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DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS
AND RESTRICTIONS OF THE VILLAS OF INDIGO RUN
AT BEAR CREEK

THESE DECLARATIONS OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS OF THE VILLAS OF INDIGO RUN AT BEAR CREEK (hereinafter referred to as "Declarations"), are made this 4th day of August, 1999, by Aiello Terbrock Construction, Inc., a Missouri corporation, hereinafter referred to as "Declarant", for itself, its successors, grantees, and assigns.

WITNESSETH:

WHEREAS, there are prior Declarations and Covenants that govern this property titled "Master Declaration of Covenants and Restrictions of Bear Creek Estates" dated October 29, 1997, filed for record in the Office of the St. Charles County Recorder of Deeds in Book 1994, pages 1643-1653; and

WHEREAS, those Declarations include the entire property of Bear Creek Estates; and

WHEREAS, these Declarations are in addition to those Declarations, and are for the specific purpose of governing that area referred to as "The Villas of Indigo Run at Bear Creek"; and

WHEREAS, the Declarant is the owner of certain real property situated in St. Charles County, Missouri, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. This Declaration initially

Aiello Terbrock Construction

pertains to the above-described property which may be amended by Declarant by amendment of real property of the legal description (by deletion or addition of real property) and recorded in the St. Charles County Recorder of Deeds Office at any time prior to December 31, 2005.

The development to which this Declaration shall apply shall be a single family residential development, and therefore is not subject to or governed by the provisions of Chapter 448 et seq. of the Revised Statutes of Missouri, 1988, as amended.

Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties, and to establish a method for the governance, administration, maintenance, preservation, use and enjoyment of the Properties whether now or hereafter subject to these Declarations.

ARTICLE I

DEFINITIONS

Disclaimer. The definition of any of the terms below shall not have the meaning as set forth in Chapter 448, et seq. of the Revised Statutes of Missouri, 1988, as amended, since this is not a Condominium.

Section 1. "Association" shall mean and refer to The Villas at Indigo Run at Bear Creek Association, which is an unincorporated Association. The Association's Board of Directors, at any time may, by Board resolution, incorporate this Association as a nonprofit corporation. In such event, said corporation shall be the legal successor in interest to the Board of Directors or

Trustees as said terms are used in Section 2.

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Section 2. "Board of Directors", "Directors", "Board" or "Members" shall be the initial and subsequent Board Members as per Article III and may also be referred to as Trustees in any recorded Plat or Deed pertaining to The Villas of Indigo Run at Bear Creek.

Section 3. "The Villas of Indigo Run at Bear Creek". See Association for definition.

Section 4. "Common Elements" of the Property include the following:

(a) All Property referred to on the Plat which is designated as either as a "common element" or "common property";

(b) All streets until such time as they have been dedicated to the public and accepted by the City of Wentzville, Missouri. Notwithstanding the above, all streets dedicated and accepted by the City of Wentzville shall remain subject to this Additional Declaration.

Section 5. "Declarant" shall mean and refer to Aiello Terbrock Construction, Inc., and its successors and assigns if such successors and assigns should acquire one or more undeveloped Building Lot(s) from the Declarant for the purpose of construction of a Unit thereon for sale.

Section 6. "Lot" shall mean any parcel of land, including improvements thereon, shown upon any recorded subdivision map or Plat of the Properties which depicts the location and dimensions,

and establishes the legal boundaries of the individual Lot(s) and describes that portion of the Properties upon which a single residence is to be located. A subdivision Plat will be filed in the City of Wentzville (which may be commonly known as The Villas of Indigo Run at Bear Creek or such other name as determined by the Declarant), and then subsequently recorded with the St. Charles County Recorder of Deeds to show the location, the dimensions, and to establish the legal boundaries of each Lot and the Common Elements. The portions of the Plat which are not delineated as a Lot, shall be construed to be dedicated free and clear by the Declarant as a Common Element.

Section 7. "Owner/Lot Owner" shall mean the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

The Declarant shall be considered, and is the "Owner" of all Lots from the date created by recorded Plat, until conveyed to purchasers.

Section 8. "Plat" shall mean the Plat or Plats or survey describing the Property (as amended from time to time) in the official records of the Recorder of Deeds of St. Charles County, Missouri, and any amendments thereto.

Section 9. "Property" or "Properties" shall mean that real property hereinbefore described in Exhibit "A", and such additions thereto as may hereafter be brought within the jurisdiction of the

Association.

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Section 10. "Trustee(s)". See Section 2, "Board of Directors".

Section 11. "Unit" shall mean any portion of a building on a Lot designed and intended for independent residential occupancy.

ARTICLE II

PROPERTY RIGHTS, EASEMENTS AND RESTRICTIONS

Section 1. Ownership of Common Elements. Fee simple title to the Common Elements, or parts of them, will be conveyed by the Declarant to the Association, if incorporated as a nonprofit corporation. If not, then fee-simple title will be conveyed to the Trustees in their capacity as a Trustee on behalf of the unincorporated Association by separate conveyance of record which describes, by metes and bounds, or by reference as the "Common Elements" or "Common Ground" as depicted on the Plat of The Villas of Indigo Run at Bear Creek or by any other means of description that the Declarant may choose. The title to each part of the Common Elements so conveyed by express grant shall be vested in the Association or Trustees, or its/their successors or assigns, under this instrument. Declarant reserves an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations hereunder. Every Owner shall be a member of the Association.

Section 2. Easements.

(a) Easement in Gross. The Property, including the

Lots and Units thereupon located, shall be subject to a perpetual easement in gross to the Association, its successors and assigns, for ingress and egress to perform its obligations and duties as required by this Declaration.

(b) **Right to Grant Easement.** During Declarant control and thereafter, the Board of Directors shall have the right to grant such easements and rights-of-way to such utility companies, municipal agencies, and municipal authorities or Lot Owners or any other entities as it shall deem necessary or appropriate.

(c) **Declarant's Reserved Easement.** Notwithstanding any provisions contained in the Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a non-exclusive perpetual right, privilege and easement with respect to Properties for the benefit of Declarant and its successors and assigns, over, under, in and/or on Properties without obligation and without charge to Declarant, for purposes of exercising any development right reserved in this Declaration. This includes but is not limited to the use of display units, sales offices, construction trailers, banners, billboards, etc., or construction, installation, relocation, development, sale, advertising, maintenance, repair, replacement, use and enjoyment, and/or otherwise dealing with the Properties, and any other property which may, in the future, be owned by Declarant, which is not annexed to the Properties.

(d) Utility Easements. All utility easements are for the benefit of all Lot Owners subject to the control of the Association and dedicated as per the recorded Plat in the St. Charles County Recorder of Deeds' Office.

(e) Easements Created in this Agreement Run with the Land. All easements and rights herein established shall run with the land and inure to the benefit of, and be binding upon the Declarant and any Owner, purchaser, mortgagee or other person having an interest in any portion of the Properties.

(f) Owners' Easement of Enjoyment. Every Owner shall be a member of the The Villas of Indigo Run at Bear Creek Homeowners' Association, subject to the provisions of these Declarations and the Rules and Regulations, if any, as promulgated by the Board of Directors.

Section 3. Conveyance of Common Elements. Notwithstanding anything contained in this Declaration to the contrary, Declarant conveys the Common Elements to the Association/Directors subject to the right for it to request the Directors to reconvey the same to Declarant, in part or whole, as necessary for the Declarant to convey Lots as described herein. Accordingly, the Directors may convey such Common Elements to the Declarant with or without consideration.

Section 4. Streets. All streets located upon the Properties are intended to be dedicated and accepted by the City of Wentzville, Missouri. Initially, the streets shall be privately

maintained for public use by the Association until such time as the City of Wentzville assumes part or all of the responsibilities upon acceptance.

Section 5. Personal Residence. Each Lot shall be used for single-family, residential purposes only; no trade or business of any kind may be carried on therein.

No commercial activity of any kind shall be conducted on any Lot or in any Unit, but nothing herein shall prohibit the carrying on of promotional activities by the Developer.

Notwithstanding the above, home occupations are permitted, subject to the City of Wentzville's ordinances.

Section 6. Parking Regulations. No commercial vehicles (including any vehicles with signage advertising a commercial enterprise), jet skis, boats, house or other trailers, recreational or farming vehicles shall be permitted to be parked or stored on any street (public or otherwise), Common Elements, or Lot, except in the Lot Owner's garage. No trucks in excess of one-half ton and/or their trailers (if any), except non-commercial passenger pickup trucks, shall be permitted to be parked or stored on any Lot except during periods of approved construction on the Lot. This parking prohibition shall not apply to the above-referenced vehicles which are parked for no more than twelve (12) consecutive hours, limited to the pick-up, delivery or other commercial services to the Lot or Unit, including loading and unloading of such vehicles.

Section 7. Structures. No structures of any character (the

definition of structures shall include but not be limited to basketball poles and backboards) shall be allowed at any time on any Lot or the Common Elements without the express written permission of the Board of Directors.

Section 8. Fences, Walls and Decks. No fence, wall or deck of any kind shall be erected, begun, or permitted to remain upon any Lot or Unit of the Properties unless approved in writing by the Board of Directors and the City of Wentzville, Missouri, if necessary. If such fence, wall or deck is permitted, the enclosed area (interior) of such shall be maintained by the Lot Owner, per the standards established by the Board of Directors, notwithstanding that the Association may have maintained the same area had it not been enclosed by the fence, wall or deck. All rear exterior portions of such fence, wall or deck are to be maintained by the Association and the Association may assess an individual Assessment against the Lot or Unit Owner of the Property for the maintenance of such fence, wall or deck and such amount is subject to enforcement as any other Assessment referred to herein.

Section 9. Signs. No signs, advertisements, billboards, or advertising structures of any kind including "For Rent" or "For Sale" signs may be erected or maintained on any Lot, other than the Developer's signs during promotion of sales or improvements without the express written permission of the Board of Directors.

"For Rent" or "For Sale" signs may only be displayed at windows from inside a Unit.

Section 10. Nuisances. It shall be the responsibility of each Owner to prevent the development of or to maintain any unclean, unhealthy, unsafe, unsightly or unkept condition on his or her Lot. No Lot shall be used, in whole or in part, for the storage of anything that will cause such Lot to be in any of the above conditions or appears obnoxious to the eye, nor shall any thing be kept upon the Lot that will emit foul or obnoxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No obnoxious or offensive activity shall be conducted upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person(s) or surrounding properties. Any plants, animals, devices or things of any sort whose activities or existence is, in any way, obnoxious, dangerous, unsightly, unpleasant, or of a nature that may diminish or destroy the enjoyment of the Properties is not allowed. The determination of a nuisance, obnoxious or offensive activity shall be determined in the sole discretion of the Board of Directors.

Section 11. Rules and Regulations. The Board of Directors may establish reasonable Rules and Regulations concerning the use of the Common Elements and any individual Lots. Copies of such Rules and Regulations, and amendments thereto, shall be delivered by first class mail or hand delivered by the Association to all Owners thirty (30) days prior to the effective date of the Rules and Regulations. The Rules and Regulations shall be binding upon

the Owners, other family members occupying the Unit, tenants, guests, invitees, and agents until and unless such Regulation, Rule or requirement shall be specifically overruled, cancelled or modified by the Board or the Association in a regular or special meeting (having met the quorum requirements) by the vote of a majority of each Class of Lot Owners present at such meeting. (See Article III, Section 3 for quorum requirements and Section 5 for Class identification).

Section 12. Owner's Easements of Enjoyment. Every Owner of a unit shall have a right and easement of enjoyment in and to the Recreation Facilities (if any should be erected) of the Common Elements.

Section 13. Encroachment. Through construction, settlement, or shifting of any building, should any part of any building encroach upon any part of the Common Elements or upon any other unit, perpetual easements for the maintenance of such encroachments and for the use of the space required thereby, are hereby established and shall exist for the benefit of the Owners; provided, however, that no easement shall be created in the event the encroachment is due to the willful conduct of the Owner. All easements and rights herein established shall run with the land and inure to the benefit of, and be binding upon the Developer, his successors or assigns, and any Owner, purchaser, mortgagee, or other person having an interest in any portion of the properties.

ARTICLE III

Section 1. Board of Directors.

(a) **Original Directors.** The original Directors (together with their successors being hereinafter referred to as "Director" or "the Directors"), to serve on the Board shall be Anthony Aiello, Rhonda Aiello, and Anthony Terbrock, who by their signatures hereto, consent to serve in such capacity until their successors are elected or appointed as hereinafter provided. Should an Original or Successor Director appointed pursuant hereto resign, refuse to act, become disabled, or die, Declarant shall have the power to appoint, by duly written and recorded instrument, a successor Director who shall serve until his/her successor is elected by the Association members in the manner hereinafter provided.

(b) **Election of Directors.** At such time as one hundred percent (100%) of the total Lots authorized to be developed in the Properties have been approved, sold, conveyed for residential use, and are ready for residential use, Declarant shall cause the resignation of all three (3) directors. The current Class A members (see Section 5) shall then elect Owners who shall serve as Directors.

The Class A members shall then elect the three (3) Owners as successor Directors, one of which shall be elected to serve for a one (1) year period, one of which shall be elected to serve for a two (2) year period and one of which

shall be elected to serve for a three (3) year period from the date of the election. The actual initial Directors' terms may be extended to coincide and expire with the end of a calendar year, so that subsequent elections and Directors' terms will be on a calendar basis. Thereafter, all Directors shall be elected for a term of three (3) years each. (Note: Having served as a prior Director does not preclude an Owner from being reelected for one of the above terms).

The successor to an elected Director whose term is expired shall be elected at the annual meeting or a special meeting called for that purpose.

Any Class A member who has failed to pay any Assessments due and payable shall not be entitled to vote at any annual or special meeting provided for herein or to be elected or appointed to serve on the Board. The person or persons receiving the highest number of votes shall be deemed elected and shall, upon his, her or their acceptance in writing, at once and by force of this Declaration imposed, to succeed to, be vested within possess and enjoy as joint tenant but not as tenants in common with the remaining Directors, all the estate, rights, interest, privileges and powers granted by this Declaration to the Board of Directors.

In the event that any Director elected hereinunder shall die or become unable, for any reason, to discharge the duties, exercise, or avail himself or herself of all the rights and powers herein granted or bestowed upon him or her, as a

Director, it shall then be the duty of the remaining Directors to select a successor to serve until the next regularly scheduled election for that position.

(c) **Qualifications of Directors.** Any Director elected under these provisions shall be a Lot Owner.

(d) **Officers.** Following each annual meeting of the Association as provided for herein (or at least annually if no meeting), the Board of Directors shall designate one (1) of its members to serve as Chairperson and President, one (1) member to serve as Secretary and one (1) member to serve as Treasurer until such time as the next following annual meeting.

Section 2. Meetings of the Association. There shall be an annual meeting of the Association (subject to the provisions of Section 2(a) hereof) to be held on the first Saturday of April of each year during the term of the Declaration, said meeting to be held at a convenient place in the City of Wentzville. Special meetings of the Association may also be called by any one of the Directors, or twenty percent (20%) of the Class A members, also to be held at a convenient place in the City of Wentzville. Written notice shall be given no less than ten (10) days in advance of the meeting to each Owner of the time and place of any annual or special meeting. This shall be provided by the Directors or the Owner(s) calling said meeting, by depositing the same in the United States mail, properly addressed to the address shown on the real estate tax assessment records for each Owner, with postage

prepaid, or by hand deliver to each Unit. In the event of hand delivery, the delivery person shall file an Affidavit with the Secretary of the Board stating the name, approximate time, date and address of the delivery(ies).

Section 3. Quorum.

(a) Except as provided in Section 5 of Article IV, or below, business may be transacted only at a special or general meeting of the Unit Owners at which there is a quorum. A quorum shall be deemed present at an Association meeting if the Owners in attendance at the beginning of the meeting represent at least twenty percent (20%) of the votes eligible to vote at the time of the meeting. If proper notice was given (as provided in Section 2 above) and a meeting called at which business cannot be conducted because of failure to achieve a quorum, then the Directors may either: (i) given another notice of the meeting indicating the proposed business soir purpose and if such meeting is held within thirty (30) days of the date of the first meeting at which there was no quorum, then there shall not be a quorum requirement to transact the proposed business at such second meeting; or (ii) act by vote of a majority of the eligible Lot Owners on any proposed business by written ballot of the Owners in lieu of a meeting.

(b) A quorum is present at a meeting of the Directors if a majority of the Directors are in attendance. All actions of the Directors shall be by majority vote, oral or

written.

Section 4. Nonprofit Corporation. In the event that the Association shall desire to incorporate as a nonprofit corporation, the Board of Directors of the Association shall serve as the Directors of such corporation and have the same powers, duties and rights as per this Declaration. The Association may elect non profit status by a resolution of the Board of Directors. The By-Laws of the nonprofit corporation may be the same as the By-Laws (if any) as adopted by the Board of Directors for this Declaration.

Section 5. Voting Classes. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A members shall be Owners (other than Declarant) entitled to one (1) vote for each Lot owned.

When more than one (1) person holds an interest in any Lot, all such persons shall be Owners. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. The Class B member shall be the Declarant who shall be entitled to a number of votes equal to three (3) times the number of Class A votes. The Class B membership and votes shall dissolve on the happening of either of the following events, whichever occurs earlier:

(i) when the total eligible votes in the Class A membership equal ninety-five percent (95%) of the total

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Lots shown on any recorded subdivision maps subject to this instrument; or,

(ii) January 31, 2002;

(c) Rules pertaining to proxies shall be governed by the By-Laws.

ARTICLE IV

MAINTENANCE ASSESSMENTS

Section 1. General. Each Owner, except the Declarant (which shall pay assessments as hereinafter stated), by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed covenants and agrees to pay to the Association: (1) Annual Assessments or charges; (2) Special Assessments for capital or other necessary improvements, as hereinafter provided; and (3) Special Assessments not requiring a vote of the Owners for the purpose of complying with local, state or federal ordinances and/or statutes. The Annual and Special Assessments, together with interest, costs and reasonable attorneys' fees, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment is made. Each such Assessment, together with interest, collection costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due.

Section 2. Purpose. The Assessments levied by the Association shall generally be used as follows: (a) to implement the intent of these Additional Declarations; (b) the

improvements, maintenance, repair and/or replacement of all streets in the sole discretion of the Board of Directors; (c) the improvements, maintenance, repair and/or replacement of the Common Elements in the sole discretion of the Board of Directors; (d) the maintenance of each Lot which is to include, but not be limited to, lawn care and snow removal in the sole discretion of the Association; (e) those items mentioned in Article V; (f) the costs of all insurance carried by the Association; (g) the provision of utilities in the Common Elements; (h) the administrative and management costs of the Association; (i) legal, accounting and auditing fees of the Association; (j) such other expenses as determined from time to time by the Board of Directors; and (k) to build reserves for the Association.

Section 3. Establishment of Assessment.

(a) Each year, prior to December 1, at a meeting duly called for such purpose, the Board of Directors shall present the Owners with a budget showing the total amount necessary to pay the costs of carrying out the Association's duties, together with a reasonable amount considered by the Board to be necessary for contingencies for the following year.

(b) Any such proposed budget may be defeated by two-thirds (2/3) votes of the Owners present at such duly called meeting whereupon the Board of Directors shall re-estimate amounts necessary to carry out the Association's duties, and shall resubmit such estimates for approval at that or a subsequent meeting as required by this subparagraph. In the

event that the Association is unable to obtain the required approval or ratification, as the case may be, of the proposed budget, then the existing budget shall remain in place with an automatic five percent (5%) increase each year until such time as the budget is ratified according to this Declaration.

(c) On or before December 1 each year, the Board shall notify each Owner subject to Assessment, in writing, of the amount of the Assessment established in subparagraph (a) or (b) hereof, if different from the preceding Annual Assessment. The budget shall be divided by the total number of Lots subject to Assessment, and the result shall constitute the next Annual Assessment.

Section 4. Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment year, a Special Assessment for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements.

Section 5. Notice and Quorum for Assessment Meetings. Notwithstanding any other notice or quorum requirements stated elsewhere in this Declaration, written notice of any meeting called for the purpose of taking actions authorized under Sections 3 or 4 of this Article shall be sent to all Owners not less than ten (10) days nor more than sixty (60) days in advance of the meeting. Notification will follow the procedures outlined in Article III, Section 2. At the first such meeting, the presence

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of Owners and/or of proxies entitled to cast twenty percent (20%) of all the votes of each Class of Owners shall constitute a quorum. If the required quorum is not present, a second meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots.

Section 7. Commencement of Annual Assessments. The Annual Assessments provided for herein shall commence at a monthly basis, with respect to any Owner, on the first day following the conveyance of the deed from the Declarant or a prior Owner by which the Lot is transferred to a new Owner. The first Annual Assessment shall be adjusted according to the number of days remaining in the calendar year. Assessments shall be collected on a monthly basis, or for such other period as may be determined by the Board of Directors. The monthly due date shall be the first day of the month and delinquent after the tenth day of each month, unless otherwise established by the Board of Directors. The Board, or its duly authorized representative, shall, upon demand, and for a reasonable charge, furnish a statement signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

Section 8. Nonpayment of or Delinquent Assessments. Each

Annual or Special Assessment not paid by the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum, plus a late charge of Twenty-Five Dollars (\$25.00). The Board, however, may adopt such other interest rate (not to exceed eighteen percent (18%) per annum) or late fee (to be determined by the Board from time to time) provided that such notice of such charge is submitted with the proposed annual budget. The Association may bring an action at law against an Owner personally obligated to pay the same, or foreclose the lien against the property by power of sale under Chapter 443, R.S.Mo. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the common Elements, abandonment of his Lot, or assertion of any claim against the Association, Board, Declarant or another Owner. In addition to the above-referenced Assessments, interest and late charges, said Owner shall be responsible for any court costs, attorney's fees, arbitration fees, recording and release fees, and interest at the rate of twelve percent (12%) per annum on any such fees advanced by the Association for the purpose of collection.

ARTICLE V

EXTERIOR MAINTENANCE

The Association shall be responsible for the maintenance to the Common Elements. In addition, the Association shall be responsible for exterior maintenance upon each Lot which is

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subject to assessment hereunder, as follows: paint, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, including trees, shrubs, grass, walks, and other exterior improvements, but which shall not include driveways, decks, patios, glass surfaces of exterior doors, garage doors, and windows, or the screened surfaces of interior surfaces of screened in decks or patios.

ARTICLE VI

INSURANCE, UTILITIES AND TRASH REMOVAL

Section 1. Insurance. Commencing not later than the time of the first conveyance of a Lot to a person other than Declarant, the Association may maintain a Master Insurance Policy to provide for insurance for the Common Elements.

Section 2. Utilities. Lot Owners are responsible for all utilities which are individually billed or metered and serving only one Lot. Said utilities include but are not limited to water, sewer, gas, electric, telephone, and cable/digital satellite T.V.

Section 3. Trash Removal. The Board of Directors may, in its sole discretion, enter into contract(s) for trash pickup by one vendor. This would normally benefit the Association by limited the amount of traffic on the road which minimizes damage to the streets and/or safety concerns. If the Board chooses to contract for such services, said services shall commence upon the termination of any existing agreement an individual Lot Owner has with a trash service provider. All Lot Owners shall be required

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to use the trash pickup company negotiated by the Board.

ARTICLE VII

PARKING.

Each Unit shall have two (2) inside garage parking spaces which shall not be a Common Element. A patio or deck shall be an assigned space so that the Owner of the Unit has one (1) patio space (except for walk-out Units which will have a patio and deck) which shall be Limited Common area to be maintained by the Unit Owner. All parking spaces and patios which are not assigned for the exclusive use of an Owner shall be open for the use of any other Owner or his guest.

ARTICLE VIII

ARCHITECTURAL CONTROL AND OTHER COMMITTEES

Section 1. Architectural Control Committee Applicability.

The following provisions shall apply exclusively to Owners other than the Declarant. (The Declarant, even though an Owner for certain purposes of this Declaration is exempt from any provisions of this Article VII.

(a) Additions, Changes or Alterations. No structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior additions, change or alteration therein be made until proposed plans and specifications have been submitted to and approved in writing by the Board and be in keeping with the harmony of external design and location in relation to surrounding structures and topography. An Architectural Control Committee, composed of

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three (3) or more representatives, appointed by the Board, shall initially review all such plans or proposals submitted and provide a formal recommendation to the Board to accept or reject the proposal. In the event the Board, or its designated committee, fails to approve or disapprove such proposal within forty-five (45) days after said plans and specifications have been submitted, approval will not be necessary and the requirements of this Article will be deemed to have been fully satisfied. In the event that the addition, change or alteration is of such a nature that the Association would be responsible for continuing maintenance, repair or replacement after it has been made, the Board may condition its approvals upon the Owner agreeing to maintain, repair or replace such addition, change or alteration in the future and, if not so maintained, the Board may perform such service and shall charge the Owner for the associated costs.

These costs will be due and payable the same as a Special Assessment. The Owner shall have the duty of advising any future Owner of said Unit of his or her duty to maintain, repair or replace said addition, change or alteration.

(b) **Fees for Review.** If the Architectural Control Committee receives compensation for its efforts, or incurs costs, the Board of Directors may establish a reasonable fee for review of any proposed changes.

(c) **Guidelines.** The Architectural Control Committee may adopt reasonable guidelines to facilitate the review of

proposed changes.

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Section 2. Other Committees. The Board of Directors may appoint other committees, as deemed appropriate, in the Board's discretion in carrying out its purpose.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions, easements, restrictions, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant, condition, easement or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall be entitled to bring an action in equity for injunctive relief to enforce these covenants and restrictions of this Declaration without the necessity of posting a bond.

Section 2. Severability. Invalidation of any one of these covenants, conditions, easements, or restrictions by judgment or court order shall, in no way, affect any other provisions which shall remain in full force and effect.

Section 3. Mortgagee Rights. An institutional holder, insurer or guarantor of a first mortgage shall be entitled to timely written notice of: (a) a proposed termination of the Association; (b) any condemnation laws or casualty law which affects a material proportion of the Properties or which affects

any Lot on which there is a first mortgage held, insured or guaranteed by the mortgagee(s); and, (c) any delinquency, continued for a period of sixty (60) days, in the payment of Assessments or charges owned by an Owner of a Lot subject to a first mortgage, or, (d) any default in the performance by the Owner, of any obligation under the Declaration which is not cured within sixty (60) days. **BOOK 2292 PAGE 1872**

Section 4. Duration. The provisions of this Declaration shall run with and bind the land and shall be and remain in effect until such time as all Plats of The Villas of Indigo Run at Bear Creek are vacated by the City of Wentzville, Missouri, or its successors after which period of time fee simple title to the Common Elements shall vest equally in the record Owners of all Lots on the Property as tenants in common. Any conveyance or change of ownership of any Lot shall convey with it ownership in the Common Elements, and no interest in the Common Elements shall be conveyed by a Lot Owner except in conjunction with the sale of a Lot. The sale of any Lot shall carry with it all incidents of ownership of the Common Elements although such is not expressly mentioned in the Deed, provided, however, that no right or power conferred upon the Board of Directors shall be abrogated.

Section 5. Amendment. This Additional Declaration may be amended during the first ten (1) years by an instrument approved by vote or agreement of not less than sixty-five percent (65%) of the Owners, and, thereafter, by an instrument approved by vote or agreement of not less than fifty-one percent (51%) of the Owners.

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At least thirty (30) days prior to the effective date of said instrument, written notice shall be given to all Owners, of the meeting to consider the amendment, which meeting shall be held at a place convenient to the Owners. Any amendment must be recorded and shall be effective upon said date. For the purpose of this Section, the Declarant shall have the right to veto any amendment so long as the Declarant has voting rights pursuant to Article III, Section 5, subparagraph (b).

Notwithstanding the above, the Declarant reserves the right to amend this Declaration unilaterally, at any time, without prior notice and without the consent of any person or entity so long as Declarant, as defined herein, owns one (1) Lot.

Section 6. Attorneys' Fees. In the event that the Board of Directors shall desire to enforce any of the provisions of the Declaration or defend any of the same, the Association shall be entitled to recover fees from the Lot Owner who is challenging or has failed to abide by the Declaration, including attorneys' fees, court costs, arbitration fees, paralegal fees, expert fees and interest on such fees advanced by the Association at the rate of twelve percent (12%) per annum.

Section 7. Arbitration. In the event any Owner chooses to challenge this Declaration or its amendments, or an act or omission by the Board, such action shall be submitted to binding arbitration pursuant to Chapter 435, R.S.Mo., and according to the Rules of the American Arbitration Association. The decision of the arbitrator shall be binding upon all parties. The Board of

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Directors, on behalf of the Association, when enforcing the Declaration or the Rules and Regulations may choose to bring such action in any court of law of any competent jurisdiction or in a forum of arbitration under the Rules of the American Arbitration Association. If the Board of Directors shall choose arbitration, the decision of the Arbitration Board shall be binding upon the Owners and the Association.

Section 8. Indemnification. The Association shall indemnify every Officer, Director and Member of the Association against any and all expenses, including attorneys' 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 approved by the then Board of Directors) to which she or he may be a party by reason of being or having been an Officer or Director of the Association. The Officers and Directors shall not be liable for mistake of judgment, negligence, 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 conduct or any commitment made by them in good faith on behalf of the Association (except to the extent such Officers or Directors may also be members of the Association) and the Association shall indemnify and forever hold each such Officer and Director free and harmless from and against any and all liability to others on account of such a contract or commitment.

Section 9. Compliance with Laws, Etc. Notwithstanding any

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condition herein, the Board of Directors shall make suitable provision for compliance with all subdivision and other ordinances, rule and regulations of the City of Wentzville and any other governmental entity for which the Properties may become a part. If such compliance requires improvements to the Properties, this shall be a Special Assessment, if necessary, to comply with such ordinance or statute, without the vote of the Lot Owners.

Section 10. Powers of the Association. The Association, acting through the Board of Directors, shall have the power to:

(a) adopt and publish Rules and Regulations regarding the use of Common Elements and Lots, and the personal conduct of the Owners and their guests thereof, to impose penalties for any Owner's infractions after providing written notice and an opportunity to be heard thereof;

(b) exercise, for the Association, all powers, duties, and authority vested in or delegated to this Association and not reserved by the Owners by other provisions of the Declaration;

(c) employ, supervise and terminate a manager, independent contractor or such other employees as necessary and prescribe their duties and compensation;

(d) establish a budget, prior to October 1st of each year projecting the amounts necessary to be expended to carry out its obligations pursuant to the Declaration;

(e) adopt an annual budget and collect Assessments;

(f) establish the fiscal year of the Association

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which, in the absence of any establishment, shall be on a calendar year basis;

(g) establish the principal office of the Association, which shall be 1550 Wall Street, St. Charles, Missouri 63303, until changed by the Board of Directors;

(h) establish rules regarding proxies for voting;

(i) promulgate and amend By-Laws to execute the functions of the Board of Directors on behalf of the Association;

(j) borrow funds on behalf of the Association and to pledge the assets or future assessments of the Association as collateral;

(k) effect the interest and purposes of this Declaration;

(l) bring suit or arbitration matters to enforce or carry out the terms of this Declaration;

(m) If the Association should incorporate, the Board would have the powers provided under Chapter 355, R.S.Mo.

(n) Notwithstanding any of the above restrictions, the Directors may permit variances on a case-by-case basis or blanket variances as may be contained in the Rules and Regulations, which may be amended from time to time.

THIS DECLARATION CONTAINS AN ARBITRATION PROVISION WHICH MAY BE BINDING UPON THE PARTIES.

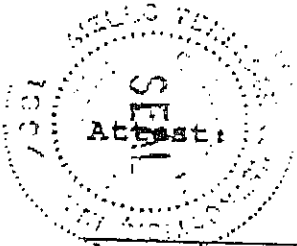
IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 4th day of

August, 1999

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AIELLO TERBROCK CONSTRUCTION, INC.

BY: Gianna Aiello, SEC



(corporate seal)

"Declarant"

Original Directors

[Signature]
Anthony V. P.
Gianna Aiello, SEC

STATE OF MISSOURI
COUNTY OF ST. CHARLES

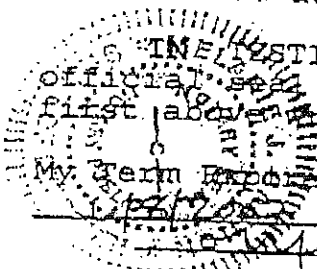
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On this 4th day of August, 1998, before me personally appeared Rhonda Aiello, to me personally known, who, being duly sworn did say that he is the President of Aiello Terbrock Construction, Inc., and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Rhonda Aiello acknowledged said instrument to be the free act and deed of said corporation.

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

My Term Expires:



Melanie J. Cannon
NOTARY PUBLIC

(NOTARY SEAL)

Melanie J. Cannon, Notary Public
State of Missouri, St. Charles County
My Commission Expires 8/8/2002

STATE OF MISSOURI
COUNTY OF ST. CHARLES

)
) SS.
)

On this 4th day of August, 1998, before me appeared Anthony Aiello Pres. and Rhonda Aiello Sec. to me personally known, who, being duly sworn, upon their oath, did say that they are the Original Directors of The Villas of Indigo Run at Bear Creek Homeowners' Association, and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

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

My Term Expires:

7-16-00

Julie C. Burton
NOTARY PUBLIC

(NOTARY SEAL)

JULIE C BURTON
Notary Public - Notary Seal
STATE OF MISSOURI
ST CHARLES COUNTY
MY COMMISSION EXP. JULY 16, 2000