

DECLARATION OF RESTRICTIONS

THIS DECLARATION (the "Declaration"), made and entered into this _____ day of _____, 20____, by Tompkins Homes and Development, Inc., a Missouri corporation ("Developer");

WITNESSETH:

WHEREAS, Developer has executed and filed with the Recorder of Deeds of Boone County, Missouri, a plat of the subdivision known as Breckenridge Park, Plat 1, which is recorded in Plat Book ____ at Page ____ ("Plat 1");)(hereinafter collectively referred to as the "Plat); and

WHEREAS, Plat 1 creates the following described lots and tracts, to-wit:

Lots _____, inclusive; and

WHEREAS, Developer, as the developer of the above-described lots and as the present owner of the above-described lots, desires to place certain restrictions on such lots to preserve and enhance the value, desirability and attractiveness of the Development and improvements constructed thereon and to keep the use thereof consistent with the intent of the Developer, all of which restrictions shall be for the use and benefit of the Developer and its future grantees, successors and assigns;

NOW, THEREFORE, in consideration of the premises contained herein, Developer, for itself and for its successors and assigns, and for its future grantees, hereby agrees and declares that all of the above-described lots shall be, and they hereby are, restricted as to their use and otherwise in the manner hereinafter set forth.

1. **Definitions.** For purposes of this Declaration, the following definitions shall apply:

(a) "Approving Party" shall mean (i) prior to the recording of the Certificate of Substantial Completion, the Developer (or its designees from time to time) and (ii) subsequent to the recording of the Certificate of Substantial Completion, the Owners Association.

(b) "Architectural Committee" shall mean (i) prior to the recording of the Certificate of Substantial Completion, the Developer (or its designees from time to time) and (ii) on and after the recording of the Certificate of Substantial Completion, a committee comprised of three members of the Owners Association who shall be appointed by the Board.

(c) "Board" shall mean the Board of Directors of the Owners Association.

(d) "Certificate of Substantial Completion" shall mean a certificate executed, acknowledged, and recorded by the Developer stating that all, or at the Developer's discretion, substantially all, of the Lots in the Development (as then composed or contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are substantially completed.

(e) "Common Areas" shall mean (i) Lots _____ as shown on Plat 1, and (ii) any common areas in any adjacent subdivision developed by Developer which are, by recorded declaration or agreement, subjected to the provisions of this Declaration.

(f) "Developer" shall mean and refer to Tompkins Homes and Development, Inc., and its successors and assigns.

(g) "Development" shall mean all of the above-described Lots shown on the Plat, all Common Areas, and all additional property which hereafter may be made subject hereto in the manner provided herein.

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

(i) "Owners Association" shall mean the Missouri not-for-profit corporation to be formed by the Developer for the purpose of serving as the Owners Association for the Development.

(j) "Plat" shall initially mean Plat 1 recorded in Plat Book ____ at Page 60, of the Records of Boone County, Missouri, but shall also include reference to final approved and recorded subdivision plats of all additional property which hereafter may be made subject hereto in the manner provided herein.

(j) "Lot" shall mean any Lot shown as a separate lot on any recorded plat of all or part of the Development, except for the Common Areas, and any Lot shown on the plats of subdivisions of property adjacent to the Development made subject to this Declaration by Developer, except for the Common Areas shown on such plats.

(k) "Owner" shall mean the record owner in fee simple of any Lot, including the Developer, and for purposes of all obligations of the Owner hereunder, shall include, where appropriate, all family members and tenants of such Owner and all of their guests and invitees.

(l) "Street" or "Streets" shall mean any public street, road, terrace, circle, boulevard, or cul-de-sac shown on any recorded plat of all or part of the Development.

2. **Use of Land.** None of the Lots zoned for single-family residential purposes may be improved, used, or occupied for other than single-family residential purposes, and no duplex, flat, boarding house, rooming house, apartment house, or other multi-family or multi-unit residential structure, or any non-residential structure or other improvement (except Exterior

Structures approved by the Architectural Committee), may be erected thereon. No more than one single-family residence shall be located on any such Lot. All residences in the Development shall be of new construction on-site; no residential building which has previously been at another location shall be moved onto any Lot, and no "prefabricated," "modular," or "manufactured" or otherwise preassembled or pre-constructed homes or structures of any nature or kind whatsoever (except Exterior Structures approved by the Architectural Committee) shall be permitted. No camper, trailer, mobile home, vehicle, tent, outbuilding, exterior structure, or any other apparatus or structure whatsoever except the permanent residence shall at any time be used for human habitation, temporarily or permanently, nor shall any residence or other structure or improvement of a temporary character be erected, moved onto, or maintained upon any of such Lots or any Common Areas. Nothing herein shall prevent the Developer or others (including, without limitation, builders and real estate sales agencies) authorized by the Developer from using temporary buildings or structures or any residence for model, office, sales, or storage purposes prior to the recording of the Certificate of Substantial Completion.

3. Building Requirements.

- (a) Roofs shall be covered with wood shingles, wood shake, slate or laminated asphalt type or architectural shingles or metal;
- (b) On the street front (which includes the side facing the street of any residence constructed on a corner lot) of any residence the exterior finish shall, excluding gables or dormers, be fifty percent (50%) brick, dryvit, stone, or stucco or a combination thereof or such other materials as may be approved by the Developer or the Architectural Committee; and
- (c) Gables and dormers on the street front space, any side walls not facing a street, and all rear walls, may be composed of fiber cement siding or similar products. No vinyl or polymer siding shall be permitted; and
- (d) The majority of the roof on a dwelling must have a pitch of no less than eight (8) inches of vertical rise for each twelve (12) inches of horizontal distance, provided that the Architectural Committee may approve a lower pitch if such pitch is consistent with the style of home being built; and
- (e) On the street front (which includes the side facing the street of any residence constructed on a corner lot) of any residence, there shall be no flue or chimney constructed adjacent to the exterior wall of such dwelling unless the same is entirely enclosed either with masonry or the same material as the exterior siding on the dwelling; and
- (f) Each residence shall have a mailbox and mailbox post of a type specified by the Developer. Installation, repair, and replacement of mailboxes shall be at the expense of each Lot Owner.

4. **Minimum Floor Area.** No residence shall be constructed upon any Lot in the Development unless it shall have a total enclosed interior finished floor area of not less than:

- (a) 1,400 square feet above grade for a one-story residence, excluding basements, garages, carports, porches, patios, attics, and deck; or
- (b) 1,700 square feet above grade for a multi-level or two-story residence, excluding basements, garages, carports, porches, patios, attics, decks, or unfinished basements.
- (c) No residence shall have less than a two (2) car garage.

5. **Approval of Plans and Post-Construction Changes.**

(a) Notwithstanding compliance with the provisions of Sections 2, 3, and 4 above, no residence or Exterior Structure may be erected upon any Lot unless and until the building plans, specifications, materials, location, elevations, lot grading plans, general landscaping plans, and exterior color scheme have been submitted to and approved in writing by the Architectural Committee. No change or alteration in or deviation from the approved building plans, specifications, materials, location, elevations, grading plans, landscaping plans, or exterior color scheme shall be made until such change, alteration, or deviation has been submitted to and approved in writing by the Architectural Committee. The Architectural Committee shall have the power and authority to, in its discretion, and without liability to any person or entity owning or having an interest in any Lot, approve building plans, specifications, materials, location, elevation, grading plans, landscaping plans, or exterior color schemes even though the same do not comply with the provisions of this Declaration.

(b) Following the completion of construction of any residence or Exterior Structure, no exterior colors or general landscaping or grading shall be changed and no exterior additions or alterations shall be made unless and until the changes have been submitted to and approved in writing by the Architectural Committee. All replacements of all or any portions of a structure because of age, casualty loss, or other reason, including, without limitation, roofs and siding, shall be of the same materials, location, and elevation as the original structure unless the changes have been submitted to and approved in writing by the Architectural Committee.

6. **Set Backs.** No residence or Exterior Structure shall be located closer to any street than the building set back lines, if any, shown on the Plat; provided, however, that the Architectural Committee, in its discretion, may waive or alter any such building set back lines to the extent they are greater than the minimum set backs, if any, required by the ordinances of the City of Columbia, Missouri.

7. **Commencement and Completion of Construction.** Unless the following time period is expressly extended by the Developer in writing, construction of the residence on a Lot shall be completed within nine (9) months after the commencement of construction. Each Lot Owner

shall be responsible for clean-up of any run-off and any other tracking of dirt, soil, etc., due to erosion and/or construction on said Owner's Lot, and shall ensure that any agent, employee, contractor, sub-contractor, or other person acting on behalf of said Owner performs all clean-up necessary due to construction on said Owner's Lot. Should any Lot Owner fail or refuse to perform any clean-up that is or becomes necessary due to such Owner's Lot, as a result of either erosion or construction on said Lot, Developer is hereby given the right to perform any such necessary clean-up, and Owner shall reimburse Developer for the cost of such clean-up plus a service charge of 10%, and interest on such amount from the date on which the clean-up occurs until the date upon which such charge is paid by the Lot Owner to Developer. Lot Owner further agrees to indemnify, defend, and hold Developer harmless from and against any claims, damages, penalties, fines, costs, liabilities, losses, and judgments, including attorney fees, consultant fees, and expert witness fees, and further including any clean-up or remedial work that Developer must do, or for which Developer becomes liable, due to any failure by Lot Owner to perform such necessary clean-up.

8. Exterior Structures.

(a) No Exterior Structure shall be erected upon, moved onto, or maintained upon any Lot except (i) with and pursuant to the advance written approval of the Architectural Committee as to the plans, specifications, materials, location, elevations, landscaping plans, and color scheme, and (ii) in compliance with the additional specific restrictions set forth elsewhere in this Declaration unless compliance is waived by the Architectural Committee.

(b) All fences, walls, and privacy screens (other than any installed by the Developer) shall be consistent with standard designs, heights, and materials to be selected by the Architectural Committee, and shall be first approved by the Architectural Committee. All fences, walls, and privacy screens shall be constructed with the finished side out. All fences shall be wrought iron. Privacy screens shall be permitted around patios and/or pools, and shall be constructed of materials and in a manner approved by the Architectural Committee. Except as specifically authorized by the Architectural Committee, no fence, wall, or privacy screen shall extend in front of the front building set back line.

(c) All basketball goals shall be consistent with the standard designs and materials to be selected by the Architectural Committee, and shall be set back from the street at least ten (10) feet. All backboards shall be clear or painted white, and poles shall be painted black or gray. The Approving Party shall have the right to make, alter, and revoke reasonable rules regarding the hours of use of basketball goals and any such rules shall be binding upon all of the Lots and the Owners.

(d) Except as specifically authorized by the Architectural Committee, all recreational or play structures (other than basketball goals) shall be located behind the line consisting of the wall of the residence farthest to the rear of the Lot extended to the side Lot lines (the "rear line").

(e) No above-ground swimming pools shall be permitted. All pools and hot tubs shall be wholly screened from the ground view of the public and all other Lots. All pools and hot tubs shall be kept clean and maintained in operable condition.

(f) Except to the extent necessary in order to get service, no antenna or satellite dish or similar device attached to the exterior of any dwelling or upon any Lot may be visible from any public roadway abutting such Lot, and to the extent necessary in order to obtain service, any visibility must be minimized to the extent reasonably possible.

(g) No Exterior Structure that is prohibited under Section 9 below shall be permitted under this Section 8.

9. Buildings or Uses Other Than for Residential Purposes; Noxious Activities; Miscellaneous.

(a) No noxious or offensive activity shall be carried on with respect to any Lot, nor shall any trash, ashes, or other refuse be thrown, placed, burned, or dumped upon any Lot or Common Area, nor shall anything be done which may be or become an annoyance or a nuisance to the neighborhood. Each Owner shall properly maintain such Owner's Lot in a neat, clean, and orderly fashion. All residences and Exterior Structures shall be kept and maintained in good condition and repair at all times.

(b) No vehicles in inoperable condition or any trailer, mobile home, bus, van, camper, recreational vehicle, boat, boat trailer, or other mobile apparatus of any nature or kind whatsoever (other than personal automobiles and standard 3/4 ton or smaller noncommercial pickup trucks) shall be parked, left, or stored on any Lot or street for more than a 24-hour period except in an enclosed garage. Motorized vehicles shall not be operated on any Common Area, other than in the street.

(c) No temporary structure, basement, tent, trailer, vehicle, garage, barn, or other outbuilding shall be used on any Lot at any time as a place of residence, either temporary or permanent, prior to completion of the permanent residence.

(d) No sign of any kind shall be displayed to the public view on the real estate, except for one sign not more than 5 feet square, advertising the property for sale by the homeowner, realtor, or builder during the construction or sale period may be placed on a Lot. Notwithstanding the foregoing, one sign, not more than 5 feet square, advertising the property

for rent may be placed on any Lot located within a zoning district permitting duplex or multi-family uses at any time.

(e) All residential service utilities shall be underground.

(f) In the event of vandalism, fire, windstorm, or other damage, no residence or Exterior Structure shall be permitted to remain in damaged condition for longer than three (3) months unless a delay is permitted by the Architectural Committee.

(g) No portable building, shed, barn, detached garage, or other storage facility shall be erected upon, moved onto, or maintained upon any yard, unless permitted by the Architectural Committee in a location not visible from the street. Storage shall be permitted under a deck provided such area is wholly screened from the view of other Lots and the public.

(h) No fuel storage tanks of any kind, above or below ground, shall be permitted.

(i) No Lot or combination of Lots shall be resubdivided, rezoned or replatted by any Lot Owner other than the Developer. No Lot shall be sold or conveyed except as a whole as described on the Plat, except as may be otherwise approved in writing by the Architectural Committee.

(j) No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other wastes, and all such items shall not be kept on any Lot, except in sanitary containers. All trash or sanitary containers shall be stored in concealed locations and may be placed in open locations only for a period of twelve hours in one day during each week for collection.

(k) All Lots shall be kept neat and free from debris.

(l) No open fires shall be permitted on any Lot or Common Area, except for the use of outdoor grills or smokers for the preparation of food, or portable fire pits. Plans for permanent fire pits must be approved by the Architectural Committee.

(m) No automobile equipment repair or rebuilding shall be permitted on any Lot except for minor repair and maintenance of the Owner's personal vehicles which activities shall be conducted only inside a garage.

10. **Animals.** No livestock, poultry, or other animals of any kind shall be raised, bred, or kept on any Lot except that dogs, cats, and other common household pets may be kept so long as they are not kept, bred, or maintained for commercial purposes and do not constitute a nuisance to the neighbors or neighborhood. Subject to more restrictive law or ordinance, in no event shall more than three dogs or cats, or combination thereof, be raised, kept, or maintained on any Lot.

11. **Landscaping and Lawns.** Prior to the occupancy, and in all events within nine (9) months following commencement of construction of the residence, the Owner thereof shall

complete all landscaping required herein, according to the landscaping plans submitted to the Architectural Committee, which plans shall be in compliance with the provisions of this paragraph 11. The Owner shall sod all front lawn areas with fine leafed turf-type tall fescues, ryes, or bluegrasses, and all front lawns shall include a minimum of two (2) trees each being two inches in diameter, a minimum of ten (10) shrubs, and a mulch bed surrounding said shrubs. Each Lot shall otherwise be landscaped to the same standards as those generally prevailing throughout the Development and in accordance with plans approved by the Architectural Committee. The area between a residence on a corner lot and the public street must also be sodded. The remainder of the Lot must be seeded with grass, and all such sodding and seeding shall occur as soon as possible after completion of construction. The Owner of each Lot shall keep the lawn neat, clean, and uniformly mowed and clipped to a reasonable and attractive height and shall properly maintain and replace all trees and landscaping. Vegetable gardens must be located behind the rear line of the residence, as such line would be extended to each side lot line, and shall not be located within twenty-five (25) feet of any public street right-of-way. Such garden must be well-kept before, during, and after the growing season.

12. Easements for Public Utilities; Drainage; Maintenance; Pedestrian Walkways. The Developer shall have, and does hereby reserve, the right to locate, relocate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance, and use of drains, pipelines, sanitary and storm sewers, gas and water mains and lines, electric, telephone and cable television lines and other utilities, and to give or grant rights-of-way or easements therefor, over, under, upon, and through all easements, rights-of-way and Common Areas shown on the Plats. All utility easements and rights-of-way shall inure to the benefit of all utility companies for purposes of installing, maintaining, or moving any utility lines or services and shall inure to the benefit of the Developer, all Owners in the Development and the Owners Association as a cross easement for utility line or service maintenance.

The Developer shall have and does hereby reserve for itself, its successors and assigns, and the Owners Association and its successors and assigns, an easement over and through all unimproved portions of each Lot in the Development for the purpose of performing the duties of the Owners Association and maintaining any Common Area. No structure, planting, or other material shall be placed or permitted to remain on the easement areas on a Lot such that it may damage or interfere with the installation and maintenance of the utility facilities.

13. Common Areas.

(a) The Developer and its successors, assigns, and grantees, the Owners of Lots in the Development and the Owners Association shall have the right and easement of enjoyment in and to all of the Common Areas, but only for the intended use or uses thereof. Such right and

easement in favor of the Owners shall be appurtenant to, and shall automatically pass with, the title to each Lot. All such rights and easements shall be subject to the rights (including ownership) of any governmental authority or any utility therein or thereto.

(b) The Developer covenants and agrees to convey all of its right, title, and interest in the Common Areas shown on the Plat (except any part thereof that is within any Lot or outside of the Development and except any part of a Common Area shown on a recorded plat that has been subsequently replatted by the Developer for other use for the purpose of relocating streets, street rights-of-way, utilities, recreational areas, recreational facilities, or adjusting lot sizes and locations) to the Owners Association, without any cost to the Owners Association, after the Developer has recorded the Certificate of Substantial Completion. The Developer and Owners Association shall, at all times, be responsible for the proper maintenance of all Common Areas, including repairs of any berms or other landscaping, and replacements of trees or other plantings in the event of death of such landscaping, as well as any plantings located on property adjoining Development within the area shown on the landscaping plan attached hereto and incorporated herein by this reference as Exhibit ___, except any part of any Common Area that is within any Lot and part that has not been landscaped or otherwise improved by the Developer or the Owners Association, provided that upon the later to occur of (i) October ___, 2021, or (ii) recordation of the Certificate of Substantial Completion, Developer's obligation hereunder shall expire, and Owners Association shall thereafter be responsible for maintenance of the Common Areas. Notwithstanding anything herein to the contrary, no Owner shall have any ownership interest in any designated Common Area, but shall only have easement rights to use such property consistent with this Declaration and further no such rights shall commence to exist unless and until Developer actually conveys said designated property to the Owners Association or dedicates same to the City of Columbia as right-of-way, as the case may be.

(c) The right and easement of enjoyment of the Owners in the Development as to any Common Area shall be subject to the right of the Developer to convey sewage, water, drainage, maintenance and utility easements over, under, upon, and through such Common Area, provided in Section 12 above.

(d) No Owner shall improve, destroy, or otherwise alter any Common Area without the express written consent of the Approving Party.

(e) The Approving Party shall have the right from time to time to make, alter, and revoke additional rules, regulations, and restrictions pertaining to the use of any Common Areas.

(f) The Board of Directors of the Owners Association shall have the authority and responsibility to maintain, manage, and collect funds for maintenance and management of the Common Areas as provided herein. Provided that individual lot owners in adjacent subdivisions

developed by Developer shall pay the same assessment per annum as the individual lot owners of Plat 1 and Plat 2 of the Development, Developer may designate certain Common Areas as "Shared Common Areas" for the benefit of owners of lots in subdivisions developed by Developer that are located adjacent to the above-described Development, and the owners of such lots within adjacent subdivisions will have the same use of the Common Areas as the Lot Owners provided herein.

14. Architectural Committee. The Developer shall serve as the Architectural Committee until the earlier to occur of (a) all of the Lots subject to this Declaration, including any Lots hereafter annexed to the Development as provided herein, have been sold by the Developer, or (b) Developer records the Certificate of Substantial Completion provided for herein. The Architectural Committee shall meet at least quarterly to consider applications with respect to any matters that require the approval of the Architectural Committee as provided herein. A majority of the members of the Architectural Committee shall constitute a quorum for the transaction of business at a meeting. Every act or decision made by a majority of the members present at a meeting at which a quorum is present shall be regarded as the act or decision of the Architectural Committee, and no act or decision made at any other time or in any other manner by the Architectural Committee or any member or members thereof shall be valid or binding or constitute waiver of any provision of this Declaration. In making its decisions, the Architectural Committee may consider any and all aspects and factors that the committee members, in their reasonable discretion, determine to be appropriate to establish and maintain the quality, character, and aesthetics of the Development, including but not limited to, the consistency and harmony of the proposed work and improvements with the Developer's overall plans for the Development and existing improvements in and the general appearance of the Development, the potential impact on property values within the Development and compliance with the specific requirements of this Declaration. Any action of the Architectural Committee that is required or permitted to be taken at a meeting of the Architectural Committee may be taken by unanimous written consent of all members of the Architectural Committee, which written consent may consist of one or more counterparts setting forth the action to be taken. All decisions of the Architectural Committee shall be in writing and delivered to the applicant.

15. No Liability for Approval or Disapproval. Neither the Developer, nor the Owners Association, nor any member of the Architectural Committee or the Board shall be personally liable to any person for any discretionary or other approval, disapproval, or failure to approve any matter submitted for approval, for the adoption, amendment, or revocation of any rules, regulations, restrictions, or guidelines or for the enforcement of or failure to enforce or waiver of any of the restrictions contained in this Declaration or any of such rules, regulations,

restrictions, or guidelines. The Developer and the Architectural Committee shall, in their absolute and unrestricted discretion, have the power and authority to waive application of any of the restrictions as to any Lot, or as to any residence or Exterior Structure on any Lot and any such waiver shall be binding on all Owners and the Owners Association.

16. Covenants Running with Land; Enforcement.

(a) The agreements, restrictions, and reservations herein set forth are, and shall be, covenants running with the land into whosesoever hands any of the property in the Development shall come, for the benefit of all the land in the Development. The Developer, and its successors, assigns, and grantees, and all parties claiming by, through, or under them, shall conform to and observe such agreements, restrictions, and reservations; provided, however, that no person shall be obligated to enforce any such agreements, restrictions and reservations.

(b) The Developer, its successors, and assigns, the Owner of any of the Lots, and the Owners Association, shall have the right (but not the obligation) to sue for and obtain an injunction prohibitive or mandatory, to prevent the breach of or to enforce the observance of the agreements, covenants, restrictions, and reservations herein set forth, in addition to any action at law for damages. In the event the Developer or Owners Association seeks to enforce these restrictions by legal proceedings and the Developer or Owners Association prevails in such legal proceedings, then the Developer or Owners Association, in addition to other rights and remedies to which it or they may be entitled, shall further recover their reasonable costs, expenses, and attorneys' fees in such proceedings. The failure to enforce any of the agreements, restrictions, or reservations herein set forth at the time of its violation shall in no event be deemed to be a waiver of the right to do so thereafter.

17. Owners Association Membership, Voting, and Management.

(a) Membership in the Owners Association shall be limited to the Owners of Lots within the Development, and owners of lots in subdivisions developed by Developer located adjacent to the Development that are zoned residential and which the Developer annexes into the Development as provided for hereinafter. Every such owner shall automatically be and become a member upon acquisition of fee title to a lot in the Development. The Owners Association shall have only one class of membership. Each member shall have one vote for each Lot for which he or she is the Owner and upon which he or she has become liable for payment of initiation fees and assessments, and shall not be delinquent in the payment of any assessment; provided, however, that when more than one person is an Owner of any particular Lot, all such persons shall be members and the vote for such Lot shall be exercised as they, among themselves, shall determine, but in no event shall the vote be divided nor shall more than one vote be cast with respect to such Lot.

(b) The Association shall be governed by a Board of Directors, which shall consist of three (3) Directors appointed by the Developer until the earlier to occur of (i) Developer's sale of the last of the Lots, or (ii) Developer records the Certificate of Substantial Completion, or (iii) Developer elects to allow the Owners to appoint some or all of the Board of Directors.

(c) At such time as the some/all of the Board of Directors is to be appointed by the Owners, the Owners shall elect one Owner for a three (3) year term, one Owner for a two (2) year term, and one Owner for a one (1) year term. Each year thereafter, one new Director shall be elected to a three (3) year term such that the total Board Members shall be three (3), all of which shall serve for three (3) year terms. The election of Directors and conduct of all affairs of the Association shall be in accordance with the Articles of Incorporation and Bylaws to be drafted and put in place by Developer, to the extent same do not conflict with this Declaration.

18. Powers and Duties of the Owners Association.

(a) In addition to the powers granted by other portions of this Declaration, by any deeds, declarations, or plats covering the property in the Development or adjacent property outside the Development that is subdivided by Developer and made subject to this Declaration or by law, the Owners Association shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by its Board of Directors to carry out and effectuate the purposes of this Declaration, including, without limitation:

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

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

(iii) To maintain public liability, worker's compensation, fidelity, fire, and other casualty, director and officer liability, indemnification, and other insurance with respect to the activities of the Owners Association and the property within the Development.

(iv) To levy and collect the assessments which are provided for in this Declaration and to maintain accounts and accounting records with respect thereto.

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

(vi) To enter into and perform agreements with the Developer, other developers, other home associations, and other parties relating to the joint use, operation, and maintenance of any recreational facilities and other similar common areas, whether in or outside the Development and the sharing of expenses related thereto.

(vii) To engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the Owners Association, including, without limitation, keeping of books and records, operation and maintenance of Common Areas and maintenance of lawns and landscaping, collecting and accounting for assessments and paying the expenses of the Owners Association, including management fees.

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

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

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

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

(xii) To enter upon any Lot (other than a Lot owned by the Developer) and to perform thereon any maintenance or repairs necessary to cause such Lot and the improvements thereon to be brought into the condition required by this Declaration, provided, notice of the intention to enter such Lot and perform such maintenance or repairs is first given to the Owner of such Lot, by certified mail, postage prepaid, sent to the address of such Owner according to the records of the Assessor of Boone County, Missouri at least 30 days prior to the date of such

entry. The Owners Association is hereby granted the right to go on each of the Lots for such purposes.

(xiii) To exercise such other powers as may be set forth in the Articles of Incorporation or Bylaws of the Owners Association.

(b) Except as otherwise provided in any agreement with the Developer, the Owners Association shall, at all times, pay and be responsible for the proper maintenance of, and shall maintain, the Common Areas, subject to any control thereover maintained by any governmental authority, utility, or other person or entity.

(c) Notwithstanding anything herein contained, the Developer shall not be obligated to form the Owners Association, nor shall the Owners Association be empowered to exercise any of the authority provided for herein, until after the Certificate of Substantial Completion has been recorded unless the Developer determines, in Developer's discretion, to form the Owners Association at an earlier time.

19. Method of Providing General Funds/Lot Maintenance Assessment.

(a) For the purpose of providing a general fund to enable the Owners Association to exercise the powers, maintain the improvements, and render the services provided for herein, all Lots in the Development, other than Lots then owned by the Developer, shall be subject to an initiation fee and an annual assessment to be paid to the Owners Association by the respective Owners thereof as provided in this Section 19. The amount of the initiation fee shall be Five Hundred Dollars (\$500), which fee shall be payable upon the first conveyance of a Lot by the Developer or a builder to an Owner (except for conveyance to a builder prior to the time a residence is constructed on the Lot, for which there shall be no initiation fee unless and until the builder moves into or rents a house, in which event the builder shall pay both the initiation fee and all assessments otherwise due and payable at such time). The amount of the annual assessment per Lot shall be fixed periodically by the Owners Association, and until further action of the Owners Association, shall be Three Hundred Fifty Dollars (\$350) per year, payable on June 1 of each calendar year, in advance, unless a different time is set by the Board of Directors under subparagraph (iii) below. In the calendar year that a Lot is conveyed to an Owner by the Developer or by a builder to an Owner, the initial Owner shall pay the initiation fee, and a prorated annual assessment for the remainder of the calendar year in which such conveyance occurs. The initiation fee and any prorated assessment shall be payable at the closing of the conveyance by the Developer or builder to such Owner. Until the Owners Association is empowered to act, all initiation fees and annual assessments shall be payable to the Developer when due. The Developer shall cause said initiation fees and annual assessments to be placed in escrow and to be used for purposes related to the Development (including, but not limited to, the

employment of a management company to manage the funds and use the funds to perform duties which relate to the maintenance of the Common Areas, collection of assessments and operation of the Development), at the time the Owners Association is organized by the Developer and upon Substantial Completion of the Development the Developer shall cause any funds remaining in escrow to be transferred to the Owners Association.

(b) The rate of the annual assessment upon each Lot in the Development may be increased or decreased (a) annually by the Board of Directors in an amount not to exceed twenty-five percent (25%) of the rate of the annual assessment then in effect, or (b) at any time or times at a meeting of the members specially called for that purpose and of which advance notice is given and if at least fifty-one percent (51%) of the members present at such meeting and entitled to vote authorize such increase or decrease by an affirmative vote therefor; provided, however, that the rate of assessment may not be less than an amount that is necessary to permit the Owners Association to perform its duties or in exercising its authority hereunder.

(c) The assessment provided for herein shall be due and payable to the Owners Association on such dates as shall be determined by the Board of Directors from time to time, and may be made payable in installments at the discretion and in such manner as the Board of Directors shall determine. No Owner of any Lot shall be entitled to receive any services to be provided by and through the Owners Association or to use any Common Areas other than streets until such time as the first assessment has been paid.

(d) In the event the Developer shall designate certain common areas as "Shared Common Areas" for the use and benefit of lots that are zoned residential in subdivisions developed by the Developer that are located within or adjacent to the Development, and declare that the lots therein are subject to this Declaration, then the assessment provided for in said Declaration by the Developer shall be paid into the general fund for the maintenance and rendering of services as provided herein. The rate of assessment on each Lot shall be increased or decreased as provided in this Declaration and the assessments will be due and payable as provided hereinabove in paragraph (i) of this Section.

(e) Should the Owners Association enter a Lot and perform maintenance and repairs pursuant to the provisions of subsection 18(a)(xiii) above, the Owners Association shall levy a maintenance assessment against the Lot and the Owner thereof for all cost and expense incurred by the Owners Association in entering such Lot and performing such maintenance and repairs.

20. **Lien on Real Estate.**

(a) Each Owner (other than the Developer) shall be personally liable for payment of all initiation fees and assessments becoming due and payable during the time such Owner holds fee title to a Lot, and the fees and assessments shall become a lien on such Lot as soon as they

are due and payable. In the event of the failure of any Owner to pay any fee or assessment within sixty (60) days of the due date thereof, then such fee or assessment shall bear interest at the rate of nine percent (9%) per annum from the due date until paid. Should an attorney be engaged to collect any fee or assessment hereunder, all costs of collecting such fee or assessment, including court costs and reasonable attorney's fees, shall, to the extent permitted by applicable law, be added to the amount of the fee and assessment and the lien on the Lot.

(b) All liens on any Lot for fees or assessments provided for herein shall be inferior and subordinate to the lien of any valid purchase money, first mortgage, or first deed of trust now existing or which may hereafter be placed upon such Lot.

(c) Nonpayment of any fee or assessment provided for herein within sixty (60) days from the due date thereof shall cause such fee or assessment to become delinquent. Payment of both principal and interest of a delinquent fee or assessment may be enforced as a deed of trust lien on such Lot or collected from such Owner through proceedings in any court in Boone County, Missouri, having jurisdiction of suits for the enforcement of such liens, or by any other appropriate proceedings allowed by law. In any such proceedings, the Developer or the Owners Association shall be entitled to recover from the Owner who has failed to pay such fee or assessment all court costs and attorneys' fees incurred in prosecuting such action. The Developer or the Owners Association may file certificates of nonpayment of fees or assessments in the office of the Recorder of Deeds of Boone County, Missouri, whenever any fee or assessment is delinquent. For each certificate so filed, the Developer or the Owners Association shall be entitled to collect from the Owner of the Lot described therein a fee established by the Developer or the Owners Association from time to time, which initially shall be One Hundred Dollars (\$100), which fee shall be added to the amount of the delinquent fee or assessment and the lien on the Lot.

(d) Such liens shall continue for a period of three (3) years from the date of delinquency and no longer, unless within such period suit shall have been instituted for collection of the fee or assessment, in which case the lien shall continue until payment in full or termination of the suit and sale of the property under execution of judgment, provided, however, expiration of such lien shall not extinguish the obligation of the Owner who has failed to pay a fee or assessment from personal liability therefor, plus interest thereon, and court costs and attorneys' fees incurred in any action to collect such unpaid fee or assessment.

(e) The Owners Association may cease to provide any or all of the services to be provided by or through the Owners Association with respect to any Lot during any period that the Owner is delinquent in the payment of any fee or assessment due under this Declaration, and no such cessation of services shall result in a reduction of any amount due from the Owner

before, during, or after such cessation. No Owner shall be entitled to use any Common Areas (other than streets) during such period of delinquency.

21. Special Assessments. In addition to the other assessments provided for herein, the Developer, and then the Board of Directors shall levy from time to time special assessments against each and every Lot (other than any Lot then owned by the Developer) in an equal amount that is sufficient, when aggregated, to enable the Owners Association to perform its duties and to exercise its authority as specified herein that require any expenditures during any period in an amount in excess of the general funds of the Owners Association available therefor. In addition, special assessments against each and every Lot (other than any Lot then owned by the Developer) to pay the costs of constructing, maintaining, altering, or repairing any Common Area or improvement thereon may be levied (i) if fifty-one percent (51%) of the Owners (other than the Developer if it is then an Owner) present and entitled to vote at a meeting of the members specially called for that purpose and of which advance notice is given authorizing such special assessments by an affirmative vote therefor, and (ii) if the Developer, if then an Owner, approves such special assessments in writing. Special assessments shall be due and payable, shall be the personal obligation of the then-Owner of each Lot, and shall become a lien on such Lot upon notice to such Owner of the assessment. Such lien shall be enforced and terminated in accordance with the provisions of Section 20 above.

22. Limitation on Expenditures. The Owners Association shall at no time expend more money within any one year than the total amount of the assessments (including special assessments) for that particular year, plus any surplus and available reserves which it may have on hand from prior years; nor shall the Owners Association have the power to enter into any contract which binds the Owners Association to pay for any obligation out of the assessments for any future year, except for contracts for utilities, maintenance, or similar services or matters to be performed for or received by the Owners Association or its members in subsequent years.

23. Common Areas. The Developer covenants and agrees to convey title to or its interest in the Common Areas (except any part thereof that is within any Lot or outside the Development) to the Owners Association, without cost to the Owners Association, after the Developer has recorded the Certificate of Substantial Completion.

24. Notices.

(a) No less than fourteen (14) and no more than forty (40) days prior to any meeting of the Owners Association, it shall give written notice to all members of the place, time, and purpose of the regular or special meeting of the Owners Association.

(b) The Owners Association shall designate from time to time, by notice to all Owners, the place where payment of assessments shall be made and the place or places where other

business in connection with the Owners Association may be transacted and where the Owners Association may be contacted.

(c) All notices required or permitted under this Declaration shall be deemed given if deposited in the United States Mail, postage prepaid, and addressed to the person entitled to such notice at the last address listed with the Owners Association for such person. Notice to one co-owner shall constitute notice to all co-owners.

25. **Extension of Development.** The Developer shall have, and expressly reserves, the right, from time to time, to add to the existing Development and to the operation of the provisions of this Declaration such other adjacent (without reference to streets and rights-of-way) lands as it may now own or hereafter acquire by executing, acknowledging, and recording an appropriate written declaration or agreement subjecting such land to all of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof; provided, however, that such declaration or agreement may contain such deletions, additions, and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable as solely determined by the Developer in good faith.

26. **Applicable Law.** The Owners Association shall, at all times, observe all applicable federal, state, county, city, or other laws, rules, regulations, and ordinances. If, at any time, any of the provisions of this Declaration shall be found to be in conflict with such law, rules, regulations, or ordinances, such provisions shall be of no force or effect to the extent of such conflict for so long as such conflict exists, but no other parts of this Declaration not in conflict therewith shall be affected thereby.

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

28. **Assignment of Developer's Rights.** The Developer shall have the right and authority from time to time, by appropriate agreement made expressly for that purpose and recorded in the office of the Recorder of Deeds of Boone County, Missouri, to assign, convey, transfer, and set over to any person or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties, and responsibilities herein reserved by or granted to the Developer, and upon such assignment the assignee shall then for all purposes be the Developer hereunder with respect to the assigned rights, benefits, powers, reservations, privileges, duties, and responsibilities. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer, and set over the rights, benefits, powers, reservations, privileges, duties, and responsibilities hereunder.

29. **Duration and Modification of Restrictions.** The provisions of this Declaration shall remain in full force and effect for a period of twenty (20) years from the date hereof, and shall automatically be continued thereafter for successive periods of ten (10) years each; provided, however, the provisions of this Declaration may be amended, modified, or supplemented, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by both (a) the Owners (excluding therein the Developer if it is then an Owner) of sixty-six and two/thirds percent (66 2/3%) of the Lots (excluding those owned by the Developer) within the Development as then constituted and (b) the Developer if it is then an Owner.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed the day and year first written above.

Developer: Tompkins Homes and Development,
Inc.

By _____
Mike Tompkins, President

STATE OF MISSOURI)
) ss.
COUNTY OF BOONE)

On this ___ day of _____, 20___, before me appeared Mike Tompkins, and acknowledged that said instrument was signed in behalf of Tompkins Homes and Development, Inc., by authority of its Board of Directors, and acknowledged said instrument to be the free act and deed of Tompkins Homes and Development, Inc..

In witness whereof, I have hereunto set my hand and official seal.

Notary Public
Print Name _____

My term expires:

SUBORDINATION AGREEMENT

_____ hereby subordinates the lien of the deed of trust recorded in Book ____ at page ___, in the Records of Boone County, Missouri, to the foregoing Declaration of Restrictions.

ATTEST:

Printed Name: _____
Title: _____

by _____
Printed Name: _____
Title: _____

STATE OF MISSOURI)
) ss.
COUNTY OF BOONE)

On this ____ day of _____, 2005, before me personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Notary Public
Print Name _____

My term expires: