
File #: _____

RECORDING DOCUMENT IDENTIFICATION SHEET

TITLE: **DECLARATION OF GOVERNANCE, COVENANTS,
EASEMENTS, CONDITIONS, AND RESTRICTIONS
FOR THE NEW TOWN AT ST. CHARLES**

DATE: _____

GRANTOR: **WHITTAKER BUILDERS, INC.
355A MID RIVERS MALL DRIVE ST. PETERS, MO 63376**

GRANTEE: **WHITTAKER BUILDERS, INC.
355A MID RIVERS MALL DRIVE ST. PETERS, MO 63376**

CITY/MUNICIPALITY: City of St. Charles, Missouri

LEGAL DESCRIPTION: That certain property legally described as The New Town at St. Charles Plat One, recorded at Plat Book _____, page _____, of the St. Charles County Recorder of Deeds' office.

DECLARATION OF GOVERNANCE, COVENANTS, EASEMENTS, CONDITIONS, AND RESTRICTIONS FOR



THIS DECLARATION of Governance, Covenants, Easements, Conditions, and Restrictions for THE NEW TOWN AT ST. CHARLES is made as of the _____ day of _____, 2004, by Whittaker Builders, Inc., a Missouri corporation (hereinafter referred to as the "Founder").

STATEMENT OF PRINCIPLES

“Nothing happens unless first a dream.” Carl Sandburg

The New Town at St. Charles springs from the Founder's desire and vision that:

THE NEW TOWN AT ST. CHARLES shall be a community that echoes historic Old Town St. Charles while embracing 21st Century living and opportunities made available through technology and the Internet;

THE NEW TOWN AT ST. CHARLES shall be a community that fosters the exploration of the history and beauty of Missouri through bikeways and walkways that connect to the Katy Trail and Old Town St. Charles;

THE NEW TOWN AT ST. CHARLES shall dare to be different by rejecting planning concepts that dominated community development from the 1950s through the end of the 20th Century while adopting tenets of New Urbanist design;

THE NEW TOWN AT ST. CHARLES shall be a community dedicated to living on a human scale with places to live, work, and play within a pleasant five-minute walk from one another;

THE NEW TOWN AT ST. CHARLES shall be a community that works to replace dependence upon automobiles and freeway connectivity with bike paths, sidewalks, porch swings, and corner stores;

THE NEW TOWN AT ST. CHARLES shall be a community that provides places for a free range of creativity in play, civic governance, and community living;

THE NEW TOWN AT ST. CHARLES shall be a community that celebrates life in its noisiness at shows in the amphitheater, quietude in places of worship and contemplation, splashing in kayaks on the water and shouts from ball games in the park, and commerce in

neighborhood centers and civic places; and

THE NEW TOWN AT ST. CHARLES shall be a community unlike any other in Missouri, both vast in scope but intimate in detail.

These principles shall inform this Declaration of Governance, Covenants, Easements, Conditions, and Restrictions for The New Town At St. Charles but not tyrannize it, as the fulfillment of this vision is dependent upon the vicissitudes of time, response of the market, and the vagaries of people. The Founder cannot assure that this vision will be fulfilled but intends that in the interpretation of this Declaration and enactment of rules for The New Town At St. Charles that the Assembly shall bear these principles in mind.

RECITALS

The Founder has established The New Town at St. Charles Design Code (the "Code") as the regulatory expression of the permitted uses, intensity of development, street plan, landscaping, setbacks, landscaping, and architecture at The New Town at St. Charles.

The City of St. Charles, Missouri, has adopted the Code pursuant to Ordinance No. 03-174 as part of the Zoning Ordinance of the City of St. Charles, Missouri, as amended by Ordinance No. 04-57.

This Declaration is intended to further implement the Code and govern the development and maintenance of common properties, buildings, and civic spaces in The New Town at St. Charles while establishing regulations to encourage harmonious relationships among neighbors within the Community.

The Founder owns or controls all of that certain tract of land in the County of St. Charles, Missouri, as such tract of land is more particularly described on Exhibit A, attached hereto and incorporated herein by reference (the "Entire Tract"); and

The Founder intends, by recordation of this Declaration, to subject that part of the Entire Tract legally described on Exhibit B, attached hereto and incorporated herein by reference (the "Community"), to the terms and provisions of this Declaration, reserving to the Founder the right, in its sole discretion, to add to, modify, or remove property from the Community in the future by amending the Declaration from time to time as set out hereinbelow.

The Founder cannot guarantee that The New Town at St. Charles will be successful and therefore may choose, as a result of market conditions, not to add to the Community, to remove property from the Community, to change the development plan for the Community by altering street patterns, commercial areas, housing stock, and park areas, or to change architectural specifications and criteria within the Community, all rights that are expressly reserved to the Founder as contained in Article III, Section 5 herein.

DECLARATION

NOW, THEREFORE, the Founder hereby declares that the Community and any parts thereof, shall be held, sold, and conveyed subject to the following covenants, easements, conditions, and restrictions which are for the purpose of protecting the value and desirability of, and which shall run with, the Community and be binding on all parties having any right, title, or interest in and to the Community or any part thereof and shall inure to the benefit of each owner thereof and their respective heirs, legatees, personal representatives, successors, and assigns.

ARTICLE I DEFINITIONS

When *I* use a word,” Humpty Dumpty said, in rather a scornful tone, “it means just what I choose it to mean—neither more nor less.” “The question is,” said Alice, “whether you *can* make words mean so many different things.” “The question is,” said Humpty Dumpty, “which is to be master—that’s all.” **ATtribution:** LEWIS CARROLL (Charles L. Dodgson), *Through the Looking-Glass*, chapter 6, p. 205 (1934). First published in 1872.

1. “Affiliate” shall mean, as to any individual, corporation, association, partnership, limited liability company, joint venture, trust, estate, or other entity or organization (a “Person”), any other Person which, directly or indirectly, is in common control of, is controlled by, or is under direct or indirect common control with, such Person, and, if such Person is an individual, any member of the immediate family of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person which is controlled by any such member or trust. As used herein, the term “control” (and like terms) when used with respect to any Person, means the direct or indirect beneficial ownership of more than five percent (5%) of the outstanding voting securities or voting equity of such Person or possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through ownership of voting securities or by contract or otherwise.
2. “Architectural Review Board” shall mean and refer to the panel established pursuant to the Declaration to administer the Design Standards contained within the Code.
3. "Assembly" shall mean and refer to *The New Town at St. Charles General Assembly*, a Missouri non-profit corporation, its successors, and assigns.
4. "Assessments" shall mean and refer collectively to the following Association charges:
 - (i) General Assessment. The term “General Assessment” is the amount payable each year by each Owner (other than the Founder or any Affiliate of the Founder) to meet the Assembly's annual budgeted common expenses pursuant to the provisions of Article VIII, Section 1.

(ii) Individual Parcel Assessment. An “Individual Parcel Assessment” is a charge made to a particular Owner (other than the Founder or any Affiliate of the Founder) for charges relating only to that Owner or such Owner’s Parcel, as provided in Article VIII, Section 1.

(iii) Special Assessment. A “Special Assessment” may be charged to each Owner and such Owner’s Parcel (other than the Founder or any Affiliate of the Founder) for capital improvements or emergency expenses, in accordance with the provisions of Article VIII, Section 1.

5. “Assessment Year” shall be the calendar year.

6. “Board” or “Board of Governors” shall mean and refer to the board of directors of the Assembly.

7. “Builder” shall mean and refer to any builder who is approved as a builder within *The New Town at St. Charles Guild*.

8. “Building” in the singular and “Buildings” in the plural shall respectively mean and refer to each and all Dwellings, Civic Structures, Community Buildings, and Commercial Structures, Garages, commercial, retail, governmental, office, and other structures, constructed, installed, erected, placed, or maintained on any Parcel within the Community.

9. “City” shall mean and refer to the City of St. Charles, Missouri, a charter city.

10. “Civic Structures” shall mean and refer to all Improvements used primarily by, for, or intended for the conduct of governmental or municipal functions or the Assembly.

11. “Commercial Districts” shall mean and refer to any and all areas of the Community that are designated and established from time to time by the Founder as commercial/retail areas or Live-Work Units; such Districts may be established under a separate set of covenants and may be subject to separate fees and assessments.

12. “Commercial Structures” shall mean and refer to all Improvements used primarily by, for, or intended for the conduct of private sector retail or office activity.

13. “Community Buildings” shall mean and refer to Buildings used primarily by, for, or intended for the conduct of public functions including, without limitation, schools, churches, gymnasiums, public swimming pools, and athletic or religious assemblies.

14. “Code” shall mean and refer to The New Town at St. Charles Design Code, which shall consist of the following documents:

(a) The Design Standards, which guide the design of Buildings and describe the material of which Buildings may be constructed;

- (b) The Landscaping Regulations, which regulate the planting and maintenance of trees and plants;
- (c) The Book of Inspiration, which offers illustrations of examples of forms and details of architecture used by the Founder in the development of The New Town at St. Charles;
- (d) The Code of The New Town at St. Charles, adopted by the City of St. Charles, which establishes setbacks, density, street standards, uses, lot coverage, and other similar matters;
- (e) The Regulating Plan, including both the overall Master Plan and various Section Plans for the different Districts, which establishes transect zones and depicts the Common Ways, Commons, and any civic use lots for the real property encompassed by the Master Plan Area; and
- (f) The Design Review Procedures, which describe the steps for approval of all Buildings, landscaping, and other Improvements to any Parcel.

The Code does not need to be recorded to be effective but shall be available from the Board of Governors. The Board of Governors may adopt additional rules and regulations to implement the Code. The rules and regulations may include information about the design approval process, submittal forms, a review and approval process for architects and builders, and regulation of builders.

15. "Commons" shall mean and refer to the open spaces, greenswards, parks, meadows, lakes, canals, piers, amphitheaters, paths, pools, Buildings and Common Ways that are developed or set aside within the Community and are now or hereafter conveyed to the Assembly, together with the improvements thereon, for the common use and enjoyment of all Members, but excluding any of the foregoing that are dedicated to public use. Such Commons shall include, by way of example and not by way of limitation, any area designated on the Plat as "Commons," "Common Area," "Stormwater Detention & Common Ground" and all other areas including the term "Common Ground" or "Commons" within their designation on the Plat.

16. "Common Ways" shall mean and refer to the public and private streets, alleys, bridges, and rights-of-way for the same within the Community which are intended for automobile traffic.

17. "Community" shall mean and refer to the property legally described on the attached Exhibit B and as shown on the Plat, together with such additional parcels of real estate that may be added to the Community and subjected to this Declaration from time to time by amendment in the manner provided herein.

18. "Community Use Parcel" shall mean and refer to those Parcels or Lots containing Civic Structures or Community Buildings. Community Use Parcels are not subject to General

Assessments or Special Assessments (but are subject to Individual Parcel Assessments) and are not entitled to any voting rights in the Association.

19. "District" or "Districts" shall mean and refer to the geographic areas in the Community determined by the Founder from time to time as governing areas within the Community. The Founder contemplates that the Community, if fully developed, will contain the following seven named Districts: the Theater District, the Island District, the South Lake District, the East Lake District, the North Lake District, the West Lake District, and the Bridge District. The Founder shall initially establish the boundaries of each District as the Founder plats the Community. Prior to the Turnover Date, the Founder may at any time expand, contract, or otherwise alter the boundaries of any District or change the name of any District. In addition to the foregoing Districts, the Founder anticipates that another area of property to be known as the Gateway District will be developed by a separate developer contemporaneously with the Community. The Gateway District is not part of the Community per se but will be governed by a separate declaration of covenants, easements, conditions, and restrictions.

20. "District Assembly" shall mean and refer to the Missouri non-profit corporation, limited liability company, or unincorporated association formed by the Founder and whose members shall consist of all Owners living within a District.

21. "District Board" shall mean and refer to the Board of Directors of each District Assembly established by the Founder to govern each District as set forth in this Declaration.

22. "Dwelling" or "Dwellings" shall mean and refer to the homes constructed or to be constructed upon the respective Lots. Dwellings shall include Apartments, Condominiums, Cottages, Live-Work Units, Lofts, Row Homes, Single-family Homes, and Townhomes, Dwellings shall not include accessory buildings such as Garages or storage sheds.

23. "Entire Tract" shall mean and refer to the property set forth on the attached Exhibit A, incorporated herein by reference. The Entire Tract may or may not be added into the Community over time by amendment to the Declaration.

24. "Founder" shall mean and refer to the Founder and/or any Affiliates of the Founder and to its successors and assigns, if such successors and assigns should acquire more than one undeveloped Lot from the Founder for the purpose of development and is so designated on the deed to such party.

25. "Garage" shall mean and refer to any attached or detached Building or portion of a Building whose principal use is designed for the storage of one or more automobiles.

26. "Governors" or "Board of Governors" shall mean and refer to the Board of Governors of the Assembly.

27. "Improvements" shall mean and refer to any and all Buildings, structures, or other devices constructed, erected, placed, or maintained upon any Parcel which in any way affects, alters, or causes a change in the exterior appearance of such Parcel or any Building situated

thereon. Improvements shall include, by way of illustration and not limitation, all Buildings, structures, sheds, foundations, covered patios, weather vanes, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, swimming pools, tennis courts, tree houses, playhouses, swing sets, trees, shrubbery, landscaping, fences, screening, walls, signs, and any other artificial or man-made changes or alterations to the natural condition of any Parcel and any fixtures, appurtenances, personal property or devices installed, erected, constructed, attached, placed or maintained on the exterior of any Building situated on any Parcel. The term "Improvements" shall also mean any grading, excavation, or fill work undertaken on any Parcel and shall include the planting or removal of plants, trees or other landscaping materials; provided, however, that notwithstanding the foregoing, the removal of dead or diseased trees, shrubbery or other plant life or material, the planting of additional trees, shrubbery, flowers, plant life, or other plant matter on a Parcel following the installation of the initial landscaping for such Parcel (as approved by the New Town at St. Charles Architectural Review Board) shall not be deemed to be "Improvements" to a Parcel.

28. "Live-Work Units" shall mean and refer to the Buildings that are situated within the Community and used as both Residential and Commercial Structures.

29. "Lot" or "Lots" shall mean and refer to the separately designated and numbered lots shown on each Plat, each of which contain or shall contain a single Dwelling or Garage, or the separately designated and numbered lots indicated on any supplemental plat of property subjected to this Declaration from time to time.

30. "Occupant" includes any family members, guests, tenants, agents, servants, employees, and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees, and any other person who occupies or uses any Residential Structure within the Community. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Residential Structure.

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

32. "Parcel" shall mean and refer to any separately delineated and designated plot of ground or block of airspace within the Community including any plot designated as a Lot, Unit, or Commons.

33. "Parking District Use Committee" shall mean and refer to the committee established by the Assembly for the allocation of the number and use of parking spaces in The New Town at St. Charles, the maintenance and repair thereof, and promulgation of restrictions and rules with respect to such parking areas.

34. "Permanent Occupant" shall mean and refer to a person who occupies a Dwelling for more than eight (8) weeks in any calendar year.

35. "Plat" shall mean and refer to the plat of The New Town at St. Charles Plat One recorded in Plat Book _____, page _____, of the Office of Recorder of Deeds' for the County of St. Charles, Missouri, a copy of which is being recorded simultaneously with this Declaration and is incorporated herein by reference and which plat reflects, among other matters, the Lots, the Commons, and certain utility easements. "Plat" shall also mean and refer to any additional subdivided property made subject to this Declaration from time to time by amendment in the manner provided herein.

36. "Regulating Plan" shall mean and refer to the map showing the various zoning categories as approved by the City, including the form and location of public open spaces, and the type and trajectories of the various thoroughfares and transect zones. The platting of lots within the Regulating Plan is illustrative only. Until the Turnover Date, the Regulating Plan is subject to changes based on market conditions, Governmental Regulations and any other modifications which the Town Architect may, in its sole discretion, elect to make to the Regulating Plan. After the Turnover Date, the Regulating Plan may be changed and modified as approved by the General Assembly.

37. "Residential Structures" shall mean and refer to individual dwelling units, including both detached and attached units, townhouses, row homes, apartments, condominium units, senior housing, or other living spaces used primarily for habitation by one or more individuals as their dwelling place who may or may not be part of a family.

38. "Rules and Regulations" shall mean and refer to rules and regulations for the Community adopted by the Board from time to time, which Rules and Regulations are subject to modification and amendment from time to time and at any time by the action of the Board. The Rules and Regulations are incorporated by reference into this Declaration.

39. "Senior Housing" shall mean and refer to Residential Structures of which at least eighty percent (80%) of the occupied units shall be occupied by at least one person who is 55 years of age or older, and all Permanent Occupants must be at least 18 years of age or older.

40. "*The New Town at St. Charles Guild*" shall consist of those persons identified from time to time by the Architectural Review Board who are engaged in the business of (i) constructing Buildings for resale and who apply and are admitted to The New Town at St. Charles Builder's Guild by the Architectural Review Board, making them eligible to purchase Lots and build Buildings in the Community for resale so long as such persons remain participants in good standing in The New Town at St. Charles Guild, (ii) constructing or erecting fences and who apply and are admitted to The New Town at St. Charles Contractor's Guild by the Architectural Review Board, making them eligible to erect or construct fences in the Community so long as such persons remain participants in good standing in The New Town at St. Charles Guild, and (iii) designing, planning, establishing, constructing, planting, or placing landscaping and who apply and are admitted to The New Town at St. Charles Landscaper's Guild by the Architectural Review Board, making them eligible to design, plan, establish, construct, plant or place landscaping in the Community so long as such persons remain participants in good standing in The New Town at St. Charles Guild .

41. "Town Architect" shall mean and refer to the individual selected to administer the Design Standards in accordance with the following requirements and who shall have such other responsibilities as are ascribed to the office of the Town Architect for the Community in this Declaration and the Code.

a. Selection. The Town Architect shall initially be selected by the Founder and shall serve at the Founder's pleasure. At any time prior to the occurrence of the Turnover Date, the Town Architect may be changed from time to time and at any time, with or without cause, solely by the Founder acting in its sole discretion. After the Turnover Date, the Board shall have the right to select and remove, with or without cause, at any time and from time to time the Town Architect.

b. Qualification. The Town Architect shall have a professional degree in architecture or urban design from an accredited university or shall have comparable qualifications. The Town Architect does not, however, need to be licensed to practice in Missouri.

42. "Turnover Date" shall mean and refer to the earlier of (a) the date on which neither the Founder nor any Affiliate of the Founder no longer owns any Parcel within the Community or (b) the date on which Founder elects, in its sole and absolute discretion, to relinquish (i) all rights to appoint and remove members of the Board of Governors pursuant to this Declaration and the Bylaws and (ii) all voting rights in the Assembly reserved to the Founder pursuant to this Declaration and the Bylaws.

43. "Unit" shall mean and refer to a part of a Building including one or more rooms, occupying one or more floors or a part or parts thereof, designed and intended for any type of independent use, and having lawful access to a Common Way.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

Go West, young man, and grow up with the country. **ATTRIBUTION:** Horace Greeley (1811–1872), U.S. newspaper editor.

1. Existing Property. The real property that is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is the Community as shown on the Plat.

2. Additions to Existing Property. The Founder may cause additional properties to be made subject to this Declaration by executing and recording an amendment to this Declaration, all without the consent of any Owner, mortgagee or holder of any deed of trust encumbering the Community. The properties thus added may include areas and facilities that are to constitute a portion of the Commons. An amendment to this Declaration that adds to the

Community may contain special covenants and restrictions as to Dwellings, Buildings, and/or Commons so added to the Community.

ARTICLE III PROPERTY RIGHTS

1. Commons.

a. Right of the Assembly. The Assembly, subject to the rights reserved to the Founder and the rights and obligations of the Owners set forth in this Declaration as it may be amended and/or supplemented from time to time, shall have the right to and shall be responsible for the exclusive management and control of the Commons and improvements thereon, together with the fixtures, equipment, and other personal property of the Assembly related thereto. The Board of Governors shall be responsible for the maintenance, upkeep and repair of the Commons and for making any capital improvements and alterations thereto as set forth in Article V, Section 11.

b. Sidewalks and Parking Lots Upon or Serving Commercial Lots. Notwithstanding anything provided in this Declaration to the contrary, the use, maintenance, and repair obligations of various parking areas and sidewalks in the Commercial Districts shall be regulated in the following manner: (i) if accepted by the City, some parking lots and sidewalks shall become public parking lots and sidewalks, (ii) if not dedicated to the City by the Founder or his successors in interest, some parking lots and sidewalks shall be available for public use but maintained by the Assembly as specified in either the plat containing such lots, a declaration of covenants, deed, or other instrument executed by the Founder and recorded in the St. Charles County Recorder of Deeds office, (iii) if not dedicated to the City or designated for maintenance by the Assembly, some parking lots and sidewalks shall be available for public use but maintained by a separate association to which ownership or an easement over such lot and/or sidewalk is granted, (iv) if not dedicated to the City or designated for maintenance by the Assembly or any other association, some parking lots and sidewalks shall be available for public use but maintained by the Owner of each Parcel within a Commercial District within or upon such Owner's Parcel and any other areas on or adjacent to such Owner's Parcel up to the curb of the street or roadway abutting such Lot. Notwithstanding the foregoing, any Owner may apply to the Parking District Use Committee to reserve spaces in a particular parking lot for special events, commercial business use, or overnight parking in the case of a residential use contained in a Live-Work Unit. The Commercial Districts within the Community may be subject to separate covenants or declarations whereby the cost of maintaining the sidewalks and parking lots within the Commercial District shall be paid on a prorata basis by and among the Owners of any such Parcels therein and the maintenance of such sidewalks shall be performed by one or more owners' associations which may be established for any of the Commercial Districts.

The foregoing maintenance and repair obligation shall extend to and include the repair and replacement of all sidewalks, the general cleaning and removal of snow, debris, trash, rubbish and litter therefrom and, to the extent approved by the Board of Governors, any and all landscaping situated on or adjacent to the sidewalks in any of the Commercial Districts. Notwithstanding that parking lots situated within any Commercial Districts may be maintained by the Owners of all Parcels within such Commercial Districts or any owners' association established for such Commercial Districts, on-street parking within any of the Common Ways shall be deemed part of the Commons which will be maintained by the City in the case of any dedicated public way and by the Assembly in the case of any private street.

c. Maintenance Occasioned by Acts or Omissions of Owners. In the event that the Board of Governors determines that any maintenance, cleaning, repair, or replacement for which the Assembly is responsible is caused by either the negligent or willful acts or omissions of any Owner or Occupant, then the Board, in addition to the exercise of any other rights and remedies set forth in this Declaration, may give such Owner written notice of the Board's intent to provide such necessary maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner, which notice shall set forth in reasonable detail what action is deemed necessary to be taken by such Owner. Except in the event of emergency situations, such Owner shall have five (5) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such five-day period, to commence such maintenance, cleaning, repair, or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to promptly comply with the provisions hereof after said notice, the Board of Governors may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner, in which event said costs shall be a personal obligation of such Owner, shall constitute an Individual Parcel Assessment to such Owner, and shall be subject to the lien and foreclosure set forth in Article VIII, Section 1, herein. If, and to the extent that, the Board of Governors undertakes any action against an Owner pursuant to this Section, then all costs and expenses incurred by or on behalf of the Assembly, including, without limitation, reasonable administrative costs and expenses, attorneys' fees, and court costs, if any, and any other costs and expenses incurred by the Board of Governors in curing any default by such Owner shall be due and payable on demand by such Owner and such costs and expenses shall also be deemed to constitute Individual Parcel Assessments payable by such Owner and shall be recoverable by the Board of Governors in accordance with the terms and provisions of the Declaration.

d. Owners' Easements and Rights of Enjoyment in the Commons. Subject to the terms and provisions of this Declaration, each Owner and Occupant shall have a nonexclusive, perpetual right and easement of ingress, egress, use, and enjoyment over, across, upon, in, and to the Commons, which easement shall include, without limitation, the right of access to and from, and use of, the Commons and the right to use access, utility, water, sewer, drainage, and ponding easements therein. Such right and easement shall be appurtenant to and shall pass with the title to each Parcel that is part of the Community, shall not be severable therefrom, and shall be subject to the following provisions:

- (i) the right of the Assembly to charge reasonable admission and other fees for the use of any recreational facility situated upon the Commons;
- (ii) the right of the Assembly to suspend any Owner's voting rights and right of such Owner, his family, guests, and invitees to use the recreational facilities for any period during which any Assessment against such Owner's Lot remains unpaid; and the right to suspend the same for a period not to exceed sixty (60) days for any infraction of the Assembly's published rules and regulations;
- (iii) the right of the Assembly or the Founder to dedicate all or any part of the Commons to any public agency, authority, or utility for such purposes and subject to such conditions as may be deemed advisable by the Assembly;
- (iv) the right of each other Owner and Occupant to the use of the Commons, as provided and limited in this Article;
- (v) the restriction that no Owner or Occupant shall operate, drive, ride, store, or otherwise place any motorized vehicles on, in, or about any part of the Commons other than the Common Ways, including, but not limited to, cars, go-carts, trailers, recreational vehicles (RVs), sleds, snow mobiles, recreational motor vehicles, trucks, vans, all-terrain vehicles (ATVs), motorcycles, motorized bicycles, motortricycles, dirt bikes, minibikes, tractors, truck-tractors, campers, and house trailers;
- (vi) the restriction that no Owner or Occupant shall operate, drive, ride, store or otherwise place any motorized watercraft, including, without limitation, boats, vessels, motorboats, and jetskis on, in, or about any part of the Commons and that any swimming, ice skating, or other water activity shall be strictly at the risk of such Owner, member, guest, or invitee as no such activity shall be supervised by any lifeguard or other safety personnel;
- (vii) the easements, uses, limitations, conditions, reservations, and restrictions hereinafter provided in this Declaration;
- (viii) the Rules and Regulations as established from time to time by the Board;
- (ix) the right of the Founder and any Builder to use the Commons for sign placement purposes during periods of construction and development;
- (x) the right of the Founder and the Governors, on behalf of the Assembly, to negotiate with any public agency for the conveyance of all or any part of the Commons, for any public purpose, and to execute such instruments as may be necessary for such purpose, subject to the proceeds of any such conveyance being held by the Assembly in trust for the Owners; and

- (xi) the Founder's and any Affiliate of the Founder's right to use the Commons as set in this Declaration and the rights reserved to the Founder as provided elsewhere in this Declaration.

Each Owner and Occupant shall use and exercise their easement rights over the Commons in a reasonable manner so as not to endanger or harm others, create a nuisance for others, or cause any obstruction or impediment to the use of the easements created by this Declaration by others authorized to use them. Any Owner may delegate, subject to the provisions of this Declaration and the Rules and Regulations, such Owner's right to enjoyment of the Commons to any Occupant who either resides on the Parcel or are accompanied by such Owner while using any of the Commons. Subject to the rights granted by the Founder to third parties to use the Commons as allowed under this Declaration, the Board may adopt additional rules and regulations from time to time which limit, restrict, or prohibit the use of any recreational facilities constituting part of the Commons by any person who is not an Owner or which impose fees or charges on the use of any of the Commons by any persons who are not Owners.

e. Conveyance of Title. Subject to the right of the Founder to dedicate or convey all or portions of the Commons to a governmental entity, for-profit, or not-for-profit entity, title to the Commons shall be conveyed to the Assembly no later than the Turnover Date. For those Commons that are easements or other rights, the Assembly shall be the holder of those rights. Upon termination of the Declaration, title to the Commons shall vest in the then Owners as tenants in common. The rights of such tenants shall only be exercisable appurtenant to and in conjunction with their Lot ownership and any conveyance or change of lot ownership shall convey ownership in the Commons, as no interest in the Commons shall be conveyed by any such tenant except in conjunction with the sale of such tenant's Lot.

f. Limitation of Liability. The Board of Governors shall endeavor to use reasonable judgment in maintaining the Commons and enforcing traffic control measures, but neither the Board of Governors nor the Founder makes any representation or assumes any liability for any loss or injury. Neither the Board of Governors nor the Founder shall be liable for any injuries or damage to person or property (a) caused by the elements, acts of God, or any Owner or other person, (b) resulting from any surface or subsurface conditions or which may be caused by rain or any other surface water which may leak or flow from any portion of the Commons or another Lot or Parcel onto a Lot or any Improvements thereon, (c) resulting from theft, burglary, or other illegal entry onto any Lot or any Improvements thereon or any of the Commons, (d) resulting from improper design of the Commons or improvements therein, or (e) resulting from swimming, fishing or any other water activities in any of the lakes in the Commons.

No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the General Assembly or the Founder to take some action or perform some function required to be taken by or performed by the General Assembly hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the General Assembly or from any action taken by the Assembly to comply with any applicable governmental regulations of any applicable governmental authority.

2. Surface Water or Stormwater Management System. Each District Assembly shall have the right to maintain and cause all Owners within such District to maintain proper drainage within the Community in accordance with the grading plan approved by the City, as the same may be amended from time to time. In the exercise of this right, each District Assembly shall have a blanket easement and right on, over, across, under, and through all portions of the Community within such District not owned by the Founder or any Affiliate of the Founder to maintain and to correct drainage of surface water provided, however, that as provided below, each Owner shall be solely responsible for providing and maintaining adequate soil erosion measures and drainage facilities on such Owner's Parcel. This easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health or safety or to comply with applicable governmental regulations; provided, however, that the District Assembly shall not be obligated to undertake any of the foregoing actions. Notwithstanding the foregoing, following conveyance by the Founder, each Owner shall provide and maintain on his or her Parcel adequate soil erosion measures and drainage facilities to accommodate any stormwater runoff from and coming onto such Owner's Parcel or resulting from any Improvements being or having been constructed on such Owner's Parcel. Each Owner shall also insure that his or her Parcel and any Improvements thereto are at all times in strict compliance with (a) all soil erosion protection requirements of the City, (b) all stormwater drainage and runoff requirements and regulations of the City and (c) all over applicable governmental regulations. **Each Owner, by acceptance of a deed to his or her Parcel, shall and does hereby indemnify, defend and agree to hold the Founder, the Architectural Review Board, the District Assembly within which such Owner's Lot is located, and their respective agents, employees, officers, directors, shareholders, members, managers, and representatives harmless from and against any and all other amounts suffered, paid, or incurred by any of them in connection with any action, suit, or proceeding (including the settlement of any suit or proceeding) to which any such person may be made a party by reason of the breach by such Owner (or any breach by such Owner's Occupants, contractors, subcontractors, guests, agents, employees, or invitees) of any of the terms and provisions of this Section 2.**

3. Utilities.

a. Water Lines. It is intended that all water supply lines (other than those service lines that may be located within the boundaries of a Lot) shall be owned and maintained by the City. Most water supply lines will be placed adjacent to Common Ways.

b. Waste Treatment. Waste water (sanitary sewer) treatment services for the Community will be provided by the City who shall assess and collect from each Owner a fee for such services. This Declaration establishes easements in favor of the City for rights of access over any Parcel for the purpose of installing, repairing, and replacing sanitary sewer lines, pipes, conduit, and other apparatus in connection with providing such services to the Community. Further, each Parcel and Unit is burdened with an easement to allow any other Lot Owner to place a lateral line underground and across such Parcel for the purpose of connecting to the main line of any sanitary system or any equipment that is part of such system and transmitting sanitary sewage through such line.

Such easements are included within the utility easements reserved by the Founder pursuant to Article X, Section 6.(b) herein.

c. Cable Television. The Founder, for itself and its successors and assigns, reserves the right to install, maintain, and repair within any portion of the Community's lines, pipes, wiring, conduit, and other apparatus and equipment for cable television and Internet service (including fiber optic service or such other technologies which may become available in the future) and other communication purposes. The Founder or its assigns may collect a fee for such service.

d. Owner Responsibility for Utility Services. Each Owner shall, at such Owner's sole cost and expense, be responsible for (i) constructing, installing, maintaining, repairing, and replacing all necessary lines, pipes, wiring, conduit and equipment necessary to connect any Improvements located on such Owner's Parcel to all utility lines, pipes, wiring, conduit, or other apparatus situated adjacent to or within the boundaries of such Owner's Parcel or which may be situated within the right-of-way of any Common Ways situated adjacent to such Owner's Parcel, which obligation shall include the installation, maintenance, repair and replacement of any grinder pumps, vacuum systems, and/or related equipment to the extent the same are necessary in order to provide or obtain sanitary sewer service and (ii) paying all reservation, tap, impact, service, demand, use, license, permit, and other fees, charges, costs and expenses charged by the applicable utility companies or utility providers to provide any such services to such Owner's Parcel.

e. Trash and Garbage Service. The City shall be solely responsible for arranging for the provision for the removal of all trash, garbage, rubbish, refuse, waste, and debris (including, without limitation, tree and shrubbery clippings, grass clippings, and the removal of any dead or diseased trees and flora) from such Owner's Parcel, provided, any payment for such service shall be the responsibility of the Owner and, provided, further, the continuance of any such service is within the discretion of the City.

4. Assembly Right to Grant Easements and Certain Easements Over Lots and Commons. The Assembly shall have the right to grant permits, licenses, and easements over the Commons for utilities, access, and other purposes necessary or desirable for the operation of the Community.

A perpetual, nonexclusive easement is hereby established in favor of the Assembly, its employees, agents, contractors, successors, and assigns for a reasonable right of entry on any Lot to perform repairs or to do other work reasonably necessary for the proper maintenance of the Commons and/or to perform any of the powers, rights and duties available to or imposed upon the Assembly by this Declaration and/or the Bylaws of the Assembly, including, without limitation, enforcing the covenants and restrictions imposed by this Declaration.

5. Founder's Rights. Prior to Turnover Date, the Founder may, in its sole discretion, at any time and from time to time, make changes that the Founder believes will better accomplish the objectives of the Community, adjust to market conditions, or respond to changing land use conditions both within and without the Community, including, any of the following:

a. Development. The Founder may, in its sole discretion, at any time and from time to time:

- (i) amend and modify any portion of the Code, including, without limitation, the Regulating Plan or this Declaration;
- (ii) change District boundaries at any time by expanding, altering, or contracting any of the same or change the name of any District;
- (iii) add property from the Entire Tract to the Community;
- (iv) release all or any portion of the Community from the provisions of this Declaration, including, without limitation, any Lot, Parcel or Commons;
- (v) change the use of any Parcel or classification of any transect zone or uses permitted within a transect zone; and
- (vi) erect windmills, ground source heat pipes, sinks or pumps, or other technology, devices or equipment as alternative sources of energy production within any part of the Commons.

The Founder may exercise any of the foregoing development rights by executing and recording an amendment to this Declaration or, in the case of a change of use of a transect zone by filing an amendment to the Code of The New Town at St. Charles with the City, all without the consent of any Owner, mortgagee, or holder of any deed of trust encumbering the Community. In addition, the Founder may record one or more revised or amended plats if the Founder deems it necessary in connection with the same.

b. Reservation of Right to Receive Certain Funds. The Founder further reserves the right to receive any money consideration which may be refunded or allowed on account of any sums previously expended or subsequently provided by it for joint main sewers, sanitary sewers, storm sewers, gas pipes, water pipes, conduits, poles, wires, street lights, roads, streets, traffic signals, recording fees, Community fees, consultation fees, or any fees, charges, and expenses incurred with respect to the development and creation of the Community.

c. Consent of Founder Required for Changes. Prior to the Turnover Date, no modification of the Code or this Declaration may be made without the prior written consent of Founder. From and after the occurrence of the Turnover Date, the Town Architect may make any of the modifications to the Design Standards subject to the prior written consent of the same by the Board of Governors.

d. Signage Easement. Until the Turnover Date, there is reserved to the Founder and each Builder a nonexclusive easement over all Lots and Commons, for a distance of ten (10) feet behind any Lot line or Commons boundary line that parallels a street, for the purpose of erecting and maintaining street intersection signs, directional signs, promotional or sales signs, entrance features, lights, stone, wood, or masonry wall features and/or related landscaping.

e. Commercial Areas. The Founder intends to develop commercial areas within the Community, as the same may be modified from time to time, as Commercial Districts that are intended to be an integral part of the community. These Commercial Districts may be subject to special conditions and assessments. Alternatively, any of the Commercial Districts within the Community may be subject to additional or supplemental restrictive covenants and otherwise be maintained by a separate association.

f. Interconnectivity. The Community is intended to follow traditional neighborhood design principles that allow interconnectivity of streets with neighboring communities. Certain streets on the Regulating Plan end at the boundary of the Entire Parcel so that areas that are developed later may connect with those streets. If the neighboring property is developed in a way that interconnectivity is not possible or not permitted by the applicable governmental authority, then the Founder reserves the right to convert the street ends to additional Lots or other uses.

g. Display Homes, Sales and Management Offices. The Founder reserves for itself, its successors, and assigns and such third parties or entities as the Founder may designate, including other Builders, the right to build, maintain, operate, and relocate from time to time one or more sales offices, management offices, and an unlimited number of display homes within the Community and/or to use Buildings that may be designated for Civic Use for purposes of selling Parcels and otherwise promoting and managing the Community.

h. Commercial Use of Images. Prior to the Turnover Date, no part of the Commons nor any other exteriors of any Improvements of any Commercial or Residential Structures or parts thereof, including any Parcels and Improvements therein, may be photographed, sketched, painted, or otherwise reproduced for any promotional, publishing, academic, or commercial use (including, without limitation, its use as a background for the display of fashions or other goods) without the prior written consent of the Founder. Such exteriors may be reproduced without the consent of, or payment to, the Owner of such Parcel. Notwithstanding the foregoing, an Owner may photograph any part of the Community for personal, non-commercial reasons and may independently grant reproduction rights for any Parcel and any Improvements thereto owned exclusively by that Owner, in which case the consent of the Founder shall not be required by such Owner. The Founder may collect a fee for its consent to the use of Commons or common area images or for the providing of support services to photographers or others.

i. Use of the Name New Town. The names "The New Town at St. Charles" and "New Town" are business assets of the Founder and are currently registered or in the process of registration for federal and state trademark protection. An Owner may use the name "The New Town at St. Charles" or "New Town" to describe the location of their home or a business, or may advertise a business as being located in the Community, provided, any such use that is associated with a business shall also use a symbol or explanation disclosing trademark or service mark registration of the name "The New Town St. Charles" or "New Town" by the Founder. Owners may not use the name "The New Town at St. Charles" or "New Town" in any other manner without the express permission of the Founder, which may be arbitrarily denied. No business entity, regardless of the type or nature of the business, that contains the words "New Town" in

its name, or uses those words or any variation in spelling or construction of those words, in its course of business or in its advertising, will be permitted to be located in the Community, to advertise in the Community, or to do business in the Community, except with the prior, written consent of the Founder, which may be withheld in the Founder's sole discretion. Upon any violation of this restriction, the Founder may, in its sole discretion, (i) seek immediate injunctive relief to restrain such use, (ii) obtain liquidated damages from such violator in the amount of \$1,000 per day for each violation for so long as such violation continues, and (iii) seek such other remedies as may be available under Missouri or federal law or in equity. Any Owner that is leasing all or any part of a Parcel shall place this restriction on the use of the name "The New Town at St. Charles" and "New Town" in the lease for such space and shall be responsible for any violation of this restriction by any such tenant. Each Owner shall indemnify and hold the Founder harmless from and against any demands, claims, damages, liabilities, causes of action, losses, costs and expenses, including, without limitation, attorneys' fees and costs of suit, arising from or in connection with any violation of this restriction by such Owner or such Owner's tenants, agents, employees, contractors, successors, and assigns and consents to the immediate entry of injunctive relief against such Owner and any such tenants, agents, employees, contractors, successors, and assigns for violation of this restriction.

j. Dedication and Conveyance of Commons. As provided elsewhere in this Declaration, the Founder has reserved the right to dedicate any of the Common Ways as public roadways to the City of St. Charles, Missouri, and the Founder is authorized, without obtaining the consent or the approval of any Owners or Mortgagees, to grant easements or otherwise convey by deed any other portion of the Commons to any third parties. While the Founder intends that all or part of the Commons will be conveyed to the Assembly, the Founder expressly reserves the right not to convey all or any part of the Commons or to convey the same subject to the Founder's right to (i) dedicate all or part of the Commons to the City for public use, (ii) convey parts of the Commons to a separate, independent operating entity (which may be a for-profit or non-profit entity) which may require the payment of a membership fee in order to use the improvements contained therein, (iii) retain or reacquire for no consideration fee title to such land for the purpose of building structured parking or other Improvements, including those that are occupied by persons for residential, commercial or civic use therein, all without compensation or reimbursement to the Assembly. If the Founder desires to retain or reacquire any part of the Commons as aforesaid, it may do so by giving notice to the Assembly at any time, and upon the giving of such notice, the Assembly shall immediately convey such designated land to the Founder by special warranty deed.

k. Reservation of Easement by Founder. The Founder does hereby establish and reserve, for itself and the Assembly and its respective agents, employees, representatives, invitees, successors, and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, under, through, and upon all of the Commons for the purpose of (i) providing access to and from any Parcels or any other real property (whether situated within or outside of the Community) owned by the Founder or any Affiliate of the Founder, (ii) installing, maintaining, repairing, and replacing any Improvements to any portion of the Community or to any of the Commons, including, without limitation, sidewalks, walkways, traffic, informational, and directional signs, (iii) using and enjoying any and all of the Commons for such purposes as the Founder may deem appropriate, and (iv) doing all other things reasonably necessary and proper

in connection therewith; provided, however, that in no event shall the Founder have any obligation to undertake any of the foregoing.

The Founder further reserves the right, but shall not have any obligation, to (1) grant to other third parties, including, without limitation, school boards, school districts and any students and teachers thereof, this non-exclusive right and easement, in common with the Founder, the Assembly, and all Owners, to use any of the Commons and (2) convey by quit claim deed to the Assembly at any time and from time to time any real property and any Improvements thereto to be utilized as part of the Commons, as the Founder, in its sole and absolute discretion, may determine.

l. Open-Air Market and Festivals. The Founder reserves, for itself, its agents, employees, representatives, designees, invitees, successors, and assigns the permanent and perpetual right to use any portions of the Commons as an open-air market for the rental of space for pushcarts, kiosks, stands, or similar temporary sales structures. Such uses may be for special events or on a recurring or daily basis. Founder also reserves, for itself, its agents, designees, employees, representatives, invitees, successors, and assigns, the right to use portions of the Commons for festivals or other events intended to enrich and enliven the Community. Founder further reserves a right of access through the Commons for all such purposes. Founder may, but is not obligated to, assign such rights to the Assembly or to any other third party at any time.

m. Conservation Areas. The Founder reserves the right, in its sole and absolute discretion, at any time and from time to time to grant conservation easements or otherwise convey by deed to any third party, including, without limitation, a tax-exempt entity qualified under Section 5.01 (c) (3) of the Internal Revenue Code of 1954, as revised, any portion of or rights in any of the Commons, without any requirement that the consent or approval of any Owner, Mortgagee, or the Assembly be obtained.

n. Exemptions from Design Standards. Notwithstanding anything provided in this Declaration to the contrary, the Founder may, in its sole and absolute discretion, grant exceptions or exemptions from any of the terms and provisions of relating to the Design Standards or otherwise modify, extend, release, or waive any of the terms and provisions of the Design Standards pursuant to a written instrument executed by the Founder. The issuance or granting of any exemption or exception by the Founder to any one Parcel shall not obligate the Founder to grant any such similar exemption or exception to any other Parcel.

Each Owner, by acceptance of a deed to any Parcel, does hereby acknowledge and agree that the Founder shall have the right to take any and all of the foregoing actions specified in this Article III, Section 3 without any obligation or requirement that the consent or approval of any Owner or Mortgagee be obtained. To the extent any new or additional District classifications are made pursuant to this Section 3, then the allocation of values and voting rights set forth in the Bylaws and Declaration shall be subject to amendment as provided therein.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS IN THE

GENERAL ASSEMBLY AND DISTRICT ASSEMBLIES

No man is an island entire of itself; every man is a piece of the Continent, a part of the main.... Any man's death diminishes me because I am involved in Mankind; and therefore never send to know for whom the bell tolls; it tolls for thee.

Attribution: John Donne "Devotions Upon Emergent Occasions," Part XVII, Meditation

1. Membership. Every Owner within a District (excluding the Assembly or the City) of a Parcel within the District shall be a member of the District Assembly within which such Parcel is located. Membership in the District Assembly shall be appurtenant to and may not be separated from ownership of any Parcel. The General Assembly shall not have Members but shall be comprised of representatives appointed by each of the Boards of Directors of each of the District Assemblies, as set out below.

2. Votes. Adjusted by the provisions of Article VI, Section 2 hereof, all Owners, including Founder with respect to unsold Parcels, shall be entitled to one vote in each District Assembly for each Parcel owned by such Owner located within such District and in no event shall more than one vote in any District Assembly be cast with respect to any Parcel in such District. If any Owner consists of more than one person, the voting rights of such Owner shall be exercised as if the Owner consisted of only one person. For purposes of determining votes, Parcels that contain only a Garage and no other Residential or Commercial Structure shall not be included.

3. Proxies. At all meetings of each District Assembly and the General Assembly, any Owner or Board Member, as the case may be, may vote in person or by proxy. All proxies shall be in writing, signed by the giver of the proxy, state that the giver of the proxy is appointing the proxy holder to vote for the proxy giver at a designated meeting or meetings, and be filed with the Board of the District Assembly or General Assembly, as applicable. Every proxy shall be revocable and shall automatically cease upon the conveyance by the giver of the proxy of such proxy giver's Lot.

4. District and General Assembly Meetings. Meetings of each District Assembly and the General Assembly shall be held at a location within the Community or at such other place in St. Charles County, Missouri, as may be specified in the written notice of the meeting. The first annual meeting of each District shall be called by the Board of Directors for such District at such time as the District Board deems appropriate, but in any event no later than sixty (60) days after Founder sells the last Parcel in such District owned by the Founder to a third party Owner, and thereafter the annual meeting of such District Assembly shall be held on the same day of each year on the anniversary date of the first annual meeting called by the District Board at the same hour or at such other date or hour specified in the written notice of such meeting. Special meetings of any District Assembly may be called by the President of such District Assembly, a majority of the District Board, or by Owners having at least one-third (1/3) of the votes in the District Assembly. Written notice of the place, day and time of the annual meeting and all special meetings shall be delivered not less than five (5) days before such meetings to all Owners and District Board members, if such Board Members are not Owners and to those institutional

holders of a first mortgage or first deed of trust on any Lot that have requested such notice by written notification to the District Board no fewer than ten (10) days prior to any such meeting. Any Owner or holder of a first mortgage or first deed of trust shall have the right to designate a representative to attend all annual and special meetings. If sent by mail, notice shall be deemed delivered when deposited in the United States mail, with postage thereon prepaid, addressed to the person or entity entitled to notice at his or her last known address.

5. Quorum. A quorum of Owners for any meeting shall consist of Owners having one-tenth (1/10) of the votes in the District Assembly, whether present in person or by written proxy submitted to the District Board at or before the meeting. Unless otherwise provided herein, the decision of a majority of a quorum shall be valid as the act of the District Assembly. If a quorum is not present at any meeting, another meeting shall be called as provided above, and business may be conducted at said second meeting if at least one-tenth (1/10) of the Owners attend in person or by proxy.

ARTICLE V
BOARD OF GOVERNORS OF THE GENERAL ASSEMBLY
AND
BOARDS OF DIRECTORS OF DISTRICT ASSEMBLIES

The best argument against democracy is a five-minute conversation with the average voter. Attribution: Winston Churchill

1. Number and Terms of District Assembly Directors.

The Board of Directors of each District Assembly shall, except as otherwise provided herein, consist of five (5) persons, with each person elected by a majority vote of a quorum of Owners that own Parcels within the District. Except as otherwise provided herein, each such Director shall hold office for the term of one year and until his successor shall be elected and qualified. Except for the special elections of Directors who replace Directors appointed by the Founder to the District Assembly Board, elections for Directors that are not appointed by the Founder shall be held in the month of November or December of each year for the next succeeding calendar year.

The Founder shall initially appoint all five (5) of the Directors to each of the District Assembly Boards, who shall serve until they are replaced by the Founder or in an election as set out herein. Within four months after the closing of the sale by the Founder to a non-affiliated third party of fifty percent (50%) of the Parcels in such District (or at such earlier time as the Founder may elect), two District Directors appointed by the Founder shall resign and the District Assembly Board for such District shall conduct a special election by mail or through a called meeting through which two Directors shall be elected by a majority vote of a quorum of Owners within the District. The District Directors so elected shall serve until the end of the calendar year following their election or until their successor is elected and qualified.

Within four months after the closing of the sale by the Founder to a non-affiliated third party of ninety percent (90%) of the Parcels in such District (or at such earlier time as the Founder may elect), two more District Directors appointed by the Founder shall resign and the District Board shall conduct a special election by mail or through a called meeting through which two additional Directors shall be elected by a majority vote of a quorum of Owners within the District. The District Directors so elected shall serve until the end of the calendar year following their election or until their successor is elected and qualified.

Within four months after the closing of the sale by the Founder to a non-affiliated third party of all of the Parcels in such District (or at such earlier time as the Founder may elect), the remaining District Director appointed by the Founder shall resign and the District Board shall call a special election through which this last Director shall be elected by a majority vote of a quorum of Owners within the District. The District Director so elected shall serve until the end of the calendar year following such Director's election or until such Director's successor is elected and qualified.

Notwithstanding any provision contained herein to the contrary, Founder shall have the sole right and authority to remove, replace, and/or fill the vacancy of any Director appointed by Founder.

2. Number and Terms of Board of Governors.

Owners shall not vote for Governors to the Board of Governors of the General Assembly and in lieu of such vote, the Board shall have a self-perpetuating Board of Governors, selected as provided herein. The Board of Governors shall initially consist of five (5) individuals, all appointed by the Founder ("Founder Members"), and shall subsequently be increased as Districts are created by the Founder. No later than the first anniversary of the creation of each District, each Board of Directors of each District Assembly shall select two (2) individuals who live within the District (who may also be, but are not required to be, District Board members) to serve on the General Assembly Board of Governors ("District-Appointed Directors"). Each such District-Appointed Director on the Board of Governors shall serve for a term of one year or until his successor shall be appointed. Except for such initial appointment, District-Appointed Directors shall be selected on the second Tuesday in January of each year, and shall serve for a term of one year or until their successor shall be appointed. District-Appointed Directors may be re-appointed by any District Assembly Board to the General Assembly Board of Governors. Founder Members shall serve until the Turnover Date or until the Founder decides, in its sole discretion, to replace any such Founder Member. Each Founder Member shall have four (4) votes on the Board of Governors while each District-Appointed Director shall have one vote on the Board of Governors. Founder Members shall not be required to live within the Community.

3. Election of District Assembly Board of Directors or Other Approvals by Mail.

Notwithstanding any provision of this Declaration to the contrary, elections of persons to any District Assembly Board of Directors or the approval of any matter reserved to the Owners in this Declaration may be conducted by mail. In order to conduct an election, the Board shall send a notice for each Parcel to the Owner(s) of such Parcel, addressed to the address of the Owner(s) then on file with the Assembly, notifying the Owner(s) of the election, and, in the case of an

election to a District Assembly Board, requesting nominations for such Board. In the case of the election to a District Assembly Board, the notice shall specify that nominations will be received for a period of three (3) weeks from the date set forth on the notice. Any Owner wishing to submit a nomination of an individual shall notify the District Assembly Board in writing of the name of the nominee; the nominee shall consent to such nomination in writing on the letter containing such nomination, and the nominee shall also sign the letter setting forth the nomination of the nominee. After receiving nominations or if the Board is seeking Owner approval of an action, proposal, or amendment by mail, the Board shall prepare a ballot (i) containing the names of all nominations validly submitted to the Board in accordance with the requirements hereof within the time limit established in the notice in the case of a District Assembly Board election, or (ii) setting forth the action, proposal, or amendment for which approval is being sought with the statement: "If you approve of the action, proposal, or amendment then mark the enclosed ballot 'Yes,' but if you disapprove of the foregoing action, proposal, or amendment then mark the enclosed ballot 'No'." The ballot shall have typed upon it the address of the Board to which the ballot must be returned and the date by which the ballot must be received by the Board in order to constitute a valid vote. The date by which ballots must be received shall be such date as the Board, in its sole discretion, selects, provided, in no event shall such date be sooner than ten (10) days or later than twenty (20) days after the mailing of the ballots to the Owner(s). The Board shall mail one ballot for each Parcel to the Owner(s) of such Parcel, addressed to the address of the Owner(s) then on file with the Board. Together with each ballot, the Board shall send an envelope, upon the outside of which is typed the name of the Owner(s) to whom the ballot is sent. After voting for the nominees, action, proposal, or amendment by marking the ballot, the Owner shall place the ballot within the envelope accompanying the ballot and shall sign the outside of the envelope next to the typewritten name of the Owner(s). This envelope must then be placed in an envelope addressed to the Board at the address set forth on the ballot and be personally delivered to such address or delivered to such address after being deposited in the United States Mail, postage prepaid, within the required time limit. All ballots received within the required time limit, properly marked and sealed, and within the accompanying signed envelopes, shall be counted by the Board and results shall be announced within seven (7) days after the deadline for receiving the ballots to the Owner(s) by the Board in a mailing notice to all Owner(s) at the addresses of the Owner(s) then on file with the Board.

4. Qualifications. District Assembly Directors and District-Appointed Directors to the Board of Governors must own at least one Parcel in the Community but do not need to reside in the Community. Members to any District Assembly Board or the Board of Governors who are appointed by the Founder shall not be required to own any Parcel in the Community or reside within the Community. Except as otherwise provided herein, if a Director shall cease to meet such qualifications during his term, such Director shall immediately cease to be a Director and such Director's place on the Board shall be deemed vacant.

5. Vacancies. Any vacancy occurring in a District Assembly Board shall be filled by the remaining District Directors on such Board, with the successor elected by the Owners in such District at the next election as set forth in Section 2 above. Any vacancy occurring in the Board of Governors shall (i) in the case of a Board member appointed by a District, be replaced by the

District Assembly Directors from which such Director was initially appointed or, (ii) in the case of a Founder Member, be replaced by the Founder.

6. Meetings of District Assemblies, District Boards, and the Board of Governors. An annual meeting of each District Assembly shall take place in January of each year upon a date and time selected by the Board of Directors for such District Assembly. The Board of Directors of each District Assembly shall meet no less than once each quarter throughout each calendar year upon a date and time selected by such Board. The Board of Governors shall meet once each month throughout the year upon a date and time selected by the Board. Special meetings of any Board may be held upon a call by a majority of the Directors of such Board on not less than forty-eight (48) hours' notice in writing to each Director, delivered personally or by mail or telegram. Any Director may waive notice of a meeting or consent to the holding of a meeting without notice, or consent to any action of the Board without a meeting.

7. Removal. Any District Assembly Director elected by the Owners may be removed from office by Owners having two-thirds of the votes in such District and any District-Appointed Director may be removed from office by the District Assembly Board that appointed such Director. District Assembly Directors appointed by the Founder or Board of Governor members appointed by the Founder may only be removed from office by the Founder.

8. Quorum Requirements for District Boards and the Board of Governors. A majority of the number of Directors on each District Assembly Board shall constitute a quorum for the transaction of business and the act of a majority of the Board members at a meeting at which a quorum is present shall be the act of such District Board. In the absence of a quorum, a majority of the Board members present at a meeting, or the Director, if there be only one present, may successively adjourn the meeting from time to time, not to exceed thirty (30) days in the aggregate, until a quorum is obtained, and no notice other than an announcement at the meeting need be given of such adjournment. Prior to the Turnover Date a quorum on the Board of Governors shall consist of at least two Founder Members and, after the Turnover Date, a quorum on the Board of Governors shall consist of at a majority of the number on the Board of Governors.

9. Actions without Meetings. Any action that is required to or may be taken at a meeting of the Board of Governors or any District Board may be taken without a meeting if consents in writing setting forth the actions so taken, are signed by all of the Governors of the Board of Governors or such District Board, as the case may be. The consents shall have the same force and effect as the unanimous vote at a meeting duly held.

10. Compensation. District Assembly Board members and Board of Governors members shall receive such compensation for their services as may be approved by the applicable Board and consented to by a majority of the Owners .

11. Powers and Duties of the Board of Governors. The Board of Governors of the Assembly shall manage the Commons and affairs of the Assembly with respect thereto. The Board of Governors shall have and is vested with all powers and authorities, except as may be expressly limited by law or this Declaration, to supervise, control, direct, and manage the Commons,

affairs, and activities of the Assembly, to determine the policies of the Assembly, to do or cause to be done any and all lawful things for and on behalf of the Assembly, to levy Assessments, to exercise or cause to be exercised any and all of its powers, privileges, or franchises, and to seek the effectuation of its objects and purposes. Without limiting the generality of the foregoing, the Board of Governors may:

- a. administer the affairs of the Assembly and of the Commons;
- b. engage, if deemed necessary or appropriate, the services of a professional managing agent who shall manage and operate the Commons for all of the Owners, upon such terms and for such compensation and with such authority as the Board may approve;
- c. formulate policies for the maintenance, management, operation, repair, and replacement of the Commons and improvements and obtain such services that provide for the public health, safety and welfare of the Commons as the Governors may consider advisable;
- d. adopt and enforce administrative rules and regulations governing the maintenance, management, operation, repair, and replacement of the Commons and improvements, and to amend such rules and regulations from time to time;
- e. provide for the maintenance, management, operation, repair, and replacement of the Commons and improvements, including, without limitation, mowing, landscaping, planting, seeding, pruning, and care of shrubbery, removal of plants, maintenance, repair, and replacement of streets and street lights located within or adjacent to Common Ways (unless such maintenance, repair, and replacement shall be performed by a municipal entity), and maintenance, repair, and replacement of improvements located within the Commons;
- f. provide for payments for (i) any and all maintenance, management, operation, repair and replacement of the Commons and improvements therein and (ii) any and all professional services rendered by the Town Architect and other professionals retained by the Board or any District Assembly Board in accordance with such rates and agreements as the Board shall determine;
- g. provide for the levying and collection of Assessments pursuant to this Declaration, including, without limitation, General, Special and Individual Parcel Assessments, and to approve payment vouchers, or to delegate such approval to the officers or the managing agent;
- h. provide for the designation, hiring, and removal of employees and other personnel, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management, and operation of the Community and improvements, and to delegate any such powers to a managing agent (and any such employees or other personnel that may be the employees of said managing agent);

- i. estimate the amount of the annual budget and provide the manner of assessing and collecting from the Owners their respective shares of such common expenses, as hereinafter provided;
- j. collect funds owing to the Assembly from persons or entities other than Owners who, by provision of this Declaration, are entitled to use the Commons and who are obligated to share in expense for the improvement and maintenance of the Commons;
- k. grant easements and rights-of-way over the Commons to such utility companies or public agencies or others as the Governors shall deem necessary or appropriate and to make rules and regulations, not inconsistent with the law and this Declaration, for the use and operation of the Commons and in every and all respects governing the operation, funding, and usage thereof;
- l. receive, hold, convey, dispose, and administer, in trust, for any purpose mentioned in the Declaration, any gift, grant, conveyance, or donation of money or real or personal property;
- m. make all contracts and incur all liabilities necessary, related, or incidental to exercise the Board's power and duties hereunder;
- n. dedicate any Common Ways or portions thereof to appropriate agencies and to vacate or abandon easements in accordance with applicable legal procedures;
- o. obtain, in the Board's discretion, liability and hazard insurance on the Commons, as well as insurance protecting the Governors from any and all claims for damages arising out of any decision, act, or failure to act, of the Governors acting in their capacity as Governors;
- p. coordinate policies with and, as the Board deems appropriate, contract with *The New Town at St. Charles Trust* or such other non-profit entities as may be managing or operating the amphitheater or other entertainment venues in the Community;
- q. provide for the establishment, levying and collection of Assessments for the establishment and promotion of various funds for the promotion of the Community and/or the New Town at St. Charles Trust, pursuant to this Declaration, and to approve payment vouchers, or to delegate such approval to the officers or the m
- r. exercise all other necessary or appropriate powers and duties commonly exercised by a Board of Governors and all powers and duties of the Governors as stated in the Declaration;
- s. purchase a fidelity bond for any person or persons handling funds belonging to the Assembly or Owners;

t. enforce the Declaration with respect to the Commons and activities therein and any and all restrictions governing the Commons, and to take any and all necessary steps to secure the enforcement and compliance of the same; and

u. exercise any and all other powers or acts as are authorized by the Declaration.

12. Powers and Duties of the District Assembly Boards of Directors. The Boards of Directors of each District Assembly shall manage those parts of their District lying outside of the Commons that contain Dwellings and the affairs of the District Assembly with respect thereto. The District Assemblies shall not have the power to levy Assessments, which power is expressly reserved to the Board of Governors. The District Assembly may apply to the Board of Governors for funding for projects that the District desires to undertake, pay for fees charged by the Town Architect or to enforce compliance with the Declaration or the Rules and Regulations by any Owner other than the Founder. Without limiting the generality of the foregoing, each District Assembly Board within its District may:

a. administer the affairs of the District Assembly and of that part of the District lying outside of the Commons;

b. engage, if deemed necessary or appropriate, the services of a professional managing agent who shall assist the District Assembly in such management, provided the funding of any such management agreement shall be subject to approval of the Board of Governors;

c. adopt and enforce administrative rules and regulations governing the maintenance, management, operation, repair, and replacement of Dwellings and Parcels containing Residential Structures and improvements thereon, and to amend such rules and regulations from time to time, provided, any such rules and regulations affecting Live- Work Units must be approved by either (i) a majority of the Owners of such Units within the District or (ii) the Board of Governors;

d. provide for payments for any and all professional services rendered by the Town Architect and other professionals retained by the Board or any District Assembly Board in accordance with such rates and agreements as the Board shall determine and are approved by the Board of Governors;

e. estimate the amount of the annual District Assembly budget and provide the same to the Board of Governors for approval with respect to any funding required thereunder;

f. make all contracts and incur all liabilities necessary, related or incidental, to exercise the Board's powers and duties hereunder;

g. obtain, in the Board's discretion, insurance protecting the Board from any and all claims for damages arising out of any decision, act, or failure to act, of the District Assembly Board of Directors acting in their capacity as Directors;

h. coordinate policies with other District Assemblies and the Board of Governors;

i. enforce the Declaration with respect to the Dwellings and Parcels containing Residential Structures on Parcels within the District and activities therein and any and all restrictions governing such Dwellings and Parcels and to take any and all necessary steps to secure the enforcement and compliance of the same; and

j. exercise any and all other powers or acts as are authorized by the Declaration.

13. Records. The Board of Governors shall cause to be kept detailed and accurate records in chronological order of the receipts and expenditures affecting the Community, specifying and itemizing the common expenses incurred. Such records and the vouchers authorizing the payments of such expenses shall be available for examination by the Owners, and by the holders of a first mortgage or first deed of trust on any Parcel, at convenient hours on week-days. Payment vouchers may be approved in such manner as the Governors may determine. To the extent that any District Assembly Board is expending funds, it shall provide a complete accounting for such expenditures to the Board of Governors in such form and such detail as the Board of Governors shall require.

14. Indemnification. Each Director on the Board of Governors and each Director of any District Assembly Board of Directors, or officer of the Assembly or District Assembly, or former Director or officer, and such Director or officer's heirs, personal representatives, and assigns, shall be indemnified by the Assembly from and against any and all claims, demands, losses, damages, liabilities, expenses, counsel fees and costs incurred by him or his estate in connection with, or arising out of, any action, suit, proceeding or claim in which he is made a party by reason of his being, or having been, such Director or officer; and any person who, at the request of the Assembly, served as Director or officer of another corporation in which the Assembly owned corporate stock and his legal representatives shall in like manner be indemnified by the Assembly, provided that in neither case shall the Assembly indemnify such Director or officer with respect to any matters as to which such Director or officer shall be finally adjudged in any such action, suit, or proceeding to have been liable for gross negligence or willful misconduct in the performance of his duties as such Director or officer. The indemnification herein provided for, however, shall apply also in respect of any amount paid in compromise of any such action, suit, proceeding, or claim asserted against such Director or officer (including expenses, counsel fees, and costs reasonably incurred in connection therewith), provided the Board of Governors of the Assembly shall have first approved such proposed compromise settlement and determined that the Director or officer involved was not guilty of gross negligence or willful misconduct; but in taking such action, any Director involved shall not be qualified to vote thereon.

In determining whether or not a Director or officer was guilty of gross negligence or willful misconduct in relation to any such matters, the Board of Governors may rely conclusively upon an opinion of independent legal counsel selected by the Board of Governors. Unless otherwise provided by law, any compromise settlement authorized herein shall be effective without the approval of any court. The right to indemnification herein provided shall not be exclusive of any other rights to which such Director or officer may be lawfully entitled.

No Director or officer of the Assembly shall be liable to any other Director or officer or other person for any action taken or refused to be taken by him as Director or officer with respect to any matter within the scope of his official duties, except such action or neglect or failure to act as shall constitute gross negligence or willful misconduct in the performance of his duties as Director or officer.

ARTICLE VI

FORMULA FOR ALLOCATING INTERESTS

1. Generally. General Assessments and Special Assessments made by the Board of Governors shall be allocated among the Parcels in accordance with the relative values described in Article VI, Section 2. Voting rights in the Association attributable to each of the Parcels shall, subject to the provisions of Article VI, Section 3, also be equal to the relative values set forth in Article VI, Section 2. Individual Parcel Assessments may be levied against any Parcel in accordance with the terms and provisions of the Declaration.

2. Assignment of Values.

Allocated Values. Subject to the remaining provisions of this Section 2, the following allocated values (and voting rights) are assigned and allocated among the Parcels or Residential Units within the Community:

<u>Type of Residential Structure</u>	<u>Allocated Value (and voting right)</u>
Single-Family Detached on Lot with 40' or greater frontage	1.0 Per Lot
Single-Family Detached on Lot with less than 40' frontage	0.90 Per Lot
Row Home (Buildings with attached Units but containing no common area)	0.90 Per Lot
Multi-Family Apartments (Buildings with three or more Units on one Lot intended primarily for rental)	0.25 Per Residential Unit
Loft/Condominium (Buildings containing subject to the Uniform Condominium Act)	0.90 per Residential Unit

Live/Work Unit	1.0 Per Residential Lot (not Unit)
Commercial Structure (other than Live/Work Units)	0.20 per Commercial Unit
Senior Housing	0.50 Per Residential Unit
Assisted Living (nursing, food, and laundry services provided on site)	0.20 Per Residential Unit
Civic	0.0 if no business license is issued for the uses contained therein; for any use contained therein that is required to obtain a business license, such use shall be assessed as a Commercial Structure

3. No Changes in Formula Without Certain Consent. Notwithstanding the allocation of voting rights to Owners of provided herein, no amendment, rule or regulation may be subsequently enacted by the Assembly, any District Board, or any Committee thereof that solely and directly affects the Owners of any class of Lot or Unit and no other class of Owners of Lots or Units without the approval of Owners holding at least fifty percent of the votes allocated to such affected class of Lots or Units. No assessment increase may be imposed solely upon any particular class of Lots or Units (other than an increase that is proportional for all Owners in the Community) without the consent of Owners holding at least fifty percent of the votes allocated to such affected class of Lots or Units.

4. Determination of Total Values and Voting Rights. The total of all allocated values and all voting rights for the Community shall be determined by adding all of the allocated values for any Districts as of (i) the date notice of any annual or special meeting of the members of such District Assembly or election/approval by mail is given to the Owners or (ii) as of the date on which (1) notice of the amount of General Assessments is given by the Board of Governors to all Owners or (2) a Special Assessment has been approved by the Board of Governors pursuant to Article VIII, Section 4. The voting rights of any Owner are subject to the terms and provisions of this Declaration and the Bylaws which may limit, restrict, or suspend voting rights of certain Owners who are in violation of the terms and provisions of this Declaration. Any and all references in this Declaration to the vote of a specified percentage (in interest) shall mean and refer to the combined voting interest (based on the allocation set forth in Section 2 above) of the Owners (or only those Owners who own Parcels or Residential Units within a specified District) who are voting on a matter at a meeting of the District Assembly or a ballot vote of the Owners in either case held in accordance with the requirements of the Declaration and Bylaws.

5. Amendments to Section. Pursuant to the terms and provisions of this Declaration, the Founder has the right, from time to time and at any time, to adopt new District classifications for the Community. To the extent the Founder exercises its rights to establish new District classifications for the Community, then the Founder or the Board of Governors shall have the right, in their sole and absolute discretion, without the consent or approval of any Owners, to amend Article VI, Section 2, with respect to the allocation of values and voting rights with

respect to such new District classifications. Except as otherwise authorized in the preceding sentence, the allocation of values and voting rights set forth in Section 2 above and the provisions of this Article VI may not be modified or amended unless approved as follows:

- a. The Owners of at least ninety percent (90%) of the total number of Parcels within the applicable District whose allocated values and voting rights are to be amended must approve in writing such amendment;
- b. At least fifty-one percent (51%) in interest of all Owners (including those Owners voting pursuant to Section 5.a. who are voting, either in person or proxy, at a duly constituted meeting of the members of the Assembly or in a ballot vote held in lieu thereof to specifically approve such modification or amendment; and
- c. To the extent such modification or amendment will be effective at any time prior to the occurrence of the Turnover Date, then the same must also be approved in writing by the Founder.

For the purposes of Section 5.a. only, the Owner of each Parcel containing a Residential Structure or a Commercial Structure shall be entitled to one vote for each Parcel owned by such Owner.

ARTICLE VII BUDGET

We might come closer to balancing the Budget if all of us lived closer to the Commandments and the Golden Rule. **ATTRIBUTION:** Ronald Reagan (b. 1911), U.S. Republican politician, president. Quoted in Observer (London, February 5, 1983).

1. Fiscal Year. The fiscal year of each District Assembly and the General Assembly shall begin January 1 of each year and end on December 31 of that year, unless the applicable Board selects a different fiscal year.
2. Common Expenses. Each annual budget of the Assembly shall estimate total expenses to be incurred by the Assembly in carrying out its responsibilities. These expenses shall include, without limitation, the following (collectively, the “Common Expenses”):
 - a. Salaries, fringe benefits and other compensation paid and out-of-pocket expenses reimbursed by the Assembly for its employees, agents, officers, members of the Board and any third-party contractors;
 - b. Management fees and expenses of administration, including legal and accounting fees, incurred by or on behalf of the Assembly;
 - c. Utility charges for any utilities serving any of the Commons and charges for other common services for the Community, including, without limitation, trash collection and

security services, if applicable;

d. The costs of any insurance policies purchased for the benefit of the Assembly as required or permitted by this Declaration, including, without limitation, fire, flood, and other hazardous coverage, commercial general liability coverage, and such other insurance coverage as the Board determines to be in the best interest of the Assembly, including errors and omissions insurance, fidelity bonds, directors' and officers' liability insurance, and any other liability insurance coverage for the benefit of the Assembly, the members of the Board, any officers, employees, agents, or representatives of the Assembly (including members of the Architectural Review Board);

e. The expenses of maintaining, operating, repairing, and replacing all portions of the Commons and any other amenities and facilities serving the Community (whether located within or outside of the Community) which the Board, in its sole discretion, determines from time to time would be in the best interest of the Association to so maintain, operate, repair, or replace;

f. Ad valorem real and personal property taxes assessed and levied upon any of the Commons;

g. The expenses of the Architectural Review Board that are not paid in full by plan review charges;

h. The costs and expenses for conducting recreational, culture, or other related programs for the benefit of the Owners and Occupants;

i. Such amounts as the District Assemblies may request from the Board of Governors as permitted under this Declaration;

j. All other fees, costs, and expenses incurred by the Assembly in accordance with the terms and provisions of this Declaration or which the Board, in its sole discretion, determines to be appropriate to be paid by the Assembly, including, without limitation, taxes and governmental charges not separately assessed against Parcels; and

k. The establishment and maintenance of a reasonable reserve fund or funds (1) for inspections, maintenance, repair, and replacement of any portions of the Commons for which the Assembly is responsible to inspect, maintain, repair, or replace on a periodic basis; (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds; and (3) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board.

l. The establishment and maintenance of a fund or funds (1) for the promotion of the Community and the commercial businesses therein, including, without limitation, providing print, electronic, television, radio and other advertising, billboards, and postage for mailings, and/or (2) for the promotion and support of the New Town Trust, including,

without limitation, paying for advertising, festivals, promotional events, entertainment and transportation, all as may be authorized from time to time by the Board.

3. Reserves. If any budget or the amount of General Assessments collected by the Assembly at any time proves to be inadequate or insufficient for any reason to fully pay all Common Expenses of the Assembly, then the Board may call a meetings of the members of the Assembly for the purpose of approving Special Assessments. If the actual amount of General Assessments collected in any one year exceeds the actual costs incurred for the Common Expenses for such year, the excess shall be retained by the Assembly as a reserve for subsequent years' Common Expenses or for any other purposes as may be determined by the Board, including, without limitation, the making of any capital improvements to the Commons.

ARTICLE VIII

Covenants for Assessments

"We make a living by what we get, we make a life by what we give."
Winston Churchill

1. Creation of the Community Lien. Except as otherwise provided herein, each Owner of a Parcel (other than the Founder or any Affiliate of the Founder) by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Assembly: (1) regular assessments and charges ("General Assessments"); (2) special assessments ("Special Assessments") for capital improvements or for emergencies such as a budget shortfall, such assessments to be established and collected as hereinafter provided; and (3) individual parcel assessments ("Individual Parcel Assessments") which are established or assessed pursuant to Article VIII, Section 5; provided, however, no portion of the Commons are subject to any Assessments.

In addition to the foregoing Assessments, each Owner of a Parcel (other than the Founder or any affiliate of the Founder) by acceptance of a deed therefor, whether or not it be so expressed in the deed, is deemed to covenant and agree to pay (i) upon the resale or exchange of such Owner's Residential or Commercial Structure to a third party, a fee in the amount of two-tenths percent (.2%) of the sale price of the Parcel and such Structure (the "New Town Trust Fee") to The New Town at St. Charles Trust (or to such other third-party for-profit or non-profit entity that the Founder shall direct) to supply funding to accomplish the Trust's non-profit purposes of bettering the community life of the City and County of St. Charles, as well as the Community, which activities may include the construction, operation, and/or performance of educational, civic, musical, artistic, transportation, charitable, and/or scientific lectures, engagements, events, activities, improvements, concerts, and endeavors; and (ii) each year to the Assembly (or such other third-party non-profit entity that Founder shall direct) an annual fee in the amount of Fifty and 00/100ths Dollars (\$50.00), or such greater or lesser amount as shall be determined annually by the Board of Directors for the Assembly (the "New Town Capital Improvement Fee") for the purpose of funding capital improvements for the Commons, such as park benches, statues, fountains, paths, civic improvements, art, recreational equipment, or other

amenities (the New Town Trust Fee and the New Town Capital Improvement Fee are hereinafter referred to as the "Fees").

The Assessments and Fees, together with interest, costs, and attorneys' fees, shall be a charge on each Parcel and improvements thereon and shall be, upon levying of the same, a continuing lien upon the Parcel against which the Assessment is made or Fee is charged. Each such Assessment or Fee, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Parcel at the time the Assessment or Fee became due. Notwithstanding the foregoing, no Assessments or Fees of any kind shall be charged against Parcels owned by the Founder, any Affiliate of the Founder, or any Builder during their period of ownership; and neither the Founder, any Affiliate of the Founder, nor any Builder shall have any obligation to pay Assessments or Fees relating to Parcels owned by the Founder, any Affiliate of the Founder, or any such Builder at any time. In the event of co-ownership of any Parcel, all of the co-owners shall be jointly and severally liable for the entire amount of such Assessments and Fees.

All Assessments shall commence as to each Parcel as provided hereinbelow and be paid in such a manner and on such dates as may be fixed by the Board. All Assessments and Fees shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu, of or in anticipation of the exercise of the right of eminent domain, condemnation, or by private purchase in lieu thereof with respect to any Parcel or any improvements thereto, Commons or any other portion of the Community or any other cause or reason of any nature.

2. Purpose of Assessment. The Assessments levied by the Assembly shall be used exclusively to promote the health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of the Community, for the improvement and maintenance of the Community and Commons, any recreational facilities constructed by Founder or others for use by the Owners, and otherwise to fulfill and perform the Assembly's rights, duties, obligations, and functions pursuant to this Declaration. Notwithstanding anything provided herein to the contrary, each Owner and Occupant does hereby acknowledge and agree that certain portions of the General Assessments and the Special Assessments as well as certain Common Expenses to be incurred by the Association may not benefit all of the Owners and Occupants equally but that the levy of such General Assessments and Special Assessments and the incurrence of Common Expenses shall be deemed to be for the benefit of all of the Community. The Board may, in its discretion, pay some part of the Assessments to one or more for-profit or non-profit entities that own, lease, or operate Improvements within or about the Community that may benefit the Owners.

3. General Assessments. Pursuant to the provisions of Article VII, the Board of Governors shall determine and approve annually an annual budget covering the estimated Common Expenses for the upcoming year, which budget shall include the amount payable by each Parcel as provided in Article VIII, Section 1. The amount set forth in such budget shall constitute the aggregate amount of General Assessments for all of the Community for the then applicable year and each Owner shall pay his or her proportionate share of the same as provided in Article VI Section 2. As used in this Declaration, the term "General Assessments" with respect to each

Parcel shall mean the proportionate amount of the Common Expenses payable each calendar year by each Owner in accordance with the provisions of Article VIII, Section 2.

4. Special Assessments. In addition to the General Assessments authorized in Article VIII, Section 3, the Board of Governors may levy in any year Special Assessments for Common Expenses or any extraordinary costs incurred or to be incurred by the Assembly, including, without limitation, costs which have been, are, or will be incurred for capital improvements which are not paid for from General Assessments or to cover any unexpected budget shortfall; provided, however, that any such Special Assessments must be approved by a two-thirds vote of the Board of Governors cast at a duly convened meeting of the Assembly. As used herein, the term "Special Assessments" shall mean those assessments made to all Owners pursuant to this Section 4. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said Special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Article VI, Section 2.

5. Individual Parcel Assessments. The Board of Governors or any District Assembly Board may, in their respective sole discretion, at any time and from time to time, levy and assess as individual assessments (collectively, "Individual Parcel Assessments") against any Parcel:

a. fines against an Owner and such Owner's Parcel in accordance with the terms and provisions of Article IX hereof or adopted by the Architectural Review Board or the General Assembly pursuant to any of the terms and provisions of this Declaration;

b. any costs or expenses, including, without limitation, collection costs, attorneys' fees, court costs, and any administrative costs and expenses incurred by or on behalf of the Architectural Review Board, the District Assembly, or the General Assembly as a result of the failure of any Owner or any Occupant to observe and perform their respective duties and obligations under this Declaration, the Design Code or the Rules and Regulations;

c. any special services provided by the General Assembly or any District Assembly to a Parcel at the request of the Owner thereof; and

d. fees, charges, and other costs incidental to the use of any of the Commons for which a charge for the use thereof has been established by the Board. The Individual Parcel Assessments provided for in this Section 5 shall be levied by the Board of Governors or District Assembly Board and the amount and due date of such Individual Parcel Assessment shall be specified in a note to such Owner.

6. Limits on Increases and Timing of Issuance of Budget. The General Assessments may be increased by more than ten percent (10%) in any given Assessment Year only by approval by Owners having at least two-thirds (2/3) of a quorum of the votes in the General Assembly at an Assembly meeting or by a vote in accordance with the voting procedures set forth herein. Copies of the estimated annual budget shall be furnished by the Governors to the Owners not later than

thirty (30) days prior to the beginning of such Assessment Year. Any institutional holder of a first mortgage or first deed of trust on any Parcel shall receive at no cost, if it so requests in writing, said statement from the Governors. On or before the first day of each succeeding Assessment Year, and without further notice, the Owners of each Parcel shall pay, as the respective annual General Assessment for such Parcel, such Parcel's share of the expenses for such Assessment Year as shown by the annual budget. In the event that the Governors shall not approve an estimated annual budget or shall fail to determine new General Assessments for any Assessment Year or shall be delayed in doing so, the Owners shall continue to pay each year the annual General Assessment as last determined. All Owners shall pay the annual General Assessments to the managing agent for the Assembly or as may be otherwise directed by the Governors.

7. Accounting. The Board of Governors shall cause to be kept a separate account for each Parcel showing the respective Assessments charged to and paid by the Owners of such Parcel, and the status of such account from time to time. Upon ten (10) days written notice to the Governors, and the payment of a reasonable fee therefor, any Owner or holder of a first mortgage or first deed of trust on any Parcel shall be furnished a statement of the respective account for such Parcel setting forth the amount of any unpaid Assessments that may be due and owing.

8. Storm Water Assessment. In addition to other Special Assessments authorized by this Article, the Governors may make a separate special assessment, without a vote of the Members, for the operation and maintenance of storm sewer systems, creeks, retention basins, detention basins, and other storm water control easements and facilities. The assessment provided for by this paragraph shall be allowed and applicable until the operation and maintenance of such sewer system and such canals and other storm water control easements and facilities are accepted for maintenance by an appropriate public governmental agency, body, or utility company. The Governors may also make a separate special assessment pursuant to this paragraph as necessary for compliance with all Community and other ordinances, rules, and regulations of the City.

9. Uniform Rate. Both General Assessments and Special Assessments must be fixed at a uniform rate for all Parcels within the same class of Parcels and shall be assessed in accordance with the allocation provisions of Article VI herein.

10. Additional Property and Changes in Boundaries. Each Owner of a Parcel, by acceptance of a deed to such Parcel, acknowledges and agrees that the General Assessments and Special Assessments payable by such Owner are subject to change, modification, increase or decrease, respectively, in the event that (i) any Parcels are combined, subdivided or re-subdivided by the Founder; (ii) any portion of the Community becomes Commons; (iii) additional property is added to the Community; or (iv) any portion of the Community is exempted from Assessments as provided in this Declaration.

11. Commencement of Annual General Assessments. Each Owner shall pay his first annual General Assessment upon the closing of the purchase of his Parcel, adjusted according to the number of months remaining in the calendar year. Thereafter, annual Assessments shall be paid as provided herein. In addition to the foregoing, each Owner purchasing a Parcel from the Founder or a Builder shall pay an initial set-up fee to be deposited with the Assembly and which

shall be in such amount as the Founder shall determine. The Founder expressly reserves the right to change the amount of the set-up fee at any time.

12. Non-payment of Assessments. Any Assessment or Fee not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of twelve percent (12%) per annum or (ii) the maximum rate per annum allowed by law. The Board of Governors shall have the authority to exercise and enforce any and all rights and remedies as provided in this Declaration or as otherwise available at law or in equity, including, but not limited to, the right to foreclose the lien against the defaulting Owner's Parcel in like manner as a mortgage on real estate or a power of sale under Chapter 443, R.S.Mo. In addition to the foregoing, the Board of Governors shall have the right to suspend any Owner's voting rights and the right of such Owner, his family, guests and invitees to use the recreational facilities in the Commons for any period during which any assessment against such Owner's Parcel remains unpaid. No Owner may waive or otherwise escape liability for any of the Assessments or Fees established herein by non-use or abandonment of such Owner's Parcel or the Commons.

13. Unexpended Assessments and Special Assessments. All funds paid from time to time by Owners for Assessments and Special Assessments, from time to time on hand and unexpended, shall be deemed to be owned equally and in common by the Owners.

14. Subordination of the Lien to Mortgages. The liens of the General Assessments or Special Assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust encumbering the Parcel. Sale or transfer of any Parcel shall not affect the liens for General Assessments or Special Assessments; however, the sale or transfer of any Parcel pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such General Assessments or Special Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Parcel from liability for any General Assessments or Special Assessments thereafter becoming due or from the lien thereof.

ARTICLE IX GENERAL COVENANTS AND RESTRICTIONS

“Some men see things as they are and say, 'Why;' I dream things that never were and say, 'Why not.’” Robert Francis Kennedy, *The New York Times*, June 9, 1968

1. Creation of Covenants and Restrictions. Each Owner of a Parcel, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to the following terms, provisions, covenants, and restrictions which run with the land and are perpetual and appurtenant to the Parcels:

- a. Use of Parcel. No Parcel shall be used for any purpose except as may permitted under the Code. The Founder shall initially determine the specific uses permitted upon any Parcel prior to conveyance of the Parcel.
- b. Approval of Business Uses by Founder. During the period commencing with the

date of this Declaration through the fifteenth (15th) anniversary thereof, no business may locate in the Community without first obtaining the approval of the Founder, which approval may be withheld based upon the following criteria: (i) the nature of the business, (ii) the experience of the business operator, (iii) the reputation of the business owner, (iv) the capitalization of the business, or (v) such other criteria that Founder may determine to be in the best interest of the development. Prior to entering into any contract to sell or lease all or any part of a Parcel in the Commercial District, the Owner thereof shall give notice to the Founder specifying (i) the name of the proposed buyer or tenant, (ii) the location of the Parcel being conveyed, (iii) the nature of the proposed business, (iv) the experience of the business operator in such business, (v) the reputation of the business owner, (vi) the capitalization of the business, and (vii) such other information as the Founder may specify. Within ten (10) days after the receipt of all such information in form satisfactory to the Founder, the Founder shall either approve or disapprove such transfer. In the event of approval, then the Parcel may be sold or leased to such proposed buyer or tenant and the business commenced in the Community. In the event of disapproval, then the Parcel may not be so sold and the business may not be opened in the Community.

c. Certain Uses Prohibited. Notwithstanding the above section b., prior to the Turnover Date, the following businesses are prohibited in the Community, unless owned or operated by the Founder or an Affiliate of the Founder: (i) real estate sales or brokerage offices for any type of real estate, (ii) property management companies, (iii) apartment rental services, (iv) a grocery store, food store or general store that receives at least fifty percent of its annual gross revenue from the sale of prepackaged food or raw fruits, meat or vegetables, (v) a bank, credit union or other financial institution, or (vi) a mortgage company, or (vii) any similar type of business. No Commercial or Residential Structure, Parcel, or any portion thereof shall be used for any noxious or offensive activity nor for any purpose prohibited by law or ordinance or which may become a nuisance, in the reasonable judgment of the Governors or the District Assembly within which such Parcel is located, to other Owners or Occupants. Notwithstanding the foregoing, by acceptance of a deed for their Parcel, whether or not the same is expressed in the deed, the Owners acknowledge that the Community shall consist of entertainment-related activities, restaurants, places that serve alcoholic beverages, commercial, and retail sales establishments and an organic farm and the presence of such activities and the odors, noise, and lights associated with such activities shall not be deemed to be nuisances or noxious or offensive activities.

d. Maintenance of Parcels. The maintenance and repair of all Parcels and all Improvements situated thereon or therein, including, without limitation, all lawns, shrubbery, landscaping and the grounds on or within a Parcel, shall be the sole responsibility of the Owner of such Parcel. The Owner of each Parcel shall, in addition to the foregoing maintenance requirements, maintain, if required by the Assembly, any portion of the Commons (or greenspace or right-of-way within the Common Roads) lying between the property line of such Owner's Lot and the curb of the adjacent Common Road.

- e. Other Restrictions Affecting Parcels. The Design Code and the Rules and Regulations set forth other terms, provisions, covenants, conditions, and requirements which shall be applicable to all, or only portions of, the Parcels within the Community. The Design Code, the Rules and Regulations, or the District Assembly for each District may regulate placement and maintenance of garbage and trash containers and fuel or gas storage tanks (including the prohibition of such tanks) and other matters affecting the attractiveness or safety of Parcels.
- f. Rules and Regulations. The initial Rules and Regulations are attached to and included in the bound volume of documents provided to all initial Parcel purchasers. The Rules and Regulations do not need to be recorded to be effective, but shall be available from each District Assembly Board and will be provided to the Owners or posted in the Town Center or some other conspicuous place in the Community. By this reference, the Rules and Regulations, as the same may be amended from time to time, are incorporated into and made a part of this Declaration. At all times prior to the occurrence of the Turnover Date, the Rules and Regulations are subject to modification and amendment, from time to time and at any time, solely by the action of the Board of Governors and without any prior notification to, or approval by, any of the Owners. The Board shall also have the right to adopt additional rules and regulations which shall be incorporated into and form a part of the Rules and Regulations, including, without limitation, the right to approve rental and sales agents, contractors, and subcontractors who do business within the Community. Following the occurrence of the Turnover Date, any proposed modifications or amendments to the Rules and Regulations or any additional rules and regulations which the Board desires to adopt shall (i) either be submitted to all Owners in writing or otherwise posted in a conspicuous place within any of the Commons and (ii) be subject to review and discussion by the Owners at either a town meeting or any annual or special meeting of the Owners.
- g. Compliance and Permits. Each Owner shall maintain his Parcel and Dwelling in compliance with all applicable zoning ordinances and regulations of the City and St. Charles County, Missouri. To the extent that the City or any other governmental authority shall require permits for the erection of any improvements upon a Parcel, including, without limitation, fences, decks or other structures or improvements, the Owner of such Parcel shall be responsible for obtaining the same.
- h. Approved Receptacles. No trash, rubbish, garbage, trashcan or other receptacle therefor, other than those receptacles approved by the District Assembly within which such Parcel is located, shall be placed on any Parcel outside of a Dwelling or in a Commercial District.
- i. No Fuel Tanks. No tank, bottle or container of fuel for the purpose of heating any Dwelling shall be erected, placed or permitted above the surface level of any Parcel, except as may be required by the Founder or an affiliate of the Founder in the construction of a Dwelling.

- j. No Temporary Structure as Residence. No structure of a temporary character, trailer, mobile home, tent, shack, garage, barn or other outbuilding shall be used on any Parcel at any time as a temporary or permanent residence.
- k. Signs. Except as is permitted of the Founder and its Affiliates, no signage of any kind shall be displayed to the public view on any Parcel except in compliance with the Code and approval of the Architectural Review Board, as provided in this Declaration.
- l. Lot Maintenance. Each Owner shall maintain his Parcel in a neat attractive manner, including, without limitation, maintenance of the lawn and shrubbery. No Owner shall permit the lawn upon such Owner's Parcel, whether grass, legume or ivy, to grow in excess of six (6) inches in height. The foregoing requirement regarding lawn maintenance shall not apply to any Builder or Founder prior to the sale of the Parcel at retail to an Owner other than a Builder.
- m. Limitation on Pets/Livestock. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Parcel other than as permitted under the Code. Notwithstanding the foregoing, dogs, cats, or other household pets may be kept, provided with the exception of the Commercial District, they shall not be kept, bred, or maintained for any commercial purposes and provided that such household pets shall not exceed two (2) in number per Dwelling on any Parcel at any one time. Each Owner shall comply with all ordinances, zoning, and regulations of the City relating to the supervision, control, responsibility, and maintenance of animals and/or pets in residential areas and shall maintain control of their pet at all times.
- n. Insurance. Nothing shall be done or kept on any Parcel that will increase the rate of, or result in cancellation of, insurance for any other Parcel or its contents, without the prior written consent of the Assembly.
- o. Soliciting. The Assembly may regulate or prohibit soliciting within the Community.
- p. Age Restriction - With respect to Senior Housing, at least eighty percent (80%) of the occupied Units shall be occupied by at least one person who is 55 years of age or older, and all Permanent Occupants must be at least 18 years of age or older.

A surviving or divorced spouse who is a Permanent Occupant under the age of 55 years and who was the spouse of an occupant 55 years of age or older will be allowed to remain as an Occupant.

The Founder may not rent or sell a Unit unless at least one person who will occupy the Unit is 55 years of age or older. The District Assembly Board for the District in which such housing is located shall have the right to require prior age verification from all prospective Occupants.

Notwithstanding anything to the contrary contained herein, the Founder and any

Affiliate of the Founder shall have the right, but not the obligation, to sell up to twenty percent (20%) of the Units in which there will be no occupant who is 55 years of age or older, provided that such sales do not conflict with any federal, state, or local law.

The Founder and, after the Turnover Date, each District Assembly for Senior Housing located within such District, shall have the right to promulgate, from time to time, reasonable rules and regulations governing the visitation and temporary residence of or use of common facilities by persons under 18 years of age.

Prior to entering into a contract to sell or lease any Senior Housing Parcel, the Owner shall (i) notify in writing any real estate agent or broker of the age restrictions contained in this Declaration; (ii) obtain a copy of each proposed buyer's or tenant's drivers license, birth certificate or other proof of age issued by a governmental entity (the "Age Document"); and (iii) verify that the proposed tenant or buyer meets the age restrictions contained in this Declaration. In addition, the Owner shall immediately hand deliver or send a copy of the Age Document to the District Assembly for the District within which such housing is located by certified mail so that the Assembly may update its records and verify compliance with the age restrictions contained in this Declaration. At the closing of the sale or entering into the lease, the new Owner or Occupant, as the case may be, shall immediately register with the applicable District Assembly such Owner's/Occupant's name, age, and address and confirm their understanding of the age restrictions set forth in this Declaration.

Each District Assembly may, from time to time, in its sole discretion, survey the Owners of each Senior Housing Parcel within the District to determine the age of all Occupants to verify compliance with the requirements of this Declaration. Each Owner must respond to any such survey by truthfully disclosing the names and ages of all Occupants, including Owner, of each Parcel owned by such Owner. Failure to respond to any such survey within the time frames set forth in the survey shall be a violation of the covenants of this Declaration and (i) subject the Owner to a fine of \$25.00 per day for each day such survey is not returned and (ii) entitle the Assembly to exercise any and all remedies reserved herein, at law or in equity, including, without limitation, seeking an order of mandamus to require such disclosure. The Owner against whom any such action may be brought shall be liable for the amount of the fine, any and all attorneys' fees incurred by the Assembly in connection therewith, together with costs of suit.

q. Enforcement.

(i) Owner's Responsibility. Each Owner and such Owners' Occupants shall conform and abide by the covenants contained in this Declaration and all of the Rules and Regulations. Each Owner shall be responsible for assuring such compliance and any violation by an Owner's Occupants may be considered to be a violation by the Owner.

(ii) Remedies of Assembly. In addition to the other rights and remedies provided elsewhere in this Declaration, the Rules and Regulations, or the Code, in the event of any violation of any of the provisions of this Declaration, the Rules and

Regulations, or the Code by any Owner or Occupant, then the District Board of any District or the Board of Governors shall have the power and right, at its option to (i) impose monetary fines which shall constitute Individual Parcel Assessments, (ii) suspend an Owner's right, if any, to vote in the District Assembly, and (iii) suspend or terminate the privilege of such Owner and such Owner's Occupants to use all or any of the recreational facilities, if any, which constitute part of the Commons. Any action to be taken by the District Assembly or Board pursuant to this Section shall be subject to the satisfaction of the terms and provisions set forth below.

(iii) Notice, Hearing, and Fines. In the event any Owner or Occupant is believed to be in violation of this Declaration, the Rules and Regulations, or the Code, then the Board or District Assembly, as the case may be, shall not impose a fine, suspend voting rights, or suspend or terminate any other rights pursuant to Section q. (ii) above unless written demand to cease and desist from such alleged violation shall be served upon the Owner responsible for such violation setting forth the information required by the terms and provisions of this Section q. (iii) and providing such Owner the opportunity to appear before and be heard by the Board. Such demand shall be personally delivered or sent by certified mail, postage prepaid, to the last known address of such Owner. Any notices required by this Section q. (iii) shall specify:

- (a) the alleged violation;
- (b) the action required to abate such violation;
- (c) the time period of not less than five (5) days during which the violation may be abated and corrected by such owner without further sanctions if such violation is a continuing one or, if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Rules and Regulations, or the Code may result in the imposition of sanctions; and
- (d) the date, which shall be no earlier than five (5) days from the date of such written notice, and the time and place at which such Owner may appear before the Board to be heard.

Each day an infraction continues shall be deemed a separate infraction subject to fine. However, the primary goal of this provision is not to punish but to conciliate and resolve problems. The District Assembly or the Board may suggest or approve agreements and withhold the requirement of paying a fine if the agreement is honored. Fines shall be charged against the Parcel as an Individual Parcel Assessment. Any fines collected shall be contributed to the general fund of the Assembly. The foregoing procedure shall only be applicable to the enforcement right specified in Section q. (ii) above and shall not apply to the exercise of any other rights or remedies specified in any other section or provision of this Declaration, the Rules and Regulations, or the Code.

(iv) Corrective Action for Parcel Maintenance. If the District Assembly

within which a Parcel is located determines after notice that any Owner has failed to maintain any part of such Owner's Parcel (including any Building or the yard, shrubbery, landscaping, and any wall, fence, garden structure, or other Improvements thereto) in a clean, attractive and safe manner, in accordance with the provisions of this Declaration, the Rules and Regulations, or the Code, then the Assembly shall also have the right (but not the obligation) without liability to enter upon such Parcel to correct, repair, restore, paint, and maintain any part of such Parcel and to have any objectionable items removed from the Parcel. All costs and expenses paid or incurred by the Assembly in connection therewith shall constitute an Individual Parcel Assessment against the Owner of such Parcel.

ARTICLE X EASEMENTS

The bloom of Monticello is chilled by my solitude. Thomas Jefferson (1743–1826), U.S. president. Letter, March 27, 1797, to his daughter, Martha Jefferson Randolph. The Family Letters of Thomas Jefferson, p. 142, eds. E.M. Betts and J.A. Bear, Jr. (1966).

1. Encroachment Easement. Should any portion of any Dwelling, including the roof, as constructed on any Parcel by the Founder or any Builder overhang or encroach on an adjacent Parcel or on any Commons and such encroachment is the result of unintentional placement, settling or shifting of any Improvements, then the Owner of the overhanging or encroaching Dwelling shall have an easement on such adjacent Parcel or Commons, as the case may be, to permit the overhanging or encroaching portion of such construction to remain in the same state and location as when said Dwelling was first occupied for residential use. Such easement shall be appurtenant to and shall pass with title to the Parcel on which said improvements were constructed.

2. Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plats. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Parcel and all improvements in it shall be maintained continuously by the Owner of the Parcel, except for those improvements for which a public authority or utility company is responsible. Every utility easement on each Parcel shall constitute an easement for utility purposes to serve any other Parcel or Commons. If any utilities and connections therefor serving a Parcel are located in part on a Parcel other than the Parcel being served by such utilities and connections, the utility company, the Owner of the Parcel being served, and contractors and employees of such company or Owner shall have the right and easement to enter upon the Parcel in which the utility line or connection is located for the repair, maintenance and replacement of such line and/or connection.

3. Construction Easement. Until the Turnover Date, the Commons and that portion of each Parcel not occupied by a Dwelling shall be subject to an easement allowing the Founder and/or

its employees, agents, contractors, and subcontractors to enter upon, over, across, and through the Commons and Parcel for the purpose of construction on adjoining Parcels, Commons and streets, including, without limitation, installing improvements therein and adjusting grades and slopes to facilitate storm water drainage.

4. Easement for Side Yard Wall and Common Fence Encroachments. The Founder does hereby establish and declare a permanent and perpetual reciprocal appurtenant easement for encroachments of up to 12 inches (measured from the common property line of all Parcels) for any Side Yard Wall or Common Fence constructed on any Parcel. The foregoing encroachment easement is created in order to allow encroachments by any Side Yard Wall or Common Fence constructed on any Parcel onto the adjoining Parcel (subject to a maximum encroachment of 12 inches).

5. Easements for Encroachments within Commercial Structures. With respect to all Parcels located containing any Commercial Structures, the Founder does hereby declare and establish a permanent and perpetual reciprocal appurtenant easement for encroachments of up to 12 inches (measured from the common property line of Parcels containing such Commercial Structures) by which the Building on one Parcel may encroach onto the adjacent Parcel to the extent such encroachment results from the unintentional placement, settling, or shifting of a Building on a Parcel containing such Commercial Structure.

6. Reservation of Easements for Founder and Others to Facilitate Access, Development, and Maintenance. The construction of the Community is intended to follow design principles that allow interconnectivity of streets with neighboring communities. The Founder hereby establishes and reserves for itself, its Affiliates, the Assembly, the City, each public utility company and their respective agents, employees, representatives, invitees, successors, and assigns, the following easements which may be assigned for the benefit of other properties within the Regulating Plan Area and all other properties owned by the Founder, any Affiliate of the Founder, or their assigns that are adjacent to or reasonably near the Community (including property separated from the Community by a public road) whether or not such properties are developed as part of the Community:

a. Common Ways. A permanent and perpetual non-exclusive easement over, across, through, under, and upon all Common Ways for the use of the same for vehicular and pedestrian purposes, along with a permanent and perpetual non-exclusive easement for appropriate use of any pedestrian or bicycle paths thereon.

b. Utility Easements. A permanent and perpetual non-exclusive blanket easement upon, across, over, through, and under all of the Community (including all Parcels and Commons therein) for ingress, egress, and the installation, replacement, repair, and maintenance of any and all public and private utility and service systems to serve property within and outside of the Community, provided, however, no employee, agent or contractor of such utility company or City shall be permitted to encroach upon any Building or other established Improvement on a Parcel and any disturbance of the Lot caused by such utility company shall be promptly repaired and the Lot restored to its preexisting condition. These systems include, but are not limited to, water, sanitary

sewer, irrigation systems, drainage, telephone, electricity, gas, television, security, cable or communication lines, pipes, wiring, conduit, machinery, equipment, and any other apparatus. By virtue of this easement the Founder, any Affiliate of the Founder and their respective successors or assigns, may install and maintain facilities and equipment, excavate for such purposes, and affix and maintain wires, circuits, and conduits on any Parcel and any of the Commons; however, the exercise of this easement must not unreasonably disturb an Owner's right of quiet enjoyment of any Building on such Owner's Parcel.

c. General Access. A permanent and perpetual non-exclusive easement over, across, through and upon all of the Community for the purpose of a) providing ingress to and from such real property in connection with performing (i) any inspections of the same to determine compliance with the terms and provisions of this Declaration and (ii) any of the duties of the Founder, the Assembly, any District Assembly, the Architectural Review Board, or any of their respective agents, employees, representatives, invitees, successors and assigns, hereunder and under the Design Code; b) mowing, removing, clearing, cutting, or pruning underbrush, weeds, stones, or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety, and appearance within the Community; and c) exercising any of the rights and remedies granted or created by this Declaration, including, without limitation, the rights and remedies of the Assembly set forth created or reserved in this Declaration; provided, however, that the foregoing easement shall not impose any duty or obligation on the Founder, the Assembly, any District Assembly, or the Architectural Design Review Board to perform any of the foregoing actions.

d. Waterfront Parcels. A permanent and perpetual non-exclusive easement thirty (30) feet in width upon that part of any Parcel lying directly adjacent to any lake or water features within the Community (but excluding from such easement any part containing a Commercial or Residential Structure) for the purposes of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stones, or other unsightly growth and removing trash therefrom so as to maintain reasonable standards of health, fire, safety, and appearance within the Community; provided, however that the reservation of the foregoing easement shall not impose any duty or obligation upon the Founder or the Assembly to perform or undertake any of the foregoing actions.

e. Sidewalks and Signage. A permanent and perpetual non-exclusive easement over, across, through, and upon a strip of land ten (10) feet in width on each Parcel lying parallel to and running along the exterior boundary of each Parcel and any Common Ways that are directly adjacent to and abut such Parcel for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways, trails, bicycle and jogging paths and lanes, traffic directional signage, and related Improvements; provided, however, that neither the Founder nor the Assembly shall have any obligation to construct any of the foregoing Improvements.

f. Encroachments. A permanent and perpetual non-exclusive easement over, across,

through, and upon all Parcels for minor encroachments which may result from any Improvements which have been constructed on the Commons.

7. Easements between Parcels.

a. Generally. The design for the Community is intended to maximize land usage and sense of community by providing parks and open space while offering small, private yards for individual use. As provided by the Design Code, certain Buildings within may be attached or may be placed on or near the property line of a Parcel. The easements in this Section are intended to provide guidelines for reasonable cooperation between neighbors. The District Assembly for each District may make rules for maintenance and use of easement areas and shared Improvements that shall be applied uniformly to all Parcels similarly configured within such District. No easements for light, air or view shall be deemed to be created or exist in favor of any Owner or such Owner's Parcel.

b. Subdivision. Parcels may not be subdivided or separated into smaller lots nor may any portion of a Lot be separately conveyed, except by the Founder or with the specific consent of the Architectural Review Board. However, this shall not prohibit corrective deeds or similar corrective instruments. The Founder may redefine Parcels at any time by dividing or combining Parcels or portions of Parcels and adjusting the boundary of any Parcel. The Founder shall also have the right to modify subdivision plats to make adjustments to Parcel boundary lines with the consent only of those Owners whose Parcel boundaries are to be changed.

c. Structural Party Walls. The Owner of each Parcel upon which the exterior wall of a Building has been constructed on the property line of such Parcel does hereby grant to the Owner of the adjacent Parcel the permanent and perpetual right and easement to maintain and utilize the exterior wall of any such Building which forms a party wall between the two Parcels for both vertical and lateral support and the construction and attachment thereto of another Building. A wall will be considered a party wall only if it provides structural support for the Buildings, or parts of a Building, on more than one Lot and is situated on the property line of a Parcel. Maintenance of the surface of the party wall shall be the sole responsibility of the Owner of each building that abuts such wall. Each Owner shall be liable and responsible if, in connection with that Owner's use and maintenance of the party wall, the Owner damages the adjacent Owner's Parcel or the party wall itself. The cost of any other repairs to the party wall shall be shared equally by the adjacent Owners.

d. Exterior Walls and Fences. An exterior wall which supports a Building on any one Parcel or which encloses a courtyard on one Parcel which has been constructed along the property line of such Parcel and any fence constructed along the property line of any Parcel (collectively, an "Abutting Wall or Fence") shall not be considered a party wall or subject to the provisions of Article VIII, Section 7.c. above unless and until the Owner of the adjacent Parcel elects to construct and attach another Building thereto. To the extent the party wall easement created and granted pursuant to Section 7.c. above is not exercised by the Owner of the adjacent Parcel, then the provisions of this Section 7.d.

shall be applicable to the use of the Abutting Wall or Fence. The Owner who constructs an Abutting Wall or Fence along the property line of such Owner's Parcel does hereby grant to the Owner of the adjacent Parcel the permanent and perpetual right and easement to erect and maintain on and along the Abutting Wall or Fence trellises, landscaping, and other landscaping-related improvements as well as attaching to such Abutting Wall or Fence additional walls or fencing subject to the following terms and conditions:

(i) If any such trellises, landscaping, or other landscaping-related improvements or any additional walls or fencing are attached to such Abutting Wall or Fence, then the Owner of the adjacent Parcel installing the same shall 1) be responsible for any damage to the Abutting Wall or Fence caused by or resulting from such landscaping or other landscaping-related improvements or any additional walls or fencing attached to such Abutting Wall or Fence; 2) be solely responsible for routine, non-structural maintenance and repair (including painting) of that portion of the Abutting Wall or Fence which fronts any portion of such Owner's Parcel; and 3) any such landscaping or other landscaping-related improvements or additional fencing or walls installed on or adjacent to the Abutting Wall or Fence shall not block the view from any windows of the Building which constitutes part of the Abutting Wall or Fence or be allowed to grow along or onto any windows or roofing on any such Building which constitutes part of such Abutting Wall or Fence; and

(ii) Notwithstanding anything provided to the contrary in this Section 7.d., in the event the Owner of the Building or fence which constitutes an Abutting Wall or Fence elects to make any structural alterations or repairs to the Building or fence which constitutes an Abutting Wall or Fence, such Owner shall be entitled to make such alterations and repairs, and to otherwise enter upon the adjoining Parcel to undertake the same including, if reasonably necessary or required for such structural repairs, removing any and all landscaping or other landscaping-related improvements and any additional fences or walls which the adjoining Owner may have constructed or installed on or attached to the Abutting Wall or Fence.

e. Yard Easements. To allow most efficient use of a Parcel while complying with any applicable setback requirements, a portion of a Parcel along a Parcel line may be subject to an easement for use by the adjoining Parcel Owner. Such easements may be designated on the recorded subdivision plat, in the Design Code or on the deed from the Founder to the first Owner of such Lot other than the Founder. Such use easements may be up to five feet (5') wide and shall run along a boundary line, but shall not encroach upon more than one boundary line (other than corner Parcels which may be subject to two (2) use easements along both a side Parcel line and either the front or rear Parcel line of such corner Parcel). Subject to regulation under the Design Code, the beneficiary of such an easement shall have the use and maintenance responsibility for the easement area and may place air-conditioning equipment, fences, decks or patios and other fixtures (but not a primary structure or building) upon the easement area.

- f. Roof Overhang. Where any Building is built along a property line as permitted under the Code, the roof, gutters, and downspouts of such Building may encroach upon the adjoining Parcel by a maximum of 30 inches.

ARTICLE XI

INSURANCE: DAMAGE OR DESTRUCTION

"One dark night, when people were in bed, Mrs. O'Leary lit a lantern in her shed. The cow kicked it over, winked its eye, and said, 'There'll be a hot time in the old town tonight!'" popular song lyrics

Each Dwelling and Commercial Structure and other Improvements located in the Community shall be insured against loss or damage by fire and other hazards as are covered under standard fire and casualty coverage insurance policies. The Board of Governors shall from time to time establish rules and regulations governing the obtaining and maintenance of such insurance either by the Owners or by the Board of Governors, as the Board of Governors shall determine in its sole discretion, and each Owner shall comply with such rules and regulations. In all events, the obtaining and maintenance of such insurance shall be governed by the following:

1. Each Dwelling and Commercial Structure and other Improvements located in the Community shall at all times be insured in an amount equal to the full replacement cost thereof.
2. Regardless of how such insurance is purchased or by whom, the Board of Governors and the applicable District Assembly shall at all times be named as an additional insured, and a copy of each policy or Certificate of Insurance, including any renewal or additional policy, shall be delivered to the Board of Governors.
3. Each policy shall provide that the insurer waives any right of subrogation against the Board of Governors, the applicable District Assembly and the Directors thereunder, their respective employees, agents, or contractors, and any other party.
4. Each policy shall provide that the same shall not be canceled, terminated, or amended without thirty (30) days prior written notice to the Board of Directors hereunder.

In case of fire or other casualty covered by such insurance, the insurance proceeds shall be applied to reconstruction or repair of the improvements. The affected Dwelling or Commercial Structure and Improvements shall be restored to substantially the same condition in which the same existed prior to the fire or other casualty, with the same vertical and horizontal dimensions as before. The Owner thereof shall deposit a bond or cash security with the Board of Governors in such amount as it shall specify to ensure prompt completion of the restoration and repair and the completion of the same in the manner required under this Declaration. The Board shall promulgate such Rules and Regulations as it shall desire with respect to such bond or security.

If an Owner fails to obtain and maintain insurance in compliance with these provisions, the Board of Governors shall have the right, following written demand upon such Owner to provide insurance in compliance herewith and failure of such Owner to obtain such insurance within ten (10) days of such written demand, to obtain and maintain such insurance for the Dwelling, Commercial Structure, or Improvements of such Owner. Notice shall be in writing and either personally delivered or sent by Certified Mail, postage prepaid, to the last known address of the Owner; notice shall be deemed given upon such personal delivery or upon such deposit in the United States mail.

If the Board of Governors hereunder shall determine that such insurance shall be obtained and maintained by it in the case of a specific Dwelling, Commercial Structure, or other Improvements as hereinabove authorized or if the Board of Governors shall determine that such insurance shall be obtained and maintained by it for each Dwelling and Commercial Structure and other Improvements in the Community, the cost of the premiums for such insurance shall be assessed against each Unit as an Individual Parcel Assessment as provided hereinabove, and, as a part of such Assessment, the same shall constitute an obligation of the Owner and shall be a lien on the Parcel to which assessed, and the same shall become due and payable in all respects as provided in Article VIII hereof, provided that the limitations in the amount of the annual Assessment as set out in said Article VIII shall not apply to the assessment for insurance premiums as authorized in this Article. The Board of Governors, when establishing the assessment for such insurance premiums, may utilize the estimated premium charges for such insurance but shall, thereafter, make such adjustments as are necessary to reflect the actual premium charge.

ARTICLE XII GENERAL PROVISIONS

"For the support of this declaration we mutually pledge to each other our lives, our fortunes, & our sacred honor." Thomas Jefferson (1743–1826), U.S. President. "Jefferson's 'original Rough draught' of the Declaration of Independence" (1776). The Papers of Thomas Jefferson, Vol. 1, p. 427, ed. Julian P. Boyd, et al. (1950).

1. Enforcement. The Assembly, the Governors, any Owner, the Founder, or any Builder shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, easements, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Assembly, the Founder, any Builder, the Governors, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions, which shall remain in full force and effect.
3. Term. The covenants, conditions, and restrictions of this Declaration shall run with and bind the Community, for a term of fifty (50) years from the date this Declaration is recorded, after which the said covenants and restrictions shall be automatically extended for successive

periods of twenty (20) years each unless an instrument signed by the then Owners having seventy-five percent (75%) of the votes in the Assembly has been recorded, agreeing to terminate this Declaration as of the end of any such period. No such agreement of termination shall be effective unless made and recorded six (6) months in advance of the effective date of such termination.

4. Amendment. Prior to the Turnover Date, this Declaration may be amended by a vote of two-thirds of the Governors with the concurrence of the Founder. Thereafter, this Declaration may be amended by (i) a vote of two-thirds of the Governors and a majority of each of the District Assembly Boards or (ii) a vote of a majority of the Owners, provided, any amendment that affects the Commercial Districts shall be approved by Owners having a majority of the votes within such Commercial Districts. Any such amendment before or after the Turnover Date may provide more or less restrictive terms and create lessor or greater burdens on any Owner, Lot, or Parcel, so long as the required vote as set forth herein is obtained and, if applicable, has the concurrence of the Founder. Any such amendment shall be valid upon recordation in the Office of the Recorder of Deeds for the County of St. Charles, Missouri. Notwithstanding the foregoing, so long as the Founder or any Affiliate of the Founder owns any Parcel in the Community, the Founder may veto any proposed amendment to the Declaration or any proposed Rule or Regulation, modification, amendment, or termination thereof.

IN WITNESS WHEREOF, the undersigned has hereunto set its hands as of the day and year first above written.

WHITTAKER BUILDERS, INC.

Gregory G. Whittaker, President

EXHIBIT A

LEGAL DESCRIPTION
 THE NEW TOWN AT ST. CHARLES DEVELOPMENT
 630.84 ACRES

A tract of land being part of U.S. Surveys 209 through 213, 215, 217, 219 through 227, 229 through 232, and 234 through 237 of the St. Charles Common Fields, Township 47 North, Range 5 East, St. Charles County, Missouri being more particularly described as follows:

COMMENCING at a point on the southwestern line of U.S. Survey 209 at its intersection with the southeastern right-of-way line of Airport Road (40 feet wide); thence along said southwestern line South $47^{\circ}33'30''$ East, a distance of 1,372.25 feet to the true POINT OF BEGINNING of the herein described tract of land; thence departing said southwestern line, North $42^{\circ}26'30''$ East, 111.69 feet; thence North $78^{\circ}34'38''$ East, 151.54 feet; thence along a curve to the right having a radius of 389.94 feet, an arc length of 263.07 feet, with a chord of North $11^{\circ}28'20''$ East, 258.11 feet to a point of compound curvature; thence along a curve to the right having a radius of 1,604.85 feet, an arc distance of 330.28 feet, a chord of which bears North $36^{\circ}41'42''$ East a chord distance of 329.69 feet to a point of tangency; thence North $42^{\circ}35'27''$ East, a distance of 207.76 feet to a point of curvature; thence along a curve to the left having a radius of 347.00 feet, an arc distance of 200.72 feet, a chord of which bears North $26^{\circ}01'11''$ East a chord distance of 197.93 feet to a point of tangency; thence North $09^{\circ}26'55''$ East a distance of 286.47 feet to a point; thence South $80^{\circ}33'05''$ East a distance of 133.65 feet to a point; thence North $09^{\circ}26'55''$ East a distance of 334.47 feet to a point on the southwestern line of U.S. Survey 221; thence along said southwestern line South $47^{\circ}26'30''$ East, 2004.35 feet to a point at the northwestern corner of a tract of land conveyed to Daniel Kurtz, per deed in Book 2355, Page 565; thence departing said southwestern line, South $75^{\circ}11'23''$ East, a distance of 642.25 feet to a point on the southwestern line of a tract of land conveyed to Benjamin Kurtz, by deed recorded in Deed Book 2355, Page 560 of the St. Charles County Records; thence South $84^{\circ}26'39''$ East, 502.93 feet to a point; thence North $42^{\circ}44'43''$ East along the northwest line of said Benjamin Kurtz tract, and along the northwest line of a tract of land conveyed to Sydney Kurtz, per deed in Book 2054, Page 514, a distance of 728.37 feet to the northernmost corner of said Sydney Kurtz tract; thence North $42^{\circ}33'42''$ East, 1,682.31 feet; thence along the northeast line of a tract of land conveyed to Richard and Margie Green, Trustees, per deed in Book 2533, Page 1292, along the southwestern right-of-way line of State Highway "B" (60 feet wide), South $47^{\circ}26'18''$ East, 2,003.58 feet to the easternmost corner of said Green tract; thence continuing along said right-of-way line, on the northeast line of a tract of land conveyed to Schroeder Estates, per deed on file in Book 1200, Page 1141, South $47^{\circ}18'05''$ East, a distance of 2,820.42 feet to a point on the northwestern right-of-way line of Boschertown Road; thence along said northwestern right-of-way line, South $49^{\circ}15'00''$ West, a distance of 160.19 feet to a point; thence South $50^{\circ}32'00''$ West, a distance of 388.95 feet to a point; thence South $53^{\circ}05'00''$ West, a distance of 773.14 feet to a point; thence South $52^{\circ}35'00''$ West, a distance of 379.25 feet to the southernmost corner of said Schroeder Estates tract; thence continuing along the northwestern right-of-way line of Boschertown Road, along the southeastern line of a tract of land conveyed to Ostmann Estates, per deed in Book 1454, Page 1477, South $52^{\circ}35'00''$ West, a distance of 581.57 feet to a point; thence South $52^{\circ}11'27''$ West, a distance of 765.61 feet to the southernmost corner of said Ostmann Estates tract; thence continuing along said right-of-way

line, along the southeastern line of a tract of land conveyed to Arthur and John Wuelling, et al., per deed in Book 1262, Page 1505, South 52°11'27" West, 493.94 feet and South 52°27'28" West, 499.38 feet to the southernmost corner of said Wuelling tract; thence leaving said right-of-way line North 47°35'00" West, along the southwestern line of the Wuelling tract, 292.23 feet; thence along the lines of a tract of land conveyed to Agnes and Robert Keeven, et al., per deed in Book 1250, Page 213, South 52°08'00" West, a distance of 151.84 feet; thence South 47°35'00" East, a distance of 291.36 feet to a point on the northwestern right-of-way line of Boschertown Road, as aforementioned; thence along said northwestern right-of-way line, South 52°27'28" West, a distance of 637.61 feet to a point; thence South 53°34'17" West, a distance of 3.72 feet; thence along the southwestern line of the Keeven tract, being also the southwestern line of U.S. Survey 209, North 47°33'30" West, a distance of 3,986.66 feet to a point on the southeastern line of the tract of land conveyed to Ronald and Sharon Messner by deed recorded in Deed Book 859, Page 1072 of the St. Charles County Records; thence along Messner's southeastern line and along the southeastern line of a tract of land conveyed to Anna May Merz (a.k.a. Anna May Ford) North 50°15'00" East, 786.75 feet to a point on the southwestern line of U.S. Survey 213; thence along said survey line, North 47°35'00" West, 345.38 feet, to a point on the southeastern line of the Boschert Farm, Inc. tract; thence along said southeastern line and South 43°01'30" West, 799.34 feet to the westernmost corner of said Merz tract; thence North 47°33'30" West, along the southwestern line of U.S. Survey 209, being the southwestern line of the aforementioned Boschert tract, 2,392.09 feet to the POINT OF BEGINNING, said tract containing 25,941,523 square feet (595.54 acres, more or less).

Also a tract of land being part of U.S. Surveys 225, 226, 227, 229, and 230 of the Royal Domain, Township 47 North, Range 5 East, St. Charles County, Missouri, being more particularly described as follows: BEGINNING at a point on the western right-of-way line of Missouri State Highway 94 (80 feet wide), at the northeastern corner of the tract of land conveyed to Carol Wilming Kaplan, Trustee, by deed recorded in Deed Book 2762, Page 1562 of the St. Charles County, Missouri Records; thence along Kaplan's northern line, North 37°22'15" West, a distance of 313.86 feet to a point on the southwestern line of U.S. Survey 225; thence along said southwestern line North 24°39'30" West, a distance of 2,106.10 feet to a point on the southeastern right-of-way line of Boschertown Road (40 feet wide); thence along said southeastern line North 52°11'27" East, a distance of 4.60 feet to a point; thence North 52°35'00" East, a distance of 956.05 feet to a point on the southern line of Lot 4 of the Partition of the John Boschert Estate, a subdivision according to the plat thereof, recorded in Plat Book 2, Page 56 of the St. Charles County, Missouri Records; thence along said southern line South 24°36'30" East, a distance of 788.75 feet to the southern corner thereof; thence departing said subdivision line, South 16°42'22" West, a distance of 566.59 feet to the western corner of a tract of land conveyed to Vernon and Mildred Philipps by deed recorded in Deed Book 471, Page 185 of the St. Charles County, Missouri Records; thence along Philipps' southern line South 17°29'11" East, a distance of 288.14 feet to a point; thence South 59°54'44" East, a distance of 196.33 feet to a point on the western right-of-way line of Missouri State Highway 94, as aforementioned; thence along said western right-of-way line, South 05°56'04" West, a distance of 1,120.17 feet to the POINT OF BEGINNING, containing 1,537,595 square feet (35.30 acres, more or less).

EXHIBIT B

LEGAL DESCRIPTION
THE NEW TOWN AT ST. CHARLES - PHASE ONE

A tract of land being part of U.S. Surveys 209, 210, 211, 212, 213, 215, 217, 219, 220, 221, 222, 223, and 224 of the St. Charles Common Fields, Township 47 North, Range 5 East, St. Charles County, Missouri and being more particularly described as follows: BEGINNING at a point on the southwestern line of U.S. Survey 209, at the southernmost corner of a tract of land now or formerly of Whittaker Builders, Inc. per deed on file in Book 3625, Page 64 of the St. Charles County, Missouri Recorder of Deeds Office; thence along the southwest line of U.S. Survey 209, North 47°33'30" West, 2,392.09 feet; thence leaving said U.S. Survey line, North 42°26'30" East, 111.69 feet; thence North 78°34'38" East, 151.54 feet; thence along a curve to the right having a radius of 389.94 feet, an arc length of 263.07 feet, with a chord of North 11°28'20" East, 258.11 feet to a point of compound curvature; thence along a curve to the right having a radius of 1604.85 feet, an arc length of 330.28 feet, with a chord of North 36°41'42" East, 329.69 feet; thence North 42°35'27" East, 207.76 feet; thence along a curve to the left having a radius of 347.00 feet, an arc length of 200.72 feet, with a chord of North 26°01'11" East, 197.93 feet; thence North 09°26'55" East, 286.47 feet; thence South 80°33'05" East, 133.65 feet; thence North 09°26'55" East, 334.47 feet; thence South 47°26'30" East, along the southwest line of a tract of land now or formerly of Daniel Kurtz, per deed on file in Book 2355, Page 565, a distance of 2004.35 feet; thence South 75°11'23" East, 642.25 feet; thence South 84°26'39" East, 434.43 feet; thence South 09°09'27" West, 204.54 feet; thence North 86°37'34" West, 58.09 feet; thence South 09°21'14" West, 144.57 feet; thence along a curve to the right having a radius of 100.00 feet, an arc length of 96.77 feet, with a chord of South 54°14'35" East, 93.04 feet; thence South 26°31'16" East, 291.42 feet; thence North 67°56'53" East, 45.14 feet; thence South 26°31'16" East, 60.18 feet; thence North 67°56'53" East, 549.67 feet; thence South 26°31'16" East, 105.13 feet; thence South 57°37'09" West, 616.45 feet; thence North 32°22'51" West, 50.00 feet; thence South 57°37'09" West, 580.21 feet; thence south 24°23'52" East, 121.17 feet; thence South 57°45'00" West, 374.51 feet; thence North 47°24'33" West 734.20 feet; thence South 43°39'50" West, 43.89 feet; thence South 40°43'18" West, 12.18 feet; thence South 43°01'30" West, 779.34 feet to the POINT OF BEGINNING, said tract containing 130.00 acres, more or less.