

# DECLARATION OF CONDOMINIUM

## CASA VILLAGE CONDOMINIUMS,

### A CONDOMINIUM

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#### ARTICLE I

##### SUBMISSION: DEFINED TERMS

**SECTION 1. Submission of Property; Name; Location; Association.** Ronald E. Rogers and Janice M. Rogers, his wife (“Declarants”), owners in fee simple of the land described in Exhibit B attached hereto, located within Jefferson County, State of Missouri (“Land”), hereby submits the Land, together with all easements, rights and appurtenances thereon (“Property”), to the provision of the Uniform Condominium Act of Missouri (“Act”) and hereby creates with respect to the Property a Condominium to be known as “Casa Village Condominiums” (“Condominium”) and hereby causes this declaration to be recorded in Jefferson County, Missouri.

**SECTION 2. Defined Terms.** Terms not otherwise defined herein shall have the meanings specified in Section 448.3-103 of the Act.

- (a) “Allocated interests” means the undivided interest in the common elements, the common expense liability and votes in the association allocated to each unit.
- (b) “Association or Unit Owner Association” means the unit owners association organized under Section 448.3-101 RSMo.
- (c) “Common elements” means all portions of a condominium other than the units.
- (d) “Common expense” means expenditures made by of financial liabilities of the association, together with any allocations to reserves.
- (e) “Common expense liability” means the liability for common expenses allocated to each unit pursuant to Section 448.2-107.
- (f) “Development rights” means any right, or combination of rights, reserved by Declarants in the declaration to add real estate to the Condominium; to create units, common elements or limited-common elements within the Condominium; to subdivide units or convert units into common elements; or to withdraw real estate from the Condominium.
- (g) “Executive Board” means the body, regardless of name, designated in the declaration to act on behalf of the association.

- (h) "Eligible Mortgage Holder." Those holders of a first mortgage (Deed of Trust) on a unit who have made written request of the Owners Association to notify them on any proposed action that requires a specified percentage of eligible mortgage holders as set out in the Act and herein.
- (i) "Identifying number" means a symbol or address which identifies only one unit in the condominium.
- (j) "Limited-common element" means a portion of the common elements allocated by the declaration or by operation of subdivision (2) or (4) of Section 448.2-102 for the exclusive use of one or more but fewer than all of the units.
- (k) "Plat" means a drawing prepared by a registered land surveyor which contains the information required by the provisions of subsection 2 of Section 448.2-109.
- (l) "Unit" means the physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are hereinafter described.
- (m) "Unit owner" means the Declarants or other persons who own a unit but does not include a person having an interest in a unit solely as security for an obligation.

## ARTICLE II

### BUILDINGS ON THE LAND; UNITS; BOUNDARIES

**SECTION 1. Number and Location of Buildings.** The location and dimensions of building number 1 and number 2 on the Land are depicted in the Plat attached hereto as Exhibit A. Each building contains three Units. Declarants contemplate that the project upon completion will consist of 22 buildings containing a total of 65 units. Such additional buildings and units, if built, and completed, constitute Development Rights reserved by Declarants in Article VI herein, which may be exercised by Declarants with respect to different parcels of real estate at different times. No assurances are herein made by Declarants that such development rights may be exercised in whole or in part.

**SECTION 2. Units.** The location and dimensions of each Unit are shown on the Plat attached hereto as Exhibit A. A list of all Units, their identifying Numbers, and the Allocated Interests allocated to each Unit, is as set out in the Article III.1 below.

**SECTION 3. Unit Boundaries.** The boundaries of each Unit are its outer walls, lowest floor and highest ceiling; all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished interior surfaces of the outer walls, lowest floor and highest ceilings are part of the unit and all other parts of the outer walls, lowest floors or highest ceilings are part of the common elements.

#### **SECTION 4. Certain Common Elements.**

- (a) If any chute, flue, duct, wire, conduit, pipe, bearing wall, bearing column, or any other element lies partially within and partially outside the designated boundaries of a unit, any portion thereof outside of such unit's boundaries and serving only that unit is a limited-common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.
- (b) Subject to the provisions of Section 2 of this Article, all spaces, interior partitions, other elements, including those set out in (a) above, and improvements within the boundaries of a unit are a part of the unit; provided, however, a unit owner shall be responsible for keeping such elements in proper working order within such owner's unit if such elements also serve another unit or their proper functioning is required for use and enjoyment by another unit.
- (c) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, decks and all exterior doors and windows or other fixtures designed to service a single unit, but located outside the unit's boundaries, are limited-common elements allocated exclusively to that unit.

**SECTION 5. Use of Units.** The units shall be used for residential purposes only and in

accordance with local ordinances and law.

**SECTION 6. Alienation.** There shall be no restrictions on the disposition, sale or lease of a unit except as may be imposed by local ordinance and law or as set forth in Article IV, Section 3 of this Declaration.

**SECTION 7. Condemnation.** In the event that any unit or part thereof or any of the common elements or parts thereof are acquired by eminent domain, such acquisition and the funds therefrom shall be governed by the provisions of Section 448.1-107 of the Act.

## ARTICLE III

### SCHEDULE OF INDIVIDUAL UNIT INFORMATION AND ASSESSMENT

**SECTION 1. Identifying Number, Allocation of Allocated Interest.** The Identifying Number and percentage of Allocated Interests, including Common Element Interest, Common Expense Liability and votes in the Association, are as set forth in Exhibit C attached hereto.

#### **SECTION 2. Basis for Allocations.**

- (a) **Common Element Interests** are allocated on the basis of each individual unit as related to the total number of all the units in the Condominium.
- (b) **Common Expense Liability** is allocated on the basis of each individual unit as related to the total number of all the units in the Condominium. Assessments for common expense liability shall be allocated against all units, including those owned by Declarants, no later than sixty (60) days following the conveyance of the first unit from Declarant to a purchaser. The Unit Owners Association may set an interest rate or penalty provision upon any delinquent assessment payment and such interest or penalty shall become part of the amount due and part of the lien.
- (c) **Votes in the Association:** The aggregate of all the separate units now or hereafter platted within the Condominium shall be considered 100% for voting purposes. Each owner of each Unit shall be entitled to one vote for each Unit owned in the Condominium except that where title to one or more units is held jointly by one or more persons, whether as tenants in common, joint tenants, or as tenants by the entirety, or in the event a lot is owned by a corporation or other legal entity other than a natural person, one person shall be designated by said joint, corporate or other owner to cast one vote for each such owned unit.
- (d) **Reallocation.** Within thirty (30) days of the date upon which additional units are added to the Condominium, the allocations as set forth in Section 2(a), (b) and (c) of this Article III shall be reallocated to include the units added and from that date forward the reallocation shall be in full force and effect. No units may be added to the Condominium until same are substantially completed and all requirements of the Act have been met. The allocations to new units shall be on the same formula as set out in this Article III. Any amendment to the Declaration to add additional units shall be made in accordance with the provisions of Sections 448.2-117 and 448.2-110 of the Act. Provided, however, no units may be added to the Condominium which are not consistent with the initial units in quality of construction.
- (e) **Assessments and Maintenance of Limited-Common Elements.** This Declaration hereby adopts and requires the provisions set forth in Section 448.3-115.3(1) of the Act as to assessment of Common Expenses associated with the maintenance, repair or replacement of a Limited-Common Element, to-wit:

Any common expense associated with the maintenance, repair or replacement of a limited-common element shall be assessed against the units to which that limited-common element is assigned, and, if assigned to more than one unit, such expenses shall be assessed equally between such units; provided, however, the Association may perform the required maintenance, repair and replacement and charge the cost of same against the unit or units liable for such work.

The Association shall have the sole and exclusive right to determine the color and material finish applied to any limited-common element that is to be maintained by the unit owner under the terms of this Declaration. The unit owner may not change such color or material finish without prior written approval by the Association.

It is further provided that hallways and stairs which are designated as limited-common elements shall be maintained as a common expense by the unit owners association and the individual unit owners shall not be liable for the maintenance and repair of such limited-common elements except in instances where damage or destruction to such area is caused by the intentional or negligent conduct of the unit owner.

- (f) Liens for Non-Payment of Assessments.** Any lien imposed upon a unit by reason of delinquent payment for common expenses will be subordinate to the first mortgage on the unit if said first mortgage was recorded before the delinquent assessment was due. Liens for delinquent assessments shall be imposed upon the unit in accordance with the provisions of Section 448.3-116 of the Act; provided, however, a lien for common expenses shall be extinguished by foreclosure on the first mortgage if such lien is for assessments payable prior to the foreclosure sale.
- (g) Other Liens.** Liens arising in connection with the Declarant's ownership and construction of improvements upon any property to be added to the Condominium shall not adversely affect the rights of existing unit owners or the priority of first mortgages on units in the existing condominium property. All taxes, assessments, mechanic's liens and other charges affecting such property must be paid or otherwise satisfactorily provided for by the Declarant.

**SECTION 3. Budget and Assessments.** The Executive Board of the Unit Owners Association shall prepare an annual budget for the Association as provided in Sections 448.3-102 and 448.3-115 of the Act. This budget shall be ratified by the unit owners as provided under Section 448.3-103. The monthly assessments for common expenses shall be based upon the budget as ratified and shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the common elements. Such assessment for common expenses may be modified, changed and altered only in accordance with the procedure as set out in Section 448.3-103.

**SECTION 4. Number of Units.** The maximum number of Units which may be built is 65 units. This Declaration expressly does not permit the subdivision of a Unit by a Unit Owner pursuant to Section 448.2-113 of the Act.

## ARTICLE IV

### EASEMENTS AND USE

The following easements are hereby granted by this Declaration:

**SECTION 1. Use for Sales Purposes.** All Units shall be subject to Declarants' rights hereby reserved pursuant to Section 448.2-115 of the Act. Declarants reserve the right to use any Units owned by Declarants as models, management offices, or sales offices until such time as Declarants convey title thereto. Declarants reserve the right to relocate the models, management offices and sales offices from time-to-time within the Property. Upon relocation or sale of a model, management office or sales office, the furnishings thereof may be removed.

In addition to the foregoing, Declarants shall have an easement through the common elements as may be reasonably necessary for the purpose of discharging their obligations and exercising their rights granted by the Act and this Declaration.

**SECTION 2. Ingress and Egress through Common Elements; Access to Units and Support.** Each Unit owner is hereby granted an easement in common with each other unit owner for ingress and egress through all Common Elements and to such owner's unit subject to such reasonable rules, regulations and restrictions as may be imposed by the Association. Each Unit is hereby burdened with and subjected to an easement for ingress and egress through all Common Elements by persons lawfully using or entitled to use the same. The Association shall have the right of reasonable entry to any unit to perform emergency repairs or do other work necessary for the proper maintenance of the common elements.

If construction, reconstruction, repair, shifting, settlement or movement of any part of the improvements results in either the common areas encroaching upon any unit, or in a unit encroaching on the common areas or another unit, an easement shall be automatically created for both the encroachment and its maintenance and shall extend for the period the encroachment exists, provided, however, no easement shall be created if the encroachment is due to the willful conduct of the unit owner.

Upon the exercise of Development Rights reserved by Declarants in adding real estate and units to the Condominium as provided for in Article VI, the provisions of this Article IV shall apply to the real estate and units added and created.

**SECTION 3. Leasing Restrictions.** Any lease or rental agreement whereby the unit owner leases the unit to another party must be in writing and subject to the requirements of the Declaration, the By-Laws, Rules and Regulations of the Owners Association and the laws of the State of Missouri.

## **ARTICLE V**

### **AMENDMENTS**

**SECTION 1. Declaration.** This Declaration may be amended only in accordance with the provisions of the Act including, but not limited to, Section 448.2-117. The Declaration may be amended by the Declarants in exercising Development Rights reserved and in other instances as provided in Section 448.2-117 and 448.2-110 and the sections of the Act referred to therein.

Any amendments to the Declaration requiring a vote of sixty-seven percent (67%) of the votes allocated as set out in Section 448.2-117 shall also require approval from eligible mortgage holders representing at least fifty-one percent (51%) of the votes allocated; provided, however, in a vote on the termination of the Condominium in accordance with the provisions of Section 448.2-118, the approval of at least sixty-seven percent (67%) of the eligible mortgage holders shall be required.

**SECTION 2. By-Laws, Rules and Regulations.** By-Laws, Rules and Regulations adopted by the Unit Owners Association shall be amended in accordance with the provisions of such By-Laws, Rules and Regulations.

## ARTICLE VI

### DEVELOPMENT RIGHTS

**SECTION 1. Development Rights Reserved.** The Declarants hereby reserve the following development rights:

- (a) **Additional Real Estate.** Certain parts of the real estate that is described in Exhibit D may be added to the Condominium, and additional units created thereon, by the Declarants at any time as indicated in the Plat attached, Exhibit A, which is incorporated herein by reference as a Development Right Reserved. The development right to add any part of such real estate may be exercised by Declarants in any order chosen and the right shall include the addition of all or any part of such real estate so long as same is contiguous to that part of the property that is subject to this Declaration. Addition of only a part of the real estate so reserved shall not waive Declarants' right to later add any additional part or parcels of such real estate.
- (b) **Additional Units.** The Declarants have the right to add to the total number of units set out herein, as indicated on the plat, Exhibit A attached, any such number as Declarants desire including, but not limited to, those units indicated on Exhibit D attached, but at no time shall the total number of units exceed that set forth in Article III, Section 5 above. The Declarants have the right to change the number of units in a building and to change the size, style and configuration of such units prior to the initial sale of such units, subject to the provisions as to quality as set out in Article III Section 2(d) above.
- (c) **Time Limitation.** The foregoing Development Rights Reserved under this Article VI are to be exercised by Declarants at their sole discretion upon due consideration of market conditions and economic factors at the time such rights are exercised; Declarants make no representations or assurances as to the order in which any development right as to the addition of units or of real property shall be exercised; all Development Rights Reserved herein may be exercised at any time within seven (7) years of the date of recording of this instrument. In exercising any of the Development Rights Reserved, the Declarants may do so by filing a new certification of the plat filed herein or by amendment to this Declaration and the plat filed of record herewith.

## ARTICLE VII

### RIGHTS OF MORTGAGE HOLDERS, INSURERS AND GUARANTORS

**SECTION 1. Notices.** The holder, insurer or guarantor of the mortgage on a unit is entitled to timely written notice of the following:

- (a) Any condemnation proceeding or casualty loss that affects a material portion of the Condominium development or the unit which secures the mortgage.
- (b) Any delinquency of sixty (60) days in the payment of assessments or charges for the unit upon which the mortgage is held.
- (c) The lapse, cancellation or modification of any insurance policy or fidelity bond that is maintained by the Owners Association.
- (d) Any proposed action that requires the vote of a specified percentage of the eligible mortgage holders.

**SECTION 2. Request.** In order to obtain the notices and information required by Section 1 of Article VII, the mortgage holder, insurer or guarantor shall forward a written request to the executive board of the Owners Association stating both the name and address to which it desires the notices to be sent and the unit number of the unit upon which the mortgage is held.

## ARTICLE VIII

### ASSOCIATION NAME AND POWERS

**SECTION 1. Name.** The name of the Unit Owner's Association shall be the "Casa Village Condominiums Unit Owners Association" ("Association").

**SECTION 2. Governing Body and Members.** The Association shall be governed by its Executive Board which shall consist of three (3) members who shall be appointed and/or elected as set out herein. The Executive Board shall act for the Association and have all the powers granted the Association by law or this Declaration and the By-Laws. Each unit owner shall be a member of the Association and subject to all the rights and duties thereby.

**SECTION 3. Formation and By-Laws.** The Association shall be formed in accordance with the terms of the Act; By-Laws, Rules and Regulations shall be adopted by the Association to govern the Condominium in which By-Laws, Rules and Regulations shall not be inconsistent with this Declaration or the Act. The Unit Owners Association shall have all the rights granted by Section 448.3-102 if the Act and shall have the right to represent the unit owners in proceedings, negotiations, settlements, agreements and suits which affect the entire condominium.

**SECTION 4. Right to Assign Future Income.** The Unit Owners Association may assign its rights to future income, including the right to receive common expense assessments, at any time that is deemed necessary by the Association for repair, replacement or improvement to the Condominium.

#### **SECTION 5. Declarants' Control of the Owners' Association.**

- (a) The Declarants, or a person designated by them, shall appoint and remove the members of the Executive Board of the Owners Association. This Declarants' control shall terminate no later than the earlier of (1) sixty days after the conveyance of seventy-five percent (75%) of the units which may be created to unit owners other than Declarants; (2) two years after Declarants have ceased to offer units for sale in the ordinary course of business; or (3) two years after any development right to add new units was last exercised; or (4) five years from the date the first unit was conveyed to a unit owner other than Declarants. The Declarants may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of that period, but in that event, they may require, for the duration of the period of Declarants' control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarants, be approved by the Declarants before they become effective.
- (b) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the units which may be created to unit owners other than the Declarants, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by unit owners other than the Declarants; not later

than sixty (60) days after the conveyance of fifty (50%) percent of the units which may be created to unit owners other than the Declarants, no less than thirty-three and one-third (33 ⅓%) of the members of the Executive Board shall be elected by unit owners other than the Declarants.

- (c) Not later than sixty (60) days following the termination of any period of Declarants' control, the unit owners shall elect an Executive Board of at least three (3) members, all of whom shall be unit owners. The Executive Board shall elect the officers. The Executive Board members shall take office upon election.

**SECTION 6. Contract Termination.** The first elected executive board shall have the rights of contract termination, without penalty, as set out in Section 448.3-105 of the Act upon giving written notice of not less than ninety (90) days to the other party to such contracts. The recordation of this Declaration shall be notice to any party to such contract of this right of cancellation.

**SECTION 7. Availability of Document; Audit.** The Association shall keep on file current copies of this Declaration, its By-Laws and other rules and regulations governing this Condominium and the Association. These documents and the books, records and financial statements of the Association shall be readily available during normal business hours for inspection by the unit owners and the unit mortgage holders, their insurers and guarantors. The Association shall provide, as part of the requirements hereunder, an audited annual settlement, if same is requested in writing, by any entity or party that has the rights of inspection as set out herein.

**SECTION 8. Unit Owners Rights.** The Unit Owners Association or any individual unit owner shall have the right of action against any unit owners or owners for any alleged violation of this Declaration or By-Laws, Rules and Regulations of the Unit Owners Association; the individual unit owner or owners shall have the right of action against the Unit Owners Association for alleged violations of this Declaration or the By-Laws, Rules and Regulations of the Unit Owners Association.

**SECTION 9. Merger.** The Condominium Owners Association created hereunder and the resulting regime may not be amended or merged with a successor Condominium Association or regime without prior written approval of the Administrator of the Veterans Administration of the United States or without such approval of the chief executive of any other governmental agency guaranteeing or insuring loans on units of the Condominium.

## ARTICLE IX

### MISCELLANEOUS PROVISIONS

**SECTION 1. Compliance.** All conditions and provisions of any ordinance of the City of Arnold, Missouri or Jefferson County, Missouri, applicable to Casa Village Condominiums have been complied with and said Condominium has not been created in violation of any applicable ordinance or law.

**SECTION 2. Certificate of Substantial Completion.** Declarants are in receipt of and will make available for review and inspection a Certificate of Substantial Completion issued by Donald J. McCutcheon, Registered Engineer, and dated June 1, 1987, certifying that all structural components and systems, all mechanical systems and components, and all electrical systems and components are substantially complete for buildings 1 and 2 as shown in Exhibit A attached hereto.

(The original copy of this document is on file in the Recorder's office in Hillsboro, Missouri, where it may be inspected by or duplicated by parties with need of a certified copy. The original document was signed by Ronald E. Rogers and Janice M. Rogers and was notarized by Betty Sue Price on May 27, 1987.)

## **EXHIBIT B**

Part of Lot 16 of U. S. Survey 2991, Township 43 North, Range 6 East, Jefferson County, Missouri, more particularly described as follows:

Beginning at an old iron pin at the most Eastern Corner of a Tract conveyed to Ronald E. Rogers recorded at Book 44, Page 254 of the Jefferson County records; Thence along the Northern Line of said condominium tract North 38 degrees and 8 minutes West 247.0 ft. to a point; Thence South 57 degrees and 6 minutes and 30 seconds West 165.6 ft. to a point on the Northern Right of Way Line of Highway 141; Thence along said Northern Right of Way line South 53 degrees and 20 minutes East 255.0 ft. to a point; Thence along Right of Way Line of said Highway 141 North 57 degrees and 1 minute East 82.45 ft. to a point; Thence continuing along said Right of Way Line North 80 degrees and 22 minutes East 18.12 ft. to the point of Beginning, containing 31,604 s.f. or 0.73 acres.