

DECLARATION OF RESTRICTIONS

LAKE WINNEBAGO SUBDIVISION

CASS COUNTY, MISSOURI

Original Restrictions recorded in Book 489
beginning at Page 225 in the Office of
Recorder of Deed, Cass County, Missouri;

As amended by Amendment No. 1 recorded in
Indenture Numbers 193 through 197;

Amendment No. 2 recorded in Book 608
beginning at Page 115; and

Amendment No. 3 recorded in Book 1026
beginning at Page 208 in the Office of
Recorder of Deeds, Cass County, Missouri;

LAKE WINNEBAGO HOME OWNERS' ASSOCIATION

Lake Winnebago Community Center
10 North Lake Winnebago Drive
Lake Winnebago, Missouri

THIRD AMENDMENT OF DECLARATION OF RESTRICTIONS
LAKE WINNEBAGO SUBDIVISION
CITY OF LAKE WINNEBAGO, CASS COUNTY, MISSOURI

This Third Amendment of the Declaration of Restrictions made by the owners of fee simple title to the hereinafter described Lots, Parcels or tracts of land in the LAKE WINNEBAGO SUBDIVISION, a subdivision in the City of Lake Winnebago, Cass County, Missouri.

WITNESSETH:

WHEREAS, all Lots, Parcels or tracts of land in the LAKE WINNEBAGO SUBDIVISION, a subdivision in the City of Lake Winnebago, Cass County, Missouri, including any replat or resurvey thereof (the "Subdivision") are subject to certain Restrictions, Covenants, Reservations, Easements, and Limitations (the "Declaration of Restrictions") recorded in Book 489 beginning at Page 225, and subsequently amended by an Instrument recorded June 3, 1974, in Indentures 193 through 197, and further amended by an Instrument recorded June 3, 1974, in Book 608 beginning at Page 115 in the Office of Recorder of Deeds, Cass County, Missouri; and,

WHEREAS, it is the desire of the Owners in the Subdivision to amend, alter, modify and make other changes in the aforesaid Declaration of Restrictions and Amendments thereto; and,

WHEREAS, under the provisions of Paragraph 23 of the aforesaid Declaration of Restrictions, the written consents of the record Owners of fee simple title to two-thirds (2/3) of all the Lots, Parcels or tracts of land in the Lake Winnebago Subdivision are required to amend, alter, modify and change the aforesaid Declaration of Restriction; and,

WHEREAS, the Undersigned owns the lot or Parcel in the Subdivision described on the Counterpart attached hereto.

NOW, THEREFORE, in consideration of the foregoing and execution of Counterparts of this Third Amendment by others owning Lots, Parcels or tracts of land in the Subdivision, the Undersigned Owner of the aforesaid Lot, Parcel or tract of land in the Subdivision hereby consents, agrees to be bound by, and declares that the Lots, Parcels or tracts of land above-described now and hereafter shall be bound by, held subject to, and used according to the following Third Amendment to the Declaration of Restrictions affecting the Subdivision as aforesaid, to-wit:

STRIKING AND DELETING ALL OF PARAGRAPHS 1 THROUGH 29, INCLUSIVE, INCLUDING ALL SUBPARAGRAPHS AND SUBPARTS THEREOF, OF

THE DECLARATION OF RESTRICTIONS RECORDED IN BOOK 489 BEGINNING AT PAGE 225 AND SUBSEQUENTLY AMENDED BY AN INSTRUMENT RECORDED JUNE 3, 1974, IN INDENTURES 193 THROUGH 197 AND FURTHER AMENDED BY AN INSTRUMENT RECORDED JUNE 3, 1974, IN BOOK 608 BEGINNING AT PAGE 115 IN THE OFFICE OF RECORDER OF DEEDS, CASS COUNTY, MISSOURI, AND IN LIEU THEREOF MAKING, ESTABLISHING, DECLARING AND INSERTING TWELVE NEW ARTICLES DESIGNATED ARTICLE I THROUGH ARTICLE XII INCLUSIVE, WHICH SHALL BE AND READ AS FOLLOWS:

ARTICLE I

(a) Definitions. The following words as used in these Restrictions shall, unless the context otherwise prohibits, have the meanings set forth below:

(1) "All-Terrain Vehicle" shall mean and refer to any Motor Vehicle manufactured exclusively for off-highway or off-road use which is fifty (50) inches or less in width, with an unladen dry weight of six hundred (600) pounds or less, traveling on three or more low-pressure tires with a seat designed to be straddled by the operator and handlebars for steering control.

(2) "Association" shall mean and refer to the Lake Winnebago Home Owners' Association, a Missouri not-for-profit corporation, or its successor.

(3) "Basement" shall mean and refer to a Story with part but not more than one-half (½) its Heights on any side above Grade and not to exceed five (5) feet above Grade at any point, but shall not mean and refer to a garage.

(4) "Board of Directors" shall mean and refer to the group of natural persons vested with control, supervision, and management of the property, affairs, and business of the Association.

(5) "By-laws" shall mean and refer to the code of rules adopted by the Association for the conduct, regulation, and/or management of its affairs and business.

(6) "City" shall mean and refer to the City of Lake Winnebago, Missouri, or such other municipal corporation as may have jurisdiction over the Properties.

(7) "Commercial Vehicle" shall mean and refer to a Motor Vehicle designed or regularly used for carrying freight or merchandise, transporting business equipment or tools, carrying more than eight passengers, or on whose exterior the name of a business or commercial enterprise is displayed.

(8) "Common Area" or "Common Property" shall mean and refer to all real property (including improvements) other than

individual Lots, Parcels or tracts of land as shown or depicted on the Subdivision Plat or replat including such real and personal property hereafter acquired, held, licensed, contracted for, constructed, leased, owned or subject to use by the Association and intended to be used or devoted to the common use, recreation and enjoyment of the Owners of the Lots, Parcels or tracts of land. By way of illustration, but not limitation, Common Areas or Common Properties may consist of recreation areas, facilities and/or buildings and improvements, unimproved or improved real property, "green area," lakes (including Lake Winnebago, Lake Georgina and any other lakes or ponds), community docks, and beaches, boat launching and storage facilities, parks, grass and/or landscaped areas, barns and/or stables, horse trails, walking or jogging paths, bicycle paths, boat ramps, piers and/or fishing piers, swimming, diving and/or wading pools, tennis courts, basketball courts, handball or racquetball courts, athletic fields including baseball or softball fields, and such other property, both real and personal, as may from time to time be designated as a Common Area or Common Property by replat or otherwise.

(9) "Common Expense" shall mean and refer to the actual and estimated expenditures of operating the Association, including a reasonable reserve, which in the opinion of the Board of Directors, are necessary, desirable or advisable for carrying out the Association's purpose and for the continued operation of the Association.

(10) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and all provisions herein set forth, as may from time to time be amended.

(11) "Developer" shall mean and refer to the Lake Winnebago Land Company, Inc., a Missouri corporation, and its successors or assigns, if any.

(12) "Development" shall mean and refer to the LAKE WINNEBAGO SUBDIVISION, a subdivision in the City of Lake Winnebago, Cass County, Missouri, (including any replat thereof).

(13) "Director" shall mean and refer to an individual member of the Board of Directors.

(14) "Dwelling Unit" shall mean and refer to one room or rooms connected together constituting a separate, independent housekeeping establishment for Owner occupancy or for lease on a monthly or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure or building, and containing independent and separate cooking and sleeping facilities.

(15) "Family" shall mean and refer to one (1) natural

person or a group of two (2) or more natural persons residing and living together who occupy the whole or part of one (1) dwelling unit and who may be related by the bonds of marriage, consanguinity or legal adoption, but Family shall not be construed to mean or include a boarding house, dormitory, lodge, fraternity, sorority, club, day care home or center, child or elderly care facility, rehabilitation home or center, corrections or penal facility, group home, foster or juvenile home, orphanage, asylum, drug or alcohol treatment facility, clinic or hospital, retirement or rest home, half-way house, or any type of religious, charitable or institutional home or facility, or similar type organization, entity, association, order or society.

(16) "General Plan of Development" or "Master Plan" shall mean and refer to that plan as publicly distributed and as approved by the Association which represents the general concept and general use of land in the Subdivision, and such plan may be amended from time to time.

(17) "Grade" shall mean and refer to the average of elevations of the surface of the ground measured at all corners of a building.

(18) "Height" shall mean and refer to the vertical measurement from Grade at the street side of the building to the highest point of the roof.

(19) "Lake Georgina" shall mean and refer to the small man-made lake within the area designated "John G. Steinhilber Park" on the Subdivision Plat, or such other names for such lake and/or park as may be designated on any replat.

(20) "Lake Winnebago" or "Lake" shall mean and refer to the large man-made lake (including its dam and spillway) owned by the Association as designated on the Subdivision Plat or replat.

(21) "Lot" shall mean and refer to any plot of land intended and subdivided for those uses shown on Subdivision Plat or replat of the Properties, but does not include the Common Areas or Common Properties as herein defined.

(22) "Member" shall mean and refer to each Person entitled to membership in the Association as such interest is provided herein and in the Association's By-laws.

(23) "Member in Good Standing" shall mean and refer to each holder of a membership interest in the Association so long as such Member shall have paid in full all assessments fixed, established, and levied by the Association. Any Member who shall have failed or refused to pay all or any part of any assessment fixed, established and levied by the Association within the time permitted in these Restrictions shall remain a Member but shall

lose his good standing in the Association and such Member's use of the Common Areas or Common Properties and his right to vote on Association matters may be restricted or denied by the Association until such time as all assessments fixed, established, and levied by the Association (together with interest, delinquency charges, penalties and the costs of collection as provided in Article V hereof) are fully paid and satisfied.

(24) "Motorboat" shall mean and refer to any Vessel propelled through or on water by machinery, whether or not such machinery is a principal source of propulsion.

(25) "Motorcycle" shall mean and refer to a Motor Vehicle operated on two wheels.

(26) "Motor Vehicle" shall mean and refer to any self-propelled Vehicle not operated exclusively upon tracks.

(27) "Multi-Family Structure" shall mean and refer to occupied units situated in a duplex, apartment, townhouse or other structure which affords residential living space for more than one (1) family on a Lot, Parcel or tract of land, whether such units are owned or leased by the occupants.

(28) "Owner," "Homeowner," or Lot Owner" shall mean and refer to the record owner (whether joint, in common or by the entirety) as evidenced or reflected by the Recorder of Deeds of Cass County, Missouri, of fee simple title to any Lot, Parcel or tract of land (including any Lot, Parcel or tract of land annexed), but excluding in all cases any Person holding an interest merely as security for the performance of an obligation (including, but not limited to, mortgagees, or trustees under deeds of trust).

(29) "Parcel" shall mean and refer to more than one (1) contiguous Lot upon which one (1) Dwelling or Residential Unit may be constructed but Parcel does not include Common Areas or Common Properties as herein defined.

(30) "Passenger Vehicle" shall mean and refer to a Motor Vehicle designed or regularly used for carrying eight or fewer natural persons.

(31) "Person" shall mean and refer to a natural person, a corporation, a partnership, a trustee, or other legal entity.

(32) "Plat" shall mean and refer to a duly acknowledged, approved and endorsed, and recorded map drawn to scale which depicts the subdivision of real property and which sets forth and describes all areas reserved for public purposes by their boundaries, course and extent (whether they be intended

for streets, alleys, lanes, avenues, commons or other public places), and all Lots, Parcel or tracts of land (including easements) by number and precise length and width in accordance with applicable statutes, laws and ordinances.

(33) "Property" or "The Properties" shall mean and refer to all Lots, Parcels or tracts of land within the LAKE WINNEBAGO SUBDIVISION, a subdivision in the City of Lake Winnebago, Cass County, Missouri, (including any replat thereof) as well as all land and/or bodies of water described and subject to this Declaration including any property made subject to this Declaration by annexation, replat or otherwise.

(34) "Recreational Motor Vehicle" shall mean and refer to any vehicular unit mounted on wheels or Motor Vehicle designed, constructed or substantially modified for recreational, camping and/or travel so that it may be used and/or is used for the purpose of temporary housing or living quarters, including therein sleeping, kitchen, eating, bath and/or toilet facilities which are either permanently attached to the Motor Vehicle or attached to a unit which is attached to the Motor Vehicle.

(35) "Residential Unit" shall mean and refer to any portion of the Properties intended for any type of independent ownership for use and occupancy as a Single-Family Residence by a single household on one (1) Lot or Parcel. A newly constructed Residential Unit shall be deemed to come into existence upon issuance of a Certificate of Occupancy by the appropriate agency of the City of Lake Winnebago, Missouri, or other governmental entity.

(36) "Single-Family Residence" shall mean and refer to one Residential Unit for one (1) Family.

(37) "Story" shall mean and refer to a section or horizontal division of a building, extending from floor to the ceiling or roof lying directly above it. A one-half Story shall mean and refer to a Story no more than one-half of the Story directly below the one-half Story.

(38) "Structure" shall mean and refer to anything constructed, erected or placed having a fixed location on the surface of the ground, or underground or affixed to anything having a fixed location and includes, but is not limited to, buildings, walls, fences and signs.

(39) "Subdivision" shall mean and refer to the LAKE WINNEBAGO SUBDIVISION, a subdivision in the City of Lake Winnebago, Cass County, Missouri, according to the Plat or replat thereof.

(40) "Trailer" shall mean and refer to any Vehicle

without motive power designed for carrying property or passengers on its own structure and for being drawn by a self-propelled Vehicle, including a semi-trailer or Vehicle of a trailer type so designated and used in conjunction with a self-propelled Vehicle that a considerable part of its own weight rests upon and is carried by the towing Vehicle.

(41) "Vehicle" shall mean and refer to any mechanical device on wheels, designed primarily for use on highways, except motorized bicycles and Vehicles propelled or drawn by human power, or Vehicles used exclusively on fixed rails or tracks.

(42) "Vessels" shall mean and refer to every motorboat and every description of motorized Watercraft and any Watercraft powered by sail alone or by a combination of sail and machinery, used or capable of being used as a means of transportation on water.

(43) "Watercraft" shall mean and refer to any boat or craft, including a Vessel, used or capable of being used as a means of transport on water.

ARTICLE II

(a) Common Area. Every Owner/Member shall have a non-exclusive right and easement of enjoyment in and to the Common Areas or Common Properties which shall be appurtenant to and shall pass with the title to every Lot, Parcel and tract of land. The foregoing right and easement shall be subject, however, to any restrictions or limitations contained in any deed and this Declaration or amendment to this Declaration. In the event that any Owner/Member leases or permits another person to occupy any Residential Dwelling Unit or Lot, the Owner/Member may grant to such tenant or permittee the right to use Common Areas or Common Properties subject however to this Declaration and in lieu of such Owner/Member's right to use the Common Areas or Common Properties. No Owner/Member shall obstruct access to any Common Area or Common Property.

(b) No Alteration or Waste. No Owner/Member shall alter, add to, improve, replace or repair any Common Area or Common Property, or facility within such Common Area or Common Property, except as provided in this Declaration or by any rule promulgated by the Association. Under no circumstances shall any Owner/Member intentionally do or permit to be done anything which will result in the cancellation of or increase in the insurance rates for any coverage applicable to the Common Areas or Common Properties, and no Owner/Member, his Family, guests or tenants shall damage, destroy, deface or commit any waste of any Common Area or Common Property. No Motor Vehicle of any kind may be operated, driven or ridden on or in any Common Area or Common Property (including any dam or spillway) except as specifically

authorized by the Board of Directors.

(c) Obligation of Association. The Lake Winnebago Home Owners' Association, subject to the rights of the Owners/Members for the management of Common Areas or Common Properties and all improvements thereon (including furnishings and equipment related there) and shall maintain the same in good, clean, attractive and sanitary condition, order and repair.

(1) Liability Limitation. The Association may, in its By-laws or by appropriate resolution, limit any potential liability of the Association and/or Board of Director on account of any responsibility to manage, control, maintain or repair the Common Areas or Common Properties; and, the Association may, by rule, regulation or restriction, require an Owner/Member, his Family, or tenants to execute releases, covenants, indemnification agreements, and/or to furnish proof of insurance as conditions precedent to the use of any Common Areas or Common Properties.

(2) Insurance. The Association may obtain and maintain one or more policies of insurance in such form, affording such coverage, and in such amount as the Board of Directors deems necessary, appropriate or prudent for the protection of the Association and its Directors, officers and members. All premiums for any such insurance shall be part of the Common Expense and shall be payable from annual assessments as provided in Article V hereof.

(d) Limitations on Rights and Easements. The rights and easements of enjoyment to the Common Areas or Common Properties as aforesaid shall be and are subject to the following:

(1) The right of the Association to suspend an Owner/Member's use, usage and utilization of any or all Common Areas or Common Properties (including Lake Winnebago and Lake Georgina) assessment (including any interest, penalty and/or cost of collection as hereafter provided) remains delinquent, and for a reasonable period of time for each infraction or violation of the Association's published rules, regulations and restrictions; it being understood that any suspension for either non-payment of any assessment or breach of the rules, regulations, and personal obligation to pay or the lien of all assessments fixed, established, and levied by the Association as provided in Article V hereof.

(2) The right of the Association to borrow money for maintenance, repair, replacement, improvement or betterment of Common Areas or Common Properties and any improvements, equipment or facilities thereon, and in aid thereof to mortgage or pledge any part or portion of the Common Areas or Common Properties, other than Lake Winnebago, to secure any such loan.

(3) The right of the Association to grant easements or servitudes across, over, under, through and into Lake Winnebago for the placement, construction, erection, and maintenance of docks in accordance with the assignments depicted or shown on the Subdivision Plat or any replat (or in the event of no assignment, in such locations as the Board of Directors may determine appropriate), and the right of the Association to make, impose, and enforce reasonable rules, regulations, and restrictions upon the location and relocation, placement and replacement, construction and reconstruction, repair, materials, size, width, height, configuration, and use of docks, and dock easements for the health, safety, welfare, protection, and mutual benefit of Owners/Members.

(4) The right of the Association to regulate the use and usage of any Common Area or Common Property by an Owner/Member, his Family, and his guests or tenants, and/or to require applications, permits, or licenses and/or to charge reasonable admission, usage or user fees, costs and other charges as may be established by the Board of Directors from time to time for the use, repair, replacement, betterment, improvement, and maintenance of the Common Areas or Common Properties and any improvement, recreational equipment or facilities situated on or located within the Common Areas or Common Properties.

(5) The right of the Association to make, impose, and enforce reasonable rules, regulations, and restrictions upon the use, usage or utilization of any Common Area or Common Property by Owners/Members, their Families, and their guests or tenants for the health, safety, welfare, protection and mutual benefit of all Owners/Members. For example, in order to avoid or reduce congestion, prevent overburden, and to allow orderly use of recreational facilities and areas, the Association may restrict or limit the use, usage or utilization of any Common Area and Common Property as to number, time, manner, and nature of activity. No Owner/Member, Family member, guest or tenant shall use any Common area or Common Property or any part thereof in any manner contrary to or not in full compliance with all rules, regulations, and restrictions pertaining thereto as from time to time may be made, adopted, and imposed by the Association, and no Owner/Member shall use any Common Area or Common Property in such a manner so as to overburden such Common Area or Common Property or pose a threat to the safety, health or welfare of other Owners/Members, their Families and their guests or tenants.

(6) The right of the Association, with the consent of the membership, to grant easements, licenses, servitudes or rights of way across, over, under or through any Common Area or Common Property to any public utility corporation or public agency.

(e) Damage or Destruction of Common Areas. In the event

any Common Area or Common Property is damaged or destroyed by an Owner/Member, any member of his Family, his guests, tenants or licensees, such Owner/Member shall be personally liable to the Association for the cost and expense of any replacement or repair necessitated by his act, neglect or carelessness, or by that of any member of his Family, his guests, tenants or licensees. The cost and expense of any such replacement or repair, as provided herein, shall be charged to said Owner/Member and shall be due and payable immediately upon receipt of a statement from the Association.

(f) Title to Common Areas. The Developer hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area and Common Properties (not already owned by the Association) to the Association, free and clear of all encumbrances and liens, but subject to easements and rights created by this Declaration or similar instruments, upon demand by the Board of Directors, or at such time as the Developer may wish to make, and the Board of Directors wishes to accept, such a conveyance.

(g) Non-Discrimination by Association. Neither the Association nor any of its Board of Directors, officers, committees, committee members or agents shall make unavailable or deny use of any Common Area or Common Property to any Owner/Member, his Family, guests or tenants on the basis of race, religion, color national origin or sex.

ARTICLE III

(a) Use of Land. All Property in the Subdivision shall be used exclusively for residential housing and recreational facilities for Owners/Members, their Families, guests or tenants except Common Areas or Common Properties and those areas described as follows, which areas may be used for the purposes stated below:

(1) COMMUNITY BEACH AND DOCKING AREAS.

The following areas denominated on the Subdivision Plat or replat referred to below as "Community Beach and Docking Area" shall be reserved as beach, docking and access to Lake Winnebago solely for the use by and enjoyment of Owners/Members, their families, guests or tenants and subject to reasonable rules, regulations, and restrictions made and imposed by the Association:

(A) Said area so described and located North of Lot 1 in Block W on the Plat recorded in Plat Book 3, Page 66 and dated July 3, 1964.

(B) Said area so described and located between

Lots 103 and 104, Block J on the Plat recorded in Plat Book 3, Page 63 and dated July 3, 1964.

(C) Said area so described and located between Lots 11 and 26 in Block A on the Plat recorded in Plat Book 3, Page 65 and dated August 13, 1964.

(D) Said area so described and located between Lots 65 and 67 in Block V on the Plat recorded in Plat Book 4, Page 36 and recorded April 24, 1969.

(E) Said area so described and located between Lots 14 and 18 in Block S and recorded as Plat 6A amending Plat 6 in Plat Book 4, Page 14 and dated May 17, 1968.

(F) Said area so described and located between Lot 1 in Block G and Lot 49 in Block F on the Plat recorded in Plat Book 3, Page 64 and dated July 3, 1964.

(G) Said area so described and located North of Lot 4 in Block G and across Winnebago Drive from parts of Lots 11 through 14 in Block G on the Plat recorded in Plat Book 3, Page 64 and dated July 3, 1964.

(2) COUNTRY CLUB AND ARROWHEAD PARK

The two areas denominated on the Plat recorded in Plat Book 4, Page 38 as "Country Club" and as "Arrowhead Park" located South of Lot 58 in Block F may be used as a private not-for-profit social, educational, cultural, and athletic club known as "Arrowhead Yacht Club," and membership in said Arrowhead Yacht Club shall be open and available to all Owners.

(3) PLAYGROUND

The area denominated as "Playground" on the Plat recorded in Plat Book 4, Page 35, recorded April 24, 1969, and located North of Lot 39 and across Winneconne Drive from Lots 32 through 35 of Block V on said Plat may be used as a playground, park and recreation area for all Owners/Members, their Families, guests or tenants and subject to reasonable rules, regulations, and restrictions made and imposed by the Association.

(4) OFFICES AND RETAIL SHOPPING AREA

(A) The area denominated as Lot A, Block X on Plat 18, recorded in Plat Book 4, Page 2 and dated March 9, 1967, may be used for offices, a community building, a marina (including repair and service facilities), a boat ramp or launching area, and/or retail shops subject to reasonable rules, regulations and restrictions made and imposed by the Association.

(B) The area denominated as Block "SC," "Shopping Center," and "Proposed Additional Shopping Center Area" on Plat 18 recorded in Plat Book 4, Page 2, and dated March 9, 1967, may be used for offices, a community building, and/or retail shops subject to reasonable rules, regulations, and restrictions made and imposed by the Association.

(5) LAKE GEORGINA AND PARK

The area denominated as "Lake Georgina" and "John G. Steinhilber Park" (or such other names as may be designated on subsequent Plat or replat) bounded on the North by Lots 4 through 8, Block F, on the Plat recorded in Plat Book 3, in Page 64 and dated December 10, 1964, except Lots 7, 8, and 9 in Block Y, shall be reserved as a park and recreation area for Owners/Members, their Families, guests and tenants and subject to reasonable rules, regulations and restrictions made and imposed by the Association.

(b) Restriction on Further Subdivision. No Lot, Parcel or tract of land shall be further subdivided or separated into smaller Lots, Parcels or tracts of land by any Owner, and no portion less than all of any such Lot, Parcel or tract of land, nor any easement or other interest therein, shall be sold, bargained, conveyed or transferred by any Owner; provided, however, that this provision shall not prohibit deeds of correction, deeds to resolve boundary disputes, and similar corrective deeds or instruments nor shall it prohibit the Developer from replatting or submitting replats of any Lots, Parcels or tracts of land owned by such Developer.

ARTICLE IV

(a) Construction, Alternation, Etc. of Structures.

(1) Zoning and Specific Restrictions. All construction, buildings, improvements and landscaping, where applicable, shall comply with the minimum standards, building and health codes, and zoning laws of the City of Lake Winnebago, Missouri, as may be in force at the applicable time. This Declaration shall not be taken as permitting any action, matter or thing prohibited by the applicable zoning laws, health codes, building codes (including electrical and plumbing codes), or the laws, statutes, ordinances, rules or regulations of any governmental authority, or by any specific deed restrictions of records. In the event of any conflict, the most restrictive provision of such laws, statutes, ordinances, rules, regulations and deed restrictions or this Declaration shall govern and control.

(2) Permission of Committee or Board Required. No residence, outbuilding, or structure (including any detached

structure, tennis court, swimming pool, carport, fence, wall, excavation, driveway or other major improvement) shall be constructed, erected, placed or moved onto, upon any Lot, Parcel or tract of land unless and until complete plans and specifications (showing exterior design, Height, elevation, building material, location and Grade) shall have been submitted to and approved in writing by the Architectural and plan Control Committee or Board of Directors as herein provided; nor shall any exterior change, alteration, modification or reconstruction of any residence, outbuilding or structure be made or performed after original construction or erection until approval has been given in writing by the Architectural and plan Control Committee or Board of Directors, except that an identical replacement of a previously approved residence, outbuilding or structure may be made or performed without the approval of the Architectural and Plan Control Committee so long as no alteration is made in materials or no change is made to the exterior appearance. Anything herein to the contrary notwithstanding, the Architectural and Plan Control Committee and/or Board of Directors shall have the right to determine the location of all structures, residences, and/or outbuildings upon all Lots, Parcels or tracts of land and the relation of the top of the foundation thereof to street or roadway level.

(3) Composition of Committee. The Architectural and Plan Control Committee shall be a standing committee of the Association and shall consist of a Chairman who shall be a Director of the Association and six (6) Members of the Association. The Architectural and Plan Control Committee shall be responsible to see that all improvements, construction, landscaping and alterations on all Lots, Parcels or tracts of land within the Properties conform to and harmonize with existing surroundings and structures so as to preserve and enhance values. In order to encourage harmony and compatibility within the Subdivision, the Architectural and Plan Control Committee is authorized to prepare a pattern or guide book of suggested design criteria, elements, and materials. To the greater extent feasible, the Architectural and Plan Control Committee and Board of Directors shall utilize any such pattern or guide book in undertaking and exercising the duties and functions described in this Article.

(4) Procedure. In order to provide for orderly review of building plans/specifications and requests and to allow public comment, the following procedure is established and shall be followed except in the case of an emergency declared by the Board of Directors:

(A) Submission of Plans and Notice. Any person desiring to submit building plans/specifications and request to the Architectural and Plan Control Committee shall submit the same in duplicate at the Association's Office and shall remit the

submission fee established by the Association. At the time of such submission, the applicant shall be given a date and time for a hearing on the plans/specifications and request so submitted. The hearing date shall be at least ten (10) but not more than fifteen (15) days after the submission date. Not later than five (5) days after submission of the plans/specifications and request as aforesaid, the Architectural and Plan Control Committee shall provide written notice of the submission of such plans/specifications and request to all Owners of Lots, Parcels or tracts of land abutting and adjoining (excluding streets) the proposed or requested building site by personally delivering or mailing (by certified mail, return receipt requested) to each such Lot, Parcel or tract Owner a brief written summary of the proposal and a statement setting forth the date and time of the hearing.

(B) Informal Hearing. The Architectural and Plan Control Committee shall conduct an informal hearing on the date and at the time established at the submission of the plans/specifications and request. The hearing shall be conducted informally, and the applicant and/or any Owner/Member may appear to speak and present evidence in support of or against the plans/specifications and request. At the conclusion of the hearing, the Architectural and Plan Control Committee shall vote with respect to the plans/specifications and request submitted, and shall either approve, disapprove, or refer the plans/specifications and request to the Board of Directors. A majority vote of the full Architectural and Plan Control Committee (i.e., four votes) shall be required for approval or disapproval of such plans/specifications and requests.

(C) Basis for Action. The Architectural and Plan Control Committee and/or Board of Directors may disapprove any plans/specifications and request submitted for any of the following reasons:

(i) Failure to Comply. Failure of such plans/specifications and request to comply with the Covenants, Conditions and Restrictions contained in this Declaration;

(ii) Failure to Provide Information. Failure to include information in such plans/specifications and request as required by this Declaration and/or as requested by the Architectural and Plan Control Committee;

(iii) Objections Raised. Objection to the plans/specifications and request, site plan, exterior design, appearance or materials including, without limitation, color or color scheme, finish, proportion, style of architecture, parking, height, bulk or appropriateness;

(iv) Incompatibility. Incompatibility, lack

of harmony or non-conformity with existing or previously approved plans/specifications, uses or improvements in the vicinity;

(v) Violation of Codes. The failure of plans/specifications and request to comply with zoning, building, health or other governmental laws, ordinances, codes, rules or regulations; and

(vi) Other Matters. Any other matter which in the judgment and sole discretion of the Architectural and Plan Control Committee and/or Board of Directors would render or make the plans/specifications and request or use inharmonious or incompatible with the General Plan of Development or Master plan, or with existing or approved uses or improvements in the vicinity.

(D) Referrals and Appeals. Plans/specifications and requests referred to or appealed to the Board of Directors shall be taken up as follows:

(i) Appeals. In the event the plans/specifications and request are disapproved by the Architectural and Plan Control Committee, the applicant may lodge an appeal to the Board of Directors by filing with the Secretary or Assistant Secretary of the Association a "Notice of Appeal" on a form available from the Association. The "Notice of Appeal" must be filed within ten (10) days after the hearing at which the plans/specifications and request were disapproved. Failure to file the "Notice of Appeal" within the ten (10) day time limit shall constitute a complete waiver of any right to any appeal, and any "Notice of Appeal" received for filing after the tenth (10th) day following the hearing, shall be invalid and shall not be considered by the Board of Directors.

(ii) Referrals. Any plans/specifications and request referred to the Board of Directors (either by the Committee's failure to act or by vote) or appealed to the Board of Directors (by the timely filing of a "Notice of Appeal") shall be taken up, discussed, and decided at the next regularly scheduled meeting of the Board of Directors following referral or appeal.

(iii) Binding Effect. The decision of the Board of Directors to approve or disapprove the plans/specifications and request shall be final, conclusive, and binding upon all parties, and no review of any kind or further right of appeal shall exist following approval or disapproval by the Board of Directors.

(5) Failure to Act. The Architectural and Plan Control Committee shall approve, disapprove or refer any plans/specifications and request within thirty (30) days after

submission. In the event the Architectural and Plan Control Committee fails to approve, disapprove or refer any plans/specifications and request within thirty (30) days after submission, such plans/specifications and request shall automatically be referred to the Board of Directors for decision.

(6) Records. The Association and/or Architectural and Plan Control Committee shall maintain written records of all plans/applications and requests submitted and of all actions taken thereon.

(7) No Liability. Neither the Architectural and Plan Control Committee nor the Board of Directors (and their respective members, officers, agents, and Directors) shall be liable in any way for any damages to any Person submitting plans/specifications and requests for approval, or to any Owner or any other Person on account of or by reason of any action, mistake in judgment, non-feasance, failure to act, approval, disapproval, referral, or failure to approve, disapprove or refer with regard to any plans/specifications and requests submitted. Every Person submitting plans/specifications and requests to the Architectural and Plan Control Committee agrees, by such submission, that no action or suit will be brought against the Association or Architectural and Plan Control Committee (or any member, officer, agent, and Director) in connection with such submission or any action taken thereon.

(8) Type of Building. No type or kind of residence shall be erected or permitted to remain on any Lot, Parcel or tract of land except a detached Single-Family Residence not to exceed two-and-one-half (2½) Stories in Height, excluding Basement, (except that a structure may be built on a natural slope to expose a third story on the downhill side of the slope as long as the exposed story does not face on any street), or a Multi-Family Structure of an approved size, height and configuration in those authorized locations in accordance with the Master Plan. Single-Family Residences of a single Story, with or without a Basement, shall have minimum of 1800 square feet of main floor living area; one and one-half (1½) Story Single-Family Residences, with or without a Basement, shall have a minimum of 2200 square feet of living area, with not less than 1600 square feet of living area on the main or primary floor; two (2) Story Single-Family Residences, with or without a Basement, shall have a minimum of 2800 square feet, with a minimum of 1400 square feet on the main or principal living area floor. All of the foregoing area requirements shall be exclusive of porches, patios, garages or other appurtenances and the foundation area shall not, in any case, be less than the first or main floor living area required hereunder plus garage. Any Dwelling Unit or Residential Unit destroyed by fire, storm, blizzard or Act of God may be reconstructed in accordance with the original plan for such Dwelling Unit or Residential Unit even though such plan does

not comply with the minimum square footage required by this Declaration.

(9) Building Materials. Exterior walls of all buildings, structures and appurtenances thereto shall be of building brick, natural stone, stucco, wood shingles, wood siding, wood paneling, glass blocks or any combination thereof, and no other materials shall be used without the written approval of the Architectural and Plan Control Committee and Board of Directors. Windows, doors, shutters and louvers shall be of wood, metal and/or glass. Roofs shall be covered with wood shingles or wood shakes unless other material is approved in writing by the Architectural and Plan Control Committee. All wood exteriors, except roofs and shake sidewalls, shall be covered with not less than two (2) coats of good paint or stain unless the material used preclude the necessity for coatings. All materials must be of approved quality. All driveways shall be hard-surfaced and constructed of concrete or asphalt unless another composition is approved in writing by the Architectural and Plan Control Committee. No buildings shall be permitted to stand with its exterior in an unfinished condition, for longer than five (5) months after commencement of construction. In the event of fire, windstorm or other damage, no structure shall be permitted to remain in damaged condition longer than three (3) months.

(10) Building Lines. No residence or other structure shall be located closer to any street than the building lines shown on the Plat or replat, provided, however, that the Developer shall and does hereby reserve the right and power to permit such distance to be reduced or increased by written consent of the Developer, and provided that in the case of doubt, no residence or other structure shall be located on any building site nearer to the front lot line than thirty (30) feet nor nearer to either side lot line than seven and one-half (7½) feet, nor nearer the rear lot line than thirty (30) feet without written approval of the Developer and Architectural Plan and Control Committee.

(11) Encroachments. Nothing contained in this Article shall be construed to permit any portion of any building to encroach upon an adjacent Lot, Parcel or tract of land, Common Area or Common Property. Neither the exercise by Developer of its power to modify distances as permitted in the preceding paragraph with respect to any particular Lot, Parcel or tract of land whether or not covered by this Declaration, nor the refusal of the Developer to exercise its power with respect to any such Lot, Parcel or tract of land. In the event that any portion of any roadway, walkway, parking area, driveway, water line, drainage or sewer line, utility line, building or other structure as originally constructed currently encroaches on any Lot, Parcel, tract of land, Common Area or Common Property, it shall

be deemed that the Owner of such Lot, Parcel or tract of land, the Developer, the City, or the Association has granted a perpetual easement to the Owner of the adjoining Lot, Parcel or tract of land, the Developer, the City, or the Association as the case may be for continuing maintenance and use of such encroaching roadway, walkway, driveway, parking area, water line, drainage or sewer line, utility line, building or structure.

12. Parcel. For purposes of this Declaration, all or part of each of two (2) or more contiguous Lots may, with the written consent of the Developer and Board of Directors, be designated as "Parcel," in which event the building line restrictions set forth in subparagraph 10 of this Article shall be construed to apply to the "Parcel," provided, however, that no such "Parcel" shall contain less than 7,500 square feet of land if a lake front ("first tier") and 12,500 square feet of land in other locations without written approval of the Architectural and Plan Control Committee.

13. Fences or Walls. No fences or walls may be erected upon any Lot, Parcel, or tract of land without the written consent of the Architectural and Plan Control Committee, and in no event shall any fence or wall be erected on any Lot, Parcel or tract of land which shall be of a height greater than forty-eight (48) inches above the finish Grade of the Lot, Parcel or tract at point of erection. No fence may be erected that extends beyond the rear foundation corners of the Structure toward the front yard except with the prior written approval of the Architectural and Plan Control Committee. All fences shall be limited in style to decorative wooden rail fences or wooden picket fences, with pickets not wider than four inches and space between not less than twice the width of the pickets from center to center, or chain link or wrought iron fences with posts set in concrete; decorative fence posts may be erected, provided they shall not be of a height greater than forty-eight (48) inches above the finish Grade at point of erection. This provision shall not be construed to preclude the construction of privacy walls and/or screening fences provided the same do not exceed six (6) feet in height and are constructed in an area not to exceed six (6) feet from a patio, are attached to and are an integral part of the Structure and prior approval has been granted by the Architectural and Plan Control Committee.

(14) Temporary Buildings. No previously erected or temporary building, motor home, Recreational Motor Vehicle, house trailer, "pop-up trailer," tent, shack, garage or any other type of temporary, non-permanent or partly finished building or structure shall be erected, placed, moved onto or allowed to remain upon any Lot, Parcel or tract of land as a house or residence.

(15) Signs. No signs, advertisements, billboards or

advertising Structures of any kind, except "FOR SALE" or "FOR RENT" signs (not exceeding one hundred (100) square inches in area), may be placed, erected or maintained on any Lot, Parcel or tract of land except with the prior written approval of the Architectural and Plan Control Committee.

(16) Mail Boxes. Mail boxes shall be grouped in locations to be determined by the Architectural and Plan Control Committee.

(17) Grass and Weeds. All Lots, Parcels or tracts of land shall be neatly mowed and trimmed, free of weeds and overgrowth, and shall be kept clean and in good order. Owners of improved Lots, Parcels or tracts of land shall not allow any grass or weeds on such Lots, Parcels or tracts of land to attain a height in excess of five (5) inches.

(18) Businesses or Occupations. Except as otherwise permitted or as exempted in this Declaration, no Lot, Parcel or tract of land may be used for the conduct of carrying on of any business, trade, occupation, profession or commercial activity, nor used as a school, church, seminary, clubhouse, meetinghouse, or similar place of assembly or outreach service, half-way house, group home, foster or juvenile home, orphanage, asylum, day care home or center, corrections or penal facility, drug or alcohol treatment facility, rehabilitation home or center, clinic, hospital, fraternity or sorority house, boarding house, retirement or rest home, institutional home or facility or similar type home, center or facility. This provision shall not be construed to prohibit any Owner from using a part of the residence as an office or study so long as such office use is incidental and secondary to the primary residential use and the Owner does not regularly see, examine or receive patients, patrons, clients or customers at the residence. Furthermore, this provision shall not prohibit the City of Lake Winnebago, emergency services (including police, fire and ambulance), the Developer, and/or Association from maintaining offices for providing services or for the conduct of business.

(19) Solar Panels. No solar panels may be erected, placed or maintained on any Lot, Parcel or tract of land without the prior written approval of the Architectural and Plan Control Committee and the Board of Directors.

(20) Antennas and Satellite Dishes. No radio, citizens' band, short wave, television or other transmitting or receiving antenna or satellite dish may be erected or placed on any Lot, Parcel or tract of land or attached to the roof or exterior of any residence without the prior written approval of the Architectural and Plan Control Committee and the Board of Directors.

(21) Storage Tanks. No tank for the storage of gasoline, oil, fuel or water may be erected or placed on any Lot, Parcel or tract of land without the prior written approval of the Architectural and Plan Control Committee.

(22) Animals. No hogs, cows, horses, chickens, goats, poultry, birds, livestock, or animals of any kind other than common household pets may be raised, bred, or kept on any Lot, Parcel or tract of land, except dogs, cats, or other common household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. Nothing herein shall be construed as limiting or prohibiting the Association or Owners/Members from stabling or keeping a horse or horses within approved areas, barns or stables as designated in the Master Plan and/or approved in writing by the Architectural and Plan Control Committee.

(23) Sporting or Games Areas. No sporting or game areas, such as tennis courts, badminton courts, baseball diamonds, football fields, etc. shall be allowed on the street side of any Lot, Parcel or tract of land.

(24) Motor Vehicles. No Vehicle or Motor Vehicle (except Passenger Motor Vehicles), Commercial Vehicle, bus, aircraft, Recreational Motor Vehicle, motor home, Watercraft, camper, All-Terrain Vehicle, Motorcycle or Trailer may be parked, left or stored for more than a period of five (5) days on any street or on any Lot, Parcel or tract of land unless the same be in an enclosed garage. No Motor Vehicle, truck, bus, aircraft, Recreational Motor Vehicle, motor home, Watercraft, Vessel, boat, camper, All-Terrain Vehicle, Motorcycle or Trailer shall have mechanical work performed on it or be worked on in any manner and be parked, left or stored on any street, driveway or on any Lot, Parcel or tract of land for more than five (5) days during any one thirty-day (30) period. This provision shall not be construed as limiting or prohibiting the mooring and/or storage of any Watercraft in a dock or upon a mechanical lift device within a dock, nor the temporary parking and/or storing of trucks, Trailers and similar equipment utilized during or as part of any construction or building project. No Motor Vehicle of any kind may be operated, driven, ridden or parked on any vacant Lot, Parcel, or tract of land except with the express written approval or permission of the Board of Directors.

(25) Removal of Trees. No shade trees may be removed from any Lot, Parcel or tract of land without the prior written approval of the Architectural and Plan Control Committee, except that dead trees may be removed without approval.

(26) Removal of Waste. No Lot, Parcel or tract of land or any part thereof shall be used or maintained as a landfill or dumping ground for rubbish, trash, garbage or other solid wastes.

Trash, garbage or other waste pending removal shall be kept in approved locations and shall not be kept in any place which the Architectural and Plan Control Committee deems threatening or detrimental to the appearance, health, safety or welfare of Owners/Members or the Subdivision. No trash, garbage, waste or rubbish shall be placed, discharged, discarded or dumped into Lake Winnebago, Lake Georgina, onto any lake easement, dock facility, and/or any Common Area or Common Property.

(27) Sewage Disposal. No individual or private sewage disposal system (including septic tank or holding tank) shall be permitted on any Lot, Parcel or tract of land.

(28) Water Supply. No water well shall be dug or individual water supply system shall be constructed or placed on any Lot, Parcel or tract of land without the prior written approval of the Developer, and Architectural Plan and Control Committee or Board of Directors and then only after the Owner has obtained all licenses and permits required by any applicable governmental entities and agencies.

(29) Dangerous Activity. No noxious, dangerous or offensive activity shall be undertaken or carried on any Lot, Parcel or tract of land, nor shall anything be done therein which may be or become a nuisance or annoyance to other Owners/Members, their Family members, guests or tenants.

(30) Developer's Easements. Unless within the exclusive jurisdiction of the City, the Developer shall have and does hereby reserve the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of drains, sanitary and storm sewers, gas and water mains and lines, electric and telephone lines and all other utilities, and to give or grant rights of way or easements therefor over and upon any part of the Properties. No water from roof downspouts, basement garage drain or surface drainage shall be placed in any sewer line and no connection of any kind shall be made to any sewer line without inspection and approval by the Developer, or its assigns.

(31) Reservation of Easement for Utilities. Reserved and excepted from this Declaration are easements to the extent of seven and one-half (7½) feet over the rear and five (5) feet on each side Lot or Parcel line, as shown or depicted on the Subdivision Plat or replat, for the installation and maintenance of utilities and drainage facilities, and the Developer, its agents, successors and public utilities are and shall be permitted to use such easements for the purposes aforementioned.

(32) Lake Easements. Reserved and excepted from this Declaration are easements to the extent of two and one-half (2½) feet down the side of all Lake front Lots, Parcels or tracts of

land as shown or depicted on Subdivision Plat or replat for Community Access to the Lake Shore Easement itself, and the Developer, its agents, successors and permittees are and shall be permitted to use such two and one-half (2½) foot easements for access to the Lake Shore Easement. No Person shall obstruct, block or in any manner restrict access to any Community Access Easement and/or the Lake Shore Easement.

ARTICLE V

(a) Lake Winnebago Home Owners' Association.

(1) Formation. Pursuant to the Not-for-Profit Law of Missouri (Chapter 355 RSMo), the Lake Winnebago Home Owners' Association has been organized and is established to operate a homes association in the Subdivision, to enforce the Covenants, Conditions and Restrictions set forth in this Declaration, to provide facilities and services, and to have such specific rights, obligations, duties and functions as are set forth in this Declaration, its Articles of Incorporation and By-laws, as the same may be amended from time to time. The Articles of Incorporation and By-laws may not conflict or be inconsistent with the provisions of this Declaration. Subject to any additional limitations provided in the Articles of Incorporation, its By-laws, and this Declaration, the Association and its Board of Directors shall have and may exercise all the powers of a not-for-profit corporation as contained in the Missouri Not-for-Profit Corporation Law (Chapter 355 RSMo) as the same may be amended from time to time.

(2) Membership. Every Person owning an undivided fee simple interest in any Lot, Parcel or tract of land shall be a Member of the association so long as such Person owns such fee simple interest in such Lot, Parcel or tract of land; provided, however, that any Person holding an interest merely as a security for the performance of an obligation shall not be a Member of the Association. Membership shall be appurtenant to and inseparable from ownership of a Lot, Parcel or tract of land. Transfer of such ownership either voluntarily or by operation of law shall terminate membership in the Association, and said membership shall thereupon be vested in the transferee.

(3) Qualification. The Association shall be the sole judge of the qualifications of its Members and may, except as provided in its By-laws and this Declaration, establish rules and regulations respecting the conduct of meetings, voting and restrictions on voting at any meeting, and the powers, responsibilities and duties of its Members and committees.

(4) Addresses. It shall be the duty of each Member of the Association promptly to notify the Association of his address and any address changes. The Association shall notify all

Members of the time and place of all Association meetings, of the amount of all assessments, and any other business of the Association at such address. Any notice mailed by the Association to a Member's address on file with the Association, postage prepaid, shall be deemed valid and proper notice for all purposes.

(5) Assessments. By acceptance of a deed or other transfer instrument (whether or not it shall be so expressed in the deed or other transfer instrument), every Owner of any Lot, Parcel or tract of land in the Subdivision shall be deemed to covenant, promise, and agree to pay to the Association any and all annual and special assessments fixed, established, and levied by the Association from time to time as provided in this Article.

(A) Charge and Lien. Until paid in full, all annual and/or special assessments (together with interest, delinquency charges and penalties, and the costs of collection as provided in this Article), shall be a charge on and a continuing lien against the Lot, Parcel, or tract of land on which the annual and/or special assessments were fixed, established, and levied by the Association.

(B) Personal Obligation. Until paid in full, all annual and/or special assessments (together with interest, delinquency charges and penalties, and the costs of collection as provided in this Article) shall be the personal obligation of the Owner of such Lot, Parcel or tract of land at the time when such annual and/or special assessments were fixed, established, and levied by the Association. Such personal obligation to pay all annual and/or special assessments shall remain the personal obligation of the Owner of such Lot, Parcel or tract of land for the statutory period and shall not pass to any successor in title unless expressly assumed by such successor in title. If such personal payment obligation is assumed, the prior Owner and successor in title shall be jointly and severally liable for the payment of any and all annual and/or special assessments fixed, established, and levied by the Association prior to such transfer of title.

(C) Uniform Rate. Any and all annual and/or special assessments shall be fixed, established, and levied by the Association in equal amounts against each Lot, Parcel or tract of land (whether occupied or vacant, developed or undeveloped, neither the size of any Lot, Parcel or tract of land nor the exemption of less than the whole of any Lot, Parcel or tract of land as provided in this Article shall relieve any Lot, Parcel or tract of land from being assessed at said uniform rate nor affect the personal obligation to pay all such assessments or the lien against such Lot, Parcel or tract of land. Any Lots designated as a Parcel pursuant to Article IV, Section 12, of this Declaration shall be treated as a single Lot for the

purposes of any assessment.

(6) Exempt Property. The following Properties, subject to this Declaration, shall be exempt from the levy and/or payment of any annual or special assessment and the charges and liens created herein:

- (A) All Lots, Parcels or tracts of land dedicated to and accepted by any public authority and devoted to public use;
- (B) All Lots, Parcels or tracts of land acquired (by purchase or condemnation) by any governmental unit or public authority;
- (C) All Common Areas or Common Properties;
- (D) All Lots, Parcels or tracts of land owned by the Developers; and
- (E) All Lots, Parcel or tracts of land owned by the Association.

(7) Purposes of Assessments. Assessments fixed, established, and levied by the Association shall be applied, used, and expended for purposes of promoting, fostering, encouraging and supporting the recreation, education, health, safety and welfare of Owners/ Members including the acquisition, improvements, betterment and maintenance of Common Areas or Common Properties, facilities, and other services as herein specified.

(A) Annual Assessments. Annual assessments are assessments fixed, established, and levied by the Association acting through the Board of Directors sufficient in amount to provide funds for discharging the Common Expense and annual operating expenses of the Association. By way of illustration, funds collected by the Association from annual assessments may be applied to and expended for any of the following purposes and in such amounts as the Board of Directors, in its discretion, shall deem prudent, necessary or advisable:

(i) Enforcement of Restrictions. To enforce either in the name of the Association or in the name of individual Owners/Members, or as assignee of such, any Covenants, Conditions and/or Restrictions imposed by this Declaration.

(ii) Rubbish Removal. To collect and dispose of refuse, trash, rubbish and the like; and to provide, at suitable locations, receptacles for the collection of rubbish and for the disposal of such refuse, trash and rubbish as it is

collected.

(iii) Care of Vacant Properties. To mow and remove weeds and grass from vacant Lots, Parcels or tracts of land and pick up and remove therefrom loose material, trash, and rubbish of all kinds; and to do other things necessary and desirable in the judgment of the Board of Directors to keep vacant Lots, Parcels or tracts of land clean and in good order.

(iv) Common Areas or Common Properties. To acquire, create, maintain and beautify Common Areas or Common Properties, parks, beaches and docking area, playgrounds and athletic fields owned, licensed or leased by the Association or on land dedicated to the common use and enjoyment of Owners/Members.

(v) Beautifying. To beautify and keep neat and in good order anywhere neighborhood services are not adequately provided by the City of Lake Winnebago, County of Cass or the State of Missouri; to provide any other neighborhood services not provided by government authorities.

(iv) Improvements. To protect property value by keeping alive pride in the Subdivision and enthusiasm for it; to work for better transportation, school, libraries, recreation areas and playgrounds within the community, and to do all lawful things and acts which the Association at any time and from time to time shall at its discretion deem to be for the best interests of the Owners/Members and the Subdivision.

(vii) Lakes, Dam and Spillway. To determine and arrange for all inspection, labor and services necessary or desirable to maintain, repair, replace, improve, better, and add to the beauty and safety of all lakes, ponds, dams and spillways within the Subdivision for the protection and welfare of Owners/Members.

(viii) Safety Regulations. To make, adopt, impose, and enforce reasonable rules, regulations, and restriction respecting the use and usage of Lake Winnebago (including its dams and spillway), Lake Georgina and any other lakes or ponds (including, but not limited to, rules for the operation of Water craft, skiing, swimming, and the erection, placement and maintenance of docks), all other Common Areas or Common Properties, and any facilities for the health, safety, welfare, protection and benefit Owner/Members.

(ix) Police and Fire Protection. To provide supplementary financial assistance for police and fire protection in the Subdivision not otherwise adequately provided by public authorities.

(x) Expenses of Association. To pay the Common Expense and all other expenses in connection with and incident to the operation of the Association.

(B) Special Assessments. Special assessments are assessments which may be fixed, established, and levied by the Association for the purpose of defraying, in whole or in part, the cost of acquiring real or personal property or of any construction, reconstruction or replacement of any improvement or facility located upon any Common Area or Common Property, or to pay the principal and interest of any long-term loans, to be made or extended to the Association, or for special projects or capital improvements.

(8) Procedure. In order to provide facilities and services hereafter specified, the Association may levy assessments as follows:

(A) Annual Assessments. On or before December 31st of each year, the Board of Directors shall adopt a budget of any anticipated revenues and all annual operating expenses of the Association for the next year and shall thereafter fix, establish, and levy an annual assessment for the ensuing year in an amount sufficient to provide funds for discharging the Common Expense and annual operating expense of the Association. On or before February 1st of each year, the Association shall cause a copy of such annual budget and a "Statement of Annual Assessment" to be mailed to the address of each Owner/Member of the Association on file with the Association. Unless due to the intentional or willful acts of the Association, the failure of the Association to mail a copy of the annual budget and "Statement of Annual Assessment" shall not, however, affect the validity of an annual assessment or relieve any obligation to pay such annual assessment. Annual assessments become due on January 1st and shall be paid in full by all Owners/Members on or before March 1st of each year, and the lien of such annual assessment shall attach against each Lot, Parcel or tract of land as of March 1st if not paid in full prior thereto. On or before March 1st of each year, the Secretary of the Association shall record with the Recorder of Deeds of Cass County, Missouri, a Certificate of Annual Assessment which sets forth the amount of the annual assessment.

(B) Special Assessments. No special assessment shall be valid unless the Association has complied with the following procedure:

(i) The Board of Directors shall adopt a resolution calling a meeting of all Owners/Members of the Association to vote upon the proposition adopted in such resolution to incur an obligation of the Association to be paid over a period of years and specifying the purpose for which the

obligation is to be repaid, the total special assessment against each Lot, Parcel or tract of land, the estimated annual payment upon each Lot, Parcel or tract of land to repay the obligation, and the number of years of such installment payments, if payment of the special assessment is to be in installments.

(ii) A copy of the resolution and a notice of a meeting of Owners/Members of the Association designating the time and place of the meeting shall be mailed to the address of each Owner/Member on file with the Association, not less than ten (10) nor more than thirty (30) days prior to the meeting.

(iii) Voting on the proposition contained in the resolution at said meeting shall be in accordance with the By-laws of the Association and by written, secret ballot in substantially the following form:

OFFICIAL BALLOT

Instructions to voters:

To cast a ballot in favor of the proposition submitted upon this ballot place a cross (x) mark in the square opposite the word "Yes"; to vote against the proposition submitted upon this ballot place a cross (x) mark in the square opposite the word "No."

Proposition to incur an obligation of the Lake Winnebago Home Owners' Association in the amount of \$_____ to be paid in _____ years for the purpose of _____.

Total assessment against each lot \$_____. Payment of \$_____ per year for _____ years if paid in installments.

☐ Yes

☐ No

(iv) For purpose of voting on such proposition, a quorum shall be as required by the By-laws of the Association. In the event that a quorum is present at the meeting and sixty percent (60%) or more of the ballots cast are in favor of the proposition, the Board of Directors of the Association shall thereby be authorized to incur on behalf of the Association the obligation specified in the proposition for the

purposes stated therein and to fix, establish, and levy a special assessment against the Lot, Parcel or tract of land of each Owner/Member of the Association in an amount which shall not exceed the amount specified in the proposition.

(v) A special assessment may be paid in full within sixty (60) days from the date of the meeting authorizing same. If not paid in full within sixty (60) days, the special assessment shall be payable in installments in the amount and for the number of years specified in the resolution and ballot, provided that any Owner/Member paying a special assessment in installments may discharge the personal obligation and the property lien at any time by paying the total amount of the unpaid special assessment specified in the resolution and ballot including interest, if any, accrued to the date of payment. Each installment of a special assessment becomes due on January 1st and shall be paid in full on or before March 1st of each year, and special assessment installments shall be billed at the same time each year as annual assessments are billed. The lien of a special assessment shall attach to the Lot, Parcel or tract of land as of the date of recording the Affidavit mentioned in subparagraph (vi) below, and shall be subject to any existing encumbrances then of record.

(vi) In the event sixty percent (60%) or more of the ballots cast at the meeting are in favor of the proposition, then the Chairman and Secretary of the meeting shall execute and record with the Recorder of Deeds of Cass County, Missouri, an Affidavit setting out the resolution of the Board of Directors, the notice of the meeting, a certification that the resolution and notice of the meeting were mailed to the last known address of each Owner/Member of the Association and the date of said mailing, a copy of the written ballot, and a certification that a quorum of Members attended the meeting and that sixty percent (60%) or more of the ballots cast at said meeting were in favor of the proposition.

(vii) Within thirty (30) days after the meeting authorizing any special assessment, the Association shall notify each Owner/Member in writing of the total amount of the special assessment, the amount of any installment, and the period of years over which the installments may be paid.

(viii) A special assessment shall, upon recording of the Affidavit as required above, be deemed valid and enforceable and shall be so held in any legal proceeding in which its validity and/or enforceability may be challenged or questioned, unless within forty-five (45) days following the meeting of Members at which the special assessment was approved as aforesaid, an Owner/Member deeming the special assessment obligation to be invalid and/or unenforceable shall institute action (which shall be available to any Owner/Member) seeking to

enjoin the Association from imposing the special assessment and/or incurring the obligation on the ground that incurring the obligation and/or imposing the special assessment is or would be in violation of or contrary to the terms of this Declaration.

(ix) Funds obtained from any such loans as well as money collected from any special assessment shall not be commingled with other funds of the Association but shall be deposited and withdrawn from special accounts. Funds derived from any such loan shall be used only for the purpose specified in the proposition, and collections from such special assessment shall be used solely for the purposes authorized in the proposition. Any surplus special assessment funds or money remaining after repayment of any obligation may be expended by the Board of Directors for any of the purposes enumerated in subparagraph (a)(7)(A) of this Article unless otherwise directed by the Members.

(x) In the event the Association defaults in any installment due on the obligation incurred as aforesaid, the holder of the notes or obligation shall give the Association thirty (30) days notice in writing of its intention to be subrogate to the rights of the Association. If the default is not cured within thirty (30) days after receipt of notice by the Association, then the holder or obligee shall be subrogated to the rights of the Association to bill Members for the special assessment and to foreclose the lien of such assessment as provided in subparagraph (a)(8)(C) of this Article.

(C) Effect on Non-Payment. If the whole of any annual assessment or all of any special assessment installment is not paid by March 1st as required above, then such annual assessment or special assessment installment shall become delinquent and shall, together with interest thereon, delinquency charges thereon and costs of collection as herein provided, and until paid in full, remain the personal payment obligation of the Owner and continue to be a lien against the Lot, Parcel or tract of land which shall bind such property in the hands of the then Owner and any heirs, devisees, personal representatives, successors and assigns.

(i) Certificates of Non-Payment. Upon delinquency, the Association may record a "Certificate on Non-Payment" of the annual assessment and/or installment of a special assessment in the Office of the Recorder of Deeds of Cass County, Missouri, and for each such "Certificate of Non-Payment" recorded the association shall be entitled to collect an additional delinquency charge equal to the fee for recording such "Certificate of Non-Payment" plus a monetary penalty of Fifty Dollars (\$50.00).

(ii) Interest. An interest rate equal to the

greater of fifteen percent (15%) per annum or three points in excess of and in addition to the prime interest rate as announced by Chase Manhattan Bank of New York as of January 1 of each year shall also be charged and due on all delinquent annual assessments and all delinquent special assessment installments from the date of delinquency until fully paid. The interest rate to be charged on delinquent accounts for the ensuing year shall be set forth in the "Statement of Annual Assessment" mailed to each Member by the Association as provided above.

(iii) Costs of Collection. If the Association shall attempt or effectuate collection of any delinquent annual assessment and/or special assessment installment (including any interest, delinquency charges and penalties) by resort or referral to a collection agency and/or an attorney, the Association shall be entitled to recover and collect (with or without the necessity of a lawsuit), in addition to the charge, penalty and interest set forth in the preceding two subsections, all costs, sums or fees charged to the Association by any such collection agency and/or attorney for collection or attempting to collect the delinquent annual assessment and/or special assessment installment, and all such collection costs, sums and fees shall be an additional delinquency charge.

(iv) Enforcement. The personal obligation for payment of all assessments and/or the assessment lien provided for in this Article may be enforced by a civil action in the Circuit Court of Cass County, Missouri, or any other court having jurisdiction for the collection of personal obligations and/or enforcement of said liens. In such proceedings for the collection of personal obligations, if the Court finds the Owner liable for the payment of any delinquent assessment, the Court shall render and enter a personal judgment against the Owner in an amount equal to the sum of all delinquent assessments, interest, delinquency charges, the costs of collection, and all other costs permitted by law. In such proceedings for enforcement of liens, if the Court finds the Owner liable for payment of any delinquent assessment, the Court shall enter a judgment ordering the Lot, Parcel or tract of land subject to the assessment lien to be sold at public sale by such officer as may be appointed by the Court, for cash, upon due and reasonable notice and advertisements as provided by the Court, and the proceeds of the public sale shall be applied first to Court costs and expenses of sale, including title policies, next to payment of assessment lien (including interest thereon, delinquency charges and costs of collection as provided above), and the balance, if any, shall be paid to the Owner of the Lot, Parcel or tract of land at the time of sale. Any deficiency may be collected by the initiation of a separate civil action.

ARTICLE VI

Amendment and Duration of Restrictions. This Declaration may be amended, modified or terminated at any time by an instrument or instruments in writing signed and acknowledged by the record Owners of fee simple title to two-thirds (2/3) of all the Lots, Parcels or tracts of land in the Lake Winnebago Subdivision. The Covenants, Conditions and Restrictions herein contained (and as may be amended from time to time) shall run with the land and shall continue in effect until December 31, 2005, at which time the Covenants, Conditions and Restrictions in this Declaration shall automatically be extended for successive periods of ten (10) years unless an instrument in writing is executed and acknowledged by the then record Owners of fee simply title to two-thirds (2/3) of all the Lots, Parcels or tracts of land in the Subdivision, and such instrument is recorded releasing all or part of the Property or amending, modifying or terminating these Covenants, Conditions and Restrictions, in whole or in part.

ARTICLE VII

Transfer and Use. No Lot, Parcel or tract of land within the Subdivision may be willed, sold, conveyed or transferred in any manner to any civic, social, religious, charitable or fraternal corporation, group, entity or organization, or to any other Person except for the exclusive use of a Family as residential housing and recreational facilities, and no Lot, Parcel or tract of land may be used in violation of any of the specific use restrictions in this Declaration. This Article shall not be construed so as to prohibit or restrict transfer to or ownership of any Lot, Parcel or tract of land by the Developer or the Association, or prohibit the ownership of any Common Area or Common Property by the Association.

ARTICLE VIII

(a) Enforcement of Covenant. The Covenants, Conditions and Restrictions contained herein may be enforced by a proceeding at law and/or in equity (prohibitive or mandatory injunction) against any Person violating, attempting to violate, or threatening to violate any of the Covenants, Conditions or Restrictions. Any court of competent jurisdiction may restrain an attempted or threatened violation of the Covenants, Conditions and Restrictions, and/or award damages for their violation. This Declaration may be enforced by the judicial proceedings aforementioned by the Developer, or an Owner of any Lot, Parcel or tract of land in the Subdivision, or by any Owner of Property which may be hereafter subjected to these Covenants, Conditions and Restrictions, or by the Association, and the Developer, Owner or the Association may prosecute by appropriate judicial

proceedings any action to prevent violation of or enforce the observance of these Covenants, Conditions and Restrictions and/or to recover damages.

(b) No Waiver. Any failure by the Developer, Association, or any Owner to enforce or seek enforcement of any of the Covenants, Conditions and Restrictions herein set forth at the time of its or their violation or threatened violation shall in no event be deemed to be or constitute a waiver of any kind as to or of the right to enforce or seek enforcement thereafter of any Covenant, Condition and Restriction herein set forth, nor shall any such failure to enforce be deemed to estop, preclude or in any way prevent the subsequent enforcement of any Covenant, Condition or Restriction herein set forth by the Developer, Association and/or any Owner.

(c) Severability. In the event that any court shall invalidate any one or more of the Covenants, Conditions and Restrictions set forth herein, such invalidation shall not invalidate or in any way affect any of the remaining Covenants, Conditions and Restrictions, of any part thereof, but they shall remain in full force and effect.

ARTICLE IX

Binding Effect. All the Covenants, Conditions and Restrictions herein set forth shall be deemed to and shall run with the land and shall bind the Developer, and its successors and assigns, and all parties (including Owners of all Lots, Parcels or tracts of land) claiming by, through or under the Developer shall be taken to hold, agree and covenant with the Developer, its successors and assigns, and with each of them to conform to and observe all the Covenants, Conditions and Restrictions herein set forth as to the use of said Lots, Parcels or tracts of land, the constructions of improvements thereon, and the rules, regulations and restrictions made and imposed by the Association, but no Covenant, Condition and/or Restriction herein set forth shall be personally binding on any Person, except in respect of breaches committed during his, her, its or their seisin of, or title to, said Lot, Parcel or tract of land.

ARTICLE X

Right to Assign. The Developer may, by appropriate agreement, assign or convey to any person all of the rights, powers, reservations and privileges herein reserved by it and by such agreement, assignment or conveyance being made, its assignee or grantee may, at its option, exercise, transfer or assign those rights or any one or more of them at any time or times, in the same way and manner as though directly reserved by them or it, in this Declaration.

ARTICLE XI

Addition of Other Property to Declaration of Association. The Developer may, from time to time, add such other property to this Declaration as is now or hereafter approved for addition by it. The property so added to this Declaration shall be situated adjacent to the Property, and shall, at the time of the addition, be found by all the Covenants, Conditions and Restrictions of this Declaration and any future modifications thereof, and provided further the Developer makes written application to the Association and such application is approved by the Association

ARTICLE XII

(a) Captions. The captions in this Declaration are for convenience and reference only and in no way affect, define, limit or describe the scope or intent of this Declaration.

(b) Use of Words. Whenever, in this Declaration, any subject matter, party or Person is described or referred to by words importing the singular number or the masculine gender, the plural number and females as well as males, and bodies corporate as well as natural Persons, are included.

(c) Perpetuities. If any provision of this Declaration shall be interpreted to constitute a violation of the rule against perpetuities, then such provision shall be deemed to remain effective until the death of the last survivor of the now living descendants of Ronald W. Reagan, 40th President of the United States of America, plus twenty-one (21) years thereafter.

(d) Applicable Law. This Declaration shall be subject to and construed in accordance with the laws of the State of Missouri.

(e) Effective Date. This Declaration shall take effect when recorded. Uses, structures, and conditions in conformity with the original Declaration of Restrictions as amended on the Effective Date here of shall be deemed to be approved non-conforming uses, structures and/or conditions under this Declaration.

(f) Counterparts. This Declaration may be executed in counterparts, all of which taken together shall constitute one instrument.