

**SECOND AMENDED DECLARATION OF RESTRICTIONS  
AND PROTECTIVE COVENANTS FOR  
EDGEWATER VILLAGE, (FORMERLY CAPE FAIR VILLAGE)  
A SUBDIVISION**

WHEREAS the undersigned, hereinafter referred to as "Developer," whether one of more, is the owner of a majority of the lots in CAPE FAIR VILLAGE, PHASE I, a subdivision per the plat recorded as CAPE FAIR VILLAGE, PHASE I, a subdivision per the plat recorded at Plat Book 21, Pages 50-51, in the Office of the Recorder of Deeds of Stone County, Missouri, and which has been renamed EDGEWATER VILLAGE, PHASE I;

WHEREAS, the undersigned Developer is the owner of all the lots in EDGEWATER VILLAGE, PHASE A-10, which has been platted as such at Plat Book \_\_\_\_\_, Pages \_\_\_\_\_, in the office of the Recorder of Deeds of Stone County, Missouri; and

WHEREAS, both CAPE FAIR VILLAGE, PHASE I, renamed EDGEWATER VILLAGE, PHASE I, and EDGEWATER VILLAGE, PHASE A-10, together with any other property hereafter made subject to this Declaration, are referred to herein as the "subdivision;" and

WHEREAS, it is the desire and intention of the Developer to sell lots in said subdivision and to impose on said lots mutual beneficial restrictions under a general plan of improvement for the benefit of all the lots in the subdivision and the future owners of all lots; and

WHEREAS, the undersigned Developer under Article VIII, Section 4, hereby amends the Declarations recorded at Book 223, Pages 1913-1922, Stone County Recorder's office and at Book 241, Pages 1539-1550, Stone County Recorder's office;

NOW THEREFORE, the undersigned Developer hereby declares that the above described property and all lots of CAPE FAIR VILLAGE, PHASE I, renamed EDGEWATER VILLAGE, PHASE I, and EDGEWATER VILLAGE, PHASE A-10, a subdivision per the plat referred to above in Stone County, Missouri, are held and shall be held, conveyed, encumbered, leased, used, occupied and improved subject to the following limitations, restrictions, conditions and covenants referred to herein as "protective covenants," all of which are declared and agreed to be in furtherance of a plan for the improvement of the subdivision and for the purpose of enhancing and protecting the value and desirability of the lands. All of the protective covenants shall run with the land and shall be binding on all parties having or acquiring any right, title or interest therein, whether or not the said protective covenants are described in or referred to in subsequent deeds.

**I.**

**DEFINITIONS**

Section 1. The following words when used in this Declaration (unless the context shall prohibit) shall have the following meaning:

a. "The properties" and "subdivision" shall mean and refer to all the property within CAPE FAIR VILLAGE, PHASE I, a subdivision in Stone County, Missouri, as shown on the plat thereof recorded at Book 21, Pages 50-51, which shall hereafter be named EDGEWATER VILLAGE, PHASE I, and EDGEWATER VILLAGE, PHASE A-10, as shown on the plat recorded at Plat Book \_\_\_\_\_, Pages \_\_\_\_\_, of the records of the Recorder of Deeds of Stone County, Missouri, and any additional properties as may be made subject to this Declaration.

Amy Larson, Recorder of Deeds

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b. "Association" shall mean and refer to the EDGEWATER VILLAGE HOMEOWNERS ASSOCIATION, a not-for-profit corporation, its successors and assigns.

c. "Lot" shall mean and refer to any numbered plat or tract of land shown upon any recorded plat of the properties, including any numbered condominium unit, or any numbered apartment unit or tract, any numbered commercial unit or tract, any boat dock unit or any other unit or tract designated by Developer in any plat or Declaration duly filed or record in Stone County, Missouri.

d. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot situated upon the properties but, notwithstanding any applicable theory of mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. "Owner" shall include any purchaser under a contract.

e. "Sewer system" shall mean and refer to the collective wastewater disposal system and all sewer lines, pipes, fittings valves, motors, tanks, pumps and other necessary components of the system.

f. "Water system" shall mean and refer to all wells, and the water system and all water lines, pipes, fittings, valves, motors, tanks, pumps and other necessary components of the system.

g. "Commission" shall mean the Clean Water Commission of the State of Missouri and the Missouri Department of Natural Resources, and their successors as may be created by law from time to time.

h. "Developer" shall mean and refer to NELCO, INC., its successors and assigns.

i. "Architectural Review Committee" (ARC) shall mean a Committee consisting of at least three owners of lots in the subdivision appointed initially by the Developer, and after 50 percent of the lots in the subdivision are sold, by the Association to perform the duties provided for the ARC herein.

II

**PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO**

Section 1. Existing Property. The real property which is, and shall be, held, conveyed, transferred and sold subject to the conditions, restrictions, covenants reservations, easements, liens and charges in this Declaration is located in Stone County, Missouri, and is more particularly described as follows:

All of the lots in Cape Fair Village, Phase I, renamed Edgewater Village, Phase I, a subdivision in Stone County, Missouri, according to the recorded plat thereof, found at Book 21, Pages 50-51, and Edgewater Village, Phase A-10, according to the recorded plat thereof at Plat Book \_\_\_\_\_, Pages \_\_\_\_\_, of the records of the Recorder of Deeds of Stone County, Missouri, (except "well lot and common area" lot, and natural undisturbed wooded area and open space, the use of which shall be governed by the Developer and then the Association);

all of which real property shall herein be referred to as the "existing property", or the "subdivision;"

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Section 2. Addition to Existing Property. Additional land may by proper declaration duly recorded become subject to and be bound by the terms of this Declaration and any future modifications thereof. Additional land may include condominiums, apartment units, commercial units, boat docks and other uses as set forth in any future Declaration executed by Developer and recorded with the Stone County Recorder's office.

III

USE RESTRICTIONS

Section 1. No lot shall be used except for single family residential purposes. No building or structure shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling, a private garage and outbuildings specifically permitted below. No lot shall be used for a commercial or business purpose.

Section 2. No lot shall be subdivided into smaller lots or tracts. No more than one single family dwelling and permitted outbuilding may be constructed or allowed to remain on a lot.

Section 3. Each dwelling shall have a minimum of 1,500 square feet of enclosed living space, exclusive of basement, porches, carport or garage.

Section 4. Once construction is commenced on any dwelling or structure, the exterior shall be completed within six months and the entire building or structure completed within twelve months from the date of commencement.

Section 5. On street parking is prohibited. Each lot owner shall provide sufficient off street parking for vehicles of the owners and guests of such lot.

Section 6. No mobile home, trailer or any building or structure having the general appearance of a mobile home or a trailer shall be erected or placed or allowed to remain on any lot.

Section 7. Outbuildings for storage or for the parking of boats or trailers or vehicles may be erected if the outbuildings are attractive in construction and design and blend attractively with the dwelling on the lot and are approved by the Architectural Review Committee (ARC).

Section 8. No boat, trailer or recreation vehicle may be parked or allowed to remain on a lot, but may be parked inside an approved outbuilding.

Section 9. No sewage disposal system shall be permitted on any lot, and all lots will hook onto the subdivision sewer system.

Section 10. No nuisance or noxious or offensive activity shall be conducted, permitted or carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 11. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers, and then only temporarily, for disposal. All incinerators and other equipment for temporary storage and disposal of trash and garbage shall be kept in clean and sanitary condition.

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Section 12. No animal, poultry or pet shall be allowed on a lot except domestic common, ordinary household pets in accordance with this paragraph. No animal, poultry or pet shall be kept on a lot for commercial purposes. No domestic animal, poultry or pet shall be allowed to constitute a nuisance or annoyance. A lot owner may keep no more than two common, ordinary household pets, and shall restrain the same on the lot of such owner. No dangerous or exotic animal and no livestock shall be allowed on a lot.

Section 13. Each lot owner shall keep all brush and weeds cut to no higher than twelve inches on a lot. If this is not done the undersigned Developer, its successors or assigns, or the Association, after seven days' notice to the lot owner, shall have the right to cut such brush and weeds and charge the lot owner a reasonable fee for the cost of such maintenance. The collection and lien procedures under Article VI below, shall apply to the maintenance costs incurred under this Section.

Section 14. Developer shall have the reserved right to approve or disapprove of any plans of construction, upon aesthetic, fire, safety, or other considerations, including quality of location of construction, structure and compliance with this Declaration. Plans for construction of dwellings and appurtenant structures shall be submitted to and approved by the Developer according to the quality of materials and proposed workmanship, harmony of external design with respect to existing structures, and location with respect to existing structures, and location with respect to topography and finish grade level. Approval of plans shall not be unreasonably withheld by Developer and if no action is taken upon the plans within 60 days after submission to the Developer, the plans shall be considered as though they had been approved by Developer. After 50 percent of the lots in the subdivision are sold, the Association shall have the rights and duties of the Developer hereunder. The rights and duties of the Developer and the Association under this paragraph shall be exercised through the Architectural Review Committee (ARC) appointed initially by the Developer and, after 50 percent of the lots in the subdivision are sold, by the Association, consisting of at least three owners of lots in the subdivision.

Section 15. Easements for the installation, construction of, maintenance and improvement of utility, water, sewer, roads, and drainage facilities are reserved to the Developer and the Association over, across, along, through, and under each lot within the subdivision, as shown on the recorded plat and over all streets, roads and common areas for the purposes of erecting, maintaining and operating electric power lines, telephone lines, water lines, sewerage lines, gas lines, streets and roads. Developer and Association shall further be permitted entry upon any lot or tract for the purpose of cutting or trimming any tree growth or other growth located upon any lot or tract which might interfere with or endanger the construction or operation of any utility service to any lot or tract. Initially, it is anticipated that all utilities shall be placed underground.

Section 16. No sign shall be allowed erected or maintained upon any lot other than standard sized real estate "for sale" or "for rent" signs, in size having no more than 4 square feet in area. Developer may require removal of any sign, of any size, deemed at anytime in the Developer's discretion to be objectionable or offensive due to aesthetic or other reasons.

Section 17. All subdivision roads, even though such roads are dedicated to the public, along with the access road to the subdivision shall be maintained and repaired by the Developer initially, and then the Association as hereinafter provided. If a road is maintained by the State, County or other entity, the Developer and Association may maintain such road but shall not be required to do so.

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Section 18. Except as permitted by the ARC or by the applicable Planning and Zoning authority, no building or structure shall be located nearer to a property line adjacent to a street or road than 25 feet or nearer to any side lot line than 20 feet or nearer any rear lot line than 25 feet.

Section 19. Fences and Shrubs. Fencing of front yards is prohibited, except that decorative wood or stone fencing of a maximum height of three (3) feet may be constructed upon approval by the Developer or Association, through the ARC. Any fence located on any lot must be approved as to material, location, height, and width by the ARC prior to commencement of construction.

Section 20. Garages. Attached garages or unattached garages may open toward any side of the house but must be kept closed at all times except for ingress and egress.

Section 21. Swimming Pools. Swimming pools may be constructed upon any lot but must comply with the setback requirements set forth above. The design of any swimming pool and its screening or fencing must be approved by the ARC in writing in advance, and must meet National Electrical Association BOCA requirements.

Section 22. Exterior Lighting. All exterior lighting must be approved by the ARC in the same manner as provided in Section 14 above.

Section 23. Common Fence Attachments. No lot owner shall attach anything to any fence constructed by the Developer without the specific written permission of the ARC in the same manner as provided in Section 14 above.

Section 24. Trees. All live trees which do not impede construction must be preserved, and any major clearing on a lot must be approved by the ARC in the manner provided in Section 14 above.

Section 25. Clothes Lines. No permanent outdoor clothes lines are permitted.

Section 26. Sight Distance at Intersections. No fence, wall, hedge, or shrub which obstructs sight lines at intersections in the subdivision shall be permitted.

Section 27. Propane Tanks. If a propane tank is placed on a lot, it shall be hidden from the view from any street or other residence by a fence or structure which blends attractively with the dwelling on such lot, and such fence or shield shall be approved by the ARC in the manner provided in Section 14 above.

IV  
**HOMEOWNERS ASSOCIATION**

Section 1. Membership. The Developer shall cause to have incorporated a not-for-profit corporation known as the EDGEWATER VILLAGE HOMEOWNERS ASSOCIATION. Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot. Furthermore, Developer may cause additional tracts to be connected to the water system or sewer system, in which case the owners of such tracts shall be members of the Association and shall have the rights and obligations of members of the Association and shall be considered as "lot owners" for all purposes hereunder.

Section 2. Purposes. The Association shall have the power and authority to: promote the general betterment of the EDGEWATER VILLAGE HOMEOWNERS ASSOCIATION, Stone County, Missouri; maintain and improve any common areas in

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the subdivision now existing or hereafter established; maintain and improve any streets and roads in the subdivision, access roads to the subdivision and lake access roads; maintain, improve and operate any central sewerage system and any water system now existing or hereafter established in the subdivision or for use by property owners in the subdivision; enforce any protective or restrictive covenants pertaining to the subdivision; and to, in general, engage in activities to promote the general betterment of the subdivision and to enhance the value of the property therein and to promote the general welfare of the residents of the subdivision. Any maintenance referred to herein may include reconstruction and construction and shall hereinafter be referred to as "maintenance." The Association may have such other purposes as its directors or membership may determine by amendment to the Articles of Incorporation.

Section 3. Voting Rights. All members of the Association shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members and the vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot.

Section 4. Board of Directors. The Association shall be governed by a Board of Directors, which shall consist of 3 directors to be elected by the members of the Association. The initial Board shall have 1 director serving a three (3) year term, 1 director serving a two (2) year term, and 1 director serving a one (1) year term. Each year sufficient new directors shall be elected so as to maintain a total membership on the Board of Directors of 3. The election of directors, and the conduct of all of the affairs of the Association, shall be in accordance with the Articles of Incorporation and Bylaws of the Association, insofar as such do not conflict with the provisions of the Declaration, and in the case of such conflict the provisions of this Declaration shall control.

V

**PROPERTY RIGHTS IN THE COMMON AREAS**

The Board of Directors of the Association has the power to borrow money and mortgage its property for common area improvements, make and enforce rules regarding access to and use of common areas, grant easements across common areas for utility service, purchase insurance, and do all acts, incidental to the carrying out of its purposes. Common areas include all streets and roads in the subdivision, any future "sewage treatment plant" and any "well lot" and any lot designated as "common area" or "natural undisturbed wooded area" or "open space" by the Developer.

Section 2. The Association may make such bylaws as are necessary or desirable for the conduct of its business, and all lot owners shall be bound thereby. The Association shall have the power to make annual and special assessments for the improvement, maintenance and reconstruction of streets and roads and common areas, as set forth below. The fee shall be payable to the Association annually on the 1st of January beginning 1, 1996. However, no lots owned by Developer shall be subject to the assessment hereunder until January 1, 1999, except any lot on which a residence is constructed.

Section 3. The bylaws as enacted and amended from time to time, by the Association, may include any reasonable provision with relation to improvement, reconstruction and maintenance of streets, roads and common areas, water system and any sewer system.

VI

**COVENANTS FOR ASSESSMENTS**

Section 1. Obligation for regular and special assessments. Each owner of a lot by acceptance of a deed, contract for deed, or other form of conveyance therefor, whether or not it shall be so expressed in any such deed, contract or other conveyance, shall be

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deemed to covenant and agree to pay to the Association annual assessments and additional special assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with interest thereon and costs of collection as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot against which assessment is made. Each such assessment, together with interest therein and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time the assessment fell due. However, no water or sewerage assessments under this Article shall apply to any lots owned by Developer until January 1, 1999, except any lot on which a residence is constructed.

Section 2. Purposes of assessments. The annual and special assessment shall be used for the purpose of constructing, operating, maintaining and improving the sewer system, the water system, and for improvement, maintenance and reconstruction of streets, roads and common areas for enforcement of the provisions of the Declaration, and for any other lawful purpose of the Association. No other use of such assessments, except as specifically provided above or reasonably incidental thereto, shall be made.

Section 3. Basis and collection of assessment. The Association is hereby empowered to make and collect during each year from each owner of a lot an assessment in a sum sufficient for the normal operation, repair, maintenance and improvement of any sewer system and any water system, for streets roads and common areas, and for any other lawful purpose of the Association. In the event the sums derived from the annual assessments are inadequate to pay the expenses of construction, operation, maintenance, repair or improvement of the sewer system, water system, streets, roads and common areas and for any other lawful purpose of the Association, the Association may levy and collect additional special assessments for such purposes from time to time, as determined by the Board of Directors. The Association may from time to time elect to make assessments more frequently than annually, no more frequently than monthly, and in such event assessments shall be due as billed by the Association.

Section 4. Date of commencement of annual assessment; due dates. The annual assessments provided for herein shall commence on January 1, 1996, and shall be in such amount as the Board of Directors shall specify. Until the Board of Directors specifies the amount of the annual assessment, such assessment shall be in the sum of \$75.00 After the Board of Directors has set the amount of the annual assessment, such amount shall be the annual assessment for each year thereafter until the Board of Directors by appropriate action changes the amount of the annual assessment. The annual assessment for any year shall become due and payable thirty days after the date on which the Board of Directors sets the amount of the special assessment, unless some other due date is specified by the Board. The Association shall upon demand at any time furnish to any owner liable for any assessment a certificate in writing signed by a duly authorized representative of the Association setting forth whether the assessments on a specified lot have been paid.

The Association shall have the discretion to determine the amounts necessary, periodically, to carry out the various purposes of the Association, including funds related to roads, common areas, water and sewer systems, and other lawful purposes. The Developer or Association may compute the assessments of lot owners relating to the water and sewer systems in accordance with their use of water as shown by meters.

Section 5. Effect of nonpayment of assessments; the personal obligations of the owners; the liens, remedies of the Association. If an assessment is not paid on the date due, then such assessment shall become delinquent and shall, together with interest and cost of collection, thereupon become a continuing lien on the property which shall bind such property in the hands of the owners, his or her heirs, devisees, successors, personal representatives and assigns.

If the assessment is not paid when due, the assessment shall bear interest from the date of delinquency at the rate or ten percent (10%) per annum, and the Association may

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bring an action at law against the owner personally obligated to pay the same or an action to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment and interest the reasonable attorney's fees incurred in collection. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the services and facilities provided or by abandonment of his or her lot.

Section 6. Subordination of the lien to mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon a property subject to assessment; provided, however, that such subordination shall apply to the assessments which have become due and payable prior to the sale or transfer of such property pursuant to a foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. Such sale or transfer shall not affect the personal obligation of the property owner for the assessments coming due during the time he owned the property.

VII

THE WATER SYSTEM AND SEWER SYSTEM

Section 1. Rights, powers and duties of the Association. The Association shall have the following rights, powers and duties in regard to the sewer system and water system.

a. The Association shall maintain, operate, repair, improve, and regulate the use of any water system and sewer system. In reconstruction, improvement and regulation of the water system and any sewer system, the Association shall comply with all requirements and duties imposed by the Missouri Clean Water Law, Chapter 204, RSMo., and all standards, rules and regulations adopted pursuant thereto and permits and orders issued thereunder, and all other provisions of law, federal, state and local, as such may exist from time to time. The Association will accept a conveyance when tendered by Developer or its designee, of any water or sewer system, any appurtenances thereto, and one tract on which the same are located, at any time in the future.

b. The Association shall provide to all lot owners in the above-described property the right and advantage of connection with the water system and sewer system for the collection, treatment and disposal of sewage and wastewater, subject, however, to the conditions hereinafter provided, by the Association, such rules and regulations to be uniform in application to all owners of lots of the same classification.

c. Subject to the approval of the Commission, if required the Association may acquire for addition to the water or sewer system any sewage treatment or water well or distribution facilities, properties, and improvements of the type described in this Declaration which are located outside the properties described above, and may permit any property and improvements located outside the properties described above to be connected to the sewer or water system and all such property and improvements which are permitted to be connected to the sewer or water system shall be made subject to all the terms, conditions and restrictions of this Declaration and the rules and regulations of the Association promulgated pursuant thereto.

d. The Association is empowered to transfer and convey to any public authority, municipal corporation, or private corporation certificated by the Public Service Commission of Missouri, with the approval of the Commission, any sewer or water system, either with or without money consideration therefor, and such conveyance shall become mandatory and shall be made by the Association as soon as practicable, subject to the approval of the Commission, when any such public authority, municipal corporation, or private corporation certificated by the Public Service Commission becomes capable of accepting such conveyance and thereafter performing all functions



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relating to the construction, maintenance, operation, repair, improvement and regulation of the sewer or water system.

e. The Association is empowered to contract with any other person, firm, or governmental or other entity for the performance of all or any part of any sewage treatment or water system services, or construction, repair and improvement of any sewer or water system, provided that the cost of any such contract shall be paid by the Association in the same manner as all other costs and expenses incurred by the Association in operating and maintaining the sewer or water system.

f. The Board of Directors shall adopt, prescribe and enforce reasonable rules and regulations with respect to the use of any sewer and water system. Said rules and regulations shall not conflict with the Missouri Clean Water Law and regulation promulgated pursuant thereto.

g. The Board of Directors shall be authorized from time to time to employ such agents, servants and employees as they may determine necessary, and may employ counsel to prosecute or defend suits or actions for or against them concerning a sewer system or water system and the operation thereof.

h. The Board of Directors shall be authorized to contract for and obtain such policies of insurance and surety bonds as it may deem necessary or appropriate concerning construction, maintenance, operation, repair and improvement of a sewer system or water system.

Section 2. Number of users. No more household unit connections or other units connections shall be allowed on the water system than the maximum number allowed by any permit issued pursuant to the Missouri Clean Water Law with respect to such water system.

Section 3. Duty to maintain, repair and improve. If a sewer system or water system shall at any time require maintenance, repair, improvement or replacement, it shall be the duty of the Association to cause the same to be done, and the Association shall have the power to contract for the same and to determine the terms of the contract. The Association shall pay for the costs thereof from the annual and special assessments made hereunder. The Association shall also be empowered to borrow money and to pledge the assets of the Association as security therefor, in order to make payment for such costs.

VIII  
**GENERAL PROVISIONS**

Section 1. Enforcement. Enforcement of these covenants may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenants or restrictions, either to restrain violation, to require correction of a violation, or to recover damages, and proceedings may be maintained against the land to enforce the lien created by these covenants. Any expenses of any proceeding hereunder, including a reasonable attorney's fee, shall be borne by the party or parties violating or threatening to violate a limitation, restriction or condition or covenant for which the proceeding is instituted. Failure to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

In addition to the powers of the Developer, any owner or the Association may take action to enforce these covenants and restrictions, the provisions herein relating to a sewer system, water system, provisions of sewage treatment and disposal services or water service and facilities, and making and collection of assessments for such purposes, and the same may be enforced in a proceeding in equity by the Commission, as beneficiaries of such provisions.

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Section 2. Right of Entry. The right to enter any lot or tract at any reasonable time for the purpose of inspection, maintenance and repair of a sewer or water system, or for the purpose of inspection for possible violations of any provision of these covenants and restrictions or possible violations of the Missouri Clean Water Law and regulations, is granted to the Association and its authorized representatives, the Commission, its successors and representatives, the Developer, and the representatives of any person, firm corporation, municipality or public agency contracting or otherwise acting with or for the Association to provide operation, maintenance or monitoring service for a sewer system or water system.

Section 3. Severability. Invalidation of any one of these covenants or restrictions or any sentence, phrase or word thereof by judgment or court order shall in no wise affect other provisions which shall remain in full force and effect.

Section 4. Duration; amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Developer, the Association, or the owner of any lot subject to this Declaration, or to the Commission as provided herein, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions herein may be amended by the owners of a majority of the lots in the subdivision, upon recordation of an instrument duly signed by the owners by the owners of a majority of the lots, specifying the amendments to be made; provided that no amendment to or repeal of this Declaration may be made which in any way affects the making of or obligation for annual and special assessment or powers, rights and duties of the Association and lot owners respecting any sewer system, without the express written consent of the Commission. Developer reserves the right to amend any provision of the Declaration for a period of one year from the date hereof.

Section 5. Easements. Developer hereby reserves an easement for utility purposes as shown on the plat of the subdivision and as set forth above for the benefit of the Association, its successors and assigns.

IX  
**DEVELOPER/ASSOCIATION RELATIONSHIP**

Section 1. The Developer shall have the option of retaining direct control over all matters which might otherwise be the duty, obligation or entitlement of the Association for a period of five (5) years from the date of recording of this Declaration, or until such time as one-half (1/2) of the lots in the subdivision have been transferred, whichever shall first occur. At such time any well and water distribution system and any sewer system shall be conveyed to the Association.

Section 2. The Developer may, at any time assign any Developer's rights or assign any part or all of the control retained under the preceding paragraph, to the Association.

Section 3. Any assignment of control by the Developer pursuant to paragraph 2, above and preceding, shall be evidenced by a writing executed by the Developer and shall be recorded in the land records for Stone County, Missouri.

Section 4. Notwithstanding any retention of control on the part of the Developer, the Association shall nonetheless be authorized, independently of any approval of the Developer, to take any action for the enforcement of these restrictions otherwise provided for by any provision of these Declarations.

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Section 5. If the Developer collects any charge or assessment during any period of time in which Developer has retained control, as above provided for, the Developer shall hold, use and expend the monies collected in a fiduciary capacity for the benefit of membership of the Association; collecting and expending any charges or assessments solely for the purposes elsewhere herein provided for, and shall upon assigning or delivering control to the Association (or in any event, upon the expiration of five (5) years from the date of recording this Declaration) account to the Association for all collections and expenditures, and deliver into the hands of that person as may be designated by the Association, all funds remaining on hand and unexpended which were collected as charges or assessments by the Developer.

X  
AMBIGUITY OF TERMS

Should any dispute or controversy arise as between the Developer and the Association, or the Developer and a lot owner, or the Association and a lot owner, as to the meaning of any term or provision of this Declaration, the good faith opinion of the Developer as to meaning of any ambiguous term shall control and be determinative over the interpretation of the Association or any lot owner, and a good faith opinion of a majority in number of the Board of Directors of the Association shall control over the interpretation urged for any such provision by any lot owner other than the Developer.

Executed this 23rd day of June, ~~1996~~ <sup>1997</sup>

NELCO, INC.

BY:

Nel Howard  
President  
Nel Howard

ATTEST:

George Knapp  
Secretary  
George Knapp

STATE OF MISSOURI )  
                          ) ss:  
COUNTY OF STONE )

On this 23rd day of June, <sup>1997 AT</sup> ~~1996~~, before me personally appeared NEL HOWARD, President of NELCO, INC., to me known to be the person described in the above and foregoing instrument in writing and acknowledged that the same was executed as the free act and deed of said Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office the County and State aforesaid on the date last written.

Alice E. Troyke  
Notary Public

My commission expires: 9-3-2000

