

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR OLDE IVY SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR OLDE IVY SUBDIVISION is made and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by James Fowler and Vera Fowler, Co-Trustees of the Fowler Revocable Trust dated May 4, 1998, and Olde Ivy Development, L.L.C., a Missouri limited liability company (collectively referred to herein as “Developer”);

WITNESSETH:

Whereas Developer constitutes all of the legal and beneficial owners of the real estate more fully described on Exhibit “A” attached hereto and incorporated herein by reference (the “property”); and

Whereas Developer has executed and filed with the Recorder of Deeds for Greene County, Missouri a plat for the subdivision of the Property to be known as “Olde Ivy Subdivision” (the “Subdivision”) which is composed, together with the Common Areas, of the following described lots:

Lots 1 through 101 of Olde Ivy Subdivision in the City of Springfield, Greene County, Missouri, according to the recorded plat thereof; and

Whereas, Developer intends to develop the Property as a residential subdivision in one or more phases and desires to provide for the orderly development and maintenance of the Property, including all detention, drainage easements, utility easements, Common Areas and associated amenities in accordance with the requirements of the City of Springfield and for the preservation of the values of improvements to be constructed within the Subdivision, by placing certain restrictions on the Property which shall be for the use and benefit of the Developer, its future grantees, successors and assigns and the City of Springfield;

Now, Therefore, in consideration of the foregoing recitals, Developer, for itself and for its successors and assigns, and for its future grantees, hereby agrees and declares that all of the Property, including all Lots and Common Areas as shown on the plat, shall be, and they hereby are, restricted as to their use and otherwise in the manner hereinafter set forth and shall be subject to the covenants, conditions, easements and changes set forth below, which shall run with the land and shall be binding on all present and future owners, and shall inure to the benefit of each owner of a Lot, the Developer, the Association and the City of Springfield.

ARTICLE I  
DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this DECLARATION shall have the following meanings:

- 1.1 “Approving Party” shall mean (i) prior to the recording of the Certificate of Substantial Completion, the Developer (or their respective designees or assignees from time to time) and (ii) subsequent to the recording of the Certificate of Substantial Completion, the Association.
- 1.2 “Architectural Control Committee” shall mean (i) prior to the recording of the Certificate of Substantial Completion, the Developer (or its designees or assignees from time to time) and (ii) on and after the recording of the Certificate of Substantial Completion, a committee comprised of three (3) members of the Association who shall be appointed by the Board, provided, however, the Developer may, at its discretion, appoint the members of the Committee in the event the Board of the Association fails to make such appointments within ten (10) days from the date on which the Developer resigns from the Architectural Control Committee (the “ACC”).
- 1.3 “Association” shall mean and refer to Olde Ivy Homeowners Association, Inc., a Missouri not-for-profit corporation, its successors and assigns.
- 1.4 “Board” shall mean the Board of Directors of the Association.
- 1.5 “Builder” shall mean any builder, contractor, investor, or other person or entity who purchases a Lot for the purpose of resale to a Public Purchaser, or for the purpose of constructing improvements thereon for immediate resale, excluding the Developer.
- 1.6 “Certificate of Substantial Completion” shall mean a certificate executed, acknowledged and recorded by the then Developer stating that all, or at the Developer’s discretion, such percentage of the Lots as Developer may deem to be substantially all, of the Lots in the Subdivision (as then composed or contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are substantially completed.
- 1.7 “City” shall mean the City of Springfield, Missouri.
- 1.8 “Common Area” shall mean (i) street right-of-ways (subject to the rights and interests therein of the City), (ii) streets and street islands (subject to the rights and interests therein of the City), (iii) gateways, entrances, monuments and other ornamental areas and related utilities, street lights,

sprinkler systems and landscaping constructed or installed by or for the Developer at or near the entrance of any street or along any street shown on the Plat, and any easements related thereto, (iv) any club house, pool or similar amenity that Developer may elect to construct upon any portion of the Property conveyed to the Association together with adjoining parking lots, utilities, lights, sprinkler systems, landscaping and the like, (v) any and all storm water drainage or detention areas as shown on the plat, and (vi) all other real property, including any and all improvements, fences or structures thereon, which are intended for the use and benefit of all of the Owners, whether or not any Common Area is located on any Lot, all as may be designated or shown on the Plat or any amendment thereto.

- 1.9 “Corner Lot” shall mean any Lot which abuts or adjoins more than one street within the Subdivision other than at its rear boundary line.
- 1.10 “Developer” shall mean James Fowler and Vera Fowler, Co-Trustees of the Fowler Revocable Trust dated May 4, 1998, (“Fowlers”) and Olde Ivy Development, L.L.C., a Missouri limited liability company, their successors or assigns, until such time as Fowlers have conveyed a majority in number of the Lots to Olde Ivy Development, L.L.C., and thereafter shall mean Olde Ivy Development, L.L.C. only, its successors and assigns and any entity designated by it as a developer or successor.
- 1.11 “Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions For Olde Ivy Subdivision as the same may be amended from time to time, together with any and all Supplemental Declarations which may be recorded by Developer from time to time.
- 1.12 “Exterior Structure” shall mean any structure or other improvement erected or maintained on a Lot other than the main residential structure, and shall include without limitation, any deck, gazebo, greenhouse, doghouse or other animal shelter or run, outbuilding, fence, patio wall, privacy screen, boundary or retaining wall, bridge, patio enclosure, tennis court, basketball court, swimming pool, hot tub, basketball goal, swing set, trampoline, sand box, playhouse, tree house or other recreational or play structure.
- 1.13 “Lot” shall mean any parcel or portion of the Property designated as a lot on any recorded plat of the Subdivision, or any additions thereto, with the exception of the Common Area.
- 1.14 “Owner” shall mean the record owner in fee of any Lot, whether one or more persons or entities, including the Developer, and for purposes of all obligations of the Owner hereunder, shall include, where appropriate, all family members and tenants of such Owner and all of their guests and invitees. The foregoing does not include any persons or entities who hold an interest in a lot merely as security for the performance of an obligation.

- 1.15 “Person” shall mean a natural individual or any other legal entity.
- 1.16 “Plans and Specifications” shall mean any and all documents designed to guide or control the construction or installation of any improvement on any Lot, or other proposal for the same, including but not limited to those indicating size, shape, location, configuration or materials, all site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to the improvement or proposal in question.
- 1.17 “Plat” shall mean that final plat of the Property, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2002, and filed of record in the Office of the Recorder of Deeds of Greene County, Missouri, covering and describing any or all of the Property referred to in this Declaration or on Exhibit A attached hereto and incorporated herein by reference.
- 1.18 “Project” shall mean the Property or any additional real estate submitted or subjected to this Declaration and any improvements now or hereafter constructed thereon.
- 1.19 “Property” shall mean and refer to the real property more fully described on Exhibit A attached hereto and incorporated herein by reference, and any additional real property which may be made subject to this Declaration by amendment hereto.
- 1.20 “Public Purchaser” shall mean the Person who initially becomes an Owner of any Lot other than the Developer or a Builder.
- 1.21 “Rules” shall mean and refer to those rules and regulations as passed and promulgated by the Association, or the Board acting on behalf thereof, under the authority granted by this Declaration, by a Supplemental Declaration, the Articles of Incorporation or the Bylaws of the Association.
- 1.22 “Single-family Residence” shall refer to a structure containing one dwelling unit only and occupied by not more than one family.
- 1.23 “Supplemental Declaration” shall mean any amendment to this Declaration or any separate or additional declaration of covenants, conditions and restrictions pertaining or applicable to the Property which may hereafter be recorded pursuant to the terms of this Declaration.
- 1.24 “Visible from Neighboring Property” shall mean, with respect to any given object, that such object located on a Lot is or would be visible to a person

six feet tall, standing on any part of an adjoining Lot at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION

- 2.1 **Existing Property.** The property is and shall be held, transferred, sold, conveyed, encumbered and occupied subject to this Declaration and the Bylaws of the Association. Each Grantee of a portion of the Property and each Owner of a Lot, by accepting a deed thereto, agrees to, acknowledges and accepts all terms contained in this Declaration and the Bylaws of the Association as the same may be amended from time to time.
- 2.2 **Additional Property.** Additional land may be subjected to this Declaration in the following manner:
- (a) The Developer, or its successors and assigns, shall have the right, but not the obligation, to subject additional land to the terms of this Declaration regardless of whether said land is presently owned by Developer or subsequently acquired from time to time. Under no circumstances shall this Declaration, or any Supplemental Declaration, bind the Developer, its successors or assigns, to subject additional land to this Declaration or to adhere to any plan of development in any subsequent phase of development to any additional or adjoining land (other than as may be required by the City for approval of the Plat), or in any way preclude the Developer, or its successors or assigns, from conveying any land owned by Developer which may adjoin the Property and which has not been made subject to this Declaration, or Supplemental Declaration as provided herein, free and clear of this Declaration or any Supplemental Declaration.
  - (b) Additional land may be subjected to this Declaration by the Developer filing of record in the Office of the Recorder of Deeds of Greene County, Missouri, a Supplemental Declaration describing the additional land and a final plat showing and describing the additional land which identifies the lots and common areas contained therein, which right shall include any re-plat or amended plat of the Subdivision. Thereafter, the Owners of any Lot within the additional land, including the Developer, shall immediately be entitled to all privileges and be subject to all of the obligations of this Declaration, as amended from time to time, to the extent of and in accordance with the terms set forth in such Supplemental Declaration.
- 2.3 **Covenants Running with Land; Enforcement.** The agreements, restrictions and reservations herein set forth are, and shall be, covenants

running with the land into whosoever hands any of the Property shall come, for the benefit of all land in the Subdivision. The Developer, its successors, assigns and grantees, and all parties claiming by, through or under them, shall conform to and observe such agreements, restrictions and reservations; provided, however, that no person shall be obligated to enforce such agreements, restrictions and reservations. No agreement, restriction, or reservation herein set forth shall be personally binding upon any Owner except with respect to breaches thereof committed during such Owner's seizing of title to such Lot or Lots. The Developer, its successors and assigns, the Owner of any Lot and the Association shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the agreements, restrictions and reservations herein set forth, in addition to any action at law for damages. The failure to enforce any of the agreements, restrictions or reservations herein set forth at the time of its violation shall in no event be deemed to be a waiver of the right to do so thereafter.

### ARTICLE III COMMON AREAS

- 3.1 **Grant of Easement.** The Developer and its successors, assigns and grantees, the Owners of Lots and the Association shall have the right and easement of enjoyment in and to all of the Common Areas, but only for the intended use or uses thereof. Such right and easement in favor of the Owners and the Developer shall be appurtenant to, and shall automatically pass with, the title to each Lot. All such rights and easements shall be subject to the rights (including ownership) of any governmental authority or any utility therein or thereto, this Declaration, any Supplemental Declaration, the Articles of Incorporation and the Bylaws of the Association, and any Rules adopted by the Association as amended from time to time.
- 3.2 **Conveyance of Common Areas.** The Developer covenants and agrees to convey all of its right, title and interest in the Common Areas (except any part thereof that is within any Lot) to the Association, without any cost to the Association, not later than one month after the Developer has recorded the Certificate of Substantial Completion. In the event Developer shall fail to execute and record a separate deed conveying the Common Areas to the Association within 30 days following Substantial Completion, this Article III of the Declaration shall be deemed a conveyance of all of the Developer's right, title and interest in and to the Common Areas to the Association.

Notwithstanding any term or provision of this Article III to the contrary, the right and easement of enjoyment of the Owners as to any Common Area shall be subject to the right to the Developer to convey sewer, water, drainage,

maintenance, access and utility easements over, under, upon and through the Common Area or any portion thereof.

- 3.3 **Maintenance of Common Areas.** The Association, by and through the Board, shall have the authority and the responsibility, for the term of this Declaration and all renewals or extensions thereof, to provide for the maintenance and repair of the Common Areas (including the purchase of liability insurance providing coverage to the Common Areas and the payment of real estate taxes assessed to the Common Areas), to contract with such firms or Persons as it deems necessary and desirable, and to hire Persons to perform such functions, including management, clerical and administrative duties, as it deems necessary and desirable for the maintenance and repair of the Common Areas, in accordance with the terms of this Declaration, the Association Bylaws, and the requirements of the city.
- 3.4 **Rights of the City.** If the City determines that the Association has failed to maintain the Common Areas in reasonable order and condition in accordance with the plans approved by the City for development of the Subdivision, the City may, after notice and hearing to the Developer and the then Board, take such corrective or remedial action as may be necessary to adequately maintain or repair the Common Areas and assess the costs against the Owners ratably under the procedure specified in section 5-2307 of the City Zoning Code, or any successor code of similar effect.

ARTICLE IV  
ASSESSMENTS FOR MAINTENANCE  
OF COMMON AREAS

- 4.1 **Obligation and Lien for Assessments.** Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges as set forth in this Declaration and the Bylaws of the Association and as the Association may fix and determine from time to time; and (b) such special assessments as the Association may fix and determine in accordance with the terms of this Declaration and the Bylaws of the Association. The annual and any special assessments, together with interest thereon, costs of collection and attorney fees incurred in the collection thereof, shall be the personal obligation of the Owner of each Lot at the time when each such assessment is due and payable. Such personal obligation for such assessments shall not pass to such Owner's successors in title unless expressly assumed by such successors. However, each such annual and special assessment, together with interest accruing thereon, costs of collection and attorney fees incurred in the collection thereof, shall to the full extent permitted by law, be a charge on each Lot and shall be a continuing lien upon each Lot against which each such assessment is made.

- 4.2 **Purpose of Assessments.** The assessments levied by the Association shall be used for the maintenance, repair and upkeep of the Common Areas and for promoting the general benefit, recreation, health, safety, property values and welfare of the residents in the Subdivision (including any additions thereto). Such purpose shall include (in addition to the rights and powers set forth in this Declaration and in the Association's Bylaws) provisions for the improvement, construction, repair, maintenance, care, upkeep and management of the Common Areas and the improvement and facilities thereon, including Common Area fences within and along the perimeter of the Subdivision, the payment of any taxes and assessments by any governmental agency, the payment of insurance premiums on the Common Areas and any improvements thereon, and all other costs and expenses related to the management and maintenance of the Common Areas. Nothing contained herein shall limit the Association's rights and powers granted in this Article or granted elsewhere in this Declaration and the Bylaws of the Association.
- 4.3 **Initial Assessment.** An initial assessment of \$500.00 per Lot shall be made to each Lot at the time the initial Owner of each Lot receives a deed from Developer to their respective Lot and shall be due at the time of delivery of Developer's deed to each such initial Owner. The initial assessment shall be applied to the installation and construction costs for Common Area parking lot, swimming pool, clubhouse, pavilion, and the initial budget of the Association as Developer may elect and determine.
- 4.4 **Annual Assessment.** In order to provide the Association with a general fund with which to exercise the powers, maintain the Common Areas and improvements located thereon, and to render the services provided for herein and under the Association's Bylaws, including a charge for normal trash collection, all Lots, other than Lots then owned by the Developer, shall be subject to an annual assessment to be paid to the Association as set forth below and in the Association's Bylaws:
- (a) The annual assessment per Lot shall be fixed periodically by the Board and until further action by the Board, shall be \$400.00 per year.
  - (b) The Board may increase the annual assessment annually without a majority vote of the Owners by not more than 10% above the annual assessment in effect for the previous year, except that in the event that the annual assessment is not sufficient to pay for the maintenance, taxes and insurance for the Common Area, the Board may impose such additional assessments as may be necessary for the purpose of paying the same. Until such time as the Developer has sold and conveyed fifty percent (50%) of the Lots, any increase in the annual assessments shall be determined by Developer and thereafter by the



Board. After the Developer has sold and conveyed fifty percent (50%) of the Lots, any increase of annual assessments in excess of 10% over the prior year's annual assessment shall require approval by a majority of the Owners, one vote per Lot.

- 4.5 **Special Assessments.** In addition to the annual assessment provided for in Section 4.4 above, the Association may levy, in any assessment year, a special assessment for capital improvements to the Common Areas or for such emergency purposes or otherwise as the Board may recommend and the Association may approve. Any special assessment shall require the affirmative vote of a majority of the Owners, one vote per Lot. The Developer shall not be considered an Owner for purposes of approval of any special assessment nor shall Developer or any Lots then owned by Developer have any liability for any special assessment.
- 4.6 **Commencement of Assessments.** The Initial Assessment for each Lot referred to in Section 4.3 shall be due from each initial Owner respectively on the date and at the time the Developer shall deliver a deed to each initial Owner for their respective Lot. The annual assessment for each such Lot shall commence on the same date as the Initial Assessment for that Lot is due, provided, however, the same shall be prorated as of the date the deed for such Lot from the Developer to the initial Owner thereof is recorded, and provided further, the Board may, at its discretion, allow or permit such annual assessment or any special assessment to be paid in quarterly installments.
- 4.7 **Remedies.** In the event any Owner fails to pay any assessment as and when the same shall be due (a "Delinquent Owner") the Association may take such action as the Board may determine necessary for collection of the same including suit for collection and foreclosure of the lien for assessments provided for herein. In the event the Board employs an attorney for collection of any unpaid assessment or foreclosure of such lien, the Delinquent Owner shall, in addition to the amount of unpaid assessments then due, also pay all reasonable attorney fees and costs of collection or foreclosure incurred by the Association in connection therewith. Each assessment that remains unpaid for a period of more than 30 days shall, at the election of the Board, bear interest at the rate of eighteen percent (18%) per annum. The remedies provided for herein are not exclusive and are in addition to any and all other remedies available at law or in equity.
- 4.8 **Foreclosure of Lien.** Each Owner, by accepting a deed to such Owner's respective Lot, acknowledges that a continuing lien with power of sale is hereby created for securing payment of any and all assessments due with respect to such Lot, together with any and all interest accrued upon a delinquent assessment and all costs of collection, including all reasonable attorney fees incurred by the Association in collection of such delinquent assessment or foreclosure of the lien provided for herein. At any time after

thirty (30) days from the date any assessment shall be due, the Board may but shall not be required to make written demand for payment to the Delinquent Owner, setting forth the amount then due. If such amount is not paid within ten (10) days after delivery of such demand, the Board may then cause a Notice of Delinquent Assessment to be recorded in the Office of the Recorder of Deeds for Greene County, Missouri with copies thereof to be delivered by the Board to the then Owner of such Lot. The Notice of Delinquent Assessment shall be executed and acknowledged by a member of the Board and shall state the following:

- (1) The name and last known address of the Delinquent Owner;
- (2) The legal description and street address of the Lot to which such delinquent assessment pertains;
- (3) The amount due as of the date such Notice is executed and acknowledged;
- (4) That a lien exists against the Lot in favor of the Association pursuant to this Declaration for which the Association may foreclose pursuant to the power of sale granted herein.

Following the recording of the Notice of Delinquent Assessment, the Board may proceed with foreclosure of the lien provided for herein in the same manner as provided by the laws of the State of Missouri for foreclosure of a deed of trust with power of sale, or by appropriate action for judicial foreclosure and sale. At any such sale the Association may purchase the Lot and the Delinquent Owner shall remain liable for any deficiency resulting from any sale by foreclosure.

- 4.9 **Subordination of Lien for Assessments.** The lien for assessments provided for herein shall be subordinate to the lien of any deed of trust or mortgage granted by the Owner for the purchase of such Owner's respective Lot, provided, however, no sale, grant of a deed of trust or mortgage or other transfer of any interest in any Lot shall relieve such Lot from liability for any assessments then or thereafter becoming due or from the lien therefore.

## ARTICLE V USE AND BUILDING RESTRICTIONS

- 5.1 **Applicability.** The following restrictions are imposed on Lots 1 through \_\_\_\_\_ as designated, shown and described on the Plat, as the same may be amended, (hereinafter referred to as the "Single-family Residence Lots").

- 5.2 **Single-family Residence Use.** Each Single-family Residence Lot shall be used, improved and devoted exclusively for single-family residential use in accordance with the restrictions, conditions and covenants set forth in this Declaration. No duplex, flat, boarding house, rooming house, apartment house or other multi-family or multi-unit residential structures, or any non-residential structures or other improvement (except Exterior Structures approved by the Architectural Control Committee as set forth herein) may be erected on any Single-family Residence Lot. No more than one single-family residence shall be located on any Lot and no such residence shall exceed two stories in height. Each such residential structure shall have an attached garage for not less than two motor vehicles. All residential structures shall be of new construction on-site; no residential building or structure which has previously been at another location shall be moved onto any Lot, and no “prefabricated”, “modular”, or “manufactured” or otherwise pre-assembled or pre-constructed homes or structures of any nature or kind whatsoever (except Exterior Structures approved by the Architectural Control Committee) shall be erected, stored or placed on any Single-family Residential Lot. No camper, trailer, mobile home, vehicle, tent, outbuilding, Exterior Structure or any other apparatus or structure whatsoever except a permanent residence (the Plans and Specifications for which have been approved by the Architectural Control Committee as set forth herein) shall at any time be used for human habitation, temporarily or permanently, nor shall any residence or other structure or improvement of a temporary character be erected, moved onto or maintained upon any Single-family Residential Lot or any Common Areas. Notwithstanding the foregoing, nothing herein shall prevent or prohibit the Developer or its designees authorized by the Developer from placing and using temporary buildings, structures or any residence for model, office, sales or storage purposes prior to the recording of the Certificate of Substantial Completion. Further, nothing herein shall be deemed to prevent the leasing of any single-family residence from time to time by the Owner thereof, subject to all of the provisions of this Declaration.
- 5.3 **Animals.** No animals, fowl or livestock of any kind shall be kept, raised or bred on any Single-family Residential Lot except that dogs, cats and other common household pets may be kept so long as they are not kept, bred or maintained for commercial purposes, are reasonable in number with respect to each Lot, and do not constitute a nuisance to the neighbors or the Subdivision. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No pen designed solely for the confinement of any animal shall be constructed or maintained on any Lot. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether a particular animal is a common household pet, a nuisance, or whether the number of animals kept on any Lot is reasonable. Any decision rendered by the Board on such matters shall be as enforceable and in the same manner as any other restriction contained herein. No pet or animal shall be allowed to run loose or unsupervised

within the Subdivision and the walking of pets shall be allowed only on such portions of the Subdivision as the Board may prescribe in the Rules from time to time.

- 5.4 **Antennas.** No antenna, satellite dish or other device or equipment for the transmission or reception of electronic, digital, or airwave signals, shall be placed, constructed or installed so as to be visible from the street frontage of any Lot, unless the same shall be approved by the Architectural Committee.
- 5.5 **Construction of Residence, Improvements and Alterations.** No building, residence, fence, wall, swimming pool, drive, Exterior Structure or other structure or improvement shall be commenced, constructed, improved or altered, without the prior written approval of the Architectural Control Committee as set forth herein.
- 5.6 **Trailers and Motor Vehicles.** No mobile or mobile home, recreational vehicle, trailer of any kind (except those owned, placed, or approved by Developer prior to the recording of the Certificate of Substantial Completion), truck (larger than  $\frac{3}{4}$  ton), camper, boat or other watercraft shall be kept, placed, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle or motorcycle be constructed or repaired upon any Lot or street within the Subdivision in such manner as the same will be Visible from Neighboring Property; provided, however, the provisions of this Section shall not prohibit emergency vehicle repairs of a temporary nature. Further, none of the aforementioned vehicles, boats, watercraft or the like shall be parked within any street for a period in excess of twelve hours. The Board may provide in the Rules such other and further restrictions, prohibitions and conditions pertaining to the storage, maintenance, keeping and use of such motor vehicles, trailers, boats and watercraft which shall be deemed incorporated herein by reference and as effective and binding as set forth expressly herein.
- 5.7 **Lawns and Plantings.**
- (a) **Single-family Residence Lots.** Each Owner shall keep all shrubs, trees, grass and plantings of every kind within its respective Lot neatly trimmed, properly cultivated and free from trash, excessive weeds, and other unsightly material. In the event any Owner fails to comply with the provisions of this section, the Developer or the Board shall have the right, after written notice to the Owner, to enter upon such Owner's Lot in order to maintain the same in accordance with this section at the Owner's cost which shall be deemed a special assessment to such Lot.
- (b) **Common Areas.** Developer or the Association shall have the right at any time, to plant, replace, maintain, and cultivate shrubs, trees, grass,

and plantings within the Common Areas and on such easements as may be granted to or reserved by the Developer or the Association over and across each Lot. No Owner or other Person shall remove, alter, injure or interfere in any way with such shrubs, trees, grass and plantings without the prior approval of the Developer or the Board. The Developer or the Association shall have the right to enter any Lot at any reasonable time, for the purpose of maintaining, placing or replacing such shrubs, trees, grass and plantings.

- 5.8 **Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or noxious fumes shall be permitted to emanate therefrom so as to render any Lot, or portion thereof, unsanitary, unsightly, offensive or detrimental to any other Lot or its occupants. Without limiting the generality of the foregoing, no exterior speakers, excessive exterior lights, horns, whistles, bells or other sound devices, except those designed solely for security purposes, shall be used, placed or located on any Lot. The Board in its sole discretion shall have the right to determine whether any of the foregoing conditions or circumstances not specifically described herein constitutes a nuisance to any other Lot or the Subdivision and may require the removal or remediation of such condition. Any such Board decision shall be conclusive.
- 5.9 **Repair and Maintenance of Buildings.** No building, residence or structure within any Lot shall be permitted to fall into a state of disrepair and the same shall at all times be kept in good condition and repair and adequately painted or otherwise painted. The Board may determine violations of this Section to constitute a nuisance within Section 5.8 above subject to remediation by the Association in the manner provided for in Section 5.7(a).
- 5.10 **Trash Containers and Collection.** No garbage or trash shall be placed, permitted or kept on any Lot except in covered containers of a standard residential type. Such containers shall not be Visible from Neighboring Property except at such time as to make the same available for collection and then only for the time reasonably necessary to allow for such collection. All rubbish, trash and garbage shall be removed from each Lot least once per week either by or on behalf of each Owner.
- 5.11 **Clothes Drying Facilities.** Permanent outside clothes lines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot unless they are erected, placed and maintained exclusively within an area not Visible from Neighboring Property. Temporary lines or facilities shall be taken down immediately after the drying or airing task is completed.
- 5.12 **Encroachments.** No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise encroach upon any sidewalk, street,

pedestrian way, or other area from ground level to a height of eight (8) feet, without the prior approval of the Architectural Control Committee.

5.13 **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of the improvements on such Lot, and except that which Developer or the Association may require for the operation and maintenance of the Common Area.

5.14 **Restrictions on Further Subdivision.** No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest herein, shall be conveyed or transferred by an Owner without the prior written approval of the Board. This provision shall not, in any way, limit Developer from subdividing or separating into smaller Lots or parcels any Lot owned by the Developer. Moreover, this provision shall not prevent conveyances which combine in common ownership Lots or parts of Lots in such a manner that each of the parcels of land thereby resulting has an area the same or greater than the area of any of the Lots from which the new Lots were created. Such newly created parcel thereafter shall be considered as one Lot, except as provided, however, subject to the provisions of these restrictions, an Owner of each Lot as originally shown on the plat shall be entitled to that number of votes and shall be subject to assessments attributable to each full Lot owned as originally shown on the plat. No portion of a Lot less than the entire Lot, together with the improvements thereon, may be rented, and then only to a single family.

5.15 **Signs.** No sign of any kind shall be displayed to the public view on any Lot except:

- (a) One sign of not more than five (5) square feet, advertising the property for sale or rent;
- (b) Signs used by a builder to advertise the property during the construction and sales period;
- (c) Signs of such shape, size and location as the Developer deems necessary for security control and to advertise the project;
- (d) One sign, not to exceed one (1) square foot in size, which may contain the name or names of the Owner or Owners and/or the dwelling unit number.

5.16 **Dwelling Size.** The Architectural Control Committee shall exercise its best judgment to see that all structures, as to size, conform to and harmonize with

the existing surroundings and structures. Developer reserves to itself and the Architectural Control Committee the right to establish minimum square footage requirements for any residence to be constructed on a Lot.

**5.17 Building Location.**

- (a) No building shall be located nearer to any lot line than the minimum set back line and side lines shown on the Plat, or any amendments thereto.
- (b) Building location (horizontal and vertical) must be approved by the Architectural Control Committee.

**5.18 Fences.** Properly constructed and installed fences may be approved for construction by the Architectural Control Committee upon submission of Plans and Specifications. Privacy fences may not exceed seventy-two (72) inches in height. There is only one fence design that is approved for Olde Ivy Subdivision, that being "Shadowbox" alternating boards finished on both sides. Picket material must be a full 1 x 8 treated Southern yellow pine. Post materials must be a 4 x 4 treated Southern yellow pine. Pickets must be rough sawn on all sides. Rails for fence to be 2 x 4 treated Southern yellow pine. All nails used in construction of a fence must be galvanized ring shank. Posts to be set in concrete and to be on the inside of the fence. Where fences are used, they must be sufficiently clear of vegetation or other matter. No fences in the Development shall extend nearer to the front wall of a house than fifty percent (50%) of the distance between the rear wall of the house on each side to the front wall of the house on each side, without prior written approval of the Architectural Control Committee. Supporting structures on all fences shall be placed on the side of the fence facing the property of the Owner building the fence. On Corner Lots the fence may extend from the house toward the street a maximum of five feet, but said fence must run parallel with the edge of said street. No fence or hedge shall be permitted between the front wall of the structure and adjoining street or across the front yard. No fence shall be erected or maintained adjacent to any existing fence. Any such existing fence shall first be removed. Any such removal of an existing fence shall not be effected without prior written approval of the Architectural Control Committee.

**5.19 Easements.** Easements are reserved as shown on the Plat, and any amendments thereto.

**5.20 Soil Removal.** Soil may not be removed from any Lot or Common Area without consent of the Developer or the Architectural Control Committee.

- 5.21**Garage Doors.** The doors of all garages shall be kept closed at all times except when necessary for ingress and egress. The doors of all garages shall be installed with electric or battery powered opening and closing devices.
- 5.22**Improvements.** Each Owner shall, within one year after the date of commencement of construction of any improvements on their Lot, complete said improvements. If said improvements are not completed within said one-year period, the Developer shall have the option to repurchase said Lot for a sum equal to the original purchase price.
- 5.23**Basketball Goals.** No basketball goals shall be attached to the front of any dwelling or garage nor erected in any front yard or on the side of any street which abuts any Corner Lot.
- 5.24**Outside Lighting.** Except as may be initially installed by a Builder or Developer, no spotlights, floodlights or similar type high intensity lighting (including mercury vapor or sodium vapor lighting) shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereon or upon the Common Areas or any part thereof without the written authorization of the Architectural Control Committee. Other types of low intensity lighting which do not cast excessive light onto adjoining Lots are allowed. No lighting shall be installed on or around the Common Area, except that deemed necessary by the Developer.
- 5.25**Mailboxes.** Mailboxes shall be of the design materials and specifications approved by the Architectural Control Committee. Each Owner shall be responsible for the installation and construction of such mailbox which shall be complete prior to occupying the residence on that Lot. With respect to Lots with frontage on a cul-de-sac, Developer may, in its discretion, require that one or more residences located on such Lots locate their respective mailbox on a common pedestal or structure shared with other mailboxes for other residences located on such cul-de-sac.
- 5.26**Roofs.** All roofs shall have an exterior surface which shall be approved by the Architectural Control Committee, in its sole discretion.
- 5.27**Swimming Pools.** No aboveground swimming pools shall be approved by the Architectural Control Committee.
- 5.28**Tennis Courts.** No private tennis court shall be approved by the Architectural Control Committee.
- 5.29**Solar Collectors.** The construction, installation and location of solar collectors shall be permitted only upon advance approval by the Architectural Control Committee.



**5.30 Remedies.** In the event that an Owner (or guest, invitee, licensee, tenant, lessee, family member, agent or employee thereof) shall violate, or permit to be violated, any of the provisions set forth in this Article, the Board shall cause to be delivered to said Owner a written Notice of Violation. Said Notice of Violation shall set forth the nature of the alleged violation and shall request that the violation be voluntarily terminated and remedied within a reasonable time as determined by the Board from the mailing of said notice.

If, after a reasonable time has lapsed from the date of said Notice, the violation has not been voluntarily terminated by the Owner, the Board shall have the authority to pursue and effect any and all procedures which may be calculated as reasonably necessary to remove and/or terminate the cause of said violation. This authority shall include, but shall not be limited to, the power to employ laborers to enter upon the premises of said Owner for the purpose of removing and/or terminating said violation, the collection of said expenses so incurred may be effected in the manner provided in Article IV for the collection and enforcement of assessments.

For purposes of administering this Section, the determination of whether a violation has been, or is being committed, and the determination of what time period constitutes a “reasonable time” allowable for voluntary termination of the same, shall be made by the Board after taking into consideration the facts and circumstances surrounding the particular violating situation, condition or occurrence.

In the event that the Board does not elect to exercise its authority of enforcement as set forth above, then the Developer or any other Owner or Owners shall have the right to pursue, at law or in equity, any remedy for enforcement of these covenants which remedy is hereby specifically granted by this section. In the event that it is necessary for the Association, Developer or any Owner or Owners to retain the services of legal counsel in an attempt to enforce these covenants, the enforcing parties or party shall be entitled to reimbursement of all litigation costs, including reasonable attorney’s fees and court costs, with such reimbursement being awarded by way of judgment against the Owner or Owners responsible for any such violation or violations.

ARTICLE VI  
ARCHITECTURAL CONTROL COMMITTEE

**6.1 Membership.** From the date of this Declaration to that point in time when the Developer has recorded the Certificate of Substantial Completion or has earlier resigned therefrom, the Developer shall be the Architectural Control Committee. The Developer may appoint such person or persons to act as the Architectural Control Committee on its behalf during the period in which the

Developer is the Architectural Control Committee. Thereafter, the Board shall comprise the Architectural Control Committee unless the Board shall see fit to delegate this function to a Committee appointed by the Board which shall be comprised of three Owners.

- 6.2 **Architectural Control Function.** No structure, whether a residence, Exterior Structure, accessory building, mailbox, awning, swimming pool, fence, wall, lot, drainage works, exterior area lighting or any other improvement whatsoever shall be constructed, reconstructed, repaired or maintained upon any lot, and no alteration to the exterior of a structure shall be undertaken unless complete Plans and Specifications and plot plans therefore showing the exterior design, height, building material and color scheme thereof, the location of the structure on the Lot plotted horizontally and vertically, the location of driveways and fencing, shall have been approved in writing by the Architectural Control Committee and a copy of such Plans and Specifications and plot plans as finally approved shall be deposited with the Architectural Control Committee. The Architectural Control Committee shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on the properties conform to and harmonize with the existing surroundings and structures.
- 6.3 **Liability.** The Architectural Control Committee shall not be liable for damages to any person who has submitted a request for approval by reason of any action, failure to act, approval or disapproval, or failure to approve or disapprove such request.
- 6.4 **Restrictions on Builders.** The Developer reserves the right to implement and enforce such rules, regulations and policies as may be reasonable and necessary during the developmental stage of the Subdivision regarding the original construction of improvements within the Subdivision. Any Builder constructing improvements within the project shall be bound by such rules, regulations and policies as though the same were set forth herein.

ARTICLE VII  
PERMITTED USE AND RESTRICTIONS AS TO COMMON AREAS

- 7.1 **Maintenance by Association.** The Board of the Association may, at any time, as to any Common Area owned, leased or otherwise controlled by it, take the following actions without any approval of the Owners being required.
- (a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area (1) the last plans thereof approved by the Board of Directors, (2) the original plans for the improvements, (3) if neither of the foregoing is applicable and if such improvement was

previously in existence, then in accordance with the original design, finish or standard of construction of such improvement as same existed, or (4) as may be required by the City.

- (b) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, walk, driveway, or parking area.
- (c) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes.
- (d) Place and maintain upon any such area such signs as the Board of Directors may deem appropriate for the proper identification, use and regulation thereof.
- (e) Do all such other and further acts which the Board of Directors deems necessary to preserve and protect the property and the beauty thereof, in accordance with the general purposes specified in this Declaration.
- (f) The Board shall be the sole judge as to the appropriate maintenance of all grounds within and improvements upon the Common Area, including common area fences.

**7.2 Damage or Destruction of Common Area by Owners.** In the event any Common Area is willfully or maliciously damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or members of his family, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a workmanlike manner in conformance with the original plans and specifications for the area involved or as the area may have been modified or altered subsequently by the Association. The cost for such repairs shall be paid by said Owner, upon demand, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

ARTICLE VIII  
OLDE IVY HOMEOWNERS ASSOCIATION

**8.1 Organization.**

- (a) The Association. The Association shall be a not-for-profit corporation organized and existing under the general not-for-profit corporation law of the State of Missouri, charged with the duties and invested with the

powers prescribed by law and set forth in its Articles of Incorporation, Bylaws, this Declaration and any Supplemental Declarations. Neither the Articles nor the Bylaws shall, for any reason, be amended, or otherwise changed or interpreted so as to be inconsistent with this Declaration, or any amendments thereto.

(b) Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors, and such Officers as the Directors may elect or appoint, in accordance with the Articles of Incorporation and the Bylaws.

**8.2 Powers and Duties of the Association.** The Association shall have such rights, powers and duties as set forth in the Articles and Bylaws.

**8.3 Rules.** By majority vote of the Board, the Association may from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations covering the use of any Common Area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that such rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of such rules as they may from time to time be adopted, amended or repealed, shall be made available to each Owner, at said Owner's request. Upon enactment, said rules shall have the same force and effect as if they were set forth in and were part of this declaration.

**8.4 Personal Liability.** No member of the Board of Directors or any committee of the Association, or any Officers of the Association shall be personally liable to any Owner, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board or any other representative or employee of the Association or the Architectural Control Committee, or any other committee, or any Officer of the Association, provided that such person has, upon the basis of such information as may be possessed by such person, acted in good faith, without willful or intentional misconduct.

**8.5 Responsibility for Common Areas.** The Association shall have the responsibility for maintaining the Common Areas, including the Common Area fences, and shall be responsible for the payment of taxes (if any) and insurance on the Common Areas. In this Declaration, the term "Common Area fences" shall include boundary fences which separate public streets or property from private property or Common Area.

**8.6 Indemnification of Developer by Association.** The Association hereby agrees and covenants to indemnify the Developer from any and all claims for personal or property damage which may result from the use, ownership,

possession, control or maintenance of the Common Areas, including any drainage detention area, and hold Developer harmless therefrom on a continuing basis. To this end, the Association shall purchase and maintain a policy of general liability insurance naming the Developer as an additional insured, which policy shall have minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Developer reserves the right to demand proof of compliance with this insurance requirement.

ARTICLE IX  
MEMBERSHIP AND VOTING RIGHTS

- 9.1 **Membership.** Every Owner, either of a fee or undivided interest of a Lot, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment of the Association. A Builder shall have no vote in the affairs of the Association.
- 9.2 **Voting Rights.** Each Owner shall be entitled to one vote for each Lot owned by such Owner. If more than one person owns an interest in a Lot which qualifies them for membership, then all such persons shall be members, but shall only be entitled to one vote for each Lot owned. The vote for each such Lot shall be cast as they, among themselves, may determine, but in no event shall more than one vote be cast with respect to any Lot.
- 9.3 **Management of Association.** Members shall have no rights to manage the business affairs of the Association except as provided in the Articles of Incorporation and Bylaws. The management of the Association shall be vested entirely in the Board as provided in said Articles of Incorporation and Bylaws.

ARTICLE X  
GENERAL PROVISIONS

- 10.1 **Enforcement.** The Association, Developer, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and any subsequently recorded Supplemental Declarations. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.2 **Severalty.** Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

**10.3 Amendment.**

- (a) The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless otherwise amended as herein provided or terminated by the unanimous vote of all of the then existing members of the Association.
- (b) This Declaration may be amended in whole or in part at any time within ten (10) years from the date of recordation of same by an instrument in writing executed by Developer, its successors or assigns.
- (c) This Declaration may be amended at the end of the above-mentioned ten (10) year period by an instrument in writing executed by the Association, with the approval of a majority of the votes of the members voting in person or by proxy at a meeting called for that purpose.
- (d) No amendment shall be effective until it is recorded in the deed records of Greene County, Missouri.
- (e) Notwithstanding the foregoing, in no event shall this Declaration be revoked or amended with respect to the City's right to assess the Lots for repair and maintenance of Common Areas without the prior written consent of the City, nor may the Association be dissolved without the prior written consent of the City. An amendment purporting to revoke this Declaration or to vary the City's rights hereunder shall be void unless the City's prior written consent is attached to such amendment.

10.4 **Violations and Nuisances.** Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a Nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Developer, the Association, or any Owner. However, any other provision to the contrary notwithstanding, only Developer, the Association, the Board, or the duly authorized agent of any of the above, may enforce by self-help any of the provisions of these restrictions.

- 10.5 **Violation of Law.** Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Subdivision is hereby declared to be a violation of these Restrictions and subject to any or all of the enforcement procedures set forth in said Restrictions.
- 10.6 **Remedies Cumulative.** Each remedy provided by these Restrictions is cumulative and not exclusive.
- 10.7 **Delivery of Notices and Documents.** Any written notice or other document relating to or required by these Restrictions may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage pre-paid, as to any Owner, to the address of any lot within the Subdivision, owned, in whole or in part, by him or her, or to any other address last furnished by an Owner to the Association.
- 10.8 **The Declaration.** By acceptance of a deed or by acquiring any ownership interest in any of the real property, included within this Declaration, each person or entity, for himself, herself or itself, and their heirs, personal representatives, successors, transferees and assigns, binds them and the subject lot(s) to the covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby.

IN WITNESS WHEREOF, the undersigned, being the Developer herein, has hereunto set its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

JAMES FOWLER AND VERA FOWLER,  
CO-TRUSTEES OF THE FOWLER  
REVOCABLE TRUST DATED MAY 4,  
1998

\_\_\_\_\_  
James Fowler

\_\_\_\_\_  
Vera Fowler

STATE OF MISSOURI    )  
                                  )ss  
COUNTY OF GREENE    )

On this \_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned, a Notary Public in and for said County and State, personally appeared James Fowler and Vera Fowler, known to me to be the same persons whose names are subscribed to the foregoing instrument and acknowledged that they are all of the Co-Trustees of the Fowler Revocable Trust dated May 4, 1998, and further acknowledged that they signed and delivered the said instrument as the free and voluntary act of said company.

WITNESS my hand and notarial seal the day and year first above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:



OLDE IVY DEVELOPMENT, L.L.C.  
A MISSOURI LIMITED LIABILITY  
COMPANY

\_\_\_\_\_  
Michael L Pulscher, Member

\_\_\_\_\_  
David R Poppenga, Member

Being all of the Members of Olde Ivy  
Development, L.L.C.

STATE OF MISSOURI    )  
                                  )ss  
COUNTY OF GREENE    )

On this \_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Michael L Pulscher and David R Poppenga, known to me to be the same persons whose names are subscribed to the foregoing instrument and acknowledged that they are all of the members of Olde Ivy Development, L.L.C., and further acknowledged that they signed and delivered the said instrument as the free and voluntary act of said company.

WITNESS my hand and notarial seal the day and year first above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

