

**DECLARATION OF COVENANTS AND CONDITIONS AND RESTRICTIONS****FOR**STATE OF MISSOURI  
COUNTY OF ST. CHARLES  
FILED FOR RECORD**THE ESTATES AT WESTCHESTER FARM**CITY OF WELDON SPRING  
STATE OF MISSOURI

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***Barbara Hall***

RECORDER OF DEEDS

THIS DECLARATION OF COVENANTS AND CONDITIONS RESTRICTIONS is made on June 11, 1993, by the Hayden Company - Builder, Developer, Inc., a Missouri corporation, later referred to as "Declarant."

Declarant is the record title holder of a tract of land containing 21.53 acres, more or less, situated in the City of Weldon Spring, State of Missouri, and called "THE ESTATES AT WESTCHESTER FARM" and also referred to as "Subdivision."

The Estates at Westchester Farm Homeowners Association joins in the execution of this Declaration because of its status as a participant in the development of THE ESTATES AT WESTCHESTER FARM; the execution of this Declaration is meant to indicate its consent to the imposition of the terms and conditions of this Declaration and its acceptance of its responsibilities under this Declaration with respect to THE ESTATES AT WESTCHESTER FARM.

The subdivision plat of THE ESTATES AT WESTCHESTER FARM has been recorded in the office of the St. Charles County Recorder of Deeds in Plat Book, 31, Page 198, and is designated as THE ESTATES AT WESTCHESTER FARM.

Nothing in this Declaration shall be deemed to authorize anything in violation of the applicable codes and zoning ordinances of the City of Weldon Spring, Missouri.

There have been and will be designated, established and recited on a recorded plat or by other appropriate record instruments of the Subdivision, easements which are for the exclusive use and benefit of the Owners of the Lots shown and to be shown on the Subdivision Plat, for example:

- a.) for the erection and maintenance of a Subdivision entrance monument; and
- b.) for landscaping and fencing on Independence Road; and
- c.) for one or more dry detention pond(s); and
- d.) for private streets.

Some of these easements may now or may hereafter be dedicated to public bodies and agencies, such as the streets and any dry detention pond.

It is the purpose of this Declaration to provide a plan for maintaining the Subdivision entrance monument, private streets, plantings and landscaping, fencing, and other approved projects; and to provide certain architectural and design controls of structures; and certain use restrictions, all for the benefit of the owners, their successors, and the subsequent Owners, being principally the purchasers of Lots in the subdivision, so that the subdivision will have desirable features.

The Declarant shall by reference on the recorded plat convey to The Estates at Westchester Farm Homeowners Association, and its successors and assigns an easement to the areas designated "EASEMENT FOR ENTRANCE MONUMENTATION" for the Subdivision entrance monument to be held by the Association, its successors and assigns in accordance with the terms of this-Declaration.

The Declarant now creates and establishes the following Declaration of Covenants and Conditions and Restrictions for THE ESTATES AT WESTCHESTER FARM, which is to be binding on the land of the Subdivision as it may exist at the time of the recording of this Declaration and as the Subdivision may be later augmented by future recorded plat.

FURTHER, Declarant hereby declares, that all of the Lots described as THE ESTATES AT WESTCHESTER FARM shall be held, sold and conveyed subject to the *covenants, conditions, and restrictions* stated below, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties. These covenants, conditions, and restrictions, shall run with the Properties, and shall be binding on all parties, their heirs, successors, and assigns, regardless of what title or interest they may have in the Properties or any part of it, and shall inure to the benefit of each owner.

## **ARTICLE I**

### **DEFINITIONS**

Section 1.1 "Association" means The Estates at Westchester Farm Homeowners Association, a Missouri not-for-profit corporation, its successors and assigns.

Section 1.2 "Common Ground" means all real property owned by the Association for the common use and enjoyment of the members of the Association.

Section 1.3 "Declarant" means The Hayden Company, its successors and assigns, if such successors or assigns should acquire as a block all Lots then being offered for sale to ultimate residential users for the purpose of resale to such users.

Section 1.4 "Declaration" means this Declaration of Covenants and Conditions and Restrictions for THE ESTATES AT WESTCHESTER FARM as recorded in the office of Recorder of Deeds of St. Charles County, Missouri, and any other real property which may later be added or annexed to it.

Section 1.5 "Lot" means any numbered plot of land shown upon the recorded plat map of THE ESTATES AT WESTCHESTER FARM.

Section 1.6 "Member" means every person or entity who holds membership in the Association.

Section 1.7 "Owner" means the record owner, whether one or more persons or entities, and including Declarant, of a fee simple title to any Lot of THE ESTATES AT WESTCHESTER FARM, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.8 "Properties" means the real property described in THE ESTATES AT WESTCHESTER FARM Declaration of Covenants and Conditions and Restrictions for THE ESTATES AT WESTCHESTER FARM, and such additions to the real property as may later be annexed to THE ESTATES AT WESTCHESTER FARM.

Section 1.9 "Rules and Regulations" are those rules and regulations established pursuant to Section 3.2.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION**

Section 2.1 Existing Property. The real property which is, and shall be held, transferred, and occupied subject to this Declaration is located in the City of Weldon Spring, Missouri; it is described on the Plat recorded at Plat Book 31, Page 198,

referencing this Declaration, in the office of the Recorder of Deeds of St. Charles County, Missouri. No additional real property shall be subject to the covenants, conditions, and restrictions of this Declaration until such time as such additional real property is made specifically subject to it by the recording of any plat making specific reference to this Declaration as provided in this ARTICLE II.

Section 2.2 Additional Property. Additional real property may become subject to this Declaration as set out in Article VI; or, upon the approval in writing of the Association pursuant to an instrument signed by a majority of its Members, the owner of any property who desires to subject it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions, in the records of the St. Charles County, Missouri, Recorder of Deeds.

### **ARTICLE III**

#### **PERSONS SUBJECT TO DECLARATION AND TO RULES AND REGULATIONS**

Section 3.1 Declaration. All Lot Owners, tenants, trustees, mortgagees, guests, and occupants of Lots shall comply with this Declaration. The acceptance of a deed, the exercise of any incident of ownership, the entering into a lease, the acceptance of a mortgage, or the entering into occupancy of a Lot constitutes agreement that the provisions of this Declaration are accepted and ratified by such Lot Owner, tenant, mortgagee, guest, or occupant. All the provisions of this Declaration are covenants running with the land and shall bind any persons having at any time an interest or estate in such Lot.

Section 3.2 Adoption of Rules and Regulations. The Association through its Board of Directors may from time to time adopt Rules and Regulations regarding the use and occupancy of Lots and the activities of occupants. All Lot Owners, tenants, mortgagees, guests, and occupants shall comply with the Rules and Regulations as promulgated by the Association whether or not said Rules and Regulations have been recorded on the records of the St. Charles County, Missouri, Recorder of Deeds.

### **ARTICLE IV**

#### **MEMBERSHIP IN THE ASSOCIATION**

Section 4.1 Membership. Every person or entity including Declarant who is a record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed a member of the Association. Each purchaser of any Lot therefore agrees to be a member of the Association whether or not it shall be so expressed in any deed or other conveyance. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. For each Lot owned, either vacant or improved, the owner thereof shall be entitled to one membership. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. For the purpose of this Declaration, the word "Member" shall include any beneficiary of a trust holding legal title to one or more Lots.

Section 4.2 Transfer. The membership held by any owner of a Lot shall not be transferred, or pledged in any way, except upon the sale of such Lot, and then only for the purchaser of such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. In the event the owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of such Lot, the Association shall have the right to record the transfer upon the books of the Association and to issue a new certificate to the purchaser; the old certificate outstanding in the name of the seller shall be void.

## **ARTICLE V**

### **VOTING RIGHTS**

Section 5.1 Every Owner shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

## **ARTICLE VI**

### **DECLARANT RIGHTS**

Section 6.1 Reservations by Declarant. Notwithstanding any provision of this Declaration to the contrary, the Declarant reserves the following rights, powers, and exceptions regarding each and every Lot subject to the terms and provisions of this Declaration:

6.1.1 Additional Property. Declarant reserves the right to add additional real property which may become subject to this Declaration by reference in a recorded plat, which shall require only the execution and recordation by Declarant, and which shall specifically subject the parcel or parcels to this Declaration; provided that the additional property shall be contiguous to the property which is already subject to this Declaration.

6.1.2 Signs. Nothing herein shall be construed to prohibit the Declarant from establishing or erecting such promotional signs as it shall determine necessary, in its sole discretion on any Lot, or Lots, of the property. Any such promotional sign may be of a type, size, and character as Declarant solely shall determine suitable to advertise the availability of a Lot, or Lots, for sale in the property.

6.1.3 Temporary Structures. Nothing herein shall be construed to prohibit the establishment or maintenance by Declarant of a temporary trailer or outbuilding for the purpose of a Sales Office, Construction Headquarters, or other purpose it deems necessary, on any Lot or Lots of the property for so long, and until, the last Lot in the property has been closed upon by a third party purchaser.

6.1.4 Liability for Assessments. So long as any Lot of the property subject to this Declaration shall be owned by the Declarant, such Lot shall not be subject to the provisions of Article XI, and the Declarant shall not be subject to the requirements thereof and shall in no manner whatsoever be held responsible for the payment of any annual, additional, special, or specific assessment hereunder.

6.1.5 Amendment. Declarant reserves the right to amend this Declaration by modification, addition, or deletion of any provisions hereof for a period of eight (8) years from the date of recording or until it has closed upon and conveyed all Lots in the property, whichever is first.

6.1.6 Control of the Board. Declarant reserves the right to control the Board until one (1) year from the date of the conveyance of the last Lot owned by Declarant, at which time an election pursuant to Section 10.2 shall be held.

6.1.7 Refunds. Declarant reserves the right to receive any utility or development deposits or escrows which may be refunded.

6.2 Declarant may enter into a binding contractual arrangement with an electric company to provide street lights to the subdivision, and Association shall take by assignment the Declarant's contractual obligations.

**ARTICLE VII**

**CREATION OF THE ASSOCIATION**

A. Declarant has formed a not-for-profit corporation under the laws of the State of Missouri known as "The Estates at Westchester Farm Homeowners Association, ll which corporation shall exercise all the rights, duties, powers, and privileges granted the Association under the terms of:

1. this Declaration;
2. the Articles of Incorporation; and
3. its Bylaws.

The Association is vested with the right in its own behalf and on behalf of each Lot owner to enforce all the restrictions, easements, liens, and covenants contained in this Declaration.

B. Every right, duty, power, and privilege that this Declaration gives the Association or which is given to the Association by its Bylaws, shall be vested with the Board, unless otherwise specified.

**ARTICLE VIII**

**RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

Section 8.1 Common Ground. The Association through the Board of Directors, subject to the rights of the owners set forth in this Declaration shall be responsible for the exclusive management and control of the common ground, the easement areas and all plantings and all improvements to them (including furnishings and equipment related to them, if any, and particularly the entrance monuments and fencing which shall be visible along Independence Road) and shall keep them in good, clean, attractive, and sanitary condition, order, and repair.

Section 8.2 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate any such right or privilege.

**ARTICLE IX**

**BOARD OF DIRECTORS POWERS AND DUTIES**

Section 9.1 Powers and Duties. The Board of Directors may act in all instances on behalf of the Association, unless a vote of the Members is required by this Declaration or the Articles of Incorporation or by the Bylaws of the Association. The Board of Directors shall have the powers necessary for, and the duties which flow from, the administration of the affairs of the Association and of THE ESTATES AT WESTCHESTER FARM which shall include, but not be limited to, the following:

9.1.1 Adopt and amend Rules and Regulations;

9.1.2 Adopt and amend budgets for revenues, expenditures, and reserve;

9.1.3 Collect assessments from owners;

9.1.4 Hire and discharge managing agents;

9.1.5 Hire and discharge employees and agents and independent contractors;

9.1.6 Institute, defend, or intervene in litigation or administrative proceedings in the Association's name on behalf of the Association or two or more Owners on matters affecting THE ESTATES AT WESTCHESTER FARM;

9.1.7 Make contracts and incur liabilities;

9.1.8 Regulate the use, maintenance, repair, replacement and modification of the Subdivision easements and common ground;

9.1.9 Cause additional improvements to be made as a part of the Subdivision;

9.1.10 Acquire, hold, encumber, convey, or dedicate to the public in the Association's name any right, title or interest to real property or personal property;

9.1.11 Grant easements for any period of time including permanent easements;

9.1.12 Impose charges or interest or both for late payment of assessments and, after notice and hearing, levy reasonable fines for violations of this Declaration and the Rules and Regulations of the Association;

9.1.13 Impose reasonable charges for statements of unpaid assessments and/or statements of account;

9.1.14 May provide for the indemnification of the Association's Officers and Directors. and maintain Directors' and Officers' insurance;

9.1.15 Assign the Association's right to future income, including the right to receive assessments;

9.1.16 Exercise any other powers conferred by this Declaration;

9.1.17 Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association;

9.1.18 Exercise any other powers necessary and proper for the governance and operation of the Association.

Section 9.2 Eminent Domain. In the event it shall become necessary for any public agency to acquire all or any part of the property of the Association, the Association is authorized to negotiate with such public agency for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Directors of this Association need be made parties, and in any event the proceeds received shall be held by the Association.

Section 9.3 Indemnification. The Association shall indemnify every officer and director against any and all expenses, including legal fees reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify, defend, and forever hold each officer and director free and harmless against any and all liability to

others on account of any such contract or commitment. This right to indemnification shall not exclude other rights to which any officer or director, or former officer or director, may be entitled. The Association may, as a common expense, maintain adequate general liability and Directors' and Officers' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 9.4 Lot Owners' Right to Override. Any Lot Owner or successor in interest thereto, who is aggrieved by or disagrees with any decision of the Board of Directors may obtain the written approval and consent of:

9.4.1 during the period when the Declarant has control of the Board, one hundred percent (100%) of the Lot Owners and

9.4.2 after Declarant no longer has control of the Board, seventy-five percent (75%) of the Lot Owners

and override the decision of the Board of Directors as to that particular proposition.

## **ARTICLE X**

### **SELECTION OF BOARD OF DIRECTORS OF THE ASSOCIATION**

Section 10.1 Original Directors. The first Board of Directors of the Association shall consist of three (3) persons: C. Barry Hayden, Dennis Hayden, and John O'Connell.

Section 10.2 Loss of Declarant Control. At the first annual Association meeting after the date of conveyance of the last Lot owned by Declarant, the Association shall elect the successor Board of Directors of the Association. Three (3) Directors shall be elected for staggered terms of three (3) years, two (2) years and one (1) year respectively. After this initial election of three non-Declarant Board members, future elections shall be held for a Director at each annual meeting of the Association for a term of three (3) years upon the expiration of the term of each individual Director, so that the term of one such Director shall expire annually.

## **ARTICLE XI**

### **ASSESSMENTS AND COLLECTION**

Section 11.1 Purpose of Assessment. The assessments described in this Declaration shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the Lots in the Subdivision, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Association. This Article XI is subject to the provisions of Article VI encompassing reservations of the Declarant.

Section 11.2 Common expenses shall include but shall not be limited to:

11.2.1 Expenses of administration, maintenance, insurance, and repair or replacement of the Subdivision easements and common ground or other projects as deemed necessary and appropriate by the Directors of the Association.

11.2.2 Expenses declared' to be common expenses by the Declaration and Articles of Incorporation;

11.2.3 Repayment of debt incurred by the Association;

11.2.4 Expenses agreed upon as common expenses by the Board of Directors of the Association;

11.2.5 Such reserves as may be established by the Association for repair, replacement or additions to the Subdivision easements or common ground or other projects, or any other real or personal property acquired or held by the Association.

Section 11.3 Creation of Assessments, Lien and Personal obligation of Assessments.

11.3.1 The Owner of each lot within THE ESTATES AT WESTCHESTER FARM covenants and each owner by acceptance of a deed or other conveyance, shall be deemed to covenant and agree to pay to the Association:

11.3.1.1 Annual Assessments;

11.3.1.2 Additional assessments;

11.3.1.3 Specific assessments against any particular Lot which are established by this Declaration including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration;

11.3.1.4 Special assessments, which shall relate to a particular, one-time-only project;

11.3.1.5 All such assessments, together with late charges, interest not to exceed the maximum legal rate, out-of-pocket costs, and attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made.

11.3.2 Each such assessment together with late charges, interest, out-of-pocket costs, and attorney's fees actually incurred, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment arose, and his or her grantee shall be jointly and severally liable for whatever portion may be due at the time of conveyance, except no first mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage shall be liable for unpaid assessments which accrued before acquisition of title.

11.3.3 Assessments shall be paid in the manner and on dates fixed by the Association. If the Association does not otherwise provide, the assessments shall be paid in annual installments.

Section 11.4 Annual Assessment. Beginning in 1993, the Board of Directors shall have the authority to levy annual assessments against each Lot. The initial annual assessment for 1993 and 1994 shall be \$300.00. At no time can the annual assessment levied by the Board exceed \$500.00, unless this Section of the Declaration is amended.

Section 11.5 Additional Assessments. In the event the annual assessment is insufficient to pay for the Association's expenses, the Board of Directors shall have the authority to levy a uniform additional assessment to meet such obligations, not to exceed One Hundred Dollars (\$100.00) for that year per Lot, whether vacant or improved.

Section 11.6 Specific Assessments. The Board of Directors may also levy a specific assessment against any Member to reimburse the Association for cost incurred in bringing the Member and/or his or her Lot into compliance with the provisions of the Declaration, the amendments to it, the Articles of Incorporation, and the Rules and Regulations of the Association. Specific assessments may be levied upon the vote of the Board after notice to the Lot Owner and the opportunity for a hearing before the Board.

Section 11.7 Special Assessments.

In the event that the Board considers it necessary to make any expenditure requiring an assessment for a particular project, it shall submit in writing

to the Members an outline of the plan for the project contemplated and the estimated amount required for completion. The special assessment must be approved:

11.7.1 during the period when the Declarant has control of the Board, by the Board; and

11.7.2 after Declarant no longer has control of the Board, by the assent of the majority of the Members who are voting in person or by proxy at a meeting duly called for the purpose. Written notice shall be mailed to all Members at least thirty (30) days prior to such meeting. Members or proxies entitled to cast not less than sixty percent (60%) of all votes shall constitute a quorum for a meeting under this Section 11.7.2. If the required quorum is not present, a second meeting may be called. The required quorum at such meeting shall be thirty percent (30%) of all votes. No subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

section 11.8 Calendar Year; Proration. Annual assessments and additional assessments are to be calculated on a calendar year basis. Proration shall occur for any year in which the ownership of a Lot changes from Declarant to a third party purchaser of a Lot.

Section 11.9 Lien for Assessments.

11.9.1 All sums assessed against any Lot pursuant to this Declaration together with any late charges, interest, out of-pocket costs and reasonable attorney's fees actually incurred, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot except for:

11.9.1.1 Liens of ad valorem taxes; or

11.9.1.2 Liens for all sums unpaid on a first mortgage duly recorded in the Records of the St. Charles County, Missouri, Recorder of Deeds office.

11.9.2 All other entities acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for the assessments described in this Declaration, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

11.9.3 The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot to the mortgagee pursuant to judicial or non-judicial foreclosure of the first mortgage shall extinguish the lien of such assessments as to payments which became due before such sale or transfer. No sale or transfer shall relieve such Lot from lien rights of any assessments later becoming due.

11.9.4 The purchaser of a Lot (other than mortgagee of a first mortgage of record) shall be liable for the unpaid assessments chargeable to such Lot.

Section 11.10 Effect of Non-Payment of Assessments, Remedies of the Association. Any assessments which are not paid when due shall be delinquent.

11.10.1 Any assessment delinquent for a period of more than thirty (30) days shall incur a late charge.

11.10.2 If the assessment is not paid within sixty (60) days of the due date, a lien shall attach and the lien shall include the late charge from the date first due and payable; interest, not to exceed the maximum legal rate, on the principal amount due; all out-of-pocket costs; all cost of collection including attorney's fees actually

incurred; and any other amounts provided or permitted by law. A notice of claim of lien may be filed by the Association, though it is not mandatory.

11.10.3 In the event the Association remains unpaid after ninety (90) days from the due date, the Association may, as the Board shall determine, institute suit to collect such amounts and/or foreclose its lien.

11.10.4 Each Owner, by acceptance of a deed, vests in the Association the right and power to bring all actions against the owner personally for the collection of such charges as a debt and/or to foreclose the lien in the manner established in Chapter 443 RSMo. as amended from time to time. The lien provided for in this article shall be in favor of the Association and shall be for the benefit of all Owners.

11.10.5 The Association, acting on behalf of the owners, shall have the power to bid on the Lot at any foreclosure sale, or to acquire, hold, lease, mortgage, or convey the Lot.

11.10.6 No Owner may waive or otherwise escape liability for the assessments by abandonment of the Lot.

11.10.7 All payments shall be applied first to collection cost and attorney's fees, then to late charges, then to interest, then to newly-delinquent assessments, then to any unpaid installments of the assessments which are coming due within thirty (30) days of payment, and then to any unpaid installments of the assessments which are the subject matter of suit.

11.10.8 Upon the timely cure of any default for which a notice of claim of lien was filed by the Association and prior to the commencement of any legal proceedings to enforce the collection of such claims for lien, the officers of the Association are hereby authorized to file or record an appropriate release of such notice, upon payment by the defaulting owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such notice and such release.

11.10.9 The assessment lien shall be in addition to all remedies provided in this Declaration or the Articles of *Incorporation* or the Bylaws of the Association or remedies provided or permitted by law. The remedies specified are cumulative and not in substitution of other remedies available at law or equity, including a suit to recover a money judgment for unpaid assessments, as above provided.

## **ARTICLE XII**

### **INSURANCE**

Section 12.1 Authority. The Board of Directors, or its duly authorized agent, shall have the authority and shall obtain insurance for the appropriate needs of the Subdivision. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from insurable hazards, if such insurance is reasonably available.

12.1.1 All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee.

12.1.2 In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors be brought into contribution with insurance purchased by individual owners, occupants, or their mortgagees.

Section 12.2 Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each owner covenants and agrees with all other Owners and with the Association that - each Owner acknowledges that the Association has no

responsibility to provide liability or casualty insurance nor insurance of any other type upon any Lot and that each owner shall carry such insurance at his own expense.

**ARTICLE XIII**

**ARCHITECTURAL RESTRICTIONS**

All of the Properties shall be subject to the following architectural restrictions:

Section 13.1 Land Use.

13.1.1 No structure shall be used for a purpose other than that for which the structure was originally designed without the approval of the Association.

13.1.2 No Lot shall be improved, used, or occupied other than for residential occupancy by a single family)without the express written approval of the Association.

Section 13.2 Occupancy Prior to Completion of Residence. In the event that the ARC grants approval to a Lot Owner to occupy the residence prior to final completion of all aspects of the residence, the Lot Owner shall execute a letter to the Association agreeing that they will timely complete the residence to ARC approved plans and specifications.

Section 13.3 Building Setback Lines. No building shall be located on any Lot nearer to the front or nearer to the side or rear Lot lines than the minimum setback lines shown on the plat as recorded with the St. Charles County Recorder of Deeds.

Section 13.4 Uncompleted Structures. No building, addition or alteration shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after commencement of construction.

Section 13.5 Garages. All garages must be attached to the main residence. Carports are not permitted without prior approval of the Board.

Section 13.6 Frontage. All residences shall present a good, well-maintained frontage harmonious in design to the neighborhood, on the street on which it is located as shown on the recorded plat of THE ESTATES AT WESTCHESTER FARM. Residences located on corner lots shall present a good, well-maintained frontage harmonious in design to the neighborhood on both streets.

Section 13.7 Driveways. Driveways must be constructed of either asphalt or concrete.

**ARTICLE XIV**

**RECONSTRUCTION**

Section 14.1 Each Owner, his successors and assigns, hereby covenants and agrees to maintain his Lot in a neat and proper condition and to perform all necessary repairs except where the Association is required to maintain and repair. Each Owner further covenants and agrees to promptly restore, rebuild or replace all or any portion of the owner's dwelling unit and its appurtenances located on the Owner's Lot when destroyed or damaged by any cause and each Owner further covenants that to guarantee performance of this covenant that each owner will maintain casualty insurance covering his Lot and dwelling unit with good companies in an amount sufficient to restore or rebuild the dwelling unit and its appurtenances.

Section 14.2 Each individual Owner further covenants and agrees that in the event of a partial loss or damage in destruction resulting in less than total destruction, the individual Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the individual owner determines not to rebuild or to reconstruct, the individual owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed before improvement.

## **ARTICLE XV**

### **USE RESTRICTIONS**

All the Properties shall be subject to the following use restrictions set forth in this Article for and on behalf of each and every Owner of any Lot in THE ESTATES AT WESTCHESTER FARM, their grantees, lessees, successors, and assigns.

Section 15.1 Use of Lots Except as may be otherwise expressly provided in this Declaration, each Lot shall be used for residential purposes only as a residence for a single family. A single-family residence means a single housekeeping unit operating on a non-profit, non-commercial basis between its occupants. Garages are limited to the storage of vehicles and accessories.

Section 15.2 No Commercial Activity. No commercial activity of any kind shall be conducted on any Lot or Living Unit other than home professional pursuits without employees which produce no public visits or non-residential storage, mail or trash; nor shall any signs, window displays, or advertising be maintained or permitted on any Lot or structure, whether for any commercial activity or even home professional pursuit.

Section 15.3 Signs. Except as provided, no signs, window displays, or advertising signs shall be placed on any Lot or structure without the prior written consent of the Association. One exception is customary name and address signs not to exceed twenty-four (24) square inches in size. Another exception is one "For Sale" or one "For Lease" sign, not to exceed five (5) square feet in size, may be placed on each Lot for the sole and exclusive purpose of advertising for sale or lease the Lot upon which it is placed. The use restriction is subject to the provisions of Article VI encompassing reservations of the Declarant.

Section 15.4 Insurance. Nothing shall be done or kept on any Lot or structure which shall increase the rate of insurance of the Association. No building or structure shall be used for any purpose other than that for which the building or structure was originally designed.

Section 15.5 Obstruction of Traffic. No fence, wall, tree, hedge, shrub, or any other type of planting or structure shall be maintained in such manner as to obstruct sight lines for vehicular traffic.

Section 15.6 Nuisances. No noxious or offensive activity shall be carried on upon any portion of the Lots or structures, nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood in the judgment of the Association, including, but not limited to, the keeping of any domesticated animals.

Section 15.7 Exterior Lighting. No exterior lighting shall be directed outside the boundaries of a Lot.

Section 15.8 Grades. Within any slope area established on the plats and plans, no structure, planting, or other materials shall be placed or permitted to remain, nor shall any activity be undertaken, which may damage or interfere with established slope ratios, create erosion or sliding problems, or change the direction of flow of drainage channels, or obstruct or retard the flow of water through drainage channels. The

slope areas of each Lot shall be maintained continuously by the Owner, except or those improvements for which a public authority or utility is responsible.

Section 15.9 Drilling and Quarrying. No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in burrowing oil, natural gas, or mineral shall be erected, maintained, or permitted upon any Lot.

Section 15.10 Dumping of Trash and Rubbish. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, rubbish, garbage, or other waste shall not be kept except in sanitary containers, or other equipment for the storage or disposal of such material, which equipment shall be kept in a clean and sanitary condition. No trash, garbage, rubbish, refuse, debris, trash cans, or trash receptacles of any type shall be stored outside a building on any Lot, except that after sunrise on any day designated for trash pickup, said trash, garbage, rubbish, refuse, and debris secured within appropriate trash cans or receptacles may be placed at the street curbing for pickup. Trash cans or receptacles shall be removed and secured within the improvements for each Lot prior to sundown of the same day.

Section 15.11 Fuel Tanks. No fuel tanks or container of any nature shall be placed, erected, installed, or constructed on any Lot. No underground, enclosed propane tank shall be allowed without prior approval of the Association.

Section 15.12 Temporary Structures. No structure of a temporary character, trailer, basement tent, shack, garage, barn, or other outbuilding shall be used on any Lot at any time as a residence temporarily or permanently. No outbuildings, detached garages, sheds, barns, shacks, or other structures whether of temporary character or not shall be constructed or maintained on any Lot without the approval of the Association. This use restriction is subject to the provisions of Article VI encompassing reservations of the Declarant.

Section 15.13 Swimming Pools. In-ground pools of any kind on any Lot shall not be erected or maintained without the written approval of the Association. In any event, any swimming pool must be located in the rear yard area between two parallel lines extended from the sides of the main residence structure to the rear property line and be constructed of quality materials and installed in a manner to prevent water leakage or structural collapse. Above ground pools are not permitted.

Section 15.14 Fences; Patios; Storage Areas. No fencing, patios, or storage areas of any type shall be erected or maintained on any Lot without the "prior approval of the Association. Chain link fences, cyclone fences and fences of similar design are expressly prohibited for purposes of marking or enclosing property boundary lines.

15.14.1 Fences Along Independence Road. Except for in-ground swimming pool enclosures described below, no owner of a lot abutting Independence Road may construct a fence of any kind which is parallel to Independence Road. The only fence that may be erected parallel to the lot boundary lines which run along Independence Road is a common fence constructed and maintained by the Association. This fence must be constructed so that it does not change from lot to lot and may not be designed to block any line of sight from Independence Road. It may be split-rail or similar design to provide maximum open air and view. Fences otherwise permitted by this Declaration which are perpendicular to Independence Road (i.e., for the purpose of dividing lots) may be constructed if approved by the Association. This perpendicular fence may meet the common fence if its construction is similar to the common fence, otherwise the fence must end at least twenty-five (25) feet from the Independence Road right of way. Fences otherwise permitted by this Declaration may be constructed to immediately encircle an in-ground swimming pool for safety purposes only (i.e., not for purposes of privacy) so long as no part of the fence is within twenty-five (25) feet of the Independence Road right of way.

Section 15.15 Laundry Lines. No permanent poles for attaching wires or lines for the purpose of hanging laundry shall be constructed on any Lot. Temporary, foldable, or removable devices may be used so long as they are not kept erected for more than twenty-four (24) hours at a time.

Section 15.16 Rentals and Boarders. Owners shall not have the right to rent rooms. No "boarders" shall be permitted to reside in the Subdivision. A "boarder" shall include a person who is not a member of the immediate family of the Lot Owner or principal occupant of a dwelling (with the exception of parents or foreign exchange students) but who resides therein and pays rent or remuneration in kind to the Lot Owner or principal occupant.

Section 15.17 Solar Collectors. No Lot shall have an exterior solar collection system, wind generator system, or any other similar type system or appliance unless approved by the Association.

Section 15.18 Antennas. No outside radio or television antennas or satellite dishes shall be erected or maintained on any Lot without the prior approval of the Association.

Section 15.19 Storage of Personal Property and Vehicles. Personal property including, without limitation, boats, trailers, campers, commercial vehicles, camper shells, all-terrain vehicles (ATV's) shall not be placed or stored permanently or temporarily in the open on any Lot, nor shall they be parked on any street overnight. The Board may cause any item of such personal property to be towed or removed at the Owner's expense.

15.19.1 Recreational vehicles such as motor homes must be stored inside a garage.

15.19.2 No tractor trailers shall be placed on any Lot.

15.19.3 No commercial vehicles will be allowed unless they are stored in a garage.

15.19.4 This prohibition shall not apply to temporary parking of trucks or commercial vehicles for pickup or delivery, construction, or other commercial services. Pick-up trucks and van type vehicles with a capacity of three-quarters (3/4) ton or less shall not be classified as commercial vehicles if used exclusively for private use.

15.19.5 No disabled, vagrant, unlicensed, or inoperable motor vehicle shall be placed on any Lot.

15.19.6 No repairing, body work, painting of any motor vehicles, including passenger cars, except while in an enclosed garage, shall be permitted and only then when the repairing, body work, or painting is occurring to a motor vehicle owned by a resident dwelling on the Lot on which such activity takes place.

Section 15.20 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept upon any Lot except that domesticated dogs, cats, or other household pets may be raised and kept provided they are not kept, bred or maintained for any commercial or business purpose, and in the judgment of the Association, are not a nuisance to the other residents; and in no event shall more than four (4) such animals be maintained on any Lot.

Section 15.21 Grounds Maintenance. Each Owner shall keep all grass, plantings and other vegetation on the Owner's Lot neatly cut, trimmed and in healthy condition. No grass shall be allowed to grow taller than eight (8) inches on any lot.

Section 15.22 Indemnification for Actions for Others. owners shall indemnify the Association and other Owners and occupants for the actions of Owner's children, tenants, guests, pets, servants, employees, agents, invitees, or licensees.

## ARTICLE XVI

### EASEMENTS

section 16.1 Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of THE ESTATES AT WESTCHESTER FARM. Such easements shall include the rights of egress and ingress for construction and maintenance purposes. No structure, planting, or other material shall be permitted to be placed or remain within easements which may damage or interfere with the installation or maintenance of utilities or which change the direction of flow of drainage channels, or which in any other manner obstruct the use for which these easements are reserved.

## ARTICLE XVII

### MAINTENANCE

Section 17.1 Association's Responsibility. The Association shall maintain and keep in good repair the Subdivision entrance monument, the landscaping and fencing on Independence Road, any plantings on common ground, the private streets, the dry detention ponds or other projects and improvements of the Association. Maintenance shall be funded by the Association assessments.

17.1.1 With respect to any dry detention basin, it is suggested to the Association that:

(a) during the construction period of the Subdivision, that cleanup of silt occur when silt accumulates to a depth of two feet (21) and trash cleanup occur at least twice a year;

(b) that after all Lots have been built on, any cleanup should occur at least once a year and grass should be mowed as needed.

17.1.2 With respect to the private streets, should the Association determine to dedicate them to a public authority which requires any deficiencies to be repaired, the Association has the responsibility and power to accomplish such repair.

Section 17.2 Owner's Responsibility. All maintenance of the Lots, and all structures, improvements, sidewalks, and other improvements within or upon the Lots shall be the sole responsibility of the owner who shall perform such maintenance in a manner consistent with the standards of this Declaration.

Section 17.3 Owner's Failure to Comply. In the event the Association determines that any owner has failed to maintain the structures, grounds, and sidewalks of the owner's Lot in a neat and attractive *manner consistent with* the provisions of this Declaration, the Association, except in the event of a violation of Section 15.21 or an emergency situation, shall give the owner written notice of the Association's *intent to* provide the necessary *maintenance, repair, or replacement*, at the Owner's sole cost and expense. The notice shall set forth with reasonable particulars the *maintenance, repairs, or replacements* deemed necessary. The owner shall have thirty (30) days Within which to complete the *maintenance, repair, or replacement* or in the event that such *maintenance, repair, or replacement* is not capable of completion within the thirty (30) day period, to commence such work which shall be completed within a reasonable time as established by the Association . one letter per violation will be issued and will cover any *continuation* of that violation.

17.3.1 In an emergency, the Association may take remedial action immediately without giving the thirty (30) day period.

17.3.2 If an Owner fails to maintain his Lot as provided in Section 15.21 and fails to respond within seven (7) days to the Association's notice to correct the condition, the Association may take immediate corrective action.

17.3.3 Each Owner covenants and agrees that if such Owner fails to comply with the provisions of this Declaration, then the Association shall have the right, without being deemed guilty of trespass, to enter upon the Lot to provide any maintenance, repair, or replacement at the Owner's sole cost and expense.

17.3.4 Any specific assessment and shall be paid to the Association upon demand, and if not paid within fifteen (15) days after demand, shall be deemed to be delinquent and collectible; this specific assessment shall become a lien against the Lot.

## **ARTICLE XVIII**

### **REMEDIES AND ENFORCEMENT**

Section 18.1 Enforcement: The Association and each person to whose benefit this Declaration inures, may proceed through the judicial system to prevent the occurrence or continuation of any violation of any provisions of this Declaration.

Section 18.2 Suspension of Rights: The Association may suspend all of an Owner's voting rights for any period during which any assessment against such Owner remains unpaid, or during the period of any continuing violation of the provisions of this Declaration or the Rules and Regulations. Suspension shall commence when declared after by the Association and for an additional period not to exceed thirty (30) days after the condition has stopped.

Section 18.3 Cumulative Remedies: Remedies are cumulative and any specifications of them shall not be taken to preclude an aggrieved party's resort to any other remedy. No delay or failure on the part of an aggrieved party to invoke an available remedy shall be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation.-

Section 18.4 Self-Help: In addition to any other remedies, the Association or its duly authorized agent shall have the power to enter upon a Lot to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration or the Rules and Regulations. Unless an emergency situation exists, the Association shall give the violating Owner thirty (30) days written notice of its intent to exercise self-help. All costs of self-help, including attorney's fees actually incurred shall be assessed against the violating Owner and shall be collected as a specific assessment. Neither the Association nor its agents shall be deemed guilty in any manner of trespass.

Section 18.5 Attorney's Fees: The court in any action relating to the terms and provisions of this Declaration between the Association and any other party may award the successful party reasonable expenses in prosecuting such action, including attorney's fees actually incurred.

In the event the Declarant or Association shall bring suit against any Owner for a violation of any of the provisions of this Declaration, the cost of suit and attorney's fees actually incurred will be assessed as costs against the Owner upon the Board prevailing. The Association may include as a specific assessment to any violating Owner the cost of any effort before legal action to enforce provisions of this Declaration. In the event that any attorney's fees and costs are not paid by the owner of said Lot within thirty (30) days after the Association has assessed them specifically to the Owner of said Lot or within thirty (30) days after judgment for them has been rendered, then those fees and costs shall bear the maximum legal interest rate. The Association may execute and acknowledge an instrument reciting this specific assessment and record it in the office of the Recorder of Deeds, St. Charles County, Missouri.

Thereupon the specific assessment shall become a continuing lien on the Lot of that Owner and shall bind the owner, his heirs, successors and assigns.

Section 18.6 Fines: The Board may by resolution levy a fine of up to twenty-five dollars (\$25.00) per day upon any Lot for the continuing violation of the Declaration or the Rules and Regulations by the Lot Owner or the Lot Owner's tenant or occupant. Such fine shall only be imposed after the Board has given the owner

at least twenty (20) days written notice that a hearing will be held to determine the existence of any violation and only after the Board determines at such hearing that a violation exists. Any unpaid fines shall constitute a lien against the Lot.

## **ARTICLE XIX**

### **GENERAL PROVISIONS**

Section 19.1 Duration. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Lot, his respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded. After that they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Lot Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change these covenants and restrictions, in whole or in part, or to terminate them.

Section 19.2 Amendment. This Declaration may be amended upon the written consent of at least two-thirds (2/3) of the Members and the consent of the Board of Directors of the Association. Amendments to this Declaration shall become effective upon recordation in the St. Charles County Office of Recorder of Deeds, unless a later effective date is specified in the recorded Amendment. This provision is subject to the provisions of Article VI encompassing reservations of Declarant. Sections 15.14, 15.14.1, and 15.15 of this Declaration may not be amended by the Declarant without the prior written approval of the City of Weldon Spring Board of Aldermen, and after control of the Association is transferred from the Declarant to the Members, these Sections may be amended only by an instrument signed by the Members having at least ninety percent (90%) of the vote in the Association.

Section 19.3 Severability. Every portion of this Declaration is declared to be independent of and severable from every other provision. If any provision shall be held by a court of competent jurisdiction to be invalid or unenforceable, all remaining provisions shall remain unimpaired and in full force and effect.

Section 19.4 Captions and Gender. Captions in this Declaration are for convenience only and do not in any way limit or amplify the terms or provisions. Any reference to the masculine shall include the feminine and any reference to the feminine shall include the masculine and any reference to the singular shall include the plural.

IN TESTIMONY WHEREOF, the parties have cause this DECLARATION to be executed on the 11<sup>th</sup> day of June, 1993.

The HAYDEN COMPANY - BUILDER,  
DEVECER, INC.

By  
Its Vice President

STATE OF MISSOURI

SS

COUNTY OF ST. CHARLES

On this 11<sup>th</sup> day of June in the year 1993, before me, Doreen M. Mischel, a Notary Public in and for said State, personally appeared Dennis M. Hayden of The Hayden Company - Builder, Developer, Inc., a Corporation of the State of Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation, by authority of its Board of Directors; and said Vice-President acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My. Commission Expires: April 24<sup>th</sup>, 1996

WESTCHESTER FARM HOMEOWNERS ASSOCIATION, INC.

By \_\_\_\_\_  
Its Vice President

STATE OF MISSOURI            )  
  )  
COUNTY OF ST. CHARLES    )

SS

On this 11<sup>th</sup> day of June, 1993, before me appeared Dennis M. Hayden to me personally known, who, being by me duly sworn did say that he/she is Vice President of WESTCHESTER FARM HOMEOWNERS ASSOCIATION, INC., a corporation of the State of Missouri.