of any gender shall include all appropriate genders and quantity.

(C) In the event there shall be any conflict between the provisions of this Declaration and any provision of the Articles, any Bylaw, or any rule or regulation of the Association, the provisions of this Declaration shall be controlling.

(D) All conditions and covenants set forth herein shall run with the real property subject to this Declaration and any future real property becoming bound by this Declaration by ratification or consent.

This Amended and Restated Declaration of Covenants and Conditions shall amend and replace in its entirety, that certain Declaration of Covenants and Conditions, which Declaration was recorded April 14, 2000 at Book 494, Page 577, and such prior Declaration shall be of no further force or effect.

In witness whereof the Managers of Declarant have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

Folsom Ridge, LLC,  
a Colorado limited liability company, certified to do business in Missouri

By \_\_\_\_\_  
Reginald V. Golden, Manager

By \_\_\_\_\_  
Rick Rusaw, Manager

By \_\_\_\_\_  
David Lees, Manager

Some property owners signed the previously written documents, but refused to sign these "amended" docs.

STATE OF )  
COUNTY OF ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000 by Reginald V. Golden, as Manager of Folsom Ridge, LLC, a Colorado limited liability company.

My commission expires:

Witness my hand and official seal.

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

STATE OF )  
COUNTY OF ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000 by Rick Rusaw, as Manager of Folsom Ridge, LLC, a Colorado limited liability company.

My commission expires:

Witness my hand and official seal.

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

STATE OF MISSOURI )  
COUNTY OF CAMDEN ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000 by David Lees, as Manager of Folsom Ridge, LLC, a Colorado limited liability company.

My commission expires:

Witness my hand and official seal.

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