

Bluff Creek Estates

City of Columbia, Boone County, Missouri

Original Declaration of Restrictions, 10/14/1992

Document #23278 recorded in Book 933, page 307 by Bettie Johnson, Recorder of Deeds

THIS DECLARATION, made and entered into this 14<sup>th</sup> day of October, 1992, by B & E Investments, Inc., a Missouri corporation (“Developer”);

WITNESSETH:

WHEREAS, Developer has executed and filed with the Recorder of deeds of Boone County, Missouri, a plat of the subdivision known as Bluff Creek Estates, Plat 1, recorded in Plat Book 26 at Page 39 of the Boone County, Missouri records; and

WHEREAS, such plat creates the subdivision of Bluff Creek Estates, Plat 1, of the following described lots and tracts, to wit:

Lots 1 through 28 of Bluff Creek Estates Plat 1, of a subdivision in the City of Columbia, Boone County, Missouri, according to the plat thereof, recorded in Plat Book 26 at Page 39 of the Boone County Records;

and;

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

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

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

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

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

Owners Association who shall be appointed by the Board .

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

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

(e) "Common Areas" shall mean (i) street right-of-ways, (ii) streets and street islands, (iii) gateways, entrances, monuments, berms and other ornamental areas and related utilities, street lights, sprinkler systems and landscaping constructed or installed by or for the developer at or near the entrance of any street or along any street, and any easements related thereto, and (iv) all other areas, lakes, dams, recreational beaches, parks, nature areas, recreational areas and places, together with all improvements thereon and thereto (including any swimming pool, tennis courts, club-house or other recreational facilities that may be constructed or erected) , which are intended for the use, benefit or enjoyment of all of the Owners within the District, whether or not any "Common Area" is located on any Lot, all as shown on the recorded plat of all or part of the District, except that "common areas" shall not include any part of any of the above designated common areas shown on a recorded plat that are subsequently replatted for other use by the Developer prior to the recording of the Certificate of Substantial Completion for the purpose of relocating streets, street right-of-ways, utilities, recreational areas, recreational facilities, or adjusting lot sizes and locations.

(f) "Developer" shall mean and refer to B & E Investments, Inc., a Missouri corporation and its successors and assigns.

(g) "District" shall mean all of the above-described lots in Plat 1, Plat Book 26, Page 39 of the Boone County records, all Common Areas, and all additional property which hereafter may be made subject hereto in the manner provided herein.

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

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

(j) "Lot" shall mean any lot shown as a separate lot on any recorded plat of all or part of the District.

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

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

(m) "Shared Common Areas" shall mean any portions of the above described "common areas" that the Developer designates that shall be for the use, benefit and enjoyment of Owners of lots of subdivisions developed by Developer that are located either within or adjacent to the above described district and for the use, benefit and enjoyment to include the Owner of property that is not zoned "residential" and the owner's tenants or their employees.

2. Use of Land. None of the Lots may be improved, used or occupied for other than single-

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

3. Building Requirements. Roofs shall be covered with wood shingles, wood shakes, slate or laminated asphalt type shingles. No building or Exterior Structure shall be permitted to stand with its exterior in any unfinished condition for longer than six (6) months after commencement of construction.

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

- (a) 1,900 square feet of ground floor level for a one story residence if a three (3) car garage is constructed; or
- (b) 2,000 square feet of ground floor level if a two (2) car garage is constructed ; or
- (c) 2,800 square feet for a multi-level or two story residence, excluding garages, carports, porches, patios, attics, decks or unfinished basements.

No residence shall have less than a two (2) car garage.

5. Approval of Plans and Post-Construction Changes.

(a) Notwithstanding compliance with the provisions of Sections 2, 3, and 4 above, no residence or Exterior Structure may be erected upon any Lot unless and until the building plans, specifications, materials, location, elevations, lot grading plans, general landscaping plans, and exterior color scheme have been submitted to and approved in writing by the Architectural Committee. No change or alteration in or deviation from the approved building plans, specifications, materials, location, elevations, grading plans, landscaping plans or exterior color scheme shall be made until such change, alteration or deviation has been submitted to and approved in writing by the Architectural Committee.

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

6. Set Backs. No residence (exclusive of porches, porticoes, stoops, balconies, bay and other windows, eaves, chimneys and other similar projections) or Exterior Structure shall be located closer to

any street than the building setback lines, if any, shown on the plat; provided, however, that the Architectural Committee, in its discretion, may waive or alter any such building setback lines to the extent they are greater than the minimum setbacks, if any, required by the City of Columbia, Missouri. In no event shall any residence or Exterior structure be located closer to any Lot boundary than ten (10) feet.

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

8. Exterior structures.

(a) No Exterior Structure shall be erected upon, moved onto or maintained upon any Lot except (i) with and pursuant to the advance written approval of the Architectural Committee as to the plans, specifications, materials, location, elevations, landscaping plans and color scheme, and (ii) in compliance with the additional specific restrictions set forth in subsection 8(b) below or elsewhere in this Declaration.

(b)(i) All fences, walls and privacy screens (other than any installed by the Developer) shall be consistent with standard designs, heights and materials to be selected by the Architectural Committee. All fences, walls and privacy screens shall be constructed with the finished side out. Except as provided in paragraph (v) below, no metal (other than wrought iron or other ornamental), chain link or similar fence, wall or privacy screen shall be permitted, except as approved by the Architectural Committee and except a chain link fence which is used to enclose a tennis court. Except as specifically authorized by the Architectural Committee, no fence, wall or privacy screen shall extend in front of the front building set back line.

(ii) All basketball goals shall be consistent with the standard designs and materials to be selected by the Architectural Committee. All backboards shall be clear or painted white and all poles shall be a neutral color. The Approving Party shall have the right to make, alter, and revoke reasonable rules regarding the hours of use of basketball goals and any such rules shall be binding upon all of the Lots and the Owners.

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

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

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

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

(a) Except as otherwise provided in Section 2 above and in this Section 9(a), no Lot shall ever be used, and no residence or Exterior structure or other improvement shall ever be placed, erected or used, for business (including daycare whether for profit or not-for-profit), professional, trade or commercial purposes on any Lot. Home offices for the use of occupants of the residence on a Lot shall be permitted, provided that such use is not discernable from outside the residence and that the public, customers, clients, patients or other business invitees or guests are not received there for business or commercial purposes other than on an incidental basis in connection with social functions.

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

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

(d) No television, radio, citizens' band, short wave or other antenna, or any satellite dish, solar panel, clothes line or pole, or other unsightly projection shall be attached to the exterior of any residence or erected on any Lot. No lights or other illumination shall be higher than the eaves of the residence.

(e) All garage doors shall remain closed at all times except when necessary for entry or exit. No carport, attached or detached, shall be permitted.

(f) No garage sales, sample sales or similar activities shall be held within the District without the written consent of the Approving Party. The Approving Party shall have the right to make, alter and revoke reasonable rules regarding such activities, and any such rules shall be binding upon all Lots and the Owners.

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

(h) No speaker, horn, whistle, siren, bell or other sound device, except intercoms not audible beyond the Lot lines and devices used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any residence or in any yard.

(i) All residential service utilities shall be underground.

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

(k) No dog house, dog pen, storage box, shed, barn, detached garage or other storage facility shall be erected upon, moved onto or maintained upon any yard. Storage shall be permitted under a deck provided such area is wholly screened from the view of other Lots and the public.

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

(m) No Lot or combination of Lots shall be resubdivided or replatted by any lot owner other than the Developer. No Lot shall be sold or conveyed except as a whole as described on the recorded plat of the District, except as may be otherwise approved in writing by the Approving Party.

(n) No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other wastes, and all such items shall not be kept, except in sanitary containers. All trash or sanitary containers shall be stored in concealed locations and may be placed in open locations only for a period of 12 hours in one day during each week for collection.

(o) All lots shall be kept neat and free from debris.

(p) No open fires shall be permitted on any lot or common area, except for the use of outdoor grills for the preparation of food.

(q) No automotive equipment repair or rebuilding shall be permitted.

(r) Not more than 3 persons who are unrelated by blood or marriage shall be permitted to rent or occupy a residence.

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

11. Landscaping and Lawns. Prior to the occupancy, and in all events within nine (9) months following commencement of construction of the residence, the Owner thereof shall sod all front lawn areas and otherwise landscape the Lot to the same standards as those generally prevailing throughout the District and in accordance with plans approved by the Architectural Committee. No vegetable gardens shall be permitted. The Owner of each Lot shall keep the lawn neat, clean and uniformly mowed and clipped to a reasonable and attractive height and shall properly maintain and replace all trees and landscaping.

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

The Developer shall have and does hereby reserve for itself, its successors and assigns and the Owners Association and its successors and assigns an easement over and through all unimproved portions of each Lot in the District for the purpose of performing the duties of the Owners Association and maintaining any Common Area.

13. Common Areas.

(a) The Developer and its successors, assigns, and grantees (including owners of lots having the right to use shared common areas), the owners of Lots in the District and the Owners Association shall have the right and easement of enjoyment in and to all of the common Areas, but only for the intended use or uses thereof. Such right and easement in favor of the Owners shall be appurtenant to, and shall automatically pass with, the title to each Lot. All such rights and easements shall be subject to the rights (including ownership) of any governmental authority or any utility therein or thereto.

(b) The Developer covenants and agrees to convey all of its right, title and interest in the Common Areas (except any part thereof that is within any Lot or outside of the District and except any part of a common area shown on a recorded plat that has been subsequently replatted by the Developer for other use for the purpose of relocating streets, street right-of-ways, utilities, recreational areas, recreational facilities or adjusting lot sizes and locations) to the Owners Association, without any cost to the owners Association, not later than one month after the Developer has recorded the Certificate of Substantial Completion. The Owners Association shall at all times be responsible for the property maintenance of all Common Areas, except any part thereof that is within any Lot and has not been

landscaped or otherwise improved by the Developer or the Owners Association. Notwithstanding anything herein to the contrary, no owner shall have any ownership interest in any designated common area, but shall only have easement rights to use such property consistent with this declaration and further no such rights shall commence to exist unless and until Developer actually conveys said designated property to the Owners Association or dedicates same to the City of Columbia as right of way, as the case may be.

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

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

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

(f) The Board of Directors of Bluff Creek Estates Owners Association shall have the authority and responsibility to maintain, manage and collect funds for maintenance and management of the common areas as provided herein and in Article IV of "Bluff Creek Estates Owners Association Declaration" of even date. Provided that individual lot owners of adjacent subdivisions developed by Developer shall pay the same assessment per annum as the individual lot owners of Bluff Creek Estates, Developer may designate certain common areas as "shared common areas" for the benefit of owners of lots in subdivisions developed by Developer that are located either within or adjacent to the above described district, and the owners of such within or adjacent subdivision lots will have the same use of the common areas as the lot owners provided herein. Developer may require additional assessment for any lot owner whose property is not zoned "residential" to account for the usage of "shared common areas" by such owner's tenants or their employees.

14. Architectural Committee. The Architectural Committee shall meet at least monthly to consider applications with respect to any matters that require the approval of the Architectural Committee as provided herein. A majority of the members of the Architectural committee shall constitute a quorum for the transaction of business at a meeting. Every act or decision made by a majority of the members present at a meeting at which a quorum is present shall be regarded as the act or decision of the Architectural Committee, and no act or decision made at any other time or in any other manner by the Architectural Committee or any member or members thereof shall be valid or binding or constitute a waiver of any provision of this Declaration. In making its decisions, the Architectural Committee may consider any and all aspects and factors that the committee members, in their reasonable discretion, determined to be appropriate to establish and maintain the quality, character and aesthetics of the District, including but not limited to the consistency and harmony of the proposed work and improvements with the Developer's overall plans for the District and existing improvements in and the general appearance of the District, the potential impact on property values within the District and compliance with the specific requirements of this Declaration. All decisions of the Architectural Committee shall be in writing and delivered to the applicant.

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

Declaration or any of such rules, regulations, restrictions or guidelines.

16. Covenants Running with Land; Enforcement. The agreements, restrictions and reservations herein set forth are, and shall be, covenants running with the land into whosoever hands any of the property in the District shall come, for the benefit of all the land in the District. The Developer, and its successors, assigns and grantees, and all parties claiming by, through or under them, shall conform to and observe such agreements, restrictions and reservations; provided, however, that no person shall be obligated to enforce any such agreements, restrictions and reservations. No agreement, restriction or reservation herein set forth shall be personally binding upon any Owner except with respect to breaches thereof committed during such Owner's seizin of title to such Lots; provided, however, that the immediate grantee from the builder of the residence on a Lot shall be personally responsible for breaches committed during such builder's ownership of such Lot.

The Developer, its successors and assigns, the Owner of any of the Lots and the Owners Association, shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the agreements, restrictions and reservations herein set forth, in addition to any action at law for damages. The failure to enforce any of the agreements, restrictions or reservations herein set forth at the time of its violation shall in no event be deemed to be a waiver of the right to do so thereafter.

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

18. Duration, Release and Modification of Restrictions. The provisions of this Declaration shall remain in full force and effect for a period of twenty (20) years from the date hereof, and shall automatically be continued thereafter for successive periods of ten (10) years each; provided, however, that the then owners of Sixty-six percent (66%) of the Lots may release the District from all or part of such provisions at the expiration of the initial period or at the expiration of any extension period by execution (in one or more counterparts), acknowledging and recording an appropriate agreement in writing for such purpose, at least sixty (60) days prior to the original expiration date or to a subsequent expiration date, whichever is applicable. The provisions of this declaration may be amended, modified or supplemented, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by both (a) the Owners (excluding therein the Developer if it is then an Owner) of Fifty-One percent (51%) of the Lots (excluding those owned by the Developer) within the District as then constituted and (b) the Developer if it is then an Owner.

19. Extension of District. The Developer shall have, and expressly reserves, the right, from time to time, to add to the existing District and to the operation of the provisions of this Declaration such other adjacent (without reference to any street or right-of-way) lands as it may now own or hereafter acquire by executing, acknowledging and recording an appropriate written declaration or agreement



subjecting such land to all of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof; provided, however, that such declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable as solely determined by the Developer in good faith.

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

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