

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR CHARLESTON PLACE DEVELOPMENT COMPANY**

THIS AMENDMENT to the Declaration of Covenants, Conditions and Restrictions is executed this 4th day of ~~October~~^{November}, 1996, by CHARLESTON PLACE DEVELOPMENT COMPANY, a Missouri partnership ("Developer"), and consented to by BURKS CONSTRUCTION, INC., and BOB CLEVINGER, a single person.

WITNESSETH:

WHEREAS, Developer, pursuant to the Declaration of Covenants, Conditions and Restrictions for Charleston Place Subdivision, recorded in Book 364, at Page 390, in the Cole County Recorder of Deeds Office, has certain rights to amend the original Declaration of Covenants, Conditions and Restrictions for Charleston Place ("Declaration");

WHEREAS, Developer has deemed it desirable, necessary and advisable to amend the original Declaration; and

WHEREAS, Burks Construction, Inc., is the owner of Lot No. 2 and Lot No. 12, and Bob Clevenger is the owner of Lot No. 19, all in Section 1, per plat of record in Plat Book 11, page 718, Cole County Recorder's Office.

NOW, THEREFORE, Developer, with the consent of the above-referenced owners, hereby amends the Declaration, and the real property described in Article II of the Declaration is hereby made subject to the provisions of this amendment; and the property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions and restrictions hereafter set forth in addition to the covenants, conditions and restrictions set forth in the Declaration, which shall run with the land. The covenants, conditions and restrictions set forth in this Amendment shall run with the land and be binding on all present and future owners of the property. It is expressly declared that the rights of existing holders of deeds of trust are not affected by the adoption of this Amendment.

AMENDMENT I

Article I, Definition E, is deleted in its entirety and in lieu thereof the following Definition E inserted:

(E) "Lot" means the tract of land designated by a number or by a number and a letter on the recorded plat, any subsequent plat or survey of land for which these covenants are made effective.

AMENDMENT II

Article IX, Section 2, of the Declaration, as amended, is deleted in its entirety and in lieu thereof the following is inserted:

Section 2. **Restricted Lots.** Lots 1 through 13 shall be restricted for either single family townhouse or single family dwelling use. Certain additional restrictions, covenants and conditions shall apply to any lot devoted to townhouse use as set out in Article XV.

AMENDMENT III

Article IX, Section 5, of the Declaration, as amended by Amendment to Declaration of Covenants, Conditions and Restrictions for Charleston Place Development, dated May 31, 1996, and recorded in Book 377, at page 932, in the Office of the Recorder of Deeds of Cole County, Missouri, is deleted in its entirety and the following additional section is added to Article IX, to be known as Section 7.

Section 7. **Townhouse.** Townhouses may have either front or side entry garages.

All buildings constructed on Lots 1 - 13 shall be located at a minimum of 25 feet from the lots' front property line. This Amendment to Declaration amends the 30 foot building line set back provided for on Lots 1 - 13, as shown in plat of record at Plat Book 11, page 718, Cole County Recorder's Office; such that the building line shown on that plat is changed from 30 feet to 25 feet.

AMENDMENT IV

The following additional article is added to the Declaration to be known as Article XV:

ARTICLE XV

TOWNHOUSE COVENANTS, CONDITIONS AND RESTRICTIONS

The following easements, covenants, restrictions and conditions shall run with any lot numbered 1 - 13 upon which a townhouse is constructed and shall be binding upon all parties having or acquiring any right, title or interest in such lot or part thereof.

Section 1. Definitions. The following definitions shall apply to this article only:

(A) Premises. Premises shall mean and refer to any lot numbered Lot 1 through Lot 13, per plat of record in Plat Book 11, page 718, Cole County Recorder's Office, upon which a townhouse is constructed.

(B) Common Area. Common Area shall mean all land within the premises, except dedicated streets and "lots" as herein defined.

(C) Lot. Lot shall mean a tract of land located within the premises designated by number and by letter (such as Lot 1-A or Lot 1-B) on any recorded survey or plat and which is located within the premises above described.

Section 2. Common Area.

(A) Title to the Common Area. The Developer hereby covenants for itself, its successors and assigns, that it will convey fee simple title of the Common Area to the Association, prior to the conveyance of the last Lot within the Premises.

(B) Mortgage Liens on Common Area and Release Thereof. Except for existing mortgages or deeds of trust, existing easements, restrictions and rights of way, if any, of record, the easements and rights of way dedicated and/or reserved on the recorded plat and recorded subdivision maps and/or surveys of the Premises, taxes for the current year and subsequent years, and the provisions of this declaration and the By-Laws of the Homeowners Association, the Common Area conveyed to the Association pursuant to Section 2.1 shall be free and clear of all liens and encumbrances.

Section 3. Party Walls.

(A) General Rules to Apply. Each wall and footings which are built as a part of the original construction of the buildings upon the Premises and placed on the dividing line between Lots or exclusive easement areas or any combination of Lots and/or exclusive easement areas shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to the negligence or willful acts or omissions shall apply thereto.

(B) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall including the footings shall be snared by the Owners who make use of the wall in proportion to such use.

(C) Destruction by Fire or Other Casualty. 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 the others under any rule of law regarding liability for negligence or willful acts or omission.

(D) Weatherproofing. Notwithstanding any other provision of this Article, 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.

(E) Right to Contributions Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to each Owner's successors in title.

(F) Arbitration. In the event of any dispute concerning party wall, or arising under the provisions of this Article, such dispute shall be submitted to and determined by a board of three arbitrators as follows: The party desiring to have the matter in dispute submitted to arbitration shall give the other party written notice of such desire and shall name one of the arbitrators in such notice. Within ten (10) days after the receipt of such notice, the other party shall name a second arbitrator, and in case of failure to do so, the party who has already named an arbitrator may have the second arbitrator selected or appointed by a judge of the Circuit Court of Cole County, Missouri, and the two arbitrators so appointed in either manner shall select and appoint a third arbitrator, and in the event the two arbitrators so appointed shall fail to appoint the third arbitrator within ten (10) days after the naming of the second arbitrator, either party may have the third arbitrator selected or appointed by judges, and the three arbitrators so appointed shall thereupon proceed to determine the matter

in question, disagreement, or difference, and the decision of any two of them shall be final, conclusive and binding upon all parties. In all cases of arbitration, the parties hereto shall each pay the expense of its own attorneys' and witnesses' fees, and all other expenses of such arbitration shall be divided equally between the parties.

Section 4. Easements.

All of the easements provided for and described in this Section 4 shall be an appurtenance to each Lot and Common Area benefited thereby and shall run with the land.

(A) Utility and Service Easements.

(a) Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and/or recorded surveys; and further until the last lot in the Premises is sold by Developer, Developer reserves a blanket easement over the Common Area and Lots for the installation, maintenance, repair, replacement and upgrading of utilities. Within these easements, no structures, plantings or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company, or the Association is responsible.

(b) Any easements required by or for any utility, district, company, city or other legal entity over, across, under or through the Common Area may be granted by the Developer (with consent of holders of recorded mortgage, if any, on the Common Area) prior to the sale of the last lot by the Developer.

(c) Each Lot within the Premises is and shall be burdened with a blanket easement for the installation, use, maintenance, repair and construction of all water, sewer, gas, electric, telephone, television and air conditioning lines and appurtenances which constitutes any portion of an original improvement located upon any portion of the Premises. Such easements are and shall be for the benefit of any and all Lots served by the said water, sewer, gas, electric, telephone, television and air conditioning lines and appurtenances. Further provided, that when any such line or appurtenance is for the exclusive benefit of an Owner, the Owner of said Lot so exclusively served shall keep and maintain said line or appurtenance in good repair at his sole expense, and when any such line or appurtenance is for the benefit of more than one Lot, then the Owners of all such Lots

so benefited by such line or appurtenance shall equally bear the cost and responsibility of the maintenance and repair of such common line or appurtenance; and that if any improvement on any Lot is damaged in the performance of any such repair and maintenance, it shall (as a part of such repair and maintenance) be restored to its original condition. All of said easements shall be an appurtenance to each Lot benefited thereby and shall run with the land.

(B) Access Rights Throughout Common Area. Access rights are reserved for employees of the utility companies serving the residences within the Premises, and for governmental units that provide customary services such as fire protection, police protection, water service, health service, etc., all for the purpose of conducting official business, throughout areas designated Common Area.

(C) Access Rights of Owners. There is hereby granted to families, and guests to their respective Lots) easements as follows:

(a) easements of right of way for use by pedestrian traffic along, over and across all walks, driveway, private streets shown and/or described in any recorded plat, recorded subdivision map or survey of all or any part of the Premises and along, over and across all of the Common Area, except portions thereof at any time occupied by recreational facilities or structures belonging to the Association; and

(b) easement of right of way for use by vehicular traffic along, over and across all driveways, private streets and parking areas, if any, as shown and/or described on any recorded plat, recorded subdivision, map or survey of all or any part of the Premises.

(c) All of the Owners in the premises shall have a non-exclusive right to the use of all Common Areas located within the Premises.

(d) All of the Owners in the premises shall have an easement in, on, across, over and under any adjacent Lot or Common Area to permit the owner, his agents, employees and assigns, to effect any maintenance or repairs, including, but not limited to, the maintenance and repair required to be performed by Owner at his expense under this Declaration.

Provided, however, that all of the easements described in subparagraphs (a), (b), (c) and (d) above shall be appurtenant to and shall pass with the title to each Lot and that the exercise of all such easements shall be subject to reasonable rules and regulations as shall be from time to

time adopted by the Association.

(D) Easement for Minor Encroachment. Each Owner of any Lot covenants that if any portion of an original improvement, (whether the same be an improvement of an Owner or of the Association) encroaches upon a Lot or the Common Area, a valid easement for the encroachment and for the maintenance and reconstruction if partially or totally destroyed shall and does exist. Valid easements shall also exist for balconies, stoops, porches, roofs, fireplaces and second stories constructed over the Common Area or other Lots where such balconies, stoops, porches, roofs, fireplaces or second stories are part of the original; buildings constructed on the Lots, or where later added in accordance with the provisions of Article VII.

(E) Developer and Association Easement. (a) Developer (for itself and its assigns and subcontractor) hereby reserves a right of ingress and egress over and across all the Common Area and Lots for the purpose of erecting improvements upon the Lots and Common Area, and this easement shall continue until the sale of the last Lot by Developer; (b) Each Owner of any Lot covenants that the Developer, the Association or their designees shall have an easement in, on, across, over and under such Lot to permit the Developer, the Association or their agents, employees and assigns, to effect any maintenance or repairs, including, but not limited to, the maintenance required by the By-Laws of Charleston Place Development Company Homeowners Association and this Declaration or the installation and maintenance of utility lines and pipes.

(F) Patio, Decks Entrance Ways, Driveways, Walkways and Parking Easement. Valid exclusive use easements shall exist for the patios, decks, walkways, entrance ways, pads for heating and air conditioning and parking areas immediately adjacent to each Lot. Said exclusive use easements shall be for use by and the sole and exclusive benefit of Owners of said Lots as benefited by each such easement area and said easement shall be an appurtenance to such benefited Lots and shall run with the land. No structures (other than as a part of the original construction or later added in accordance with the provisions of Article VII) shall be placed or permitted on or within said easement areas and no structures shall be removed from the easement areas without prior written approval of the Owner of the burdened fee and the Association. Maintenance of the easement areas and of any improvements within the easement areas shall be at the cost and responsibility of the Owner of the Lot benefited by said easement.

(G) Easement for Right of Way. Notwithstanding the legal description and survey map or plat of the lots to be conveyed within the

Premises which is not covered or delineated by the improvements originally placed on said Lot by the original builder of same, or enclosed or delineated by a fence or enclosure originally placed on the Lot by the original builder, shall be subject to an easement of right-of-way for the common use of the members of the Association, their families, tenants, contract purchasers and guests.

Section 5. Maintenance and Repair.

(A) Common Area. The Association shall have the right and duty to maintain and keep the Common Area in good order and repair and shall assess each owner of a lot located within the premises funds necessary to cover the cost of maintaining the townhouse common area within the premises, which amounts shall be paid from time to time as determined by the Association. Maintenance contemplated by this section includes lawn mowing, lawn care, landscaping installation and maintenance. In addition, for the purpose of maintaining an attractive lawn and the landscaping, the Association shall be entitled to connect to an Owner's outdoor water faucet or outside electrical outlet, for use in those areas adjacent to Owner's lot. Association, without charge to the Association, shall fairly use such water and electricity to benefit the common area adjacent to Owner's lot.

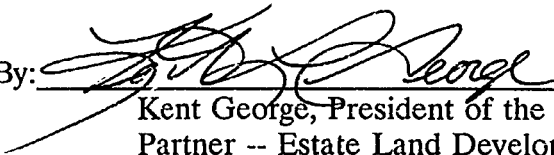
(B) Lots. Each owner shall be obligated to maintain the structure situated upon his Lot in good order and repair. All repairs, redecorations, painting and maintenance shall be subject to approval by the Association. If owner shall fail to maintain said structure in good order and repair, the Association may order the Owner to perform said maintenance by written notice from the Association. Said failure to maintain and the assessment of any cost for maintenance shall be governed by Article VIII of the Declaration.

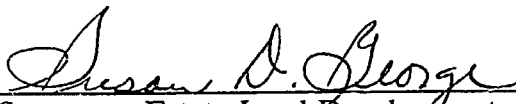
Section 6. Miscellaneous Provisions.

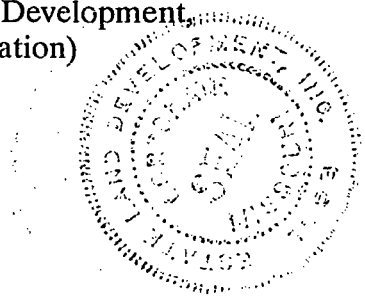
(A) Premises Subject to Provisions of Other Articles of Declaration. In addition to the covenants, conditions and restrictions set forth in this article, which apply specifically to townhouses, the other covenants, conditions and restrictions set forth in the Declaration shall apply.

IN WITNESS WHEREOF, the Developer has caused this instrument to be executed by its duly authorized corporate officers and its seal affixed as of this 4th day of Nov., 1996.

CHARLESTON PLACE DEVELOPMENT
COMPANY, a Missouri partnership

By: 
Kent George, President of the Managing
Partner -- Estate Land Development,
Inc. (a Missouri corporation)

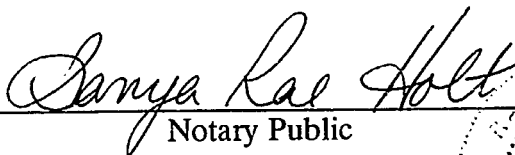

Secretary, Estate Land Development, Inc.
Susan D. George



STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

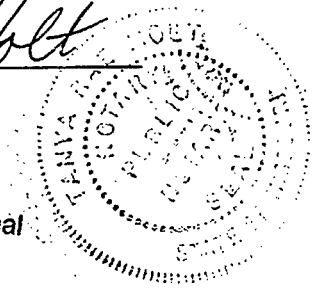
On this 4th day of ~~May~~^{November}, 1996, before me appeared Kent George, to me personally known, who, being by me duly sworn, did state that he is the President of Estate Land Development, Inc, a Missouri corporation, the Managing Partner of Charleston Place Development Company, a Missouri partnership; that the seal affixed to the foregoing instrument is the corporate seal of Estate Land Development, Inc.; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; that said corporation is now in good standing; and further acknowledged said instrument to be the free act and deed of said corporate Managing Partner.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year first above written.


Notary Public

My Commission expires:

TANYA RAE HOLT
Notary Public - Notary Seal
STATE OF MISSOURI
County of Cole
My Commission Expires: March 22, 1998



By Russ Babin, President

Witness:


Secretary
Bob Burks

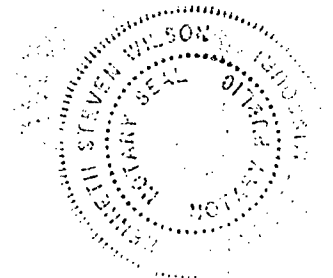
On this 4th day of November, 1996, before me personally appeared Dave Burks to me personally known, who, being by me duly sworn, did say that he is President of Burks Construction, Inc., that the seal affixed to this instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in Jefferson City, Missouri, the day and year first above written.

the day and year first above written.

Kenneth Stewart
Notary Public

KENNETH STEVEN WILSON
NOTARY PUBLIC — NOTARY SEAL
STATE OF MISSOURI
COLE COUNTY
MY COMMISSION EXPIRES FEB. 2, 1997



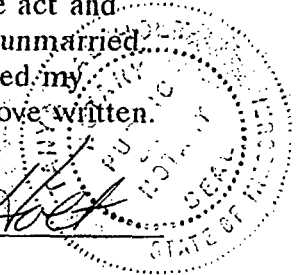
Bob Clevenger
BOB CLEVINGER

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

On this 4th day of November, 1996, before me personally appeared Bob Clevenger, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed. And the said Bob Clevenger further declares himself to be single and unmarried.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Jefferson City, Missouri, the day and year first above written.

Tanya Rae Holt
Notary Public



My Commission Expires: _____

TANYA RAE HOLT
Notary Public - Notary Seal
STATE OF MISSOURI
County of Cole
My Commission Expires: March 22, 1998

12000 /

STATE OF MISSOURI
COUNTY OF COLE
RECORDED ON

'96 NOV 4 PM 3 43
BOOK 381 PAGE 916
LARRY D. RADEMAN
RECORDER

Debra Nash

11

Debra Nash, Deputy

\$4800 Pd. Kent George
Call 690-0606