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JANET ROBERT
RECORDER OF DEEDS
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JANET ROBERT
Vickie Alreyer Deputy

(Space above reserved for Recorder of Deeds certification)

Title of Document: Third Amended Declaration of Restrictions and Protective Covenants for The Meadow of Whispering Oaks Subdivision

Date of Document: August 16, 2007

Grantor(s)/Grantee(s): The Meadows of Whispering Oaks Subdivision
Whispering Oaks of Cape Girardeau, L C
Cloverdale Ranch, L C
Castle Rock, L C

Mailing Address: Attn Rodney G Arnold
P O Box 307
Jackson, MO 63755

Legal Description: See Exhibit A (attached)

Ref. Book and Pages: Plat Book 23, Page 62
Document No 2005-02586
Document No 2006-13252
Document No 2006-15327

**THIRD AMENDED
DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS
FOR
THE MEADOWS OF WHISPERING OAKS SUBDIVISION**

THIS THIRD AMENDED DECLARATION of Restrictions and Protective Covenants for The Meadows of Whispering Oaks Subdivision (the "**Declaration**") is made and executed this 16th day of August, 2007 by **Whispering Oaks of Cape Girardeau, L.C.**, a Missouri limited liability company, **Cloverdale Ranch, L.C.**, a Missouri limited liability company, and **Castle Rock, L.C.**, a Missouri limited liability company, whose mailing addresses are P.O. Box 307, Jackson, Missouri 63755

WHEREAS, Whispering Oaks of Cape Girardeau, L.C., Cloverdale Ranch, L.C., and Castle Rock, L.C. (collectively, the "**Developer**") are, collectively, the Developer of The Meadows of Whispering Oaks-Amended, a subdivision in the City and County of Cape Girardeau, Missouri, (the "**Subdivision**") as shown by Plat recorded in **Plat Book 23, Page 62** in the Recorder of Deeds Office for Cape Girardeau County, Missouri (the "**Plat**"), and more particularly described on **Exhibit A**, attached hereto and incorporated herein. All references to Lots, streets, easements, or Common Ground hereinafter are to said items as shown on said Plat, and

WHEREAS, the property located in the Subdivision and shown on the Plat is subject to and governed by that certain *Declaration of Restrictions and Protective Covenants for The Meadows of Whispering Oaks Subdivision*, dated February 28, 2005 and recorded on February 25, 2005 as Document No. 2005-02586 (the "**Original Declaration**"), and

WHEREAS, the Developer amended the Original Declaration pursuant to the *First Amended Declaration of Restrictions and Protective Covenants for The Meadows of Whispering Oaks Subdivision*, dated and recorded September 19, 2006 as Document No. 2006-13252 (the "**First Amended Declaration**"), and then revoked and deleted the First Amended Declaration and re-adopted the Original Declaration pursuant to that certain *Second Amended Declaration of Restrictions and Protective Covenants for The Meadows of Whispering Oaks Subdivision* dated October 30, 2006 and recorded October 31, 2006 as Document No. 2006-15327 (the "**Second Amended Declaration**"), and

WHEREAS, pursuant to Section 9.10 of the Original Declaration, for so long as Developer owns any undeveloped Lots in the Subdivision, Developer reserves the right to amend the Declaration so long as such amendment conforms to the general purposes and standards of the original restrictions, or such amendment is made for the purpose of curing any ambiguity in or any inconsistency between the provisions contained in the Original Declaration, and such right to amend includes the right to add any additional covenants or restrictions which do not lower the standards of the covenants contained in the Original Declaration, but further burden the Subdivision property, and

WHEREAS, Developer currently owns 77 out of the 110 Lots in The Meadows of Whispering Oaks-Amended, and only 17 of the 33 Lots sold are improved and occupied, and

WHEREAS, Developer desires to amend the Original Declaration in order to improve the development of the Subdivision, and such amendments conform to the general purposes and standards of the Original Declaration, protect the intended objective and purpose of the Original Declaration, preserve the original general scheme of development, and do not lower the standards of the Original Declaration, although they may further burden the lots located in the Subdivision;

NOW, THEREFORE, in consideration of the above recitals, the terms and covenants of this agreement, and other good and valuable consideration, the receipt of which is hereby acknowledged, Developer hereby amends the Original Declaration by deleting the covenants, conditions, and restrictions contained in the Original Declaration in their entirety and by replacing them with the following

ARTICLE 1 CREATION OF COMMUNITY

1.1 Purpose and Intent. It is the purpose and intention of this Declaration to enhance and protect the value, attractiveness and desirability of the Lots constituting The Meadows of Whispering Oaks – Amended, to preserve said Subdivision as a restricted neighborhood, to protect the same against certain uses, to apply the plan contained in this Declaration to all of the land located in the Subdivision, including all Common Ground, except where specific exceptions are indicated, to benefit, guard and restrict current and future residents of the Subdivision, and to foster the health, welfare and safety of all current and future residents of the Subdivision

1.2 Binding Effect This Declaration shall be binding upon and shall inure to the benefit of the Owners of each and every Lot lying within the Subdivision, except where specific exceptions are indicated in this Declaration, and to the Common Areas Each and every Lot when sold shall be sold subject to the covenants, conditions, restrictions, charges and assessments set out herein, which shall run with the land, and shall be binding upon all parties having any right, title or interest in any of said Lots, and their heirs, successors and assigns.

1.3 Common Area Easements. Each Lot Owner shall have a permanent and non-exclusive easement of use and enjoyment in and to the Common Ground, which shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Association to establish rules and regulations regarding the use and enjoyment of such Common Ground, and subject further to the obligation of each Lot Owner to pay any and all Assessments in a timely manner and to comply with all of the covenants, conditions, and restrictions of this Declaration

ARTICLE 2 DEFINITION OF TERMS

2.1 Annual Assessment. “Annual Assessment(s)” shall mean such sum due and payable to the Association on an annual basis, as more particularly set out in Section 7.1 herein

- 2.2 Assessment Lien.** "Assessment Lien" shall mean a lien placed on a Lot by the Association and resulting from a Lot Owner's failure to pay any Assessment within ninety (90) days after the Assessment is made, as more particularly set out in Section 7.5 herein
- 2.3 Association.** "Association" shall mean "The Meadows of Whispering Oaks Property Homeowners Association", a Missouri non-profit corporation formed by Developer for the purpose of managing and maintaining the Common Ground of the Subdivision.
- 2.4 Board.** The "Board" shall mean the Board of the Directors for The Meadows of Whispering Oaks Property Homeowners Association
- 2.5 Castle Rock Area.** The "Castle Rock Area" shall mean and refer to those 13 Lots now or previously owned by Castle Rock, L.C., and shall consist of Lots 76A, 76B, 77A, 77B, 78A, 78B, 79A, 81, 174, 175, 176, 177 and 178
- 2.6 Cloverdale Ranch Area.** The "Cloverdale Ranch Area" shall mean and refer to those 34 Lots now or previously owned by Cloverdale Ranch, L.C., and shall consist of Lots 123, 124, 125, 133, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, and 170
- 2.7 Common Ground/Common Area.** "Common Ground" or "Common Area(s)" shall mean and refer to (a) the area designated as "Common Ground" on the Subdivision Plat, (b) the access, utility, and sewer easements shown on the Subdivision Plat, (c) the signage for the Subdivision and various areas within the Subdivision, together with the landscaped areas surrounding those signs; and (d) such other property of the Subdivision that may, in the future, be held, administered and maintained for the common use and benefit of the Lot Owners
- 2.8 Cove.** The "Cove" shall mean "The Cove Family Recreation Complex", a recreational facility located adjacent to the Subdivision at 585 Silverado Trail, Cape Girardeau, Missouri
- 2.9 Cove Assessment.** "Cove Assessment(s)" shall mean such sum as may be due and payable to the Cove for membership dues, as more particularly set out in Section 7.2 herein
- 2.10 Declaration/Instrument.** "Declaration" or "Instrument" shall mean and refer to this "Third Amended Declaration of Restrictions and Protective Covenants for The Meadows of Whispering Oaks Subdivision" as amended from time to time
- 2.11 Developer.** "Developer" shall mean and refer to, collectively or individually as the case may be, Whispering Oaks of Cape Girardeau, L.C., Cloverdale Ranch, L.C., and Castle Rock, L.C., each a Missouri limited liability company with its principal office and place of business situated in the County of Cape Girardeau, Missouri, any designated agent(s) acting on their behalf, and their successors and assigns, provided such successors and assigns acquire all of the undeveloped lots owned by that Developer for the purpose of development
- 2.12 Lot.** "Lot" or "Lots" shall mean and refer to any one or more of the numbered parcels of land shown on the Record Plat of The Meadows of Whispering Oaks - Amended

2.13 Meadows Area. The "Meadows Area" shall mean and refer to those 63 Lots now or previously owned by Whispering Oaks of Cape Girardeau, L. C., and shall consist of Lots 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 137, 138, 139, 140, 171, 172, and 173

2.14 Member. "Member" shall mean every person or entity which holds membership in the Association, as more particularly set out in Section 6 3 herein

2.15 Ordinance. "Ordinance" shall mean and refer to the Codes, Regulations and Ordinances of the City and County of Cape Girardeau, Missouri, as from time to time amended

2.16 Owner/Lot Owner. "Owner" or "Owners" or "Lot Owner" or "Lot Owners" shall mean and refer to the record owner(s) of the fee simple title to any Lot in the Subdivision purchased from Developer or a prior Lot Owner, including contract sellers, but excluding those having such interests as security for the performance of a debt or obligation

2.17 Plat/Record Plat. "Plat" or "Record Plat" shall mean and refer to the recorded subdivision plat of The Meadows of Whispering Oaks - Amended as recorded in **Plat Book 23 at Page 62** in the land records of Cape Girardeau County, Missouri.

2.18 Special Assessment. "Special Assessment" shall mean such sum as the Board of the Association may determine due and payable from each Lot Owner in order to pay for any expenditure incurred to operate the Association or to maintain, improve, or control the Subdivision Common Ground, as more particularly set out in Section 7 3 herein

ARTICLE 3 PERMITTED AND PROHIBITED USES AND CONDUCT

3.1 Residential Use Only. The Subdivision is a private residential subdivision, and shall be used solely for residential purposes. As used in this Declaration, the term "residential purposes" shall mean use for dwelling or recreational purposes, or both. No property shall be used for the conduct or operation of any commercial or industrial pursuit of any kind or description whatsoever, with the following exceptions: (i) an Owner may utilize his/her residence for a "home occupation," meaning any occupation or activity that is clearly incidental and secondary to the use of the premises for dwelling purposes, so long as the Owner complies with the applicable City Ordinance regarding such use, and (ii) Developer may conduct promotional activities in connection with the development of the Subdivision and the marketing and sale of residences therein, and (iii) Developer may operate and maintain a sales office, construction office, storage facility, and such other facilities on such Lots in the Subdivision as Developer deems necessary, and such facilities may be used for any reasonable commercial purpose related to the development of the Subdivision.

3.2 Temporary Structures. No structure of a temporary character including, but not limited to, a mobile home, trailer, basement, tent, shack, garage, barn, or other outbuilding may be used on any Lot at any time as a residence either temporarily or permanently.

3.3 Parking and Storage of Vehicles. No truck, commercial vehicle, boat, aircraft, riding lawn mower, four-wheeler, camper, RV, trailer, or other recreational or utility vehicle may be placed upon any Lot in the Subdivision for a period of more than twenty-four (24) hours unless the same is placed within an enclosed garage or approved outbuilding; provided, however, that during construction on any Lot, such items as may reasonably be necessary may be placed on a Lot for a longer period. No wrecked or unlicensed motor vehicles of any kind whatsoever that are unable to move under their own power may be stored or allowed to remain upon any lot. There shall be no on-street parking permitted within the Subdivision.

3.4 Motorized and Recreational Vehicles. Motorized vehicles shall not be operated on any part of the Subdivision other than the streets. In order to ensure all Lot Owners' peaceful enjoyment of their property, no four wheelers, dirt bikes and similar recreational type vehicles may be operated within the Subdivision.

3.5 Signs. No sign, billboard, or advertising device of any kind may be displayed for public view on any Lot, except one (1) sign of not more than five (5) square feet advertising the property for sale.

3.6 Animals and Pets. Pets are permitted for personal enjoyment, subject to applicable Ordinances, but must be leashed or confined on the Lot Owner's property. As used herein, the word pet does not include livestock, poultry, swine or any wild, dangerous, or exotic animal. No pets or animals of any kind may be kept, bred or maintained for commercial purposes. Any dog houses or other pet enclosures shall be subject to the restrictions contained herein with respect to the placement or construction of fencing or other structures on any Lot.

3.7 Trash/Garbage. No trash, garbage, rubbish, ashes or other refuse, junk, vehicles in disrepair or unsightly objects shall be thrown, placed, dumped, maintained or allowed on any Common Ground or on any Lot, except in sanitary containers located in appropriate areas concealed from public view. No trash or garbage can shall be placed on the curb of a Lot except on the day of a regularly scheduled collection.

3.8 Nuisances. No noxious, illegal or offensive activity shall be carried out on the Common Ground or any Lot, nor shall anything be done thereon that may be or become a nuisance or annoyance to the other Lot Owners in the Subdivision. In the event of a dispute or question as to what may be or become a nuisance, such dispute or question shall be submitted to the Developer, whose decision shall be binding.

3.9 Plat Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Record Plat of the Subdivision. No structure, planting or other objects shall be placed or permitted to remain within these easement areas which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area within each Lot shall be maintained continuously by the Owner of the Lot, except for the streets and those improvements for which the Association, a public authority, or utility company is responsible.

3.10 Subdividing/Plat Amendment. No Lot shown on the recorded Plat of the Subdivision may be hereafter subdivided without the express consent of Developer. Notwithstanding the foregoing, so long as Developer owns any Lot within the Subdivision, Developer reserves the right to re-subdivide any Developer-owned Lot without the consent of the other Lot Owners. Developer further reserves the right to amend or modify the Subdivision Plat without the consent of the other Lot Owners, so long as such amendment or modification changes only the Lots owned by Developer.

ARTICLE 4 BUILDINGS AND IMPROVEMENTS

4.1 Creation of Architectural Control Committee. There shall be created three (3) Architectural Control Committees (individually, the "ACC" and collectively, the "ACCs"), one for the Castle Rock Area, one for the Cloverdale Ranch Area, and one for the Meadows Area. The ACCs shall be responsible for reviewing the building and site plans for all proposed new construction in their area of the Subdivision, including additions or modifications to existing structures, and shall be responsible for ascertaining that the plans and subsequent construction meet or exceed the minimum building requirements set forth in this Declaration. The primary purpose of the ACCs shall be to assist Lot Owners in achieving compliance with such building restrictions. The ACCs shall allow the greatest possible latitude and flexibility in the type of homes to be built on the Lots in the Subdivision, so long as the design is in harmony with the surrounding structures and topography of the Subdivision, and the home is to be constructed in accordance with sound construction practices using high quality materials. As part of their review of any proposal, the ACCs shall consider any and all factors they may deem necessary, appropriate and relevant to maintain the property values of the other Lots in the Subdivision.

4.1.1 Membership of ACCs. Each ACC shall be composed of at least two (2) members, who may designate a representative to act for it. So long as Developer owns Lots in the Subdivision, Developer shall have the right to appoint the members of the ACC for Developer's area. Neither the members of the ACC nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant.

4.1.1.1 Castle Rock Area ACC. Castle Rock, L.C. shall appoint the members of the Castle Rock Area ACC, who shall initially be composed of **Rodney G. Arnold and Pamela D. Arnold**, but they shall have the ability to add one or more members, at their discretion, so long as said new member(s) owns at least one Lot in the Subdivision. In the event any such appointed member of the ACC shall no longer own a Lot in the Subdivision, said member shall be deemed to have resigned.

4.1.1.2 Cloverdale Ranch Area ACC. Cloverdale Ranch, L.C. shall appoint the members of the Cloverdale Ranch Area ACC, who shall initially be composed of **Jerome R. Zimmer and Mary J. Zimmer**, but they shall have the ability to add one or more members, at their discretion, so long as said new member(s) owns at least one Lot in the Subdivision. In the event any such appointed member of the

ACC shall no longer own a Lot in the Subdivision, said member shall be deemed to have resigned.

4.1.1.3 The Meadows Area ACC. Whispering Oaks of Cape Girardeau, L C shall appoint the members of The Meadows Area ACC, who shall initially be composed of **Rodney G. Arnold and Pamela D. Arnold**, but they shall have the ability to add one or more members, at their discretion, so long as said new member(s) owns at least one Lot in the Subdivision. In the event any such appointed member of the ACC shall no longer own a Lot in the Subdivision, said member shall be deemed to have resigned.

4.1.2 Decisions of ACCs. Any decision made by an ACC to approve anything as required in this Declaration must be by simple majority. The ACC's approval or disapproval as required in this Declaration shall be given to the Lot Owner submitting the proposal, and may be given verbally or in writing. In the event the ACC or its designated representative fails to approve or disapprove any proposal within thirty (30) days after the plans and specifications have been submitted to it (or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof), approval will not be required and the related covenants will be deemed to have been fully complied with. In the event the ACC disapproves any plan, it shall inform the Lot Owner, verbally or in writing, of the particular items it finds objectionable and any recommended changes or alterations to the objectionable portions of the submitted plans. Any failure of the ACC to approve or disapprove any proposal from a Lot Owner shall in no event be deemed a waiver of the right to approve or disapprove anything requiring ACC approval in the future.

4.1.3 No Liability for Decisions. Notwithstanding the foregoing provisions, the ACCs shall have no affirmative obligation to be certain that all elements of the building plans comply with the restrictions contained in this Declaration, and no member of any ACC shall have any liability, responsibility or obligation, whatsoever, for any decision or lack thereof, in the carrying out of duties as a member of such ACC, nor shall any member be personally liable to any person for any discretionary approval, disapproval or failure to approve any matter submitted for approval, for the adoption of any rules, regulations or guidelines, or for the enforcement of or failure to enforce any of the restrictions contained in this Declaration. The responsibility for compliance with all of the terms of this Declaration shall rest with the Lot Owners. Each Lot Owner agrees to save, defend, and hold harmless the ACCs and each of their members on account of any activities of the ACCs relating to such Owner's Lot or buildings to be constructed on his or her Lot.

4.2 Pre-Construction Approval. Prior to the construction of any residence or exterior structure of any kind upon any Lot, including but not limited to any exterior changes or alterations that may occur thereafter, a building site plan shall be submitted to the applicable ACC for review and approval. The site plan must show the proposed location of the residence, any outbuildings, driveway, and any other proposed improvements, and include proposed landscaping. Additionally, before construction may begin on any Lot, a copy of the building plans and specifications (including but not limited to blueprints of the floor plan, elevation, grade, exterior color scheme, and exterior materials) shall be submitted to the applicable ACC.

for review and approval. Once approved, no change or alteration in the site plan or building plans and specifications may be made until such change or alteration has been submitted to and approved by the applicable ACC.

4.3 Building Requirements. The Subdivision shall consist of custom built homes constructed from raw materials substantially assembled on site. No residential building which has previously been at another location shall be moved onto any Lot, and no mobile homes or manufactured homes may be erected on any Lot. No A-frame, geodesic domes, pyramid, round, earthberme, or any other variant designed home may be erected on any Lot. The minimum building requirements for all improvements placed or erected on any Lot shall be as follows:

4.3.1 Building Materials. All improvements of any kind shall be constructed of attractive, high quality materials.

4.3.2 Square Footage. The primary dwelling constructed on any Lot shall contain a minimum of 1,600 square feet of total finished floor space on the main level. Floor space shall be determined exclusive of any basement, attic, garage, porch, or patio.

4.3.3 Roofs. All roofs shall have a pitch of 8/12 or greater.

4.3.4 Driveways. All driveways and walks shall be of concrete composition. Driveways must be at least 12 feet wide.

4.3.5 Garages. All homes in the Subdivision shall include a fully enclosed and attached garage sized to adequately house at least two (2) American automobiles, with functioning garage doors. Detached garages may be permitted if approved by the applicable ACC. All garages, whether attached or detached, shall be of the same quality of construction and have the same exterior finish and roofing materials used on the home. No carport will be permitted unless approved by the applicable ACC.

4.3.6 Set backs. No structure or any part thereof (including any building, pool, satellite dish, antennae, etc.) may be located on any Lot nearer than forty feet (40') to the front lot line, nor may any structure or any part thereof be located on any Lot nearer than twenty feet (20') to the side and rear lot lines. Notwithstanding the foregoing, in the event that the applicable ACC determines that the distances set out herein cannot be met given the size and topography of any Lot and the proposed construction plans for such Lot, the ACC may, in its discretion, make such exceptions as are necessary to accommodate the proposed structure, so long as such exceptions are made in a manner calculated to maintain the architectural and aesthetic integrity of the Subdivision. In this connection, it is acknowledged that many of the Lots in both the Castle Rock Area and Cloverdale Ranch Area will be excepted from the set backs set forth above due to the size and topography of such Lots, and the ACCs for those areas shall determine the appropriate set backs for each Lot on a case by case basis in order to maintain the architectural and aesthetic integrity of the Subdivision.

4.3.7 Outbuildings. Storage buildings, pool houses, or other outbuildings may be permitted so long as the structure is the same type construction as the home on the Lot.

Any deviation must be specifically approved by the applicable ACC. Outbuildings or storage buildings may be used only in connection with the residential use of the Lot, and shall not be used as a separate residence nor for any commercial purpose, subject to the provisions of Section 3.1 herein. The plans and specifications for any and all outbuildings must be approved by the ACC prior to construction, as more specifically set forth in Section 4.2 herein.

4.3.8 Retaining Walls. All retaining walls or other such structures must match the home on the Lot or be constructed of decorative stone. No bare concrete will be allowed. The plans and specifications for any and all retaining walls must be approved by the ACC prior to construction, as more specifically set forth in Section 4.2 herein.

4.3.9 Fences. A boundary fence may be placed on a Lot so long as no more than fifty percent (50%) of the fence is composed of solid materials, and no part of the fence is placed in front of the front line of the home located on the Lot. Minor variances may be granted by the applicable ACC if it deems such variance reasonable and necessary. All fences must be built of vinyl material, powder coated aluminum, wood, wrought iron, or other similar material approved by the ACC. No chain link fence of any type or kind will be allowed as either a boundary fence or a pool enclosure. The plans and specifications for any and all fences must be approved by the ACC prior to construction, as more specifically set forth in Section 4.2 herein. Additionally, the location of any proposed fence shall be staked on the Lot at the time of, or prior to, submitting an application for ACC approval, in order to provide the ACC and any abutting Lot Owner an opportunity to inspect the proposed location of such fence.

4.3.10 Mailboxes. All mailboxes and posts shall be the same in the Subdivision and shall be selected by the Developer. Only the street name, number, and name of the residents will be permitted on the mailbox, in a font selected by the Developer.

4.3.11 Swimming Pools. No above ground swimming pools are permitted in the Subdivision. All in-ground pools must be properly fenced to secure and enclose the pool area. The plans and specifications for any and all pools, including the fencing around the pool area, must be approved by the ACC prior to construction, as more specifically set forth in Section 4.2 herein.

4.3.12 Satellite Dishes and Antennae. Satellite dishes no larger than twenty-four inches (24") and outside television antennae are permitted, but only if attached to the home or otherwise located behind the rear line of the home.

4.3.13 Utilities. The utility easements delineated on the Plat may be used for the purpose of constructing, operating and maintaining wires, pipes, conduits or other transmission systems and appurtenances for electric, natural gas, telephone, water, sewage, storm water, video or cable television, and all other services in the nature of public utility. All lines or wires for telephone, power, cable television, or otherwise shall be placed underground, and no such wires shall be shown on the exterior of any building unless the same shall be in a conduit attached to a building.

4.3.14 Storm Water Drainage. All Lot Owners shall maintain their Lots in a manner to control storm water run-off onto adjacent Lots. No Lot may be lowered or raised, in whole or in part, nor may any pipe, drain tile, or other device be placed on any Lot so as to cause its surface water to be channeled, gathered or dispersed in a manner that causes such surface water to leave the confines of the Lot in a different location, quantity or force as existed at the time of purchase of such Lot, unless such Lot Owner has obtained specific approval from the ACC. Additionally, there are relief outlets in the curbing of the streets to allow storm water to flow across certain Lots at the natural low mark, and no Lot Owner may take any action to interfere with the relief outlets. No water from any roof, downspout, basement or garage drain, or surface drainage shall be placed in or connected to any sanitary sewer line.

4.3.15 Dirt. Any dirt which is removed from a Lot through excavation or grading of the Lot prior to completion of the home on that Lot, and which is not needed by the Lot Owner in connection with grading or construction on the Lot, shall be transported at the expense of the Lot Owner and placed upon such other Lot(s) or Common Area(s) in the Subdivision as directed by the Developer.

4.3.16 Landscaping. Each Lot shall have an established lawn within six (6) months after the home on the Lot becomes occupied. Additional landscaping in substantial conformance with the landscaping plan submitted to the ACC shall be substantially completed no later than twelve (12) months after the home on the Lot becomes occupied.

4.3.17 Completion of Construction. When construction of any kind begins on any Lot, work must proceed diligently and must be completed within the following time period, unless extended by the applicable ACC: all excavation, grading, filling, and exterior construction must be completed within one (1) year, and the balance of construction, including all interior finish work, must be completed within two (2) years. No residence shall be occupied and used as a dwelling until it has been completed.

ARTICLE 5 MAINTENANCE AND REPAIR

5.1 Maintenance. Each Lot Owner shall properly maintain his/her Lot in a neat, clean and orderly fashion, keeping the lawn uniformly mowed to a height not to exceed seven inches (7"), and properly maintaining all trees, shrubs and other landscaping in such a manner as to keep the Lot neat and attractive and free from weeds and debris. All residences and exterior structures of any kind shall be kept and maintained in good condition and repair at all times.

5.2 Obligation Upon Damage or Destruction. If all or any portion of a residence or other exterior structure on any Lot is damaged or destroyed by fire or other casualty, or by vandalism, it shall be the duty of the Lot Owner, with all due diligence, to either (i) rebuild, repair, or reconstruct such structure in a manner that will substantially restore it to its appearance and condition immediately prior to the casualty, or (ii) tear down the damaged structure and restore the Lot to its natural condition.

5.3 Common Areas. The Association shall be responsible for the general maintenance, upkeep and repair of the Common Areas. Additionally, the Association may make such improvements to the Common Areas as the Association deems reasonably necessary or advisable.

ARTICLE 6 HOMEOWNERS ASSOCIATION

6.1 Formation. Developer has formed "The Meadows of Whispering Oaks Property Homeowners Association", a Missouri non-profit corporation, (the "**Association**") for the purpose of managing and maintaining the Common Ground of the Subdivision.

6.2 Responsibilities. The Association shall be responsible for the collection and disbursement of the Annual Assessments and Cove Assessments levied against each Lot in the Subdivision, as herein authorized, and any Special Assessments as may be necessary to fund operation of the Association or the discharge of its responsibility to provide for the general maintenance, upkeep, control, and/or improvement of the Subdivision Common Ground. Developer shall have the right, but not the obligation, to convey to the Association, and the Association shall have the obligation to accept from Developer, the Subdivision roads and all other Common Ground, including entryways and signage for the Subdivision, upon completion of construction of same and/or at such time as may be deemed appropriate by Developer.

6.3 Membership. Every Lot Owner shall be a Member of the Association upon completion of and occupancy of a home in the Subdivision. Membership in the Association shall be appurtenant to and may not be separated from ownership of a Lot. If more than one person or entity owns an interest in any Lot (excluding those having such interest merely as collateral security for the payment of debt or for the performance of an obligation, such as a beneficiary under or holder of a deed of trust), all such persons or entities shall be Members, provided, however, that the Owner or Owners of each Lot shall collectively have only one (1) vote per Lot owned in the Subdivision. When more than one person holds an interest in any given Lot, the vote for such Lot shall be exercised as the Owners may determine between or among themselves.

6.4 Developer Membership. Developer shall be a Member of the Association until such time as the development of the Subdivision has been completed and all Lots have been sold. Developer shall be entitled to one (1) vote for every Lot owned by Developer, and one (1) vote for every Lot sold by Developer to a third party that is not yet owner-occupied.

6.5 Association Board of Directors. The Association shall be governed by a Board of Directors (the "**Board**") whose terms and authorities shall be established in the Bylaws of the Association. The initial Board of Directors shall be comprised of three (3) members who shall be appointed by the Developer until their successors are duly elected. Upon the sale, completion, and occupancy of fifty percent (50%) of the Lots in the Subdivision (i.e., 55 Lots), Developer shall cause one of its appointed members to resign from the Board, and the voting Members of the Association shall elect one Lot Owner to fill the vacant seat. Upon the sale, completion, and occupancy of seventy-five percent (75%) of the Lots in the Subdivision (i.e., 83 Lots), Developer shall cause a second of its appointed members to resign from the Board, and the voting Members

of the Association shall elect a Lot Owner to fill the vacant seat. Upon the sale, completion, and occupancy of eighty-five percent (85%) of the Lots in the Subdivision (i.e., 94 Lots), Developer shall cause the remaining appointed member to resign from the Board, and the voting Members of the Association shall elect a Lot Owner to fill the vacant seat.

6.6 Meetings and Elections. The schedule and procedures for all meetings, annual and special, voting, and elections shall be set out in the Bylaws of the Association.

6.7 Sub-Associations. In the event Developer deems it necessary or advisable, Developer may cause to be formed a sub-association for the Castle Rock Area and/or the Cloverdale Ranch Area and/or any future developed areas. Lot Owners in any such sub-association shall have all the rights and responsibilities of the other Members of the Association, together with such additional rights and responsibilities the members of the sub-association deem necessary or reasonable, including but not limited to the right to assess and govern the Lots within the sub-association.

ARTICLE 7 ASSESSMENTS

7.1 Annual Assessments. Each Lot owned by any party other than Developer shall be subject to an "Annual Assessment" which shall be assessed on January 1 of each year, and which shall be due and payable to the Association monthly, quarterly, semi-annually, or annually at the election of the Lot Owner. The Annual Assessments shall be used for the improvement and maintenance of any and all property and facilities devoted to the common use of the Lot Owners in the Subdivision, and for such other costs as may be related to the use and enjoyment of such Common Ground, such as the payment of real estate taxes, mowing, costs associated with maintaining any improvements or amenities, insurance, bookkeeping and accounting expenses, attorneys fees, and any and all other expenses that may from time to time be deemed necessary in the reasonable discretion of the Board of Directors of the Association. The amount of the Annual Assessment for 2007 shall be set by the Board, but may not exceed the sum of \$900 per Lot. The amount of the Annual Assessment may be increased with the approval of the Board of Directors of the Association and approval by affirmative vote of the majority of voting Lot Owners.

7.2 Assessment for Cove Membership. Every Lot purchased from Developer after June 1, 2007 shall include automatic membership in *The Cove Family Recreation Complex* (the "Cove"), a recreational facility located adjacent to the Subdivision at 585 Silverado Trail, Cape Girardeau, Missouri. The Cove is not owned by Developer and is not a part of the Subdivision. Developer shall be responsible for paying the initial Enrollment Fee for membership in the Cove. Thereafter, the Lot shall be subject to an annual assessment in an amount sufficient to pay the monthly membership dues to the Cove (the "Cove Assessment"), which shall be in addition to the Annual Assessment paid to the Association. Currently, the monthly dues are \$40, payable monthly, quarterly, semi-annually, or annually at the election of the Lot Owner. The Cove Assessment is subject to change at any time in the event of a change in the amount of monthly dues charged by the Cove. Membership in the Cove provides each Lot Owner a revocable license to use the Cove facilities, which may change from time to time, in accordance with the

Membership Application & Agreement and the Rules and Regulations established by the owner of the Cove, as amended from time to time. Membership does not give any Lot Owner an ownership interest or any other property interest, including any vested or prescriptive right or easement to use the Cove facilities, and is not an investment in the Cove. In the event the Cove facilities are damaged or destroyed by fire, act of God, condemnation, loss of lease, or catastrophe, or in the event the Cove ceases to operate, the Cove Assessment shall terminate.

7.3 Special Assessments. If at any time the Board of Directors of the Association considers it necessary, in the reasonable discretion of the Board, to make any expenditure for the operation of the Association or to provide for the general maintenance, upkeep, control, or improvement of the Subdivision Common Ground, and such expenditure requires an assessment in addition to the Annual Assessment, the proposed "**Special Assessment**" must be approved by a majority of voting Lot Owners. Notwithstanding the above, the Board may at any time, without a vote of the Members, elect to complete emergency repairs on the Common Ground if, in the reasonable discretion of the Board, time is of the essence, and in such event, the costs of such emergency repairs shall be apportioned between the Lots in the Subdivision as a Special Assessment. Special Assessments may also be paid in monthly, quarterly, semi-annually, or annual payments at the election of the Lot Owner. Further, the Board may at any time, without a vote of the Members, elect to complete emergency repairs on any Lot to insure the value and safety of all other Lots, in the event the Owner of said Lot has failed to make the necessary repairs and, in such event, the Board may specially assess any such Lot for the costs of such emergency repair.

7.4 Personal Obligation of Assessments. No Owner may waive or otherwise escape liability for any Assessments provided for in this Declaration by non-use of the Common Ground, abandonment of his Lot, or by non-use of the Cove facilities. The Annual, Cove, and Special Assessments, together with interest, recording costs and reasonable attorney's fees, shall be the personal obligation of the person(s) or entity who owned the Lot at the time the Assessment fell due, but such personal obligation shall not pass to the successors in title of such person(s) or entity unless expressly assumed. The Board may suspend the right to use the Common Ground of any Member who is delinquent in payment of any Assessment.

7.5 Assessment Liens. The Annual, Cove and Special Assessments, together with interest at the legal rate of nine percent (9%), recording or other costs, and reasonable attorney's fees, shall be a charge on the land and a continuing lien on each Lot against which such Assessment is made, without suit or legal proceeding to establish such lien, if the same is not paid within ninety (90) days after the Assessment is made. In the event of any such delinquent Assessment, the Association may execute and record an instrument reciting the levy of the Assessment, together with interest, costs and legal fees (the "**Assessment Lien**") in the Cape Girardeau County Recorder's Office. An Assessment Lien against the Lot of a defaulting Owner may be executed upon in the same manner as is provided under Missouri law for the execution of judgment liens. Notwithstanding the above, the Assessment Lien provided for herein shall be subordinate to any voluntary lien (deed of trust, etc.) given by a Lot Owner. A sale or transfer of any Lot shall not affect the Assessment Lien, except that a sale or transfer pursuant to foreclosure of a deed of trust shall extinguish the Assessment Lien as to payments that became due prior to such foreclosure sale, but not those Assessments thereafter becoming due. Any delinquent Assessments which are extinguished pursuant to the foregoing provision may be reallocated and assessed to all of the Lots as a common expense.

7.6 **No Waiver.** In the event the Association should for any reason fail to assess any Lot for any reason, such failure shall in no event be deemed a waiver of the right make such Assessment in the future. Likewise, in the event the Association should decide to reduce any Annual Assessment for any given year, such reduction shall in no event be deemed a waiver of the right to collect a higher amount, as set out herein or as properly increased as set out above, in the future.

7.7 **Developer Owned Lots Exempt.** In no event shall the Association have the right to make any Assessment of any kind against Lots owned by Developer. This exception shall not apply to any Lot that is improved and being occupied as a residence by the members or principals of any Developer, regardless of how title to the Lot is held.

ARTICLE 8 RIGHTS RESERVED BY DEVELOPER

8.1 **Future Development** Developer reserves the right to subject additional property to this Declaration, which right may be exercised in Developer's sole discretion. Any such property, once subjected to this Declaration, shall be subject to the same obligations and be entitled to exercise and enjoy the same rights and privileges as the property currently platted in the Subdivision.

8.2 **Variances.** Developer reserves the right to grant variances from the covenants, conditions, restrictions, charges and assessments set out herein for any Lot located within the Subdivision, in the event Developer deems such variance reasonable and necessary, in Developer's discretion. Any such variance shall be effective upon an instrument describing the variance being signed by Developer and recorded in the Recorder of Deeds Office for Cape Girardeau County, Missouri.

8.3 **Reservation of Easements by Developer.** Developer reserves and shall have the right to a permanent and non-exclusive easement of use and enjoyment in and to the Common Ground, including but not limited to the streets in the Subdivision, for all purposes reasonably necessary to continue to develop real property adjacent to the Subdivision, whether now owned or later acquired by Developer. In this connection, Developer reserves and shall have the right to grant the right of such use to third parties, without subjecting said third parties to all of the obligations set forth in this Declaration. The permanent easements reserved to Developer pursuant to this Section 8.3 shall not be terminated or affected in any manner in the event Developer conveys any Common Ground to the Association pursuant to Section 6.2 herein, nor shall such easements terminate or be affected in any manner once Developer has sold all Lots in the Subdivision.

8.4 **Amendment by Developer.** For so long as Developer owns any undeveloped Lots in the Subdivision, or for twenty (20) years after the recording of this Declaration, whichever first occurs, Developer reserves and shall have the right (i) to amend this Declaration, so long as such amendment conforms to the general purposes and standards of the terms or restrictions herein contained, (ii) to amend this Declaration for the purpose of curing any ambiguity in or any inconsistency between the provisions contained herein, and (iii) to add any additional covenants

or restrictions which do not lower the standards of the covenants herein contained, but further burden the Subdivision. Any such amendment shall be effective upon the recording of an instrument signed by Developer.

8.5 Assignment of Developer Rights. Developer reserves the right to assign the rights, powers and obligations granted to Developer herein, in whole or in part, to any other person(s) or entity(ies) to whom Developer sells, transfers or conveys all the unsold Lots in the area of the Subdivision owned by Developer.

ARTICLE 9 GENERAL PROVISIONS

9.1 Effective Date and Term. The terms, covenants, conditions and restrictions contained in this Declaration shall take effect immediately upon being filed in the Office of the Recorder of Deeds of Cape Girardeau County, Missouri, and shall be covenants running with the land, and each and all grantees in accepting conveyances of Lots in the Subdivision shall bind themselves, their heirs, assigns, successors or legal representatives in the observance and performance of the reservations, limitations, restrictions, conditions, easements and covenants herein set forth, for a period of twenty-five (25) years from the date this Declaration is recorded, unless amended prior to such time in the manner set forth herein, after which time the reservations, limitations, restrictions, conditions, easements and covenants contained in this Declaration shall be automatically extended for successive periods of ten (10) years each, unless amended or terminated in the manner set forth herein.

9.2 Amendment by Association. The Association may amend this Declaration at any time, in whole or in part, but only upon (i) approval of the Board, and (ii) approval of three-fourths (3/4) of the Lot Owners, and (iii) approval of Developer, provided Developer still owns Lot(s) in the Subdivision. Notwithstanding the foregoing, no amendment shall reduce or modify the obligations or rights granted to or imposed upon the Association or eliminate the requirement that there be an Association. Any such amendment shall be effective upon the recording of an instrument signed by the President of the Association.

9.3 Severability. Each and every of the covenants, restrictions, reservations, and servitudes contained herein shall be considered to be an independent and separate covenant and agreement, and in the event any one of such provisions shall for any reason be held to be invalid or unenforceable, all other provisions shall nevertheless remain in full force and effect.

9.4 Enforcement. Developer, the Association, or any Lot Owner shall have the right to enforce, by any proceeding at law or in equity to restrain violation, compel compliance, or recover damages, all restrictions, conditions, covenants, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. If any such action shall be successfully brought, the party bringing the action shall also be entitled to recover its costs, including a reasonable attorney's fee, from the party violating or attempting to violate any of the provisions of this Declaration. Failure by any party to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so at a later date.

9.5 Association to Succeed Developer. At such time as all of the Lots in the Subdivision have been conveyed by Developer to Lot Owners and a residential dwelling has been built thereon, or twenty (20) years after the recording of this Declaration, whichever first occurs, Developer shall no longer have any rights or responsibilities in connection with the Subdivision and the Association shall succeed to all of the rights and responsibilities of Developer as set forth herein. Notwithstanding the above, the permanent easements to use the streets in the Subdivision, described in Section 8.3 herein, shall not terminate at any time

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

WHISPERING OAKS OF CAPE GIRARDEAU, L.C.

Rodney G. Arnold Living Trust Dated May 3, 2000, Member

By

Rodney G. Arnold, Trustee

By

Pamela D. Arnold, Trustee

Pamela D. Arnold Living Trust Dated May 3, 2000, Member

By

Pamela D. Arnold, Trustee

By

Rodney G. Arnold, Trustee

CLOVERDALE RANCH, L.C.

By

Rodney G. Arnold, Manager

CASTLE ROCK, L.C.

By

Rodney G. Arnold, Manager

STATE OF MISSOURI)

County of Cape Girardeau)

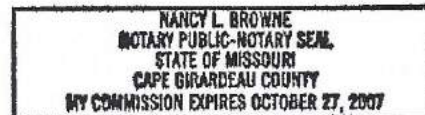
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On this 16th day of August, 2007, before me personally appeared Rodney G. Arnold and Pamela D. Arnold, Trustees of the Rodney G. Arnold Living Trust Dated May 3, 2000, and Pamela D. Arnold and Rodney G. Arnold, Trustees of the Pamela D. Arnold Living Trust Dated May 3, 2000, Members of Whispering Oaks of Cape Girardeau, L.C., a Missouri limited liability company, known to me to be the

persons who executed the within instrument in behalf of said limited liability company, and acknowledged that they executed the same as their free act and deed as trustees, and as the free act and deed of said limited liability company

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office the day and year first above written

Nancy L Browne
Notary Public

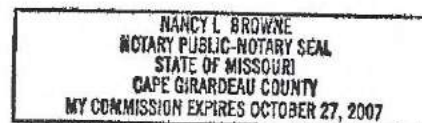


STATE OF MISSOURI)
)
County of Cape Girardeau) ss

On this 16th day of August, 2007, before me personally appeared *Rodney G Arnold*, the sole Manager of *Cloverdale Ranch, L C*, a Missouri limited liability company, known to me to be the person who executed the within instrument in behalf of said limited liability company, and acknowledged that he executed the same as the free act and deed of said limited liability company

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office the day and year first above written

Nancy L Browne
Notary Public



STATE OF MISSOURI)
)
County of Cape Girardeau) ss

On this 16th day of August, 2007, before me personally appeared *Rodney G Arnold*, the sole Manager of *Castle Rock, L C*, a Missouri limited liability company, known to me to be the person who executed the within instrument in behalf of said limited liability company, and acknowledged that he executed the same as the free act and deed of said limited liability company

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office the day and year first above written

Nancy L Browne
Notary Public

