

**BIG COUNTRY ACRES  
AMENDED AND RESTATED**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter “DECLARATIONS”) is made as of this 21st day of September, 2003, by and among the lot owners (“Owners”) of Big Country Acres (hereinafter the “Subdivision” or “Big Country Acres”) and TIM ROE, FULVIO FRANZI and JILL LORD (hereinafter collectively called the “Trustees”).

WITNESSETH:

WHEREAS, The Real Property which is subject to this Declaration is located in St. Charles, County, Missouri and is particularly described as follows: Lots 1 to 29 inclusive of BIG COUNTRY ACRES, as said lots are marked and designated on the Plat thereof recorded in Plat Book 21, Pages 51 and 52 of St. Charles County Records.

WHEREAS, the Declaration of Covenants, Conditions an Restrictions for Big Country Acres as recorded in Plat Book 844, Pages 59 through 62, was repealed and terminated by the “Amended Declaration of Covenants, Conditions and Restrictions,” dated October 15, 1981 and recorded at Book 922, Page 1228 of the office of the Recorder of Deeds, St. Charles County, Missouri (the “1981 Amended Declaration”); and

WHEREAS, the 1981 Amended Declaration was amended by the following instruments recorded with the office of the Recorder of Deeds, St. Charles County, Missouri, recorded at Book 923, Page 476; at Book 965, Page 1225; at Book 1450, Page 820; at Book 2331, Page 742; at Book 2459, Page 103 and at Book 2510, Page 67.

WHEREAS, the Owners and Trustees desire to repeal and terminate all prior instruments

relating to BIG COUNTRY ACRES and adopt in lieu thereof, these DECLARATIONS.

NOW, THEREFORE, be it known that Owners and the Trustees declare the property described as Lots 1 to 29 inclusive of BIG COUNTRY ACRES, and such additions thereto as may hereafter be made pursuant to this Declaration, is, and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

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**ARTICLE I:** REPEAL OF PRIOR DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BIG COUNTRY ACRES AND STATEMENT OF PURPOSE

Owners and Trustees do hereby repeal and terminate the above-referenced 1981 Amended Declaration, and each and every amendment thereto, whether recorded or not, and hereby adopt the following DECLARATIONS in lieu thereof.

The Trustees and Owners declare that all of the lots within Big Country Acres are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration, all of which are declared and agree to be in furtherance of a plan for the development, improvement and sale of lots and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. The provisions of this Declaration are intended to create mutual equitable servitudes upon each of said lots and in favor of each and all other lots; to create a privity of contract and estate between the grantees of such lots, their heirs, successors and assigns; and shall, as to the owner of such lot, his heirs, successors and assigns, operate as covenants running with the land for the benefit of each and all other such lots and parcels in Big Country Acres and their respective owners, present and future.

**ARTICLE II:** CREATION OF ASSOCIATION

All of the present and future lot owners in all lands as are now or shall be in the future subject to this Declaration shall, as a group, hereby be established and hereby be known as “Big Country Acres Homeowners Association” and, as such lot owners or homeowners shall have all of the rights, privileges, duties, obligations and liabilities as are prescribed under the terms and provisions of this instrument.

**ARTICLE III:** SELECTION OF TRUSTEES; MEETINGS OF LOT OWNERS; VOTING

- A. There shall be three (3) Trustees. The original Trustees are the persons named herein. Should any of the named Trustees, or their elected or appointed successors, die, resign or cease to own a lot of Big Country Acres, otherwise agree to hold office as above set out, or decline to act or exercise the rights and powers hereby granted or bestowed upon him or her as members of the Trustees under this Declaration, then and thereupon, the remaining Trustees shall designate a successor thereto for the unexpired period of service as provided for hereunder.
- B. It is the intention of this instrument that each Trustee should serve for a term of three (3) years and that said terms should be staggered to the end that thereafter one (1) of said Trustees should be elected at each annual meeting of the lot owners. Presently, Mr. Roe’s term expires at the annual meeting of the lot owners held in the year 2004; Mr. Franzi’s term expires at the annual meeting of the lot owners held in the year 2005; and Mrs. Lord’s term expires at the annual meeting of the lot owners held in the year 2006.
- C. Trustee Roles: Following the annual meeting of the lot owners as provided for herein, the

Trustees shall designate one (1) of the Trustees to serve as Chairperson, one (1) to serve as Secretary, and one (1) to serve as Treasurer, until the time of the next following annual meeting.

- D. Annual Meeting: There shall be an annual meeting of said lot owners to be held on the Third Sunday in September of each year during the term of this instrument, said meeting to be held at a convenient place in the County of St. Charles.
- E. Special Meetings: There may be Special Meetings of said lot owners as may be called by any one of the Trustees, also to be held at a convenient place in the County of St. Charles.
- F. Notice of Meetings. Ten (10) days' notice in writing to the owner of each lot of the time and place of any annual or special meeting shall be given by the Trustees calling said meeting, by depositing same in the United States mail, properly addressed and with postage prepaid. The Notice shall state the date, time and location of the meeting. The Notice shall identify the matters to be addressed at said meeting. The Notice for the annual meeting shall state that in addition to matters identified in the Notice, owners present may present by motion additional matters which shall be taken up at the annual meeting, discussed and voted upon.
- G. Election of Trustee. At each annual meeting, the successor to the elected Trustee whose term has expired shall be elected by the lot owners at the annual meeting. The person receiving the highest number of votes cast shall be elected Trustee and shall, upon his or her acceptance, at once and by force of this Declaration imposed, succeed to, be vested with, and possess and enjoy as a joint tenant but not as a tenant in common, with the remaining Trustees, all of the estate, rights, interest, privileges and powers by this Declaration granted to the Trustees. In the event that any Trustee elected hereunder shall die or cease to reside in the land subject to this instrument, or become unable for any reason, to discharge the duties or avail himself or herself of or exercise the rights and powers herein granted or bestowed upon him or her as Trustees under this Declaration, then and thereupon, it shall be the duty of the remaining Trustees to appoint a successor to fill the unexpired term. The appointed successor must be a resident or property owner.
- H. Voting. The owner or owners of each lot shall be entitled to one (1) vote for each full lot owned, which vote may be cast in person or by proxy. Any lot owner who is behind on all payments due to Big Country Acres Homeowners Association by \$500.00 or less, or who have been approved by all trustees as a hardship case where progress is being made toward current standing, may vote on any issue.

Proxy. A proxy may be given by any homeowner to any Trustee to be used in all votes taken at any meeting. Said Proxy shall be in writing, shall contain the signature of the lot owner or owners on whose behalf it is given and shall state the name of the Trustee to whom the proxy is given. A Special Proxy shall be voted only according to the terms thereof, shall state the matters to be voted upon and shall state the vote of the person giving the proxy. A General Proxy may be given providing that the person to whom it is given may vote on any and all matters coming to vote at the meeting may be given.

Any lot owner who has been deemed by the Trustees in violation of the Declarations and who is not in compliance within the timeframe specified by the Trustees, shall not be entitled to vote at any annual or special meeting provided for herein.

- I. Business at Annual and Special Meetings. Any business relevant or pertinent to the affairs of the subdivision may and shall be transacted at any annual or special meeting described above. All actions of the lot owners at annual or special meetings shall be by 66% majority of votes cast, so long as there is at least a 50% quorum of properties represented. In the event that this quorum is not represented, an extension of not less than 7 days for voting by ballot. Such ballots must contain the signature of the lot owner and may be submitted in person, by U.S. mail or by email to any Trustee before the ballot deadline. Ballots received after a meeting but before the deadline must be counted by two or more owners and must be retained and made available to any lot owner wishing to verify voting results for a period of one year. All actions of the Trustees shall be by majority vote.
- J. These bylaws may be amended by affirmative vote by 66% of eligible voting members at any annual or special meeting of the membership, provided written notice of the proposed amendment is given to a trustee three weeks prior to an annual meeting and six weeks prior to a special meeting, to allow for inclusion in the mailed agenda.

**ARTICLE IV: EASEMENTS AND DEDICATIONS**

- A. All streets and roadways, namely High Sierra Drive and Madre Court, as shown on the plat of said Subdivision are hereby dedicated for the private and perpetual use of the present and future lot owners of Big Country Acres; provided, however, that the Trustees shall have the right, in their sole and absolute discretion, to petition for and secure approval of maintenance of said streets and roadways by St. Charles County, Missouri, or such other governmental entity as may have jurisdiction thereover; provided, further, that said streets and roadways meet minimum acceptable standards provided for by said governmental entity that said streets and roadways be thereafter dedicated for perpetual public use, and that the present and future lot owners waive any and all right to recovery of cost.
- B. The lake, dam and park areas shown on the plat of Big Country Acres, as well as the streets and roadways thereof, so long as they remain private, shall be maintained by the Trustees pursuant to this Declaration.
- C. All roads within Big Country Acres (High Sierra, Madre Court and Madre Drive) are privately owned and maintained by Big Country Acres Trustees as stated within these Declarations.
- D. All street and roadway right-of-ways, together with any areas shown on the plat thereof as easement areas, are hereby declared available for utility purposes and are hereby dedicated to that use for such utility companies as may be servicing the lots consisting of Big Country Acres, and to the successors and assigns of said utility companies for the installation, use and maintenance, repair and replacement of storm and sanitary sewers, water lines, gas

lines, electric, telephone and telegraph lines along, over and under said areas for the express purpose of providing said utility service to the lots consisting of Big Country Acres.

- E. The following described parcels are dedicated as Common Ground to be used solely by the Owners and Trustees of Big Country Acres as access to lake front and pump house location. These parcels are not to be resold for use as a private residence or dwelling. (Non-profit status). Description as follows: Tract of land 1.408 Acres for Lake Access between lots 20 & 21 and tract of land 0.64 Acres for pump house/well between lots 27 & 28 designated on the plat thereof recorded in Plat Book 21 Pages 51 and 52 of St. Charles County Records Office.

**ARTICLE V:** USE RESTRICTIONS

- A. No lot shall be used except for single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot, other than one single family dwelling not to exceed two stories and not to exceed 28 feet in height, and such other outbuildings customarily used as private garage or storage space. Except, that stables may be erected with the approval of the Trustees.
- B. No buildings, fence or other structure shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Trustees as to quality of workmanship and materials, harmony of external design with existing structures.
- C. DWELLING SIZE.
  - (a) One-story dwellings: The ground floor areas of the main structure of a one-story dwelling, exclusive of open porches and breezeways, shall have not less than 1300 square feet.
  - (b) Two-story or story and a half dwelling. The ground floor area of the main structure of a two-story or a story and a half dwelling exclusive of open porches and breezeways shall have not less than 900 square feet. The roof line may be continuous or staggered.
  - (c) In the case of a split level house or a split foyer house, there shall be a minimum of 1300 square feet of living space on floors or levels completely above ground.
  - (d) All dwellings shall have an attached garage or carport for at least two, but no more than three automobiles.
- D. Any building erected shall be constructed of either wood, brick or real stone or any combination thereof, no roll tarpaper or shingles shall be used on any exterior wall. Any dwelling, building, or construction requiring a county permit begun upon a lot shall be completed within one year thereafter. All footings, foundations and basements shall be

constructed of poured concrete. No structure of a temporary nature, house trailer, tent or shack shall be placed, erected or maintained upon any lot. No basement erected or maintained on any lot shall be used, temporarily, or permanently, as a place of residence.

- E. No building shall be located on any lot closer than the minimum building set back line as shown on the recorded Plat of said Subdivision.
- F. No building or lot in Big Country Acres shall be used for any purpose prohibited by law or ordinance.
- G. No house trailer or mobile home shall be stored or parked upon any residential tract in open view. There shall be no automobile or vehicle of any kind parked in the open view upon any tract unless the vehicle is licensed to be driven and used on public roads a minimum of once every thirty days. Properly licensed and maintained camping trailers, boats with trailers, motor homes, recreational vehicles, and other utility type vehicles and trailers used by the property owner may be parked in open view as long as the parking and/or storage of said vehicles or trailers is not offensive and is not an annoyance or nuisance to other property owners.
- H. When any dwelling improvements are erected on any lot, the owner shall at the time construct a sanitary sewage system of approved character to provide for the most effective disposal of sewage, in accordance with the prevailing Government requirements.
- I. No noxious or offensive activity shall be carried on at any time on any lot or in any building thereof. Nothing shall be done or be permitted to be done which may or shall become an annoyance or nuisance to other lot owners to diminish the enjoyment by any lot owner of his lot. No lot owner shall cause or permit an accumulation of refuse of any lot, whether improved or vacant, for the storage or parking of derelict automobiles or derelict vehicles of any kind or any parts thereof.
- J. No lot shall be used or maintained as dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.
- K. No person shall be permitted to live on any lot in Big Country Acres in a garage, outbuilding, trailer, temporary building or tent or other structure not designated as permanent or stationary. A residence conforming to all the conditions set forth in this indenture shall have been erected and completed prior to any occupancy thereof. Provide however, lot owners shall be allowed to camp on their lot only on no more than any two consecutive days during any one month period.
- L. LIVESTOCK AND POULTRY. No animals, livestock or poultry of any kind shall be raised, bred and/or kept upon any lot for any commercial purpose. Usual household pets may be kept so long as they are properly restrained on the owners property. Horses and cattle may be kept, but shall not exceed a total of one per acre. Proper precautions must be taken to restrict animals access to the lake.

- M. No residence or lot, or any portion thereof, in Big Country Acres shall be used as a boarding house, nursing home, rooming house, clubhouse, or be devoted to any manufacturing, industrial, retail, or commercial activity whatsoever. A professional business or office is permitted as long as the employees of the same are residents and/or property owners.
- N. The owner or owners of each lot shall keep all weeds and grass upon any lot owned by him, her or them, cut that such weeds and grass shall not exceed one (1) foot in height, without the express written consent of Trustees.
- O. Any lot covered by these restrictions may be divided or partitioned as long as the original lot, after division or partition, consists of at least three acres and any newly created lot consists of at least three acres.
- P. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.
- Q. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.
- R. All residential driveways shall be concrete, asphalt, rocked, or per St. Charles County Class "B" road specifications and shall be flush with, or tapered to, the street pavement edge. The driveway slope must be such that it prevents damage to the pavement edge. The driveway must allow proper drainage of the road.
- S. Restrictions as hereby set forth will be secondary to any County or other governmental restrictions.
- T. Mailboxes shall be placed close enough to the road so that U.S.P.S. mail delivery person can access the mailbox without driving off the pavement edge, but the mailbox shall also not extend over the edge of the pavement of the road. Otherwise, a shoulder adequate for the mail vehicle will have to be installed and maintained by the homeowner. The shoulder may be concrete, asphalt, or gravel. The shoulder shall be constructed so that it is flush with the pavement edge and allows proper drainage of the road.
- U. No resident or property owner shall knowingly allow a vehicle upon the Big Country Acres streets with a weight exceeding 20 tons, without the expressed written consent of the Trustees.



**ARTICLE VI: TRUSTEES' DUTIES AND POWERS**

The Trustees shall have the following rights, powers, duties, and obligations (subject and subordinate to the rights, powers, duties and obligations of the Senior Trustees):

- A. To acquire and hold the common property, as designated on any recorded final plat of the subdivision as being specifically dedicated to the Trustees hereunder, to exercise control over such common property, maintain, improve and operate same with landscaping, shrubbery, decorations, buildings, recreational facilities and structures of any kind or description, and any and all other types of facilities in the interest of the health, welfare, safety, recreation, entertainment, education and for the general use of the owners of lots in the subdivision, to grant such easements and rights-of-way over such common property to such utility companies or public agencies or others as they shall deem necessary or appropriate, to make rules and regulations, not inconsistent with the law and this Declaration, for the use and operation thereof and in every and all respects govern the operation, functioning and usage of said common property.
- B. To exercise such control over the easements, streets, drives, walkways and rights-of-way (except for such as have been or may hereafter be dedicated to public bodies or agencies) as is necessary to maintain, repair, supervise and insure the proper use of said easements, streets, drives, walkways and rights-of-way by the necessary public utilities and others, including the right (to themselves and to others to whom they may grant permission) to construct, operate and maintain on, under and over said easements, streets, drives, walkways and rights-of-way, street lights, sewers, pipes, poles, wires and other facilities and public utilities for service to the lots within the lands subject hereto, and to establish traffic regulations for the use of such streets, drives and walkways.
- C. To plant, care for, maintain, spray, trim, protect and replace trees, shrubbery and vegetation within any right-of-way, to decorate the entranceway to the subdivision by appropriate landscaping or by a subdivision sign or in such other manner as the Trustees shall deem appropriate.
- D. To dedicate the private streets, drives, walkways, or rights-of-way, or any portion or portions thereof, when such dedications would be accepted by an appropriate public agency.
- E. To clear rubbish and debris and remove grass and weeds from and trim, cut back, remove, replace and maintain trees, shrubbery and flowers upon any neglected property, and to charge the owners thereof with the reasonable expense so incurred, which shall be a lien against such parcel of neglected property. The Trustees, or their agents or employees, shall not be deemed guilty or liable for any manner of trespass for any such abatement, removal or planting.

- F. At the discretion of the Trustees, to provide security service and facilities and to provide for the collection of trash, rubbish and garbage and otherwise to provide such services as shall be in the interest of the health, safety and welfare of the property owners and residents, and to enter into and assume contracts for such purposes covering such periods of time as they may consider advisable.
- G. In exercising the rights, powers and privileges granted to them, and in discharging the duties imposed upon them by the provisions of this Declaration, from time to time to enter into contracts, employ agents and other employees as they deem necessary or advisable, employ counsel to advise the Trustees or to institute and prosecute such suit as they deem necessary or advisable with the approval of two-thirds majority of eligible voting property owners present, by proxy, or ballot received prior to the meeting, and to defend suits brought against them individually or collectively in their capacity as members of the Trustees.
- H. To receive, hold, convey, dispose of and administer in trust for any purpose mentioned in this Declaration any gift, grant, conveyance or donation of money or real or personal property.
- I. With regard to all property, real, personal or mixed, owned or held by them as members of the Trustees, the full and unqualified right, power and authority to:
1. Make all contracts and incur all liabilities necessary, related or incidental to exercise of the Trustees' powers and duties hereunder, including the construction of improvements.
  2. Purchase insurance against all risks, casualties and liabilities of every nature and description.
  3. Borrow money, including making a permanent, temporary or construction loan, encumber and hypothecate same, make and execute promissory notes or incur liabilities and obligations secured by deed of trust, mortgage, lien or encumbrance on same.
  4. Use, handle, manage, control, operate, hold, deal in and in all respects treat with same, limited only as provided in this Declaration or by law.
  5. In the event it shall become necessary for any public agency to acquire all or any part of any common property as may be designated on any recorded final plat of the subdivision, for any public purpose, the Trustees are hereby authorized to negotiate with such public agency for such acquisition and to execute such instruments as may be necessary for conveyance to any such public agency. Should acquisitions by eminent domain become necessary, only the Trustees need be made parties and all monies, damage payments or condemnation award shall be held by the Trustees for the benefit of the owners of the lots subject hereto.

- J. The Trustees shall deposit the funds coming into their hands, as Trustees, in a state or national bank, protected by the Federal Deposit Insurance Corporation, or in a state or federal savings and loan association, protected by the Federal Savings and Loan Insurance Corporation. The treasurer shall be bonded for the proper performance of the treasurer's duties in an account to be fixed by the Trustees.
- K. All rights, powers, duties, privileges and acts of every nature and description conferred upon the Trustees by the terms of this Declaration may be executed and exercised by a majority of the Trustees, unless otherwise provided herein. No Trustee shall be personally liable for their acts in the performance of their duties, except for dishonesty or acts criminal in nature.
- L. To impose fines on property owners and/or residents for non-compliance of this Declaration that are not hereto specified. With a majority vote of the Trustees, and at their discretion, a fine of \$25.00 per month per infraction may be levied. Fines accrued up to \$250.00 and not paid within a six month period will require a majority vote of eligible lot owners present, by proxy, or by ballot received at or prior to a special meeting to cause a legal remedy including a suit or filing of lien.

**ARTICLE VII:       GENERAL PROVISIONS ON CONSTRUCTION AND IMPROVEMENTS**

- A. General Powers. All improvements constructed or placed on any lot must first have the written approval of the Trustees. Such approval shall be granted only after written application has been made to the Trustees in the manner and form prescribed by it. The application, to be accompanied by two sets of plans and specifications, shall show the location of all improvements, if any, existing upon said lot, the location of the improvement proposed to be constructed, the color and composition of all exterior materials to be used, proposed landscaping, and any other information which the Trustees may require
- B. Grounds for Disapproval. The Trustees may disapprove any application if such application does not comply with this Declaration:
  - 1. Because of the reasonable dissatisfaction of the Trustees with grading plans, location of the proposed improvement on a lot, finished ground elevation, color scheme, finish, design proportions, architecture, shape, height or style of the proposed improvement, the materials used therein, the kind, pitch or type of roof proposed to be placed thereon; or,
  - 2. If, in the judgment of the Trustees reasonably exercised, the proposed improvement will be inharmonious with the Development, or with the improvements erected on other lots.

- C. Rules and Regulations. The Trustees may, from time to time, adopt written rules and regulations of general application governing its procedures which shall include, but not be limited to, provisions for the form and content of applications; required number of copies of plans and specifications; provisions for notice of approval or disapproval, including a reasonable time period for approval by reason of failure to disapprove.
- D. Variances. The Trustees may grant reasonable variances or adjustments from the provisions in this Declaration where literal application thereof results in unnecessary hardship and if the granting thereof will not be materially detrimental or injurious to Owners of other lots.
- E. Certification of Compliance. At any time prior to completion of construction of an improvement, the Trustees may require a certification, upon such form as it shall furnish, from a licensed surveyor that such improvement does not violate any setback rule, ordinance or statute, nor encroach upon any easement or right-of-way of record.
- F. Liability. Notwithstanding the approval by the Trustees of plans and specifications or its inspection of the work in progress, neither the Trustees nor the Owners, nor any person acting in behalf of any of them shall be responsible in any way for any defects in any plans or specifications or other material submitted to the Trustees, nor for any defects in any work done pursuant thereto. Each person submitting such plans or specifications shall be solely responsible for the sufficiency thereto and the adequacy of improvements constructed pursuant thereto.
- G. Damage Control. The property owner is ultimately and financially responsible for any damage and repairs to Big Country Acres assets caused by construction and improvements. Big Country Acres assets include, but are not limited to, streets, ditches, water main, pump house, guardrails, street signs, subdivision entrance sign, and fire hydrants. There shall also be a weight limit for vehicles of 20 tons. One exception is that concrete trucks may carry up to 5 yards of concrete. All other exceptions must have the expressed written consent of the Trustees.

**ARTICLE VIII:      ASSESSMENTS**

- A. The initial annual assessment shall be \$600.00 per lot beginning in 2010, billed quarterly, provided, however, that such assessment may be increased for any assessment year by an amount which is equal to the percentage increase in the Consumer Price Index for All Urban Consumers, All Items Figure as published by the United States Department of Labor Statistics, as indicated by the last available Index published prior to the assessment year over the corresponding last available Index published prior to commencement of the first assessment year hereunder. The Trustees may, after consideration of current costs and anticipated needs of the lots subject hereto, fix the actual assessment for any year at less than the maximum herein authorized. Trustees will only be required to pay half (50%) of the current annual assessment during their trustee term, with such discount not to exceed \$200.

- B. In addition to the annual assessment authorized herein-above, there may be levied a special assessment for the purpose of defraying, in whole or in part, the cost of a construction or reconstruction, or replacement of a capital improvement within or upon the common property or any easement, street, drive, walkway, or other right-of-way provided for the benefit of the lots subject hereto, and including the provision, of necessary fixtures or personal property related thereto upon the approval of the required quorum and majority of the lot owners as defined in Article III voting thereon, in person or by proxy, at a meeting duly called for this purpose, written notice of which shall have been sent to all lot owners at least thirty (30) days in advance, setting forth the purpose of the meeting. In the event of such approval, the limitation hereinabove set forth shall not apply to the assessment made under the provisions of this paragraph.
- C. Notice of any assessment shall be given by the Trustees, either by mail, postage prepaid, addressed to the last known or usual post office address or the holder of legal title (and notice so given shall be considered given when mailed), or by posting a brief notice of the assessment upon the assessable property itself.
- D. If any assessment is not paid on the due date, as established by the Trustees, then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the lot involved, which shall bind such lot in the hands of the then owner, his or her heirs, devisees, personal representatives, successors and assigns. In addition to such lien, the personal obligation of the then owner to pay such assessment shall remain his personal obligation and shall not pass to his successors in title, unless expressly assumed by them.
- E. If any assessment is not paid within thirty (30) days after the delinquency date, such assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and the Trustees may bring legal action against the owner personally obligated to pay same, and, in addition, may execute and acknowledge an instrument receipting the levy of the assessment with respect to such lot and cause same to be recorded in the Office of the Recorder of Deeds of St. Charles County, and thereafter institute any appropriate legal action to enforce such lien, including, without limitation, by foreclosure and public sale. Upon payment, the trustees shall execute and record (at the expense of the owner of the affected lot) a release of such lien. All costs, including reasonable attorney's fees, incurred by the Trustees in enforcing the payment of any delinquent assessment shall be paid by the lot owner in default and the amount of such costs, including reasonable attorney's fees, shall be a lien against the lot involved until paid.

**ARTICLE IX:** LAKE AND DAM

- A. There is hereby imposed upon Lots 15 through 26 inclusive an easement for a lake and dam as shown on the plat of Big Country Acres. Said lake and dam easement shall encompass these portions of Lots 15 through 26 as may be the high water mark of the lake and dam from time to time. The Trustees, their agents and employees shall have the right to go in, upon, across, over and under the lake and dam and property immediately adjacent thereto as may be reasonable necessary for the maintenance, repair, construction, and reconstruction of the lake and dam. There is hereby created an access easement to and from the lake and dam and a recreational easement around, across and upon the lake and dam area of a portion of Big Country Acres which is partially upon Lots 15 through 26 inclusive, said access and recreational easement being for the benefit of all present and future owners of the lots in Big Country Acres (including property annexed thereto), subject to such rules and regulations as may be promulgated from time to time by the Trustees. Said right of access is hereby designated as being a tract of land 1.408 acres for lake access between lots 20 & 21, which access easement and recreational easement is hereby dedicated to all lot owners of Big Country Acres. The easement created hereby for access and recreational use shall not entitle any owner of a lot within Big Country Acres or any family member of said owner or guest to enter upon the land of any of the above referenced lots lying above the high water mark of the lake. The lots upon which the dam is situated shall have the right to utilization of that land area of their respective lots comprising the dam provided that said lot owners shall not have the right to change, alter or affect the dam in any way or to do anything upon the dam which would interfere with or impair its function in any way. Owners of the lots upon which the lake is located shall not have the right to, in any way, change, alter or affect the lake or the boundaries thereof.
- B. No building shall be permitted within 50 feet of the lake without consent of the trustees and/or Lake Committee before construction. No fencing, docks, patios, or similar construction shall be constructed within 50 feet of lake without consent of the trustees and/or Lake Committee before construction.
- C. No gasoline powered engines shall be used in or on the lake of power boats or other equipment. Any power used in conjunction with boats shall be oars, sails or electric trolling motors.
- D. The right to fish in the lake is limited to lot owners, members of their families and guests. Fishing regulations are to be maintained in a separate document by the Lake Committee or their designees and published to all lot owners whenever a change is made.

- E. The Owner and Trustees shall not have any liability or responsibility to any lot owner, homeowner or any other person or entity, for any loss, claim, damage or liability arising out of any construction or repair to the lake and/or dam, leaks or loss of water from the lake and/or dam, failure of the lake and/or dam to hold water, or any other matter dealing with the lake and/or dam and all homeowners, lot owners, their families, guest, invitees, agents, contractors and employees, and any and all persons using said lake and/or dam by acceptance of any deed of conveyance, and/or use of said lake and/or dam waive any claim or right of action against Owners and Trustees therefore.
- F. Docks are not to extend over property lines. No dock structures are allowed on the dam of the lake, and no docks are allowed within 50' of spillway. No construction of outhouses, toilets, restrooms, or urinals allowed on docks. Docks may be covered or partially covered. Dock construction materials may include, but are not limited to, treated lumber, cedar, redwood, galvanized steel, concrete, vinyl or hard rubber/plastic covered floatation logs. Dock may be no more than 20' wide, and may extend a maximum of 20' from normal full pool shoreline into water. Storage sheds located on docks should not exceed 1/3 of dock size. Landing or walkway (dock ramp) to be a minimum of 3' x 3'.
1. Stationary/fixed pier docks: Minimum support post size is 6" x 6", set in concrete encasement to a depth of 36" into lake floor (bottom), or appropriate mud legs/mud feet to prevent movement. Landing or walkway (dock ramp) to be set firmly on concrete pad or wide stones.
  2. Floating docks: Floating docks must be securely anchored to shore to prevent any sideways, or forward movement into the lake. Floatation logs must be vinyl or hard rubber/plastic covered, no metal barrels, no unprotected foam, no floating wood rafts, etc. are allowed. The type, size and number of floatation logs used must provide adequate buoyancy to accommodate maximum weight on the dock.
  3. No fishing off dock without homeowners permission. Observe all no trespassing signs and all litter must be carried on person and disposed of properly.
- G. Swimming and boating are at your own risk. Neither Owners or Trustees are responsible for injuries or loss of property resulting from an accident while using lake facilities.

**ARTICLE X:**           GENERAL PROVISIONS

- A. The Trustees, or the owner of any lot subject to this Declaration, shall have the right to enforce, by any proceedings at law or in equity, any of the covenants, conditions, restrictions and provisions hereof, either to restrain or enjoin a violation or threatened violation or to recover damages. Failure or forbearance by the Trustees or 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.

- B. The covenants and restrictions of this Declaration shall run with and bind the land subject hereto in perpetuity unless terminated as provided herein. This Declaration may be terminated by an instrument signed by the then owners of a majority of the lots subject hereto has been recorded, agreeing to terminate this Declaration.
- C. Any person or persons violating or attempting to violate any covenant, restriction, condition or limitation contained herein shall be subject to proceedings at law or in equity to restrain such violation or to recover damages therefor: Any failure to enforce any covenant, condition, restriction or limitation contained herein shall not act as not constitute a waiver of any subsequent breach thereof. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.
- D. These Declarations may be amended from time to time by an affirmative vote of a majority of the Owners taken at a meeting as described in ARTICLE III.

**ARTICLE XI:** WATER SERVICE

- A. Big Country Acres Board of Trustees, Inc. agrees to provide potable water service to each lot of Big Country Acres which has tapped on to the Big Country Acres community water system and which is current in its water service charges and subdivision assessments, excepting any temporary interruptions caused by maintenance, repairs, or circumstances beyond the control of Big Country Acres Board of Trustees, Inc.
- B. The water service charges for such water service shall be determined by the Trustees, and shall be based upon the Trustee's estimate of the expenses of providing such water service including maintenance, repairs and other necessary expenditures. A tap on fee will be assessed by the Trustees to the property owner for each tap that is added to the water main. The tap on fee will be the amount equivalent to the previous 12 months of water service charges per user.
- C. If any water service charge is not paid on the due date, as established by the Trustees, then such water service charge shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the lot involved, which shall bind such lot in the hands of the then owner, his or her heirs, devisees, personal representatives, successors and assigns. In addition to such lien, the personal obligation of the then owner to pay such water service charge shall remain his personal obligation and shall not pass to his successors in title, unless expressly assumed by them.



- D. If any water service charge is not paid within thirty (30) days after the delinquency date, such water service charge shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and the Trustees may bring legal action against the owner personally obligated to pay same, and, in addition, may execute and acknowledge an instrument receipting the levy of the water service charge with respect to such lot and cause same to be recorded in the Office of the Recorder of Deeds of St. Charles County, and thereafter institute any appropriate legal action to enforce such lien, including, without limitation, by foreclosure and public sale. Upon payment, the trustees shall execute and record (at the expense of the owner of the affected lot) a release of such lien. All costs, including reasonable attorney's fees, incurred by the Trustees in enforcing the payment of any delinquent water service charge shall be paid by the lot owner in default and the amount of such costs, including reasonable attorney's fees, shall be a lien against the lot involved until paid.

## **ARTICLE XII: LAKE COMMITTEE**

- A. There shall be three (3) members of the Lake Committee. The original members are the persons named herein. Darren Smith, Ron Bray, and Dillard Coleman. Said members shall be appointed for a term of no less than one (1) year and no more than three (3) years. The term of one (1) and only one (1) of said members shall expire each year. Should any of the named Committee members, or their appointed successors, die, resign or cease to hold office as above set out, or decline to act or become incompetent or unable for any reason to discharge the duties, or avail of or exercise the rights and powers hereby granted or bestowed upon them as members of the Lake Committee under this Declaration, then and thereupon, The Trustees shall have exclusive right to designate a successor thereto for the unexpired period of service as provided for hereunder.
- B. At the annual meeting described in ARTICLE III. The successor to the elected member of the Lake Committee whose term has expired shall be elected by the lot owner or owners or each lot shall be entitled for one (1) for each full lot owned, which vote may be cast in person or by proxy. All terms of voting as described in ARTICLE III shall apply.
- C. All members of the Lake Committee shall be residents of the land subject to this instrument.
- D. No building, fence, dock or other structure shall be erected, placed or altered on any lot on or at the lake vicinity until the construction plans and specifications and a plan showing the location of the structure have been reviewed by the Lake Committee, a recommendation made to the Trustees, and final approval by the Trustees, as to quality of workmanship and materials, harmony of external design with existing structures and vistas. Endorsement of construction plans and specifications in no way should hold Lake Committee members and/or Trustees liable for any defaults in construction or construction materials. Each property owner submitting such plans or specifications shall be solely responsible for the sufficiency thereto and the adequacy of improvements constructed pursuant thereto, and that said construction plans and specifications are in accordance with prevailing government requirements.



