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DECLARATION OF  
COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR

Carriage Oaks

A SUBDIVISION IN  
BUCHANAN COUNTY, MISSOURI

THIS DECLARATION, made and executed as of the 29th day of August, 1995, by KLINE-LADEROUTE DEVELOPMENT COMPANY, a Missouri Corporation, hereinafter called "Developer."

PREAMBLE

WHEREAS, the Developer is the owner of the real property legally described in Exhibit "A" of this Declaration, located in St. Joseph, Buchanan County, Missouri, and Developer desires to create thereon a single family residential community to be known as Carriage Oaks in accordance with all applicable laws and regulations; and

WHEREAS, the Developer has or will cause to be filed with the Recorder of Deeds of Buchanan County, a plat of Phase I of Carriage Oaks, said plat being composed of the lots and tracts contained within the legal description of the real property set forth on Exhibit "A"; and

WHEREAS, the Developer desires to provide for the preservation and enhancement of the property values, amenities, and opportunities in said community contributing to the personal and general health, safety, and welfare of the residents therein and for the maintenance of the land and improvements thereon, and to this end desires to subject the real property described in Exhibit "A", together with such additions as may hereafter be made thereto as provided in Article II, to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, the Developer has deemed it desirable, for the efficient preservation of the values and amenities of said community, to create an agency to which should be delegated and assigned the power of maintaining and administrating and enforcing these covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, to provide a means for meeting the purposes and intents herein set forth, the Developer shall cause to be incorporated under the laws of the State of Missouri, The Carriage Oaks Homes Association, Inc., a Missouri not-for profit corporation (the "Association").

NOW, THEREFORE, the Developer hereby declares that the land described in Exhibit "A", (hereinafter referred to as "Phase I" or the "Property") together with any and all additional property which may be added hereto pursuant to the provisions of Article II hereof, shall be held, sold, used and conveyed subject to the following covenants, restrictions, easements, charges and liens, all of which are for the purpose of promoting the common good and general welfare of the residents and owners of the Property and thereby enhancing and protecting the value, desirability and attractiveness of the Property. These covenants, restrictions, easements, charges and liens shall run with the land and with the title to the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof and, subject to the limitations herein provided, shall inure to the benefit of each owner, his or its heirs, grantees, distributees, personal representatives, successors and assigns, the Association (as herein defined), and the Developer.

AND FURTHER, the Developer hereby delegates and assigns to the Association, the power of owning, maintaining, and administering the community properties and facilities, administering and enforcing the covenants and restrictions, collection and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety, and welfare to the residents.

## Article I

### Definitions

Section 1. "Approval" shall mean and refer to the issuance of written approval, any written waiver approval rights, a letter of "no objection" by the Design Review Committee, the Association or any public agency.

Section 2. "Assessable Unit" shall mean and refer to any real property within the Properties which is subject to assessments, as provided in Article V.

Section 3. "Association" shall mean and refer to The Carriage Oaks Homes Association, Inc., its successors and assigns.

Section 4. "Board", "Association Board" or "Board of the Association" shall mean and refer to the Board of Directors of the Association as the same may from time to time be elected.

Section 5. "Builder" shall mean and refer to a person or entity who or which acquires a portion of the Properties for the purpose of improving such portion in accordance with the Development Plan for resale to future Owners.

Section 6. "Common Area" shall mean and refer to all real property and improvements thereon owned or leased by the Association or over which the Association has an easement

for maintenance (excepting Lots and Living Units thereon) for the use and enjoyment of the Members.

Section 7. "Declaration" shall mean and refer to the covenants, conditions, and restrictions and all other provisions herein set forth in this document, as they may from time to time be amended.

Section 8. "Developer" shall mean and refer to Kline-Laderoute Development Company, and its successors and assigns; provided, however, that no successor or assignee of the Developer shall have any rights or obligations of the Developer hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment or unless such rights and obligations pass by operation of the law. The rights and obligations set forth herein of the Developer shall cease when ninety-five percent (95%) of the Lots contemplated by the Development Plan are sold and the Living Units situated thereon are substantially complete (the "Development Period"). In the event another than the first Developer comes to stand in the same relation to the Property as the first Developer, that Developer shall hold the same rights and obligations as would then have been held by the first Developer.

Section 9. "Development Plan" shall mean and refer to the total general scheme of intended uses of land in the Properties approved by the City of St. Joseph, Missouri, as illustrated in Exhibit "B" hereof, as may be amended from time to time, and as further defined in Article II.

Section 10. "First Mortgagee" shall mean and refer to an Institutional Lender who holds the first deed of trust on a Lot.

Section 11. "Founding Documents" shall mean and refer to the Articles of Incorporation of the Association, this Declaration, Supplementary Declarations and the Association By-Laws, all as initially drawn by the Developer and filed and recorded as the case may be, and all as may be duly amended from time to time.

Section 12. "Governing Documents" shall mean and refer collectively to the Founding Documents and the Rules and Regulations as such may be amended from time to time.

Section 13. "Living Unit" shall mean and refer to any portion of a structure situated upon the Properties and designed and intended for use and occupancy as a residence by a Single Family.

Section 14. "Lot" shall mean and refer to any lot of land shown on any recorded subdivision map or plat of the Properties, with the exception of Common Area.

Section 15. "Members" shall mean and refer to members of the Association, which shall consist of all Owners.

Section 16. "Notice" shall mean and refer to written notice delivered personally or mailed to the last known address of the intended recipient.

Section 17. "Owner" shall mean and refer to the record holder of the fee simple title to any Lot, whether one or more persons or entities.

Section 18. "Phase" shall mean and refer to a group of Lots all of which are subject to the same Supplementary Declaration establishing such Phase.

Section 19. "Property" or "Properties" shall mean and refer to all real property which is hereby subjected to the Declaration, together with such other real property as may from time to time be annexed thereto under the provisions of Article II hereof.

Section 20. "Quorum of Members" shall mean and refer to the representation by presence or proxy of Members who hold fifty one percent (51%) of the outstanding votes of each voting class.

Section 21. "Registered Notice" shall mean and refer to any Notice which has been signed for by a recipient or has been certified by the U.S. Postal Service or other entity as having been delivered (or the delivery of which has been certified by the Postal Service or other entity to have been attempted) to the address of the intended recipient. Failure by refusal of an intended recipient to acknowledge such Notice shall nevertheless constitute receipt.

Section 22. "Rules & Regulations" shall mean and refer to the document containing the rules, regulations, and policies of the Association as they may from time to time be amended.

Section 23. "Single Family" shall mean and refer to a single housekeeping unit of one family which includes not more than three adults together with their children. In the event of a dispute as to the application of this section, the Board of Directors of the Association in its sole discretion shall resolve such dispute.

Section 24. "Supplementary Declaration" shall mean and refer to any declaration of covenants and restrictions which may be recorded by the Developer, which extends the provisions of this Declaration to a Phase or which contains such complementary provisions for such Phase as are deemed appropriate by the Developer and/or as are herein required.

Section 25. "Zoning Order" shall mean the provisions pertaining all applicable zoning laws and ordinances of St. Joseph, Missouri, amended from time to time and as such shall be applicable to the Properties.

## Article II

### Property Subject to This Declaration; Additions Thereto

Section 1. The Properties. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Buchanan County, Missouri and is more particularly described in Exhibit "A" and represents Phase I of the Subdivision known as Carriage Oaks.

Section 2. Additions to the Properties. Additional properties may become subject to this Declaration in the following manner:

a. **Additions by the Developer.** The Developer shall have the right to subject to the Declaration any additional property which lies within the land area represented by the Development Plan and as legally described on Exhibit "B", as it may be amended from time to time; and

b. **Other Additions.** Additional land, other than that described above, may be annexed to the Properties upon approval of two-thirds percent of the votes of a Quorum of Owners.

The additions authorized under subsections (a) and (b) shall be made by complying with the requirements of the Zoning Order, by filing of record one or more Supplementary Declarations of covenants and restrictions with respect to the additional property, and by filing with the Association the plat for such additions.

**Section 3. The Development Plan.**

a. **Purpose.** The Development Plan, illustrated in Exhibit "B-1", is the dynamic design for the staged development of the Properties as a residential planned community which will be modified and amended, as provided herein, during the several years required to build the community. Because the Development Plan is a temporary design, it shall not bind the Developer to make any of the additions to the Properties which are shown on the Development Plan or to improve any portion of such lands in accordance with the Development Plan unless and until a Supplementary Declaration is filed by the Developer subjecting such property to this Declaration.

b. **Amendments.** The Developer hereby reserves the right to add land to or amend the Development Plan for lands which have not yet been made subject to this Declaration, in response to changes in technological, economic, environmental, social or other conditions related to the development or marketing of the Properties or in response to changes in requirements of government agencies and financial institutions.

**Article III**

**The Carriage Oaks Homes Association, Inc.**

**Section 1. Organization.**

a. **The Association.** The Association is a nonprofit, nonstock corporation organized and existing under the laws of the State of Missouri and charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, and as such may be amended from time to time, provided no other Governing Documents than this Declaration shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

b. **Institutional Plan.** As the operation and responsibilities of the Association expand from those related to the Properties as originally constituted to those required by the fully developed Development Plan of Carriage Oaks, this Declaration and the Governing Documents shall guide the controlled and orderly evolution of the Association into a comprehensive community institution.

c. **Exercise to Vote.** The vote for any membership which is held by more than one person may be exercised by any one of them, unless any objection or protest by any holder of such membership is made prior to the completion of a vote, in which case the vote for such membership shall not be counted. If fewer than twenty-five percent of all Class A votes are cast in an election for any elective office, the Board of Directors may declare the results of such election invalid and may elect a member to fill such office.

**Section 2. Membership and Voting Rights in the Association.**

a. **Membership.** Every person or entity who is a record owner of a fee or undivided fee interest in any Lot or Living Unit which is subject by covenants of record to assessment by the Association shall be a Member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member.

b. **Voting Rights.** The Association shall have two classes of voting memberships. Class A Members shall be all those Owners in good standing in accordance with the By-Laws of the Association entitled to membership with the exception of the Developer. Class A Members shall be entitled to one vote for each Lot or Living Unit in which they hold the interests required for membership. The Class B Members shall be comprised of the Developer. The Class B Member shall be entitled to ten (10) votes for each designated Lot, regardless of whether there is a completed Living Unit located thereon, in which the Developer holds fee simple title, provided that the Class B membership shall cease and become converted to Class A membership when the total number of votes to which the Class B Member would be entitled (if the Class B membership were converted to Class A membership) is less than 5% of the total vote. From and after the happening of this event, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot or Living Unit in which it holds the interests required for membership.

For the purposes of determining the votes allowed under this Section, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted.

**Section 3. Board of the Association.**

a. The powers of the Association shall be vested in, exercised by, and under the authority of, and the affairs of the Association shall be controlled by, a Board of Directors consisting of five (5) persons who need not be Members (the "Association Board"). The Association Board, by a majority vote, shall exercise for and on behalf of the Association all powers, duties and authority vested in or delegated to the Association.

b. The Developer shall have the absolute right to elect the Board throughout the Development Period. Thereafter, Directors shall be elected at the first annual meeting of Members following the Development Period, and terms shall be staggered, so that two (2) Directors and three (3) Directors shall be elected respectively in alternating years. At the first annual meeting of Members, and at each annual meeting of Members thereafter, Directors shall be elected for two (2) year terms of office and shall serve until successors are elected and qualified.

c. In any election of the members of the Association Board, every Member entitled to a vote at such election shall have the right to cumulate his votes and give one (1)

candidate, or divide among any number of the candidates, a number of votes equal to the number of Directors to be elected multiplied by the number of votes which such Member is otherwise entitled to cast. The candidates receiving the highest number of votes, up to the number of the Directors to be elected, shall be deemed elected.

#### Article IV

##### Powers and Duties of the Association

The Association shall have the following powers and duties:

a. To provide for the care and maintenance of all Common Areas owned by the Association including roads (to the extent not maintained by the City of St. Joseph), landscaping, open spaces, ornamental features, signage, islands, monuments, street lights, retention areas and other facilities now existing or which may be erected or created in the future on the affected property; and to make special charges or service fees or to charge dues to Members for the use of such facilities.

b. To levy assessments on the Owners of Lots or Living Units and to enforce payment of such assessments, all in accordance with the provisions of this Declaration set forth in Article V and VII.

c. To employ, at its discretion, the services of any person or corporation as manager (herein, "Manager"), together with other employees, to, as may be directed and delegated by the Association Board, manage, conduct and perform the business, obligations and duties of the Association and to enter into contracts for such purpose; provided, however, that no management contract shall exceed a term of one (1) year and such contract shall be cancelable for good cause shown by either party upon thirty (30) days written notice. Such employees shall have the right of ingress and egress over such portions of the Properties as is reasonably necessary for the purpose of performing such business, duties and obligations.

d. To employ at its discretion qualified officers for the purpose of providing such security protection as the Association Board may deem necessary or desirable in addition to the protection rendered by public authorities.

e. To maintain insurance or surety bonds, as deemed by the Association Board to be necessary and appropriate, including but not limited to:

(a) fire and appropriate extended coverage and other appropriate physical loss and damage insurance on all improvements located in or upon the Common Property;

(b) comprehensive liability insurance insuring the Association Board and Members, including the Developer, against liability to, and claims of, the public, Members or the Association Board and Association; provided, however, that the coverage in favor of the Developer shall not extend to the Developer's operation or active ties in its capacity as a Developer and Builder; and

(c) such other insurance, including workmen's compensation insurance, to the extent necessary to comply with any applicable law and then-current insurance practices, and

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indemnity, faithful performance, fidelity and other bonds as the Association Board shall deem necessary, appropriate or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any Association funds or property.

f. To enforce the decisions of the Design Review Committee.

g. To grant and convey to any third party easements and rights of way in, on, over or under the Common Areas for the purposes set forth in Article XIII hereof.

h. At its discretion to do all other things not inconsistent with this Declaration that the Board of Directors of the Association may from time to time determine to be either necessary or desirable for the Association, for its Members or for the protection, care or development of the Common Areas and of other affected Property.

## Article V

### Method of Providing Funds

Section 1. For the purpose of providing funds to enable the Association to perform the duties and to discharge the obligations imposed upon it, all of the Property and Members owning the same shall be subject to an annual general fund assessment to be paid to the Association by Owners of assessable interests in such amounts and payable on such terms that a majority of a Quorum of the Members shall determine. Such assessment shall be prorated as follows:

A. 100% of the prorata share for each Lot, whether occupied or not until 50% of the Lots are sold.

B. After 50% of the Lots are sold:

- a. 100% on each lot occupied by a Living Unit
- b. 50% on each unoccupied Lot; and
- c. 10% on each unoccupied platted lot owned by the Developer.

Section 2. The amount of the general fund assessment provided for in Section 1 of this Article may be increased not to exceed 25% in any given year from the prior year (excepting the first years assessment which shall not be restricted) by majority vote of a Quorum of Members in attendance in person or by proxy at such meeting at any general meeting or at a special meeting of Members; PROVIDED that at least ten days notice in writing shall be given and such notice set out the reason, the purpose, and the need for the additional assessment.

Section 3. For the purpose of providing a special fund assessment to be used and to enable the Association to repair, replace, construct and extend its facilities and property, each Assessable Unit may be specially assessed by the Association at an annual rate in an amount



not exceeding the amount fixed for the annual general fund assessment as provided in Section 1 above for the year that such special assessment is approved. The amount of the special fund assessment against each Assessable Unit shall be in the same proration as required in Section 1 above. Such assessment may be made by the Board of Directors of the Association, subject to approval at a regular annual meeting or a specially called meeting of all Class A Members entitled to vote. A majority of a Quorum of Class A Members present or by proxy at such meeting shall be required to approve such an assessment.

Notice of any such meeting for the approval of an assessment for one or more special fund assessments shall be given as provided in Article I not more than 30 days nor less than 10 days prior to the meeting. Such notice shall set forth the purpose for which the sums derived from the assessment or assessments are to be used, together with the estimated cost of the proposed project or projects, and the proposed time and method of payment. The sums paid to the Association on account of such special assessment shall be set aside and used for the specific purpose for which the special fund assessment is made, unless otherwise authorized by the Members of the Association at a meeting duly called as herein provided.

Section 4. The assessments made pursuant to Sections 1, 2, and 3 above shall be on a calendar year basis and shall be paid on March 1 of each year. Said annual payment shall be in default if not paid on or before the fifteenth day of March of each year. Any assessment not paid when due shall bear interest at the maximum annual rate determined by law, or if no such maximum exists, 18%.

#### Section 5. User Fees and Charges.

In addition to the general and special fund assessments, the Association Board may levy and collect charges and fees for the use of the Common Areas for the purpose of maintaining Common Areas, operating services on Common Areas, regulating the use of Common Areas and the services offered thereon and for providing utility services. In addition, the Association may levy and collect any costs incurred in bringing an Owner or his Lot into compliance with the provisions of this Declaration.

#### Section 6. Developer Advances.

a. On an annual calendar year basis, the Association Board shall prepare the Association Budget which shall include a cash budget projecting anticipated cash receipts, cash expenditures and net cash surplus or deficit for the ensuing fiscal year.

b. The Developer may, but shall not be obligated to make cash advances to the Association to eliminate any projected net cash requirements of the Association which occur during the course of any fiscal year. Such cash advances may be considered borrowings of the Association.

c. The option of the Developer to make advances to the Association pursuant to this Section 6 shall continue only during the Development Period.

d. The foregoing provisions notwithstanding, the Developer will not make an advance if the Developer shall determine that such an advance would materially jeopardize the performance of its obligations pursuant to the Development Plan or to the requirements of its creditors. In such event, the Developer will undertake to notify the Association in writing

within thirty (30) days after a request is made by the Association that it is not able to make an advance and may state the reasons relating thereto.

e. If required by the Developer, all such advances shall be evidenced by promissory notes of the Association to bear interest at the effective rate of interest being paid by the Developer on its debentures or debt obligations.

## Article VI

### Limitation on Expenditures

**Section 1. General Funds.** The Association shall at no time expend more money within any one year for maintenance of Common Areas than the total amount of the general fund assessment for that particular year any surplus which it may have on hand from previous assessments, nor shall the Association enter into any contract whatever binding the general fund assessments of any future year to pay for any such obligations, it being the intention that the general fund assessment for each year shall be applied as far as is practicable toward the payment of the obligation of that year, and the Association shall have no power to make a contract affecting the assessment for the general fund of any future or subsequent year.

**Section 2. Special Funds.** The limitations imposed upon general fund shall not apply to special fund assessments.

**Section 3. Surplus Funds.** The Association may create as part of the general fund assessment a surplus or reserve fund to be carried forward from year to year as determined by the Board as necessary and/or desirable for the greater financial security of the Association and the effectuation of its purposes.

## Article VII

### Liens on Real Estate

Assessments, fees and other charges levied by the Association as herein provided shall become a lien on the real estate against which it is levied as soon as it is due and payable, provided, however, that such lien shall be inferior and subordinate to the lien of any valid First Mortgage now existing or which may hereafter be placed on said real estate. Once such assessments, fees and charges become delinquent, the payment of both principal and interest at the rate hereinbefore specified, together with the costs of collection thereof (including attorneys fees), may be enforced as a lien on said real estate in proceedings in any court in Buchanan County, Missouri having jurisdiction of suits for the enforcement of such liens. The Association shall have the right, at its sole discretion, to bring suits to enforce such liens before expiration thereof. The Association may at its discretion file certificates of nonpayment of assessments in the Office of the Recorder of Deeds whenever any such assessments are delinquent. For each certificate so filed, the Association shall be entitled to collect from the Owner or Owners of the property described therein a fee of \$100.00, which fee is hereby declared to be a lien upon the real estate described in said certificate, provided that such lien shall be inferior and subordinate to the lien of any valid First Mortgage now existing or which may hereafter be placed on said real estate. Such fee shall be collectible

in the same manner as the original assessments provided for herein and in addition to the interest and principal due thereon.

Such liens shall continue for a period of five (5) years from the date of delinquency and no longer, unless within such time, suit shall have been instituted for collection of the assessment, in which case, the lien shall continue until termination of the suit and until sale of the property under execution of the judgement establishing same.

#### Article VIII

##### Right to Enforce This Declaration

The restrictions set forth herein shall run with the land and bind the Properties, the present Owners, their heirs, administrators, executors, successors and assigns, and all persons claiming by, through or under them shall be taken to hold, agree and covenant with the Owners of said lands, their heirs, administrators, executors, successors and assigns, and with each of them, to conform to and observe said restrictions as to the use of said lands and the construction of improvements thereon. The Association and those persons bound by this Declaration shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the provisions hereof or to maintain an ordinary legal action for damage.

The failure of the Association to enforce any of the restrictions 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. In the event the Association is the prevailing party in any legal action, it shall be entitled to recover its attorneys' fees in such action.

If any Member shall fail to pay a user fee or charge when due and payable, such Member shall have breached this Declaration and the Association Board may suspend the voting rights and the rights of enjoyment of such Member; the Association shall not refund any portion of any user fees or charges which such Member may have paid for the use of Common Areas from which such Member is barred while his rights of enjoyment are suspended.

If any Member shall fail to pay any user fee or charge when due and payable, the Association Board may immediately suspend such user's right of enjoyment of the Common Areas or services thereon and may take whatever action it deems necessary to enforce such suspension.

#### Article IX

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