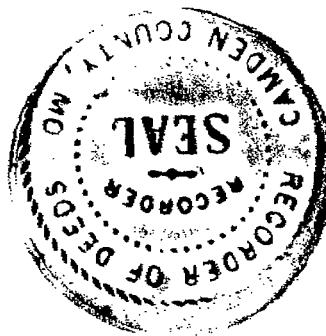


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Title of Document: DECLARATION OF RESTRICTIONS FOR THE OAKS
AT 5-89 SUBDIVISION

Date of Document: October 8, 2004

Grantor(s): The Oaks at 5-89, Inc.

Grantor(s) Address: Bob Van Stavern
P. O. Box 569
Lebanon, MO 65536

Grantee(s): N/A

Grantee(s) Address:

Full Legal Description is located on page(s): 55

Reference Book _____ and Page _____, if required:

**DECLARATION
OF
RESTRICTIONS
FOR
THE OAKS AT 5-89
SUBDIVISION**

DECLARATION OF RESTRICTIONS FOR THE OAKS AT 5-89 SUBDIVISION

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DECLARATION OF RESTRICTIONS FOR THE OAKS AT 5-89 SUBDIVISION

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, this 8th day of October, 2004, The Oaks at 5-89, Inc., a Missouri corporation, hereinafter referred to as "Grantor" or "Declarant", is the owner of certain real property located in Camden County, Missouri more particularly described as follows:

See attached exhibit A

AND WHEREAS, it is the desire of Declarant to insure continuity and conformity in the use and enjoyment of the real property described hereinabove and that the various amenities of the subdivision shall be shared by all owners.

NOW THEREFORE, Declarant, as owner of said real property, does hereby establish these restrictions, for the purposes and under the provisions set forth hereinafter:

ARTICLE I

STATEMENT OF PURPOSE AND IMPOSITION OF COVENANTS

1.1 Imposition of Covenants.

Declarant hereby makes, declares and establishes the following covenants, conditions, restrictions and easements (hereinafter "Covenants"). From the date of recording of the within instrument in the Office of the Recorder of Deeds of Camden County, Missouri, all the land and any portion thereof is held and shall be conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, subject to the provisions of these Covenants. The provisions of these Covenants shall create mutual equitable servitudes upon each of the lots, tracts and parcels

within the abovedescribed property, and in favor of each and all said lots, tracts and parcels, to create reciprocal rights between the respective owners of all such lots, tracts and parcels, to create a privity of contract and estate between the grantees of such lots, tracts and parcels, their heirs, successors, and assigns, and shall as to the owner of each lot, tract or parcel, his heirs, successors, and assigns, operate as covenants running with the land for the benefit of each and all other such lots, tracts and parcels within the abovedescribed property and the respective owners thereof.

1.2 Statement of Purpose and Intent.

These Covenants are imposed for the benefit of all owners of lots, tracts or parcels located within the abovedescribed Property, and are declared to be in furtherance of a plan for the development, improvement and sale of said lots, tracts and parcels, and are further established for the purpose of enhancing and protecting the value, desirability and attractiveness thereof; preventing any future impairment of the Property, and preserving, protecting and enhancing the values and amenities of the Property. Declarant intends to encourage the construction of attractive permanent improvements of advanced technological, architectural, and engineering design, appropriately located to preserve the harmonious development of the Property. Declarant desires and intends to develop quality residential facilities of numerous types and densities and related recreational facilities and amenities.

1.3 Expansion.

Certain parcels of land within the Property have been planned for development in the future but no assurance is expressed or intended that such development shall occur. In addition, Declarant specifically reserves the right, but shall be under no obligation, to add adjacent parcels of land to the overall project by recording an amendment to the within instrument. In such event, parcels added shall be subject to these Covenants and may be subject to additional covenants set forth in the recorded amendment. Owners of land adjoining the Property shall also have the right to annex such land to the Property and submit such land to these Covenants after obtaining the approval of Declarant, as provided hereinafter.

ARTICLE II

DEFINITIONS

The following terms, as used in this Declaration, shall have the following meanings:

1. "Adjoining Land" shall mean land contiguous with the Property, whether or not owned by Declarant, which is or may be made subject to this Declaration.

2. "Amendment" shall mean an amendment to this Declaration, which shall be filed in the Office of the Recorder of Deeds of Camden County, Missouri.

3. "Annexation" shall mean the process by which portions of the Adjoining Land are made subject to this Declaration.

4. "Articles" or "Articles of Incorporation" shall mean the Articles of Incorporation of the Association which have been filed with the Secretary of State to create the Association.

5. "Assessments" shall mean annual, special and default Assessments and related charges and fees levied pursuant to the provisions of this Declaration and the Bylaws of the Association to meet the estimated and actual cash requirements of the Association.

6. "Association" shall mean The Oaks at 5-89 Master Association, Inc., a Missouri not-for-profit corporation, or any successor of the Association by whatever name, charged with the duties and obligations set forth in this Declaration and in the Bylaws of the Association, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference.

7. "Board of Managers" or "Board" or "Directors" or "Executive Board" shall mean the Board of Managers of the Association, which is the governing body of the Association.

8. "Building" shall mean a building or structure constructed on a Lot or Tract, the use of which requires more or less permanent location on the ground or attached to something having a permanent location on the ground. Without limiting the generality of the foregoing, building shall mean fences, storage buildings, signs and pergolas.

9. "Building Site" shall mean the area within a Lot where a Building or other Improvement shall be located, always subject to the prior written approval of the Design Review Committee.

10. "Class A Member" shall mean The Oaks at 5-89, Inc. , a Missouri corporation. In the event there are at least two Projects upon the Property, then Declarant can either voluntarily relinquish in writing its rights privileges and powers to act as a Class A Member in favor of The Oaks at 5-89 Master Association or Declarant shall automatically be divested as a Class A Member in favor of the The Oaks at 5-89 Master Association, Inc. on September 1, 2023. Class A Members shall have the rights and responsibilities set forth in the Bylaws.

11. "Class B Member" shall mean:

a. Owners of Lots or Units in "The Oaks at 5-89 Subdivision", a subdivision of record in Camden County, Missouri.

b. Assignees or successors in title of The Oaks at 5-89, Inc. to Lots or parcels of real estate located within the Property or Adjoining Land which has been annexed to the Property; and

12. "Common Area" shall mean the real property, if any, in which the Association owns an interest for the common use and enjoyment of all of the Members. Such interest may include, without limitation, estates in fee, for terms of years, or easements.

13. "Common Element" shall mean all property, including the Common Areas, in which the Association owns an interest for the common use and enjoyment of all the Members.

14. "Declarant" shall mean The Oaks at 5-89, Inc., a Missouri corporation, or any entity which acquires the rights and powers of Declarant, including without limitation the right to enforce these Restrictions and/or the right to continue to develop The Oaks at 5-89 Subdivision.

15. "Design Guidelines" shall mean the guidelines and rules published and amended and supplemented from time to time by the Design Review Committee.

16. "Design Review Committee" or "Committee" shall mean the committee formed pursuant to Article VI below to maintain the quality and architectural harmony of Improvements in The Oaks at 5-89 Subdivision.

17. "Facilities" shall mean all items or things, whether real or personal, that are now or hereafter owned in fee simple or leased by the Association, including, without limitation, roads, boat docks, well and water facilities, park areas, services, sewage system and related services, a recreational Building or structure. Declarant shall not be required to construct or place any of such items or things, but may construct, place, purchase or construct any of same or others not listed here.

18. "Improvement(s)" shall mean all boat docks, roads, water systems, sewer systems, buildings and structures, parking areas, loading areas, fences, walls, hedges, plantings, poles, driveways, ponds, Facilities, signs, changes in any exterior color or shape, excavation and all other site work, including, without limitation, grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvement which may not be included in the foregoing. "Improvement(s)" does not include turf, shrub, or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearances. "Improvement(s)" does include both original improvements and all later changes in improvements.

19. "Common Expenses" shall mean those costs necessary to operate, maintain and improve the Facilities and to operate, maintain and improve the Association and the Committee.

20. "Lot" shall mean a parcel of land designated as a lot, condominium unit or tract on any Plat of the Property or portion of the Property and reserved for any purpose other than Facilities.

21. "Manager" shall mean such person or entity, if any, retained by the Board to perform certain functions of the Board pursuant to this Declaration or the Bylaws.

22. "Member" shall mean any person or entity holding either Class A or Class B membership in the Association.

23. "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any portion of the Property or interest therein as security for the payment of a debt or obligation.

24. "Mortgagee" shall mean a beneficiary of a Mortgage or Deed of Trust, or other real property security instrument as well as a named mortgagee.

25. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot or condominium unit within The Oaks at 5-89 Subdivision but shall not mean or refer to any person or entity who holds such interest merely as security for the performance of a debt or other obligation, including a Mortgage, unless and until such person or entity has acquired fee simple title pursuant to foreclosure or other proceedings.

26. "Plat" shall mean a plat or plats of survey prepared by a registered land surveyor, together with amendments thereto, of the Property or any portion thereof, the locations and dimensions of all existing Improvements thereon, and all other information required by applicable Missouri law.

27. "The Oaks at 5-89 Subdivision" shall mean the planned community created by this Declaration, consisting of the Property and all of the Improvements located on the Property.

28. "Project" shall mean a separately designated and developed area constructed upon a portion of the Property and comprised of discrete types of development or use, including without limitation the following types of uses:

- a. a residential development of single-family detached residences.
- b. a Condominium;
- c. an apartment or residential rental Building or group of Buildings for multi-family use;
- d. a residential development of duplex residences for single family use.

- e. a residential development of townhomes or zero-lot-line homes for single-family use;
- f. a parking structure; or
- g. any other separately-developed area within The Oaks at 5-89 Subdivision to a discrete purpose as approved by Declarant in advance of construction, occupancy or use.

29. "Project Assessments" shall mean Assessments levied pursuant to a specific Project Declaration.

30. "Project Association" shall mean any association or corporation established for a specific Project pursuant to a Project Declaration.

31. "Project Common Area" shall mean the area within a Project restricted in whole or in part to common use primarily by or for the benefit of the Owners within the Project and their families, tenants, employees, guests and invitees.

32. "Project Common Elements" shall mean property, including the Project Common Areas, in which a Project Association owns an interest for the common use and enjoyment of all the Members.

33. "Project Declaration" shall mean a declaration of covenants, conditions and restrictions establishing a plan of ownership or otherwise imposing a unified development scheme on a particular Project.

34. "Project Parcel" shall mean the portion of the Property upon which a Project is located, as indicated, if appropriate on the Plat relating to the Project and as designated in the Project Declaration.

35. "Property" shall mean and include the real estate initially subjected to this Declaration as described on Page 1 hereof and any additional real property from time to time made subject to these Covenants pursuant to the provisions of this Declaration.

36. "Sewer System" shall mean and refer to the wastewater disposal system and all sewer lines, pipes, fittings, valves, motors, tanks, pumps and other necessary components of the system.

37. "Water System" shall mean and refer to the water well system and all lines, pipes, fittings, valves, motors, tanks, pumps and other necessary components of the system.

ARTICLE III

THE ASSOCIATION

3.1 Dedication of Common Area.

Declarant may hereafter deed to the Association certain parts of the Property, intended for common use by the Owners in The Oaks at 5-89 Subdivision but is under no obligation to dedicate such ground. Such designated areas are intended for the common use and enjoyment of Members and their family, tenants, employees, guests and invitees.

3.2 Membership.

3.2.1 Classes of Members. There shall be two classes of membership in the Association.

3.2.2 Class A Members. "Class A Member" shall mean The Oaks at 5-89, Inc. a Missouri corporation. The Class A Membership shall automatically cease to exist as a class of membership in the Association upon the happening of Declarant either voluntarily relinquishing in writing its rights, privileges, authorities and powers pursuant to this Declaration and the Bylaws or on September 1, 2025, whichever event occurs first in time. In the event there are at least two Projects upon the Property, then Declarant can either voluntarily relinquish in writing its rights, privileges and powers to act as a Class A Member in favor of The Oaks at 5-89 Master Association or Declarant shall automatically be replaced as a Class A Member by such Association on September 1, 2023. Class A Members shall have the rights and responsibilities set forth in the Bylaws.

3.2.3 Class B Members. Class B Members shall be:

- a. Owners of Lots or parcels within "The Oaks at 5-89 Subdivision";
- b. Assignees or successors in title of The Oaks at 5-89, Inc. to Units, Lots or Parcels of real estate located within the Property or Adjoining Land which has been annexed to the Property; and their families, paying or non-paying guests, tenants, lessees, invitees, agents, employees and servants, all of whom shall be entitled to

use of the Facilities, subject to the provisions of this Declaration and the Bylaws and any amendments thereto, and to such rules and regulations as are promulgated from time to time by the Board. Until the Class A Membership is extinguished Class B Members shall be nonvoting Members, but shall have such rights and responsibilities as are set forth in the provisions of this Declaration, the Bylaws, or any amendments thereto.

3.3 Board of Managers.

- 3.3.1 **Responsibility.** The Board of Managers shall have the responsibility of governing and administering the Facilities, according to the provisions of this Declaration and the Bylaws, and in the discharge of such responsibility, shall have the general and special powers set forth in the Bylaws.
- 3.3.2 **Number and Qualifications.** The Board shall consist of three (3) Managers.
- 3.3.3 **Election of Managers.** The managers shall be elected annually on January 1 of each year by a majority vote of the persons who are Class A Members. Such vote need not be, but may be, at a meeting of the Class A Members duly called in accordance with the Association Bylaws. Such vote may also be by a writing executed by a majority of the Class A Members, or any combination of either method. If and when the Class A membership ceases to exist for any reason, then the managers will be elected by the Class B Members.
- 3.3.4 **No Conflict.** A Manager's ownership of a Lot or unit within The Oaks at 5-89 Subdivision or affiliation with or appointment by a Class A Member shall not disqualify that Manager from discharging his rights and responsibilities as a Manager of the Association, including but not limited to voting on a matter which may affect the interest of his affiliated Class A Member, nor shall such participation by a Manager be deemed to constitute a conflict of interest.
- 3.3.5 **Powers and Duties.** The Board of Managers shall have the powers and duties necessary for governing and administering the affairs of the Association and for the operation and maintenance of the Common Areas and Facilities. The Board of Managers may do all such acts and things except as prohibited by law, this Declaration, or the Bylaws. The powers and duties of the Board shall include those set forth in the Bylaws.

ARTICLE IV

ASSESSMENTS

4.1 Purposes of Assessments.

The annual and special assessments shall be used for the purpose of operating, maintaining and improving the Facilities, whether presently existing or added hereafter, and operating, maintaining and improving the Association and the Committee whether presently existing or added hereafter.

4.2 Basis of Assessments.

The Association is empowered to make during each year and collect an assessment in a sum sufficient for the normal operation, repair, maintenance and improvement of the Facilities, along with a reasonable balance for the purpose of unanticipated repairs and capital reserves. In the event the sums derived from the annual assessments are inadequate to pay the expenses of operation, maintenance, repair or improvement of the Facilities, the Association may levy and collect additional special assessments for such purposes from time to time, as determined by the Board of Managers. Any unused assessments or operating funds remaining at the end of a fiscal year may be added to a general reserve fund or kept in the operating accounts. The basis for such assessments shall be to divide equally the Common Expenses amongst all the then existing Class B Members. Provided however that the Board may charge special use and connection and hook-up fees for the use of the Facilities, including without limitation, boat docks, storage units, garages, personal water craft slips, sewer and water. In the event that an Owner shall fail to perform an obligation under the provisions of this Declaration or the Bylaws or in the event the Association has incurred an expense on behalf of an Owner under the provisions of the Declaration or the Bylaws, the Association is empowered to levy upon that Owner's lot or unit and collect default assessments, which shall include interest, late charges, costs of collection and reasonable attorney's fees as set forth hereinafter in this Restrictions.

4.3 Obligation for Assessments.

Each person or entity who becomes an Owner by acceptance of a deed, contract for deed, or other form of conveyance, whether or not it shall be expressed in such conveyance, shall be deemed to covenant and agree to pay to the Association their pro-rata share of the annual assessments and additional special assessments to be fixed, established and collected as set forth in this Article and the Bylaws. All assessments, whether general, special, or default, including interest, late charges, costs of collection and attorney's fees, shall be a charge on the Unit or Lot

owned by such Owner or Class B Member and shall be a continuing lien upon such property. Each such assessment, including default assessments, shall also be the personal obligation of such Owner.

4.4 Collection of Assessments.

The general, special and default assessments made by the Board shall be charged to the Class B Members.

4.5 Due Dates of Assessments.

The general assessments shall be in such amount as the Board of Managers shall specify and shall become due and payable on any reasonable date as determined by the Board. In addition, the Board by resolution may allow the Class B Members assessments to be paid in installments so long as the payment dates, due dates and collection methods are uniform amongst all Class B Members. Special assessments shall become due and payable thirty (30) days after the date on which the Board of Managers sets the amount of the special assessment, unless some other date is specified by the Board. Default assessments shall become due and payable at the time they are assessed by the Board.

4.6 Enforcement of Assessments.

If an assessment is not paid on the date due, then such assessment (including late charges, interest, costs, and attorney fees) shall become delinquent and shall, including default assessments, thereupon become a continuing lien on the property of the nonpaying affiliated owners or Class B Members which shall bind such property in the hands of the Owners or the Class B Members, their heirs, devisees, personal representatives, successors and assigns. The Board shall file such liens on behalf of the Association, and such liens shall be executed by a person so designated by the Association and shall be recorded in the Office of the Recorder of Deeds of Camden County, Missouri. The power and responsibility of the Board to place and file such liens shall extend to the property owned by each Owner or Class B Member and payment shall not be deemed a defense against the filing or enforcement of such lien unless payment in full shall have been made by the Class B Member of all amounts charged against it.

The personal obligation of the then Owner or Class B Member to pay a delinquent assessment shall remain his or her personal obligation and shall not pass to his or her successors in title unless expressly assumed by them.

If the assessment is not paid when due, a late charge of not more than TWENTY FIVE AND 00/100 DOLLARS (\$25.00) per month may be charged. The unpaid assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, together with all expenses, including attorney's fees incurred. The Board or the Manager shall have the duty, right, power and authority to prohibit use of the Facilities by any Owner or Class B Member in the event that any assessment chargeable to such Member remains unpaid more than 30 days from the due date for payment thereof.

The Board of Managers, on behalf of the Association, may bring an action at law against the nonpaying owner or Class B Member personally obligated to pay the same or may file an action to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment and interest the reasonable attorney's fees and costs incurred in collection. No Owner or Class B Member may waive or otherwise escape liability for the assessments provided for herein by non-use of the Facilities or by abandonment of his or her Lot or Unit.

4.7 Notice to Mortgagees.

The Board of Managers, may report to a mortgagee any then unpaid assessments due from the Owner or Class B Member who owns such mortgaged Unit or Lot, provided that the interest of such Mortgagee has been verified by the Association.

The Board may also, when giving notice to an Owner or Class B Member of a default in payment of assessments, send a copy to a Mortgagee of the Unit or Lot owned by such defaulting Owner or Class B Member.

ARTICLE V

EASEMENTS AND RESERVATIONS

5.1 Owners: Easements of Enjoyment.

Every owner shall have a nonexclusive easement for the use and enjoyment of the Common Areas which easement shall be appurtenant to and shall pass with the title to every Lot, subject to the other various easements set forth in this Article.

5.2 Delegation of Use.

Any Owner may delegate, in accordance with the provisions of this Declaration and the Bylaws, or in accordance with the Project Documents governing the Project in which such Owner owns a Lot or Unit, his right of enjoyment in the Common Areas, Common Elements, and Facilities, to such Owner's tenants, employees, family, guests or invitees.

5.3 Recorded Easements.

The Property and all portions thereof shall be subject to any and all easements shown on any recorded Plat affecting the Property or any portion thereof, and to any other easements of record or of use as of the date of recordation of this Declaration.

5.4 Easements for Encroachments.

The Property and all portions thereof shall be subject to an easement for the actual extent of encroachments created by construction as designed or constructed by the Declarant and for settling, shifting, and movement of any portion of the Property, except that no such easement is created for an encroachment which is the result of willful conduct on the part of an Owner, a tenant, the Association, or any other person or entity. A valid easement for any encroachments and for their maintenance shall exist. Such encroachments shall not be considered to be encumbrances upon any part of a Project. Encroachments referred to include, but are not limited to, encroachments caused by error in the original construction of Improvements on any Lot, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any Improvements on the Property.

5.5 Utility Easements.

There is hereby created in favor of Declarant and its successors in interest to enforcing these Restrictions and developing the The Oaks at 5-89 Subdivision a general easement upon, across, over, in and under the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electrical and communications. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such utility and communication services to install and maintain necessary equipment on the Property and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the Property.

Water, sewer, gas, telephone, electrical, or communications lines, systems or facilities may be installed or relocated on the surface of the Property as approved by Declarant or by the Design Review Committee. Such utilities temporarily may be installed above ground during

construction, if approved by the Declarant or the Design Review Committee. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided without disturbing the uses of the Owners, the Association, and Declarant; shall prosecute its installation and maintenance activities as promptly and expeditiously as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, either Declarant or the Association shall have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms of this Declaration. This general easement shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

5.6 Reservation for Expansion.

Declarant hereby reserves to itself and for Owners of Lots in all future phases of The Oaks at 5-89 Subdivision a perpetual easement and right-of-way for access over, upon, and across the Property for construction, utilities, drainage, and ingress and egress. The location or relocation of these easements and rights-of-way must be approved and documented by Declarant or the Association by recorded instruments.

5.7 Reservation of Easements, Exceptions, and Exclusions.

Declarant reserves to itself and hereby grants to the Association the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Areas, for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions, and exclusions for the best interest of all the Owners within The Oaks at 5-89 Subdivision as initially built and expanded. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, and to create other reservations, exceptions and exclusions convenient or necessary for the use and operation of any other property of the Declarant, as long as such action does not hamper the enjoyment of The Oaks at 5-89 Subdivision, as built or expanded, by the Owners.

5.8 Emergency Easement.

A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

5.9 Maintenance Easement.

An easement is hereby reserved to the Declarant, and granted to the Association, and any member of the Board or the Manager, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Lots and Project Parcels and a right to make such use of the Lots, Condominium Units, and Project Parcels as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to this Declaration and related documents or the Project Documents, including the right to enter upon any Lot, Condominium Unit, Building Site, or Project Parcel for the purpose of performing maintenance to the landscaping or the exterior of Improvements to such Lot, Building Site, or Project Parcel as required by this Declaration and related documents or the Project Documents.

5.10 Drainage Easement.

An easement is hereby reserved to Declarant and granted to the Association, its officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Property for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water. Best efforts shall be made to use this easement so as not to disturb the uses of the Owners, the Association and the Declarant, as applicable, to the extent possible, to prosecute such drainage work promptly and expeditiously, and to restore any areas affected by such work to a sightly and usable condition as soon as reasonably possible following such work. Declarant or its officers, agents, employees, successors and assigns must inform and obtain the approval of the Board prior to undertaking such drainage work, which approval shall not be unreasonably withheld.

5.11 Declarant's Rights Incident to Construction.

Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Common Areas and the Project Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or the Adjoining Land; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access to an Owner's Lot or Condominium Unit or other facility or improvement by that owner or his family, tenants, employees, guests or invitees.

5.12 Easements Deemed Created.

All conveyances of Lots made after the date of this Declaration, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance is

5.13 Partition or Combination of Lots .

No part of a Lot may be partitioned or separated from any other part thereof, and no Lots may be combined, except as provided in this Section. A Lot may be subdivided into two Lots; or two or more Lots may be combined into one, only with the written consent of Declarant or of the Association and with full compliance with all applicable state law, local governmental regulations, and all applicable Project Documents. Declarant's consent shall be conditioned, among other conditions, upon payment by the Owner or Owners concerned of all expenses incident to giving the consent, including legal, recording and accounting fees. Every agreement and recorded instrument for partition or combination of Lots shall make adequate provision for the Assessments appurtenant to or imposed on such Lots. Whether partitioned, combined or unchanged, each Lot shall be conveyed, transferred, or otherwise disposed, gifted, devised, bequeathed, encumbered, of, as the case may be, with all appurtenant rights and interests created by law or by this Declaration, including the Owner's membership in the Association and the right to use the Common Areas, and with the appropriate adjustments to the voting rights, as provided in Article III above, and liability for Assessments as established for such type of Lot by the Board being made as applicable.

5.14 No Partition of Common Areas.

The Common Areas shall be owned by the Association after conveyance, if any, by Declarant, and no Owner shall bring any action for partition or division of the Common Areas. By acceptance of a deed or other instrument of conveyance or assignment, each Owner shall be deemed to have specifically waived such Owner's rights to institute or maintain a partition action or any other action designed to cause a division of the Common Areas, and this Section may be pleaded as a bar to any such action. Any Owner who shall institute or maintain any such action shall be liable to the Association, and hereby agrees to reimburse the Association for its costs, expenses, and reasonable attorneys' fees in defending any such action.

ARTICLE VI

DESIGN REVIEW

COMMITTEE

6.1 Membership.

There is hereby established a Design Review Committee which shall be responsible for the establishment and administration of Design Guidelines to carry out the purposes and intent of this Declaration. The Committee shall be composed of three persons, who need not be Members of the Association. Declarant or the Board of Managers by Board resolution, after Declarant relinquishes control of the Association, may increase the number of members on the Committee. All of the members of the Committee shall be appointed, removed, and replaced by Declarant in its sole discretion, until such time as Declarant shall voluntarily surrender this right to the Board of Managers.

6.2 Purpose.

The Committee shall review, study and either approve or reject proposed improvements on the property, all in compliance with this Declaration and as further set forth in the rules and regulations of the Committee and the Design Guidelines adopted and established from time to time by the Committee.

- 6.2.1 **Best Judgment.** The Committee shall exercise its reasonable judgment to see that all improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location on the Building Site, height, grade and finished ground elevation, and all aesthetic considerations set forth in this Declaration or in the Design Guidelines.
- 6.2.2 **Approval Required.** No building or improvement on the property shall be erected, placed or altered on any Lot, Building Site, or Project Parcel nor shall any construction be commenced until plans for such buildings and improvements shall have been approved by the Committee; provided, however, that improvements and alterations which are completely within a Building may be undertaken without such approval. Further provided, that the Committee may in its discretion approve an improvement which has already been constructed or commenced, where such improvement will not otherwise violate the provisions of this Declaration.
- 6.2.3 **Conclusive.** The actions of the Committee in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

6.3 Organization and Operation of Committee.

6.3.1 Term. The term of office of each member of the Committee, subject to Section 6.1, shall be one year, commencing January 1 of each year, and continuing until his successor shall have been appointed. Should a Committee member die, retire, become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed as provided in Section 6.1.

6.3.2 Chairman. So long as Declarant appoints the Committee, Declarant shall appoint the chairman.

At such time as the Committee is appointed by the Board of Managers, the chairman shall be elected annually from among the members of the Committee by majority vote of said members.

6.3.3 Operations. The chairman shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the Committee prior to any meeting. The notice shall set forth the time and place of the meeting, and notice may be waived by any member. In the absence of a chairman, the party responsible for appointing or electing the chairman may appoint or elect a successor, or if the absence is temporary, a temporary successor.

6.3.4 Voting. The affirmative vote of a majority of the members of the committee shall govern its actions and be the act of the Committee. A quorum shall consist of a majority of the members.

6.3.5 Expert Consultation. The Committee may avail itself of technical and professional advice and consultants as it deems appropriate.

6.4 Expenses.

Except as provided below, all expenses of the Committee shall be paid by the Association. The Committee shall have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the Committee from time to time, and such fees shall be collected by the Committee and remitted to the Association to help defray the expenses of the Committee's operation. Until January 1, 2006, the filing fee shall not exceed \$250.00 per single family residence and \$1,000.00 for condominiums, townhomes, duplexes, commercial-residential structures such as nursing homes, and other non-residential structures. These fees may be subject to reasonable increases after such date as determined by the Board on recommendation from the Committee. The Developer is exempt from such application and fees

so long as the Committee is controlled by Developer. A waiver of a fee shall not constitute a continuing waiver, except as to the application then pending for which such fee was waived.

6.5 Design Guidelines and Rules.

The Committee shall adopt, establish, and publish, from time to time, Design Guidelines. The Design Guidelines shall not be inconsistent with this Declaration, but shall more specifically define and describe the design standards for The Oaks at 5-89 Subdivision and the various uses within The Oaks at 5-89 Subdivision. The Design Guidelines may be modified or amended from time to time by the Committee. Further, the Committee, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with The Oaks at 5-89 Subdivision design review process is not a substitute for compliance with governmental, building, zoning, and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction.

6.6 Procedures.

As part of the Design Guidelines and Rules, the Committee shall make and publish such rules and regulations as it may deem appropriate to govern its proceedings.

6.7 Limitation of Liability.

The Committee shall use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Committee nor any individual Committee member shall be liable to any persons for any official act of the Committee in connection with submitted plans and specifications, except to the extent the Committee or any individual Committee member acted with malice or wrongful intent. Approval by the Committee does not necessarily assure approval by the appropriate governmental, entity. Notwithstanding that the Committee has approved plans and specifications, neither the Committee nor any of its members shall be responsible or liable to any owner, developer, or contractor with respect to any loss, liability, claims or expense which may arise by reason of such approval of the construction of the improvements. Neither the Board, the Design Review Committee, or any agent thereof, nor Declarant or any of its partners, employees, agents, or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with these guidelines, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Committee shall be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the Committee's decision. The Association, however, shall not be obligated to indemnify each member of the Committee to the extent any such member of the Committee shall be adjudged to be liable for

negligence or misconduct in the performance of his duty as a member of the Committee, unless and then only to the extent that the court in which such action or suit may be brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

6.8 Certificate of Compliance.

Upon payment of a reasonable fee established from time to time by the Board and upon written request of an Owner or his agent, an existing or prospective Mortgagee, or a prospective grantee, the Committee shall issue an acknowledged certificate, in recordable form, setting forth generally whether, to the best of the Committee's knowledge, the Owner is in violation of any of the terms and conditions of this Declaration and related documents. Unless such request shall be complied with within 30 days after receipt of the request, it shall be conclusively presumed that the Owner and the Owner's improvement are in conformance with all the terms and conditions subject to the control of the Committee.

ARTICLE VII

CONSTRUCTION AND ALTERATION OF

IMPROVEMENTS

7.1 General.

The Design Guidelines and the general instructions set forth in these Covenants shall govern the right of an Owner, Declarant, or other entity to construct, reconstruct, refinish, alter or maintain any Improvement upon, under, or above any of the property (except as provided in Section 6.2.2 above), and to make or create any excavation or fill on the Property, or make any change in the natural or existing surface contour or drainage, or install any utility line or conduit on or over the Property.

7.2 Approval Required.

Except to the extent permitted in Section 6.2.2 above, any construction or reconstruction, or the refinishing or alteration of any part of the exterior of any Building or other Improvement on the Property is absolutely prohibited until and unless the Owner first obtains approval from

the Design Review Committee and otherwise complies with the provisions of these Covenants. All Improvements shall be constructed only in accordance with approved plans.

7.3 Deemed Nuisances.

Every violation of these Covenants is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against a Member shall be applicable. These Covenants may be enforced as provided below.

7.4 Removal of Nonconforming Improvements.

The Association, upon request of the Committee and after reasonable notice to the offender and to the Owner, may, but is under no obligation to do so, remove any Improvement constructed, reconstructed, refinished, altered, or maintained in violation of these Covenants, and the Owner of the Improvements shall immediately reimburse the Association for all expenses incurred in connection with such removal.

7.5 Construction Methods.

Specific rules regarding construction methods, including but not limited to excavation, drainage, utility lines, loading areas, waste storage, trash removal, materials storage, and transformers and meters, shall be set forth in the Design Guidelines, and all Owners shall comply with those rules.

ARTICLE VIII

PROPERTY USE

RESTRICTIONS

8.1 General Restriction.

The Property shall be used only for the purposes set forth in these Restrictions, as permitted by the applicable ordinances of Camden County, Missouri, and the laws of the State of Missouri and the United States, and as set forth in this Declaration, amendments, or specific recorded covenants affecting all or any part of the property.

8.2 Motorized Vehicles.

Without the written consent of Declarant, no trucks, trail bikes, recreational vehicles, motor homes, motor coaches, snowmobiles, campers, trailers, boats or boat trailers, or similar vehicles other than passenger automobiles or pickup or utility trucks with a capacity of one-half ton or less or any other motorized vehicles shall be parked, stored or in any manner kept or placed on any portion of the Property except in the following manner: recreational vehicles, motor homes, motor coaches, campers, boats stored on boat trailers may be kept or parked on the street abutting, or the driveway of, a lot for a twenty-four (24) hour period solely for the purposes of embarking upon or returning from an excursion trip or designated use of such vehicle. The intent of this provision is to provide for the occasional loading or unloading of such vehicle and not to allow the extended placing or keeping of such vehicle for purposes of storage or other purposes not set forth above. Subject to the foregoing exception, all such listed and designated vehicles shall be only kept, stored or placed in such areas as may be designated by the Association from time to time. This restriction however, shall not be deemed to prohibit commercial and construction vehicles in the ordinary course of business, from making deliveries or otherwise providing service to the Property or for the initial construction by Declarant or the other Owners.

8.3 Excavation.

No excavation shall be made except in connection with improvements approved as provided in these covenants. For purposes of this Section, "excavation" shall mean any disturbance of the surface of the land (except to the extent reasonably necessary for approved landscape planting) which results in a removal of earth, rock, or other substance a depth of more than 18 inches below the natural surface of the land.

8.4 Water and Sanitation.

Except when Declarant issues a written exemption, each structure designed for occupancy or use by humans shall connect with water and sanitation facilities as shall be made available from time to time by the Association or any other approved person or entity.

8.5 Wells.

Except when Declarant issues a written exemption, no well from which water, oil, or gas is produced shall be dug, nor shall storage tanks, reservoirs, or any installation of power, telephone, or other utility lines (wire, pipe, or conduit) be made or operated anywhere on the Property except in connection with water wells, sewer systems and other works operated by the Association or by duly certified public utility companies; provided, however, that the foregoing

shall not prevent the drilling of or installation of additional water wells by Declarant or its assigns.

8.6 Signs.

No signs of any kind shall be displayed to the public view on or from any portion of the Property except those signs approved by the Committee, or signs of Declarant or its affiliates or assigns, or signs required by law. Such prohibition shall include a prohibition against signs in any window of any building or condominium unit without Declarant's express written permission.

8.7 Animals and Pets.

No animals, livestock, reptiles, amphibians or poultry of any kind shall be kept, raised, or bred on any Portion of the property, except dogs, cats, or other household pets (the kind and number of which may be regulated, permitted or prohibited from time to time by the Association or applicable Project Documents).

8.7.1 Household Pets Restrained. Household pets, such as dogs and cats, must be contained within the residence constructed upon the Owner's lot or within owner's Condominium Unit or other dwelling unit, and such pets may not be permitted to run at large at any time. Pets may be kept out of doors with the approval of Declarant provided that there are adequate facilities (approval by Declarant) for such pets outdoors. Notwithstanding the foregoing, such pets must be accompanied by their owners outside the Owner's lot or unit subject to the following provisions.

(a) Leash Regulation. Pedestrians within the Property who are accompanied by dogs must have the dogs under the pedestrian's direct control by use of a leash not to exceed 10 feet in length.

8.8 Drainage.

No Owner shall do or permit any work, construct any Improvements, place any landscaping, or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Property, except to the extent such alteration and drainage pattern is approved in writing by the Committee or the Board of Directors, and except for rights reserved to Declarant to alter or change drainage patterns.

8.9 *Trash.*

No trash, ashes, garbage or other refuse shall be thrown or dumped on any building or land or area within the Property. There shall be no burning or other disposal of refuse out of doors. Each Owner shall provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles shall be screened from the public view and from the wind and protected from animal and other disturbance, and the location thereof shall be approved in accordance with Article VI hereof.

8.10 *Construction Regulations of the Design Guidelines.*

All Owners and contractors shall comply with the construction regulations portions of the Design Guidelines. Such regulations may affect, without limitation, the following: trash and debris removal; sanitary facilities; parking areas; outside storage; restoration of damaged property; conduct and behavior of builders, subcontractors and Owners' representatives on the property at any time; the conservation of landscape materials; and fire protection.

8.11 *Blasting.*

If any blasting is to occur, the Committee and Declarant shall be informed far enough in advance to allow them to make such investigation as they deem appropriate to confirm that appropriate protective measures have been taken prior to the blasting. Notwithstanding the foregoing, no approval of any blasting by Declarant or the Committee shall in any way release the person conducting the blasting from all liability in connection with the blasting, nor shall such approval in any way be deemed to make the Declarant or the Committee liable for damage which may occur from blasting, and the person doing the blasting shall defend and hereby indemnifies Declarant and Committee from any such expense or liability. Declarant or the Committee may impose any reasonable restrictions, including time and date restrictions, on all blasting. Notwithstanding the foregoing no such approval shall relieve such person conducting the blasting from obtaining appropriate local, state and other governmental permits and approvals.

8.12 *Temporary Structures.*

No temporary structures shall be permitted except as may be determined to be necessary during construction and as specifically authorized by the Committee.

8.13 *Compliance with Laws.*

Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the Property.

8.14 No Outside Clotheslines.

No laundry or wash shall be dried or hung outside any Building.

8.15 Parking and Auto Repair.

Unless within a storage rental project or unless there is written Declarant or Committee approval, no automobiles or other vehicles shall be parked in any street or upon any portion of the Property except within garages, carports, or designated parking areas. No work on automobiles or other vehicle repair shall be performed in any visible or exposed portion of The Oaks at 5-89 Subdivision except in emergencies.

8.16 Abandoned, Inoperable or Oversized Vehicles.

Abandoned or inoperable automobiles or vehicles of any kind, except as provided below, shall not be stored or parked on any portion of the Property. "Abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of three weeks or longer; provided, however, this shall not include vehicles parked by owners while on vacation. A written notice describing the abandoned or inoperable vehicle" and requesting its removal may be personally served upon the Owner or posted on the unused vehicle. If such vehicle has not been removed within 72 hours after notice as been given, the Association shall have the right to remove the vehicle without liability, and the expense of removal shall be charged against the Owner. "Oversized" vehicles, for purposes of this Section, shall be vehicles which are too high to clear the entrance to a residential garage. All unsightly or oversized vehicles, snow removal equipment, garden maintenance equipment, and all other unsightly equipment and machinery may be required by Declarant or the Association to be stored at a designated location or locations. This provision is in addition to, and shall be governed by, the provisions of Section 8.2 hereof.

8.17 Antennae.

No exterior radio, television, microwave or other antenna or antenna dish or signal capture and distribution device shall be permitted without the prior written consent of the Committee, and appropriate screening.

8.18 Outside Burning.

There shall be no exterior fires, except barbecues, outside fireplaces, braziers, and incinerator fires contained within facilities or receptacles and in areas designed and approved by the Committee. No owner shall permit any condition upon its portion of the property which creates a fire hazard or is in violation of fire prevention regulations.

8.19 Noise.

No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Property or Improvements, shall be placed or used on any portion of the Property. Owners shall not permit any noise or disturbance on their Lots, within their buildings or within their Condominium Units which tends to disturb other Owners.

8.20 Obstructions.

There shall be no obstruction of any pedestrian walkways or interference with the free use of those walkways except as may be reasonably required in connection with repairs. The Owners, their family, tenants, guests, and invitees are granted nonexclusive easements to use any pedestrian walkways which may be constructed within the Property. That use shall be subject to The Oaks at 5-89 Subdivision Rules adopted by the Board from time to time. The Association shall promptly take such action as may be necessary to abate or enjoin any interference with or obstruction of pedestrian walkways, and the Association shall have a right of entry on any part of the Property for the purposes of enforcing this Section, and any costs incurred by the Association in connection with such enforcements shall be specifically assessed to the owners or other persons responsible for the interference.

8.21 Camping and Picnicking.

No camping or picnicking shall be allowed within the Property except in those areas designated for those purposes. The Board, in its discretion, may ban or permit public assemblies and rallies within the Property.

8.22 Continuity of Construction.

All Improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within 12 months of commencement, unless an exception is granted in writing by the Committee. If an improvement is commenced and construction is then abandoned for more than 90 days, or if construction is not completed within the required 12

month period, then after notice and hearing, the Association may impose a fine of not less than \$500.00 per day on the Owner of the Lot until construction is resumed, or the Improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Board of Managers that such abandonment is for circumstances beyond the Owner's control. Such charges shall be a default assessment and lien as provided in Article IV above.

8.23 Nuisance.

No obnoxious or offensive activity shall be carried on within the Property, nor shall anything be done or permitted which shall constitute a public nuisance. No noise or other nuisance shall be permitted to exist or operate upon the property so as to be offensive or detrimental to any other part of the Property or its occupants.

8.24 General Practices Prohibited.

The following practices are prohibited at The Oaks at 5-89 Subdivision:

- 8.24.1 Allowing concrete suppliers and contractors to clean their equipment other than at a location designated for that purpose by the Committee;
- 8.24.2 Removing any rock, plant material, top soil or similar items from any property of others;
- 8.24.3 Carrying firearms on the Property;
- 8.24.4 Use of surface water for construction; or
- 8.24.5 Careless disposition of cigarettes and other flammable materials.
- 8.24.6 Use of fireworks on the Property.

8.25 Use.

It shall be expressly permissible and proper for Declarant and any Owner and their employees, agents, independent contractors, successors, and assigns involved in the construction of Improvements on, or the providing of utility service to, the Property or Adjoining Land, to perform such activities and to maintain upon portion of the Property as they deem necessary, and facilities as may be reasonably required, convenient, necessary, or incidental to such construction and development of the Property. This permission specifically includes, without limiting the generality of the foregoing, maintaining business offices, storage areas, construction yards and

equipment, signs, and sales offices. However, no activity shall be performed and no facility shall be maintained on any portion of the Property in such a way as to unreasonably interfere with or disturb any purchaser or Owner of a Lot or Condominium Unit, or to unreasonably interfere with the use, enjoyment, or access of such Owner, its tenants, employees, guests, or business invitees, of and to its Lot or Condominium Unit. If any Owner's use under this provision is deemed objectionable by Declarant or by the Design Review Committee, then Declarant or the Design Review Committee, in its sole discretion, may withdraw this permission.

8.26 Buildings.

In no case shall there be more than one (1) building located upon a lot or parcel, except in the case of a specially designed complex of institutional, commercial or residential buildings. The development and construction plans for such building complexes shall be approved by the committee prior to excavation therefor or construction thereof. Storage buildings, pergolas and other like structures shall be constructed of materials complementary to the principal building located upon such lot and their construction and placement shall be approved by the committee prior to the excavation therefor and construction thereof.

8.27 Recreational Facilities-Covenants not to Apply.

The provisions of Section 8.1 through 8.26 shall not apply to the Facilities. The Declarant and any other Owner of a Facility may adopt rules and regulations governing the use and conduct of those facilities. The Facilities shall nevertheless have the benefit of the provisions of Article VIII.

8.28 Leases.

The Owner of a Lot, Tract, Parcel, Condominium Unit, building or commercial unit, or other dwelling unit shall have the right to lease the same, upon obtaining the prior approval of the Association, subject to the following conditions:

- 8.28.1 All leases shall be in writing and shall be for a minimum of one (1) year.
- 8.28.2 The lease shall be specifically subject to this Declaration, the Project Documents and related documents, and any failure of a tenant to comply with The Oaks at 5-89 Subdivision documents shall be a default under the lease.
- 8.28.3 The Owner shall be liable for any violation of this Declaration or related documents committed by the Owner's tenant, without prejudice to the

Owner's right to collect any sums paid by the Owner on behalf of the tenant.

8.29 Boat Slip and Boat Dock Usage.

The Owner of a Unit or Lot, Parcel or Tract not located adjacent to the waters of Lake of the Ozarks shall have the right to use of a Boat Slip located within a common dock within The Oaks at 5-89 Subdivision when and if such is available subject to the following conditions:

- 8.29.1 Owners must enter into a Boat Slip Agreement with The Oaks at 5-89 Master Association, Inc., under which the terms and conditions of usage are established and specific Boat Slips are assigned.
- 8.29.2 The Oaks at 5-89 Master Association, Inc., shall have, in its sole discretion, the right to approve or disapprove of any boat lift(s) placed in the boat slip(s) located at The Oaks at 5-89 Subdivision.
- 8.29.3 The Oaks at 5-89 Master Association, Inc. shall have, in its sole discretion, the right to cancel any Boat Slip Agreement due to there being a vessel moored in any Boat Slip(s) which is deemed to exceed the capacity for the Boat Slip assigned. The Association may require, upon making such a determination, the Owner of said vessel to enter into a new Boat Slip Agreement assigning a Boat Slip(s) sufficient in size to moor said vessel.
- 8.29.4 The Oaks at 5-89 Master Association, Inc. shall always retain to relocate the boat docks along the common area shoreline in its sole discretion.

Owners of single family residential lots located immediately adjacent to the waters of Lake of the Ozarks may maintain a private dock with appropriate Declarant and Design Review Committee authorization.

ARTICLE IX

MAINTENANCE

9.1 Association's Responsibility.

The Association shall maintain and keep the Common Areas in good repair. This maintenance shall include, but not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and Improvements

situated within the Common Areas. The Association may, in the discretion of the Board, assume the maintenance responsibilities set out in any Project Declaration for any Project located on the Property, after giving the responsible Project Association reasonable notice and an opportunity to correct its deficient maintenance. In such event, all costs of such maintenance shall be assessed only against those Owners residing in the Project to which the services are provided. The assumption of this responsibility may take place either by contract or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the community-wide standard of The Oaks at 5-89 Subdivision. The provision of services in accordance with this Section shall not constitute discrimination within a class.

9.2 Owner's Responsibility.

Except as provided otherwise in The Oaks at 5-89 Subdivision Documents, applicable Project Documents, or by written agreement with the Association, all maintenance of the Lots and all structures, landscaping, parking areas, and other Improvements thereon shall be the sole responsibility of the owner thereof, who shall maintain said Lot in accordance with the community-wide standard of The Oaks at 5-89 Subdivision. The Association shall, in the discretion of the Board, assume the maintenance responsibilities of such owner if, in the opinion of the Board, the level and quality of maintenance being provided by such Owner does not satisfy such standard, and the Project Association for the Project in which the Lot or Dwelling Unit is located has failed to adequately provide such maintenance. Before assuming the maintenance responsibilities, the Board shall notify the Owner and the applicable Project Association in writing of its intention to do so, and if the Owner or the Project Association has not commenced and diligently pursued remedial action within 30 days after mailing of such written notice, then the Association shall proceed. The expenses of such maintenance by the Board shall be charged by the Association to the such Owner, together with interest as set forth in Article IV above. Such charges shall be a default assessment and lien on the Lot as provided in Article IV above.

ARTICLE X

INSURANCE AND FIDELITY

BONDS

10.1 Hazard Insurance.

The Association may maintain if practicable, obtain insurance for any insurable Improvements on the Common Areas in an amount equal to eighty percent (80%) of the actual

cash value of the insured property at the time the insurance purchased and at each renewal date, exclusive of land, foundation, excavation, depreciation on personal property, and other items normally excluded from coverage), which shall include all building service equipment and the like, Common Elements, common personal property and supplies, and any fixtures or equipment within the Common Areas, unless the Board in its discretion shall decide that it is either impossible or impractical to purchase insurance in such amount, in which event a lesser amount of coverage may be selected by the Board. Such policy shall include, if applicable, a standard form of mortgagee clause, and shall afford protection against at least the following:

- 10.1.1 Loss or damage by fire and other hazards covered by the standard extended coverage endorsement with the standard "all-risk" endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage;
- 10.1.2 Such other risks as shall customarily be covered with respect to projects similar in construction, location and use to The Oaks at 5-89 Subdivision.

10.2 Liability Insurance.

The Association may maintain if practicable, a comprehensive policy of public liability insurance insuring the Association and its Members for all liability for property damage, bodily injury, or death in connection with the operation, maintenance, use of the Common Areas or streets and roads within The Oaks at 5-89 Subdivision and legal liability arising out of lawsuits related to employment contracts of the Association. Such comprehensive policy of public liability insurance shall include a "Severability of Interest Endorsement" or equivalent coverage which would preclude the insurance company from denying the claim of any owner because of the negligent acts of the Association or any other person or Owner, with a limit of not less than \$1,000,000 covering all claims for personal injury, including death, or property damage arising out of a single occurrence. Such comprehensive policy of public liability insurance shall also include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and, if applicable, elevator collision, garagekeeper's liability, host liquor liability, contractual and all-written contract insurance, employers' liability insurance, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use to The Oaks at 5-89 Subdivision.

10.3 Fidelity Insurance.

The Association may obtain fidelity bonds to protect against dishonest acts on the part of its Officers, Board of Managers, trustees, and employees, and on the part of all others who handle or are responsible for handling the funds of or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, such bonds may be

required for the Manager and its officers, employees, and agents. Such fidelity coverage shall name the Association as an obligee and shall be written in an amount equal to at least 150 percent of the estimated annual operating expenses of The Oaks at 5-89 Subdivision, including reserves. Such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions.

10.4 Provisions Common to Hazard Insurance, Liability Insurance, and Fidelity Insurance.

Any insurance coverage obtained by the Association under the provisions of Section 10.1, 10.2, and 10.3 above shall be subject to the following provisions and limitations:

- 10.4.1 The named insured under any such policies shall be the Association, as attorney-in-fact for the Owners, or its authorized representative, including any trustee with which the Association may enter into any insurance trust agreement, or any successor trustee (each of which is sometimes referred to in this Section as the "Insurance Trustee") who shall have exclusive authority to negotiate losses under such policies.
- 10.4.2 In no event shall the insurance coverage obtained and maintained pursuant to such Sections be brought into contribution with insurance purchased by the owners, occupants, or their Mortgagees.
- 10.4.3 The policies shall provide that coverage shall not be prejudiced by (a) any act or neglect of the Owners when such act or neglect is not within the control of the Association or (b) by failure of the Association to comply with any warranty or condition with regard to any portion of The Oaks at 5-89 Subdivision over which the Association has no control.
- 10.4.4 The policies shall provide that coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to any and all first Mortgagees and insureds named in the policies.
- 10.4.5 The policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Association and any Owner and their respective agents, employees, or tenants and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.
- 10.4.6 All policies of property insurance shall provide that, notwithstanding any provisions of the policies which give the carrier the right to elect to restore

damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any Insurance Trustee) or when in conflict with the provisions of any insurance trust agreement to which the Association may be a party or any requirement of law.

- 10.4.7 All policies shall be written with a company licensed to do business in Missouri.
- 10.4.8 All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Camden County, Missouri, area.
- 10.4.9 No policy may be cancelled, invalidated, or suspended on account of the conduct of any member of the Board of Managers, Officer, or employee of the Association or its duly authorized Manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its Manager, any Owner, or Mortgagee.

10.5 Officer's and Directors' Personal Liability Insurance.

To the extent obtainable at reasonable cost, appropriate officers, and directors' personal liability insurance shall be obtained by the Association to protect the Officers and Board of Managers from personal liability in such relation to their duties and responsibilities in acting as Officers and Board of Managers on behalf of the Association.

10.6 Workmen's Compensation Insurance.

The Association may obtain workmen's compensation or similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

10.7 Other Insurance.

The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Association's responsibilities and duties.

10.8 Insurance Obtained by Owners.

It shall be the responsibility of the individual Owners, and at their expense, to make arrangements with regard to title insurance on their Lots, units or parcels, upon any resale, for hazard insurance on the improvements, personal property and furnishings located on their Lots, units or parcels and for public liability insurance covering their Lots, units or parcels. In addition, each Owner may obtain such other and additional insurance coverage on an in relation to his Lot, unit or parcel as such Owner concludes to be desirable; provided, however, that none of such insurance coverages obtained by an Owner shall affect any insurance coverages obtained by the Association nor cause the diminution or termination of the coverage obtained by the Association. Any such insurance obtained by an Owner shall include a waiver of the particular insurance company's right of subrogation against the Association and other Owners.

ARTICLE XI

DAMAGE OR

DESTRUCTION

11.1 Association as Attorney in Fact.

Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Improvements on the Common Areas upon damage or destruction as provided in this Article or a complete or partial taking as provided in Article XII below. Acceptance by any grantee of a deed or instrument of conveyance from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact.

11.2 Estimate of Damages or Destruction.

As soon as practical after an event causing damage to or destruction of any part of the Common Areas, the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Common Area so damaged or destroyed. "Repair and Reconstruction" as used in this Article shall mean restoring the damaged or destroyed

Improvements to substantially the same condition in which they existed prior to the damage or destruction.

11.3 Repair and Reconstruction.

As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

11.4 Funds for Repair and Reconstruction.

The proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may, pursuant to Article IV above, levy, assess, and collect in advance from all Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

11.5 Disbursement of Funds for Repair and Reconstruction.

The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for in Section 4.4 above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as a Special Assessment to the Association under Section 11.4 above, or, if no Special Assessments were made, then in equal shares per Lot, first to the Mortgagees and then to the Owners, as their interests appear.

11.6 Decision Not to Rebuild.

If Declarant or the Association decides not to repair and reconstruct, and if 67 percent of first Mortgagees agree in writing, and if no alternative Improvements are authorized, then and in that event the Property shall be restored to its natural state and maintained as an undeveloped

portion of the Common Areas by the Association in a neat and attractive condition, and any remaining insurance proceeds shall be distributed in equal shares per Lot, Unit or parcel as the case may be first to the Mortgagees and then to the Owners, as their interests appear.

11.7 Damage or Destruction Affecting Lots.

In the event of damage or destruction to the Improvements located on any of the Lots, units or parcels, the Owner thereof shall promptly repair and restore the damaged Improvements to their condition prior to such damage or destruction. If such repair or restoration is not commenced within 180 days from the date of such damage or destruction, or if repair and reconstruction is commenced but then abandoned for a period of more than 90 days, then the Association may, after notice and hearing, impose a fine of not less than \$50 per day on the Owner of the Lot until repair and reconstruction is commenced, unless the Owner can prove to the satisfaction of the Association that such failure is due to circumstances beyond the Owner's control. Such fine shall be a default assessment and lien against the Lot, unit or parcel as provided in Article IV above.

ARTICLE XII

CONDEMNATION

12.1 Rights of Owners.

Whenever all or any part of the Common Areas shall be taken or conveyed in lieu of and under threat of condemnation by the Board of Managers acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain each Owner shall be entitled to notice of the taking, but the Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

12.2 Partial Condemnation; Distribution of Award; Reconstruction.

The award made for such taking shall be payable to the Association as Trustee for all owners, to be disbursed as follows:

If the taking involves a portion of the Common Areas on which Improvements have been constructed, then, unless within sixty days after such taking Declarant and at least 66 percent of the Class B members of the Association shall otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in the Common Area to the

extent lands are available therefor, in accordance with plans approved by the Board of Managers and the Design Review Committee. If such Improvements are to be repaired or restored, the provisions in Article XI above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Improvements on the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Lot, first to be Mortgagees and then to the Owners, as their interests appear.

12.3 Complete Condemnation.

If all of The Oaks at 5-89 Subdivision is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Areas shall be distributed as provided in Section 12.2 above.

ARTICLE XIII

EXPANSION

13.1 Reservation of Right to Expand.

Declarant reserves the right, but shall not be obligated, to expand the effect of this Declaration to include all or part of the Adjoining Land. Declarant shall have the unilateral right to transfer to any other person this right to expand by an instrument duly recorded.

13.2 Declaration of Annexation.

Such expansion may be accomplished by recording an amendment to this Declaration in the Office of the Recorder of Deeds of Camden County, Missouri, describing the real property to be included, submitting it to the covenants, conditions, and restrictions contained in this Declaration, designating it as a Project, if the parcel subjected to these Covenants in that instance does in fact constitute a Project, and providing for voting rights and Assessment allocations as provided in this Declaration. Such Amendment shall not require the consent of Owners. Any such expansion shall be effective upon the filing for record of such Amendment, unless otherwise provided therein. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Upon the recordation of any such Amendment, the definitions used in this Declaration shall be expanded automatically to encompass and refer

to The Oaks at 5-89 Subdivision as expanded. Such Amendment may add, delete, or modify provisions of this Declaration as it applies to the property added. However, this Declaration may not be modified with respect to that portion of the Property already subject to this Declaration, except as provided below for amendment.

13.3 Incorporation of Additional Property.

Real property which is not part of the Adjoining Lands may be incorporated into the Property with the consent of two-thirds of the Class A Members.

13.4 Incorporation of Adjoining Lands.

Any owner or owners of Adjoining Land (other than Declarant) may apply to Declarant or to the Board of Managers to have the Adjoining Land made subject to this Declaration. Alternatively, Declarant may purchase Adjoining Land and either subject such Adjoining Land to The Oaks at 5-89 Subdivisions' regime as provided in this Section or seek the approval of a majority of the Board to do so. Upon the written approval of Declarant or a majority of the Board to the inclusion of such Adjoining Land within The Oaks at 5-89 Subdivision regime, the owner or owners of the Adjoining Land may make it subject to this Declaration by executing an instrument in writing which shall satisfy the requirements above for an Amendment to this Declaration. That instrument shall also be executed by Declarant or the Board of Managers, as applicable, as evidence of their approval, and shall be recorded in the Office of the Recorder of Deeds of Camden County, Missouri. Thereafter, such Adjoining Land shall be subject to this Declaration, and this Declaration shall be expanded as provided above in the case of property incorporated into the Property.

ARTICLE XIV

FHLMC

REQUIREMENTS

14.1 FHLMC Approval Requirements.

Unless at least 67 percent of the first Mortgagees (based on one vote for each first Mortgage owned) and Class A Members have given their prior written approval, the Association shall not be entitled to:

- 14.1.1 By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or part of the Common Areas (provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Areas shall not be deemed a transfer within the meaning of this clause);

- 14.1.2 Change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner or Member;
- 14.1.3 Fail to maintain fire and extended coverage on insurable Common Elements in an amount not less than 100 percent of current replacement cost; or
- 14.1.4 Use hazard insurance proceeds for losses to Common Elements for other than the repair, replacement, or reconstruction of such Common Elements.

14.2 Mortgagees' Rights.

First Mortgagees of Lots or Units, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Areas or Improvements thereon and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the common areas. First Mortgagees making such payments for the benefit of the Common Areas shall be owed immediate reimbursement from the Association.

ARTICLE XV

ENFORCEMENT OF

COVENANTS

15.1 Violations Deemed a Nuisance.

Every violation of this Declaration or related documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement the violation. In addition, all public and private remedies allowed at law or equity against anyone in violation of these Covenants shall be available.

15.2 Compliance.

Each Owner or other occupant of any part of the Property shall comply with the provisions of this Declaration and related documents from time to time.

15.3 Failure to Comply.

Failure to comply with this Declaration and related documents shall be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing shall be given to the delinquent party prior to commencing any legal proceedings.

15.4 Who May Enforce.

Any action to enforce the provisions set forth in this Article may be brought by the Declarant, the Board, or the Manager in the name of the Association. If, after a written request from an aggrieved Owner, none of the foregoing persons or entities commence an action to enforce, then the aggrieved owner may bring such an action.

15.5 Remedies.

In addition to the remedies set forth above in this Article, any violation shall give to the Board, the Manager, or the Declarant, on behalf of the Owners, the right to enter upon the offending premises or take appropriate peaceful action to abate, remove, modify, or replace, at the expense of the offending Owner, any structure, thing or condition that may exist thereon contrary to the interest and meaning of The Oaks at 5-89 Subdivision. If the offense occurs on any easement, walkway, Common Area or the like, the cure shall be at the expense of the Owner or other person responsible for the offending condition.

15.6 Nonexclusive Remedies.

All the remedies set forth herein are cumulative and not exclusive.

15.7 No Waiver.

The failure of the Board of Managers, Declarant, the Manager, the Design Review Committee or any aggrieved Owner to enforce shall not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of The Oaks at 5-89 Subdivision documents at any future time.

15.8 No Liability.

No member of the Board of Managers, the Declarant, the Design Review Committee, the Manager or any Owner shall be liable to any other Owner for the failure to enforce the provisions of any of the documents at any time.

15.9 Recovery of Costs.

If legal assistance is obtained to enforce any of the provisions of the documents or in any legal proceeding (whether or not suit is brought) for damages or for such enforcement or the restraint of violations of the documents, then at the discretion of the Board of Managers, the prevailing party shall be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees as may be incurred.

ARTICLE XVI

SEWER SYSTEM

16.1 Rights, powers and duties of the Association.

The Association shall have the following rights, powers and duties in regard to the Sewer System:

- 16.1.1 Except when Declarant gives a specific exemption, Owners shall connect to the sewer system within the Property as maintained by the Association. Each owner shall be responsible for payment of all charges and fees levied by the Association and shall comply with all local, state and federal permits and orders. The Association shall have the power to levy assessments pursuant to these Restrictions for the maintenance, repair and replacement of the sewer lines, pipes, pumps and other components.
- 16.1.2 The Association may maintain, operate, repair, improve, and regulate the use of the Sewer System. In connection with such maintenance, operation, repair, improvement and regulation of the Sewer System, the Association shall comply with all requirements and duties imposed by the Missouri Clean Water Law, Chapter 244, RSMo, and all standards, rules and regulations adopted pursuant thereto and permits and orders issued thereunder, and all other provisions of law, federal, state and local, as such may exist from time to time.
- 16.1.3 The Association shall provide to all Owners in the Property the right and advantage of connection with such Sewer System for the collection,

treatment and disposal of sewage and wastewater, subject, however, to the conditions hereinabove provided, and subject to such reasonable rules and regulations as may be prescribed by the Association, such rules and regulations to be uniform in application to all Owners.

- 16.1.4 The Association may acquire for addition to the Sewer System any sewage treatment facilities, properties, and improvements of the type described in this Declaration which are located outside the Property, and may permit any property and improvements located outside the Property to be connected to the Sewer System, provided that all such assets which are acquired for addition to the Sewer System and all such property and improvements which are permitted to be connected to the Sewer System shall be made subject to all the terms, conditions and restrictions of this Declaration and the rules and regulations of the Association promulgated pursuant thereto.
- 16.1.5 The Association is empowered, subsequent to such time as Developer may transfer and convey the Sewer System or any portion thereof to the Association, to transfer and convey to any public authority, municipal corporation, or private corporation certified by the Public Service Commission of Missouri, said Sewer System, either with or without money consideration therefor, and such conveyance shall become mandatory and shall be made by the Association as soon as practicable, subject to the approval of the Commission, when any such public authority, municipal corporation, or private corporation certified by the Public Service Commission becomes capable of accepting such conveyance and thereafter performing all functions relating to the construction, maintenance, operation repair, improvement and regulation of the Sewer System.
- 16.1.6 The Association is empowered to contract with any other Person, firm, or governmental or other entity for the performance of all or any part of the sewage treatment services, or maintenance, repair and improvement of the Sewer System, provided that the cost of any such contract shall be paid by the Association in the same manner as all other costs and expenses incurred by the Association in operating and maintaining the Sewer System.
- 16.1.7 The Executive Board shall adopt, prescribe and enforce reasonable rules and regulations with respect to the use of the Sewer System. Said rules and regulations shall not conflict with the Missouri Clean Water Law and regulations promulgated pursuant thereto.

- 16.1.8 The Executive Board shall be authorized from time to time to employ such agents, servants and employees as they may determine necessary, and may employ counsel to prosecute or defend suits or actions for or against them concerning the Sewer System and the operation thereof.
- 16.1.9 The Executive Board shall be authorized to contract for and obtain such policies of insurance and surety bonds as it may deem necessary or appropriate concerning construction, maintenance, operation, repair and improvement of the Sewer System.
- 16.1.10 The Executive Board, its successors and assigns, shall be authorized to establish a perpetual easement in gross for ingress and egress, to perform its obligations and duties as required herein. Should it be necessary to enter a unit to repair a common element or sewer facility, agents and workmen shall be entitled to entrance by exhibiting to the Unit Owner an order from the Executive Board.

16.2 Connection to the Sewer System.

Without a specific written exemption by Declarant, all Lots, units and parcels shall be connected to the Sewer System, and no Lot, unit or parcel may be occupied unless so connected to the Sewer System. No septic tank, cesspool or other means of disposal of sewage on an individual lot, unit or parcel may be used within the Property.

16.3 Duty to Maintain, Repair and Improve.

If the Sewer System shall at any time require maintenance, repair, improvement, or replacement and such work is not the obligation of any government or governmental agency, it shall be the duty of the Association to cause the same to be done, and the Association shall have the power to contract for the same and to determine the terms of the contract. The Association shall pay for the costs thereof from the annual and special assessments made hereunder. The Association shall also be empowered to borrow money and to pledge the assets of the Association as security therefor, in order to make payment for such costs, subject to the restrictions on borrowing set forth elsewhere in this Declaration and in the Bylaws.

ARTICLE XVII

RESOLUTION OF

DISPUTES

If any dispute or question arises between Members or between Members and the Association or the Design Review Committee relating to the interpretation, performance or nonperformance, violation, or enforcement of this Declaration and related documents, such dispute or violation shall be subject to a hearing and determination by the Board of Managers prior to institutions of any legal or equitable remedy except that equitable actions to restrain or prohibit construction of buildings or improvements in violation of a determination of the committee or in violation of these restrictions may be brought by Declarant or the Association at any time without such hearing.

ARTICLE XVIII

DURATION OF THESE COVENANTS AND

AMENDMENT

18.1 *Term.*

This Declaration and any amendments or supplements hereto shall remain in effect from the date of recordation for twenty (20) years subsequent thereto. Thereafter these covenants shall be automatically extended for five successive periods of ten years each from the above date, unless otherwise terminated or modified as provided below.

18.2 *Amendment.*

This Declaration, or any provision of it, may be terminated, extended, modified, or amended, as to the whole or any portion of the Property, upon the written consent of Declarant until Declarant relinquishes control of the Association and thereafter by sixty-six percent (66%) of the Class B Members. Amendments made pursuant to this Section shall inure to the benefit of and be binding upon all owners of any part of the Property, their family, tenants, guests, invitees, and employees and their respective heirs, successors, and assigns.

18.3 Amendment to Comply With Law.

Notwithstanding any other provision of this Declaration, if the Board deems any amendment to this Declaration to be necessary in order to bring this Declaration into compliance, whether mandatory or permissible, with amendments to applicable Missouri law, the Board may enact any such amendment, which shall be effective upon the recording of an appropriate instrument setting forth the amendment and its due adoption, which instrument has been executed and acknowledged by one or more Officers of the Board.

18.4 When Modifications Permitted.

Notwithstanding the provisions of Section 18.2, no termination, extension, modification or amendment of this Declaration shall be made which would have the effect of excluding or excepting any Class A Member or Class B Member from the provisions of this Declaration.

18.5 Amendment by Declarant.

Notwithstanding Section 18.2 or any other provisions of this Declaration, Declarant, acting alone, reserves to itself the sole right and power to modify and amend this Declaration by executing and recording an instrument setting forth the amendment. This right and power of the Declarant, acting alone, to amend this Declaration in whole or in part, at any time, and from time to time, shall be effective only with respect to any amendments recorded on or before twenty (20) years from the date of recordation of this Declaration of Restrictions.

18.6 Notice of Amendment.

Except in the case of amendments made pursuant to Section 18.3, Section 18.4 or Section 18.5 above, no amendment of this Declaration shall be effective unless a written notice of the proposed amendment is sent to every Owner at least 30 days in advance of any action taken or purported to be taken.

18.7 Effective on Recording.

Any modification or amendment shall be immediately effective upon recording a copy of such amendment or modification, executed and acknowledged by the Board and by Declarant, as required, in the Office of the Recorder of Deeds of Camden County, Missouri.

18.8 Revocation.

This Declaration shall not be revoked, except as provided in these Restrictions regarding total condemnation, without the consent of all of the Class B Members in a written instrument duly recorded.

ARTICLE XIX

PRINCIPLES OF

INTERPRETATION

19.1 Severability.

This Declaration, to the extent possible, shall be construed or reformed so as to give validity to all of its provisions. Any provision of this Declaration found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

19.2 Construction.

In interpreting words in this Declaration, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

19.3 Headings.

The headings are included only for purposes of convenient reference, and they shall not affect the meaning or interpretation of this Declaration.

19.4 Notice.

All notices or requests required shall be in writing. Notice to any Class B Member shall be considered delivered and effective upon mailing by regular first class mail. Notice to the Board, the Association, the Design Review Committee, or the Manager shall be considered delivered and effective upon personal delivery, or three days after posting, when sent by certified mail, return receipt requested, to the Association, the Board, the Committee, or the Manager, at such address as shall be established by the Association from time to time. General notices to

Members or any classification thereof need not be-certified, but may be sent regular first class mail.

19.5 Waiver.

No failure on the part of the Association, the Board, or the Committee to give notice of default or to exercise or to delay in exercising any right or remedy shall operate as a waiver, except as specifically provided above in the event the Board or Committee fails to respond to certain requests. No waiver shall be effective unless it is in writing, signed by the President or Secretary of the Board on behalf of the Association, or by the Chairman of the Committee on behalf of the Committee.

19.6 Limitation of Liability.

Neither the Association, the Design Review Committee, nor any Officer or member of the Board shall be liable to any party for any action or for any failure to act with respect to any matter arising by, through, or under the Declaration or related documents if the action or failure to act was made in good faith. The Association shall indemnify all of the Committee members and officers and Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles and Bylaws of the Association.

19.7 Conflicts Between Documents.

In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control. In case of conflict between this Declaration and Design Guidelines, the Design Guidelines shall control. In case of conflict between this Declaration and a Project Declaration, this Declaration shall control.

19.8 Assignment.

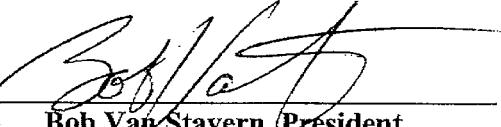
Declarant may assign all or any part of its rights and reservations hereunder to any successor who takes title to all or part of the property in a bulk purchase for the purpose of development and sale. Such successor shall be indemnified, the particular rights being assigned shall be specified, and, to the extent required, concomitant obligations shall be expressly assumed by such successor, all in a written instrument duly recorded in the Office of the Recorder of Deeds of Camden County, Missouri.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed
this 8th day of October, 2004.

DECLARANT:

THE OAKS AT 5-89, INC.

By:


Bob Van Stavern, President

STATE OF MISSOURI)
)
)ss.
COUNTY OF CAMDEN)

On this 8th day of October, 2004, before me,
Ruth A. Zeller, a Notary Public, appeared Bob Van Stavern, to me
personally known, who being by me duly sworn did say that he is the President of The Oaks at 5-
89, Inc., a corporation, and that the seal affixed to the foregoing instrument is the corporate seal
of said corporation and that said instrument was signed on behalf of said corporation by authority
of its Board of Directors, and said Bob Van Stavern, acknowledged said instrument to be the free
act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal
at my office in Seaside Beach, the day and year last above written.


NOTARY PUBLIC

My commission expires:

Aug 2, 2007

RUTH A. ZELLER
Notary Public - Notary Seal
STATE OF MISSOURI
Miller County
My Commission Expires: Aug. 2, 2007

EXHIBIT A

All that part of the following described property lying above contour elevation 665 described as follows:

All of that part of the West $\frac{1}{2}$ of Section 1, Township 38 North, Range 17 West, Camden County, Missouri, described as follows: Beginning at a point 1240 feet South of the Northwest corner of Lot 2 of the Northwest $\frac{1}{4}$ of said Section 1; thence South along the West line of said Section 1, 2104 feet more or less to the Southwest corner of the North $\frac{1}{2}$ of the North $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of said Section 1; thence East 2200 feet more or less to a point; thence North 18 degrees 30 minutes East along the branch and down the cove 1300 feet to a point on the East line of Lot 1 of the Northwest $\frac{1}{4}$; said point being 1994 feet more or less South of the Northeast corner of Lot 2 of said Northwest $\frac{1}{4}$ of Section 1; thence North 620 feet more or less to a point which is 1374 feet South of the Northeast corner of Lot 2 of said Northwest $\frac{1}{4}$ of Section 1; thence West parallel to the North line of said Section 1, 1330 feet more or less; thence North 134 feet; thence West 1330 feet more or less to the point of beginning.

Subject to easements of Union Electric Light and Power Company and all existing roads and easements.

Also subject to the right of E.L. Driver and Ruth Driver, their heirs and assigns to use the West 60 feet of that part of above property included in deed filed in Book 122 at page 346 in the Camden County Recorder's Office for purposes of ingress and egress.

ALSO:

The South 20 acres of the Northwest quarter of the Southwest Quarter of Section 1, Township 38 North, Range 17 West, Camden county, Missouri, EXCEPTING THEREFROM, a twenty foot square or part, if any, located thereon for cemetery purposes.

ALSO:

All that part of the North half of the Southeast Quarter of Section 2, Township 38, Range 17, Camden County, Missouri, which lies between the East right of way line of Lake Road 5-89 and the West line of the East half of the Northeast quarter of the Southeast Quarter of Section 2, Township 38, Range 17, except the South 600 feet thereof.

ALSO:

All that part of the North Half (N1/2) of the Southeast Quarter (SE $\frac{1}{4}$) of Section 2, Township 38, Range 17, described as follows:

The East Half (E $\frac{1}{2}$) of the Northeast Quarter (NE $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) and the South 600 feet of the North Half (N $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$) lying between the East right of way line of Lake Road 5-89 and the West line of the East Half (E $\frac{1}{2}$) of Northeast Quarter (NE $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) above described.

Subject to all restrictions, reservations, conditions, exceptions, and easements of record and to any roadways or power lines whether of record or not.