

Exhibit No.:  
Issues: Availability Charges  
Witness: James A. Merciel, Jr.  
Sponsoring Party: MO PSC Staff  
Type of Exhibit: Rebuttal Testimony  
Case No.: WR-2010-0111  
& SR-2010-0110  
Date Testimony Prepared: February 19, 2010

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

REBUTTAL TESTIMONY

OF

JAMES A. MERCIEL, JR.

LAKE REGION WATER & SEWER COMPANY

CASE NO. WR-2010-0111 &  
SR-2010-0110

Jefferson City, Missouri  
February 2010

Staff Exhibit No. 15  
Date 3/5/10 Reporter MLL  
File No. SR-2010-0110 & WR-2010-0111



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**OF**  
**JAMES A. MERCIEL, JR.**  
**LAKE REGION WATER & SEWER COMPANY**  
**CASE NO. WR-2010-0111 &**  
**SR-2010-0110**

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**REBUTTAL TESTIMONY**

**OF**

**JAMES A. MERCIEL, JR.**

**LAKE REGION WATER & SEWER COMPANY**

**CASE NO. WR-2010-0111 &  
SR-2010-0110**

14 Q. Please state your name and business address.

15 A. James A. Merciel, Jr., P. O. Box 360, Jefferson City, Missouri, 65102.

16 Q. By whom are you employed and in what capacity?

17 A. I am employed by the Missouri Public Service Commission ("PSC" or  
18 "Commission") as a Utility Regulatory Engineering Supervisor, in the Water and Sewer  
19 Department.

20 **Background of Witness**

21 Q Please describe your education and work experience.

22 A. I graduated from the University of Missouri at Rolla in 1976 with a Bachelor  
23 of Science degree in Civil Engineering. I am a Registered Professional Engineer in the State  
24 of Missouri. I worked for a construction company in 1976 as an engineer and surveyor, and  
25 have worked for the Commission in the Water and Sewer Department since 1977.

26 Q. What are your work responsibilities while employed at the Commission?

27 A. My duties include reviewing and making recommendations with regard to  
28 certification of new water and sewer utilities, sales of utility systems to other utilities, formal  
29 complaint cases, and technical issues associated with water and sewer utility rate cases. In  
addition to formal case work, I handle customer complaints that are of a technical nature,

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1 conduct inspections and evaluations of water and sewer utility systems, and informally assist  
2 water and sewer utility companies with respect to day-to-day operations, planning, and  
3 customer service issues. In the past, I have supervised engineers and technicians in the water  
4 and sewer department working on the above-described type of case work and informal  
5 matters. In the context of my position with the Commission Staff I served on the American  
6 Water Works Association Small Systems Committee for three years, and for approximately  
7 the past fourteen years have served on the National Association of Regulatory Utility  
8 Commissioners Staff Subcommittee on Water.

9 Q. Have you testified before the Commission previously?

10 A. Yes. A list of cases in which I have provided testimony is included as  
11 Attachment 1.

12 Executive Summary

13 Q. What is the purpose of your rebuttal testimony?

14 A. The purpose of this rebuttal testimony is to respond to the direct testimony of  
15 Office of the Public Counsel witness Ted Robertson, filed on January 14, 2010. More  
16 specifically, the purpose of this rebuttal testimony is to further discuss, and present the Staff's  
17 position regarding the matter of water and sewer utility availability charges as related to Lake  
18 Region Water & Sewer Co. (LRWS), as brought up in Mr. Robertson's direct testimony.  
19 However, I must note that I am not an attorney, and therefore am not purporting to state  
20 Staff's legal position, which may be presented in filed briefs.

21 Availability Charges

22 Q. Can you briefly describe the general concept of utility availability charges?

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1           A.     Yes. The concept is that the availability charge applies to subdivision lot  
2 owners at locations where a water or sewer utility's system infrastructure, or pipelines, exist  
3 usually in front of their lot, and is "available" for connection, but the lot owner has not  
4 connected to the utility system or systems, typically because they have not yet constructed a  
5 home. An availability charge provides supplemental revenue that can be used to support the  
6 utility operation until such time as the lot owner connects to the water and/or sewer system,  
7 and begins to receive the utility service, and finally pays a utility bill. An availability charge  
8 might be a monthly or annual amount that is less than what a typical utility bill would be. As  
9 discussed in greater detail elsewhere herein, such supplemental revenue can be important  
10 when a new utility is started.

11           It might be helpful to understand that many small water and sewer companies serve  
12 rural subdivisions, and were created solely because creation of such a water or sewer utility  
13 was necessary in order to have water or sewer service in the subdivision because service  
14 provided by established utilities was not available. Sometimes but not always, the land  
15 developer and the utility might be the same entity, or at least entities that are owned by the  
16 same persons.

17           Q.     How are availability charges created?

18           A.     Availability charges that I have seen in the past are created in subdivision  
19 restrictions or covenants, or land sales agreements. Such documents usually require lot  
20 purchasers to pay the availability charge, initially to the developer. The rights to collect  
21 availability charges can be assigned to others, such as a utility or other party.

22           Q.     Does the Public Service Commission (PSC or Commission) approve  
23 availability charges?

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1           A.     Availability charges have not been established directly by regulated utilities in  
2 the context of approval by the Commission for a utility to provide utility service. However, in  
3 some cases with regulated utilities, the developers would assign ownership of availability  
4 charges to the utility, and the Commission has permitted the charges to appear in the utilities'  
5 Schedules of Rates, Rules and Regulations, also known as tariffs. The Commission has also  
6 approved rate cases where availability charges were applied as a reduction to rate base, but  
7 did not exist in a tariff.

8           Q.     What, typically, is the relationship between a land developer and a utility?

9           A.     In most cases, whether the developer and utility are closely related or not, the  
10 developer creates a subdivision to sell individual lots. The developer's work entails  
11 construction of such things as streets and sidewalks, subdivision entrance structures, drainage  
12 ways, and perhaps common park areas, a clubhouse with a swimming pool, a lake, and  
13 utilities for use by the lot owners when they construct homes. With regard to utilities, the  
14 developer would construct or make arrangements for construction of electric, gas, telephone,  
15 water and sewer utility facilities, as necessary. With regard to water and sewer, the developer  
16 usually is required to either construct or pay for the construction of water distribution and  
17 sewer collection pipeline systems, then the water or sewer utility assumes ownership of the  
18 pipelines and easements generally at no cost. Also, in some but not all cases, the developer  
19 might also pay for central facilities such as wells, storage tanks, sewage treatment plants, and  
20 major water or sewer pump stations. If indeed this capital investment is contributed to the  
21 utility by the developer at no cost, it is usually treated by the Staff and the Commission as  
22 "contribution-in-aid-of-construction," or "CIAC". Assuming the subdivision project is  
23 successful, the developer generally recovers the capital cost of all of the subdivision

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1 improvements including utilities through the sale of the lots, which are attractive and valuable  
2 to potential purchasers because of the improvements.

3 Q. How does the CIAC affect utility rates?

4 A. In the setting of utility rates, capital recovery of the contributed plant  
5 investment is not included as a utility cost, and thus not included in rates charged to customers  
6 since the customers already paid for those improvements through the purchase of the  
7 subdivision lot from the developer.

8 In other instances, customers are charged a CIAC fee to start receiving utility service.  
9 This CIAC fee is intended to offset some or all of the utility's investment of central facilities  
10 such as wells, storage tanks, sewage treatment facilities, and major water or sewer pump  
11 stations. Sometimes the developer pays the CIAC for the lot purchasers. Similar to  
12 contributed pipelines, CIAC fees are used for recovery of some or all plant investment, and  
13 since it is paid up, front such recovery is not included in rates paid by the utility customers.

14 So, CIAC, whether in the form of contributed assets or contributed cash for capital, is  
15 a reduction to the utility's total plant cost, or a reduction to what is referred to as "rate base,"  
16 and recovery is not included in rates.

17 Q. Is an availability charge different than other charges for water or sewer utility  
18 service?

19 A. Yes, it is different. Utility bills issued by regulated utilities are calculated  
20 using a "rate" that applies for "service" provided and received by the utility customer. Those  
21 terms are defined in Missouri Statutes, specifically §386.020 (46) and (48) RSMo (Supp.  
22 2009), as follows:

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1 (46) "Rate", every individual or joint rate, fare, toll, charge, reconsigning  
2 charge, switching charge, rental or other compensation of any corporation,  
3 person or public utility, or any two or more such individual or joint rates,  
4 fares, tolls, charges, reconsigning charges, switching charges, rentals or other  
5 compensations of any corporation, person or public utility or any schedule or  
6 tariff thereof;

7 (48) "Service" includes not only the use and accommodations afforded  
8 consumers or patrons, but also any product or commodity furnished by any  
9 corporation, person or public utility and the plant, equipment, apparatus,  
10 appliances, property and facilities employed by any corporation, person or  
11 public utility in performing any service or in furnishing any product or  
12 commodity and devoted to the public purposes of such corporation, person or  
13 public utility, and to the use and accommodation of consumers or patrons;

14 As a technical expert, I believe that "service" is provided to a water customer when  
15 that customer is connected to the water system and has use of the water, which is the utility's  
16 product/commodity furnished to the customer, as desired. Similarly, a "service" is provided  
17 to a sewer customer when that customer is connected to the sewer system, in that any time the  
18 customer discharges sewage it will be taken and properly treated by the sewer utility. The  
19 availability charge is different because it applies when the utility "service" is available to the  
20 property owner by virtue of the existence of pipelines in front of the property, but the property  
21 owner does not connect and actually receive utility "service."

22 Q. Do you consider an availability charge to be a utility "rate"?

23 A. I believe that an availability charge is a "rate," whether charged by a regulated  
24 utility or not, because it is clearly related to the utility system in that it is applicable if, very  
25 simply, the utility system exists in front of or other proximity to the lot, and is available to  
26 provide utility service to the lot owner. I believe it is clearly a regulated and lawful "rate" if it  
27 is included in a regulated utility's tariff. Some utilities do in fact include availability charges  
28 in tariffs, and in such cases the Staff considers the availability to be a "rate" with associated  
29 revenue, charged to lot owners any of whom could become customers at any time.

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1 Q. Do you consider any "service" to be provided to a lot owner who pays  
2 availability charges?

3 A. No, I do not. Since a lot owner paying an availability charge is not connected  
4 to the appropriate utility system to which the availability charge is related, I believe that there  
5 is no utility "service" provided in consideration of payment of such an availability charge,  
6 though such "service" is available to that lot owner upon connection to the pipeline in front of  
7 the property. Some might contend that some type of a "service" is being provided to a  
8 subdivision lot if the pipelines are in front, because such availability causes the value of a lot  
9 to be greater than it would be without utility availability. But, I do not share the opinion that  
10 this is a service provided by the utility. The value of any given lot, anywhere, is what it is,  
11 based on any of a number of factors including utility availability, and an extra recurring  
12 payment does not do anything to increase the value of the lot.

13 Q. What is your idea of the usefulness of availability charges?

14 A. There are at least two ways that an availability charge can be useful to either  
15 the utility or developer in the early years of a new development served by a new utility. One  
16 way is to provide revenue that supports the utility's day-to-day operations, either paid directly  
17 to the utility or to provide funds for the developer to subsidize the utility' operational revenue.  
18 In all cases of new startup water or sewer utilities operating in new subdivisions, the utility  
19 system must be turned on and operating when the first customer is connected. With the  
20 system running, and while the utility collects a very small amount of revenue from only a few  
21 customers, the utility will still incur what is sometimes called "out-of-pocket" costs, requiring  
22 money to be paid out. Examples typically include electric power bills, a licensed operator  
23 along with transportation expense, office supplies, administrative expenses, and needed

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1 repairs. While some utility expenses such as return on investment, depreciation and  
2 allocations of expenses shared with related companies will simply not be realized by the  
3 utility owner, the out-of-pocket costs that must actually be paid by the utility often exceed  
4 revenue for a substantial amount of time, perhaps several years, until enough customers are  
5 actually connected to the system and paying utility bills. In many cases the subdivision  
6 developer, who may or may not be the utility owner, will provide funds to supplement utility  
7 revenue for operations for some period of time. Collection of an availability charge is another  
8 way for the utility to realize sufficient revenue to pay the out-of-pocket expenses, but is really  
9 not necessary after the utility can collect sufficient revenue from actual customers. This  
10 collection of out-of-pocket expenses is also why availability charges do not need to be in  
11 place for the long term. After an initial period of time those out-of-pocket expenses should be  
12 recouped and the availability charge no longer necessary.

13 The second way an availability charge can be useful is for recovery of capital funds  
14 expended for construction of utility system assets. It might be recovery by the developer, if  
15 that developer paid for construction then contributed the assets to the utility, or the developer  
16 contributed funds to the utility in order for it to construct the assets, as discussed herein as  
17 CIAC. Capital investment by the utility is normally recoverable through utility rates paid by  
18 customers, and recoverable by developers through lot sales. However, similar to operations  
19 expenses, capital recovery could be slow and inadequate in the early years of development,  
20 depending on the level of utility investment and developer CIAC for central facilities.  
21 Legitimate capital recovery through availability charges, in my opinion, would apply only if  
22 the utility invests capital (rate base) in water distribution or sewer collection infrastructure, in  
23 which case investment exists for lot owners who are not connected. As discussed, however,

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1 such rate base does not exist for most regulated utilities because developers typically  
2 contribute those assets. Capital recovery could also legitimately apply if the utility  
3 constructed water source of supply, storage tanks, or sewage treatment facilities of adequate  
4 capacity to serve all lots sold, as opposed to constructing capacity necessary for existing  
5 customers plus a reasonable reserve for future growth. Again, this situation could exist for a  
6 newly created development and new utility, but does not exist for established utilities.

7 Q. What are some disadvantages of availability charges?

8 A. Disadvantages of availability charges include, but are not limited to, the  
9 following:

- 10 • The intended use of availability charge funds is usually not well defined,  
11 potentially resulting in disagreements over use of the funds.
- 12 • Payments of availability charges could be made to a developer or to another  
13 party and not actually used to support the utility operation which is the apparent  
14 stated purpose.
- 15 • Collection of availability charges can be difficult to enforce, resulting in the  
16 inequitable situation of some lot owners paying and others not.
- 17 • The use of availability charge funds may be different than corresponding use of  
18 utility revenue, resulting in inequitable situations. Example: the developer  
19 constructs and contributes water distribution mains to the utility, and then  
20 recovers the capital cost from lot owners paying the availability charge, but  
21 neither the developer nor the utility recovers any capital cost of water mains  
22 from customers paying utility bills.
- 23 • Lot owners in various subdivisions or various subdivision plats throughout the  
24 utility's service area might pay different amounts of availability charges; or,  
25 some are required to pay and some are not, resulting in an inequitable situation.
- 26 • Availability charges may have no expiration, meaning some lot owners might  
27 supplement utility revenue or capital recovery long after capital recovery is  
28 realized, and the utility is self-sufficient without any need for supplemental  
29 revenue.
- 30 • Lot owners paying availability charges may not see any direct benefit for what  
31 they are paying, not even in the future, especially if their payments are  
32 inequitably benefiting the developer, utility owners, or other utility customers.
- 33 • Past due availability charges, arguably, remains with the lot, meaning subsequent  
34 lot owners may acquire liability for past due availability charges incurred by  
35 previous lot owners, possibly with no time or amount limits.
- 36

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1 Q. Do you believe it is reasonable for land developers to charge regularly  
2 occurring fees for utility-related matters?

3 A. No, I don't. My opinion is that only the utility should assess recurring utility-  
4 related charges, because it has the responsibility for operation of the utility system, and with  
5 such recurring charges appearing as a utility "rate" paid in consideration of a "service"  
6 received. I believe that it is reasonable that developers should be able to recover one time  
7 charges, such as connection fees, particularly when those types of fees are specifically for the  
8 individual lot purchaser when similar fees might or might not be paid by the developer for  
9 other lots. I also recognize that developers are in fact involved with utility development and  
10 support to varying degrees. In my opinion, it is equitable for developers to recover capital  
11 cost and operational subsidies through the sale prices for lots, but not in assessing recurring  
12 charges to some lot owners and not others, which is the case when some lot owners pay an  
13 availability charge. It is also not equitable for developers, or their assigns, to over-recover by  
14 assessing such recurring charges. It is also a fact that availability charges, or similar charges,  
15 could be created and exist outside of an apparent context of utility operations and regulation.  
16 To the extent that availability charges do exist, and are represented by the lot seller or  
17 subdivision documents or both as charges related to the utility, I believe they should actually  
18 be used for the benefit of the utility customers, and potential customers somehow, and not as a  
19 windfall revenue income to the developer or assigns.

20 Q. Why do you consider recurring utility-related charges by anyone other than the  
21 utility to be inequitable?

22 A. There are at least three perspectives on why I believe such recurring charges  
23 are inequitable.

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- 1           1. From a capital investment recovery standpoint, if availability charges are assessed  
2           for such capital recovery, then the developer recovers from those folks paying the  
3           availability charge, but does not recover from those who are connected and paying  
4           utility bills. The developer should be able to recover capital funds expended for  
5           utility infrastructure that are typically expended by developers and contributed to  
6           the utility, meaning water distribution and sewer collection pipelines. However,  
7           such infrastructure is available and useful to all of the lots whether they are  
8           connected to the utility or not, so in my opinion the only equitable capital recovery  
9           is through lot sales.
- 10          2. From an operations standpoint, during the initial operation of a new development  
11          and new utility, the availability charges can provide additional revenue to  
12          supplement that from utility customers actually connected. Sufficient revenue is  
13          critical to meet the out-of-pocket expenses. However, after a few years and  
14          enough customers are connected to fully support the utility's day-to-day operations  
15          including all capital recovery, then those who are paying availability charges are  
16          simply subsidizing utility customers when it is not necessary.
- 17          3. Those who pay availability charges on an ongoing basis are not getting anything  
18          for what they are paying. There is no utility service provided as discussed further  
19          herein, no capital or operational costs incurred for lot owners not connected to the  
20          utility system, and no future benefit for those lot owners. In fact, they are simply  
21          paying money to support others, either utility customers, utility owners, or  
22          developers or assignees, with nothing returned in consideration of paying the  
23          charges.

24  
25           Q.     Are there existing regulated utilities that employ availability charges in some  
26           fashion?

27           A.     Yes. Besides the existence of water and sewer availability charges in LRWS's  
28           service area, a water availability charge exists and is applicable to Ozark Shores Water  
29           Company (OSWC), which is a regulated water utility affiliated with LRWS, and also located  
30           in the Lake of the Ozarks area, however it is not specified in OSWC's tariff. A water  
31           availability charge exists and is included in the water tariff of Peaceful Valley Service  
32           Company (Peaceful Valley), near Owensville, MO, a copy of the rate sheet included herein as  
33           Attachment 2. A water availability charge existed until recently and was in the tariff of I.H.  
34           Utilities, Inc. (IH), near Cuba, MO.

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1 Q. For regulated utilities that employ an availability charge, does the Staff include  
2 revenue derived from availability charges in rate treatment, and if so how?

3 A. Yes, the Staff normally includes funds from availability charges as ordinary  
4 utility revenue. For IH, and I believe for Peaceful Valley although I don't have  
5 documentation readily available, the availability charge for each was assigned from the  
6 developers to the water utilities, and thus was included in the tariffs. However, in a recent  
7 rate case, IH voluntarily agreed to cease charging the availability charge, the charge has been  
8 removed from the tariff, and the issue presumably will never again arise with respect to that  
9 utility and the subdivision in which it provides service. The Staff included approximately  
10 \$14,000 of availability charge annual revenue of Peaceful Valley's approximately \$39,000  
11 total annual water utility revenue in a recent rate case, WR-2009-0145. Revenue derived from  
12 water availability charges was included in OSWC's revenue, and revenue of the previous  
13 owner of its water system, Four Seasons Lakesites Water & Sewer Co., in rate cases over the  
14 years. LRWS has never had a rate proceeding since its certification in 1997, until this current  
15 rate case, and thus availability charges have never been addressed for it.

16 Q. Are you familiar with the history of availability charges in the LRWS service  
17 area?

18 A. Yes, I am generally familiar with the history of availability charges in LRWS's  
19 water and sewer service area, as well as that within the service areas of OSWC, and some or  
20 all of the area served by Camden County Public Water Supply District No. 4 (Water District),  
21 both of which are nearby or overlap LRWS's service area. Availability charges are addressed  
22 in the Four Seasons Lakesites, Inc.'s subdivision Declaration of Restrictive Covenants.  
23 However, this does not include all subdivisions in the area. I am also aware of one private

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1 civil proceeding in which availability charges was an issue, but in which the Staff was not  
2 involved. It is Cause No. 07CM-CC00013 in Camden County Circuit Court, involving the  
3 Water District. It is my understanding and belief that the rights to collect availability charges  
4 with respect to LRWS's service area have been transferred to the various owners of LRWS in  
5 some manner. Currently, a separate fictitious entity known as Lake Utility Availability 1  
6 (LUA) is billing and collecting availability charges. According to available information  
7 through the Missouri Secretary of State, the people involved with LUA are the same people  
8 and family members that are the owners of LRWS.

9 Q. Can you give a brief history of LRWS, along with availability charges  
10 applicable in its service area?

11 A. Yes. LRWS, originally known as Four Seasons Lakesites Water & Sewer Co.  
12 (Four Seasons), obtained a Certificate of Convenience and Necessity to provide water service  
13 in Case No. 17,954 in 1973, in an area at the Lake of the Ozarks known as Horseshoe Bend.  
14 In that case, an availability charge as related to the water system was mentioned but there was  
15 no Commission ruling or any agreement on how it or its funds would be handled. The  
16 availability charge was never included in that company's tariff, although the Staff has  
17 included funds derived from the availability charge as water revenue in subsequent rate cases,  
18 most recently in WR-99-183. Four Seasons also began providing sewer service, and  
19 expanded its certificated areas in several subsequent cases before the Commission. It changed  
20 its name to Four Seasons Water & Sewer Company in 1997, and then changed to its current  
21 name, Lake Region Water & Sewer Co., in 1999.

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1 In Case No WM 93-59 OSWC acquired the water utility assets of LRWS. The  
2 treatment of availability charge funds with respect to rates remains with OSWC as it was with  
3 LRWS.

4 In addition to some relatively minor certificated area expansions over the years,  
5 LRWS expanded its sewer service area and created a new water service area in an area known  
6 as Shawnee Bend in Case No. WA-95-164. Some pertinent information with respect to that  
7 case and availability charges is included in Mr. Robertson's direct testimony.

8 Utility availability charges were also addressed in Case No. WA-95-164, as Mr.  
9 Robertson pointed out in his testimony. But, similar to Four Seasons' original certificate case,  
10 there is not much detail set out in that case with regard to how the availability charges or the  
11 funds would be handled, beyond a Staff witness stating that the Staff would take availability  
12 charges into consideration when undertaking future rate studies.

13 Q. Do you know what is required of property owners in LRWS service area with  
14 respect to availability charges?

15 A. For most or all of the subdivisions developed by Four Seasons Lakesites, Inc.,  
16 there is a Declaration of Restrictive Covenants document. This document has been modified  
17 a great number of times over the years since an original that was dated in 1969 according to  
18 notations in later versions. All modified versions of this document are referred to herein  
19 generally as the "Declaration." I believe, based on various versions of the Declaration I have  
20 seen, that an availability charge originally applied to water service in the Horseshoe Bend  
21 area, and the amount was to be specified in the tariff of a regulated water utility.

22 A copy of the *Third Amended and Restated Declaration of Restrictive Covenants*  
23 ("Third Amended Declaration"), applying to lots in both the Horseshoe Bend and Shawnee

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1 Bend areas, is included herein as Attachment 3. On Pages 18 and 19 of this version of the  
2 Declaration, which includes amendment up to July 9, 1998, it is stated that the water  
3 availability charge will be paid to the owner of the water system, which owner will be a utility  
4 regulated by the PSC or successor agency, that the availability charge would be included in  
5 the regulated utility's tariff, and that the availability charge could be subject to change in the  
6 future.

7 In an *Amendment to the Third Amended and Restated Declaration of Restrictive*  
8 *Covenants Relating to Water and Sewer Systems* ("Amendment to the Third"), included  
9 herein as Attachment 4, similar language for a water availability charge is applicable to lots  
10 within the Horseshoe Bend area, and this version also specifies both water and sewer  
11 availability charges for lots in the Shawnee Bend area. It also states that the Shawnee Bend  
12 availability charges will be paid to the owner of the water and sewer systems or assigns or  
13 designees, but does not specify that owner to be a regulated utility, and there is no reference to  
14 the PSC or to tariffs.

15 A copy of the *Fourth Amended and Restated Declaration of Restrictive Covenants*  
16 ("Fourth Amended Declaration") is posted by the Four Seasons Lakesites Property Owners  
17 Association, Inc. (POA), an intervenor in this rate case, on that organization's website, and is  
18 included herein as Attachment 5. This most recent modification apparently was in 2009 but  
19 blanks for specific dates are not filled in. In this most recent version, availability charges and  
20 specific applications is removed, and in its place is a reference to a "Water and Sewer  
21 Amendment," which document the Staff believes is the Amendment to the Third.

22 Q. Do you believe that lot owners had some expectation that the availability  
23 charges would come under the oversight of the Commission?

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1           A.     Yes. Based on the Third Amended Declaration and possibly earlier versions of  
2 the Declaration, it is clear from the language of that document that the water availability  
3 charge applicable to lots purchased and covered under the Declaration would be within the  
4 oversight of the Commission. To the extent these lot owners relied on the Declaration, they  
5 likely believed that indeed the Commission would provide oversight of availability charges.  
6 In addition, LRWS owns and/or controls the water distribution and sewer collection pipelines  
7 in front of or otherwise available to the lot owners' homes, and is the utility entity that would  
8 provide utility service, upon that lot owner's connection to the utility system.

9           Q.     Do you know how many lot owners are affected and obligated to pay  
10 availability charges, and how much revenue is involved?

11           A.     At this time, the Staff has requested but does not have exact numbers for lots  
12 affected by availability charges, nor the amount of charges for each. Availability charges as  
13 set out in the Amendment to the Third are \$10 per month for water, and \$15 per month for  
14 sewer, with a provision that other contracted amounts could apply to some lots. So, there  
15 could be different amounts charged for lots within various subdivisions. Most lots are likely  
16 subject to both water and sewer availability charges, but some could be affected only by one  
17 or the other. The Staff is attempting to obtain such accurate information. Also, subdivisions  
18 not developed by Four Seasons Lakesites, Inc. may or may not have any availability charges  
19 applicable to lot owners. However, based on testimony from some lot owners at the public  
20 hearing held in this case on January 26, 2010, and some information provided by the POA, the  
21 Staff believes there could be between 1,100 and 1,300 lots in the Shawnee Bend area, perhaps  
22 more, that are subject to both water and sewer availability charges. The amount of money  
23 thus could be between \$300,000 and \$400,000, annually. In addition to any estimated

Direct Testimony of  
James A. Merciel, Jr.

1 revenue, late fees also exist, as shown on a copy of a bill that is included in Attachment 6 that  
2 is a part of this testimony.

3 Q. Has LRWS included any revenues from availability charges in its rate filing?

4 A. No, based on the Staff auditors' findings.

5 Q. Do you believe availability charge revenue should be included as revenue for  
6 LRWS?

7 A. Yes. However, the Staff does not have a specific revenue amount at this time,  
8 and has thus far not included any such revenue, because LRWS has objected to the Staff's  
9 data requests with respect to information pertaining to such revenues and other related  
10 information.

11 Q. Why do you believe availability charge revenue should be included as LRWS  
12 revenue?

13 A. My opinion is based upon the general principles of availability charges as  
14 known to me in the context of my work and experience on the Staff of the PSC, and upon  
15 specific language in the various versions of the Declaration documents referencing the owners  
16 of the utility systems, as outlined herein. In the specific case of LRWS, I believe that the  
17 owners of the company indeed are collecting the revenue derived from availability charges,  
18 even though the separate fictitious entity, LUA, bills and collects availability charges. I  
19 believe that LRWS, in the past and also under its previous names, billed and collected the  
20 availability charges. It was after the current owners of LRWS created LUA that the  
21 availability charges were separated, to a limited extent, from LRWS. Additionally, bills from  
22 LUA and LRWS look similar, and bear the same address and telephone number. Copies of  
23 these bills are included as Attachment 6. It is likely, in my opinion, that lot owners believe

Direct Testimony of  
James A. Merciel, Jr.

1 that since availability charges and utility charges are billed by and paid to the "same place,"  
2 that if they are not paid, not only could a lien be filed on their property as provided for in the  
3 Declaration, but their future utility service could be jeopardized. From this perspective, the  
4 lot owners paying availability charges likely see LRWS, the utility provider of water and  
5 sewer services, and LUA, the beneficiary collector of the availability charges, as one and the  
6 same. Additionally, there is evidence that in the past, availability charges were paid directly  
7 to the utility. Included as Attachment 7 is a copy of a Sewer and Water Agreement from 1994  
8 for a lot on Shawnee Bend, in which utility system availability, availability charges, and  
9 reference to the PSC, among other things, are addressed; also included is a bill from 1995 for  
10 water and sewer availability charges, payable to Four Seasons Lakesites Water & Sewer Co.,  
11 a previous name of LRWS as discussed herein. Finally, I believe that justification of the  
12 availability charges is represented to lot purchasers in the Declaration as financial support of  
13 the utility systems that exist and are available to their property, even if they choose to not  
14 connect for whatever reason. So, it is clear to me that availability charges applicable in  
15 LRWS's service areas are inextricably tied to the existence of sewer and/or water utility  
16 systems available to provide utility service for particular subdivision lots.

17 Q. Does this conclude your rebuttal testimony?

18 A. Yes.

WR-2010-0111 and SR-2010-0110  
Rebuttal Testimony of James A. Merciel, Jr.

List of Attachments

- 1 Cases with Testimony by James A. Merciel, Jr.
- 2 Peaceful Valley Service Company Tariff Sheet No 6
- 3 Third Amended and Restated Declaration of Restrictive Covenants
- 4 Amendment to the Third Amended and Restated Declaration of Restrictive Covenants Relating to Water and Sewer Systems
- 5 Fourth Amended and Restated Declaration of Restrictive Covenants
- 6 Copies of Lake Region Water and Sewer Co. and Lake Utility Availability, Inc. Bills
- 7 Copy of a Sewer & Water Agreement, and Availability Bill from 1995

**Attachment No. 1  
Cases with Testimony by James A. Merciel, Jr.**

**WR-2010-0111 and SR-2010-0110  
Rebuttal Testimony of James A. Merciel, Jr.**

WR-2010-0111 and SR-2010-0110  
Cases with Testimony by James A. Merciel, Jr. (not all inclusive)  
February 2010

Algonquin Water Resources  
WR-2006-0425

Aqua Missouri, Inc.  
SC-2007-0044

Big Island – Folsom Ridge  
WO-2007-0277

Blue Lagoon, LLC  
SO-2008-0358

Camelot Utility Co.  
WA-89-1

Capital City Water Co.  
WR-94-297  
WR-90-118  
WO-89-76  
WR-88-215  
WR-83-165.

Davis Water Company  
WC-87-125 and WC-88-288 (including proceeding in the Circuit Court in Wayne  
County)

Finley Valley Water Company / Public Funding Corporation, City of Ozark  
WM-95-423

Gascony Water Company, Inc.  
WA-97-510

House Springs Sewer Co.  
SC-2008-0409

Lake Saint Louis Sewer Co.  
SC-78-257

Proceeding in Circuit Court in St. Charles County, approx 1980 or 1981

Merriam Woods Water Company  
WC-91-18 and/or WC-91-268

Mill Creek Sewer System, Inc.  
Proceeding by MO Attorney General in Circuit court in St. Louis County, Cause  
No. 611261, 1998

Missouri American Water Company  
WR-2008-0311 and SR-2008-0312  
WR-2007-0216  
WC-2006-0345  
WR-2003-0500  
WR-2000-281  
WR-97-237  
WT-97-227 / WA-97-45 / WC-96-441 consolidated cases  
WR-95-205  
WR-95-174  
WR-93-212

WR-2010-0111 and SR-2010-0110  
Cases with Testimony by James A. Merciel, Jr. (not all inclusive)  
February 2010

WR-91-211  
WR-89-265  
WR-87-177  
WR-85-16

Missouri Cities Water Company

WR-95-172  
WR-92-207  
Proceeding in Circuit Court in Audrain County, CV192-40SCC approx 1992  
WR-91-172  
WR-90-236  
WR-89-178  
WC-88-280  
WR-86-111  
WC-86-20  
WR-85-157  
WR-84-51  
WR-83-15

North Oak Sewer District, Inc.

SR-2004-0306

Raytown Water Company

WR-92-85 / WR-92-88

Southwest Village Water Company

WO-89-187  
WC-89-138 (included testimony in Circuit Court in Greene County)

St. Louis County Water Company

WR-97-382  
WR-96-263  
WR-95-145  
WR-94-166  
WR-93-204  
WR-91-361  
WR-88-5  
WR-87-2  
WR-85-243  
WC-84-29  
WR-83-264  
WR-82-249  
WC-79-251

Stoddard County Sewer Co.

SO-2008-0289

Suburban Water and Sewer Co.

WC-84-19  
Injunction hearing, Circuit Court in Boone County 07BA-CV02632, June 2007  
WC-2007-0452

WR-2010-0111 and SR-2010-0110  
Cases with Testimony by James A. Merciel, Jr. (not all inclusive)  
February 2010

United Water Missouri  
WR-99-326

Villa Park Heights Water Co.  
WA-86-58

Warren County Water and Sewer Co.  
Circuit court case in Warren County CV597-134CC, September 1997

West Elm Place Corporation  
Circuit court lawsuit case in Jefferson County, approx 1988

Attachment No. 2  
Peaceful Valley Service Company Tariff Sheet No 6

WR-2010-0111 and SR-2010-0110  
Rebuttal Testimony of James A. Merciel, Jr.

P.S.C. MO. No. 2  
Canceling P. S. C. MO No. 2

1<sup>st</sup> Revised Sheet No. 6  
Original SHEET No. 6

Peaceful Valley Service Company For Peaceful Valley Lake Estates  
Name Of Issuing Corporation Community, Town, or City  
Gasconade County, Missouri

Rules and Regulations Governing  
Rendering of Water Service

SCHEDULE OF RATES

Availability: The Company holds itself out to provide water for distribution at retail only and no sales of water for re-distribution shall be made. Otherwise, service is available to any customer adjacent to the Company's water distribution mains using standard water service.

General Rates

Residential or Domestic Use:	\$29.24	per quarter
Commercial:	\$29.24	per quarter
Commercial with Restaurant:	\$55.58	per quarter
Yard Hydrants in Parks-Beaches-Camping Areas:	\$14.64	per quarter
( Availability Charge:	<u>\$ 8.16</u>	per quarter )

The availability charge is applicable where the Company has a water main located adjacent to a lot or lots in Peaceful Valley Lake Estates Subdivision and the owner of said property is subject to a contract agreement with or an assignment to the Company, wherein it is agreed that the property owner will pay to the Company an availability charge until a water service line is connected to the property. At the time a service line is connected, the other rates in this tariff will apply.

As a condition of service, a property owner will be required to pay any availability charge owed since the effective date of this provision (July 1, 1985), before the Company is required to provide water service.

\* Indicates new rate or text  
+ Indicates change

DATE OF ISSUE March 23, 2009  
ISSUE BY President

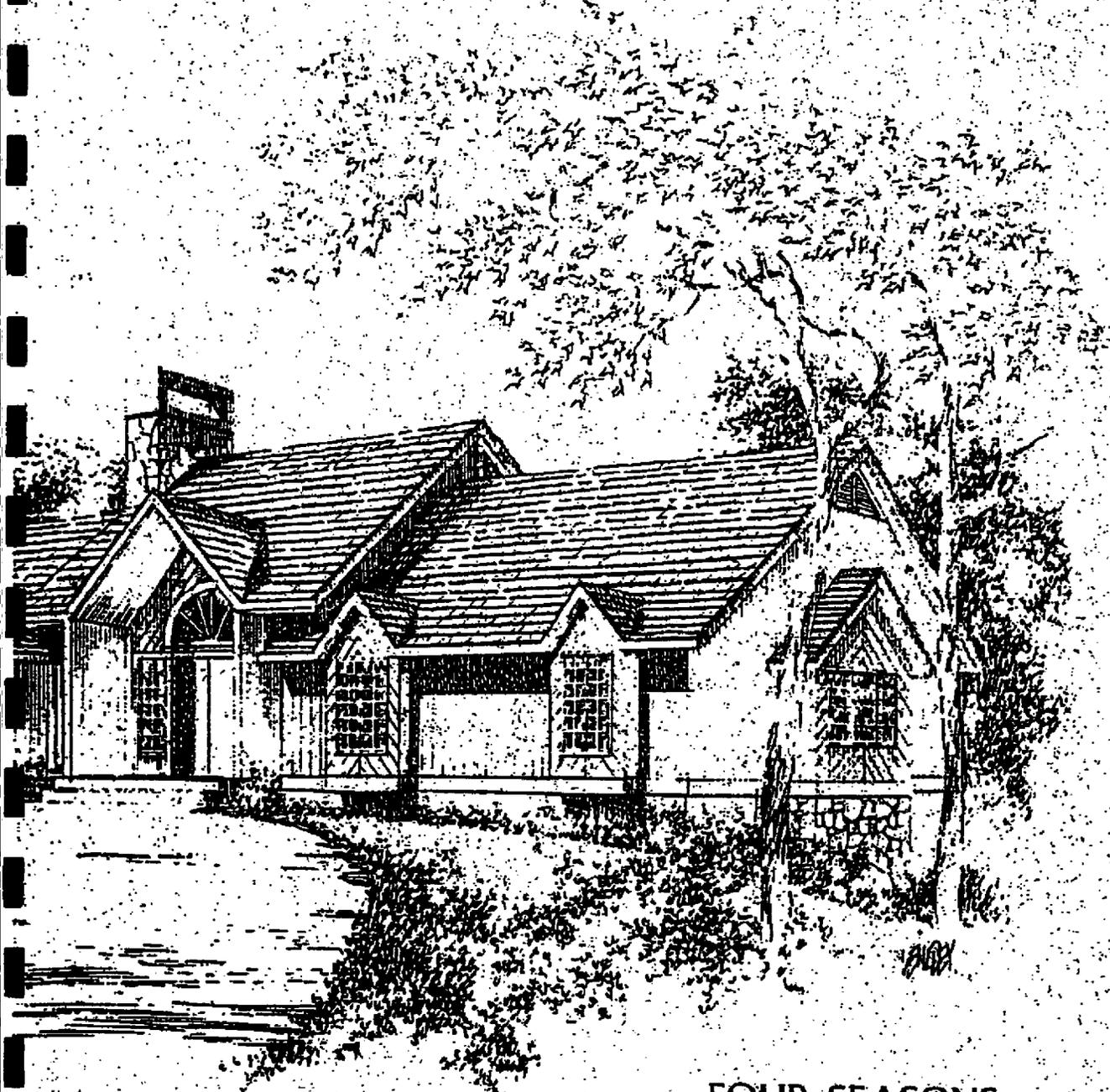
DATE EFFECTIVE May 7, 2009  
3408B Lakeshore Drive, Owensville, MO 65066

Attachment No. 3  
Third Amended and Restated Declaration of Restrictive Covenants

WR-2010-0111 and SR-2010-0110  
Rebuttal Testimony of James A. Merciel, Jr.

P 18, 19

DECLARATION  
of  
RESTRICTIVE COVENANTS



FOUR SEASONS  
LAKESITES, INC.

THIRD AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE COVENANTS

KNOW ALL MEN BY THESE PRESENTS THAT WHEREAS FOUR SEASONS LAKESITES, INC., hereinafter known as the Declarant, is the Developer of certain lands situated in the County of Camden, State of Missouri, and known as Kay's Point Subdivision Nos. 1 through 8; Cornett Cove Subdivision Nos. 1 through 7; Country Club Estates Subdivision Nos. 1 through 3; Ridgcrest Subdivision; Imperial Point Subdivision; Equestrian Estates Subdivision Nos. 1 and 2; Palisades Point Subdivision Nos. 1 through 5; Seasons Ridge Subdivision; Regency Cove Subdivision; Grand Point Subdivision; and Grand Point No. 2 Subdivision; and

WHEREAS, the plats of said subdivisions were recorded in the Office of the Clerk of the Circuit Court, as ex officio Recorder of Camden County, Missouri, on the 4th day of September, 1969, in Book 12, at page 57; on the 22nd day of September, 1970, in Book 13, at page 41; on the 30th day of June, 1971, in Book 13, at page 80 and 82; on the 30th day of June, 1971, in Book 13, at page 83 and 86; on the 17th day of April, 1972, in Book 14, at page 34; on the 1st day of June, 1972, in Book 14, at page 35; on the 9th day of June, 1972, in Book 14, at page 48; on the 30th day of August, 1972, in Book 14, at page 68; on the 8th day of February, 1973, in Book 14, at page 92; on the 8th day of February, 1973, in Book 14, at page 93; on the 26th day of November, 1973, in Book 15, at page 77; on the 26th day of November, 1973, in Book 15, at page 79; on the 26th day of November, 1973, in Book 15, at page 81; on the 13th day of July, 1976, in Book 17, at page 22; on the 13th day of July, 1976, in Book 17, at page 23; on the 13th day of July, 1976, in Book 17, at page 24; on the 13th day of July, 1976, in Book 17, at page 25; on the 13th day of July, 1976, in Book 17, at page 26; on the 1st day of June, 1978, in Book 18, at page 76; on the 1st day of June, 1978, in Book 18, at page 77; on the 10th day of May, 1979, in Book 19, at page 42; on the 8th day of April, 1980, in Book 20, at page 18; on the 15th day of May, 1981, in Book 21, at page 9; on the 10th day of September, 1981, in Book 21, at page 30; on the 28th day of April, 1983, in Book 22, at page 55A; on the 20th day of March, 1984, in Book 24, at page 13A; on the 10th day of February, 1988, in Book 24, at page 28A; on the 30th day of November, 1990, in Book 40, at page 29A; on the 11th day of October, 1991, in Book 42, at page 34A; on the 16th day of April, 1993, in Book 45, at page 32A; and on the 13th day of January, 1995, in Book 51, at page 9A.

WHEREAS, the Declarant filed in connection therewith, a certain Declaration of Restrictive Covenants executed on the 2nd day of December, 1969, and recorded on the 4th day of September 1969, in Book 158, at page 345 in the records of Camden County, Missouri, as stated aforesaid; and has subsequently amended said

Declaration by an instrument dated the 10th day of March, 1971, and recorded in Book 162, at page 780; by an instrument dated the 21st day of June, 1972, and recorded in Book 168, at page 668; by an instrument dated the 31st day of May, 1972, and recorded in Book 168, at page 451; by an instrument dated the 3rd day of August, 1973, and recorded in Book 175, at page 534; by an instrument dated the 15th day of August, 1973, and recorded in Book 175, at page 756; by an instrument dated the 23rd day of November, 1973, recorded in Book 177, at page 513; by an instrument dated the 30th day of May, 1975, and recorded in Book 185, at page 252; by an instrument dated the 30th day of May, 1975, and recorded in Book 185, at page 253; by an instrument dated the 24th day of September, 1975, and recorded in Book 187, at page 430; by an instrument dated the 25th day of May, 1978, and recorded in Book 206, at page 428; by an instrument dated the 26th day of August, 1980, and recorded in Book 225, at page 106; by an instrument dated the 18th day of March, 1981, and recorded in Book 228, at page 026; by an instrument dated the 15th day of August, 1981, and recorded in Book 231, at page 510; by an instrument dated the 23rd day of November, 1981, and recorded in Book 233, at page 702; by an instrument dated the 22nd day of August, 1984, and recorded in Book 261, at page 941; by an instrument dated the 23rd day of June, 1986, and recorded in Book 287, at page 565; by an instrument dated the 14th day of May, 1987, and recorded in Book 300, at page 155; by an instrument dated the 14th day of May, 1987, and recorded in Book 300, at page 185; by an instrument dated the 9th day of February, 1987, and recorded in Book 308, at page 269; by an instrument dated the 9th day of February, 1988, and recorded in Book 308, page 269; by an instrument dated the 30th day of April, 1988, and recorded in Book 311, at page 74 and 185; by an instrument dated the 7th day of June, 1988, and recorded in Book 312, at page 352; by an instrument dated the 13th day of May, 1989, and recorded in Book 325, at page 820; by an instrument dated the 6th day of November, 1989, and recorded in Book 332, at page 789; by an instrument dated the 1st day of June, 1990, and recorded in Book 340, at page 733 and 734; by an instrument dated the 15th day of November, 1991, and recorded in Book 358, at page 268; and

WHEREAS, by an instrument dated the 21st day of June, 1972, and recorded in Book 168, at page 668, the Developer may amend said Declaration of Restrictive Covenants at any time until such time as all lots in the Development have been sold, and

WHEREAS, all lots in the development have not been sold, and

WHEREAS, the Developer desires to further amend said Declaration of Restrictive Covenants and to restate said Declaration so that all portions thereof to date appear in one (1) document.

NOW, THEREFORE, be it known that Four Seasons Lakesites, Inc., the Developer of the above-mentioned lands, amends said Declaration

of Restrictive Covenants as follows; and rescinds all prior instruments mentioned above inconsistent with the following Third Amended and Restated Declaration of Restrictive Covenants, to wit:

I. **STATEMENT OF PURPOSE:** The Developer declares that all of the lots within the Development are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration, all of which are declared and agreed to be in furtherance of a plan for the Development, improvement and sale of lots and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. The provisions of this Declaration are intended to create mutual equitable servitudes upon each of said lots and in favor of each and all other lots; to create reciprocal rights between the respective Owners of all such lots and parcels; to create a privity of contract and estate between the grantees of such lots, their heirs, successors and assigns; and shall, as to the Owner of each such lot, his heirs, successors and assigns, operate as covenants running with the land for the benefit of each and all other such lots and parcels in the Development and their respective Owners, present and future. The Developer specifically reserves unto itself the right and privilege prior to the sale by it of any particular lot or parcel of land within the Development to designate any such lot or parcel of land as being commercial in character or for some use or purpose other than single family residential; and, where necessary to apply to the appropriate governmental bodies for such zoning classification or authority:

II. **DEFINITIONS:** The following terms as used in this Declaration are defined as follows:

A. "Articles" means the Articles of Incorporation of the Association.

B. "Association" means the Four Seasons Lakesites Property Owners Association, Inc.

C. "Board" means the Board of Directors of the Association.

D. "By-Laws" means the By-Laws of the Association.

E. "ACC" means the Architectural Control Committee of the Association.

F. "Common Area" means all of the real property designated as Common Area, Community Area, or C/A in the Plats, Declaration or other recorded instruments; all real property which may be later annexed to the Development as common area; all real property acquired by the Association, whether from the Developer or otherwise, together in each instance with all improvements which may be at any time constructed thereon, including, but not limited

to, recreational and community facilities, parks and other amenities.

G. "Declaration" means this Third Amended and Restated Declaration of Restrictive Covenants and any amendments made hereafter.

H. "Developer" or "Declarant" means Four Seasons Lakesites, Inc. and its successors or assigns.

I. "Development" means all that real property situated in Kay's Point Subdivision Nos. 1 through 8; Cornett Cove Subdivision Nos. 1 through 7; Country Club Estates Subdivision Nos. 1 through 3; Ridgecrest Subdivision; Imperial Point Subdivision; Equestrian Estates Subdivision Nos. 1 and 2; Palisades Point Subdivision Nos. 1 through 5; Seasons Ridge Subdivision; Regency Cove Subdivision; Grand Point Subdivision; and Grand Point No. 2 Subdivision, all in Camden County, Missouri, as shown and depicted on the recorded plats thereof and all other real property which may be annexed thereto as provided herein.

J. "Improvements" means all buildings, outbuildings, roads, driveways, parking areas, fences, retaining and other walls, docks, piers, hedges, poles, antennae and any other structures of any type or kind.

K. "Lot" means any numbered lot shown on the plats, other than those specifically designated for special purposes, and any lot designated herein or in a Supplemental Declaration for use as single family residential or multiple family purposes.

L. "Multiple Family Dwelling" means a residential dwelling containing two (2) or more living units.

M. "Owner" means:

1. any person or legal entity, including the Developer, who holds fee simple title to any lot.

2. any person or legal entity who has contracted to purchase fee simple title to a lot pursuant to a written agreement, in which case the Seller under said agreement shall cease to be the Owner while said agreement is in effect.

N. "Plat" means the maps of the Development as they are from time to time recorded.

O. "Single Family Dwelling" means a residential dwelling for one (1) or more persons, each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) adults not so related, together with his or their domestic

servants, maintaining a common household in such dwelling.

P. "Supplemental Declaration" means the recorded Supplemental Declaration by the Developer designating any additional parcels of real estate which are hereafter made subject to this Declaration.

III. LAND USE: Lots in the Development shall be designated herein, or in a Supplemental Declaration, as to their permissible uses and shall thereupon become subject to the restrictive or other provisions of this Declaration relating to such uses. In the event a use is designated for which no such provisions are contained herein, e.g., commercial, governmental, school, etc., the same may be set forth in a Supplemental Declaration.

A. Single Family Residential: Only single family dwellings and such outbuildings as are usually accessory thereto shall be permitted on any lot designated as single family residential. Unless specifically stated herein, or in a Supplemental Declaration, all lots shall be designated as single family residential.

B. Multiple Family Residential. Only multiple family or single family dwellings and such outbuildings as are usually accessory thereto shall be permitted on any lot designated as multiple family residential. Lots may be designated multiple family residential on a plat or plats by amendment of these Restrictive Covenants, or by a Supplemental Declaration.

The following lots have been designated multiple family by amendment of these Restrictive Covenants, or by a Supplemental Declaration: Cornett Cove Subdivision No. 3, Lot Nos. 579, 580, 585, 599, 608 through 613, inclusive, 632 through 634, inclusive, 643, 647, 648, 656 and 661; Cornett Cove Subdivision No. 4, Lot Nos. 785 through 935, inclusive; Country Club Estates Subdivision No. 2, Lot Nos. 78, 79 and 89 through 97, inclusive; and Kay's Point Subdivision No. 8, Lot No. 167.

Lots 1 through 76 of Country Club Estates 1; Lots 77 and 80 through 88 of Country Club Estates 2; and Lots 98 through 134 of Country Club Estates 2 have formerly been designated multi-family, but are hereby re-designated as single-family, notwithstanding anything to the contrary in Article III (C) (1), Lots 98 through 134 of Country Club Estates 2 shall have a minimum amount of fully enclosed floor area, as defined in said Article III (C) (1) of one thousand, two hundred (1200) square feet, except that the Architectural Committee may in its sole discretion increase the minimum amount of fully enclosed floor area up to any amount not exceeding one thousand four hundred (1400) square feet.

Lot Nos. 581 through 584, inclusive; 586 through 598, inclusive; 600 through 607, inclusive; 614 through 631, inclusive; 635 through

642, inclusive; 644 through 646, inclusive; 649 through 655, inclusive; 657 through 660, inclusive; and 662 through 664, inclusive, of Cornett Cove Subdivision No. 3, have formerly been designated as multiple family residential, but are hereby re-designated as single family residential, and, notwithstanding anything to the contrary in Article III C.1., shall have a minimum amount of fully enclosed floor area, as defined in said Article III C.1., of eight hundred forty (840) square feet, except that the ACC may, in its sole discretion, increase the minimum amount of fully enclosed floor area up to any amount not exceeding one thousand four hundred (1,400) square feet.

C. Minimum Standards.

1. Minimum Area of Single Family Dwellings. Minimum amount of fully enclosed floor area devoted to living purposes on the ground or first floor of single family dwellings (exclusive of porch areas, garages, patios, terraces and unfinished basements) shall be as follows:

a. For lots with the letter designation "A" on the plat or plats, one thousand two hundred (1,200) square feet.

b. For lots with the letter designation "B" on the plat or plats, one thousand twenty (1,020) square feet.

c. For lots with the letter designation "C" on the plat or plats, eight hundred forty (840) square feet.

d. For lots with the letter designation "D" on the plat or plats, six hundred eighty (680) square feet.

e. For lots with the letter designation "E" on the plat or plats, or with no letter designation, as determined by the ACC.

f. Notwithstanding the above, for lots in Country Club Estates Subdivision No. 1, Lot Nos. 1 through 76, inclusive, and for lots in Country Club Estates Subdivision No. 2, Lot numbers 77 and 80 through 88, one thousand four hundred (1,400) square feet.

2. Minimum Area of Multiple Family Dwellings. Minimum amount of fully enclosed floor area devoted to living purposes in each unit in a multiple family dwelling shall be six hundred (600) square feet (exclusive of porch areas, garages, patios, terraces and unfinished basements), except in Country Club Estates Subdivision

No. 1, Lots 1 through 76, in Country Club Estates No. 2. Lots 78, 79 and 89 through 97, inclusive wherein the minimum shall be five hundred fifty (550) square feet.

3. Setbacks. Minimum setbacks for all dwellings, single family or multiple family, shall be as follows:

a. Front lot lines: Thirty (30) feet from the front lot line.

b. Rear lot lines: Fifty (50) feet from the rear lot line (Provided that the ACC may make exceptions for any lot whose rear lot line is adjacent to a golf course, and may allow a lessor setback).

c. Side lot lines: Ten (10) feet from the side lot line (provided that the side lot line setback shall be fifteen (15) feet in Country Club Estates Subdivision No. 1, Lot Nos. 1 through 76, inclusive, and Country Club Estates Subdivision No. 2, Lot Nos. 77 through 97, inclusive).

d. From the shoreline of the Lake of the Ozarks, using as such shoreline the 662 contour elevation thereof, fifty (50) feet; provided, however, that on any lake front lot there may be constructed and maintained, at or adjacent to such shoreline, a boat shelter, pier or dock in respect to size, design, construction or placement of which the ACC has approved; and provided further, that in subdivisions located on Shawnee Bend, the minimum setback from the shoreline as defined herein shall be forty (40) feet.

e. Interior side lot and rear lot lines of adjacently owned lots may be disregarded as to setback lines and easement restrictions when such lots are owned by the same person or legal entity, as long as a notarized statement recognizing that the lots cannot be sold separately is recorded in Camden County Records.

4. Carport, Garage or Parking Space. There shall be one (1) carport, garage or parking space for each residential dwelling unit, whether single family or multiple family, to be of a space of not less than nine (9) feet by twenty (20) feet, unless the ACC provided otherwise. In Country Club Estates Subdivision No. 1, Lot Nos. 1 through 76, inclusive, and for such other single family or multiple family units as the ACC deems necessary, there shall be one and one-half (1 1/2) parking spaces for each residential dwelling unit.

5. Special Provisions For Multiple Family Dwellings. Multiple family dwellings shall, in addition to meeting all other criteria set forth herein, or required by the ACC, shall be governed by the following provisions:

a. Said dwellings, subject to the approval of the ACC, may be single or multiple story construction and may be detached or may be joined by common walls.

b. The maximum height from finish grade to the ridge line shall be thirty five (35) feet.

c. The minimum density of dwelling units shall be one (1) dwelling unit for each three thousand (3,000) square feet of land on any lot, parcel or groups of lots unused for multiple family use, except for Country Club Estates Subdivision No. 2, Lot Nos. 78, 79 and 89 through 97, inclusive, wherein the density shall be one (1) dwelling unit for each two thousand (2,000) square feet of land.

D. Common Areas. All lots or parcels in the Development designated as Common Areas are and shall remain private property and Declarant's recordation of a Plat shall not be construed as a dedication to the public of any such Common Areas located therein:

1. Ownership. Developer will convey all Common Areas as described in the Declaration to the Association free and clear of all liens and encumbrances, but subject to such easements and rights-of-way, restrictions of record and other conditions as the Developer may, at the time of such conveyance, deem appropriate and proper. Such conveyance shall be deemed to have been accepted by said Association and those persons who may, from time to time, be members thereof upon the recording of a deed or deeds conveying such Common Areas to the Association. Said conveyance shall occur within five (5) years after completion of the Common Areas.

2. Use. The use and enjoyment of the Common Areas and the improvements thereon, whether before or after conveyance to the Association, shall be subject to the powers of the Developer and the Association and the rules adopted by them regulating and governing the use of such property and improvements and, subject to the reservation of the right by the Developer to reasonable use of such Common Areas in connection with its sales and development programs.

3. Maintenance. Maintenance of Common Areas and

repairs to any improvements thereon shall be the obligation and responsibility of the Developer until conveyance to the Association, or until the Association assumes said obligation or responsibilities, whichever comes first, and thereafter, the Association shall have the sole responsibility therefor.

IV. RESIDENTIAL RESTRICTIONS: The following shall be applicable to all lots and parcels within the Development designated as residential in character, whether single family or multiple family, and each Owner, as to his lot or parcel, covenants to observe and perform the same:

A. Accessory Outbuildings. Without approval of the ACC, no accessory outbuildings shall be erected on any lot or parcel prior to the erection thereon of a dwelling. In no event shall any such accessory outbuilding, partially completed or temporarily constructed, ever be used for human occupancy or habitation.

B. Completion of Construction. Construction of any improvement, once commenced, shall be completed within nine (9) months unless special approval is given by the ACC. The time of construction shall commence as of the date the building permit is issued. Improvements not so completed or upon which construction has ceased for ninety (90) consecutive days, or which have been partially or totally destroyed and not rebuilt within nine (9) months, shall be deemed nuisances. The Association may remove any such nuisances or repair or complete the same at the cost of the Owner. Failure to complete construction within the nine (9) months time, or the allocated times as listed on the building permit, shall result in the forfeiture of said building permit and all posted deposits. Resubmissions of plans and repayment of all fees and deposits will be necessary to complete construction.

C. Prohibition Against Used Structures. No used buildings or structures, intended for use as a dwelling, shall be placed on any lot.

D. Maintenance of Lots. All lots and parcels, whether occupied or unoccupied, or any improvements placed thereon, shall at all times be maintained in such a manner as to prevent their becoming unsightly, unsanitary or a hazard to health. If not so maintained, the Association shall have the right, through its agents and employees, to do so; the cost of which shall be added to and become a part of the annual assessment to which such lot is subject. Neither the Association nor the Developer nor any of their agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed.

E. Fences. All property lines shall be kept free and open and no fences, hedges or walls shall be permitted thereon without ACC approval.

F. Golf Course Lots. Owners of lots adjacent to golf course fairways shall permit the entrance upon their lots for retrieval of golf balls and shall be subject to Golf Course ACC Rules and Regulations in addition to all other Rules and Regulations to which they are to be subject.

G. Nuisances. No noxious or offensive activities or nuisances shall be permitted on any lot.

H. Signs. No persons shall erect or maintain upon any lot or improvements any sign or advertisement. In the event said signs or advertisements are erected or maintained in violation of this provision, the Association shall have the right, through its agents and employees, to remove said signs or advertisements and the cost of said removal shall be added to and become a part of the annual assessment to which said lot is subject. Neither the Association nor the Developer nor any of their agents, employees, or contractors shall be liable for any charges or claims of any nature which may result because of said removal.

A posted board, no larger than 24" x 24", giving only the name and telephone number of the builder and upon which all necessary permits are posted, shall not be considered a sign.

I. Animals. No animals, livestock or poultry of any kind shall be housed, raised or kept within the Development either temporarily or permanently, except that commonly accepted household pets (but not including horses), may be kept, provided that they are not kept or maintained for any commercial purposes, and are not a nuisance to adjoining property Owners. Dogs may be kept upon a lot by the Owner of said lot, so long as the dogs are securely confined in an enclosed pen, approved by the Committee, restricted by a suitable leash or chain or, having been properly trained, are at all times within the control of the Owner under voice command and are not running at large. Preference will be given to the use of electronic fences. Unconfined dogs, outside Owner's control, will either be impounded and/or destroyed.

J. Garbage and Refuse Disposal. No Owner shall burn trash or other like household refuse without a permit from the ACC, nor shall any Owner accumulate on his lot junked or inoperative vehicles, or litter, refuse or garbage, except in receptacles provided for such purposes.

K. Concealment of Fuel Storage Tanks and Trash Receptacles.

1. Fuel storage tanks on any lot shall be either buried below the surface of the ground or screened to the satisfaction of the ACC.

2. Any improved homesites developed within the Development whose owner or occupants subscribe to a trash

removal service must erect and maintain a trash enclosure, the design and location to be approved by the ACC, for the purpose of concealing trash receptacles. All trash enclosures must have affixed to the front or roadward side three inch (3") contrasting letters and numbers to identify only the lot number and subdivision. Trash enclosures shall be of sufficient size to entirely conceal the trash receptacle, and be located in such a manner to be accessible from the road, and within the extension of the side lot line extended to the edge of the road.

3. In the event the occupants/owners of said improved homesite do not subscribe to a trash pick up service and do not, in fact, place trash containers out in public view for any reason, then these owners shall erect a sign not to exceed six inches by eighteen inches (6" x 18") depicting lot and subdivision numbers. Letters/numbers should be a minimum of three inches (3") in height and of contrasting color to the sign background. The sign should be clearly visible from the street. The purpose of this provision is to clearly identify each residential location for emergency and safety vehicles.

4. All owners of improved multi-family properties shall be required to subscribe to a professional trash collection service. Such service shall include one trash receptacle of no less than ninety (90) gallons for each occupied unit. Said receptacles shall be enclosed in the same manner as required for all Four Seasons improved properties which have trash pick-up service.

L. Restrictions on Temporary Structures or Certain Vehicles. No travel trailer, mobile home, motor home, boat, boat trailer, utility trailer or commercial vehicle shall be placed on any lot unless garaged in a manner approved by the ACC.

No tent shall be placed or erected on any lot, nor shall any overnight camping be permitted on any lot.

M. Removal of Trees. No tree over six (6) inches in diameter may be removed from any lot without with prior written consent of the ACC.

N. Dock and Piers. No dock, pier, seawall, retaining wall or other similar structure shall be constructed without express written permission of the ACC.

O. Ditches and Swales. Each Owner shall keep drainage ditches and swales located on his lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon his lot as may be reasonably required for proper drainage.

P. Resubdivision of Lots. No lot or parcel shall be further subdivided by subsequent Owners, except those designated multiple family residential, and then only to the extent required or permitted by governmental authority. The Developer retains the right to resubdivide lots prior to the time of the original sale.

Q. Resource Extraction. No drilling, (except for water on lots not provided water service as described in Article IX. A. herein), quarrying, refining or mining operation of any kind shall be permitted on any lot.

R. Subdividing Certain Lots. The provisions of Section IV. P. notwithstanding, any lot may be subdivided if upon the subdivision thereof all portions of the lot so subdivided are conveyed to the Owners of an adjacent lot or lots, thereby enlarging such lot or lots. The boundaries between the enlarged lot or lots shall constitute the new back and side lines for purposes of these Restrictive Covenants.

The subdivisions authorized by this section shall be effective only if the Owners of the lot being subdivided and the Owners of the lots being enlarged join in execution of an indenture, setting forth the new boundaries of the enlarged lots, and said indenture is approved in writing by the President of the Association, and is recorded in the Recorder's Office of Camden County, Missouri.

The indenture shall also prorate the subdivided lot's assessments (including, but not limited to, Association assessments, water and sewer fees), among the Owners of the enlarged lots, and thereafter said Owners of the enlarged lots shall be liable for their prorated share of the assessments of the subdivided lots.

If a building or any part of a building is placed on a portion of the subdivided lot, the Owner to whom that portion was conveyed shall pay twice his prorated share, since said portion will be considered a developed lot for purposes of assessments under these Restrictive Covenants.

For any lot so subdivided the voting rights for members as provided in Section VI B.2. shall be apportioned in fractional shares among the Owners of the enlarged lots in proportion to the area acquired by each Owner.

V. ARCHITECTURAL CONTROL COMMITTEE:

A. General Powers. All improvements constructed or placed on any lot must first have the written approval of the ACC. Such approval shall be granted only after written application has been made to the ACC in the manner and form prescribed by it. The application, to be accompanied by two (2) sets of plans and specifications, shall show the location of all improvements, if any, existing upon said lot, the location of the improvement proposed to

be constructed, the color and composition of all exterior materials to be used, proposed landscaping, and any other information which the ACC may require, including soil, engineering and geological reports and recommendations.

B. ACC Membership. The ACC shall be composed of no less than three (3) nor more than nine (9) persons to be selected annually by the Board of the Association. Members shall serve until their successors are appointed, and in the case of the failure of the Board to appoint members annually, those previously appointed shall remain as members until the appointments are made by the Board.

C. Grounds for Disapproval. The ACC may disapprove any application if:

1. such application does not comply with this Amended and Restated Declaration;
2. because of the reasonable dissatisfaction of the ACC with grading plans, location of the proposed improvement on a lot, finished ground elevation, color scheme, finish, design proportions, architecture, shape, height or style of the proposed improvement, the materials used therein, the kind, pitch or type of roof proposed to be placed thereon; or,
3. in the judgment of a majority of the ACC reasonably exercised, the proposed improvement will be inharmonious with the Development, or with the improvements erected on other lots.

D. Rules and Regulations. The ACC shall, from time to time, adopt written rules and regulations of general application governing its procedures which shall include, but not be limited to, provisions for the form and content of applications; required number of copies of plans and specifications; provisions for notice of approval or disapproval, including a reasonable time period for approval by reason of failure to disapprove. Such rules and regulations shall be adopted by the Board under the same provisions as section IV hereinabove.

E. Variances. The ACC may grant reasonable variances or adjustments from the provisions in this Declaration where literal application thereof results in unnecessary hardship and if the granting thereof will not be materially detrimental or injurious to Owners of other lots.

F. Certification of Compliance. At any time the ACC may require a certification from a licensed surveyor that such improvement does not violate any setback rule, ordinance or statute, nor encroach upon any easement or right-of-way of record.

The cost of said certification shall be borne by the owner of the lot.

G. Submittal Fees. As a means of defraying its administrative expenses, the ACC may require a reasonable filing fee to accompany the submission of plans and specifications. Said fees shall be established by the Board or the Committee or its subordinate bodies. The minimum submittal fee will be SEVENTY FIVE DOLLARS (\$75).

H. Liability. Notwithstanding the approval by the ACC of plans and specifications or its inspection of the work in progress, neither it, the Developer, the Association, or any person acting in behalf of any of them shall be responsible in any way for any defects in any plans or specifications or other material submitted to the ACC, nor for any defects in any work done pursuant thereto. Each person submitting such plans or specifications shall be solely responsible for the sufficiency thereof and the adequacy of improvements constructed pursuant thereto.

I. Appeals. Any application shall have the right to appeal to the Board from any decision of the ACC within thirty (30) days after entry of such decision.

#### VI. EASEMENT:

A. Reservations. The following easements over each lot or parcel, and the right to ingress and egress to the extent reasonably necessary to exercise such easements, are reserved to the Developer its assignees or licensees:

1. Utilities. A ten (10) foot wide strip running along the inside of all lot lines, except those lot lines coincident with street right-of-way lines, in which case such strip shall be twenty (20) feet wide, for the installation, maintenance and operation of utilities, including radio, and television transmission cables, and the accessory right to locate guy wires, braces or anchors or to cut, trim or remove trees and plantings wherever necessary upon such lots in connection with such installation, maintenance and operation. An easement is retained for the purpose of locating, constructing, operating and maintaining sanitary sewer lines and all necessary appurtenances, across all lots at locations deemed necessary by Declarant for the construction, operation and maintenance of a sanitary sewer system, in the event one is required in any part of the Development. Said easement shall consist of a temporary easement fifty (50) feet wide laying twenty five (25) feet either side of the centerline of the sewer line located as deemed necessary for Declarant. Upon

completion of construction, the temporary construction easement is automatically vacated and a permanent easement ten (10) feet wide laying five (5) feet either side of the centerline of the sewer as constructed shall be retained. Said easements shall consist of the right to ingress and egress to the easement across the hereinafter described lots, together with the easement across the hereinafter described lots, together with the right to trim, cut or remove any trees or vegetation necessary to accomplish the above stated purpose. Subsequent Owners of the hereinafter described property shall have no cause of action against Declarant, or its licensees, successors, heirs, or assigns, either at law or in equity by reasons of any damage caused to said property in location, construction, operation or maintenance of the sanitary sewer lines, except in the case of gross negligence.

2. Shoreline Maintenance. A fifty (50) foot wide strip (provided that in subdivisions located on Shawnee Bend, strip is forty (40) foot wide) running along the inside of all lots coincident with the shoreline of Lake of the Ozarks, or any watercourse in the Development, for the purpose of shoreline maintenance.

3. Slope and Drainage. A thirty (30) foot wide easement running along the inside of all lot lines coincident with street right-of-way lines for the purpose of cutting, filing, drainage, and maintenance of slopes and drainage courses.

4. Other Easements. Any other easements shown on the Plat or Plats, or which are otherwise of record.

B. Use and Maintenance by Owners. The areas of any lots affected by the easements reserved herein shall be maintained continuously by the Owner of such lot, but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken thereon which may damage or interfere with the use of said easements for the purpose herein set forth. Improvements within such areas shall be maintained by the Owner except those for which a public authority or utility company is responsible.

C. Liability For Use Of Easements. No Owner shall have any claim or cause of action against the Developer, or its licensees, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on the Plat or Plats except in cases of willful or wanton misconduct.

VII. FOUR SEASONS LAKESITES PROPERTY OWNERS ASSOCIATION, INC.:

A. General. The Association is a Missouri not-for-profit corporation, organized to further and promote the common interest of property owners in the Development. The Association shall have such powers in the furtherance of its purposes as are set forth in its Articles and By-Laws.

B. Memberships.

1. Classes of Memberships. There shall be members and associate members.

2. Members. Each Owner shall, by reason of ownership, become a member of the Association.

There shall be one (1) voting member for each lot, regardless of the number of persons who may have an ownership interest in such lot or the manner in which title is held by them, and regardless of the number of lots which any person may have an ownership interest. If more than one (1) person shall have an ownership interest in any lot, the voting member shall be designated in writing at the request of the Association.

3. Associate Member. If not otherwise a member, each of the following shall be associate members in the Association:

a. The spouse and children of a member who have the same principle residence as the member.

b. Persons who may be tenants or regular occupants of residences situated within the Development.

c. Persons who, by virtue of contractual agreements with the Developer, are entitled to membership in the Association.

C. Rights, Privileges and Obligations. The rights, duties, privileges and obligations of membership in the Association, including voting rights, are as set forth in its Articles and By-Laws.

D. Assessments.

1. General. Pursuant to the powers granted to it in its Articles and By-Laws, the Association shall have the power to levy annual assessments against all lots in the Development. Such annual assessment shall be Four Hundred Twenty-Five Dollars (\$425) for each lot with a

building on it, but may be in a greater or lesser amount if so determined by the Board after consideration of the current maintenance needs and future needs of the Association. Provided, however, that no such charge or assessment shall ever be made against the Developer, the Association itself, or any lots owned by them; and provided further that the Board may, by resolution, provide that a lesser assessment may be levied on lots without buildings than is levied on lots with buildings.

2. Collection and Lien. The amount of the assessment levied by the Association shall be paid to it on or before the date fixed by resolution of the Board. If not so paid, the amount of such assessment, plus any other charges thereon, including interest at the maximum limit provided by law per annum from date of delinquency, and costs of collection, including attorney's fees, if any, shall constitute and become a lien on the lot so assessed when the Board causes to be recorded in the Office of the appropriate County Recorder of Deeds, a notice of assessment. Such notice shall state the amount of such assessment, and such other charges, and a description of the lot which has been assessed. Such notice shall be signed by the Secretary of the Association or other person authorized by the Board on behalf of the Association. Upon payment of said assessment and other charges, or other satisfaction thereof, the Board shall, within a reasonable time, cause to be recorded a further notice stating the satisfaction and release of said lien.

3. Priority of Lien. Conveyance of any lot shall not affect any lien for assessment provided herein. Such lien shall be prior to all other liens recorded subsequent to said notice of assessment, except that liens of a first Deed of Trust incurred either for the purpose of construction of improvements or for the purchase of the lot, and which are recorded in accordance with applicable law, shall be superior to any and all assessment liens provided for herein.

4. Enforcement. The lien provided for herein may be foreclosed upon by suit by the Association in like manner as a mortgage and, in such event, the Association may be a bidder at the foreclosure sale. The Association may also pursue any other remedy against any Owner owing money to it which is available to it by law or equity for the collection of debt.

5. Proof of Payment. Upon request, the Association shall furnish a statement certifying that all assessments then due have been paid or indicating the amount then

due.

6. Suspension. The Association shall not be required to transfer memberships on its books or to allow the exercise of any rights or privileges of membership on account thereof to any Owner or to any persons claiming under them unless or until all assessments and charges to which they are subject have been paid.

7. Assessments For Multiple Family Dwellings. Multiple family buildings shall be assessed only one (1) assessment, regardless of the number of units in said multiple family buildings, but in such an event, there shall be only one (1) Association membership card issued to the Owner or Manager thereof and members of his family; provided, that in the case of a multiple family building owned by two (2) or more persons, (whether as tenants in common, partners or shareholders in a corporation, but not including husband and wife), each Owner who also occupies a separate unit of said multiple family building, shall be liable for a separate assessment, which shall be a lien on the entire building, and each Owner - Occupant so separately assessed shall be issued a separate Association membership card issued for use only by said Owner - Occupant and members of his family; provided further, that the Developer, in its contract for sale of property for multiple family development, may cause additional assessments to be levied on the multiple family building to be constructed on such property, and in such an event, the Owner of such multiple family property will be liable for such additional assessment.

#### VIII. PROVISIONS WITH RESPECT TO DISPOSAL OF SANITARY SEWAGE:

No outside toilet shall be permitted. No sanitary waste shall be permitted to enter the lake and all sanitary installations must conform with the recommendations of the Developer, its successors and assigns, the County and State Boards of Health, and the Missouri Department of Natural Resources ("DNR".)

#### IX. WATER SYSTEM AND SEWAGE TREATMENT SYSTEM:

A. The Owner of each lot agrees to pay the Owner of the water works system to be constructed within the Development, a minimum monthly availability charge for water, water service and the accommodations afforded the Owners of said lots by said water works system, commencing upon the availability of water in a water works system distribution main provided for the lot and continuing thereafter so long as water is available for use, whether or not tap or connection is made to a water works system distribution main and whether or not said Owner actually uses or takes water. No

charge will be made to the lot Owners for the right to connect to, the water system. Each lot Owner will bear the cost of the service line from his building into the water main. The said Owner or Owners of said water works system will be a privately owned public utility authorized by a Certificate of Public Convenience and Necessity issued by the State of Missouri Public Service Commission (\*PSC\*) to operate the water works systems.

The aforesaid amounts of said availability charges, times and methods of payments thereof by said Owners, and other matters, shall be as provided in Schedules of Rate and Rules, Regulations and Conditions of Services for Water Services filed and published by said public utility or utilities which said Missouri PSC, or any successor Regulatory Body of the State of Missouri, in accordance with law and passed to file or formally approved by said PSC as the then effective Schedule of Rates and Rules, Regulations and Conditions of Service of said public utility or utilities, or if not so provided, as determined by the Owner of the water works system. The amounts of said availability charges and other charges are subject to change hereafter by order of the said Missouri PSC, or its successors, in accordance with then existing law and the structure of said availability charges are likewise and in the same manner subject to change from availability rates to another type of rate or rates.

Unpaid charges shall become a lien upon the lot or lots to which they are applicable as of the date the same become due. Nothing in this paragraph shall be construed as a limitation on the rights of any such public utility to sell and assign in accordance with law its property and assets to a governmental subdivision of the State of Missouri.

Prior to the construction of the central water system lot owners who wish to build at that time may drill individual wells. Upon completion of the central water system serving these lots the use of individual wells must be discontinued and connection must be made to the central water system. Individual wells will be prohibited after completion of the central water system.

B. No water system will be provided by the Developer to the Ridgecrest Subdivision. All references in paragraph A. of Article IX of this Declaration shall not apply to the Ridgecrest Subdivision. Each lot Owner within said subdivision will be required to install his own well for water supply.

C. Plan for Sewage Treatment. The Association has adopted a plan for sewage treatment by use of individual treatment facilities or other methods of sewage treatment by the Development and the plan has been approved by the Missouri DNR. The Association administers the plan. The following provisions apply to the implementation and administration of said plan:

1. Each Owner of a lot containing a residence shall install, at the expense of the Owner of said lot, an individual treatment facility. Each such individual treatment facility must meet the specifications for such individual treatment facility set forth in the plan approved by the Missouri DNR. An "Owner of a lot" shall include any person owning said lot in fee simple or purchasing a lot under a contract for deed arrangement.

2. It shall be the duty of each Owner of a lot containing a residence to construct an individual treatment facility in accordance with the specifications approved pursuant to subparagraph C.1. above, so that it performs its stated functions and upon the failure of any Owner of a lot containing a residence to maintain such an individual treatment facility, the Association may enter upon the lot, take such action as is necessary to so construct and maintain such an individual treatment facility, and assess the lot Owner for the expenses so incurred. Said assessment, if unpaid, shall be a lien upon the lot and may be enforced by the Association of the manner set forth in Article VII. D. above.

3. The plan shall include provisions whereby the Association shall periodically maintain each individual treatment facility, a method whereby the Association, or its agents, shall collect wastes on a regular basis from each individual treatment facility, and a method whereby the Association, or its agents, shall inspect and make necessary repairs to each individual treatment facility (whether constructed under the plan or an existing unit described in Article IX. C.7.) on a regular basis to ensure continued compliance with the specifications set forth in the plan and, for these purposes, the Association and its agents may enter upon any lot within the subdivisions. The Association shall install, own, operate and repair any central facilities, effluent collection pipes, and supporting equipment necessary for implementation of the plan. All effluent collection pipes shall be installed, owned, operated, maintained and repaired by the Association.

4. The Association shall assess each lot with a residence, or other dwelling unit or units, a monthly maintenance fee for implementing and administering the plan. The Association may charge more for lots with more than one (1) dwelling unit or more than one (1) sewage treatment plant. The Association shall develop criteria for such variable fees. The Association may, at its discretion, allocate a portion of the regular assessment collected pursuant to Article VII. D. to pay a portion of the expenses of implementing and administering the plan.

and may, from time to time, levy capital assessments to pay any capital costs of the plan.

5. All actions taken pursuant to the provisions of this Article IX. 3: to 7. shall conform to applicable laws and regulations of the State of Missouri, United States Government, and Camden County, relating to sewage treatment.

6. No permit shall be issued by the ACC for the construction of any building, whether residential, commercial, or otherwise, unless the submitted construction plans provide for the construction of an individual treatment facility in conformance with the plan for sewage treatment adopted pursuant to this Article IX. C. and which meet the specifications set forth in said plan. The ACC shall employ an engineer to review such plans and advise the ACC whether the plans are in conformance.

7. Notwithstanding anything herein, any residence whose construction was commenced prior to August 24, 1984, the date of adoption of this Article IX., and which has an individual treatment facility, shall not be bound by the specifications set forth in the plan until August 21, 1994, but, if at any time before August 21, 1994, the individual treatment facility is replaced or substantially changed, in the judgment of the Association, it shall then be replaced with an individual treatment facility which does conform to said specifications. The Association may make further variances and exceptions to avoid hardship.

Notwithstanding the above, if at any time before August 21, 1994, the existing sewage treatment facility on any lot does not meet the specifications outlined in the plan and is causing pollution of any waters or is presenting a hazard to health, the Association may (after notice and opportunity to correct the deficiency) enter onto said lot, construct a new facility which does meet the specifications of the plan, and assess the lot Owner for the expenses so incurred. Such assessment shall be a lien upon the lot and may be enforced in the manner set forth in Article VII. D.

D. Rights, Powers and Duties of the Association. The Association shall have the following rights, powers and duties in regard to the plan for sewage treatment:

1. The Association shall maintain, operate, repair, improve and regulate the use of the sewage treatment system. In connection with such maintenance, operation,

repair, improvement and regulation of the sewage treatment system, the Association shall comply with all requirements and duties imposed by the Missouri Clean Water Law, Chapter 204, R.S.Mo., and all standards, rules and regulations adopted pursuant thereto and permits and orders issued thereunder, and all other provisions of law, federal, state and local, as such may exist from time to time.

2. The Association shall provide to all lot Owners the right and advantage of participation in such plan for sewage treatment, subject, however, to the conditions herein provided, and subject to such reasonable rules and regulations as may be prescribed by the Association, such rules and regulations to be uniform in application to all Owners of lots of the same classification.

3. The Association may acquire for addition to the plan for sewage treatment any sewage treatment facilities, properties, and improvements of the type described in this Declaration which are located outside the Development, and may permit any property and improvements located outside the Development to participate in the plan for sewage treatment, provided that all such assets which are acquired for addition to the plan for sewage treatment and all such property and improvements which are permitted to participate in the plan for sewer treatment shall be made subject to all the terms, conditions, and restrictions of Article IX. of this Declaration and the rules and regulations of the Association promulgated pursuant thereto.

4. The Association is empowered to transfer and convey to any public authority, municipal corporation, or private corporation certified by the Missouri PSC, said sewer system (except for the individual treatment facilities, ownership of which shall remain with the Owner of the lot on which said facility is located), either with or without money consideration therefor, and such conveyance shall become mandatory and shall be made by the Association as soon as practicable, subject to the approval of the PSC, when any such public authority, municipal corporation, or private corporation certified by the PSC becomes capable of accepting such conveyance and thereafter performing all functions relating to the construction, maintenance, operation, repair, improvement and regulation of the sewage treatment system.

5. The Association is empowered to contract with any other person, firm or governmental or other entity for the performance of all or any part of the sewage treatment system; provided that the cost of any such

contract shall be paid by the Association in the same manner as all other costs and expenses incurred by the Association in operating and maintaining the sewage treatment system.

6. The Board shall adopt, prescribe, and enforce reasonable rules and regulations with respect to the sewage treatment system. Said rules and regulations shall not conflict with the Missouri Clean Water Law and regulations promulgated pursuant thereto.

7. The Board shall be authorized, from time to time, to employ such agents, servants and employees as they may determine necessary, and may employ counsel to prosecute or defend suits or actions for or against them concerning the sewage treatment system and the operation thereof.

8. The Board shall be authorized to contract for and obtain such policies of insurance and surety bonds as it may deem necessary or appropriate concerning construction, maintenance, operation, repair and improvement of the sewage treatment system.

9. The Board, its successors and assigns, shall be authorized to establish a perpetual easement in gross for ingress and egress, to perform its obligations and duties as required by this Article IX. Should it be necessary to enter a residence to repair a common element or any part of the sewage treatment system, agents and workmen shall be entitled to entrance by exhibiting to the residence Owner an order from the Board.

E. Connection to the Sewer System. Except as otherwise provided in Article IX. C. 7., all homes and other structures requiring sewage or waste water disposal facilities, shall conform to the plan for sewage treatment; no such home or structure may be occupied unless so connected to the sewage treatment system and no septic tank, cesspool or other means of disposal of sewage on an individual lot may be used in the subdivisions.

F. Duty to Maintain, Repair and Improve. If any physical part of the sewage treatment system shall at any time require maintenance, repair, improvement or replacement, it shall be the duty of the Association to cause the same to be done. The Association shall have the power to contract for same and to determine the terms of the contract. The Association shall pay for the costs thereof from the annual and special assessments made hereunder, and, in the case of any individual treatment facility, shall bill the Owner thereof and issue a special assessment against said Owner if the bill is not paid. The Association shall also be empowered to borrow money and to

pledge the assets of the Association as security therefor, in order to make payment for such costs.

G. Right of Entry. The right to enter any lot or tract at any reasonable time for the purpose of inspection, maintenance and repair of any part of the sewage treatment system, or for the purpose of inspecting for possible violations of the provisions of these covenants and restrictions, or possible violations of the Missouri Clean Water Law and regulations, is granted to the Association and its authorized representatives, the PSC, its successors and representatives, the Developer, and the representatives of any person, firm, corporation, municipality or public agency contracting or otherwise acting with or for the Association to provide operation, maintenance or monitoring service for the sewage treatment system.

H. Definitions. "Sewage Treatment System" as used herein shall mean all elements under the Plan for Sewage Treatment, including, but not limited to, the individual treatment facilities, and all support facilities used in connection with maintaining and operating the individual treatment facilities.

X. ANNEXATION:

A. Property to be Annexed. Declarant may, from time to time, and in its sole discretion, annex to the Development any other real property owned by Declarant which is contiguous or adjacent to or in the immediate vicinity of the Development.

B. Manner of Annexation. Declarant shall effect such annexation by recording a plat of the real property to be annexed and by recording a Supplemental Declaration which shall:

1. describe the real property being annexed and designate the permissible uses thereof;

2. set forth any new or modified restrictions or covenants which may be applicable to such annexed property, including limited or restrictive uses of Common areas; and

3. declare that such annexed property is held, and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the provisions of this Declaration. Upon the recording of such plat and Supplemental Declaration, the annexed area shall become a part of the Development and shall be subject to the provisions hereof as supplemented, as fully as if such area were part of the Development as of the date of the recording of this Declaration.

## XI. REMEDIES:

A. Enforcement. Declarant and each person whose benefit this Declaration inures, including the Association, may proceed at law or in equity to prevent the occurrence, continuation or violation of any provision of this Declaration, and the court in such action may award the successful party reasonable expenses in prosecuting such action, including attorney's fees.

B. Suspension of Privileges. The Board may suspend all voting rights and all rights of any Owner to use the Association's Common Areas for any period during which the Association assessment against such Owner remains unpaid, or during the period of continuing violation of the provisions of this Declaration by such Owner after the existence thereof has been declared by the Board.

C. Cumulative Rights. Remedies specified herein are cumulative and any specifications of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law or in equity. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect to a violation of any provisions of this Third Amended Declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation.

D. Fines. The Board may levy fines on Owners of lots violating any provision of this Declaration, in accordance with a Schedule of Fines adopted by Resolution of the Board, and such fines may be a single fine for a violation (not to exceed Five Hundred Dollars (\$500)), and may be accompanied by a continuing daily fine (not to exceed Ten Dollars (\$10)) per day but not to exceed 100 days. No fine shall be levied unless the Owner has been given seven (7) days written notice, at the address of record, in which to comply or request a hearing before the Board or its appointed committee. If no request for hearing is made, the fine shall be deemed levied effective the eighth (8th) day from the date of notice. If a hearing is held, and the imposition of the fine is upheld, the fine shall be deemed levied as of the date the Board or committee issues its decision upholding the fine. The Board's or Committee's determination shall be conclusive. If such fine is not paid within thirty (30) days of the date the fine is levied, the unpaid amount, plus interest at the rate of ten percent (10%) per annum, shall constitute and become a lien on the lot owned by the person fined. Any fine which becomes a lien may be enforced in the same manner and by subject to the same provisions as liens for unpaid assessments described in Article VII. D. of this Declaration.

XII. GRANTEE'S ACCEPTANCE: Each grantee or purchaser of any lot or parcel shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether

from Declarant or a subsequent Owner of such lot or parcel, accept such deed or contract upon and subject to each and all of the provisions of this Declaration and to the jurisdiction, rights, powers, privileges and immunities of Declarant and of the Association. By such acceptance such grantee or purchaser shall for himself, his heirs, devisees, personal representatives, grantees, successors, assigns, lessors and lessees, covenant, consent and agree to and with Declarant and the grantee or purchaser of each other lot to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration.

**XIII. SUSPENSION OF RESTRICTIONS:** The provisions on improvements, use and occupancy set forth herein shall be suspended as to any lot, parcel or other area while and so long as the same is owned by or leased to the State of Missouri or any governmental agency, public or private utility, whenever and to the extent, but only to the extent, that such provisions shall prevent the reasonable use of such lot, parcel or area for said purposes. On cessation of such use, such provisions shall become applicable again in their entirety. While owning or leasing and using, such Owner shall have no rights as a member of the Association, nor shall it be liable for any Association assessments.

**XIV. SEVERABILITY:** Every provision of this Declaration is hereby declared to be independent of any severable provision from every other provision hereof. If any provisions thereof shall be held by a court of competent jurisdiction to be invalid, or unenforceable, all remaining provisions shall continue unimpaired and in full force and effect.

**XV. CAPTIONS:** Paragraph captions in this Declaration are for convenience only and do not in any way limit or amplify the terms of provisions hereof.

**XVI. TERM AND AMENDMENT:** The provisions of this Declaration shall affect and run with the land and shall exist and be binding upon all parties claiming an interest in the Development until January 1, 1995, after which time the same shall be automatically extended for successive periods of ten (10) years each unless the Owners of ninety percent (90%) of lots vote, at a special meeting of the Association called for that purpose, to terminate this Declaration. This Declaration may be amended at any time by the Developer until such time as all lots in the Development have been sold, at which time the restrictions may thereafter be amended by the affirmative vote of two-thirds (2/3) of the Owners of all lots in the Development entitled to vote. In the case of an amendment by two-thirds (2/3) of the property owners, an amendment to this Declaration shall be duly executed by:

A. the requisite of such Owners required to effect such an amendment; or





BOOK 431 PAGE 0292



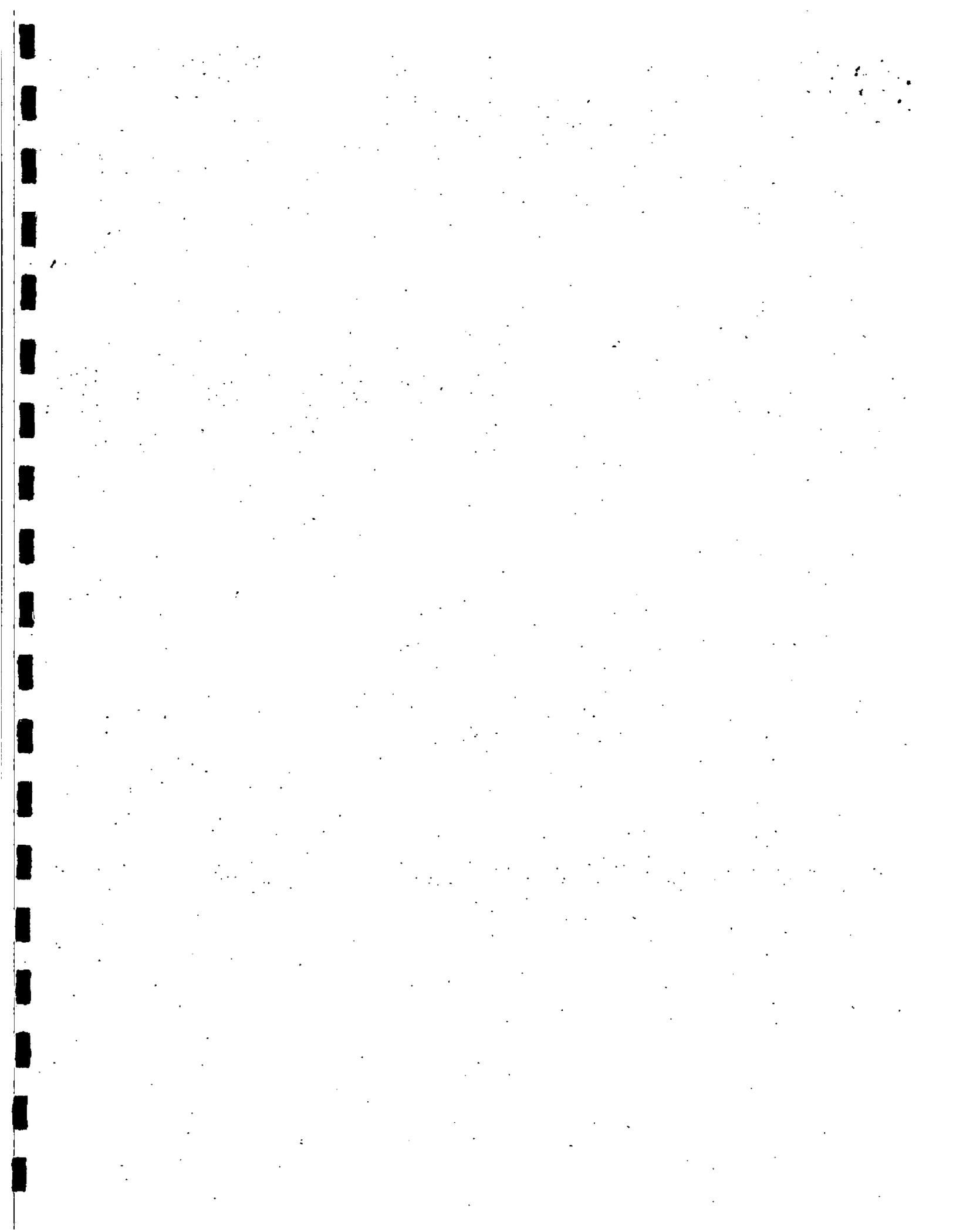
S. M. [unclear] [unclear], SS

Title 20 Aug 96  
213 431 0 292  
 Res: [unclear]

*[Signature]*  
 RECORDER AND DEPUTY, SO.  
*[Signature]*  
 Deputy 103<sup>00</sup>

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AMENDMENT  
TO THE THIRD AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE COVENANTS

THIS AMENDMENT TO THE THIRD AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS (the "Amendment") is made this 27th day of April, 1998, by FOUR SEASONS LAKESITES, INC., a Missouri corporation ("Declarant").

WHEREAS, Declarant is the developer of certain real property (the "Development") situated in Camden County, Missouri, the plats of which are recorded in the Office of the Recorder of Deeds of Camden County, Missouri as the following subdivisions: Kay's Point No. 1, as recorded in Plat Book 12, Page 57 and as amended; Kay's Point No. 2, as recorded in Plat Book 13, Page 41 and as amended; Kay's Point No. 3, as recorded in Plat Book 13, Page 82; Kay's Point No. 4, as recorded in Plat Book 13, Page 83; Kay's Point No. 5, as recorded in Plat Book 13, Page 86; Kay's Point No. 6, as recorded in Plat Book 13, Page 88; Kay's Point No. 7, as recorded in Plat Book 14, Page 35; Kay's Point No. 8, as recorded in Plat Book 17, Page 23 and as amended; Ridgecrest No. 1, as recorded in Plat Book 14, Page 48; Cornett Cove No. 1, as recorded in Plat Book 14, Page 34; Cornett Cove No. 2, as recorded in Plat Book 14, Page 68; Cornett Cove No. 3, as recorded in Plat Book 14, Page 92; Cornett Cove No. 4, as recorded in Plat Book 14, Page 93; Cornett Cove No. 5, as recorded in Plat Book 15, Page 81 and as amended; Cornett Cove No. 6, as recorded in Plat Book 17, Page 22; Cornett Cove No. 7, as recorded in Plat Book 17, Page 25; Country Club Estates No. 1, as recorded in Plat Book 15, Page 77; Country Club Estates No. 2, as recorded in Plat Book 15, Page 80; Country Club Estates No. 3, as recorded in Plat Book 17, Page 24 and as amended; Imperial Point, as recorded in Plat Book 17, Page 26 and as amended; Palisades Point No. 1, as recorded in Plat Book 18, Page 77 and as amended; Palisades Point No. 2, as recorded in Plat Book 19, Page 42 and as amended; Palisades Point No. 3, as recorded in Plat Book 20, Page 18 and as amended; Palisades Point No. 4, as recorded in Plat Book 21, Pages 30 through 33 inclusive; Palisades Point No. 5, as recorded in Plat Book 24, Page 13A; Equestrian Estates No. 1, as recorded in Plat Book 21, Page 9; Equestrian Estates No. 2, as recorded in Plat Book 34, Page 28A and as amended; Seasons Ridge, as recorded in Plat Book 39, Page 24A and as amended; Regency Cove, as recorded in Plat Book 42, Pages 34A through 34D and as amended; Grand Point, as recorded in Plat Book 45, Pages 32A through 32P inclusive and as amended; Grand Point No. 2, as recorded in Plat Book 51, Pages 9A through 9I inclusive; Eagles Cove, as recorded in Plat Book 56, Pages 50A through 50G inclusive and as amended; Fox Run, as recorded in Plat Book 59, Pages 30A through 30C inclusive; and Heritage Isle, as recorded in Plat Book 59, Pages 50A through 50J inclusive; and

WHEREAS, this Declaration imposes upon the Development mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Development, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Development; and

WHEREAS, Declarant recorded the original Declaration of Restrictive Covenants dated December 2, 1969 in Book 153, Page 345 in the Office of the Recorder of Deeds of Camden County, Missouri; and

WHEREAS, Declarant subsequently amended the original declaration by instrument dated March 10, 1971, recorded in Book 162, Page 780; by instrument dated June 21, 1972, recorded in Book 168, Page 668; by instrument dated May 31, 1972, recorded in Book 168, Page 451; by instrument dated August 3, 1973, recorded in Book 175, Page 534; by instrument dated August 15, 1973, recorded in Book 175, Page 756; by instrument dated November 23, 1973, recorded in Book 177, Page 513; by instrument dated May 30, 1975, recorded in Book 185, Page 252; by instrument dated May 30, 1975, recorded in Book 185, Page 253; by instrument dated September 24, 1975, recorded in Book 187, Page 430; by instrument dated May 25, 1978, recorded in Book 206, Page 428; by instrument dated August 26, 1980, recorded in Book 225, Page 106; by instrument dated March 18, 1981, recorded in Book 228, Page 26; by instrument dated August 15, 1981, recorded in Book 231, Page 510; by instrument dated November 23, 1981, recorded in Book 233, Page 702; by instrument dated August 22, 1984, recorded in Book 261, Page 941; by instrument dated June 23, 1986, recorded in Book 287, Page 565; by instrument dated May 14, 1987, recorded in Book 300, Page 155; by instrument dated May 14, 1987, recorded in Book 300, Page 185; by instrument dated February 9, 1988, recorded in Book 308, Page 269; by instrument dated April 30, 1988, recorded in Book 311, Page 185; by instrument dated June 1, 1990, recorded in Book 340, Page 733; by instrument dated April 8, 1993, recorded in Book 379, Page 813; by instrument dated January 13, 1995, recorded in Book 407, Page 666; by instrument dated February 5, 1997, recorded in Book 438, Page 209; and by instrument dated February 6, 1998, recorded in Book 454, Page 885:

WHEREAS, by instrument dated June 21, 1972, recorded in Book 168, Page 668, Declarant may amend this Declaration at any time until such time as all lots in the Development (as defined below) have been sold; and

WHEREAS, Declarant desires to further amend and restate this Declaration.

NOW, THEREFORE, Declarant hereby amends this Declaration as follows.

1. DEFINITIONS. Article II, DEFINITIONS, shall amended to add the following definitions:

Q. The letter "A" on any numbered lot on any Plat of the Development means the Lot is an "A" Lot and is therefore entitled to all rights and subject to all obligations and restrictions of an "A" Lot as set forth in this Declaration.

R. The letter "B" on any numbered lot on any Plat of the Development means the Lot is a "B" Lot and is therefore entitled to all rights and subject to all obligations and restrictions of a "B" Lot as set forth in this Declaration.

S. The letter "C" on any numbered lot on any Plat of the Development means the Lot is a "C" Lot and is therefore entitled to all rights and subject to all obligations and restrictions of a "C" Lot as set forth in this Declaration.

T. The letter "D" on any numbered lot on any Plat of the Development means the Lot is a "D" Lot and is therefore entitled to all rights and subject to all obligations and restrictions of a "D" Lot as set forth in this Declaration.

U. The letter "E" on any numbered lot on any Plat of the Development means the Lot is an "E" Lot and is therefore entitled to all rights and subject to all obligations and restrictions of an "E" Lot as set forth in this Declaration.

V. The letters "WF" when used in conjunction with any other letters on any Lot on any Plat of the Development means the Lot is a waterfront ("WF") Lot and is therefore entitled to all rights and subject to all obligations and restrictions of a "WF" Lot as set forth in this Declaration.

W. The letters "GC" on any numbered lot on any Plat of the Development means the Lot is a golf course ("GC") Lot and is therefore entitled to all rights and subject to all obligations and restrictions of a "GC" Lot as set forth in this Declaration.

2. MINIMUM DWELLING SIZE. Article III. LAND USE. shall be amended by adding to Section III.C.1. the following language:

g. For Lots in all phases of the Development planned and filed after March 31, 1998, commencing with Heritage Isle, which contain the letter designations "A" or "GC" on the Plat or Plats, one thousand five hundred (1,500) square feet.

e. For Lots in all phases of the Development planned and filed after March 31, 1998, commencing with Heritage Isle, which contain the letter designation "B" on the Plat or Plats, one thousand two hundred fifty (1,250) square feet.

f. For Lots in all phases of the Development planned and filed after March 31, 1998, commencing with Heritage Isle, which contain the letter designation "C" on the Plat or Plats, one thousand one hundred (1,100) square feet.

3. DOCKS. Article IV. RESIDENTIAL RESTRICTIONS. shall be amended by adding to the end of Section III.N. the following language:

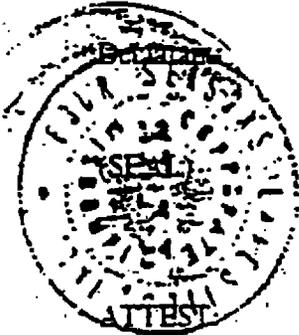
For Lots in all phases of the Development planned and filed after March 31, 1998, commencing with Heritage Isle, only owners of those Lots with a "WF"

designation on the Plat or Plats will be permitted to build private covered boat decks.

4 GOLF COURSE LOTS. Article IV. RESIDENTIAL RESTRICTIONS, shall be further amended to add the following language as a new Section III.S..

S. Golf Course Lots. The ACC shall from time to time adopt written rules and regulations specifically governing the architecture, construction, building size and aesthetics of residences on Golf Course Lots, including, but not limited to, requiring the Lot owner to construct and maintain the side of the residence facing the golf course in an aesthetically pleasing manner.

IN WITNESS WHEREOF, the undersigned, being the authorized officers of Declarant herein, has hereunto set their hand and seal this 27 day of April, 1998.



FOUR SEASONS LAKESITES, INC.

By: [Signature]  
Peter N. Brown, Vice President

[Signature]  
David F. Marano, Asst. Secretary

STATE OF MISSOURI     )  
  )     S.S.  
COUNTY OF Campbell     )

On this 27 day of April, 1998, before me, a Notary Public in and for the above said County and State, personally appeared PETER N. BROWN and DAVID F. MARANO, personally known to me to be the President and Assistant Secretary, respectively, of Four Seasons Lakesites, Inc., a Missouri corporation, and did state that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that this Amendment to the Third Amended and Restated Declaration of Restrictive Covenants was signed and sealed on behalf of said corporation, by authority of its Board of Directors; and said PETER N. BROWN and DAVID F. MARANO acknowledged said instrument to be the free act and deed of FOUR SEASONS LAKESITES, INC.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal  
the date above written.

Norma Cromer  
Notary Public

My commission expires: \_\_\_\_\_

NORMA CROMER  
NOTARY PUBLIC - STATE OF MISSOURI  
COMMISSIONED in CAMDEN COUNTY  
MY COMMISSION EXPIRES JAN. 6 - 2002



181034v4

BOOK 458-1360332

S. Missouri, County of Camden, MO	
THIS WAS RECORDED	
This 29 day of April 1991	
at 2:47 PM	
Record # 458-1360332	Page 852
<i>Norma Cromer</i>	
RECORDED	
<i>Norma Cromer</i>	
Deputy	300



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AMENDMENT  
TO THE THIRD AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE COVENANTS

THIS AMENDMENT TO THE THIRD AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS (the "Amendment") is made this 9 day of July, 1998, by FOUR SEASONS LAKESITES, INC., a Missouri corporation ("Declarant").

WHEREAS, Declarant is the developer of certain real property (the "Development") situated in Camden County, Missouri, the plats of which are recorded in the Office of the Recorder of Deeds of Camden County, Missouri as the following subdivisions: Kay's Point No. 1, as recorded in Plat Book 12, Page 57 and as amended; Kay's Point No. 2, as recorded in Plat Book 13, Page 41 and as amended; Kay's Point No. 3, as recorded in Plat Book 13, Page 82; Kay's Point No. 4, as recorded in Plat Book 13, Page 83; Kay's Point No. 5, as recorded in Plat Book 13, Page 86; Kay's Point No. 6, as recorded in Plat Book 13, Page 88; Kay's Point No. 7, as recorded in Plat Book 14, Page 35; Kay's Point No. 8, as recorded in Plat Book 17, Page 23 and as amended; Ridgecrest No. 1, as recorded in Plat Book 14, Page 48; Cornett Cove No. 1, as recorded in Plat Book 14, Page 34; Cornett Cove No. 2, as recorded in Plat Book 14, Page 68; Cornett Cove No. 3, as recorded in Plat Book 14, Page 92; Cornett Cove No. 4, as recorded in Plat Book 14, Page 93; Cornett Cove No. 5, as recorded in Plat Book 15, Page 81 and as amended; Cornett Cove No. 6, as recorded in Plat Book 17, Page 22; Cornett Cove No. 7, as recorded in Plat Book 17, Page 25; Country Club Estates No. 1, as recorded in Plat Book 15, Page 77; Country Club Estates No. 2, as recorded in Plat Book 15, Page 80; Country Club Estates No. 3, as recorded in Plat Book 17, Page 24 and as amended; Imperial Point, as recorded in Plat Book 17, Page 26 and as amended; Palisades Point No. 1, as recorded in Plat Book 18, Page 77 and as amended; Palisades Point No. 2, as recorded in Plat Book 19, Page 42 and as amended; Palisades Point No. 3, as recorded in Plat Book 20, Page 18 and as amended; Palisades Point No. 4, as recorded in Plat Book 21, Pages 30 through 33 inclusive; Palisades Point No. 5, as recorded in Plat Book 24, Page 13A; Equestrian Estates No. 1, as recorded in Plat Book 21, Page 9; Equestrian Estates No. 2, as recorded in Plat Book 34, Page 28A and as amended; Seasons Ridge, as recorded in Plat Book 39, Page 24A and as amended; Regency Cove, as recorded in Plat Book 42, Pages 34A through 34D and as amended; Grand Point, as recorded in Plat Book 45, Pages 32A through 32P inclusive and as amended; Grand Point No. 2, as recorded in Plat Book 51, Pages 9A through 9I inclusive; Eagles Cove, as recorded in Plat Book 56, Pages 50A through 50G inclusive and as amended; Fox Run, as recorded in Plat Book 59, Pages 30A through 30C inclusive; and Heritage Isle, as recorded in Plat Book 59, Pages 50A through 50J inclusive; and

WHEREAS, this Declaration imposes upon the Development mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Development, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Development; and

WHEREAS, Declarant recorded the original Declaration of Restrictive Covenants dated December 2, 1969 in Book 158, Page 345 in the Office of the Recorder of Deeds of Camden County, Missouri; and

WHEREAS, Declarant subsequently amended the original declaration by instrument dated March 10, 1971, recorded in Book 162, Page 780; by instrument dated June 21, 1972, recorded in Book 168, Page 668; by instrument dated May 31, 1972, recorded in Book 168, Page 451; by instrument dated August 3, 1973, recorded in Book 175, Page 534; by instrument dated August 15, 1973, recorded in Book 175, Page 756; by instrument dated November 23, 1973, recorded in Book 177, Page 513; by instrument dated May 30, 1975, recorded in Book 185, Page 252; by instrument dated May 30, 1975, recorded in Book 185, Page 253; by instrument dated September 24, 1975, recorded in Book 187, Page 430; by instrument dated May 25, 1978, recorded in Book 206, Page 428; by instrument dated August 26, 1980, recorded in Book 225, Page 106; by instrument dated March 18, 1981, recorded in Book 228, Page 26; by instrument dated August 15, 1981, recorded in Book 231, Page 510; by instrument dated November 23, 1981, recorded in Book 233, Page 702; by instrument dated August 22, 1984, recorded in Book 261, Page 941; by instrument dated June 23, 1986, recorded in Book 287, Page 565; by instrument dated May 14, 1987, recorded in Book 300, Page 155; by instrument dated May 14, 1987, recorded in Book 300, Page 185; by instrument dated February 9, 1988, recorded in Book 308, Page 269; by instrument dated April 30, 1988, recorded in Book 311, Page 185; by instrument dated June 1, 1990, recorded in Book 340, Page 733; by instrument dated April 8, 1993, recorded in Book 379, Page 813; by instrument dated January 13, 1995, recorded in Book 407, Page 666; by instrument dated February 5, 1997, recorded in Book 438, Page 209; by instrument dated February 6, 1998, recorded in Book 454, Page 885; by instrument dated April 23, 1998, recorded in Book 458, Page 616; and by instrument dated April 27, 1998, recorded in Book 458, Page 852;

WHEREAS, by instrument dated June 21, 1972, recorded in Book 168, Page 668, Declarant may amend this Declaration at any time until such time as all lots in the Development (as defined below) have been sold; and

WHEREAS, Declarant desires to further amend and restate this Declaration.

NOW, THEREFORE, Declarant hereby amends this Declaration as follows.

I. Article X. ANNEXATION, shall be amended by adding the following paragraph as a new subparagraph C:

C. Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article X, without prior notice and without the consent of any person, for the purpose of removing property then owned by Declarant, its affiliates or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in Declarant's plans for the



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S. Missouri, County of Camden, MO

This 9<sup>th</sup> day of August, 1915

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Deputy *270*

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**AMENDMENT  
TO THE THIRD AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE COVENANTS  
WITHDRAWING HERITAGE ISLE SUBDIVISION**

THIS AMENDMENT TO THE THIRD AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS (the "Amendment") is made this 9<sup>th</sup> day of July, 1998, by FOUR SEASONS LAKESITES, INC., a Missouri corporation ("Declarant").

WHEREAS, Declarant is the developer of certain real property (the "Development") situated in Camden County, Missouri, the plats of which are recorded in the Office of the Recorder of Deeds of Camden County, Missouri as the following subdivisions: Kay's Point No. 1, as recorded in Plat Book 12, Page 57 and as amended; Kay's Point No. 2, as recorded in Plat Book 13, Page 41 and as amended; Kay's Point No. 3, as recorded in Plat Book 13, Page 82; Kay's Point No. 4, as recorded in Plat Book 13, Page 83; Kay's Point No. 5, as recorded in Plat Book 13, Page 86; Kay's Point No. 6, as recorded in Plat Book 13, Page 88; Kay's Point No. 7, as recorded in Plat Book 14, Page 35; Kay's Point No. 8, as recorded in Plat Book 17, Page 23 and as amended; Ridgecrest No. 1, as recorded in Plat Book 14, Page 48; Cornett Cove No. 1, as recorded in Plat Book 14, Page 34; Cornett Cove No. 2, as recorded in Plat Book 14, Page 68; Cornett Cove No. 3, as recorded in Plat Book 14, Page 92; Cornett Cove No. 4, as recorded in Plat Book 14, Page 93; Cornett Cove No. 5, as recorded in Plat Book 15, Page 81 and as amended; Cornett Cove No. 6, as recorded in Plat Book 17, Page 22; Cornett Cove No. 7, as recorded in Plat Book 17, Page 25; Country Club Estates No. 1, as recorded in Plat Book 15, Page 77; Country Club Estates No. 2, as recorded in Plat Book 15, Page 80; Country Club Estates No. 3, as recorded in Plat Book 17, Page 24 and as amended; Imperial Point, as recorded in Plat Book 17, Page 26 and as amended; Palisades Point No. 1, as recorded in Plat Book 18, Page 77 and as amended; Palisades Point No. 2, as recorded in Plat Book 19, Page 42 and as amended; Palisades Point No. 3, as recorded in Plat Book 20, Page 18 and as amended; Palisades Point No. 4, as recorded in Plat Book 21, Pages 30 through 33 inclusive; Palisades Point No. 5, as recorded in Plat Book 24, Page 13A; Equestrian Estates No. 1, as recorded in Plat Book 21, Page 9; Equestrian Estates No. 2, as recorded in Plat Book 34, Page 28A and as amended; Seasons Ridge, as recorded in Plat Book 39, Page 24A and as amended; Regency Cove, as recorded in Plat Book 42, Pages 34A through 34D and as amended; Grand Point, as recorded in Plat Book 45, Pages 32A through 32P inclusive and as amended; Grand Point No. 2, as recorded in Plat Book 51, Pages 9A through 9I inclusive; Eagles Cove, as recorded in Plat Book 56, Pages 50A through 50G inclusive and as amended; Fox Run, as recorded in Plat Book 59, Pages 30A through 30C inclusive; and Heritage Isle, as recorded in Plat Book 59, Pages 50A through 50J inclusive; and

WHEREAS, this Declaration imposes upon the Development mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Development, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Development; and

WHEREAS, Declarant recorded the original Declaration of Restrictive Covenants dated December 2, 1969 in Book 158, Page 345 in the Office of the Recorder of Deeds of Camden County, Missouri; and

WHEREAS, Declarant subsequently amended the original declaration by instrument dated March 10, 1971, recorded in Book 162, Page 780; by instrument dated June 21, 1972, recorded in Book 168, Page 668; by instrument dated May 31, 1972, recorded in Book 168, Page 451; by instrument dated August 3, 1973, recorded in Book 175, Page 534; by instrument dated August 15, 1973, recorded in Book 175, Page 756; by instrument dated November 23, 1973, recorded in Book 177, Page 513; by instrument dated May 30, 1975, recorded in Book 185, Page 252; by instrument dated May 30, 1975, recorded in Book 185, Page 253; by instrument dated September 24, 1975, recorded in Book 187, Page 430; by instrument dated May 25, 1978, recorded in Book 206, Page 428; by instrument dated August 26, 1980, recorded in Book 225, Page 106; by instrument dated March 18, 1981, recorded in Book 228, Page 26; by instrument dated August 15, 1981, recorded in Book 231, Page 510; by instrument dated November 23, 1981, recorded in Book 233, Page 702; by instrument dated August 22, 1984, recorded in Book 261, Page 941; by instrument dated June 23, 1986, recorded in Book 287, Page 565; by instrument dated May 14, 1987, recorded in Book 300, Page 155; by instrument dated May 14, 1987, recorded in Book 300, Page 185; by instrument dated February 9, 1988, recorded in Book 308, Page 269; by instrument dated April 30, 1988, recorded in Book 311, Page 185; by instrument dated June 1, 1990, recorded in Book 340, Page 733; by instrument dated April 8, 1993, recorded in Book 379, Page 813; by instrument dated January 13, 1995, recorded in Book 407, Page 666; by instrument dated February 5, 1997, recorded in Book 438, Page 209; by instrument dated February 6, 1998, recorded in Book 454, Page 885; by instrument dated April 23, 1998, recorded in Book 458, Page 616; by instrument dated April 27, 1998, recorded in Book 458, Page 852; and by instrument dated as of even date, recorded in Book ~~458~~ Page 829;

WHEREAS, by instrument dated June 21, 1972, recorded in Book 168, Page 668, Declarant may amend this Declaration at any time until such time as all lots in the Development (as defined below) have been sold;

WHEREAS, Four Seasons Lakesites, Inc. filed the Heritage Isle Plat in Plat Book 59, Pages 50A through 50J, in the records of the Office of the Recorder of Deeds, Camden County, Missouri; and

WHEREAS, Four Seasons Lakesites, Inc. filed a Supplemental Declaration to the Third Amended and Restated Declaration of Restrictive Covenants of Four Seasons Lakesites, Inc. annexing Heritage Isle Subdivision, which Supplemental Declaration is filed in Book 458, Page 616 in the records of the Office of the Recorder of Deeds, Camden County, Missouri;

WHEREAS, Four Seasons Lakesites, Inc. desires to file an amended the plat of Heritage Isle Subdivision and believes it to be in the best interests of the Development to withdraw Heritage Isle as recorded on the original plat from the Development prior to recording such amended plat; and

WHEREAS, Declarant desires to further amend and restate this Declaration.

NOW, THEREFORE, Declarant hereby amends this Declaration as follows.

1. The following real property is hereby withdrawn from the Development: Heritage Isle Subdivision, according to Plat filed in Plat Book 59, Pages 50A through 50J, records of the Recorder of Deeds, Camden County, Missouri, and said plat is hereby vacated and made void.

2. The Supplemental Declaration to the Third Amended and Restated Declaration of Restrictive Covenants of Four Seasons Lakesites, Inc. annexing Heritage Isle Subdivision filed in Book 458, Page 616 in the records of the Office of the Recorder of Deeds, Camden County, Missouri is hereby vacated and made void.

IN WITNESS WHEREOF, the undersigned, being the authorized officers of the Declarant, Four Seasons Lakesites, Inc., have hereunto set their hands and seal this 9 day of July, 1998.

FOUR SEASONS LAKESITES, INC.

By Larry B. Cooper  
Larry B. Cooper, Vice President



ATTEST

D. F. Marano  
David F. Marano, Assistant Secretary

STATE OF MISSOURI )  
 ) SS.  
COUNTY OF CAMDEN )

On this 9 day of July, 1998, before me appeared Larry B. Cooper, to me personally known who, being duly sworn, did say that he is the Vice President of Four Seasons Lakesites, Inc., a corporation of the State of Missouri, and that said instrument was signed and sealed in behalf of said corporation, by authority of its Board of Directors, and said Larry B. Cooper acknowledged said instrument to be the free act and deed of said corporation.

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

Norma Cromer  
Notary Public

My Commission Expires:  
NORMA CROMER  
NOTARY PUBLIC - STATE OF MISSOURI  
COMMISSIONED IN CAMDEN COUNTY  
MY COMMISSION EXPIRES JAN. 6 - 2002

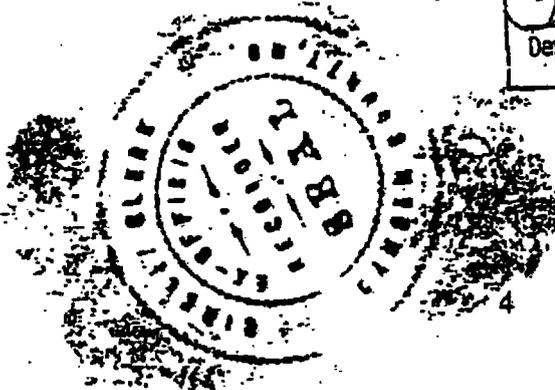


186670.2

BOOK 0452 PAGE 0830

St. Missouri, County of Camden, MO  
FILED FOR RECORD  
This 9 day of July, 1998  
at 5:11 O'Clock PM, and is now  
Recorded in BOOK 452 PAGE 830  
Norma Cromer  
RECORDER CAMDEN COUNTY, MO.  
Vivian Stray  
Deputy 270

HC



**Attachment No. 4**  
**Amendment to the Third Amended and Restated Declaration of**  
**Restrictive Covenants Relating to Water and Sewer Systems**

**WR-2010-0111 and SR-2010-0110**  
**Rebuttal Testimony of James A. Merciel, Jr.**

0681-0760

P 5,6

DONNE SVELLING  
CAMDEN COUNTY  
RECORDER OF DEEDS

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Summers Compton Wells PC  
Carol Stanton Fiala  
8909 Laclede Road  
St. Louis, MO 63124

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Document Title: AMENDMENT TO THE THIRD AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE COVENANTS  
RELATING TO WATER AND SEWER SYSTEMS

Grantor: Four Seasons Lakesites, Inc.  
a Missouri corporation

Grantor's Address: P.O. Box 430  
Lake Ozark, MO 65049

Grantee: Four Seasons Lakesites, Inc.  
a Missouri corporation

Grantee's Address: 315 Four Seasons Dr.  
P.O. Box 430  
Lake Ozark, MO 65049

Legal Description: See Attached Exhibit "A"

AMENDMENT TO THE THIRD AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE COVENANTS OF FOUR SEASONS LAKESITES  
RELATING TO WATER AND SEWER SYSTEMS

THIS AMENDMENT TO THE THIRD AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS RELATING TO WATER AND SEWER SYSTEMS (the "Water and Sewer Amendment") is made this 22nd day of July, 2009, by FOUR SEASONS LAKESITES, INC., a Missouri corporation ("Declarant").

WITNESSETH

WHEREAS, Declarant is the developer of real property situated in Camden County and Miller County, Missouri and more particularly described in Exhibit "A", which is attached and incorporated by reference.

WHEREAS, Declarant recorded the original Declaration of Restrictive Covenants dated December 2, 1969 in Book 158, Page 345 in the Office of the Recorder of Deeds of Camden County, Missouri (the "Original Declaration").

WHEREAS, Declarant subsequently amended the Original Declaration by Amended Declaration of Restrictive Covenants dated March 10, 1971, recorded in Book 162, Page 780; by First Supplemental Indenture dated May 31, 1972, recorded in Book 168, Page 451; by First Supplemental Indenture dated June 21, 1972, recorded in Book 168, Page 668; by Indenture Agreement dated August 3, 1973, recorded in Book 175, Page 534; by Indenture Agreement dated August 15, 1973, recorded in Book 175, Page 756; by Indenture Agreement dated November 23, 1973, recorded in Book 177, Page 513; by Amendment dated May 30, 1975, recorded in Book 185, Page 252; by Amendment dated May 30, 1975, recorded in Book 185, Page 253; by Amendment dated September 24, 1975, recorded in Book 187, Page 430; by Amended and Restated Declaration of Restrictive Covenants dated May 25, 1978, recorded in Book 206, Page 428; by Supplemental Declaration dated October 14, 1980, recorded in Book 225, Page 105; by Amendment dated August 26, 1980, recorded in Book 225, Page 106; by Supplemental Declaration dated March 18, 1981, recorded in Book 228, Page 26; by Supplemental Declaration dated July 30, 1981, recorded in Book 231, Page 182; by Amendment dated August 15, 1981, recorded in Book 231, Page 516; by Amendment dated November 23, 1981, recorded in Book 233, Page 702; by Amendment dated August 22, 1984, recorded in Book 261, Page 941; by Second Amended and Restated Declaration of Restrictive Covenants dated January 14, 1986, recorded in Book 283, Page 436; by Amendment dated June 23, 1986, recorded in Book 287, Page 565; by Amendment dated May 14, 1987, recorded in Book 300, Page 155; by Amendment dated May 14, 1987, recorded in Book 300, Page 185; by Supplemental Declaration dated February 9, 1988, recorded in Book 308, Page 269; by Supplemental Declaration dated June 7, 1988, recorded in Book 312, Page 353; by Amendment dated April 30, 1988, recorded in Book 314, Page 74; by Amendment dated May 13, 1989, recorded in Book 325, Page 820; by Amendment dated November 6, 1989, recorded in Book 332, Page 789; by Supplemental Declaration dated June 1, 1990, recorded in Book 340, Page 733; by Amendment dated June 1, 1990, recorded in Book 340, Page 734; by Supplemental Declaration dated November 15, 1991, recorded in Book 357, Page 836; by Supplemental

Declaration dated November 15, 1991, recorded in Book 358, Page 268; by Supplemental Declaration dated April 8, 1993, recorded at Book 379, Page 813; by Supplemental Declaration dated January 13, 1995, recorded at Book 407, Page 666; by Third Amended and Restated Declaration of Restrictive Covenants dated July 2, 1996, recorded at Book 431, Page 292; by Supplemental Declaration dated February 5, 1997, recorded at Book 438, Page 209; by Supplemental Declaration dated February 6, 1998, recorded at Book 454, Page 885; by Supplemental Declaration dated April 23, 1998, recorded at Book 458, Page 616; by Amendment dated April 27, 1998, recorded at Book 458, Page 852; by Amendment dated July 9, 1998, recorded at Book 462, Page 829; by Amendment dated July 9, 1998, recorded at Book 462, Page 830; by Supplemental Declaration dated July 9, 1998, recorded in Book 462, Page 833; by Supplemental Declaration dated August 6, 1998, recorded at Book 464, Page 339; by Supplemental Declaration dated September 2, 1998, recorded at Book 465, Page 787; by Supplemental Declaration dated June 18, 1999, recorded at Book 480, Page 492; by Supplemental Declaration dated May 3, 2000, recorded in Book 495, Page 526; by Supplemental Declaration dated July 14, 2000, recorded in Book 499, Page 521; by Amendment dated February 13, 2001, recorded in Book 510, Page 726; by Supplemental Declaration dated March 14, 2001, recorded in Book 511, Page 100; by Amendment dated March 28, 2002, recorded in Book 532, Page 175; by Supplemental Declaration dated July 31, 2002, recorded in Book 539, Page 905; by Supplemental Declaration dated July 31, 2002, recorded in Book 539, Page 911; by Amendment dated February 13, 2001, recorded in Book 510, Page 726; by Amendment dated September 19, 2003, recorded in Book 569, Page 406; by Supplemental Declaration dated October 26, 2005, recorded in Book 615, Page 762; and by Supplemental Declaration dated November 29, 2005, recorded in Book 615, Page 996.

WHEREAS, Declarant further amended the Original Declaration by filing the following: Supplemental Declaration of Covenants and Restrictions for Porto Cima Townhouse Properties dated October 5, 2000, recorded October 10, 2000 recorded in Book 503, Page 509; Amendment dated February 13, 2001, recorded March 26, 2001 in Book 510, Page 727; Supplemental Declaration dated October 24, 2001, recorded October 25, 2001 in Book 523, Page 260; Amendment dated March 28, 2002, recorded April 2, 2002 in Book 532, Page 177; Supplemental Declaration dated September 12, 2002, recorded September 19, 2002 in Book 542, Page 765; Supplemental Declaration dated March 28, 2003, recorded April 18, 2003 in Book 556, Page 466; Supplemental Declaration dated September 19, 2003, recorded September 29, 2003 in Book 569, Page 405; Supplemental Declaration dated February 25, 2004, recorded March 2, 2004 in Book 577, Page 958; First Amended and Restated Supplemental Declaration of Covenants and Restrictions for Porto Cima Townhouse Properties dated February 15, 2005, recorded March 10, 2005 in Book 599, Page 335; Supplemental Declaration of Covenants and Restrictions for the Villas at Country Club Cove dated April 25, 2005, recorded June 2, 2005 in Book 604, Page 275; Supplemental Declaration of Restrictive Covenants for Country Club Cove dated August 30, 2005, recorded September 12, 2005 in Book 610, Page 786; Supplemental Declaration of Covenants and Restrictions for Porto Cima Courts dated October 16, 2006, recorded October 17, 2006 in Book 633, Page 214; and First Supplemental Declaration to the Supplemental Declaration of Covenants and Restrictions for the Villas at Country Club Cove dated June 6, 2008, recorded June 11, 2008 in Book 663, Page 600.

WHEREAS, by First Supplemental Indenture dated June 21, 1972, recorded in Book 168, Page 668, Declarant may amend this Declaration at any time until such time as all Lots in the Development have been sold.

WHEREAS, fewer than all of the Lots in the Development have been sold and Declarant desires to further amend and restate this Declaration.

WHEREAS, Article IX of the Declaration, "Water System and Sewage Treatment System," no longer adequately or accurately addresses the water and sewer treatment systems in the Development, the role of the Missouri Public Service Commission or the laws of the State of Missouri and as such, Declarant desires to remove Article IX from the Declaration and place certain covenants and restrictions relating to water and sewer systems within the Development in this Water and Sewer Amendment.

NOW, THEREFORE, Declarant hereby amends this Declaration as follows:

1. Removal of Article IX. Article IX of the Declaration, titled "Water System and Sewage Treatment System," is hereby removed in its entirety from the Declaration and replaced with the following language:

#### IX. WATER AND SEWER SYSTEMS.

All provisions relating to Water and Sewer Systems and treatment are set forth in the Amendment to Declaration dated July 15, 2009, recorded in the Office of the Recorder of Deeds of Camden County, Missouri and the Office of the Recorder of Deeds of Miller County (the "Water and Sewer Amendment"). All provisions of the Water and Sewer Amendment shall survive the recording of any amendment to the Declaration.

2. Definitions. The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as follows:

2.1 "ACC" means the Architectural Control Committee of the Association.

2.2 "Assessment" means all assessments levied against any Lot in accordance with the Declaration, now or as amended.

2.3 "Association" means the Four Seasons Lakesites Property Owners Association, Inc., a Missouri mutual nonprofit corporation, its successors and assigns.

2.4 "Lot" means any numbered lot shown on the Plats of the Subdivision, and any lot designated herein or in a Supplemental Declaration for use as single family or residential multiple family purposes, other than those specifically designated for special purposes, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, and any improvements thereon. The term shall

include, by way of illustration, but not limitation, condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses as well as vacant Lots intended for development. In the case of a building within a condominium development containing multiple living Units, each living Unit shall be deemed to be a separate Lot.

2.5 "Owner" collectively means one or more Persons (such additional Persons being a "Co-Owner") who holds the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

2.6 "Person" means a natural person, a corporation, limited liability company, partnership, trustee or any other legal entity.

2.7 "Plan Area" means those areas of the Development located on Horseshoe Bend for which the Sewage Treatment Plan has been adopted as set forth in Section 4.2.

2.8 "Plat" means a plat of any phase or subdivision, or any part thereof, of the Development as is recorded in the appropriate recording offices of Camden County and Miller County, Missouri.

2.9 "Sewage Treatment Plan" means the plan adopted by the Declarant for sewage treatment as described in Section 4.2.

2.10 "Special Assessment" means Assessments levied by the Association from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, and as more specifically set forth in the Declaration, now and as amended.

2.11 "Sub-Association" means any condominium association or other owners association created pursuant to the provisions of a Supplemental Declaration and having concurrent jurisdiction with the Association over the portion of the Development added by such Supplemental Declaration.

2.12 "Subdivision" means any real property submitted to this Declaration pursuant to a Supplemental Declaration and a Plat and amended Plats as a distinct phase of the Development.

2.13 "Supplemental Declaration" means an amendment or supplement to the Declaration which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

2.14 "Unit" shall have the meaning assigned to it in any Sub-Association Declaration with respect to the property governed by such Sub-Association Declaration.

3. Water Systems.

3.1 Shawnee Bend Lots - Central Water System. The Owner of each Lot located on Shawnee Bend in a subdivision serviced by a central water system agrees to pay the owner of the central water system, or its assigns or designees, a monthly availability charge of Ten Dollars (\$10.00), unless the Owner of the Lot is contractually obligated to Developer, or Developer's assign, to pay a different amount. This availability fee shall commence upon the availability of water in a water system distribution main provided for the Lot and shall terminate when the Owner connects his Lot to the water system distribution main. Each Lot Owner will bear the cost of the service line from his building to the water main. Unpaid availability fees shall become a lien upon the Lot the date they become due.

3.2 Horseshoe Bend Lots Central Water System. The Owner of each Lot located on Horseshoe Bend agrees to pay the owner of the water works system to be constructed within the Development on Horseshoe Bend, a minimum monthly availability charge for water, water service and the accommodations afforded the Owners of said Lots by said water works system, commencing upon the availability of water in a water works system distribution main provided for the lot and continuing thereafter so long as water is available for use, whether or not tap or connection is made to a water works system distribution main and whether or not said Owner actually uses or takes water. No charge will be made to the Lot Owners for the right to connect to the water system. Each Lot Owner will bear the cost of the service line from his building into the water main. The said owner or owners of said water works system will be a privately owned public utility authorized by a Certificate of Public Convenience and Necessity issued by the State of Missouri Public Service Commission ("PSC") to operate the water works systems.

The aforesaid amounts of said availability charges, times and methods of payments thereof by said Owners, and other matters, shall be as provided in Schedules of Rate and Rules, Regulations and Conditions of Services for Water Services filed and published by said public utility or utilities which said Missouri PSC, or any successor Regulatory Body of the State of Missouri, in accordance with law and passed to file or formally approved by said PSC as the then effective Schedule of Rates and Rules, Regulations and Conditions of Service of said public utility or utilities, or if not so provided, as determined by the owner of the water works system. The amounts of said availability charges and other charges are subject to change hereafter by order of the said Missouri PSC, or its successors, in accordance with then existing law and the structure of said availability charges are likewise and in the same manner subject to change from availability rates to another type of rate or rates.

Unpaid charges shall become a lien upon the Lot or Lots to which they are applicable as of the date the same become due. Nothing in this paragraph shall be construed as a limitation on the rights of any such public utility to sell and assign in accordance with law its property and assets to a governmental subdivision of the State of Missouri.

3.3 Individual Water Systems. Prior to the extension of the central water system to a Lot on either Horseshoe Bend or Shawnee Bend, the Owner of the Lot may install an individual water system. Once the central water system is available to the Lot, the Owner must disconnect the individual water system and utilize the central water system.

3.4 Ridgecrest Water System. No water system will be provided by the Developer to the Ridgecrest Subdivision. Section 3.2 shall not apply to the Ridgecrest Subdivision. Each Lot Owner within Ridgecrest Subdivision will be required to install an individual water system for water supply, unless a water supply system becomes accessible to the Lot.

4. Sewer Systems.

4.1 Shawnee Bend Lots - Central Sewer System. The Owner of each Lot in a subdivision located on Shawnee Bend serviced by a central sewer system agrees to pay the owner of the central sewer system, or its assigns or designees a monthly availability charge of Fifteen Dollars (\$15.00), unless the Owner of the Lot is contractually obligated to Developer, or Developer's assign, to pay a different amount. This availability fee shall commence upon the availability of a sewer system distribution main provided for the Lot and shall terminate when the Owner connects his Lot to the sewer system distribution main. Each Lot Owner will bear the cost of the service line from his building to the sewer main. Unpaid availability fees shall become a lien upon the Lot the date they become due.

Prior to the extension of the central sewer system to such a Lot as described above, the Owner of the Lot may install an individual sewer system. Once the central sewer system is available to the Lot, the Owner must disconnect the individual sewer system and utilize the central sewer system.

4.2 Horseshoe Bend Lots - Plan for Sewage Treatment. The Developer adopted the Sewage Treatment Plan for sewage treatment by use of individual treatment facilities or other methods of sewage treatment in certain areas of the Development located on Horseshoe Bend (the "Plan Area") in lieu of or prior to central sewer service being available. The following provisions apply to the implementation and administration of said Sewage Treatment Plan. For purposes of Sections 4.2 and 4.3, each reference to an Owner shall mean an Owner of a Lot in the Plan Area.

a. Each Owner of a Lot containing a residence shall install an individual treatment facility, at the Owner's expense. Each such individual treatment facility must meet the specifications for such individual treatment facility set forth in the Sewage Treatment Plan.

b. It shall be the duty of each Owner of a Lot improved by a residence to construct an individual treatment facility in accordance with the specifications of the Sewage Treatment Plan so that it performs its stated functions and upon the failure of any Owner of a Lot containing a residence to maintain such an individual treatment facility, the Association may enter upon the Lot, take such action as is necessary to so construct and maintain such an individual treatment facility, and assess the Lot Owner for the expenses so incurred. Said Specific Assessment, if unpaid, shall be a lien upon the Lot and may be enforced by the Association in the manner set forth in the Declaration.

c. According to the Sewage Treatment Plan, the Association shall periodically maintain each Lot Owner's individual treatment facility by (i) collecting wastes on a regular basis, and (ii) inspecting and making or causing to be made necessary repairs (whether the facility is constructed under the Sewage Treatment Plan or is an existing unit described in

Section 4.2f) on a regular basis to ensure continued compliance with the specifications set forth in the Sewage Treatment Plan. And for these purposes, the Association and its agents may enter upon any Owner's Lot.

d. The Association shall assess as a Specific Assessment in accordance with the Declaration against each Lot with a residence, a monthly maintenance fee for implementing and administering the Sewage Treatment Plan. The Association may charge more for Lots with more than one (1) dwelling Unit. The Association shall develop criteria for such variable fees.

e. No permit shall be issued by the ACC for the construction of any building, whether residential, commercial or otherwise, within the Plan Area unless the submitted treatment plan provides for the construction of an individual treatment facility in conformance with the Sewage Treatment Plan. The ACC shall employ an engineer to review such plans and advise the ACC whether the construction plans are in conformance.

f. Notwithstanding anything herein, if the individual treatment facility for any residence is replaced or substantially changed, in the judgment of the Association, it shall then be replaced with an individual treatment facility which conforms to said specifications as approved by the ACC. The Association may make further variances and exceptions to avoid hardship.

g. Notwithstanding the above, if the existing sewage treatment facility on any Lot does not meet the specifications outlined in the Sewage Treatment Plan and is causing pollution of any waters or is presenting a hazard to health, the Association may (after notice and opportunity to correct the deficiency) enter onto said Lot, construct a new facility which does meet the specifications of the plan, and assess the Lot Owner for the expenses so incurred. Such Specific Assessment shall be a lien upon the Lot and may be enforced in the manner set forth in the Declaration

4.3 Rights, Powers and Duties of the Association. The Association shall have the following rights, powers and duties with respect to the Sewage Treatment Plan:

a. The Association or its assignees shall inspect, maintain, operate, repair, improve and regulate the use of all elements under the Sewage Treatment Plan, including, but not limited to, the individual treatment facilities and all support facilities use in connection with the individual treatment facilities (the "Sewage Treatment System"). In connection with such inspection, maintenance, operation, repair, improvement and regulation of the Sewage Treatment System, the Association shall comply with all provisions of law, federal, state and local, as such may exist from time to time, including, but not limited to, any regular inspection obligations.

b. The Association or its assignees shall provide to all Lot Owners the right and advantage of participation in such plan for sewage treatment, subject, however, to the conditions herein provided, and subject to such reasonable rules and regulations as may be prescribed by the Association, such rules and regulations to be uniform in application to all Owners of the same classification.



EXHIBIT "A"  
TO  
AMENDMENT TO THE THIRD AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE COVENANTS OF FOUR SEASONS LAKEITES  
RELATING TO WATER & SEWER SYSTEMS

Horseshoe Bend Subdivisions

All of the real property identified as:

Kay's Point No. 1 as per plat recorded in Plat Book 12, Pages 57 through 61 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Kay's Point No. 2 as per plat recorded in Plat Book 13, Pages 41 through 45 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Kay's Point No. 3 as per plat recorded in Plat Book 13, Page 82 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Kay's Point No. 4 as per plat recorded in Plat Book 13, Page 83 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Kay's Point No. 5 as per plat recorded in Plat Book 13, Pages 86 and 87 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Kay's Point No. 6 as per plat recorded in Plat Book 13, Page 88 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Kay's Point No. 7 as per plat recorded in Plat Book 14, Page 35 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Kay's Point No. 8 as per plat recorded in Plat Book 17, Pages 23, 27, 28 and 29 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Ridgecrest No. 1 as per plat recorded in Plat Book 14, Pages 48 through 50 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Cornett Cove No. 1 as per plat recorded in Plat Book 14, Page 34 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Cornett Cove No. 2 as per plat recorded in Plat Book 14, Pages 68 through 70 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of

Camden County, Missouri;

Cornett Cove No. 3 as per plat recorded in Plat Book 14, Page 92 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri, save and except for lots 601 through 613 withdrawn per Amendment to Declaration recorded December 12, 2002 in Book 548, Page 338 at the Office of the Recorder of Deeds of Camden County, Missouri;

Cornett Cove No. 4 as per plat recorded in Plat Book 14, Pages 93 through 95 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Cornett Cove No. 5 as per plat recorded in Plat Book 15, Pages 81 through 85 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Cornett Cove No. 6 as per plat recorded in Plat Book 17, Pages 22 and 22A and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Cornett Cove No. 7 as per plat recorded in Plat Book 17, Pages 25 and 25A and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Country Club Estates No. 1 as per plat recorded in Plat Book 15, Pages 77 and 78 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Country Club Estates No. 2 as per plat recorded in Plat Book 15, Pages 79 and 80 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Country Club Estates No. 3 Amended Plat as per plat recorded in Plat Book 18, Pages 75 and 76 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Imperial Point as per plat recorded in Plat Book 17, Pages 26 through 26B and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Palisades Point No. 1 Amended Plat as per plat recorded in Plat Book 19, Page 11 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Palisades Point No. 2 as per plat recorded in Plat Book 19, Page 42 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Palisades Point No. 3 as per plat recorded in Plat Book 20, Page 18 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Palisades Point No. 4 as per plat recorded in Plat Book 21, Pages 30 through 33 inclusive and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Palisades Point No. 5 as per plat recorded in Plat Book 24, Pages 13A through 13D and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Equestrian Estates No. 1 as per plat recorded in Plat Book 21, Pages 9 through 11 at the Office of the Recorder of Deeds of Camden County, Missouri;

Equestrian Estates No. 2 Amended Plat as per plat recorded in Plat Book 35, Pages 15A through 15D and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Seasons Ridge First Amended Plat as per plat recorded in Plat Book 40, Pages 29A through 29F and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Regency Cove as per plat recorded in Plat Book 42, Pages 34A through 34D and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Villas at Country Club Cove as per that portion of the Country Club Cove Subdivision Phase I plat recorded in Plat Book 84, Pages 49A through 49I as identified in the Supplemental Declaration of Covenants and Restrictions for the Villas at Country Club Cove recorded on June 2, 2005 in Book 604, Page 275 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Villas at Country Club Cove as per plat titled "Country Club Cove Subdivision, Phase II" recorded in Plat Book 112, Pages 16A-16C and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri; and

That portion of the Country Club Cove Subdivision Phase 1 plat recorded in Plat Book 84, Pages 49A through 49H as described in Exhibit A to the Supplemental Declaration of Restrictive Covenants for Country Club Cove recorded on September 12, 2005 in Book 610, Page 786 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri; as well as,

Shawnee Bend Subdivisions

All of the real property identified as:

Grand Point as per plat recorded in Plat Book 45, Pages 32A through 32P inclusive, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Grand Point No. 2 as per plat recorded in Plat Book 51, Pages 9A through 9I inclusive, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Eagles Cove as per plat recorded in Plat Book 56, Pages 50A through 50G inclusive, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Fox Run as per plat recorded in Plat Book 59, Pages 30A through 30C and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri, save and except for lot 675 which was withdrawn as per Amendment to Declaration recorded in Book 662, Page 513 at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle as per plat recorded in Plat Book 60, Pages 40A through 40J inclusive, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri, save and except for lots 1055-1060 which were withdrawn as per Amendment to Declaration recorded in Book 510, Page 726 at the Office of the Recorder of Deeds of Camden County, Missouri;

Grand Point No. 3 as per plat recorded in Plat Book 61, Pages 2A through 2B, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Champions Run as per plat recorded in Plat Book 63, Pages 15A through 15J, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

La Riva Est as per plat recorded in Plat Book 66, Pages 12A through 12H, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri, and as recorded in Plat Book A, Page 293 and rerecorded in Plat Book A, Page 294, at the Office of the Recorder of Deeds of Miller County, Missouri, and all amendments thereto and resubdivisions thereof at the Offices of the Recorder of Deeds of Camden County, Missouri and Miller County, Missouri, save and except for the property designated "Reserved for Future Development Rights" withdrawn per Amendment to Declaration recorded in Book 569, Page 406 at the Office of the Recorder of Deeds of Camden County, Missouri and as recorded in Book 2003, Page 7774 at the Office of the Recorder of Deeds of Miller County, Missouri;

La Riva Est No. 2 as per plat recorded in Plat Book 70, Pages 11A through 11II, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri, and as recorded in Plat Book A, Page 327, at the Office of the Recorder of Deeds of Miller County, Missouri;

Grand Point Subdivision First Addition as per plat recorded in Plat Book 73, Page 11, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

La Riva Est No. 3 as per plat recorded in Plat Book 75, Pages 36A through 36D, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle No. 2 Townhomes as per plat recorded in Plat Book 68, Pages 5A-5F and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle No. 3 Townhomes as per plat recorded in Plat Book 70, Pages 8A-8H and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle No. 4 Townhomes as per plat recorded in Plat Book 73, Pages 43A-43P and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle No. 5 Townhomes as per plat recorded in Plat Book 72, Pages 19A-19F and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle No. 6 Townhomes as per plat recorded in Plat Book 76, Pages 12A-12F and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle No. 7 Townhomes as per plat recorded in Plat Book 78, Pages 27A through 27P and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle No. 7 Townhomes First Addition as per plat recorded in Plat Book 82, Pages 44A-44J and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle No. 8 Townhomes as per plat recorded in Plat Book 81, Page Pages 11A-11H and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri and as per plat recorded in Plat Book 2003, Page 7773 at the Office of the Recorder of Deeds of Miller County, Missouri; and

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Porto Cima Courts as per plat recorded in Plat Book 101, Pages 32A-32D and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri.

Attachment No. 5  
Fourth Amended and Restated Declaration of Restrictive Covenants

WR-2010-0111 and SR-2010-0110  
Rebuttal Testimony of James A. Merciel, Jr.

P 7, 17

**FOURTH AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE COVENANTS**

THIS FOURTH AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS (the "Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 2009, by FOUR SEASONS LAKESITES, INC., a Missouri corporation ("Declarant").

**RECITALS**

A. Declarant is the developer of real property situated in Camden County and Miller County, Missouri and more particularly described in Exhibit "A", which is attached and incorporated by reference. This Declaration imposes upon the Development (as defined below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Development, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Development;

B. Declarant recorded the original Declaration of Restrictive Covenants dated December 2, 1969 in Book 158, Page 345 in the Office of the Recorder of Deeds of Camden County, Missouri (the "Original Declaration");

C. Declarant subsequently amended the Original Declaration by Amended Declaration of Restrictive Covenants dated March 10, 1971, recorded in Book 162, Page 780; by First Supplemental Indenture dated May 31, 1972, recorded in Book 168, Page 451; by First Supplemental Indenture dated June 21, 1972, recorded in Book 168, Page 668; by Indenture Agreement dated August 3, 1973, recorded in Book 175, Page 534; by Indenture Agreement dated August 15, 1973, recorded in Book 175, Page 756; by Indenture Agreement dated November 23, 1973, recorded in Book 177, Page 513; by Amendment dated May 30, 1975, recorded in Book 185, Page 252; by Amendment dated May 30, 1975, recorded in Book 185, Page 253; by Amendment dated September 24, 1975, recorded in Book 187, Page 430; by Amended and Restated Declaration of Restrictive Covenants dated May 25, 1978, recorded in Book 206, Page 428; by Supplemental Declaration dated October 14, 1980, recorded in Book 225, Page 105; by Amendment dated August 26, 1980, recorded in Book 225, Page 106; by Supplemental Declaration dated March 18, 1981, recorded in Book 228, Page 26; by Supplemental Declaration dated July 30, 1981, recorded in Book 231, Page 182; by Amendment dated August 15, 1981, recorded in Book 231, Page 516; by Amendment dated November 23, 1981, recorded in Book 233, Page 702; by Amendment dated August 22, 1984, recorded in Book 261, Page 941; by Second Amended and Restated Declaration of Restrictive Covenants dated January 14, 1986, recorded in Book 283, Page 436; by Amendment dated June 23, 1986, recorded in Book 287, Page 565; by Amendment dated May 14, 1987, recorded in Book 300, Page 155; by Amendment dated May 14, 1987, recorded in Book 300, Page 185; by Supplemental Declaration dated February 9, 1988, recorded in Book 308, Page 269; by Supplemental Declaration dated June 7, 1988, recorded in Book 312, Page 353; by Amendment dated April 30, 1988, recorded in Book 314, Page 74; by Amendment dated May 13, 1989, recorded in Book 325, Page 820; by Amendment dated November 6, 1989, recorded in Book 332, Page 789; by Supplemental Declaration dated June 1, 1990, recorded in Book 340, Page 733; by Amendment dated June 1, 1990, recorded in Book 340, Page 734; by Supplemental Declaration

dated November 15, 1991, recorded in Book 357, Page 836; by Supplemental Declaration dated November 15, 1991, recorded in Book 358, Page 268; by Supplemental Declaration dated April 8, 1993, recorded at Book 379, Page 813; by Supplemental Declaration dated January 13, 1995, recorded at Book 407, Page 666; by Third Amended and Restated Declaration of Restrictive Covenants dated July 2, 1996, recorded at Book 431, Page 292; by Supplemental Declaration dated February 5, 1997, recorded at Book 438, Page 209; by Supplemental Declaration dated February 6, 1998, recorded at Book 454, Page 885; by Supplemental Declaration dated April 23, 1998, recorded at Book 458, Page 616; by Amendment dated April 27, 1998, recorded at Book 458, Page 852; by Amendment dated July 9, 1998, recorded at Book 462, Page 829; by Amendment dated July 9, 1998, recorded at Book 462, Page 830; by Supplemental Declaration dated July 9, 1998, recorded in Book 462, Page 833; by Supplemental Declaration dated August 6, 1998, recorded at Book 464, Page 339; by Supplemental Declaration dated September 2, 1998, recorded at Book 465, Page 787; by Supplemental Declaration dated June 18, 1999, recorded at Book 480, Page 492; by Supplemental Declaration dated May 3, 2000, recorded in Book 495, Page 526; by Supplemental Declaration dated July 14, 2000, recorded in Book 499, Page 521; by Amendment dated February 13, 2001, recorded in Book 510, Page 726; by Supplemental Declaration dated March 14, 2001, recorded in Book 511, Page 100; by Amendment dated March 28, 2002, recorded in Book 532, Page 175; by Supplemental Declaration dated July 31, 2002, recorded in Book 539, Page 905; by Supplemental Declaration dated July 31, 2002, recorded in Book 539, Page 911; by Amendment dated February 13, 2001, recorded in Book 510, Page 726; by Amendment dated September 19, 2003, recorded in Book 569, Page 406; by Supplemental Declaration dated October 26, 2005, recorded in Book 615, Page 762; and by Supplemental Declaration dated November 29, 2005, recorded in Book 615, Page 996;

D. Declarant further amended the Original Declaration by filing the following, all of which are collectively referred to as the "Surviving Instruments" (as defined in Section 2.42): Supplemental Declaration of Covenants and Restrictions for Porto Cima Townhouse Properties dated October 5, 2000, recorded October 10, 2000 recorded in Book 503, Page 509; Amendment dated February 13, 2001, recorded March 26, 2001 in Book 510, Page 727; Supplemental Declaration dated October 24, 2001, recorded October 25, 2001 in Book 523, Page 260; Amendment dated March 28, 2002, recorded April 2, 2002 in Book 532, Page 177; Supplemental Declaration dated September 12, 2002, recorded September 19, 2002 in Book 542, Page 765; Supplemental Declaration dated March 28, 2003, recorded April 18, 2003 in Book 556, Page 466; Supplemental Declaration dated September 19, 2003, recorded September 29, 2003 in Book 569, Page 405; Supplemental Declaration dated February 25, 2004, recorded March 2, 2004 in Book 577, Page 958; First Amended and Restated Supplemental Declaration of Covenants and Restrictions for Porto Cima Townhouse Properties dated February 15, 2005, recorded March 10, 2005 in Book 599, Page 335; Supplemental Declaration of Covenants and Restrictions for the Villas at Country Club Cove dated April 25, 2005, recorded June 2, 2005 in Book 604, Page 275; Supplemental Declaration of Restrictive Covenants for Country Club Cove dated August 30, 2005, recorded September 12, 2005 in Book 610, Page 786; Supplemental Declaration of Covenants and Restrictions for Porto Cima Courts dated October 16, 2006, recorded October 17, 2006 in Book 633, Page 214; First Supplemental Declaration to the Supplemental Declaration of Covenants and Restrictions for the Villas at Country Club Cove dated June 6, 2008, recorded June 11, 2008 in Book 663, Page 600; Second Amended and Restated Supplemental Declaration of Covenants and Restrictions for Porto Cima Townhouse Properties dated October \_\_\_\_, 2009, recorded October

\_\_\_\_, 2009 in Book \_\_\_\_\_, Page \_\_\_\_\_; and Amendment to Declaration for Water and Sewer dated \_\_\_\_\_, 2009, recorded \_\_\_\_\_, 2009 in Book \_\_\_\_\_, Page \_\_\_\_\_.

E. By First Supplemental Indenture dated June 21, 1972, recorded in Book 168, Page 668, Declarant may amend this Declaration at any time until such time as all Lots in the Development have been sold; and

F. Fewer than all of the Lots in the Development have been sold and Declarant desires to further amend and restate this Declaration.

NOW, THEREFORE, Declarant hereby amends this Declaration as follows; and rescinds to the extent they are inconsistent with this Fourth Amended and Restated Declaration of Restrictive Covenants, all prior instruments, except the Surviving Instruments which shall survive this amendment and remain in full force and effect as if restated herein:

1. STATEMENT OF PURPOSE.

1.1. The Recitals are an integral part of this Declaration and are incorporated herein by this reference.

1.2. Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined below) are and shall be held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. The provisions of this Declaration are intended to create mutual equitable servitudes upon the Development and in favor of each and all other Lots (as defined below); to create reciprocal rights between the respective Owners of all such Lots; to create a privity of contract and estate between the grantees of such Lots, their heirs, successors and assigns; and shall, as to the Owner of each such Lot, his heirs, successors and assigns, operate as covenants running with the land for the benefit of each and all other such Lots in the Development and their respective Owners, present and future.

2. DEFINITIONS. The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as follows:

2.1. "ACC" means the Architectural Control Committee of the Association.

2.2. "Act" means the Missouri Nonprofit Corporation Act, Section 355.001 et seq., Revised Missouri Statutes.

2.3. "Architectural Control Guidelines" or "ACC Guidelines" means the architectural guidelines and procedures titled "ACC Guidelines for Homebuilders" adopted by the Board of Directors and recorded in Book 619, Page 784 in the Office of the Recorder of Deeds of Camden County, Missouri, and in Book 2007, Page 7453 in the Office of the Recorder of Deeds of Miller County, Missouri, now and as may be amended.

2.4. "Articles of Incorporation" or "Articles" means the Articles of Incorporation of the Four Seasons Lakesites Property Owners Association, Inc. as filed with the Missouri Secretary of State, attached as Exhibit "B" and incorporated herein by reference, and any amendments thereto.

2.5. "Assessment" means all assessments levied against any Lot in accordance with Section 12, including Base Assessments, Special Assessments and Specific Assessments.

2.6. "Associate Member" means a Person entitled to Associate Membership in the Association as more particularly described in Section 4.2(b).

2.7. "Association" means the Four Seasons Lakesites Property Owners Association, Inc., a Missouri mutual nonprofit corporation, its successors and assigns.

2.8. "Base Assessment" means assessments levied on all Lots under Article 12 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 12.1 and 12.3.

2.9. "Beneficiary Agreements" means those instruments identified on the attached Exhibit "F" pursuant to which certain non-Owners may become Associate Members as more particularly described in Section 4.2(b).

2.10. "Board of Directors" or "Board" means the body responsible for administration of the Association, and generally serving the same role as the board of directors under Missouri not-for-profit corporate law.

2.11. "Builder" means any Person which purchases one or more Lots for the purpose of constructing Improvements for later sale to consumers or parcels of land within the Development for further subdivision, development and/or resale in the ordinary course of such Person's business and who has been designated as a Builder by the Developer in an instrument recorded in the Office of the Recorder of Deeds of Camden County, Missouri or, if applicable, Miller County, Missouri.

2.12. "Business" and "Trade" shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required.

2.13. "Bylaws" means the Bylaws of Four Seasons Lakesites Property Owners Association, Inc., attached as Exhibit "C" and incorporated herein by reference, and as amended.

2.14. "Common Area" means all real and personal property which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners; including, but not limited to that property which is referred to as "Common Area" or

"Community Area" on any recorded Plat of the Subdivision. The term shall not include Sub-Association Common Area.

2.15. "Common Area Improvements" means all buildings, outbuildings, driveways, parking areas (for any type of transportation), fences, retaining and other walls, piers, boat docks, hedges, poles, antennae and any other structures of any type or kind located on, attached to or appurtenant to Common Area real property. The term shall include, without limitation, all landscaping, pools, tennis courts, storage areas, boat ramps, park pavilions, parking lots and activity centers located on or upon the Common Area, together with such other improvements constructed or otherwise acquired by the Association.

2.16. "Common Expenses" means the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Lots, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws and the Articles of Incorporation.

2.17. "Declarant" or "Developer" means Four Seasons Lakesites, Inc., a Missouri corporation, and its successors or assigns.

2.18. "Declaration" means this Fourth Amended and Restated Declaration of Restrictive Covenants, the Surviving Instruments and any Supplemental Declarations and amendments made hereafter.

2.19. "Development" means the real property described in Exhibit "A", together with such additional property as is subjected to this Declaration in accordance with Article 11.

2.20. "Golf Course" means any parcel of land adjacent to or within the Development which is privately owned by either Declarant, its successors, assigns or affiliates, Chase Resorts, Inc., a Missouri corporation, its successors, assigns or affiliates or The Club at Porto Cima, Inc., a Missouri corporation, its successors, assigns or affiliates, and which is operated as a golf course, and all related and supporting facilities and improvements operated in connection with such golf course.

2.21. "Improvements" means all buildings, outbuildings, driveways, parking areas (for any type of transportation), fences, retaining and other walls, docks, piers, boat lifts, hedges, poles, antennae and any other structures of any type or kind located on or appurtenant to the Lots.

2.22. "Land Use Covenants" means the guidelines and restrictions governing land use, individual conduct and use or actions upon the Development as more specifically set forth in Section 14.7.

2.23. "Lot" means any numbered lot shown on the Plats of the Subdivision, and any lot designated herein or in a Supplemental Declaration for use as single family or residential multiple family purposes, other than those specifically designated for special purposes, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use and occupancy as an attached or detached residence for a single family. The term

shall refer to the land, if any, and any improvements thereon. The term shall include, by way of illustration, but not limitation, condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses as well as vacant Lots intended for development. In the case of a building within a condominium development containing multiple living Units, each living Unit shall be deemed to be a separate Lot.

2.24. "Member" means a Person entitled to membership in the Association, as provided in Section 4.2(a).

2.25. "Mortgage" means a mortgage, a deed of trust, a deed to secure debt or any other form of security deed.

2.26. "Mortgagee" means a beneficiary or holder of a Mortgage.

2.27. "Multiple Family Dwelling" means a residential dwelling containing two (2) or more dwelling units.

2.28. "Owner" collectively means one or more Persons (such additional Persons being a "Co-Owner") who holds the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

2.29. "Person" means a natural person, a corporation, limited liability company, partnership, trustee or any other legal entity.

2.30. "Plat" means a plat of any phase or subdivision, or any part thereof, of the Development as is recorded in the appropriate recording offices of Camden County and Miller County, Missouri.

2.31. "Roads" means the right-of-ways for ingress and egress to Lots or Common Area as depicted on the recorded Plats of the Development without regard to the manner in which the right-of-way is depicted or dedicated.

2.32. "Single Family Dwelling" means a separate residential dwelling for one (1) or more persons, together with his, her or their domestic servants, maintaining a common household in such dwelling, subject to local occupancy rules, regulations and ordinances.

2.33. "Special Assessment" means assessments levied in accordance with Section 12.5 of this Declaration.

2.34. "Specific Assessment" means assessments levied in accordance with Section 12.6 of this Declaration.

2.35. "Sub-Association" means any condominium association or other owners association created pursuant to the provisions of a Supplemental Declaration and having concurrent jurisdiction with the Association over the portion of the Development added by such Supplemental Declaration.

2.36. "Sub-Association Assessments" means assessments levied against the Lots in a particular Sub-Association to fund Sub-Association Expenses, as described in Section 12.14.

2.37. "Sub-Association Common Area" means all real and personal property which a Sub-Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the owners in that Sub-Association, as well as all real and personal property designated on a Plat of record for such Sub-Association as "Common Area" or Community Area." Sub-Association Common Area is not Common Area as defined in Section 2.14.

2.38. "Sub-Association Declaration" means the declaration of restrictions and covenants recorded by any Sub-Association or developer thereof.

2.39. "Sub-Association Expenses" means the actual and estimated expenses incurred or anticipated to be incurred by a Sub-Association for the benefit of the Owners and occupants of Lots within the particular Sub-Association, which may include a reasonable reserve for capital repairs and replacements, as may be authorized herein or in the Supplemental Declaration applicable to the Sub-Association.

2.40. "Subdivision" means any real property submitted to this Declaration pursuant to a Supplemental Declaration and a Plat and amended Plats as a distinct phase of the Development.

2.41. "Supplemental Declaration" means an amendment or supplement to this Declaration filed pursuant to Section 11 which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

2.42. "Surviving Instrument" means one of the instruments listed in Recital D above which shall survive the execution and recording of this Fourth Amended and Restated Declaration and remain in full force and effect and are incorporated into this Fourth Amended and Restated Declaration as if set forth herein. In the event of a conflict between the terms of any Surviving Instrument and the terms of this Declaration, the terms of the Surviving Instrument shall control.

2.43. "Unit" shall have the meaning assigned to it in any Sub-Association Declaration with respect to the property governed by such Sub-Association Declaration.

2.44. "Water and Sewer Amendment" shall mean the Amendment to Declaration for Water and Sewer dated \_\_\_\_\_, 2008, recorded \_\_\_\_\_, 2008 at Book \_\_\_\_\_, Page \_\_\_\_\_ in the Office of the Recorder of Deeds of Camden County, Missouri.

### 3. COMMON AREA

3.1. Association to Hold Common Area. All Lots or parcels of real property in the Development designated as Common Area are and shall remain property to be held by the Association for the benefit of all Owners and Declarant's recordation of a Plat shall not be construed as a dedication to the public of any such Common Area located therein. Declarant will convey all Common Area to the Association free and clear of all liens and encumbrances, but

subject to such easements and rights-of-way, restrictions of record and other conditions as Declarant may, at the time of such conveyance, deem appropriate and proper. Such conveyance shall be deemed to have been accepted by said Association and those Persons who may, from time to time, be Members thereof upon the Association recording or recording acknowledgement of a deed or deeds conveying such Common Area to the Association.

3.2. Owner Rights. Every Owner shall have a right of nonexclusive use, access and enjoyment in and to the Common Area, subject to:

- (a) This Declaration, the Bylaws, Plats and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Association to adopt rules regulating the use and enjoyment of the Common Area;
- (d) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of Common Area to occupants of Lots and their guests and rules limiting the number of guests who may use the Common Area;
- (e) The right of the Board to suspend the right of an Owner to use the Common Area (i) for any period during which any Assessment or fine against such Owner's Lot remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation of the Declaration, any applicable Supplemental Declaration, the Bylaws or rules of the Association after notice and a hearing pursuant to the Bylaws of the Association;
- (f) The right of the Association, acting through the Board, to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (g) The right of the Association, acting through the Board, to grant a non-exclusive easement to any third party upon receipt of such consideration as determined by the Board in its sole discretion;
- (h) The right of the Association, acting through the Board, to convey to a third party an interest in any Common Area. Any sale, lease or other conveyance of title to Common Area in excess of twenty-five thousand (25,000) square feet shall require an appraisal by an appraiser licensed in the State of Missouri. No conveyance of Common Area will reduce the area of unimproved Common Area to less than ten percent (10%) of the Development without the approval of seventy-five percent (75%) of the Owners; and
- (i) The right of the Association, acting through the Board, to use the Common Area, or any portion thereof, for utility purposes for the benefit of any or all of the Lots.

3.3. Maintenance of Common Area. Maintenance of Common Area and repairs to any improvements thereon shall be the obligation and responsibility of Declarant until conveyance to the Association, or until the Association assumes said obligation or responsibilities, whichever comes first, and thereafter, the Association shall have the sole responsibility for all Common Area. The Association, by majority vote of the Board, may dedicate the obligation or responsibility for maintenance of the Common Area or any part thereof to a municipal corporation, county or other governmental body.

4. ASSOCIATION.

4.1. Function of Association.

(a) The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area as set forth herein.

(b) The Association shall be the entity responsible for enforcement of this Declaration and such reasonable rules regulating the use of the Development. The Association shall be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the ACC Guidelines. The Association shall perform its functions in accordance with this Declaration and Missouri law.

4.2. Membership. There shall be two (2) classes of Members: Members and Associate Members.

(a) Members. Every Owner shall be a Member of the Association. Ownership of a Lot entitles the Owner(s) thereof to membership privileges subject to the provision of this Section. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. If a Lot is owned by more than one natural person, or by a trust, corporation, limited liability company, partnership or other legal entity, all Owners or officers, directors members, partners, trustees or trust beneficiaries of such Owners shall share the privileges of such membership, subject to the following:

(i) the restrictions on voting set forth in Section 4.3 below;

(ii) the terms and provisions of the Bylaws and such rules and regulations as the Board may reasonably promulgate from time to time; and

(iii) all Owners of a Lot, whether or not then exercising the rights and privileges of membership, shall be jointly and severally obligated to perform the duties and responsibilities of Owners with respect to such Lot.

(b) Associate Members. If not otherwise a Member, each of the following shall be a non-voting Associate Member of the Association:

(i) Persons who may be tenants or regular occupants of Lots (other than the Owners) situated within the Development pursuant to written agreements with the Owners; and

(ii) Persons who, by virtue of any Beneficiary Agreement with the Developer or the Association are entitled to access the common facilities available to Members, including but not limited to amenities within Common Areas owned and operated by the Association.

(c) Rights, Privileges and Obligations. The rights, duties, privileges and obligations of membership in the Association, including voting rights, are as set forth in this Declaration, the Articles and the Bylaws. With respect to a Lot which is owned by more than one natural person, or by a trust, corporation, limited liability company, partnership or other legal entity, no more than two (2) married couples or three (3) unrelated adults may exercise the rights and privileges of Members or Associate Members at any one time. The dependent children (as defined by the Internal Revenue Service) of any such Person may enjoy the use of the Development, subject to the terms of this Declaration.

#### 4.3. Voting.

(a) Voting Rights. Each Member shall have one (1) equal vote for each Lot in which they hold the interest required for membership under Section 4.2(a); there shall be only one (1) vote per Lot.

(b) Exercise of Voting Rights. In any situation in which there is more than one (1) Owner of a particular Lot, the vote for such Lot shall be exercised as the Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, in the event more than one (1) Owner seeks to exercise the vote for the Lot, the first vote cast by a Owner shall bind all the other Owners, unless all Owners sign and timely deliver to the Association a document revoking the vote.

4.4. Board of Directors. The Board of Directors shall govern the Association's affairs. Directors shall be selected and shall serve as set forth in the Articles and Bylaws of the Association, and in Sections 4.5 and 4.6.

4.5. Election of Directors. The Board of Directors shall consist of six (6) Members of the Association as set forth herein and in the Bylaws: four (4) elected Directors, each of whom shall be elected by a vote of the Members, and two (2) appointed Directors, each of whom shall be appointed by all of the remaining Directors. One (1) of the appointed Directors must be an Owner of a Lot located on Shawnee Bend and the other appointed Director must be an Owner of a Lot located on Horseshoe Bend. The appointed Shawnee Bend Director shall always be reappointed or replaced by an Owner of a Lot on Shawnee Bend and the appointed Horseshoe Bend Director shall always be reappointed or replaced by an Owner of a Lot on Horseshoe Bend. The Board shall appoint Directors to fulfill any term created by any vacancy subject to the preceding sentence as it refers to Directors from Shawnee Bend or Horseshoe Bend, as applicable.

4.6. Eligibility Requirements for Members of the Board of Directors, Architectural Control Committee, Association Employees and Independent Contractors.

(a) Definitions. The following definitions shall apply to this Section 4.6:

(i) An "Employee" of the Association shall be a person who receives a W-2 from the Association at any time as a result of employment at any time during the calendar year.

(ii) An "Independent Contractor" shall be any and all entities or individuals who receive or are intended to receive more than \$600.00 from the Association during any calendar year for their services or their merchandise and are not Employees of the Association.

(iii) Employees and Independent Contractors shall collectively be referred to as "Compensated Parties."

(iv) An "Obligation" shall be any financial obligation owing the Association which is outstanding more than thirty (30) calendar days past its due date or continues to be in violation after the Board has sent a determination that a Member is in violation of the Declaration for a period of more than thirty (30) days.

(b) No Conflicts. Members of the Board of Directors, members of the Architectural Control Committee, Employees of the Association and Independent Contractors of the Association must act selflessly at all times in the interests of the Association and be free of any apparent conflict of interest.

(c) Required Disclosures. All nominees for Board Membership or appointment to the ACC, at the time of their nomination, and all Compensated Parties, at the time of their application for employment or for contract as an Independent Contractor, shall execute the Disclosure of Potential for Conflict of Interest as adopted by the Board from time to time, the current form of which is attached hereto and incorporated by reference as Exhibit "D". All Board Members and Compensated Parties must as a condition of their continued service in either an elected, selected or employment/contract capacity, annually complete an updated Disclosure of Potential for Conflict of Interest.

(d) Eligibility Requirements. Members of the Board of Directors, the Architectural Control Committee and any other committee created pursuant to the Bylaws must be eligible, as more fully set forth below, at all times during their tenure and at the time a Member is nominated for election or selection. In the event an Employee or an Independent Contractor is a Member of the Association, he, she or any of its individual owners must be eligible at all times as a condition of continued employment or contract, as more fully set forth below.

(i) A Board Member or Compensated Party shall not be considered eligible if he, she or its owners (in the case of a corporation, limited liability

company or partnership) are Members who are not in good standing with the Association or who have an outstanding Obligation. Board Members lose their eligibility to serve in their elected or appointed capacity when they are no longer an Owner. Board Members who are appointed from a particular geographical area pursuant to Section 4.5 lose their eligibility to serve if they are no longer an Owner within that geographical area.

(ii) A Board Member shall not be eligible to serve if he, she or its owners receive any form of compensation, including but not limited to compensation in the form of services or sales, as a Compensated Party.

(iii) A Compensated Party shall not be eligible to receive compensation if he, she or any of its individual owners is a Board Member.

(iv) In no event shall a Board Member be eligible if he or she is an elected official or an employee of Camden County, Miller County or any municipal corporation within the Counties of Camden or Miller.

(v) A Board Member or a Compensated Party shall not be eligible if the Board of Directors (absent the Member under consideration) determines in its sole discretion that the Board Member or Compensated Party would have an apparent conflict of interest with the Association.

(e) Nonprofit Corporation Act. This Section shall be in addition to the provisions of the Act.

## 5. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

5.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all Common Area Improvements thereon (including, without limitation, furnishings, equipment and common landscaped areas), and shall keep it in good, clean, attractive and sanitary condition, order and repair, consistent with this Declaration, any Supplemental Declaration or any Sub-Association Declaration.

5.2. Personal Property and Real Property for Common Use. The Association may acquire, hold and dispose of tangible and intangible personal property and real property. Declarant may, with the consent of the Board, convey to the Association for the benefit of the Association, improved or unimproved real estate located within the Development, personal property and leasehold and other property interests. Declarant may, with the consent of a Sub-Association Board, convey to the Sub-Association for the benefit of the designated Sub-Association, improved or unimproved real estate located within the Development, personal property and leasehold and other property interests. Upon acceptance by the Association as set forth in Section 3.1, or upon acceptance by a Sub-Association, such property shall be subject to any restrictions set forth in the deed shall thereafter be maintained as Common Area by the Association, at its expense for the benefit of its Members, or if conveyed for the benefit of a Sub-Association as Sub-Association Common Area, at the Sub-Association's expense. In addition,

the Association may acquire Lots for use as Common Area as an investment or to protect the Association's interest. The acquisition costs, availability charges, taxes and maintenance costs associated with acquired Lots shall be a Common Expense.

5.3. Rules. The Association, through the Board, shall have the exclusive right to make and enforce reasonable rules governing the use of the Common Area, to define or limit, and, where specifically authorized hereunder, to create exceptions to these covenants and restrictions set forth in this Declaration, provided that such rules do not affect the substantial property rights of the Owners. Such rules shall be binding upon all Members, Owners, occupants, invitees and licensees of the Association until and unless repealed or modified by the vote of two-thirds (2/3) of the Owners of all Lots. Such rules and regulations shall be further subject to and limited by the provisions of this Declaration.

5.4. Enforcement. The Association, through the Board, has the exclusive right to impose sanctions, including fines, against all Owners, occupants, invitees and licensees of any portion of the Development for violations of this Declaration, the Bylaws or rules in accordance with procedures set forth in the Bylaws, including reasonable monetary fines and suspension of the right to vote and to use the Common Area, hereafter referred to as "Enforcement." In addition, in accordance with the Bylaws, the Association may exercise self-help to cure violations, and may suspend any services it provides to the Lot of any Owner who is more than thirty (30) days delinquent in paying any Assessment or other charge due to the Association. The Association may seek relief in any court for violations or to abate nuisances within the Development. The Association shall be entitled to recover attorneys' fees, including costs, incurred in connection with Enforcement.

5.5. Fines. The Association may levy fines on Owners, occupants and licensees of Lots for violations of this Declaration in accordance with a schedule of fines adopted by Board resolution. Such fines may be a single fine for a violation or may be a continuing daily fine. No fine shall be levied unless the Owner has been given seven (7) days written notice, at the address of record, in which to comply or request a hearing before the Board. If no request for hearing is made, the fine shall be deemed levied effective the eighth (8th) day from the date of notice. If a hearing is held, and the imposition of the fine is upheld, the fine shall be deemed levied as of the date the Board issues its decision upholding the fine. The Association's determination shall be conclusive. If such fine is not paid within thirty (30) days of the date the fine is levied, the unpaid amount, plus interest, shall constitute and become a lien on the Lot owned, occupied or licensed by the person fined. Any fine which becomes a lien may be enforced in the same manner and be subject to the same provisions as for unpaid Assessments.

5.6. Implied Rights; Board Authority. The Association may exercise any other right or privilege given to the Association by this Declaration, the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws, the Articles or by law, all rights and powers of the Association may be exercised by the Board, without a vote of the membership.

5.7. Indemnification. The officers, directors, committee members and designees, agents representatives, employees and compensated parties of the Association shall not be liable

for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, committee member and each designee, agent and employee of the Association harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, committee member, designee, agent or employee may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available. Indemnification shall be in compliance with the Act.

## 6. MAINTENANCE

6.1. Association's Responsibility. Except as set forth in Section 6.2, the Association shall maintain and keep in good repair the Common Area, Common Area Improvements, landscaping, sidewalks, street lights, entry features and signage within public rights-of-way and open space within or abutting the Development (except any such items constructed by parties other than the Developer or the Association and which such third party, its successors or assigns, or applicable government entity is obligated to maintain).

There are hereby reserved to the Association easements over the Development as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and equipment within the Common Area and all Common Area Improvements, unless the Board discontinues such operation.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Common Area and Common Area Improvements shall be a Common Expense to be allocated among all Lots in the manner of and as a part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Common Area pursuant to this Declaration, other recorded covenants or agreements with the owner(s) thereof.

In addition, except as set forth in Section 6.2, the Association shall maintain and keep in good repair each Road in the Development until such time that the obligation to maintain that Road has been assumed by the applicable governmental entity. There are hereby reserved to the Association easements over the Development as necessary to enable the Association to fulfill its responsibilities with respect to the Roads. All costs associated with maintenance and repair of the Roads and the transfer of responsibility relating thereto, shall be allocated among the Lots as an Assessment.

6.2. Owner's Responsibility. Each Owner shall maintain his or her Lot and all structures, parking areas and other Improvements comprising the Lot in a manner consistent with the Declaration and the Sub-Association Declaration, if applicable, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Sub-Association

pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot. In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 12.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

6.3. Standard of Performance. Maintenance, as used in this Section 6, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, shall be performed in a manner consistent with the respective covenants governing the Development.

Notwithstanding anything to the contrary contained herein, neither the Association nor an Owner shall be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

## 7. INSURANCE AND CASUALTY LOSSES

7.1. Association Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable Common Area and Common Area Improvements to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a loss. The Association shall have the authority to and interest in insuring any privately or publicly owned property for which the Association has maintenance or repair responsibility. Such property shall include, by way of illustration and not limitation, any insurable Common Area Improvements on or related to parks, rights-of-way, medians, easements and walkways which the Association is obligated to maintain. If blanket "all-risk" coverage is not generally available at reasonable cost, then the Association shall obtain fire and extended coverage, including coverage for vandalism and malicious mischief. The face amount of the policy shall be sufficient to cover the full replacement cost of the insured property. The cost of such insurance shall be a Common Expense to be allocated among all Lots subject to Assessment as part of the annual Base Assessment; subject to the Board's discretion to elect to self-insure, pay deductibles or co-pay insure. The Sub-Association shall be responsible for obtaining insurance on Sub-Association Common Areas.

The Association shall also obtain a public liability policy on the Common Area and Common Area Improvements insuring the Association and Members for damage or injury caused by the negligence of the Association, Members or any employees, agents or contractors while acting on the Association's behalf. The Association, by and through its Board, shall in its sole discretion determine the amount of any deductible, limitations, endorsements, co-insurance, retention, policies and self-insured retention.

The policies may contain a reasonable co-insurance provision or deductible which shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the required coverage. In the event of an insured loss, the co-insurance or the

deductible, as the case may be, shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with all Bylaws, that the loss is the result of the negligence or willful conduct of one (1) or more Owners or occupants, then the Board may specifically assess the uninsured portion of the loss against the Lot of such Owner or occupant, pursuant to Section 12.6.

All insurance coverage obtained by the Association shall be written in the name of the Association with a company authorized to do business in Missouri which holds a Best's rating of A or better and is assigned a financial size category of IX or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating and rating service which is available.

The Board shall use reasonable efforts to secure insurance policies containing endorsements that:

- (a) waive subrogation as to any claims against the Association's Board, its officers, employees and its manager, and the Owners and their tenants, servants, agents and guests;
- (b) waive the insurer's rights to repair and reconstruct instead of paying cash;
- (c) preclude cancellation, invalidation, suspension or nonrenewal by the insurer on account of any one (1) or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;
- (d) exclude individual Owners' policies from consideration under any "other insurance" clause; and
- (e) require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification or nonrenewal.

The Association may also obtain, as a Common Expense, worker's compensation insurance, employer's liability insurance, directors' and officers' liability coverage, as well as flood, earthquake, hail and sewer back-up insurance and any other policy or endorsement that the Board, in its sole discretion, deems reasonably available or prudent.

The Association may also obtain, as a Common Expense, a fidelity bond or bonds, if generally available at reasonable cost, covering all persons responsible for handling Association funds. The Board shall determine the amount of fidelity coverage in its best business judgment. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification or nonrenewal.

7.2. Damage and Destruction.

(a) Immediately after damage or destruction to all or any part of the Development covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. The Association, through the Board, or in the case of a Sub-Association, the Sub-Association Board, shall determine in its best reasonable judgment whether to repair or reconstruct any damage or destruction. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(b) If the Board, or in the case of a Sub-Association, the Sub-Association Board, determines that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and maintained by the Association or the Sub-Association, as applicable, in a neat and attractive, landscaped condition consistent with the applicable covenants.

8. NO PARTITION

Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition or petition for adverse possession or easement by necessity unless the Development or such portion thereof have been removed from the provisions of this Declaration. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

9. WATER AND SEWER SYSTEMS

This section is intentionally left blank. All provisions relating to Water and Sewer Systems and treatment are set forth in the Amendment to Declaration dated \_\_\_\_\_, 2009, recorded \_\_\_\_\_, 2009 at Book \_\_\_\_\_, Page \_\_\_\_\_ in the Office of the Recorder of Deeds of Camden County, Missouri (the "Water and Sewer Amendment"). All provisions of the Water and Sewer Amendment shall survive the recording of this Declaration.

10. CONDEMNATION

The Board shall have the authority to act on behalf of the Association if any part of the Common Area shall be taken or conveyed in lieu of and under threat of condemnation by any authority having the legal authority to condemn. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which Common Area Improvements have been constructed, the Board may in its sole discretion restore or replace such

Common Area Improvements on the remaining land included in the Common Area to the extent available. Any such construction shall be in accordance with plans approved by the Board.

If the taking does not involve any Common Area Improvements, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed and used for such purposes as the Board shall determine.

## 11. ANNEXATION AND WITHDRAWAL OF PROPERTY

11.1. Annexation Without Approval of Membership. Until all Lots in the Development have been sold or otherwise conveyed by the Developer, Declarant may unilaterally subject to the provisions of this Declaration any real property which is contiguous or adjacent to the Development and the real property identified on Exhibit "E". In addition, Declarant may subject additional real property to this Declaration with the consent of the Board. Declarant may transfer or assign these rights to annex property, provided that the transferee or assignee is a parent or subsidiary of or is affiliated with Declarant and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Nothing in this Declaration shall be construed to require Declarant or any successor to annex or develop any of the property in any manner whatsoever.

Such annexation shall be accomplished by filing a Plat and a Supplemental Declaration in the land records of Camden County, and if appropriate, Miller County, Missouri, describing the property to be annexed and specifically:

- (a) describing the real property being annexed and designating the permissible uses thereof;
- (b) setting forth any new or modified restrictions or covenants which may be applicable to such annexed property, including limited or restrictive uses of Common Areas; and
- (c) declaring that such annexed property is held, and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the provisions of this Declaration.

Upon the recording of such Plat and Supplemental Declaration, the annexed area shall become a part of the Development and shall be subject to the provisions hereof as supplemented, as fully as if such area were part of the Development as of the date of the recording of this Declaration. Annexation under this Section shall not require the consent of Members.

11.2. Annexation with Approval of Membership. The Association may subject any real property to the provisions of this Declaration (a) with the consent of the owner of such property, (b) the affirmative vote of a majority of the Members at a meeting at which a quorum is present and has been duly called for such purpose in accordance with the Bylaws, and (c) the consent of Declarant so long as Declarant owns property subject to this Declaration or which may become

subject to this Declaration in accordance with Section 11.1. If such property is to be included in an existing Sub-Association, the consent of a majority of the Members within the Sub-Association shall also be required.

Such annexation shall be accomplished by filing a Supplemental Declaration in the land records of Camden County, and if appropriate, Miller County, Missouri, describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association and by the owner of the annexed property. If the land is to become part of an existing Sub-Association, such Supplemental Declaration shall be signed by the President and Secretary of the Sub-Association and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

11.3. Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Section, without prior notice and without the consent of any Person, for the purpose of removing property then owned by Declarant or its affiliates from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in Declarant's plans for the Development.

11.4. Additional Covenants and Easements. Declarant may unilaterally subject any portion of the Development which are either (a) submitted to this Declaration by Supplemental Declaration subsequent to the execution of this Declaration or (b) were previously submitted to this Declaration pursuant to Supplemental Declaration as part of a Sub-Association, to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property.

11.5. Amendment. This Section 11 shall not be amended without the prior written consent of Declarant so long as Declarant owns any property in the Development.

## 12. ASSESSMENTS

12.1. Creation of Assessments. The Association is hereby authorized to levy Assessments against each Lot for Common Expenses as the Board may specifically authorize from time to time, together with interest, late charges, costs and reasonable attorney fees. The Assessments shall be a lien against the Lot when the Association records the Assessment in the office of the recorder of deeds in the County in which the Lot is located providing the recorded publication cross-references to the plat book and page number to which the Lot belongs. There shall be three (3) types of Assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 12.5; and (c) Specific Assessments as described in Section 12.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Development, is deemed to covenant and agree to pay these Assessments.

All Assessments, together with interest at a rate which is the lesser of (a) twelve percent (12%) per annum, or (b) the maximum lawful rate of interest permitted to be charged under the laws of the State of Missouri, from the due date of such Assessment, late charges as determined by the Board from time to time (provided the late charge is calculated in relation to the administrative costs incurred by the Association to collect the delinquent assessments), costs and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the Assessment is made until paid, as more particularly provided in Section 12.8. Each such Assessment, together with interest, late charges, costs and reasonable attorneys' fees, also shall be the personal obligation of the Owner of such Lot at the time the Assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any Assessments and other charges due and/or past due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid Assessments which accrued subsequent to the recordation of the Mortgage and prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, Assessments, as well as interest and administrative costs, may be paid in two (2) or more installments. Unless the Board otherwise provides, the Base Assessment and all Specific Assessments shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any Assessments or other charges levied on his Lot, the Board may require any unpaid installments of all outstanding Assessments due to it to be paid in full immediately.

The Association shall, upon request, furnish to any Owner liable for any type of Assessment a certificate in writing signed by an officer or agent of the Association setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

No Owner may exempt himself from liability for Assessments by non-use of Common Area, abandonment of his Lot or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials or a combination of services and materials with Declarant or other entities for payment of Common Expenses.

12.2. Declarant's and Association's Obligations for Assessments. No charge or Assessment shall ever be levied against Declarant, the Association, or any Lot owned by any of them.

12.3. Computation of Base Assessment. At least ninety (90) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses

during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 12.4.

The Base Assessment shall be levied equally against all Lots and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of the Base Assessment, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to Assessment under Section 12.7 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to Assessment during the fiscal year. In addition, the Board may, by resolution, provide that a lesser Assessment may be levied on Lots without Improvements than is levied on Lots with Improvements.

The Board shall send a copy of the budget and notice of the amounts of the Assessments for the following year to each Owner at least sixty (60) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and Assessment shall become effective unless disapproved by at least seventy-five percent (75%) of the Members in attendance at a meeting at which a quorum is present. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the notice of Assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

12.4. Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for Common Expenses, which take into account the number and nature of replaceable assets, the expected life of each asset and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the reserve budget, said amount to be incorporated in the Base Assessment as provided in Section 12.3.

12.5. Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of the majority of all Members which will be subject to such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

12.6. Specific Assessments. In addition to other authorized Assessments, the Board shall have the power to levy Specific Assessments against a particular Lot or Lots constituting less than all Lots within the Development, as follows:

(a) to fund specific, identified costs to the Association in providing benefits, items, services or functions to the Lot or Lots or the occupants thereof not included in the scope of services contained in Common Expenses pursuant to Section 2.16 which, in the sole judgment of the Board, are necessary for the benefit of the Lot or Lots pursuant to either this Declaration or governmental regulations;

(b) to fund the costs, including overhead and administrative costs, to the Association in providing benefits, items, services or functions to the Lot or Lots or the occupants thereof upon the request of the Owner which, in the sole judgment of the Board, are permitted and proper under this Declaration to be provided by the Association and the provision of which is in the best interest of the Association and its Members; and

(c) to cover costs incurred in bringing the Lot into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the Bylaws, or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their licensees, invitees or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying any Specific Assessment under this subsection.

12.7. Date of Commencement of Assessments. The obligation to pay Assessments shall commence as to each Lot on the first day following the day the Lot is transferred (the day of closing) from Declarant to an Owner.

12.8. Lien for Assessments. If not so paid, all Assessments authorized in this Section 12, plus any interest, late charges and costs of collection, including attorneys' fees, shall constitute a lien against the Lot upon which they are levied when the Association records a notice of assessment in the Office of the appropriate County Recorder of Deeds. Such notice shall include a statement of the amount of the Assessment and other charges and a description of the Lot against which the Assessment is levied. Such notice shall be signed by the President, Vice-President, Secretary or Treasurer of the Association. Upon payment or other satisfaction of said Assessment and other charges, the Association shall record a further notice stating the satisfaction and release of said lien.

All liens for Assessments shall be superior to all liens recorded subsequent to said notice of assessment, except (a) the liens of all taxes, bonds, Assessments and other levies which by law would be superior; and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association may enforce liens for general Assessments when delinquent by suit, judgment and foreclosure. The Association may also purchase Lots at tax sales of any kind.

The Association may bid for the Lot at the foreclosure or tax sale and acquire, hold, lease, mortgage and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no Assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged such Lot had it not been acquired by the

Association. The Association may sue for unpaid Assessments and costs without foreclosing or waiving the lien securing the same.

The Association may also pursue any other remedy against any Owner owing money to it which is available to it in law or equity for the collection of such debt.

The sale or transfer of any Lot shall not affect the Assessment lien or relieve such Lot from the lien for any subsequent Assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such Assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for Assessments on such Lot due prior to such acquisition of title.

12.9. Failure to Assess. Failure of the Board to fix Assessment amounts or rates or to deliver or mail each Owner a notice of Assessment, shall not be deemed a waiver, modification or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Assessments on the same basis as for the last year for which an Assessment was made, if any, until a new Assessment is made, at which time the Board may retroactively assess any shortfalls in collections.

12.10. Non-Assessed Property. The following property shall be exempt from payment of Assessments:

- (a) all Common Area;
- (b) any property dedicated to and accepted by any governmental authority or public utility;
- (c) any property held by a conservation trust or similar nonprofit entity as a conservation easement, except to the extent that any such easement lies within the boundaries of a Lot which is subject to Assessment under Section 12.7 (in which case the Lot shall not be exempted from Assessment);
- (d) any property owned by a Sub-Association; and
- (e) any property owned by Declarant or the Association.

Notwithstanding anything to contrary contained in this Section, all property described in Sections 12.10(a)-(e) shall remain subject to the terms of this Declaration.

12.11. Suspension. The Association shall not be required to transfer memberships on its books or to allow the exercise of any rights or privileges of membership on account thereof to any Owner or to any persons claiming under them unless or until all Assessments and charges to which they are subject have been paid.

12.12. Assessments For Multiple Family Dwellings. Each Lot designated as Multi-family and improved with a multiple family building shall be assessed one (1) Assessment; provided that the Developer, in its contract for sale of property for multiple family development, may cause additional Assessments to be levied on the multiple family building to be constructed on such property, and in such an event, the Owner of such multiple family property will be liable for such additional Assessment. This Section shall not apply to multiple family buildings in a condominium development where each living unit is platted as a separate Lot.

12.13. Assessments for Associate Members. The Board may assess and collect assessments from those Associate Members who obtained their member status pursuant to a Beneficiary Agreement, as set forth in Section 4.2(b)(ii), in accordance with each Associate Member's respective Beneficiary Agreement for services and amenities provided in accordance with the Beneficiary Agreement.

12.14. Sub-Association Assessments. In addition to the Assessments authorized pursuant to this Article, additional Sub-Association Assessments may be levied by the Sub-Association Board upon Lots located within any Sub-Association pursuant to the provisions of the applicable Sub-Association Declaration.

### 13. ARCHITECTURAL CONTROL

13.1. General Powers. All Improvements, exterior alterations, site preparation or modifications constructed or placed on any Lot must first have the written approval of the ACC, unless exempted by Supplemental Declaration. Such approval shall be granted only after written application has been made to the ACC in the manner and form prescribed by it and so stated in the ACC Guidelines. Upon request, the ACC shall make the ACC Guidelines available to Owners and Builders who seek to engage in construction in the Development. The ACC may amend the ACC Guidelines subject to the Board's approval. The Board may amend the ACC Guidelines at any time. Amendments shall become effective upon recordation in the Counties of Camden and Miller, State of Missouri and shall apply prospectively to applications filed after recordation.

An application for new home construction shall be in the form and accompanied by such plans and specifications and other submissions as determined by the ACC and as may be required by Federal, State and local laws. The plans and specifications shall show the location of all Improvements, if any, existing upon said Lot, the location of the Improvement proposed to be constructed, the color and composition of all exterior materials to be used, proposed landscaping, and any other information which the ACC may require, including soil, engineering and geological reports and recommendations.

Any Owner may remodel, paint or redecorate the interior of structures on his Lot without approval. However, modifications to the number of bedrooms, interior of screened porches, patios and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

This Section shall not apply to (a) Improvements to the Common Area or Sub-Association Common Areas by or on behalf of the Association or any Sub-Association, (b) any Sub-Association property or Sub-Association Common Areas where the Sub-Association Declaration provides for a Sub-Association architectural control committee other than the ACC, or (c) any area in the Development specifically removed from the control of the ACC and exempted from compliance with the ACC Guidelines.

13.2. ACC Membership and Review. The ACC shall consist of no less than five (5) and no more than nine (9) Owners appointed by the Board. Each ACC member shall serve such terms as is set forth in the Bylaws. All ACC members shall serve and may be removed in the Board's discretion. The members of the ACC shall serve until their successors are appointed, and in the case of the failure of the Board to appoint members annually, those previously appointed shall remain as members until the appointments are made. Subject to Board approval, the ACC shall have exclusive jurisdiction, unless such jurisdiction is shared or superseded by the jurisdiction of a Sub-Association pursuant to a Sub-Association Declaration.

Each Owner acknowledges that the members of the ACC will change from time to time and that interpretation, application and enforcement of the ACC Guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

13.3. Grounds for Disapproval. The ACC may disapprove any application if:

- (a) such application does not comply with this Declaration;
- (b) such application does not comply with the requirements specified in the ACC Guidelines;
- (c) the ACC is not reasonably satisfied with grading plans, location of the proposed Improvements on a Lot, finished ground elevations, color scheme, finish, design proportions, architecture, shape, height or style of the proposed improvement, the materials used therein, the kind, pitch or type of roof proposed to be placed thereon; or
- (d) in the judgment of a majority of members of the ACC reasonably exercised, the proposed Improvement will be inharmonious with the Development, or with the Improvements erected on other Lots.

13.4. Variances. The ACC may grant reasonable variances or adjustments from compliance with any of its guidelines and procedures where literal application thereof would result in unnecessary hardship and if the granting thereof will not be materially detrimental or injurious to Owners of other Lots.

13.5. Certification of Compliance. At any time the ACC may require a certification from a licensed surveyor that such proposed Improvement, alteration or modification shall not

violate any setback rule, ordinance or statute, nor encroach upon any easement or right-of-way of record. The cost of said certification shall be borne by the Owner of the Lot.

13.6. Submittal Fees. As a means of defraying its administrative expenses, the ACC may require a permit fee to accompany the submission of plans and specifications. Said fees shall be established by the ACC and approved by the Board. Current fee schedules are outlined in the Guidelines and must be submitted with all applications.

13.7. Limitation of Liability. Notwithstanding the review and approval by the ACC of plans and specifications or its inspection of a work in progress, none of the ACC, the Association or the Developer nor any person working on behalf of one of them shall be responsible in any way for any defects in the plans or specifications, any material supplied in connection therewith or work performed pursuant thereto. The ACC shall bear no responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. None of Declarant, the Association, the Board, nor any committee or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Lot. Each person submitting plans or specifications shall be solely responsible for the sufficiency thereof and the adequacy of Improvements constructed pursuant thereto.

13.8. Appeals. Any applicant shall have the right to appeal to the Board any decision of the ACC within thirty (30) days after receipt of the ACC decision. An applicant is deemed to have received the required notice of the ACC decision three (3) days after said decision is mailed to the applicant's last known address by first class mail and certified mail. All appeals must be in writing and timely filed in accordance with procedures set forth in the ACC Guidelines.

13.9. Enforcement. Any structure or Improvement placed or made in violation of this Section shall be deemed to be a violation of this Declaration. Upon written request from Declarant, the Board or the ACC, Owners shall, at their own cost and expense, remove such structure or Improvement and restore the land to substantially the same condition as existed prior to the violation. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed. All costs, including reasonable attorneys fees, together with interest at the maximum rate then allowed by law, may be assessed against the benefited Lot as Specific Assessments.

Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Section and the ACC Guidelines may be excluded by the Board from the Development, subject to the notice and hearing procedures contained in the ACC Guidelines. In such event, none of the Association, the Board, its officers or directors, nor Declarant shall be held liable to any Person for exercising the rights granted by this Section.

In addition to the foregoing, the Board shall have the authority and standing in the name of the Association to pursue all legal and equitable remedies available to enforce the provisions of the Section and the decisions of the ACC.

14. LAND USE

14.1. Plan of Development; Applicability; Effect. Declarant has created the Development as a residential and recreational development and, in furtherance of its and every other Owner's interests, has established a general plan of development for the Development as a master planned community. The Development is subject to land development, architectural and design guidelines as set forth in Section 13. The Development is subject to guidelines and restrictions governing land use, individual conduct and uses of or actions upon the Development as provided in this Section 14.7.

All provisions of this Declaration shall also apply to all occupants, tenants, guests and invitees of any Lot. Any lease on any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of this Declaration, the Bylaws and the rules of the Association.

14.2. Board Power. Subject to the terms of this Section 14 and to its duty of care and undivided loyalty to the Association and its Members, the Board shall implement and manage the Land Use Covenants set forth in Section 14.7 through amendments which adopt, modify, limit, cancel, create exceptions to or expand the Land Use Covenants. Prior to any such action, the Board shall conspicuously publish notice of the proposal at least five (5) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to action being taken.

The Board shall publish in a newspaper of general circulation (of at least once a week) any proposed new rule or amendment at least thirty (30) days prior to its intended effective date. The new rule or amendment shall become effective unless disapproved by at least two-thirds (2/3) of the Owners of all the Lots. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in the Bylaws.

The Board shall have all powers necessary and proper, subject to its exercise of sound business judgment and reasonableness, to effect the powers contained in this Section 14.2.

The Board shall provide, without cost, a copy of the Land Use Covenants and rules then in effect to any requesting Member or Mortgagee.

14.3. Members' Power. The Members, at a meeting duly called for such purpose as provided in the Bylaws, may adopt, modify, limit, cancel, create exceptions to or expand the Land Use Covenants by a vote of two-thirds (2/3) of all the Members.

14.4. Amendment Effective Date. Any amendment to the Land Use Covenants made pursuant to Sections 14.2 or 14.3 shall become effective upon the recordation of such amendment

in the Office of the Recorder of Deeds of Camden County, Missouri and the Office of the Recorder of Deeds of Miller County, Missouri.

14.5. Owners' Acknowledgment. All Owners are subject to the Land Use Covenants and are given notice that (a) their ability to use their privately owned property is limited thereby; and (b) the Board and/or Members may adopt, modify, limit, cancel, create exceptions to or expand the Land Use Covenants in accordance with Sections 14.2, 14.3, and 19.3.

Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Land Use Covenants may change from time to time.

14.6. Rights of Owners. Except as may be specifically set forth in Section 14.7, neither the Board nor the Members may adopt any rule the result of which would cause similarly situated Owners and occupants to be treated dissimilarly.

14.7. Land Use Covenants.

(a) General. The Development shall be used only for residential, recreational and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for Declarant or the Association consistent with this Declaration and any Supplemental Declaration).

(b) Single Family Residential. Only single family dwellings and such outbuildings as are usually accessory thereto shall be permitted on any Lot designated as single family residential on any Plat or in any Supplemental Declaration annexing real property to the Development. Unless specifically stated herein, or in a Supplemental Declaration, all Lots shall be designated as single family residential.

(c) Multiple Family Residential. Either multiple family or single family dwellings and such outbuildings as are usually accessory thereto shall be permitted on any Lot designated as multiple family residential on the attached Exhibit "H" or otherwise annexed to the Development.

(d) Minimum Standards. Minimum standards regarding set backs, structural size, garages and density for all of the Development is set forth on Exhibit "G" attached hereto and incorporated herein by reference. This Exhibit "G" may be modified by Supplemental Declaration or in accordance with Section 19.3.

(e) Replats and Subdivision. No property in the Development may be replatted and no Lot may be subdivided into two (2) or more Lots after a subdivision plat including such Lot has been approved and filed with the appropriate governmental authority and no boundary lines of any Lot may be changed, except as follows:

(i) Lots designated for multiple-family residential use may be replatted or subdivided to the extent required or permitted in this Declaration, the

ACC Guidelines and by governmental authority. Such replat or subdivision plat must be approved by the Board as evidenced by signature on the plat.

(ii) An Owner may replat up to three Lots for the purpose of combining all or portions of contiguous Lots with the approval of the Board as evidenced by signature on behalf of the Association on the recorded plat. Notwithstanding the provisions hereof, no replat shall result in any Lot of lesser size than any of the originally platted Lots. Any Lot so combined with another Lot may not be further replatted pursuant to the provisions of this subsection as it is the intention of this Declaration to limit the combination of Lots pursuant to this subsection to no more than three Lots. The Board may establish a one-time fee per Lot for any Lots combined pursuant to this subsection.

(iii) The Declarant, and Builders with Declarant's consent, may subdivide, change boundary lines or otherwise replat any Lot or property in the Development prior to the initial sale or transfer of such Lot or property to an unrelated third party owner.

(iv) The Declarant may subdivide, change boundary lines or otherwise replat any Lot or Lots previously sold or otherwise transferred to an unrelated third party and which has been accepted back into Declarant's inventory so as to create a new Lot or Lots (each of which is subject to one Assessment, entitled to one vote and subject to one set of easements and setback lines), to redraw Lot lines, to eliminate a Lot or Lots or to reconfigure the Subdivision Lots as it deems appropriate and with the consent of the Association. The Association may place additional conditions on any such replat in its reasonable discretion.

(f) Restricted Activities. The following activities are prohibited within the Development unless expressly authorized by the Association, and then subject to such conditions as may be imposed by the Association:

(i) Accessory Outbuildings. Erecting any accessory outbuilding on any Lot or parcel prior to the erection thereon of a dwelling without approval of the ACC. In no event shall any such accessory outbuilding, partially completed or temporarily constructed, ever be used for human occupancy or habitation.

(ii) Completion of Construction. Failing to complete construction of any improvement within the time frame allotted by the ACC.

(iii) Prohibition Against Used Structures. Placing any used buildings or structures on a Lot for use as a dwelling or, without the prior consent of the ACC, incorporating any used materials into a building or structure which will be visible from the exterior of the building or structure.

(iv) Fences. Constructing any fence, hedge or wall or any portion of a Lot without ACC approval.

(v) Golf Course Lots. For Owners of Lots adjacent to golf course fairways, failing to permit golfers to enter upon their Lots for retrieval of golf balls and failing to comply with rules and regulations specifically governing the architecture, construction, building size and aesthetics of residences on Golf Course Lots, including, but not limited to, requiring the Owner to construct and maintain the side of the residence facing the golf course in an aesthetically pleasing manner.

(vi) Nuisances. Permitting noxious or offensive activities or nuisances in or on any Lot or Common Area.

(vii) Signs. Erecting or maintaining any sign or advertisement upon any Lot or improvements thereon. In the event said signs or advertisements are erected or maintained in violation of this provision, the Association shall have the right, through its agents and employees, to remove said signs or advertisements and the cost of said removal shall be added to and become a part of the annual Assessment to which said Lot is subject. Neither the Association nor the Developer nor any of their agents, employees or contractors shall be liable for any charges or claims of any nature which may result because of said removal.

A posted board, no larger than 24" x 24", giving only the name and telephone number of the builder and upon which all necessary permits are posted, shall not be considered a sign. Notwithstanding the provisions herein, "No Trespassing" and other similar warning signs posted during construction of Improvements on a Lot shall be permitted.

(viii) Animals. Capturing, trapping or killing of wildlife within the Development, except in circumstances posing an imminent threat to the safety of persons using the Development or pursuant to activities mandated by law enforcement or conservation authorities, and raising, breeding or keeping, either temporarily or permanently, of animals, livestock or poultry of any kind, except that a reasonable number of dogs, cats or other usual and common household pets may be permitted on or in a Lot. However, those pets which are not confined to the Lot, or, in the sole discretion of the Association, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Lots shall be removed upon request of the Association. If the pet owner fails to honor such request, the Association, in addition to all other remedies available to it, may remove the pet.

(ix) Garbage and Refuse Disposal. Burning trash or other household refuse (not to include leaves) without a permit from the appropriate authority, or accumulating junked vehicles, litter, refuse or garbage, on or in the Lot except in receptacles provided for such purposes.

(x) Concealment of Fuel Storage Tanks; Trash Receptacles.

A. Failing to install fuel storage tanks in compliance with all federal, state and local laws or to bury or screen them to the satisfaction of the ACC.

B. For Owners who subscribe to a trash removal service, failing to erect and maintain a trash enclosure, the design and location of which are, approved by the ACC, for the purpose of concealing trash receptacles.

C. For Owners of improved multi-family property, failing to subscribe to a professional trash collection service. Such service shall include one trash receptacle of no less than ninety (90) gallons for each occupied Lot. Said receptacles shall be enclosed in the same manner as required for all improved properties in the Development which have trash pick-up service.

(xi) Emergency Addresses. For Owners of improved Lots, failing to comply with applicable governmental regulation with respect to displays of E-911 addresses.

(xii) Parking and Camping. Parking or otherwise locating travel trailers, mobile homes, motor homes, recreational vehicles, boats or other watercraft, boat trailers, utility trailers, commercial vehicles (as defined in the ACC Guidelines) or other oversized vehicles, stored vehicles (as defined in the ACC Guidelines) or inoperable vehicles in places other than enclosed garages as approved by the ACC; or placing or erecting a tent, or permitting overnight camping on any Lot.

(xiii) Environmental Restrictions. Engaging in any activity which materially disturbs or destroys the vegetation, wildlife or air quality within the Development or which uses excessive amounts of water or which results in unreasonable levels of sound or light pollution, including removing any tree over six (6) inches in diameter without the prior written consent of the ACC.

(xiv) Dock and Piers. Constructing a dock, pier, seawall, retaining wall or other similar structure without the express written permission of the ACC and without obtaining all applicable permits. For Lots in all phases of the Development platted and filed after March 31, 1998, commencing with Heritage Isle, only Owners of those Lots with a "WF" designation on the Plat or Plats will be permitted to build private covered boat docks.

(xv) Drainage. Obstructing, rechanneling or failing to keep clear drainage flows after location and installation of approved drainage swales, culverts, ditches, storm sewers or storm drains, and the Association shall have such right to modify drainage improvements; provided, the exercise of such right

shall not materially diminish the value of or unreasonably interfere with the use of any Lot, without the Owner's consent.

(xvi) Resource Extraction. Drilling (except for water on Lots which are not and will not be provided central water service), quarrying, refining or mining of any kind on any Lot.

(xvii) Additional Living Space. Converting any carport, garage, attic or other unfinished space, other than a basement, to finished space for use as an apartment or other separate living area on any Lot.

(xviii) Home Business. Conducting any Business, Trade or similar activity, except that an Owner or occupant residing in a Lot may conduct Business activities within the Lot so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the activity conforms to all zoning requirements for the Development; (c) the activity does not involve regular visitation of the Lot by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Development; and (d) the activity is consistent with the residential character of the Development and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Development, as may be determined in the sole discretion of the Board. Provided, however, that garage sales, moving sales and estate sales may be conducted in accordance with the rules established by the Board.

This subsection shall not apply to any activity conducted by Declarant or a Builder approved by Declarant with respect to its development and sale of the Development or its use of any Lots which it owns within the Development, including the operation of a timeshare or similar program.

(xix) Helicopter Pads. Installing any helicopter pad without the approval of the ACC or which is not in compliance with the ACC Guidelines and applicable governmental regulations.

## 15. EASEMENTS

15.1. Easements for Utilities, Etc. There are hereby reserved unto Declarant, so long as Declarant owns any property described in Exhibit "A" of this Declaration as amended, the Association, and the assignees, licensees and designees of each the following access and maintenance easements upon, across, over and under all of the Development and the right to ingress and egress to the extent reasonably necessary to exercise such easements:

(a) Utilities. A ten (10) foot wide strip running along the inside of all Lot lines, except those Lot lines coincident with street right-of-way lines, in which case such strip shall be twenty (20) feet wide, for the installation, maintenance and operation of utilities, including radio, and television transmission cables, and the accessory right to locate guy

wires, braces or anchors or to cut, trim or remove trees and plantings wherever necessary upon such Lots in connection with such installation, maintenance and operation. An easement is retained for the purpose of locating, constructing, operating and maintaining sanitary sewer lines and all necessary appurtenances across all Lots at locations deemed necessary for Declarant for the construction, operation and maintenance of a sanitary sewer system, in the event one is required in any part of the Development. Said easement shall consist of a temporary easement fifty (50) feet wide laying twenty five (25) feet either side of the centerline of the sewer line located as deemed necessary for Declarant, but subject to existing ACC approved Improvements located within said easement. Upon completion of construction, the temporary construction easement is automatically vacated and a permanent easement ten (10) feet wide laying five (5) feet either side of the centerline of the sewer as constructed shall be retained. Said easements shall consist of the right to ingress and egress to the easement across the hereinafter described Lots, together with the easement across the hereinafter described Lots, together with the right to trim, cut or remove any trees or vegetation necessary to accomplish the above stated purpose, but subject to existing ACC approved Improvements located within said easement. Subsequent Owners of Lots shall have no cause of action against Declarant, or its licensees, successors, heirs, or assigns, either at law or in equity by reasons of any damage caused to said property in location, construction, operation or maintenance of the sanitary sewer lines, except in case of gross negligence;

(b) Shoreline Maintenance. A fifty (50) foot wide strip running along the inside of all Lots in the Development located on Horseshoe Bend which are coincident with the shoreline of Lake of the Ozarks or any watercourse in the Development, and a forty (40) foot wide strip running along the inside of all Lots in the Development located on Shawnee Bend which are coincident with the shoreline of Lake of the Ozarks or any watercourse in the Development, both for the purpose of shoreline maintenance;

(c) Slope and Drainage. A thirty (30) foot wide easement running along the inside of all Lot lines coincident with street right-of-way lines for the purpose of cutting, filing, drainage, and maintenance of slopes and drainage courses;

(d) Other Easements. Any other easements assigned to Declarant or shown on the Plat or Plats, or which are otherwise of record.

15.2. Use and Maintenance by Owners. The areas of any Lots affected by the easements reserved herein shall be maintained continuously by the Owner of such Lot, but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken thereon which may damage or interfere with the use of said easements for the purpose herein set forth, unless otherwise approved by the ACC or the Board. Improvements within such areas shall be maintained by the Owner except those for which a public authority or utility company is responsible.

15.3. Easements to Serve Additional Property. Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees and mortgagees, an easement over the public and private roads, rights-of-way and other access areas

in the Development for the purposes of enjoyment, use, access and development of any property added to the Development, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors and assigns shall be responsible for any damage caused to the roads, rights-of-way and access areas as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, Declarant, its successors and assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property.

15.4. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons, to perform maintenance pursuant to Section 6 and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, ACC Guidelines and rules, which right may be exercised by the Association, its officers, agents, employees and managers and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association, to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Association, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

15.5. Liability for Use of Easements. No Owner shall have any claim or cause of action against Declarant or the Association, or either of their respective officers, agents, employees or licensees, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on the Plat or Plats, except in cases of willful or wanton misconduct.

15.6. Impact of Replat. In the event Declarant or any authorized Person replats any portion of the Development, the easements granted by this Section 15 under the initial Plat shall be extinguished and new easements shall be granted based on the modified Plat.

## 16. DECLARANT'S RIGHTS

In addition to any rights set forth in this Section 16, Declarant specifically reserves those rights set forth in Sections 3.1, 11.1, 11.3, 11.4, 11.5, 14.7(e), 15.1, 15.3 and 19.5, as well as all other rights set forth in this Declaration.

Any or all of the special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred to Declarant's parent, subsidiaries or other affiliates, or, upon the consent of the Board, to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the Bylaws. No such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Office of the Recorder of Deeds of Camden County, Missouri and, if required, in the Office of the Recorder of Deeds in Miller County, Missouri.

So long as construction, development and initial sales of Lots shall continue, Declarant and Builders authorized by Declarant may, with the consent of the Board, maintain and carry on upon portions of the Common Area such facilities and activities as may be reasonably required, convenient or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities.

This Section may not be amended without the written consent of Declarant. The rights contained in this Section shall terminate upon the earlier of (a) twenty-five (25) years from the date this Declaration is recorded; or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

## 17. DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

17.1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Board, Declarant, all Persons subject to this Declaration and any Person not otherwise subject to this Declaration who agrees to submit to this Section (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Development, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Development, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the Association rules or the Articles of Incorporation (collectively "Claim"), except for those Claims authorized in Section 17.2, shall be subject to the procedures set forth in Section 17.3.

17.2. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 17.3:

- (a) any suit by the Board against any Bound Party to enforce the provisions of Section 12;
- (b) any suit by the Developer or the Board to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Section 13 and Section 14; and
- (c) any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under the law of the State of Missouri in the absence of a claim based on the Declaration, the Bylaws, Articles or rules of the Association, if the amount in controversy exceeds Five Thousand Dollars (\$5,000.00).

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 17.3, but there shall be no obligation to do so.

17.3. Mandatory Procedures for All Other Claims. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than a Claim exempted from this provision by Section 17.2, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

(a) Notice. The Claimant shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including date, time, location, persons involved, Respondent's role in the Claim and the provisions of this Declaration, the Bylaws, the rules, the Articles of Incorporation or other authority out of which the Claim arises;

(ii) the basis of the Claim (i.e., the provision of the Declaration, the Bylaws, the rules or Articles triggered by the Claim);

(iii) what Claimant wants Respondent to do or not do to resolve the Claim; and

(iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

(i) Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation; and

(ii) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Association may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Final and Binding Arbitration.

(i) If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or such other period as may be agreed upon by the Parties, Claimant shall have thirty (30) additional days within which to submit the Claim to arbitration in accordance with the American Arbitration Association Rules of Arbitration or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge

Respondent from any liability to Persons not a Party to the foregoing proceedings;  
and

(ii) This subsection 17.3(c) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration law of the State of Missouri. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Missouri.

17.4. Allocation of Costs of Resolving Claims. Each Party shall bear all of its own costs incurred prior to and during the proceedings described in this Section 17, including the fees of its attorney or other representative; provided, however, that the Association shall be entitled to attorneys fees incurred in connection with the collection of Assessments or the enforcement of liens, Land Use Covenants, ACC Guidelines, rules of the Association or other obligations or restrictions set forth herein or promulgated by the Association hereunder.

#### 18. GRANTEE'S ACCEPTANCE

Each grantee or purchaser of any Lot shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, accept such deed or contract upon and subject to each and all of the provisions of this Declaration and to the jurisdiction, rights, powers, privileges and immunities of Declarant and the Association. By such acceptance such grantee or purchaser shall for himself, his heirs, devisees, personal representatives, grantees, successors, assigns, lessors and lessees, covenant, consent and agree to and with Declarant, the Association and the grantee or purchaser of each other Lot to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration.

#### 19. GENERAL PROVISIONS

19.1. Severability. Every provision of this Declaration is hereby declared to be an independent and severable provision from every other provision hereof. If any provision hereof shall be held by a court of competent jurisdiction to be invalid, or unenforceable, all remaining provisions shall continue unimpaired and in full force and effect.

19.2. Captions. Paragraph captions in this Declaration are for convenience only and do not in any way limit or amplify the terms or provisions hereof.

19.3. Term and Amendment. The provisions of this Declaration as amended from time to time shall affect and run with the land and shall exist and be binding upon all parties claiming an interest in the Development until January 1, 2015, after which time the same shall be automatically extended for successive periods of ten (10) years each unless the Owners of ninety percent (90%) of all Lots vote, at a special meeting of the Association called for that purpose, to terminate this Declaration. This Declaration may be amended at any time by the Developer at the request of or with the consent of the Board until such time as all Lots in the Development have been sold, at

which time this Declaration may be amended by the affirmative vote of two thirds (2/3) of the Owners of all Lots in the Development entitled to vote. In the case of an amendment by two thirds (2/3) of the property owners, an amendment to this Declaration shall be duly executed by:

- (a) the requisite of such Owners required to effect such an amendment; or
- (b) the Association, in which latter case such amendment shall have attached to it a copy of the resolution of the Board attesting to the affirmative action of the requisite number of such Owners to effect such an amendment, certified by the Secretary of the Association.

19.4. Sub-Association Declarations. Notwithstanding anything to the contrary contained herein, Sub-Association Declarations may be modified and amended in accordance with the terms contained therein; provided that no such modification or amendment shall result in the termination of the Sub-Association's Owners' membership in the Association or the financial rights and obligations pertaining thereto. In the event of a conflict between any Sub-Association Declaration and this Declaration, the inconsistency shall be resolved in favor of the Sub-Association Declaration. For purposes of this paragraph only, the Supplemental Declaration of Restrictive Covenants for Country Club Cove dated August 30, 2005, recorded September 12, 2005 in Book 610, Page 786 in the Office of the Recorder of Deeds of Camden County, Missouri shall be deemed to be a Sub-Association Declaration.

19.5. No Waiver. No determination, failure or refusal to enforce or to not enforce any rights, obligations or other provisions set forth in this Declaration shall constitute a waiver of such right, obligation or other provision by such party to any other future occurrence or event.

19.6. Severability. If any provision of this Declaration shall to any extent be invalid or unenforceable, the remainder of this Declaration shall not be affected thereby, and each provision of this Declaration, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

[Remainder of Page Intentionally Blank. Signature Page to Follow.]

IN WITNESS WHEREOF, the undersigned, being the authorized officers of Declarant herein, has hereunto set their hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.**

DECLARANT: FOUR SEASONS LAKESITES, INC.

By: \_\_\_\_\_  
PETER N. BROWN, President

(SEAL)

ATTEST:

\_\_\_\_\_  
SUSAN KOPLAR BROWN, Secretary

STATE OF MISSOURI     )  
  )     S.S.  
COUNTY OF CAMDEN    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me, a Notary Public in and for the above said County and State, personally appeared PETER N. BROWN, personally known to me to be the President, of FOUR SEASONS LAKESITES, INC., a Missouri corporation, and did state that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the Fourth Amended and Restated Declaration of Restrictive Covenants was signed and sealed in behalf of said corporation, by authority of its Board of Directors; and said PETER N. BROWN acknowledged said instrument to be the free act and deed of FOUR SEASONS LAKESITES, INC.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the date above written.

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

My commission expires:



EXHIBIT "A"

DEVELOPMENT

Horseshoe Bend Subdivisions

All of the real property identified as:

Kay's Point No. 1 as per plat recorded in Plat Book 12, Pages 57 through 61 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Kay's Point No. 2 as per plat recorded in Plat Book 13, Pages 41 through 45 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Kay's Point No. 3 as per plat recorded in Plat Book 13, Page 82 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Kay's Point No. 4 as per plat recorded in Plat Book 13, Page 83 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Kay's Point No. 5 as per plat recorded in Plat Book 13, Pages 86 and 87 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Kay's Point No. 6 as per plat recorded in Plat Book 13, Page 88 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Kay's Point No. 7 as per plat recorded in Plat Book 14, Page 35 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Kay's Point No. 8 as per plat recorded in Plat Book 17, Pages 23, 27, 28 and 29 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Ridgecrest No. 1 as per plat recorded in Plat Book 14, Pages 48 through 50 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Cornett Cove No. 1 as per plat recorded in Plat Book 14, Page 34 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Cornett Cove No. 2 as per plat recorded in Plat Book 14, Pages 68 through 70 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Cornett Cove No. 3 as per plat recorded in Plat Book 14, Page 92 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri, save and except for lots 601 through 613 withdrawn per Amendment to Declaration recorded December 12, 2002 in Book 548, Page 338 at the Office of the Recorder of Deeds of Camden County, Missouri;

Cornett Cove No. 4 as per plat recorded in Plat Book 14, Pages 93 through 95 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Cornett Cove No. 5 as per plat recorded in Plat Book 15, Pages 81 through 85 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Cornett Cove No. 6 as per plat recorded in Plat Book 17, Pages 22 and 22A and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Cornett Cove No. 7 as per plat recorded in Plat Book 17, Pages 25 and 25A and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Country Club Estates No. 1 as per plat recorded in Plat Book 15, Pages 77 and 78 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Country Club Estates No. 2 as per plat recorded in Plat Book 15, Pages 79 and 80 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Country Club Estates No. 3 Amended Plat as per plat recorded in Plat Book 18, Pages 75 and 76 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Imperial Point as per plat recorded in Plat Book 17, Pages 26 through 26B and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Palisades Point No. 1 Amended Plat as per plat recorded in Plat Book 19, Page 11 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Palisades Point No. 2 as per plat recorded in Plat Book 19, Page 42 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Palisades Point No. 3 as per plat recorded in Plat Book 20, Page 18 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Palisades Point No. 4 as per plat recorded in Plat Book 21, Pages 30 through 33 inclusive and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Palisades Point No. 5 as per plat recorded in Plat Book 24, Pages 13A through 13D and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Equestrian Estates No. 1 as per plat recorded in Plat Book 21, Pages 9 through 11 at the Office of the Recorder of Deeds of Camden County, Missouri;

Equestrian Estates No. 2 Amended Plat as per plat recorded in Plat Book 35, Pages 15A through 15D and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Seasons Ridge First Amended Plat as per plat recorded in Plat Book 40, Pages 29A through 29F and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Regency Cove as per plat recorded in Plat Book 42, Pages 34A through 34D and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Villas at Country Club Cove as per that portion of the Country Cove Subdivision Phase I plat recorded in Plat Book 84, Pages 49A through 49H as identified in the Supplemental Declaration of Covenants and Restrictions for the Villas at Country Club Cove recorded on June 2, 2005 in Book 604, Page 275 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Villas at Country Club Cove as per plat titled "Country Club Cove Subdivision, Phase II" recorded in Plat Book 112, Pages 16A-16C and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri; and

That portion of the Country Club Cove Subdivision Phase I plat recorded in Plat Book 84, Pages 49A through 49H as described in Exhibit A to the Supplemental Declaration of Restrictive Covenants for Country Club Cove recorded on September 12, 2005 in Book 610, Page 786 and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri; as well as,

#### Shawnee Bend Subdivisions

All of the real property identified as:

Grand Point as per plat recorded in Plat Book 45, Pages 32A through 32P inclusive, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Grand Point No. 2 as per plat recorded in Plat Book 51, Pages 9A through 9I inclusive, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Eagles Cove as per plat recorded in Plat Book 56, Pages 50A through 50G inclusive, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Fox Run as per plat recorded in Plat Book 59, Pages 30A through 30C and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri, save and except for lot 675 which was withdrawn as per Amendment to Declaration recorded in Book 662, Page 513 at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle as per plat recorded in Plat Book 60, Pages 40A through 40J inclusive, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri, save and except for lots 1055-1060 which were withdrawn as per Amendment to Declaration recorded in Book 510, Page 726 at the Office of the Recorder of Deeds of Camden County, Missouri;

Grand Point No. 3 as per plat recorded in Plat Book 61, Pages 2A through 2B, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Champions Run as per plat recorded in Plat Book 63, Pages 15A through 15J, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

La Riva Est as per plat recorded in Plat Book 66, Pages 12A through 12H, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri, and as recorded in Plat Book A, Page 293 and rerecorded in Plat Book A, Page 294, at the Office of the Recorder of Deeds of Miller County, Missouri, and all amendments thereto and resubdivisions thereof at the Offices of the Recorder of Deeds of Camden County, Missouri and Miller County, Missouri, save and except for the property designated "Reserved for Future Development Rights" withdrawn per Amendment to Declaration recorded in Book 569, Page 406 at the Office of the Recorder of Deeds of Camden County, Missouri and as recorded in Book 2003, Page 7774 at the Office of the Recorder of Deeds of Miller County, Missouri;

La Riva Est No.2 as per plat recorded in Plat Book 70, Pages 11A through 11H, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri, and as recorded in Plat Book A, Page 327, at the Office of the Recorder of Deeds of Miller County, Missouri;

Grand Point Subdivision First Addition as per plat recorded in Plat Book 73, Page 11, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

La Riva Est No. 3 as per plat recorded in Plat Book 75, Pages 36A through 36D, and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle No. 2 Townhomes as per plat recorded in Plat Book 68, Pages 5A-5F and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle No. 3 Townhomes as per plat recorded in Plat Book 70, Pages 8A-8H and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle No. 4 Townhomes as per plat recorded in Plat Book 73, Pages 43A-43P and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle No. 5 Townhomes as per plat recorded in Plat Book 72, Pages 19A-19F and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle No. 6 Townhomes as per plat recorded in Plat Book 76, Pages 12A-12F and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle No. 7 Townhomes as per plat recorded in Plat Book 78, Pages 27A through 27P and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle No. 7 Townhomes First Addition as per plat recorded in Plat Book 82, Pages 44A-44J and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri;

Heritage Isle No. 8 Townhomes as per plat recorded in Plat Book 81, Page Pages 11A-11H and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri and as per plat recorded in Plat Book 2003, Page 7773 at the Office of the Recorder of Deeds of Miller County, Missouri; and

Porto Cima Courts as per plat recorded in Plat Book 101, Pages 32A-32D and all amendments thereto and resubdivisions thereof at the Office of the Recorder of Deeds of Camden County, Missouri.

**NOTE: NEED COUNTRY CLUB COVE REPLAT (TO ELIMINATE OPEN SPACES)**

EXHIBIT "B"

ARTICLES OF INCORPORATION OF  
FOUR SEASONS LAKESITES PROPERTY OWNERS ASSOCIATION, INC.

EXHIBIT "C"

BY-LAWS OF  
FOUR SEASONS LAKESITES PROPERTY OWNERS ASSOCIATION, INC

EXHIBIT "D"

DISCLOSURE OF POTENTIAL FOR CONFLICT OF INTEREST

The Disclosure of Potential for Conflict of Interest currently utilized by the Association is attached hereto.

## FIDUCIARY DUTIES AND CODE OF CONDUCT

The purpose of the letter is to acquaint potential candidates who wish to serve on the Board of Directors of the Four Seasons Lakesites Property Owners Association, Inc., with the standard of conduct that is expected of our Association Board of Directors. The law imposes certain legal obligations on all Board members. Failure to fulfill these obligations could lead to a lawsuit against the Association, the Board and even, you personally. Most importantly, among these obligations is what is called a "fiduciary duty" to the Association. This means you must perform your duties as a Board member in good faith and with the degree of care that an ordinary prudent person would use under similar circumstances, being at all times loyal to the Association and its best interest.

But, in practice, it gets a bit more complicated than that. While it is impossible to review every possible situation you might face, all board members have resolved themselves to a "Code of Conduct." Your election to the Board and "fiduciary responsibilities" to the Association require your agreement and acknowledgement as shown below.

If, after reading this, should you have any questions about your fiduciary duty and the "Code of Conduct" please discuss them with our Association legal counsel, Anthony J. Soukenik. He can be reached by calling: 800-225-5529.

Sincerely,

Nancy Cason-President  
Four Seasons Lakesites Property Owners Association, Inc.

## CODE OF CONDUCT FOR BOARD MEMBERS

WHEREAS, the Board of Directors ("Board") of the Four Seasons Lakesites Property Owners Association, Inc. ("Association") has the authority and responsibility to make decisions for the benefit of the entire community, and

WHEREAS, the Board wishes to ensure that it and its individual members ("Board Member") maintain a high standard of ethical conduct in the performance of the Association's business, and to ensure that the Association's members maintain confidence in and respect for the entire Board,

NOW, THEREFORE, BE IT RESOLVED THAT the Board of the Association hereby adopts the following rules of conduct, standards of behavior, ethical rules, and enforcement procedures that are applicable to all member of the Board.

Board Members shall act in the best interests of the Association as a whole. Board Members serve for the benefit of the entire community, and shall, at all times, strive to do what is best for

the Association as a whole. Board Members shall not use their positions as such for private gain, for example:

No Board Member shall solicit or accept, directly or indirectly, and gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who is seeking a contractual or other business or financial relationship with the Association.

No Board Member shall seek preferential treatment by the Board, any of its committees, or any contractors or suppliers.

No Board Member shall accept a gift or favor made with the intent of influencing a decision or action on any official matter.

No Board Member shall receive any compensation from the Association for serving on the Board.

No Board Member shall willingly misrepresent facts to advance a personal cause or influence the community to advance a personal cause.

No Board Member shall use his/her position to enhance his/her financial status through the use of certain contractors or suppliers.

The above list of examples is offered for illustration purposes only, and is not intended to be exclusive.

Board Members shall comply with governing documents and relevant law. Board Members shall use their best efforts at all times to make reasonable decisions that are consistent with the Declaration of Restrictive Covenants, Bylaws, and other governing documents of the Association, and to be familiar with all such documents. Board Members shall likewise comply with and make decisions that are consistent with all applicable laws, including, but not limited to, refraining from discriminating against any person on the basis of race, color, religion, national origin, gender, family status, or mental or physical disability.

Board Members shall set high standards for themselves as Association members. Board Members shall hold themselves to the highest standards as members of the Association, and shall in all ways comply with the provisions of the Association's governing documents.

Board Members shall work within the Association's framework and refrain from unilateral action. Board Members shall at all times work within the Association's framework and abide by the system of management established by the association's governing documents and the Board. The Board shall conduct business in accordance with state law and the Association's governing documents, and shall act upon decisions duly made, and no Board Member shall act unilaterally or contrary to such decisions. Toward that end, no Board Members shall seek to have a contract implemented that has not been duly approved by the Board, nor promise anything not approved by the Board to any contractor, supplier, or otherwise.

Board Members shall behave professionally at meetings. Board Members shall conduct themselves at all meetings, including board meetings, annual meetings of the members, and committee meetings, in a professional and businesslike manner. Personal attacks against other Board Members, Association members, residents, officers, management, or guests are not consistent with the best interest of the community and will not be tolerated. Language at meetings shall be kept professional. Though differences of opinion are inevitable, they must be expressed in a professional and businesslike manner.

Board Members shall maintain confidentiality when appropriate. Board Members shall at all times maintain the confidentiality of all legal, contractual, personnel, and management matters involving the Association. Board Members shall also maintain the confidentiality of the personal lives of other Board Members, Association members, residents, and management staff.

Board Members shall disclose conflicts of interest. Board Members shall immediately disclose to the Board any perceived or potential conflict of interest regarding any aspect of the business operations of the Association. Such potential conflicts of interest shall be listed below.

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Board Members shall refrain from defaming anyone in the community. Board Members shall not engage in defamation, by any means, of any other Board Member, Association member, resident, or management staff member. The Association shall deem any Board Member who engages in defamation to be acting outside the scope of his authority as a Board Member.

Board Members shall refrain from harassing Association members or residents. Board Members shall not in any way harass, threaten, or otherwise attempt to intimidate any other Board Member, Association member, or resident. The Association shall deem any Board Member who harasses, threatens, or otherwise attempts to intimidate other Association members or residents to be acting outside the scope of his authority as a Board Member.

Board Members shall refrain from interfering with management staff and contractors. No Board Member shall interfere with the duties of management staff or any contractor executing a contract in progress. All communications with contractors must go through the one designated Board Member or management, or must otherwise be in accordance with Board policy.

Board Members shall refrain from using members' keys, except as authorized by Association's governing documents. No Board Member shall use members' keys in any manner other than as outlined in the Association's official key policy.

#### VIOLETIONS OF CODE

Violations of the Code of Conduct shall be brought to the Hearing Board, which shall be comprised of designated Board Members. In addition, the Board may elect, at its sole discretion,

to appoint as Advisory Hearing Board Members, other Board Members, as well as the Association attorney, manager, and/or accountant. Any Board Member who violates this Code of Conduct agrees that the Board may seek injunctive relief against him/her, following a hearing before the Hearing Board, unless circumstances necessitate the issuance of injunctive relief prior to such hearing. The Board Member also agrees that the board shall be relieved of posting bond as a condition to its injunctive remedy. Such Board Member must pay the attorney's fees incurred by the Board in any enforcement effort.

ADOPTED BY BOARD RESOLUTION AS PART OF THE MEETING AGENDA ON June 1, 2005.

AGREED:

DATE:

\_\_\_\_\_

\_\_\_\_\_

EXHIBIT "E"

NON-CONTIGUOUS PROPERTIES WHICH DEVELOPER MAY ANNEX

The real property located on Horseshoe Bend, Camden County, Missouri and commonly described as follows:

- The undeveloped land adjacent to the Seasons Ridge Golf Club;
- The balance of the undeveloped land at Vintage Landing Point;
- The undeveloped land in the Country Club Cove Subdivision area;
- The State Road HH frontage road area near Treetops Village and Regency Cove Subdivision; and

The real property located on Shawnee Bend, Camden County, Missouri and commonly described as follows:

- Porto Cima Point (land past the club house and out to the Bridge);
- Land commonly referred to as inside the center loop of the Porto Cima Golf Course;
- Tract of land behind the Four Seasons Homes, Inc. office off of Grand Point Blvd.;
- Approximately six (6) acre tract of undeveloped land located in Government Lot 14 and identified by Camden County, Missouri Assessor's Office as: Parcel No. 08-30-062-0000-000-009.000;
- Undeveloped land in Shawnee Bend No. 1 Subdivision as recorded in Plat Book 3, Page 34 in the Office of the Recorded of Deeds of Camden County, Missouri;
- Undeveloped land in Shawnee Bend No. 2 Subdivision as recorded in Plat Book 3, Page 58 in the Office of the Recorded of Deeds of Camden County, Missouri;
- Undeveloped land in Shawnee Bend No. 3 Subdivision as recorded in Plat Book 4, Page 27 in the Office of the Recorded of Deeds of Camden County, Missouri;
- Undeveloped land in Shawnee Bend No. 4 Subdivision as recorded in Plat Book 5, Page 78 in the Office of the Recorded of Deeds of Camden County, Missouri;
- Undeveloped land in Shawnee Bend No. 5 Subdivision as recorded in Plat Book 6, Page 30 in the Office of the Recorded of Deeds of Camden County, Missouri; and

- Undeveloped land in Shawnee Bend No. 6 Subdivision as recorded in Plat Book 9, Page 27 in the Office of the Recorded of Deeds of Camden County, Missouri.

EXHIBIT "F"

BENEFICIARY AGREEMENTS

Declaration of Restrictive Covenants of Treetop Village recorded in Book 206, Page 542 in the Office of the Recorder of Deeds of Camden County, Missouri.

Treetop Condominiums Declaration of Condominium (the "Declaration"), filed in Book 259, at Page 285 in the Office of the Recorder of Deeds of Camden County, Missouri.

Charleston Condominiums Declaration of Condominium and Bylaws recorded in Book 369, Page 384 in the Office of the Recorder of Deeds of Camden County, Missouri

Declaration of Condominium for Vintage Landing Condominium recorded in Book 384, at Page 340 in the Office of the Recorder of Deeds of Camden County, Missouri.

Four Seasons Racquet and Country Club Declaration of Condominium and Bylaws recorded in Book 261, Page 512 in the Office of the Recorder of Deeds of Camden County, Missouri.

1996 Amenities Agreement dated July 19, 1996 by and among Four Seasons Racquet and Country Club Condominiums Property Owners Association, Inc., Four Seasons Lakesites Property Owners Association, Inc., Four Seasons Lakesites, Inc., Chase Resorts, Inc. and HRS Properties, Inc. recorded in Book 430, Page 70 in the Office of the Recorder of Deeds of Camden County, Missouri.

Amended and Restated Agreement for Amenities dated December 28, 1996 by and among Four Seasons Lakesites, Inc., Chase Resorts, Inc., HRS Properties, Inc., Cecil Van Tuyl, Cedar Crest Development, L.L.C. and Cedar Crest Master Association, Inc. recorded in Book 437, Page 600 in the Office of the Recorder of Deeds of Camden County, Missouri.

Amendment and Restatement of Agreement dated February 19, 1988 by and among Water's Edge Homeowner's Association, Inc., Four Seasons Lakesites, Inc. and Chase Resorts, Inc. recorded in Book 314, Page 8 in the Office of the Recorder of Deeds of Camden County, Missouri.

EXHIBIT "G"

MINIMUM STANDARDS

1. Lot Designations:

a. The letter "A" on any numbered Lot on any Plat of the Development means the Lot is an "A" Lot and is therefore entitled to all rights and subject to all obligations and restrictions of an "A" Lot as set forth in this Declaration.

b. The letter "B" on any numbered Lot on any Plat of the Development means the Lot is a "B" Lot and is therefore entitled to all rights and subject to all obligations and restrictions of a "B" Lot as set forth in this Declaration.

c. The letter "C" on any numbered Lot on any Plat of the Development means the Lot is a "C" Lot and is therefore entitled to all rights and subject to all obligations and restrictions of a "C" Lot as set forth in this Declaration.

d. The letter "D" on any numbered Lot on any Plat of the Development means the Lot is a "D" Lot and is therefore entitled to all rights and subject to all obligations and restrictions of a "D" Lot as set forth in this Declaration.

e. The letter "E" on any numbered Lot on any Plat of the Development means the Lot is a "E" Lot and is therefore entitled to all rights and subject to all obligations and restrictions of a "E" Lot as set forth in this Declaration.

f. The letters "WF" when used in conjunction with any other letters on any Lot on any Plat of the Development means the Lot is a waterfront ("WF") Lot and is therefore entitled to all rights and subject to all obligations and restrictions of a "WF" Lot as set forth on the applicable Plat or in this Declaration.

g. The letters "GC" on any numbered Lot on any Plat of the Development means the Lot is a Golf Course Lot and is therefore entitled to all rights and subject to all obligations and restrictions of a Golf Course Lot as set forth in this Declaration.

h. the letters "MF" on any numbered Lot on any Plat of the Development means the Lot was designated as Multiple Family Residential when platted. Notwithstanding, only those Lots listed on Exhibit "H" to this Declaration are entitled to the rights and subject to the obligations and restrictions of a Multiple Family Residential Lot as set forth in this Declaration.

2. Minimum Area of Single Family Dwellings. Minimum amount of fully enclosed floor area devoted to living purposes on the ground or first floor of single family dwellings (exclusive of porch areas, garages, patios, terraces and unfinished basements) shall be as followed:

a. For Lots with the letter designation "A" on the Plat or Plats, one thousand two hundred (1,200) square feet.

b. For Lots with the letter designation "B" on the Plat or Plats, one thousand twenty (1,020) square feet.

c. For Lots with the letter designation "C" on the Plat or Plats, eight hundred forty (840) square feet.

d. For Lots with the letter designation "D" on the Plat or Plats, six hundred eighty (680) square feet.

e. For Lots with the letter designation "E" on the Plat or Plats, or with no letter designation, as determined by the ACC.

f. Notwithstanding the above, for Lots in Country Club Estates No. 1, Lot Nos. 1 through 76, inclusive, one thousand four hundred (1,400) square feet

g. For Lots in all phases of the Development platted and filed after March 31, 1998, commencing with Heritage Isle, which contain the letter designations "A" or "GC" on the Plat or Plats, one thousand five hundred (1,500) square feet.

h. For Lots in all phases of the Development platted and filed after March 31, 1998, commencing with Heritage Isle, which contain the letter designations "B" on the Plat or Plats, one thousand two hundred (1,200) square feet.

i. For Lots in all phases of the Development platted and filed after March 31, 1998, commencing with Heritage Isle, which contain the letter designations "C" on the Plat or Plats, one thousand one hundred (1,100) square feet.

3. Minimum Area of Multiple Family Dwellings. Minimum amount of fully enclosed floor area devoted to living purposes in each unit in a Multiple Family Dwelling shall be six hundred (600) square feet (exclusive of porch areas, garages, patios, terraces and unfinished basements), except in Country Club Estates No. 2, Lot Nos. 77, 78 and 89 through 97, inclusive, wherein the minimum shall be five hundred fifty (550) square feet.

4. Setbacks. Minimum setbacks for all dwellings, single family or multiple family, shall be as follows:

a. Front Lot lines: Thirty (30) feet from the front Lot line.

b. Rear Lot lines: Fifty (50) feet from the rear Lot line (provided that the ACC may make exceptions for any Lot whose rear Lot line is adjacent to a golf course, and may allow a lesser setback).

c. Side Lot lines: Ten (10) feet from the side Lot line (provided that the side Lot line setback shall be fifteen (15) feet in Country Club Estates No. 1, Lot Nos. 1 through 76, inclusive, and Country Club Estates No. 2, Lot Nos. 77 through 97, inclusive).

d. From the shoreline of the Lake of the Ozarks, using as such shoreline the 662 contour elevation thereof, fifty (50) feet; provided, however, that on any lake front Lot there may be constructed and maintained, at or adjacent to such shoreline, a boat shelter, pier or dock in respect to size, design, construction or placement of which the ACC has approved; and provided further, that for Lots located on Shawnee Bend, the minimum setback from the shoreline as defined herein shall be forty (40) feet.

e. Interior side Lot and rear Lot lines of adjacently owned Lots may be disregarded as to set back lines and easement restrictions when such Lots are owned by the same person or legal entity, as long as a notarized statement recognizing that the Lots cannot be sold separately is recorded in the office of the county recorder of deeds.

5. Garage or Parking Space. There shall be at least one (1) garage space or parking space for each residential dwelling unit, whether single family or multiple family, to be of a space of not less than nine (9) feet by twenty (20) feet, unless the ACC provided otherwise. In Country Club Estates No. 1, Lot Nos. 1 through 76, inclusive, and for such other single family or multiple family units as the ACC deems necessary, there shall be one and one-half (1 1/2) parking spaces for each residential dwelling unit.

6. Special Provisions For Multiple Family Dwellings. Multiple family dwellings shall, in addition to meeting all other criteria set forth herein, or required by the ACC, be governed by the following provisions:

a. Said dwellings, subject to the approval of the ACC, may be single or multiple story construction and may be detached or may be joined by common walls.

b. The maximum height from finish grade to the ridge line shall be thirty-five (35) feet.

c. The maximum density of dwelling units shall be one (1) dwelling unit for each three thousand (3,000) square feet of land on any Lot, parcel or groups of Lots unused for multiple family use, except for Country Club Estates No. 2, Lot Nos. 77, 78 and 89 through 97, inclusive, wherein the density shall be one (1) dwelling unit for each two thousand (2,000) square feet of land.

EXHIBIT "H"

LOTS DESIGNATED AS MULTIPLE FAMILY RESIDENTIAL

Cornett Cove No. 3: Lots 579, 580, 585, 599, 632 through 634, 643, 647, 648, 656 and 661

Cornett Cove No. 4: Lots 785 through 935

Cornett Cove No. 6: Lots 20 through 28

Country Club Estates No. 2: Lots 77, 78 and 89 through 97

Kays Point No. 8: Lot 167

**Attachment No. 6  
Copies of Lake Region Water and Sewer Co. and  
Lake Utility Availability, Inc. Bills**

**WR-2010-0111 and SR-2010-0110  
Rebuttal Testimony of James A. Merciel, Jr.**

**LAKE UTILITY AVAILABILITY**  
P.O. BOX 9 LAKE OZARK, MO 65049  
PHONE: 573-365-6792

Statement Date **1/14/09** **1/07/08**

TYPE OF SERVICE				CHARGES
PrevBal				\$0.00
WtrAva	1	1	0	\$120.00
SwrAvail				\$180.00
OthrChg				\$0.00
AdjWtr				\$0.00
AdjSwr				\$0.00
AdjOthr				\$0.00
Write-O			Service ID# <span style="background-color: black; color: black;">XXXXXXXXXX</span>	\$0.00
Sales Tax				\$0.00
Pymt Recd: 2/13/2008				\$0.00
<b>Amount NOW DUE =</b>				<b>300.00</b>
IF Late - Add'l Charge				4.50
<b>Amt Due After: 2/25/09</b>				<b>\$304.50</b>



**LAKE REGION WATER & SEWER**  
P.O. BOX 9, LAKE OZARK, MO 65049  
PHONE: 573-365-6792

PRESORTED  
FIRST CLASS MAIL  
U.S. POSTAGE PAID  
LAKE OZARK, MO  
65049 PERMIT NO. 21

Statement Date **2/02/10** Meter Read **1/28/10**

	PREVIOUS	PREVIOUS	USAGE	CHARGES
PrevBal				\$0.00
Water			5280	\$18.21
Sewer				\$21.96
Other				\$0.00
AdjWtr				\$0.00
AdjSwr				\$0.00
PWSD4-H				\$4.25
AdjOthe	Service ID#			\$0.00
WPF				\$0.00
Sales Tax				\$0.00
Last Pymt	1/18/2010			\$0.00
<b>Amount NOW DUE =</b>				<b>42.42</b>
IF Late - Add'l Charge				8.50
<b>Am't Due After: 2/23/10</b>				<b>\$48.92</b>

**RETURN THIS STATEMENT TO:**  
SERVICE DISCONTINUED 30 DAYS AFTER BILLING

**Now DUE: \$42.42**  
**After 2/23/10 \$48.92**

Grand Cove Road

Service ID#

Grand Cove Road

Sunrise Beach MO 65079



**Attachment No. 7**  
**Copy of a Sewer & Water Agreement, and Availability Bill from 1995**

**WR-2010-0111 and SR-2010-0110**  
**Rebuttal Testimony of James A. Merciel, Jr.**

**Invoice Amount      \$300.00      Due by: December 31, 1995**

As the sales of Grand Point Subdivisions lots proceed, the development of utilities to service those lots continues, as well. The utilities to service phase one were substantially completed in 1994. Therefore, the related billing begins on January 1, 1995. In this regard, as in accordance with the terms of your purchase documents, we are now commencing the billing for water and sewer fees.

This invoice relates to the fees for 1995. For those owners who purchased their lots in 1995, the charges have been prorated accordingly. The basis of the charge is \$15.00 per month for sewer (\$180.00 annual) and \$10.00 per month for water (\$120.00 annual). We would like to receive full payment of this invoice by December 31, 1995. However, if that will present a problem we will accept four equal monthly installments each due on the first of December, January, February and March.

Please make your check payable to Four Seasons Lakesites Water & Sewer Co..   
Should you have any questions, please call Georgann at (314) 365-8581 ext. 16.

For your reference, future billings will be for the annual period January through December and such billings will be mailed during the first calendar quarter of each ensuing year.

~~Handwritten scribble~~  
300.00

<u>Item Description</u>	<u>Charge</u>	<u>months</u>	<u>Bill Amount</u>
Water Availability	\$10.00	12	\$120.00
Sewer Fee - Vacant Lot	\$15.00	12	\$180.00
	<b>Total billed</b>		<b><u>\$300.00</u></b>



# SEWER & WATER AGREEMENT

As the Owner or Owners of the below described lot, I/We agree on behalf of our heirs, successors, and assigns to pay to the Owner or Owners of the water works system to be constructed within the Development and a sewage disposal system which may be built in parts of the Development, an availability charge for water, water service and the accommodations afforded me/us by said water works system, commencing upon the availability of water in a water works system distribution main provided for the lot and continuing thereafter so long as water is available for use, whether or not tap or connection is made to a water works system distribution main and whether or not I/We actually use or take water; and, an availability charge for sewage disposal and treatment and the accommodations afforded me/us by said sewage disposal system, if built to service my lot, commencing upon the availability for use of a sewage collection main provided for the lot which leads to an operating sewage treatment facility, and continuing thereafter so long as such sewage collection main is so available for use, irrespective of whether or not connection is made to or use made of said sewage collection main in connection with or for the purpose of any said lot. Each Lot Owner will bear the costs applicable to the service line and meter installation from his building into the service and/or water main. The Owner or Owners of said water works system will be a privately owned public utility authorized by a Certificate of Public Convenience and Necessity issued by the State of Missouri Public Service Commission to operate water works systems, the aforesaid amounts of said availability charges, time and methods of payment thereof by said owners and other matters shall be provided in Schedules of Rates and Rules, Regulations and Conditions of services for Water Services and for Sewer Service filed and published by said public utility or utilities with said Missouri Public Service Commission, or any successor Regulatory Body of the State of Missouri, in accordance with law and passed to file or formally approved by said Commission as the then effective Schedule of Rates and Rules, Regulations and Conditions of service of said public utility or public utilities, or if presented but not approved or until approved, such charges as have been presented by said Owner or Owners to the Missouri Public Service Commission. The amount of said availability charges and other charges are subject to change hereafter by order of the said Missouri Public Service Commission or its successors in accordance with then existing law and the structure of said availability charges are likewise and in the same manner subject to change from availability rate to another type of rate or rates. Unpaid charges together with collection costs, including reasonable legal fees, shall become a lien upon the lot or lots to which they are applicable as of the date the same became due, and may be foreclosed upon in the same manner as assessments due to the Four Seasons Lakesites Property Owners Association, Inc.

**WE HAVE READ AND WE UNDERSTAND THE CONDITIONS IN THE ABOVE WATER & SEWER AGREEMENT.**

OBTAIN THE PROPERTY REPORT REQUESTED BY FEDERAL LAW AND READ IT BEFORE SIGNING ANYTHING.  
NO FEDERAL AGENCY HAS JUDGED THE MERITS OR VALUE, IF ANY, OF THIS PROPERTY.

  
SIGNATURE, OWNER

  
LOT NUMBER

  
SIGNATURE, SPOUSE

Grand Point Subdivision  
SUBDIVISION

\_\_\_\_\_  
SIGNATURE, SALES ASSOCIATE

June 25, 1994  
DATE

In House Sale