

**BY-LAWS  
OF  
THE TRAILS HOMES ASSOCIATION, INC.**

**ARTICLE I**

**Definitions**

*Section 1.* "ASSOCIATION" shall mean and refer to THE TRAILS HOMES ASSOCIATION, INC., a not for profit corporation organized and existing under the laws of the state of Missouri.

*Section 2.* "ARTICLES OF INCORPORATION" shall mean the Articles of Incorporation of The Trails Homes Association, Inc., as such Articles of Incorporation may from time to time be amended.

*Section 3.* "BY-LAWS" shall mean the By-Laws of The Trails Homes Association, Inc., as originally adopted and as from time to time amended.

*Section 4.* "DECLARATION" shall mean The Homes Association Declaration filed for record with the Recorder of Deeds for Clay County, Missouri, as such Declaration may from time to time be amended.

*Section 5.* "PROTECTIVE COVENANTS" shall mean the Declaration of Protective Covenants of the Trails, as filed with the Recorder of Deeds for Clay County, Missouri, as such Declaration of Protective Covenants may from time to time be amended.

*Section 6.* "DEVELOPER" shall mean the Trails Associates, Inc., a Missouri corporation, its successors and assigns.

*Section 7.* "PROPERTIES" shall mean and refer to the property described on Exhibit "A" hereto attached and incorporated herein by reference and such additions thereto as may hereafter be brought within the jurisdiction of the Association by annexation as provided in the Articles of Incorporation, By-Laws, Declaration or Protective Covenants.

*Section 8.* "COMMON AREAS" shall mean and refer to the entire area designed for a common use and benefit of the owners, tenants, and invitees of each, including, but not by way of limitation, parks, playgrounds, swimming pools, recreational facilities, tennis courts, commons, footways, including buildings, structures and personal properties incident thereto, and any other properties owned and maintained by the Association for the common benefit and enjoyment of the residents within the Properties.

*Section 9.* "BUILDING" shall mean a structure composed of units.

*Section 10.* "UNIT" shall mean the portion of a Building which is designed and used exclusively for single family residential purposes which shall include the patio area and other such areas within each Residential Tract as shown on the recorded certificate of survey of each platted lot of The Trails not included in "Enclosed Floor Area".

*Section 11.* "ENCLOSED FLOOR AREA" as used herein shall mean and include in all cases areas on the first, second, and third floors of each unit, enclosed and finished for all year occupancy, and all atriums, computed on outside measurements or center of common walls of the Units, but shall not mean or include any areas in basements, garages, porches, attics, or patios.

*Section 12.* "OWNER" shall mean the owner, whether one or more persons or entities, in fee simple of any Unit, but excluding those having such interest merely as security for the performance of an obligation.

*Section 13.* "TENANT" shall mean the individual(s) renting a Unit from an owner.

*Section 14.* "PROJECT" shall mean THE TRAILS as it ultimately may be (if and when enlarged from time to time) fully developed.

*Section 15.* "RESIDENTIAL TRACT" shall mean the area of property owned by an Owner or the Developer, in fee simple, on which a Unit is, or is to be, constructed, as legally described on the recorded certificate of survey of each platted lot, or the plat, of the Project.

*Section 16.* "COMMON AREAS TRACT" shall mean the area or property owned by the Association, or the Developer, in fee simple, as legally described on the recorded certificate of survey of each platted lot, or the plat, of the Project.

## **ARTICLE II**

### **Location**

*Section 1.* The principal office of the Association shall be located at 20 West 9th Street, Kansas City, Missouri, or such other place as may from time to time be designated by the Board of Directors of the Association.

## **ARTICLE III**

### **Membership**

*Section 1.* Every Owner of a Residential Tract included within the Properties, or any portion thereof as more particularly described on any document now or hereafter recorded, together with the owners of any other land which may from time to time be made subject to all of the terms and provisions of the Declaration, Protective Covenants, Articles of Incorporation and these By-Laws, shall be a member of the Association, and no Owner shall be permitted or allowed to disclaim said membership and the duties, obligations and benefits thereof nor withdraw from the Association for any reason; provided, that the foregoing is not intended to include persons or entities who hold an interest in the Residential Tract or Tracts merely as security for performance of an obligation.

*Section 2.* The rights of membership are subject to the payment of annual and special assessments levied by the Association, the obligation of which assessments is imposed against each owner of an becomes a lien upon the property against which such assessments are made as provided by Article VI of the Declaration to which the properties are subject and which is recorded in book 1144 page 572 in the Records of the Recorder of Clay County, Missouri, and which provides for (a) creation of the lien and personal obligation for such assessment in Section 1 of said Article VI of the Declaration, (b) payment of annual assessments as provided in Section 2 of said Article VI of the Declaration, (c) special assessments, as provided for in Section 3 of said Article VI of the Declaration, (d) late charges as provided for in Section 4 of said Article VI of the Declaration, and (e) foreclosures of liens as provided for in Section 5 of said Article VI of the Declaration.

*Section 3.* The membership rights, including but not limited to the rights provided for in Articles IV and V of these By-Laws, of any person whose interest in the Properties is subject to assessments under Article III, Section 2 of these By-Laws may be suspended by action of the Directors during the period when the assessments remain unpaid; but, upon payment of such assessments, his rights and privileges shall be automatically restored. The Directors shall adopt and publish rules and regulations governing the use of the Common Areas, and the personal conduct of any person thereon, as provided in Article IX, Section 1, and in the event of breach of such rules and regulations the Directors may, in their discretion, suspend the rights of any such person for violation of such rules and regulations, such suspension period not to exceed thirty (30) days.

## **ARTICLE IV**

### **Voting Rights**

*Section 1.* The Association shall have two classes of voting membership, as follows:

(a) Class A: Each Owner, with the exception of the Developer, of a completed residence in The Trails, a subdivision of the City of Gladstone, Clay County, Missouri, shall be a Class A member. Each Class A member shall be entitled to one vote for each Unit in which he holds fee simple title. When more than one person holds such interest in any Unit, all such persons shall be members, and the vote for such Unit shall be exercised as they, among themselves determine, but in no event shall more than one vote be cast with respect to any Unit.

(b) Class B: The Class B member(s) shall be the Developer. The Class B member(s) shall be entitled to four (4) votes for each designated Residential Tract in The Trails, regardless of whether there is a completed Unit located thereon, in which Developer holds fee simple title.

## **ARTICLE V**

### **Property Rights and Rights of Enjoyment of Common Property**

*Section 1.* Each member shall be entitled to the use and enjoyment of the Common Areas in the manner provided in rules and regulations adopted by the Board of Directors for such purpose in accordance with Article III, Section 3, of these By-Laws.

*Section 2.* Any member may delegate his rights of enjoyment in the Common Areas to the members of his family who reside upon the Properties or to any of his tenants who reside thereon under a leasehold interest for a term of one year or more. Such member shall notify the Secretary in writing of the name of any such person and of the relationship of the member to such person. The rights and privileges of such person are subject to suspension under Article III, Section 3, to the same extent as those of the member.

## **ARTICLE VI**

### **Association Purposes and Powers**

The Association has been organized for the purpose of promoting the health, safety, welfare and enjoyment of the residents within the Properties, and such additions thereto as may hereafter be brought within the jurisdiction of the Association. In connection with such purpose, the Association shall have the powers set forth in Article V of the Articles of Incorporation of The Trails Homes Association, Inc.

## **ARTICLE VII**

### **Board of Directors**

*Section 1.* The affairs of the Association shall be managed by a Board of three (3) Directors who need not be members of the Association. The initial Board of Directors shall consist of three (3) Directors as established in the Articles of Incorporation of The Trails Homes Association, Inc., which Directors shall serve until the first annual meeting of the Association, which meeting shall be held on the fourth Tuesday of March of each and every year, commencing 1974, at which meeting the members shall elect Directors. The number and term of Directors for the Association may, from time to time, be changed by majority vote of not less than two-thirds (2/3) of the members entitled to vote thereon, which change in number of Directors shall be reflected by amendment to the Articles of Incorporation and resultant amendment to these By-Laws; **provided** that the number of Directors as authorized by the Articles of Incorporation and these By-Laws shall always be an odd number.

*Section 2.* Vacancies in the Board of Directors shall be filled by the remaining Directors, or the majority thereof if more than three (3). Any such appointed Director shall hold office until his successor is elected by the members, who may make election at the next annual meeting of the members or at any special meeting duly called for that purpose.

## **ARTICLE VIII**

### **Election of Directors; Nominating Committee; Election Committee**

*Section 1.* Election to the Board of Directors shall be by written ballot as hereinafter provided. At such election, the members or their proxies may cast, in respect of each vacancy, as many votes as they are entitled to exercise under the provisions of the recorded documents applicable to the Properties. The names receiving the largest number of votes shall be elected.

*Section 2.* Nominations for election to the Board of Directors shall be made by a Nominating Committee which shall be one of the Standing Committees of the Association.

*Section 3.* The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each such annual meeting.

*Section 4.* The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members, as the Committee in its discretion shall determine. Nominations shall be placed on a written ballot which shall be sent to all members with written notice of the meeting at which any such election is to be held. At the annual or special meeting at which such election is being held, the ballots shall be collected and counted, and the results of such election shall be announced at the meeting.

## **ARTICLE IX**

### **Powers and Duties of the Board of Directors**

*Section 1.* The Board of Directors shall have power:

- (a) To call special meetings of the members whenever it deems necessary and it shall call a meeting at any time upon written request of one-fourth (1/4) of the voting membership, as provided in Article XIII, Section 2.
- (b) To appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these By-Laws shall be construed to prohibit the employment of any member, officer or Director of the Association in any capacity whatsoever.
- (c) To adopt and publish rules and regulations governing the use of the Common Areas and the personal conduct of the members and their guest thereon.
- (d) To exercise for the Association all powers, duties and authority vested in or delegated to this Association, including those referred to in Article III, Section 2, except those reserved to the meeting or to members in the covenants.
- (e) In the event that any members of the Board of Directors of this Association shall be absent from three (3) consecutive regular meetings of the Board of Directors, the Board may by action taken at the meeting during which said third absence occurs, declare the office of said absent Director to be vacant.

*Section 2.* It shall be the duty of the Board of Directors:

- (a) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting when such is requested in writing by one-fourth (1/4) of the voting membership, as provided in Article XIII, Section 2.
- (b) To supervise all officers, agents and employees of this Association, and to see that their duties are properly performed.
- (c) To employ a professional real estate management company to carry out the purposes of this Association including, but not by way of limitation, maintenance of the Common Areas.
- (d) As more fully provided in the Declaration applicable to the Properties, to establish, levy and assess against the Residential Tracts, and collect the assessments, and in connection therewith:
  - (1) To fix the amount of the assessment against each Residential Tract for each assessment period at least thirty (30) days in advance of such date or period and, at the same time;
  - (2) To prepare a roster of the Properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any member, and, at the same time;
  - (3) To send written notice of each assessment to every Owner subject thereto.
- (e) To issue, or to cause an appropriate officer to issue, upon demand by any person a certificate setting forth whether any assessment has been paid. Such certificate shall be conclusive evidence of any assessment therein stated to have been paid.

## **ARTICLE X**

### **Directors' Meetings**

*Section 1.* A regular meeting of the Board of Directors shall be held at 10:00 A.M. on the fourth Tuesdays of March, June, September and December of each and every year (or the immediately succeeding business day if any such meeting date falls on a holiday) provided that the Board of Directors may, by resolution, change the day and hour of holding such regular meeting.

*Section 2.* Notice of such regular meeting is hereby dispensed with.

*Section 3.* Special meetings of the Board of Directors shall be held when called by a majority of the Directors then serving after not less than three (3) days' notice to each Director.

*Section 4.* The transaction of any business at any meeting of the Board of Directors, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice if a quorum is present and, if either before or after the meeting, each of the Directors not present signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records and made part of the minutes of the meeting.

*Section 5.* The majority of the Board of Directors shall constitute a quorum thereof.

## ARTICLE XI

### Officers

*Section 1.* The officers shall be a Chairman of the Board, a President, a Vice President, a Secretary, and a Treasurer. The Chairman of the Board, President and Vice President shall be members of the Board of Directors, and the Chairman of the Board and President may be the same individuals.

*Section 2.* The officers shall be chosen by majority vote of the Directors.

*Section 3.* All officers shall hold office during the pleasure of the Board of Directors.

*Section 4.* The Chairman of the Board shall preside at the meetings of the Board of Directors, shall see that orders and resolutions of the Board of Directors are carried out and sign all notes, checks, leases, deeds of trust, chattel mortgages, financing statements, deeds, and all other written instruments.

*Section 5.* The Vice President shall perform all the duties of the President in his absence.

*Section 6.* The Secretary shall be ex officio the secretary of the Board of Directors, shall record the votes and keep the minutes of all proceedings in a book to be kept for the purpose. He shall sign all certificates of membership. He shall keep the records of the Association. He shall record in a book kept for that purpose the names of all members of the Association together with their addresses as registered by such members (see Article XII, Section 3).

*Section 7.* The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors, **provided however**, that a resolution of the Board of Directors shall not be necessary for disbursements made in the ordinary course of business conducted within the limits of a budget adopted by the Board. The Treasurer shall sign all checks and notes of the Association, provided that such checks and notes shall also be signed by the President or the Vice President.

*Section 8.* The Treasurer shall keep proper books of account and cause an annual audit of the Association books to be made by a certified public accountant at the completion of each fiscal year. He shall prepare an annual budget and an annual balance sheet statement and the budget and balance sheet shall be presented to the membership at its regular annual meeting.

## ARTICLE XII

### Committees

*Section 1.* The Standing Committee of the Association shall be:

- The Nominations Committee
- The Recreation Committee
- The Maintenance Committee
- The Architectural Control Committee
- The Publicity Committee
- The Audit Committee

Unless otherwise provided herein, each committee shall consist of a Chairman and two or more members and shall include a member of the Board of Directors for board contact. The committees shall be appointed by the Board of Directors prior to each annual meeting to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each such annual meeting. The Board of Directors may appoint such other committees as it deems desirable.

*Section 2.* The Nominations Committee shall have the duties and functions described in Article VIII.

*Section 3.* The Recreation Committee shall advise the Board of Directors on all matters pertaining to the recreational program and activities of the Association and shall perform such other functions as the Board, in its discretion, determines.

*Section 4.* The Maintenance Committee shall advise the Board of Directors on all matters pertaining to the maintenance, repair or improvement of the Common Areas of the Association, and shall perform such other functions as the Board, in its discretion, determines.

*Section 5.* The Architectural Control Committee shall advise the Board of Directors on all matters pertaining to construction of improvements on the Properties. It shall watch for any proposals, programs, or activities which may adversely affect the residential value of the Properties and shall advise the Board of Directors regarding Association action on such matters.

*Section 6.* The Publicity Committee shall inform the members of all activities and functions of the Association and shall, after consulting with the Board of Directors, make such public releases and announcements as are in the best interests of the Association.

*Section 7.* The Audit Committee shall supervise the annual audit of the Association's books and approve the annual budget and balance sheet statement to be presented to the membership at its regular annual meeting as provided in Article XI, Section 8. The treasurer shall be an ex officio member of the Committee.

*Section 8.* With the exception of the Nominations Committee and the Architectural Control Committee, each committee shall have power to appoint a subcommittee from among its membership and may delegate to any such subcommittee any of its powers, duties and functions.

*Section 9.* It shall be the duty of each committee to receive complaints from members on any matter involving Association functions, duties, and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, director or officer of the Association as is further concerned with the matter presented.

## **ARTICLE XIII**

### **Meetings of Members**

*Section 1.* The regular annual meeting of the members shall be held on the fourth Tuesday of the month of March in each year, at the hour of 7:00 P.M. If the day for the annual meeting of the members shall fall upon a holiday, the meeting will be held at the same hour on the first day following which is not a holiday.

*Section 2.* Special meetings of the members for any purpose may be called at any time by a majority of the Board of Directors then serving, or upon written request of the members who have a right to vote one-fourth (1/4) of all of the votes of the Class A membership.

*Section 3.* Notice of any meetings shall be given to the members by the Secretary. Notice may be given to the member either personally, or by sending a copy of the notice through the mail, postage thereon fully prepaid to his address appearing on the books of the corporation. Each member shall register his address with the Secretary, and notices of meetings shall be mailed to him at such address. Notice of any meeting regular or special shall be mailed at least six (6) days in advance of the meeting and shall set forth in general the nature of the business to be transacted, **provided however**, that if the business of any meeting shall involve an election governed by Article VIII or any action governed by the Articles of Incorporation, the Declaration or the Protective Covenants, notice of such meeting shall be given or sent as therein provided.

*Section 4.* The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each Class of membership shall constitute a quorum for any action governed by these By-Laws. Any action governed by the Articles of Incorporation, the Declaration or the Protective Covenants shall require a quorum as therein provided.

## **ARTICLE XIV**

### **Proxies**

*Section 1.* At all corporate meetings of members, each member may vote in person or by proxy.

*Section 2.* All proxies shall be in writing and filed with the Secretary. No proxy shall extend beyond a period of eleven (11) months, and every proxy shall automatically cease upon sale by the member of his Unit or other interest in the Properties.

## ARTICLE XV

### Books and Papers

*Section 1.* The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to the inspection of any members.

## ARTICLE XVI

### Corporate Seal

*Section 1.* The Association shall have a seal in circular form having within its circumference the words:

THE TRAILS HOMES ASSOCIATION, INC.

## ARTICLE XVII

### Amendments

*Section 1.* These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of each class of members present in person or by proxy, **provided** that those provisions of these By-Laws which are governed by the Articles of Incorporation of this Association may not be amended except as provided in the Articles of Incorporation or applicable law; and **provided further** that any matter stated herein to be or which is in fact governed by the Declaration or Protective Covenants applicable to the Properties may not be amended except as provided in such Declaration or Protective Covenants.

*Section 2.* In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration or Protective Covenants applicable to the Properties referred to in Section 1 and these By-Laws, the Declaration or Protective Covenants shall control.

## ARTICLE XVIII

### Indemnification of Officers and Directors

*Section 1.* Each director, officer, former director and former officer of this Association and the legal representatives thereof shall be indemnified and held harmless by this Association against liabilities, expenses, counsel fees and costs reasonably incurred by him or his estate in connection with or arising out of any action, suit, proceeding or claim in which he is made a party by reason of his being, or having been, such director or officer; provided that this Association shall not indemnify such director or officer with respect to any matters as to which he shall be finally adjudged in any such action, suit or proceeding to have been liable for gross negligence or willful misconduct in the performance of his duties as such director or officer. The indemnification herein provided for, however, shall apply also in respect of any amount paid in compromise of any such action, suit, proceeding or claim asserted against such director or officer (including expenses, counsel fees and costs reasonably incurred in connection therewith), provided the Board of Directors of this Association shall have first approved such proposed compromise settlement and determined that the director or officer involved was not guilty of gross negligence or willful misconduct; but in taking such action any director involved shall not be qualified to vote thereon, and if for this reason a quorum of the Board of Directors cannot be obtained to vote on such matter, it shall be determined by a committee of three (3) persons appointed by the members at a duly called special meeting or at an annual meeting. In determining whether or not a director or officer was guilty of gross negligence or willful misconduct in relation to any such matters, the Board of Directors or committee appointed by the members, as the case may be, may rely conclusively upon an opinion of independent legal counsel selected by such Board or committee. Any compromise settlement authorized herein shall not be effective until submitted to and approved by a court of competent jurisdiction. The right to indemnification herein provided shall not be exclusive of any other rights to which such director or officer may be lawfully entitled.

IN WITNESS WHEREOF, we, being all of the Directors of THE TRAILS HOMES ASSOCIATION, INC. have hereunto set our hands this 31st day of January, 1974.

\_\_\_\_\_  
Raymond R. Brock, Jr.

\_\_\_\_\_  
James L. Carney

\_\_\_\_\_  
William F. Gillen

STATE of MISSOURI }  
COUNTY of JACKSON } SS

BE IT REMEMBERED, that on this 31st day of January, 1974, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Raymond R. Brock, Jr., personally known to me, and known to me to be the same person who executed the foregoing By-Laws, and he duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

---

Carol A. Johns, Notary Public

My commission expires:

July 7, 1976.

STATE of MISSOURI }  
COUNTY of JACKSON } SS

BE IT REMEMBERED, that on this 31st day of January, 1974, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared James L. Carney, personally known to me, and known to me to be the same person who executed the foregoing By-Laws, and he duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

---

Carol A. Johns, Notary Public

My commission expires:

July 7, 1976.

STATE of MISSOURI }  
COUNTY of JACKSON } SS

BE IT REMEMBERED, that on this 31st day of January, 1974, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared William F. Gillen, personally known to me, and known to me to be the same person who executed the foregoing By-Laws, and he duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

---

Carol A. Johns, Notary Public

My commission expires:

July 7, 1976.



**EXHIBIT "A" TO HOMES ASSOCIATION DECLARATION**

**LEGAL DESCRIPTION**

Lots 1 thru 35 inclusive and Tracts A, B, C, D, E, F, THE TRAILS, an addition in and to the City of Gladstone, Clay County, Missouri.

## D-15141

### RESTATED AND AMENDED HOMES ASSOCIATION DECLARATION

THIS RESTATED AND AMENDED HOMES ASSOCIATION DECLARATION is made this 21st day of July, 1975, by THE TRAILS ASSOCIATES, INC., a Missouri corporation.

#### WITNESSETH:

*WHEREAS*, The Trails Associates, Inc. is the owner of all of the lots and tracts shown on the plat of THE TRAILS, a subdivision of land in Clay County, Missouri, filed for record on June 20, 1973 in the office of the Recorder of Deeds of Clay County, Missouri, and recorded in Book 15 at Page 59, the legal description of which is attached hereto as Exhibit "A", except such portions thereof as have been previously conveyed to bona fide purchasers; and

*WHEREAS*, on the 4th day of January, 1974, The Trails Associates, Inc. filed a Homes Association Declaration with the Recorder of Deeds of Clay County, Missouri, which Homes Association Declaration is recorded as Document No. C-94395, in Book 1144, at Page 572, and

*WHEREAS*, on the 3rd day of October, 1974, The Trails Associates, Inc. filed a First Amendment to Homes Association Declaration with the Recorder of Deeds of Clay County, Missouri, which First Amendment to Homes Association Declaration is recorded as Document No. D-5914, in Book 1169 at Page 133, and

*WHEREAS*, The Trails Associates, Inc. now desires to further amend and restate the Homes Association Declaration, as previously amended, in such manner as is necessary in order to permit future owners of residential tracts in THE TRAILS to participate in the Federal National Mortgage Association mortgage loan program, and

*WHEREAS*, pursuant to the provisions of Article VIII of the Homes Association Declaration, as previously amended and as hereby amended, a two-thirds (2/3) majority vote of the members of The Trails Homes Association, Inc. has agreed to amendment and restatement of the Homes Association Declaration for the purposes as aforesaid,

*NOW THEREFORE*, to provide the means necessary to achieve the aforesaid purposes, The Trails Associates, Inc. does now and hereby further amend the Homes Association Declaration for THE TRAILS, as previously filed of record, and does now and hereby restate the Homes Association Declaration for THE TRAILS, in its entirety and as previously and hereby amended:

#### Definition of Terms Used

"Association" shall mean and refer to The Trails Homes Association, Inc., a Not-For-Profit corporation organized and existing under the laws of the State of Missouri.

"Articles of Incorporation" shall mean the Articles of Incorporation of The Trails Homes Association, Inc., as such Articles of Incorporation may from time to time be amended.

"By-Laws" shall mean the By-Laws of The Trails Homes Association, Inc. as originally adopted and as from time to time amended.

"Declaration" shall mean the Homes Association Declaration filed for record with the Recorder of Deeds for Clay County, Missouri, as such Declaration may from time to time be amended.

"Protective Covenants" shall mean the Declaration of Protective Covenants of THE TRAILS, as filed with the Recorder of Deeds for Clay County, Missouri, as such Declaration of Protective Covenants may from time to time be amended.

"Developer" shall mean The Trails Associates, Inc., a Missouri corporation, its successors and assigns.

"Properties" shall mean and refer to the property described on Exhibit "A" attached hereto and incorporated herein by reference and such additions thereto as may hereafter be brought within the jurisdiction of the Association by annexation as provided in the Articles of Incorporation, By-Laws, Declaration or Protective Covenants.

**"Common Areas"** shall mean and refer to the entire area designated for common use and benefit of the owners, tenants and invitees of each, including, but not by way of limitation, parks, playgrounds, swimming pools, recreational facilities, tennis courts, commons, footways, including buildings, structures and personal properties incident thereto, and any other properties owned and maintained by the Association for the common benefit and enjoyment of the residents within the Properties.

**"Building"** shall mean a structure composed of Units.

**"Unit"** shall mean the portion of a Building which is designed and used exclusively for single family residential purposes, which shall include the patio area and such other areas within each Residential Tract as shown on the recorded certificate of survey of each platted lot of THE TRAILS not included in "Enclosed Floor Area".

**"Enclosed Floor Area"** as used herein shall mean and include in all cases areas on the first, second and third floors of each Unit, enclosed and finished for all year occupancy, and all atriums, computed on outside measurements or center of common walls of the Units, but shall not mean or include any areas in basements, garages, porches, attics or patios.

**"Owner"** shall mean the Owner, whether one or more persons or entities, in fee simple of any Unit, but excluding those having such interest merely as security for the performance of an obligation.

**"Tenant"** shall mean the individual(s) renting a Unit from an Owner.

**"Project"** shall mean THE TRAILS as it may ultimately be (if and when enlarged) from time to time fully developed.

**"Residential Tract"** shall mean the area of property owned by an Owner, or the Developer, in fee simple, on which a Unit is, or is to be, constructed, as legally described on the recorded certificate of survey of each platted lot, or the plat, of the Project.

**"Common Areas Tract"** shall mean the area of property owned by the Association, or the Developer, in fee simple, as legally described on the recorded certificate of survey of each platted lot, or the plat, of the Project.

## **ARTICLE I**

### **Membership in Association**

The Owners of the property described on Exhibit "A", or any portion thereof as more particularly described on any document now or hereafter recorded, together with the owners of any other land which may from time to time be made subject to all of the terms and provisions of this Declaration in the manner hereinafter provided for, shall be members of an Association, which is hereby created and established, to be known as THE TRAILS HOMES ASSOCIATION, INC. Membership in the Association shall be mandatory for the Owner or Owners of each of the aforementioned Residential Tracts and no Owner shall be permitted or allowed to disclaim said membership and the duties, obligations and benefits thereof nor withdraw from the Association for any reason. Upon becoming a member in the Association such Owner shall be entitled thereby to the non-severable use and enjoyment of the Common Areas (subject to such rules governing the use and enjoyment thereof as may be found in the Articles of Incorporation, By-Laws, Declaration and Protective Covenants), and transfer of ownership of a Residential Tract shall automatically transfer membership in the Association and all rights of the transferor with respect to the Common Areas to which ownership of such Residential Tract relates. The foregoing is not intended to include persons or entities who hold an interest in a Residential Tract or Tracts merely as security for performance of an obligation. The Association shall be incorporated under the laws of the State of Missouri as a corporation not organized for profit. Membership in the Association shall be limited to the Owners of Residential Tracts within the boundaries of the Project as it exists from time to time. The Association shall be the sole judge of the qualifications of its members and of their right to participate in and vote at its meetings and proceedings in accordance with its Articles of Incorporation and By-Laws.

## **ARTICLE II**

### **Voting Rights**

The Trails Homes Association, Inc. shall have two classes of voting membership, as follows:

(a) **Class A:** Each Owner, with the exception of the Developer, of a complete Unit in THE TRAILS, a subdivision in the City of Gladstone, Clay County, Missouri, shall be a Class A member. Each Class A member shall be entitled to one vote for each Unit in which he holds fee simple title. When more than one person holds such interest in any Unit,

all such persons shall be members, and the vote for such Unit shall be exercised as they, among themselves determine, but in no event shall more than one vote be cast with respect to any Unit.

(b) *Class B*: The Class B member(s) shall be the Developer. The Class B member(s) shall be entitled to three (3) votes for each Residential Tract in THE TRAILS, regardless of whether there is a completed Unit located thereon, in which the Developer holds fee simple title; **provided, however**, that all voting rights of the Class B member(s) shall cease and be null and void on July 1, 1978, regardless of whether the Class B member(s) owns any Residential Tract or Residential Tracts in THE TRAILS as of such date.

### ARTICLE III

#### Additions to Land

The Developer shall not add such other adjoining land owned by the Developer to the land subject to this Declaration, unless all of the following conditions precedent have been satisfied:

(a) The Developer, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of THE TRAILS, **provided** that such additions are in accord with a General Plan of Development assuring that future improvements of such adjoining land will be of comparable style, quality, size and cost as THE TRAILS, and such General Plan of Development shall have been submitted for review to the Owners Association and any applicable governmental regulatory authority, agency or association.

(b) Such General Plan of Development shall show the proposed additions to the land subject to the Declaration and shall contain:

- (i) A general indication of size and location of additional development stages and proposed land uses in each;
- (ii) The approximate size and location of common areas proposed for each stage;
- (iii) The general nature of proposed common facilities and improvements;
- (iv) A statement that the proposed additions, if made, will become subject to assessment for their just share of Owners Association expenses;
- (v) A schedule for termination of the Developer's right to bring additional development stages within the scheme.

Unless otherwise stated therein, such General Plan of Development shall not bind the Developer, its successors and assigns, to make the proposed additions to or adhere to the General Plan of Development in any subsequent development of the land shown thereon and the General Plan of Development shall contain a conspicuous statement to this effect.

(c) The additions authorized under this Article shall be made by filing of record such supplemental Declarations with respect to the additional property as shall be necessary, which shall extend the scheme of the covenants and restrictions of the Protective Covenants and provisions of this Declaration to such property. Such supplemental document may contain such complimentary additions and modifications as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration or of the Protective Covenants. In no event, however, shall any of such supplementary documents revoke, modify or add to the covenants established by the Articles of Incorporation, By-Laws, Protective Covenants and this Declaration.

### ARTICLE IV

#### Powers and Duties of the Association

##### Section 1. Duties

The Association shall have the following duties:

- (a) To paint and/or stain the exterior trim and siding of the Buildings and patio fencing which is externally visible, at such intervals as may be deemed necessary by the Association; provided, however, that the

maintenance and repair of the Buildings and patio area (other than is provided for herein) shall be the responsibility of each respective Owner, and provided further that the Association shall have no duty to maintain and repair the interior of any Building or Unit.

(b) To establish and maintain a roof replacement reserve for all Buildings and to replace such roofs on a periodic basis coinciding with the normal estimated life of such roofs.

(c) To maintain and repair the Common Areas, and the improvements, if any, located thereon, and to replace items therein when necessary, all of which includes but it is not limited to grass areas, flower gardens, shrubs, trees, plants, curbs, walkways, drainage and lighting facilities, striping of parking areas, removal of snow, ice and trash, recreational facilities and other parts and accessories in and to the Common Areas.

(d) To pay all real estate taxes and special assessments levied against the Common Areas.

(e) To obtain and provide public liability insurance and such other insurance deemed necessary by the Association for the Common Areas, as more specifically set forth herein in Article VI.

(f) To employ a professional real estate management company to carry out the purpose of the Association including, but not by way of limitation, maintenance of the Common Areas; provided that any management agreement for such purposes shall provide that it is terminable by the Association for cause upon 30 days written notice thereof, and the term of such management agreement may not exceed one year, renewable by agreement of the parties for successive one year periods.

(g) To establish reserve account(s) for repair and maintenance of Buildings and Common Areas, to periodically review the adequacy thereof, and to keep and maintain such reserve funds in interest bearing accounts, until expended, for the benefit of the Association.

(h) To do such other matters as may from time to time be necessary to maintain the quality and appearance of the Common Areas and the Buildings.

(i) To fix, levy and collect assessments, both general and special, as Common Areas costs or otherwise, against each Unit, as hereinafter set forth in Article V, in order to perform the duties required of the Association pursuant to Section 1 of this Article, and to carry out the powers granted the Association pursuant to Section 2 of this Article.

## **Section 2. Powers:**

The Association shall have the following powers:

(a) Unless the Board of Directors is satisfied that proper arrangements have been made for restoration, replacement or repair of any Unit or Building which has been damaged by an insured peril, to collect and receive the proceeds from any insurance company covering loss or damage by fire or other hazard or occurrence to any Unit, and to pay out of said proceeds the cost of any such restoration, reconstruction, replacement or repair hereinabove mentioned, and to collect any excess of the cost of any such work over the said insurance proceeds from the Owner or Owners of the respective Unit incurring such excesses all as hereinafter provided in Article VI hereof.

(b) To establish and publish such rules and regulations from time to time which it deems necessary for the enjoyment by the Owners and for the protection of the Common Areas, and to amend said rules and regulations as it deems necessary.

(c) To perform, install and maintain any and all other functions, measures and items deemed necessary by the Association for the convenience, benefit and enjoyment of the Owners.

## **Section 3. Rights of Holders of First Deeds of Trust:**

In the event that the Association shall fail to pay all real estate taxes and special assessments levied against the Common Areas, as otherwise required by paragraph (d) of Section 1 of this Article IV, or if the Association shall fail to pay any other charges which are in default and which may or have become a charge against the Common Areas, or if the Association shall have failed to pay premiums on hazard insurance as required in accordance with the provisions of Article VI, the holders of the First Deeds of Trust on Residential Tracts and/or Units may, jointly or singly:

(a) Pay real estate taxes and special assessments or other charges levied against the Common Areas which are in default and which may or have become a charge against the Common Areas, or any portion thereof;

(b) Pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas or any portion thereof. In the event any one or more of the holders of First Deeds of Trust shall make any such payments, such holder or holders of First Deeds of Trust shall be owed immediate reimbursement therefor by the Association, and entitlement to such reimbursement shall be reflected in an agreement to be executed by the Association, in favor of all holders of First Deeds of Trust of Residential Tracts and/or Units, and the Association shall deliver one or more certified copies of such agreement to such holder or holders of First Deeds of Trust as may request delivery of such agreement.

## **ARTICLE V**

### **Covenant for Maintenance Assessments**

#### **Section 1. Creation of the Lien and Personal Obligation Assessments:**

Each Owner of a Unit, by acceptance of a Deed therefor, whether or not it shall be so expressed in any deed or other conveyance, is deemed to covenant and agree to pay to the Association assessments or charges to be fixed, established, levied and collected from time to time as herein provided, (regardless of whether such charges are for maintenance and repair of the Common Areas or otherwise). The assessments, both general and special, together with such interest thereon and such costs of collection thereof as may be necessary, as hereinafter provided, shall be a charge on the Residential Tract involved and shall be a continuing lien upon the Residential Tract against which each such assessment is made; provided that the lien of any such assessments shall be subordinate to the lien of any First Deed of Trust now or hereafter placed upon such Residential Tract, and recorded prior to the date such assessment becomes due. The foregoing provisions of this section 1 shall be applicable to the Developer with respect to all completed Units owned by the Developer; however, vacant Residential Tracts and Residential Tracts on which there are uncompleted Units shall not be subject to the foregoing provisions, and the Developer shall have responsibility for maintenance, at its expense, of such vacant Residential Tracts and uncompleted Units, **provided** that Developer shall not, in any manner, purposely delay completion of Units under construction so as to avoid any obligation for payment of assessments as provided for in the preceding provisions of this section 1.

#### **Section 2. Payment of Annual Assessments:**

Prior to the beginning of each calendar year, the Board of Directors of the Association shall prepare a Budget for the ensuing calendar year and such Budget shall cover the estimated costs of maintaining the Common Areas and performing all of the obligations and exercising the powers established under this Declaration. On the basis of this Budget, the monthly assessments for each Owner of each Unit for the ensuing year shall be established by the Association on the basis that the costs as estimated under such Budget shall be borne equally by the Owners of the Units. The monthly assessments shall be paid on the first day of each calendar month in each calendar year and shall be deemed delinquent after the tenth day of such month. All computations relating to obligations to be performed under this Declaration shall be accomplished in accordance with accepted practices and the Association shall employ a firm of Certified Public Accountants to render a written audit of its operations for each calendar year and a copy of such written audit shall be available to the Owners of each Unit.

#### **Section 3. Special Assessments:**

The cost incurred by the Association in performing its duties under Section 1 of Article IV, as such is applicable to particular Buildings, shall be billed as a special assessment to the Owners of the Units in the particular Buildings in the proportion that the Enclosed Floor Area in the Unit bears to all of the Enclosed Floor Area in the Building upon which the work was performed, and the amount specified in the billing shall constitute a special assessment which shall be paid within thirty (30) days of such billing.

#### **Section 4. Late Charges:**

If an assessment or special assessment is not paid when due, the Association may exact a Late Charge as established by the Board of Directors, and such Late Charge shall become a lien on a defaulting Unit as any other assessment until paid, subject to the limitations of such lien as set forth in Section 1 of this Article V.

#### **Section 5. Foreclosure of Lien:**

If any assessment made pursuant to the provisions hereof by the Association remains unpaid for thirty (30) days after the date upon which it is due, it may be foreclosed by suit by the Association in a like manner as a mortgage (or deed of trust) of real property. The Association shall have the power to bid at the foreclosure sale and to acquire and hold, lease, mortgage and convey any property acquired as a result of a successful bid. Suit to recover money charged for unpaid Common Areas assessments may be maintained without foreclosing or waiving the lien securing the same.

## **Section 6. Limitations on Foreclosure of Lien:**

The right of the Association to exercise any of its rights of foreclosure pursuant to Section 5 of this Article V shall be subject to the following limitations:

(a) The Association shall have previously given notice to any holder of a First Deed of Trust which might be affected thereby, of any default by the Owner of a Unit, which default has not been cured within thirty (30) days, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation, By-Laws or the Protective Covenants.

(b) Any holder of a First Deed of Trust who comes into possession of a Unit pursuant to the remedies provided in the Deed of Trust, or any similar mortgage, or foreclosure of the Deed of Trust, or Deed (or Assignment) in lieu of foreclosure, shall take the Residential Tract and/or Unit free of any claims from the Association for unpaid assessments or charges against the Unit subject to such Deed of Trust which accrue prior to the time such holder comes into possession of the Unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units including the Unit subject to such Deed of Trust).

## **ARTICLE VI**

### **Insurance**

#### **Section 1. Liability Insurance:**

The Association shall obtain comprehensive public liability insurance covering all of the Common Areas and insuring the Association in such amounts as the Association may determine from time to time; provided that the amount of such insurance shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for personal injury and/or property damage arising out of a single occurrence, and such coverage shall include protection against liability for non-owned and hired automobile, liability for property of others, and, if applicable: garage keepers' liability, host liquor liability, water damage liability, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use to THE TRAILS. Each Owner of each Unit shall be responsible for obtaining and paying for his personal liability insurance.

#### **Section 2. Fidelity Insurance:**

The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, and employees of the Association and all others who handle, or are responsible for handling funds of the Association. Such fidelity bond shall meet the following requirements:

- (a) All such fidelity bond shall name the Association as an obligee; and
- (b) Such fidelity bond shall be written in an amount equal to at least One Hundred Fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves, unless a greater amount is required by Federal National Mortgage Association or other applicable governmental regulatory authority, agency or association; and
- (c) Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and
- (d) Such fidelity bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premiums) without at least fifteen (15) days prior written notice to the mortgage servicer on behalf of Federal National Mortgage Association, or other applicable mortgage servicer for any other governmental authority, agency or association.

#### **Section 3. Hazard and Other Insurance:**

(a) **Purchase of Insurance by Unit Owners.** The Owners of each Unit shall at all times obtain and maintain fire, windstorm and extended coverage insurance on its broadest terms, and vandalism and malicious mischief insurance, insuring such Owner's respective Unit for the full replacement cost. Copies of the policies of such insurance shall be kept on deposit with the Association and the Association shall be satisfactorily assured that the premium for such insurance is paid in full, and such policies shall name the Association as an additional insured thereunder, with any proceeds to be utilized for the repair and restoration of such damaged Unit. In addition, the Association shall give timely written notice to the holder of any First Deed of Trust of any such affected Unit of any substantial damage or destruction. If such insurance proceeds are insufficient to

repair or restore such damaged Unit, the Owner shall be responsible for any such deficiency. If any Owner shall default in performance of this requirement of procuring insurance, the Association may procure such insurance in the name of the Owner and the cost thereof shall be assessed as a special assessment against such Owner's Unit to be the responsibility of each Owner of each Unit to also obtain his own hazard insurance on the contents of his own Unit, including his additions, improvements, decorations, furnishings and personal property therein and his personal property stored elsewhere. In lieu of naming the Association as an "additional insured" of any such insurance, the Owner may name the Association, if permitted or required by the applicable insurer, as a "loss payee" under such insurance referred to in this paragraph.

(b) **Purchase of Insurance by the Association.** All real and personal property included in the Common Areas owned or used by the Association shall be insured for its full replacement value (i.e., 100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage) with an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent, and, if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement" or equivalent, such insurance to afford protection against at least the following:

- (i) Loss or damage by fire or other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, costs of demolition, vandalism, malicious mischief, wind-storm and water damage; and
- (ii) Such other risks as shall customarily be covered with respect to projects similar in construction, location and use to THE TRAILS.

The Association shall also maintain workmen's compensation and employer's liability insurance, if necessary, and such other insurance as the Association deems necessary. The Management Company, or any other firm retained by the Association or the Management Company, shall provide evidence of such coverage as a condition of employment.

(c) **Loss Payable Provisions.** All liability and workmen's compensation insurance policies purchased by the Association shall be for the benefit of the Association. No Unit Owner or Mortgagee shall have the right to require or to elect to apply the insurance proceeds from loss to real property to the reduction of any note secured by a deed of trust or any other evidence of debt on the damaged Unit and other damaged portions of the Project, or to assert any right or claim to any portion of the insurance proceeds, from loss to real property, unless it be the excess of insurance payments over the replacement costs of the damaged Unit and other damaged portions of the Project, and then only after the same is fully repaired and restored.

(d) **Utilization of Insurance Payments.** In the event of a hazard loss to improvements within the Common Areas and after payment of the proceeds of the insurance are paid to the Association for such loss or damage, or arrangements for such payment have been made, said property shall be restored as nearly as possible to the condition it was in prior to the damage. The Association shall determine the amount of money required to rebuild or repair, and if there are insufficient funds in the hands of the Association to pay for such repairs, then the deficiency shall be borne by and assessed equally to all of the Owners of Units. If the insurance proceeds are sufficient for, or in excess of, the amount needed for said repairs, then the Association shall have the damaged portion repaired and any surplus or excess shall be added to the Association's funds.

The Association shall be reimbursed for any and all actual expenses as a result of performing its duties designated in this Article VI.

## **ARTICLE VII**

### **Enforcement**

The Association, its successors and assigns, and also the Owner or the Owners of any of the Properties hereby restricted, shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the provisions set forth above, in addition to any ordinary legal action for damages, and failure of the Association, its successors and assigns, or any Owner or Owners of the Properties in THE TRAILS, to enforce any of the provisions set forth herein at the time of its violation shall, in no event, be deemed to be a waiver of the right to do so thereafter.

## **ARTICLE VIII**

### **Release or Modification**

The covenants, restrictions and provisions of this instrument shall be deemed covenants running with the land



and shall remain in full force and effect until January 1, 2009, at which time said covenants, restrictions and provisions shall automatically be extended for successive periods of ten (10) years each, provided that such covenants, restrictions and provisions may be amended, modified, changed or cancelled at any time, in whole or in part, by a written agreement adopted by a two-thirds (2/3) majority vote of the members of The Trails Homes Association, Inc., and One Hundred Percent (100%) of holders of the First Deeds of Trust. Any agreement modifying, changing or cancelling these restrictions shall become effective upon the date of its recording in the office of the Recorder of Deeds of Clay County, Missouri, which must be at least before the commencement of any such ten (10) year period.

## **ARTICLE IX**

### **Separability**

Invalidation of any provision 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 as set forth herein, but they shall remain in full force and effect.

## **ARTICLE X**

### **Binding Effect**

All of the provisions contained herein shall be binding on all Owners of the property described in Exhibit "A", or any portion thereof as more particularly described on any document now or hereafter recorded, together with the Owners of any other land which may from time to time be made subject to all of the terms and provisions of this Declaration in the manner herein provided for, together with their heirs, administrators, executors, successors or assigns and all persons claiming any right, title or interest in or to any such Unit or Units or other land under any such Owner or Owners.

## **ARTICLE XI**

### **Additional Miscellaneous Provisions**

#### **Section 1. Action Requiring Approval of 100% of Holders of First Deeds of Trust:**

Unless at least 100% of the holders of the First Deeds of Trust (based upon one vote for each Deed of Trust) of Residential Tracts or Units have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association for the benefit of Owners of Units; provided that the granting of easement for public utilities or other public purposes consistent with the intended use of such property by the Association shall not be deemed a transfer within the meaning of this paragraph.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner of a Unit.

(c) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the Units, the exterior maintenance of the Units, the maintenance of any party walls or common fences and driveways, or the upkeep of lawns and plantings in the Common Areas or Residential Tracts.

(d) Fail to maintain fire and extended coverage insurance on insurable Common Areas property on the current replacement cost basis in any amount not less than one hundred percent (100%) of the insurable value thereof (based on current replacement cost).

(e) Use hazard insurance proceeds for losses to any Common Areas property for other than the repair, replacement or reconstruction of such improvements.

#### **Section 2. Inspection of Books and Records:**

The holders of First Deeds of Trust shall have the right to examine the books and records of the Association from time to time, or at any time, at the offices of the Association during normal business hours, or at such other place and at such other time as may be reasonable under the circumstances. In addition, the Association will provide,

upon request of holders of First Deeds of Trust with copies of financial statements, minutes of meetings, and other relevant data pertaining to the Association and its operation.

### **Section 3. Restrictions on Insurance Proceeds or Condemnation Awards:**

Notwithstanding anything herein to the contrary, no Owner of a Unit or any other party shall have priority over any rights of the holders of First Deeds of Trust of such Units or equivalent security interest pursuant to their rights under the Deeds of Trust in the case of a distribution to Owners of Units of insurance proceeds or condemnation awards for loss to or taking of any Unit or portion thereof or any Common Areas property or any portion thereof. The holders of First Deeds of Trust will be entitled to receive timely written notice from the Association of any condemnation proceeding or proposed acquisition in lieu of condemnation.

### **Section 4. Right of Owner to Sell:**

The Owner of a Residential Tract shall have the right to sell, transfer or otherwise convey his Residential Tract, and Unit located thereon, without such sale, transfer or other conveyance being subject to any right of first refusal or any similar restriction in favor of the Association.

### **Section 5. Lease of Residential Tract and Unit:**

Any lease agreement between an Owner of a Residential Tract and Unit and a lessee of such Residential Tract and Unit shall be required to be in writing, and shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Protective Covenants, By-Laws and Articles of Incorporation, and such lease shall further provide that any failure by the lessee therein to comply with the terms of such document shall be a default under the lease. Other than as provided in the preceding sentence, there is no restriction on the right of any Owner of a Residential Tract and Unit to lease his Residential Tract and Unit.

### **Section 6. Parking Spaces:**

Each Residential Tract will contain sufficient parking space to accommodate at least one automobile for each Residential Tract, and each Owner shall have the right to the use, for at least one automobile, of such space.

Except for operative customer passenger automobiles and temporary maintenance vehicles, no trailers, trucks, house trailers, boats, boat trailers or racks, mobile homes, jeeps, motorcycles, motorbikes, campers, camper shells or movable units of any type (even if temporarily immobile) may be kept externally visible on any portion of the Project.

### **Section 7. Prohibition Against Encumbrances:**

Except as to the Association's right to grant easements for utilities and similar or related purposes as set forth in the provisions of this Declaration, the Protective Covenants, By-Laws or Articles of Incorporation, the Common Areas may not be alienated, released, transferred, hypothecated or otherwise encumbered without the approval of all holders of the First Deeds of Trust liens on Residential Tracts and Units.

### **Section 8. Party Walls:**

Each wall which is built as part of the original construction of the Units upon the Residential Tracts and placed on the dividing line between the Residential Tracts shall constitute a party wall, and to the extent not inconsistent with the provisions of this Section 8, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from others under any rule of law regarding liability for negligent or willful acts of omissions; provided, that the foregoing provisions of this sentence shall be subject to the provisions of this Declaration with respect to damage or destruction of Units and repair or replacement on account thereof. Notwithstanding any other provision of this Section 8, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contribution from any other Owner under this Section 8 shall be appurtenant to the land and shall pass to such Owner's successor in title. In the event of any dispute arising concerning a party wall, or under the provisions of this Section 8, each party shall choose one arbitrator, and such arbitrator shall choose one additional arbitrator, and the decision of a majority of all the arbitrators shall be final and conclusive of the question involved.

**Section 9. Title to Common Areas:**

The Developer shall convey marketable fee simple title to the Common Areas to the Association, and at the time of such conveyance the Association shall receive an owner's title insurance policy, issued by a title insurance company licensed to do business in the State of Missouri, which title insurance policy shall insure marketable fee simple title to the Common Areas in the name of the Association. Said title insurance policy shall reflect that the Association owns fee simple title to the Common Areas, free and clear of all liens and encumbrances, except as otherwise provided in this Declaration.

**Section 10. Interpretation and Construction of Provisions:**

The terms, conditions and provisions of this Declaration shall be interpreted and construed in such manner, unless the context clearly requires otherwise, as shall be consistent with applicable rules and regulations applicable to participation by holders of First Deeds of Trust on Residential Tracts and/or Units in the Federal Home Loan Mortgage Association mortgage program.

IN WITNESS WHEREOF, THE TRAILS ASSOCIATES, INC. has caused this instrument to be executed by its officers this 21st day of July, 1975.

THE TRAILS ASSOCIATES, INC.

By \_\_\_\_\_

(Corporate Seal)

ATTEST:

\_\_\_\_\_

STATE of MISSOURI }  
COUNTY of JACKSON } SS

On this 21st day of July, 1975, before me, the undersigned, a Notary Public, appeared Raymond R. Brock, Jr., President of THE TRAILS ASSOCIATES, INC., a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, and Barbara A. Byrd, Secretary of said corporation, personally known to me to be the persons who executed the foregoing instrument on behalf of said corporation and acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Carol A. Johns, Notary Public

(Seal)

My commission expires:

July 7, 1976.

**EXHIBIT "A"**  
**TO**  
**RESTATED AND AMENDED**  
**HOMES ASSOCIATION DECLARATION**

Lots 1 through 35, inclusive, and Tracts A, B, C, D, E, F, THE TRAILS, an addition in and to the City of Gladstone, Clay County, Missouri.

**FIRST AMENDMENT TO BY-LAWS  
OF THE TRAILS HOMES ASSOCIATION, INC.**

THIS FIRST AMENDMENT TO BY-LAWS OF THE TRAILS HOME ASSOCIATION, INC. (hereinafter called the "Association") has been duly authorized and approved by the Board of Directors of the Association at its regular meeting held on June 24, 1975, amending the following provisions of the By-Laws of the Association:

**A**

Section 2 of Article III of the By-Laws is hereby deleted and a new amended Section 2 is inserted in lieu thereof, reading as follows:

"Section 2. The rights of membership are subject to the payment of annual and special assessments levied by the Association, the obligation of which assessments is imposed against each Owner of, and becomes a lien upon the property against which assessments are made (which lien is subordinate and inferior to the lien of any First Deed of Trust affecting such property) as provided in the Declaration to which the Properties are subject, which Declaration is recorded as Document No. C-94395, in Book 1144, at Page 572, in the records of the Recorder of Clay County, Missouri, and has been amended by First Amendment recorded as Document No. D-5914, in Book 1169, at Page 133, and has been further amended and restated by the Restated and Amended Homes Association Declaration, which is recorded as Document No. D-15141, in Book 1189, at Page 459, in the records of the Recorder of Clay County, Missouri, and which provides for (a) creation of the lien and personal obligation for such assessment in Section 1 of Article V of the Declaration, (b) payment of annual assessments as provided in Section 2 of said Article V of the Declaration, (c) special assessments, as provided for in Section 3 of said Article V of the Declaration, (d) late charges as provided for in Section 4 of said Article V of the Declaration, and (e) foreclosures of liens as provided for in Section 5 of said Article V of the Declaration, subject, however, to the limitations on foreclosures of liens as provided for in Section 6 of said Article V of the Declaration."

**B**

Article IV of the By-Laws is hereby deleted in its entirety, and a new Article IV is substituted in lieu thereof, which reads as follows:

**"ARTICLE IV  
Voting Rights**

Section 1. The Association shall have two classes of voting membership, as follows:

(a) Class A: Each Owner, with the exception of the Developer, of a complete Unit in THE TRAILS, a subdivision in the City of Gladstone, Clay County, Missouri, shall be a Class A member. Each Class A member shall be entitled to one (1) vote for each Unit in which he holds fee simple title. When more than one (1) person holds such interest in any Unit, all such persons shall be members, and the vote for such Unit shall be exercised as they, among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

(b) Class B: The Class B member(s) shall be the Developer the Class B member(s) shall be entitled to three (3) votes for each Residential Tract in THE TRAILS, regardless of whether there is a completed Unit located thereon, in which the Developer holds fee simple title; **provided, however**, that all voting rights of the Class B member(s) shall cease and be null and void on July 1, 1978, regardless of whether the Class B member(s) owns any Residential Tract or Residential Tracts in THE TRAILS as of such date."

C

Except as expressly amended hereby, the By-Laws of the Association as previously adopted shall remain in full force and effect.

IN WITNESS WHEREOF, we, being all of the Directors of The Trails Homes Association, Inc., have hereunto executed this First Amendment to the By-Laws as of the 24th day of June, 1975.

\_\_\_\_\_  
RAYMOND R. BROCK, JR.

\_\_\_\_\_  
JAMES L. CARNEY

\_\_\_\_\_  
WILLIAM F. GILLEN

STATE of MISSOURI }  
COUNTY of JACKSON } SS

On this 21st day of July, 1975, before me, the undersigned, a Notary Public in and for the County and State aforesaid, appeared RAYMOND R. BROCK, JR., JAMES L. CARNEY and WILLIAM F. GILLEN, to me known to be all of the directors of The Trails Homes Association, Inc., by me duly sworn, declared that they executed the foregoing instrument and acknowledged the execution of the same to be their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Carol A. Johns, Notary Public

(Seal)

My commission expires:

July 7, 1976.

**DECLARATION OF PROTECTIVE COVENANTS  
OF  
THE TRAILS**

THIS DECLARATION is made and entered into this 12th day of December, 1973, by THE TRAILS ASSOCIATES, INC., a Missouri corporation (hereinafter referred to as the "Developer"), and relates to certain land located in the City of Gladstone, County of Clay, State of Missouri, as described on Exhibit A hereto attached and incorporated by reference.

**WITNESSETH:**

WHEREAS, Developer has heretofore caused a plat of THE TRAILS to be recorded in the Office of the Recorder of Deeds of Clay County, Missouri, on June 20, 1973, in Book 15 at Page 59, and

WHEREAS, Developer now desires to place restrictions on said Lots for the use and benefit of the present owner and for its future grantees, successors and assigns,

NOW, THEREFORE, in consideration of the premises, The Trails Associates, Inc., for itself and its successors and assigns, and for it and their future grantees, hereby agrees that the property described in Exhibit A shall be and is hereby restricted as to their use in the manner hereinafter set forth:

**SECTION 1.**

Certain terms used herein shall be defined as follows:

(a) "ASSOCIATION" shall mean and refer to THE TRAILS HOMES ASSOCIATION, INC., a not for profit corporation organized and existing under the laws of the state of Missouri.

(b) "ARTICLES OF INCORPORATION" shall mean the Articles of Incorporation of The Trails Homes Association, Inc., as such Articles of Incorporation may from time to time be amended.

(c) "BY-LAWS" sh

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(b) "ARTICLES OF INCORPORATION" shall mean the Articles of Incorporation of The Trails Homes Association, Inc., as such Articles of Incorporation may from time to time be amended.

(c) "BY-LAWS" shall mean the By-Laws of The Trails Homes Association, Inc., as originally adopted and as from time to time amended.

(d) "DECLARATION" shall mean The Homes Association Declaration filed for record with the Recorder of Deeds for Clay County, Missouri, as such Declaration may from time to time be amended.

(e) "PROTECTIVE COVENANTS" shall mean the Declaration of Protective Covenants of the Trails, as filed with the Recorder of Deeds for Clay County, Missouri, as such Declaration of Protective Covenants may from time to time be amended.

(f) "DEVELOPER" shall mean the Trails Associates, Inc., a Missouri corporation, its successors and assigns.

(g) "PROPERTIES" shall mean and refer to the property described on Exhibit "A" hereto attached and incorporated herein by reference and such additions thereto as may hereafter be brought within the jurisdiction of the Association by annexation as provided in the Articles of Incorporation, By-Laws, Declaration or Protective Covenants.

(h) "COMMON AREAS" shall mean and refer to the entire area designed for a common use and benefit of the owners, tenants, and invitees of each, including, but not by way of limitation, parks, playgrounds, swimming pools, recreational facilities, tennis courts, commons, footways, including buildings, structures and personal properties incident thereto, and any other properties owned and maintained by the Association for the common benefit and enjoyment of the residents within the Properties.

(i) "BUILDING" shall mean a structure composed of units.

(j) "UNIT" shall mean the portion of a Building which is designed and used exclusively for single family residential purposes which shall include the patio area and other such areas within each Residential Tract as shown on the recorded certificate of survey of each platted lot of The Trails not included in "Enclosed Floor Area".

(k) "ENCLOSED FLOOR AREA" as used herein shall mean and include in all cases areas on the first, second, and third floors of each unit, enclosed and finished for all year occupancy, and all atriums, computed on outside measurements or center of common walls of the Units, but shall not mean or include any areas in basements, garages, porches, attics, or patios.

(l) "OWNER" shall mean the owner, whether one or more persons or entities, in fee simple of any Unit, but excluding those having such interest merely as security for the performance of an obligation.

(m) "TENANT" shall mean the individual(s) renting a Unit from an owner.

(n) "PROJECT" shall mean THE TRAILS as it ultimately may be (if and when enlarged from time to time) fully developed.

(o) "RESIDENTIAL TRACT" shall mean the area of property owned by an Owner or the Developer, in fee simple, on which a Unit is, or is to be, constructed, as legally described on the recorded certificate of survey of each platted lot, or the plat, of the Project.

(p) "COMMON AREAS TRACT" shall mean the area or property owned by the Association, or the Developer, in fee simple, as legally described on the recorded certificate of survey of each platted lot, or the plat, of the Project.

## SECTION 2.

(a) The Residential Tracts may only be improved, used or occupied (with exception of such portion thereof as may be included in Common Areas) for private residential purposes and any Unit erected on any of said Tracts shall be designated for occupancy by a single family, and no professional, business or commercial use shall be made of any Tract, or portion thereof.

(b) The Common Areas Tracts may only be improved or used for the installation thereon or maintenance of driveways, parking areas, walkways, lawns, flower beds, recreational and security and maintenance facilities, and other uses for the purposes of benefiting and beautifying the Residential Tracts on the plat of THE TRAILS, or any addition to such plat.

(c) The Association shall be created for the purpose of owning the Common Areas and shall designate specific uses of the Common Areas and establish rules and regulations governing the use thereof as it may deem advisable from time to time, all as may be set forth in the Association's Articles of Incorporation or By-Laws.



### SECTION 3.

(a) No signs, billboards, unsightly objects, or nuisances shall be erected, placed, hung, or displayed in any manner on any Residential Tract, Common Areas Tract or any public right of way adjoining any Residential or Common Areas Tract, or in or on the improvements thereon, so as to be seen externally, provided that Developer may maintain, while constructing and developing The Trails, in or upon such portions of the Residential Tracts or Common Areas Tracts as Developer determines, such facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units, signs, billboards and display and promotional materials, and provided further the Association may place identification signs for the Project on Common Areas Tracts.

(b) No awnings, storm sash or windows, canopy, shutter, radio or television antenna shall be affixed to or placed upon any improvements on any Residential Tracts or Common Areas Tracts in such manner as to be externally visible without the approval of the Association.

(c) No animals, livestock or poultry of any kind shall be raised, bred or kept on any Residential Tract or Common Areas Tract, except dogs, cats or other common household pets (not to exceed a total of two (2) pets per Residential Tract) may be kept, provided that they are not kept, bred or maintained for any commercial purposes. All permitted household pets shall be kept inside the Unit constructed on any Residential Tract and enclosed patio area of any such Unit constructed on a Residential Tract at all times.

(d) Laundry, bedding and the like shall not be hung to dry in any manner in which it is visible from the exterior of any Unit.

(e) All rubbish, trash, garbage or debris from a Residential Tract shall be kept in such manner as to not be externally visible, except when placed outside for the purpose of being picked up and removed in accordance with trash pick-up service utilized by the Association.

(f) All fixtures and equipment installed within any improvement on a Residential Tract, commencing at a point where the utility lines, pipes, wires, conduit or systems enter the Residential Tract of the Owner thereof, shall be maintained and kept in repair by the Owner thereof. An Owner shall do not act nor any work that will impair the structure soundness or integrity of another improvement constructed on an adjoining Residential Tract or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other improvements constructed on Residential Tracts, or their Owners.

(g) Except in the individual patio area appurtenant to an improvement constructed on a Residential Tract, as designated on Developer's plans for such improvement, no planting, transplanting or gardening shall be done, and no fences or walls shall be erected or maintained upon said Residential Tract, except as installed in accordance with the initial construction of the improvements or as approved by Developer during construction and development of The Trails, or the Association after said construction period. As used in these Protective Covenants, the term "patio" shall mean the private space within a Residential Tract which is adjacent to the improvements constructed thereon and located entirely within such Residential Tract. All other area, whether or not within a Residential Tract shall be maintained and deemed to be a part of the Common Areas for the purpose of maintenance, care and regulation. Maintenance, upkeep and repairs of any patio shall be the sole responsibility of the Owner of such Residential Tract and not in any manner the responsibility of the Association, provided that the exterior of any patio fence shall be maintained by the Association in the same uniform color as all other patio fences, unless the Association shall otherwise permit.

### SECTION 4.

No improvements or structures of any sort may be constructed on any Residential Tracts without the prior written consent of the Association, nor may the structural portions or exterior (including painting of an exterior portion) of any building or structure erected on any Residential Tract be changed or altered without the like prior written consent of the Association.

### SECTION 5.

Except for operative customary passenger automobiles and temporary maintenance vehicles, no trailers, trucks, house trailers, boats, boat trailers or racks, mobile homes, jeeps, motorcycles, motorbikes, campers, camper shells or movable units of any type (even if temporarily immobile) may be kept externally visible on any portion of the Project.

**SECTION 6.**

The covenants, restrictions and provisions of these Protective Covenants shall be deemed covenants running with the land and shall remain in full force and effect from the date hereof until January 1, 2009, at which time said covenants, restrictions and provisions shall automatically be extended for successive period of ten (10) years each, unless at least one (1) year prior to January 1, 2009, or at least one year prior to the expiration of any subsequent ten year period, such covenants, restrictions and provisions are amended, modified, changed or cancelled, in whole or in part, by a written agreement adopted by a two-thirds (2/3) majority vote of the members of Association, with such written agreement then being filed in the Office of the Recorder of Deeds of Clay County, Missouri.

**SECTION 7.**

The restrictions set forth herein shall run with the land and bind the Developer, its successors and assigns, and all parties claiming by, through or under it shall be taken to hold, agree and covenant with the owner of said Residential Tracts and Common Areas Tracts, its successors and assigns, and each of them, to comply with and observe said restrictions as to the use of said Residential Tracts and Common Areas Tracts, and the construction of the improvements thereon, but no restrictions herein set forth shall be personally binding on any corporation, person or persons, except in respect of breaches committed during its, his or their seisin of or title to said Residential Tracts and Common Areas Tracts; and the Owner or Owners of any of the Residential Tracts and Common Areas Tracts shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the restrictions set forth above, in addition to ordinary legal action, and failure by the Owner or Owners of any other Residential Tract or Common Areas Tracts or Residential Tracts or Common Areas Tracts in such plat of The Trails or additions thereto to enforce any of the restrictions set forth herein, shall in no event be deemed to be a waiver of the right to do so thereafter.

**SECTION 8.**

Each Residential Tract and Common Areas Tract shall be subject to an easement for encroachments created by construction, settling and overhang of the structures built by the Developer. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist. Said easement shall not be considered an unlimited easement and the final decision as to the reasonableness of such easement shall rest with the Developer until such time as all Residential Tracts are conveyed by the Developer to individual Owners, and thereafter such decision shall rest with the Association. There is hereby created a blanket easement upon, across, over and under all Residential Tracts and Common Areas Tracts for ingress and egress to the Residential Tracts, by the Owner or Owners, Tenant or Tenants, and their invitees, and for ingress and egress, installation, replacing, repairing and maintaining utilities, including, but not limited to, water, sewer, telephone, electricity, and gas. Also, there is hereby created a blanket easement upon, across, over and under all of the Residential Tracts and the Common Areas Tracts for ingress and egress for the purpose of maintaining building exteriors and landscape, shrubs and grass. By virtue of these easements, it shall expressly permissible for the utility companies to affix and maintain pipes, wires, conduits, or other service lines on, above, across and under the roofs and exterior walls of any improvements constructed on Residential Tracts or Common Areas Tracts. Notwithstanding anything to the contrary contained in this paragraph, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on any property located in The Trails until approved by the Developer during the construction period or by the Association thereafter. In the event that any utility company furnishing a service covered by the general easement herein provided request a specific easement on the Residential Tracts, or any portion thereof, and/or the Common Areas Tracts, by separate recordable instrument, the Developer during the construction period and the Association thereafter shall have the right to grant such easement on said property without conflicting with the terms hereof.

IN WITNESS WHEREOF, The Trails Associates, Inc. has caused this instrument to be executed the day and year first above written.

THE TRAILS ASSOCIATES, INC.

(Corporate Seal)

By \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_

STATE OF MISSOURI }  
COUNTY OF JACKSON } SS

On this 12th day of December, 1973, before me, the undersigned, appeared Raymond R. Brock, Jr., to me personally known, who being by me duly sworn, did say that he is an authorized representative of The Trails Associates, Inc., a Missouri corporation, and that said instrument was signed in behalf of said corporation and said Raymond R. Brock, Jr. acknowledges said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in Kansas City, Missouri, the day and year last above written.

\_\_\_\_\_  
Notary Public  
Carol A. Johns

My commission expires:

July 7, 1976  
\_\_\_\_\_

EXHIBIT "A" TO DECLARATION OF  
PROTECTIVE COVENANTS OF THE TRAILS

LEGAL DESCRIPTION

Lots 1 thru 35 inclusive and Tracts A, B, C, D, E, F, THE TRAILS, an addition in and to the City of Gladstone, Clay County, Missouri.

1. 10. 1944  
2. 10. 1944  
3. 10. 1944  
4. 10. 1944  
5. 10. 1944  
6. 10. 1944  
7. 10. 1944  
8. 10. 1944  
9. 10. 1944  
10. 10. 1944