

## **Section 11**

**Subordination of Lien.** The lien provided for in this Declaration shall be subordinate to the lien of any purchase money mortgage or refinance thereof, now or hereafter placed upon the Lot or Duplex Unit subject to assessment.

## **Section 12**

**Estoppel Certificates.** The Association shall, upon request of a member, at any reasonable time, furnish an Estoppel Certificate signed by an officer or other authorized agent of the Association, setting forth the amount of unpaid assessments and/or other charges, if any, against said member's Lot or Duplex Unit, up to a given date or time of conveyance. Also, said estoppel certificate will certify as to whether or not there are violations of the Governing Documents on the Lot or Duplex Unit as of the date of preparation of the certificate. Said certificate shall be delivered to the place of closing, and all outstanding assessments and other charges, if any, and a reasonable charge, as from time to time determined by the Board, to cover the cost of providing such certificate shall be paid by the Member at the closing and transmitted directly to the Association.

# **ARTICLE VI** **COMMON AREAS AND EASEMENTS**

## **Section 1**

**Creek Maintenance and General Access Easements.** The Developer reserves and the Association is hereby granted the following easements:

**A. Utility Easements.** There is hereby reserved by Developer for itself and the Association a perpetual easement upon, across, over, through and under the Lot and Duplex Units as depicted in the Subdivision Final Plat for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems including, but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the Developer or the providing utility or service company to install and maintain facilities and equipment on the property, to excavate for such purposes and to fix and maintain wires, circuits and conduits on, in and under the land providing such company restores disturbed areas to the condition in which they were found.

**B. Easements for Drainage.** Perpetual easements are hereby reserved on, over and under parts of those Lots and Duplex Units as shown on the Subdivision Final Plat for drainage. Said easements are maintained by the respective Owners of said Lots or Duplex Units and the existing grade and elevation shall not be altered. The Developer reserves for itself and the Association an easement and right on, over and under the ground within that Lot or Duplex Unit to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary, following which the Developer shall restore the affected property to its original condition as near as

practicable. The Developer shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Developer an emergency exists which precludes such notice. Notwithstanding this Drainage Easement, the Owners of the Lots or Duplex Units shall have the responsibility to keep drainage gutters adjacent to this Lot or Duplex Unit free from vegetation and debris so as to maintain proper flow of drainage. If an Owner fails to properly maintain said gutter and drainage flow, the Developer or the Association may charge the Owner for an individual Assessment pursuant to Article V, Section 6.

**C. Construction Easements and Rights.** Notwithstanding any provision of this Declaration, so long as the Developer or builders are engaged in developing or improving any portion of the Real Estate, such persons shall have an easement of ingress, egress and use over any lands not occupied by an Owner for (1) movement and storage of building materials and equipment, (2) erection and maintenance of directional and promotional signs, and (3) conduct of sales activities. Such easement shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness and general appearance of the properties.

**D. Easement to Inspect.** There is hereby created an easement in favor of the Association for ingress and egress on any Lot or Duplex Unit to inspect such Lot or Duplex Unit for alleged violations of the Governing Documents, compliance with architectural standards and/or approved plans for alterations and improvements. This easement does not give the Developer or the Association the power or right to access any completed or occupied residential structure.

**E. Easement for Landscaping and Related Purposes.** There shall be and is hereby reserved to the Developer, a non-exclusive easement over all Lots and Duplex Units for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, street lights, entrance features and/or "theme areas," lighting, stone, wood, or masonry wall features and/or related landscaping.

## **ARTICLE VII** **RESTRICTIVE COVENANTS**

### **Section 1**

**Land Use.** The Real Estate committed to this Declaration as described shall be used for residential purposes only, and no trade or business of any kind may be carried on therein.

### **Section 2**

**Nuisances.** No nuisance or offensive activity shall be permitted upon the properties as to jeopardize property values or be detrimental to the enjoyment, comfort and well-being of the Members. Each Member shall refrain and prohibit any act or use of a Lot or Duplex Unit which could reasonably cause embarrassment or annoyance to other Members or occupants, and the Board shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.



### Section 3

**Architectural Standards.** Developer hereby creates an Architectural Control Committee, composed of three (3) persons who shall be appointed by the Developer. In the event of death or resignation of any member of said committee, the Developer shall appoint a person to fill the vacancy. The Developer shall continue to appoint the Architectural Control Committee until such time as it voluntarily turns over the control of Architectural Control Committee to the Association. The Architectural Control Committee shall have the right to prevent the clearing of a Lot or Duplex Unit and subsequent excavation and grading prior to construction of the main residence upon such Lot or Duplex Unit according to the following:

Prior to the construction of the main residence, a Member is required to seek approval of building plans through the Architectural Control Committee. The committee shall consider quality of workmanship and materials, external design, location with respect to topography and finished grades, elevations and building lines, location of driveways and walk ways and the preservation of certain existing trees and wooded areas. To comply with this requirement, each Member, prior to any construction on the Lot or Duplex Unit, shall then submit to the Architectural Control Committee actual plans and specifications which shall include the floor plan, exterior color schemes, and materials, elevations and actual plat plan showing distances from easements and Lot or Duplex Unit lines and the location of the finished grade height of the first floor. The Member owner agrees that he/she will not obtain a building permit until the Architectural Control Committee shall have given written approval of any plan submitted to it. No alterations, repairs, excavations, fences, awnings, patio cover, swimming pool, light pole or fixture, landscaping or other work which in any way alters the exterior of any Lot or Duplex Unit or the improvements located thereon shall be commenced, made or done on such property without the prior written approval of the Architectural Control Committee. If disapproval of a plan is not given in writing for a period of twenty (20) days after submission of the plans, they shall be deemed approved.

**A. Type of Structure.** No Lot or Duplex Unit shall be used except for single family residential purposes or for one duplex and private garage appertaining thereto. A duplex may only be erected on Lot or Duplex Units 49 through 71. No building shall be erected, altered, placed, or permitted to remain on any Lot or Duplex Unit, or part of parts thereof, exceeding 2 and ½ stories in height.

**B. Floor Area.** The total floor area of the main structure, exclusive of basement, one story open porches and garages shall:

- (i) Have a floor area of not less than 1,800 square feet for a one story dwelling;
- (ii) Have a floor area of not less than 2,200 square feet total for a two story building;

(iii) The minimum floor area for any duplex dwelling unit shall be 1,350 square feet and the minimum for both units shall total at least 2,700 square feet;

(iv) Sidewalks shall be repaired and maintained by the Member owning the Lot or Duplex Unit.

(v) All driveways located upon a Lot or Duplex Unit shall be no less than 20 feet in width and shall be concrete. Except for Lots 72 and 73 (and only while current houses remain) no driveways shall exit onto Koke Mill Drive.

**C. Landscaping.** There shall be installed and planted upon each Lot or Duplex Unit and maintained by each Lot or Duplex Unit owner landscaping as may be approved by the Architectural Control Committee and sod must be placed upon all front and side yards. Members shall not destroy any trees that already exist on the Lot or Duplex Unit unless such trees hinder construction of the residence being built. If no trees exist on the Lot or Duplex Unit, the Member shall plant at least two trees in the front yard. Rear yards shall be seeded or sodded within thirty (30) days of the conclusion of construction.

**D. Residence Exterior.** No house will be of the exact exterior color combination as a house next door or across the street. There will be a minimum of 25% brick on the front exterior of the home, unless approved by the Developer or Architectural Control Committee. Color and style must be approved and signed off by the Developer and/or Architectural Control Committee.

**E. No Subdividing/Grading of Lot.** No Lot or Duplex Unit shall be re-subdivided, nor shall a fractional part of any Lot or Duplex Unit be sold without written consent of the Architectural Control Committee and approval from municipal authorities.

No owner of any Lot or Duplex Unit shall change or permit to be changed the contours and the gradeline of any Lot or Duplex Unit. The gradeline of any Lot or Duplex Unit shall be maintained to correspond with that of surrounding property. All gradelines will be set by the engineering company employed by the Developer prior to any construction. No swale within the easement of any Lot or Duplex Unit shall be altered or wholly or partially filled so as to interfere with or prohibit the free flow of surface water; however, if such swale shall be altered, it shall be restored at the expense of such Lot or Duplex Unit Owner of the Lot or Duplex Unit where such alteration occurs.

**F. Building Materials/Outbuildings.** No building shall be occupied for living purposes which is not functionally complete in detail as to the exterior, nor shall any building materials, paint, or building equipment be exposed as to the public view if occupied as a dwelling. No trailer, underground cellar, tent, shack, garage, barn or other outbuilding placed on any Lot or Duplex Unit shall, at any time, be used as a residence, temporarily or permanently. No extra outbuildings are to be placed on any Lot or Duplex Unit unless approved by the Architectural Control Committee prior to placement. Any outbuilding must match the residence on the Lot in color scheme and exterior construction style and must have a shingled roof.



**G. Vegetation.** All vacant Lots or Duplex Units shall be kept free of grass and weeds and shall not be permitted to fall into an unsightly condition. Grass and weeds shall not be allowed to grow over six inches in height. Any vacant Lot or Duplex Unit which falls into an unsightly condition may be mowed and cleaned up by the Declarant or the Association at the expense of the owner.

**H. Yards.** The front, side, and rear yard dimensions must be in compliance with the City of Springfield ordinances and the following:

- (1) Any Lot or Duplex Units zoned R-1 must have a minimum front yard depth of thirty (30) feet, either side yard a minimum of seven (7) with a total of both side yards of fifteen (15) feet, and the rear yard must be twenty (20) feet in depth;
- (2) Any Lot or Duplex Units zoned R-2 must have a minimum front yard depth of twenty-five (25) feet in the front yard, either side yard a minimum of seven (7) feet (except Lot or Duplex Units 49 and 71 which must have a minimum of five (5) feet on the west side yard), with a total of both side yards of fifteen (15) feet and the rear yard must be twenty (20) feet in depth.
- (3) On corner Lots or Duplex Units, where side yards are required, any side yard abutting a street shall be at least one-half of the depth of the required front yard.

**I. Antenna/Satellite Dishes.** No outside television or radio aerial or antenna, or other serial or antenna or dish or signal receptacle, for reception or transmission, shall be maintain on the exterior of any Lot or Duplex Unit, living unit without the prior written consent of the Architectural Control Committee. Satellite dishes will be permitted in the rear or side of the house only if they do not exceed twenty-four (24) inches in diameter and if not located on the roof or in the rear yard, must be reasonably landscaped so as to blend aesthetically with the yard to the fullest extent possible to minimize visibility without impairment of reception. This restriction shall be subject to all applicable laws and shall be construed to be in compliance.

**J. No Alcohol Sales.** No spirituous, vinous or malt liquor shall be sold, or kept for sale, on any Lot or Duplex Unit.

**K. Fencing.** Any fencing construction on any Lot or Duplex Unit shall conform to the City of Springfield ordinances; however, no fencing shall be permitted in front yards. In cases of corner Lot or Duplex Units, both street sides of the residence shall be considered as front yards. All fences must be erected at least six inches inside property or Lot or Duplex Unit lines. All fences will be constructed with no posts showing on the outside. Fences must be of wood or wrought iron no more than six (6) feet in height and approved by the Architectural Control Committee.

**L. No Offensive Activity.** No noxious or offensive activity shall be carried on upon any Lot or Duplex Unit, nor shall anything be done thereon which may become any annoyance or

nuisance to the neighborhood, disturb the peace and quiet thereof, or annoy any occupant of the neighboring property. A nuisance or annoyance shall include any continued violation of any state or county or local statute, regulation or ordinance, or any rule adopted from time to time by the Board.

**M. Vehicles.** No Lot or Duplex Unit, or any part thereof, shall be used, either temporarily or permanently, to sell, store or accumulate used cars, parts therefrom or junk or recycling material of any kind or character whatever. No member, tenant, guest or other person shall park, store or keep on any Lot or Duplex Unit any commercial vehicle, boat or other water craft, motor home, trailer, R.V., camper or other recreational devices of any kind in the driveway or street; provided, however, that a Member or tenant may park his other privately owned automobile in such Member's or tenant's garage. No Member, tenant or other person shall repair or restore any vehicle of any kind upon any Lot or Duplex Unit, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. Notwithstanding any provisions heretofore stated in these covenants and restrictions, the Declarant or the Association through its Board of Directors shall have the power and authority from time to time to adopt additional rules regarding the parking and storage of vehicles.

**N. Garages.** Each residence and duplex shall have an attached garage that is designed to shelter at least two cars.

**O. Sidewalks.** The Member is responsible for construction of the sidewalks in front of a Lot or Duplex Unit pursuant to the City of Springfield's ordinances and acceptance by the City Engineer or his representative. The Member shall be responsible for replacing, at his own expense, any and all cracked sections of said sidewalk adjacent to his Lot or Duplex Unit.

**P. Roof Pitch.** Roofs for single family residences shall have a pitch of 6 to 12 . Roofs for Duplexes shall have a pitch of 5 to 12.

**Q. No Livestock.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or Duplex Unit, except dogs, cats or domesticated birds kept inside the home, provided that they are not kept, bred or maintained for any commercial purposes. Such domestic pets shall not be permitted to cause or create a nuisance, disturbance or unreasonable amount of noise which may affect any resident or other person on a Lot or Duplex Unit. No outdoor kennel or dog run shall be permitted. Pets may not be kept for breeding or other commercial use. Notwithstanding any other provision to the contrary binding, the Board may adopt binding rules and regulations from time to time pertaining to the keeping of any and all pets upon the properties (including the inside of a residential building) when the Architectural Control Committee determines such action to be in the best interest, well being and enjoyment of any and all of the residents of the Springcrest Subdivision.

**R. Erosion Control.** During cleaning and construction, until all exposed dirt from excavation has been removed from the Lot or Duplex Unit or brought to an approved final grade surrounding the dwelling unit and until the Lot or Duplex Unit is permanently landscaped with vegetation or landscaping material, the Member shall take such steps as are necessary to prevent the erosion and washing of soil from the Lot or Duplex Unit into the street, gutters or adjoining Lot or



Duplex Units. Soils, mud and landscape waste carried from the Lot or Duplex Unit onto other properties and areas such as easements, rights of way and roadways, by erosive forces or by vehicles leaving a construction site, shall be cleaned up daily or as necessary, at the expense of the Member owning the Lot or Duplex Unit.

**S. No Refuse.** Rubbish, trash, garbage or other waste shall be kept in sanitary containers, and shall not be stored, kept, deposited or left on any Lot or Duplex Unit. Sanitary containers shall not be permitted to remain in public view except on days of collection.

**T. Signs.** No sign of any kind shall be maintained or displayed on any Lot or Duplex Unit except one sign of not more than one (1) square foot in area, identifying the occupants of the dwelling, one sign of not more than ten (10) square feet in area advertising the property for sale or rent, and signs used by contractors during the construction of any improvements thereon, or a sign advertising or endorsing a candidate for political office; however, such a sign shall be taken down immediately after the election.

**U. Swimming Pools.** No above ground swimming pools may be erected.

**V. Rules and Regulations.** From time to time the Association through its Board of Directors shall adopt additional rules and amend existing rules, including but not limited to rules to regulate potential problems relating to the use of the Lots or Duplex Units and the well-being of the residents, tenants, guests, and invitees. As such additional rules are adopted they shall be furnished in writing to all Members of record prior to the effective date of such rules and shall be binding on each Member and all residents and their guests. Copies of such rules may also be filed for record with these covenants and when files, shall become a part hereof.

## **ARTICLE VIII** **INSURANCE AND INDEMNIFICATION**

### **Section 1**

**Insurance.** The Board shall have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death to persons, and property damage, in such limits as the Board shall deem desirable, insuring the Association, its Directors, officers, committee members, employees, and agents from liability in connection with the Creek, improvements located thereon, and other real and personal property of the Association, and insuring the Directors, officers and committee members of the Association from liability for good faith acts or omissions beyond the scope of their respective authorities. Premiums for all such insurance shall be a common expense of the Association.

### **Section 2**

**Indemnification.** The Directors, officers and committee members of the Association shall not be liable to any Member, or any person claiming by or through any such Member, for any act or omission to act in the performance of their duties, and the Association shall indemnify all such