

OCT 1 1996

N 16223

DECLARATION OF PROTECTIVE COVENANTS  
OF  
CHARLESTON HARBOR - PHASE II

BOOK 2607 PAGE 468

THIS DECLARATION is made and entered into this 26th day of August, 1996, by CCC, L.L.C., a Missouri limited liability company (hereinafter referred to as the "Developer"), and relates to certain land located in the City of Kansas City, County of Clay, State of Missouri, as described on Exhibit "A" hereto attached and incorporated by reference.

WITNESSETH:

WHEREAS, Developer has heretofore caused a plat of Charleston Harbor - Phase II to be recorded in the Office of the Recorder of Deeds of Clay County, Missouri on April 22, 1988, in Book 23 at Pages 62-63; and

WHEREAS, Developer now desires to place restrictions on said Lots for the use and benefit of the present owners and for their future grantees, successors and assigns.

NOW, THEREFORE, in consideration of the premises, the Developer, for itself and its successors and assigns, and for its and their future grantees, hereby agrees that the property described in Exhibit "A" shall be and is hereby restricted as to their use in the manner hereinafter set forth:

SECTION 1.

Certain terms used herein shall be defined as follows:

(a) "ASSOCIATION" shall mean and refer to Charles Harbor Homeowners Association, Inc., a corporation organized and existing under the laws of the State of Missouri.

(b) "ARTICLES OF INCORPORATION" shall mean the Articles of Incorporation of Charleston Harbor Homeowners Association, Inc., as such Articles of Incorporation may from time to time be amended.

(c) "BY-LAWS" shall mean the By-Laws of Charleston Harbor Homeowners Association, Inc., as originally adopted and as from time to time amended.

(d) "DECLARATION" shall mean the Homes Association Declaration of Charleston Harbor - Phase II filed for record with the Recorder of Deeds for Clay County, Missouri, as such Declaration may from time to time be amended.

(e) "PROTECTIVE COVENANTS" shall mean this Declaration of Protective Covenants of Charleston Harbor - Phase II, as filed

with the Recorder of Deeds for Clay County, Missouri, as such Declaration of Protective Covenants may from time to time be amended.

(f) "DEVELOPER" shall mean CCC, L.L.C., its successors and assigns.

(g) "PROPERTIES" shall mean and refer to the property described on Exhibit "A" hereto attached and incorporated herein by reference and such additions thereto as may hereafter be brought within the jurisdiction of the Association by annexation as provided in the Articles of Incorporation, By-Laws, Declaration or Protective Covenants.

(h) "COMMON AREAS" shall mean and refer to the entire area designed for common use and benefit of the owners, tenants, and invitees of each, including, but not by way of limitation, parks, playgrounds, swimming pools, recreational facilities, tennis courts, commons, footways, including buildings, structures and personal properties incident thereto, and any other properties owned and maintained by the Association for the common benefit and enjoyment of the residents within the Properties.

(i) "BUILDING" shall mean a structure which is designed and used exclusively for single family residential purposes which shall include the patio area and other such areas within each Residential Tract as shown on the recorded certificate of survey of each platted lot of Charleston Harbor - Phase II not included in "Living Area".

(j) "LIVING AREA" as used herein shall mean and include in all cases areas on the first, second, and third floors of each Building, enclosed living areas and finished for all year occupancy, computed on outside measurements or center of common walls of the Buildings, but shall not mean or include any areas in basements, garages, breezeways, porches, attics, atriums or patios.

(k) "OWNER" shall mean the owner, whether one or more persons or entities, in fee simple of any Building, but excluding those having such interest merely as security for the performance of an obligation.

(l) "TENANT" shall mean the individual(s) renting a Building from an Owner.

(m) "PROJECT" shall mean Charleston Harbor as it ultimately may be (if and when enlarged from time to time) fully developed.

(n) "RESIDENTIAL TRACT" shall mean the area of property owned by an Owner or the Developer, in fee simple, on which a Building is, or is to be, constructed, as legally described on the

recorded certificate of survey of each platted lot, or the plat, of the Project.

(o) "COMMON AREAS TRACT" shall mean the area of property owned by the Association, or the Developer, in fee simple, as legally described on the recorded certificate of survey of each platted lot, or the plat, of the Project.

## SECTION 2.

(a) The Residential Tracts may only be improved, used or occupied (with exception of such portion thereof as may be included in Common Areas) for private residential purposes and any Building erected on any of said Tracts shall be designated for occupancy by a single family, and no professional, business or commercial use shall be made of any Tract, or portion thereof.

(b) The Common Areas Tracts may only be improved or used for the installation thereon or maintenance of driveways, parking areas, walkways, lawns, flower beds, recreational and security and maintenance facilities, and other uses for the purposes of benefiting and beautifying the Residential Tracts on the plat of Charles Harbor - Phase II, or any addition to such plat.

(c) The Association shall be created for the purpose of owning the Common Areas and shall designate specific uses of the Common Areas and establish rules and regulations governing the use thereof as it may deem advisable from time to time, all as may be set forth in the Association's Articles of Incorporation or By-Laws.

## SECTION 3.

(a) No signs, billboards, unsightly objects, or nuisances shall be erected, placed, hung, or displayed in any manner on any Residential Tract, Common Areas Tract or any public right of way adjoining any Residential or Common Areas Tract, or in or on the improvements thereon, so as to be seen externally, provided that Developer may maintain, while constructing and developing Charleston Harbor, in or upon such portions of the Residential Tracts or Common Areas Tracts as Developer determines, such facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model buildings, signs, billboards and display and promotional materials, and provided further the Association may place identification signs for the Project on Common Areas Tracts. No additional yard signs from realtors other than that authorized by the Developer shall be allowed on any residential tract.

(b) No exterior radio or television antenna or satellite dishes shall be affixed to or placed upon any improvements on any Residential Tracts or Common Areas Tracts in such manner as to be externally visible without the approval of the Developer during the

development phase and thereafter by the Association; provided, however, subject to approval of the Developer during the development phase and thereafter by the Association or its designated committees may permit individual 18" or smaller antennas.

(c) No animals, livestock or poultry of any kind shall be raised, bred or kept on any Residential Tract or Common Areas Tract, except dogs, cats or other common household pets (not to exceed a total of two (2) pets per Residential Tract) may be kept, provided that they are not kept, bred or maintained for any commercial purposes. All permitted household pets shall be kept inside the Building constructed on any Residential Tract and enclosed patio area of any such Building constructed on any Residential Tract and enclosed patio area of any such Building constructed on a Residential Tract at all times.

(d) Laundry, bedding and the like shall not be hung to dry in any manner in which it is visible from the exterior of any Building.

(e) All rubbish, trash, garbage or debris from a Residential Tract shall be kept in such manner as to not be externally visible, except when placed outside for the purpose of being picked up and removed in accordance with trash pick-up service utilized by the Association.

(f) All fixtures and equipment installed within any improvement on a Residential Tract, commencing at a point where the utility lines, pipes, wires, conduit or systems enter the Residential Tract of the Owner thereof, shall be maintained and kept in repair by the Owner thereof. An Owner shall not do any act nor any work that will impair the structure soundness or integrity of another improvement constructed on an adjoining Residential Tract or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other improvements constructed on Residential Tracts, or their Owners.

(g) Except in the individual patio area appurtenant to an improvement constructed on a Residential Tract, as designated on Developer's plans for such improvement, no planting, transplanting or gardening shall be done, and no fences or walls shall be erected or maintained upon said Residential Tract, except as installed in accordance with the initial construction of the improvements or as approved by Developer during construction and development of Charleston Harbor - Phase II, or the Association after said construction period. Each residential tract shall be required to have plantings of a value of at least one percent (1%) of the value of the house, the specific sizes, style, placement and other particulars shall be subject to the approval of the Developer during the development phase or thereafter the Landscaping Committee after the construction period. As used in these Protective Covenants, the term "patio" shall mean the private space

within a Residential Tract which is adjacent to the improvements constructed thereon and located entirely within such Residential Tract. All other areas, whether or not within a Residential Tract shall be maintained and deemed to be a part of the Common Areas for the purpose of maintenance, care and regulation. Maintenance, upkeep and repairs of any patio shall be the sole responsibility of the Owner of such Residential Tract and not in any manner the responsibility of the Association, provided that the exterior of any patio fence shall be in the same uniform type of fence color as all other patio fences.

(h) Any residence erected upon any lot(s) must comply with the minimum size requirements as hereinafter set forth and the quality, style and construction materials and any changes to the same must be approved by Developer during the construction of Charleston Harbor - Phase II or thereafter by the Association and a new survey showing the existing structures and proposed new structures, together with the plans and specifications with the quality, style and color of construction materials must be submitted for approval. For purposes of these restrictions, living area shall be exclusive of any garages, breezeways and unfinished basements. All plans and specifications submitted must include square footages for all areas including all Buildings and Living Area, location of the Building on the lot, construction materials and if requested model profiles reflecting the style of construction and all other information required to be submitted for approval and must be submitted for approval by the Developer during the development phase or the Homes Association or its designated subcommittee at least fifteen (15) days prior to any work commencing. Acceptable sizes based upon Living Area for any residence are as follows:

1. Any one story residence (ranch style house) shall contain a minimum of One Thousand Eight Hundred (1,800) square feet of Living Area above ground level.
2. Any residence which may consist of one level of Living Area above ground level and one level of Living Area below ground level (sometimes referred to as a reverse story and a half) shall contain a minimum of One Thousand Six Hundred (1,600) square feet of living space above ground level and a minimum of Six Hundred (600) square feet of living space below ground level.
3. Any residence which consists of split levels (front to back or atrium) shall contain a minimum of Two Thousand (2,000) square feet of living area above ground level.
4. Any residence which consists of two levels of Living Area above ground level with at least one bedroom on the first floor (sometimes referred to as a story and a half) shall contain a minimum of Two Thousand (2,000) square feet of

living space and a minimum of One Thousand Six Hundred (1,600) square feet of Living Area on the first floor.

5. Any residence which consists of two levels of Living Area above ground level with all bedrooms on the second floor (sometimes referred to as a two story) shall contain a minimum of Two Thousand (2,000) square feet of Living Area with a minimum of One Thousand (1,000) square feet of such space on the first floor and a minimum of One Thousand (1,000) square feet of such space on the second floor.

The term "living space" as used herein shall mean and include in all cases area enclosed and finished for all year occupancy and shall not mean or include any areas in utility rooms, basements, garages, breezeways, porches, attics, atriums or patios, provided, however, that certain interior areas, other than the specifically aforementioned areas, need not be immediately finished for occupancy if the residence is so designed and built that such areas can be finished at a later date without any structural changes being made to the exterior of such residence. Developer reserves the right to require greater square footages for approval of a plan on any lot or lots and Developer in its discretion may permit variances in the foregoing square footage requirements. After the development phase, this reservation shall automatically transfer to the Association.

(i) Any residence erected on any one of the lots hereby restricted shall not be more than two stories in height as measured from the highest point of the finished grade adjacent to the foundation walls; provided, however, that a residence of more than two stories in height may be erected thereon with the consent in writing of Developer during the development phase and thereafter the Architectural Control Committee.

(j) Any residence erected on any of the lots hereby restricted or any part of parts thereof shall have appurtenant thereto, not occupied by any other residence, at least seventy-five feet or the lot width as platted if less than as per plat of ground fronting on the street upon which the lot or lots or part of parts thereof front, measured on the front building line of said lot.

(k) No part of any residence except as hereinafter provided, may be erected or maintained on any of the lots hereby restricted nearer to the front street or side street than is the front building line or the side building line shown in the plat of Charleston Harbor - Phase II on the lot or lots upon which such residence may be erected; provided, however, that the Developer shall have and does hereby reserve the right, in the sale and conveyance of any of said lots, to change any building line which is shown thereon, and may at any time thereafter change any such building line which is shown on said plat of any such lot or lots or which may in such sale and conveyance be established by it;

provided, however, that in no event shall any building be established which is less than the building lines as per plat from the front street or fifteen (15) feet to twenty-five (25) feet as per plat from the side street; and provided further that no change may be made at any time which will permit the erection or maintenance of any residence of any lot, exclusive of those projections hereinafter set forth, more than two (2) feet nearer to the front street or one (1) foot nearer to the side street than is the front building line or side building line shown on such plat of such lot or lots. Reference is made herein to front and side building lines for the purpose of determining the location of any residence with reference to the adjoining street, and in case of the relocation of any of said streets, changes may be made in any of said building lines, provided that such building lines shall in no way be established nearer to the new location of any of said streets than are the building lines on said plat with reference to the present location of said street, and provided further that the Developer shall have the same privilege of changing the location of any new building lines so established as they have in the case of those shown on said plat. Those parts of the residence which may project to the front of and be nearer to the front streets and the side streets than the front building lines and the side building lines shown on said plat, and the distance which each may project are as follows:

(1) Window Projections: Bay, bow or oriel, dormer or other projecting windows and stairways landings other than full one and one-half story bay, bow or oriel window or stairway landings, may project beyond the front building lines and the side building lines not to exceed three (3) feet.

(2) Miscellaneous Projections: Cornices, spoutings, wing walls, chimneys, brackets, pilasters, grill work, trellises and other similar projections and any other projections for purely ornamental purposes, may project beyond the front building lines and the side building lines not to exceed four (4) feet.

(3) Vestibule Projections: Any vestibule not more than one story in height may project beyond the front building lines and the side building lines not to exceed three (3) feet.

(4) Porch Projections: Unenclosed or uncovered porches, balconies and terraces may project beyond the front building lines not to exceed four (4) feet, or in respect to any corner lot or lots, any unenclosed or uncovered porches, balconies and terraces may project beyond the side building lines not to exceed four (4) feet.

(1) The main body of any residence, including attached garages, attached greenhouses, ells and porches, enclosed or unenclosed, but exclusive of all other projections set forth above,

erected or maintained on any of the lots hereby restricted, or any part or parts thereof, as shown on the above-described plat of Charleston Harbor - Phase II shall not occupy greater than eighty percent (80%) of the width of the lot on which such residence is erected.

In computing the free space required on any lot or any part of parts thereof, the measurement shall be made in each case on the front building line or on the front building line projected to the side lines of any lot. Any residence, including attached garages, attached greenhouses, ells and porches, enclosed or unenclosed, shall be set back at least eight (8) feet from both of the side lines of the lot upon which such residence is erected.

(m) All roofs, whether new construction or replacement, in Charleston Harbor - Phase II shall consist of and be constructed with GAF Timberline Weathered Wood 30-year product with GAF Timbertex Ridge and 20" preformed "W" Valley Bronze in color or in the event such material is no longer available a quality substitute similar and which has been approved by the Developer during the development phase or by the Architectural Control Committee after the end of such development phase. No built-up, asphalt, compositions, rolled wood or other type of roofing except such timberline shingles shall be used. Rear room dormers or any other protruding roof structures shall be covered with such timberline shingles unless a different material is specifically approved.

(n) Supplementary heating units visibly attached to the structures on the outside must be architecturally neat in appearance, safe to adjacent property owners, and be constructed generally consistent with the structural material of the attached resident, and meet local fire codes. Round "stove pipe" type metal chimneys are prohibited on brick or wood frame houses. Fireplace flues shall be constructed of brick, or insulated wood of the type that matches the existing residential material type. Solar hot water heaters, on roofs, walls, or ground installations, and inconsistent with the Architectural and material type of the residence are prohibited. Heating devices or accessories that are to be added or shall be visible on the exterior of the residence shall have plan and specifications showing the nature, kind, shape, height, materials, location and cost submitted to the Architectural Control Committee for review prior to construction or installation.

(o) No tank for the storage of fuel may be maintained on any of the lots hereby restricted.

(p) No fence greater than five (5) feet in height shall be erected on any of the lots hereby restricted nor shall any fence extend within the area between the building lines and the street right-of-way as designated on said plat, even if said lot is not built upon or if said lot is a back yard or side yard for an adjacent lot. Any fence constructed must be approved by the



Developer during the development phase and thereafter by the Architectural Control Committee.

(q) No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them to points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property line with the edge of a driveway. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions to such sight lines. No tree shall be permitted to be planted between the curb and sidewalk on any lot.

(r) No individual sewage disposal systems shall be permitted on any lot.

(s) No building shall be placed nor shall any material or refuse be placed or stored on any lot within twenty (20) feet of the property line of any part or edge of any open water course, except that clean fill may be placed nearer provided that the natural water course is not altered or blocked by such fill.

(t) No above ground swimming pool may be maintained upon any of the lots hereby restricted.

(u) None of the lots in Charleston Harbor - Phase II hereby restricted may be improved, used or occupied for other than private residences, and no flat or apartment house, although intended for residence purposes, may be erected thereon. Any residence erected or maintained on any of the lots in Charleston Harbor - Phase II hereby restricted shall be designated for occupancy by a single family. No business outbuilding shall be erected, nor business of any nature conducted on the land herein described, nor shall anything be done thereon which may be or become a nuisance to the neighborhood.

#### SECTION 4.

No improvements or structures of any sort may be constructed on any Residential Tracts without the prior written consent of the Association, nor may the structural portions or exterior (including painting of an exterior portion) of any building or structure erected on any Residential Tract be changed or altered without the like prior written consent of the Association.

#### SECTION 5.

Except for operative customary passenger automobiles and temporary maintenance vehicles, no trailers, trucks, house trailers, boats, boat trailers or racks, mobile homes, jeeps, motorcycles, motorbikes, campers, camper shells or movable buildings of any type (even if temporarily immobile) may be kept externally visible on any portion of the Project.

#### SECTION 6.

The covenants, restrictions and provisions of these Protective Covenants shall be deemed covenants running with the land and shall remain in full force and effect from the date hereof until March 1, 2016, at which time said covenants, restrictions and provisions shall automatically be extended for successive periods of ten (10) years each, unless within the one (1) year prior to March 1, 2016, or at least one year prior to the expiration of any subsequent ten year period, such covenants, restrictions and provisions are cancelled by a written agreement adopted by at least a two-thirds (2/3) majority vote of the members of the Association, which such written election shall be filed in the Office of the Recorder of Deeds for Clay County, Missouri. These covenants, restrictions and provisions may be amended, modified or changed in part at any time by a modification adopted by a two-thirds (2/3) majority vote of the members of the Association plus the approval of the Developer during the development phase, which amendment or modification shall be in writing, signed by the Association with such appropriate verification as to the required approval vote and then such written agreement shall be filed in the Office of the Recorder of Deeds for Clay County, Missouri.

#### SECTION 7.

The restrictions set forth herein shall run with the land and bind the Developer, its successors and assigns, and all parties claiming by, through or under it shall be taken to hold, agree and covenant with the owner of said Residential Tracts and Common Areas Tracts, its successors and assigns, and each of them, to comply with and observe said restrictions as to the use of said Residential Tracts and Common Areas Tracts, and the construction of the improvements thereon, but no restrictions herein set forth shall be personally binding on any corporation, person or persons, except in respect of breaches committed during its, his or their seisin of or title to said Residential Tracts and Common Areas Tracts; and the Owner or Owners of any of the Residential Tracts and Common Areas Tracts shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the restrictions set forth above, in addition to ordinary legal action, and failure by the Owner or Owners of any other Residential Tract or Common Areas Tracts or Residential Tracts or Common Areas Tracts in such plat of Charleston Harbor - Phase II or additions thereto to enforce any of the restrictions set forth herein, shall in no event be deemed to be a waiver of the right to do so thereafter.

SECTION 8.

Each Residential Tract and Common Areas Tract shall be subject to an easement for encroachments created by construction, settling and overhang of the structures built by the Developer. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist. Said easement shall not be considered an unlimited easement and the final decision as to the reasonableness of such easement shall rest with the Developer until such time as all Residential Tracts are conveyed by the Developer to individual Owners, and thereafter such decision shall rest with the Association. There is hereby created a blanket easement upon, across, over and under all Residential Tracts and Common Areas Tracts for ingress and egress to the Residential Tracts, by the Owner or Owners, Tenant or Tenants, and their invitees, and for ingress and egress, installation, replacing, repairing and maintaining utilities, including, but not limited to, water, sewer, telephone, electricity, and gas. Also, there is hereby created a blanket easement upon, across, over and under all of the Residential Tracts and the Common Areas Tracts for ingress and egress for the purpose of maintaining building exteriors and landscape, shrubs and grass. By virtue of these easements, it shall be expressly permissible for the utility companies to affix and maintain pipes, wires, conduits, or other service lines on, above, across and under the roofs and exterior walls of any improvements constructed on Residential Tracts or Common Areas Tracts. Notwithstanding anything to the contrary contained in this paragraph, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on any property located in Charleston Harbor - Phase II until approved by the Developer during the construction period or by the Association thereafter. In the event that any utility company furnishing a service covered by the general easement herein provided request a specific easement on the Residential Tracts, or any portion thereof, and/or the Common Areas Tracts, by separate recordable instrument, the Developer during the construction period and the Association thereafter shall have the right to grant such easement on said property without conflicting with the terms hereof.

SECTION 9.

Yard lights with high pressure sodium bulbs are required to be purchased and installed by the builder for each residential tract. Each residential tract must have a minimum of one thousand two hundred (1,200) square yards of sod. The owners of Charleston Harbor - Phase II shall be required to purchase and pay Developer for, at builder's cost, the split rail wood fence erected on the back rear portion of that owner's lot.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed the day and year first above written.

CCC, L.L.C.

By: Tony M. Cucchiara  
Tony M. Cucchiara, Member

By: Frank J. Cucchiara  
Frank J. Cucchiara, Member

STATE OF Missouri )  
COUNTY OF Clay ) ss.

On this 7th day of August, 1996, before me, appeared Tony M. Cucchiara and Frank J. Cucchiara, to me personally known, who being by me duly sworn, did say that they are the only members of CCC, L.L.C., a Missouri limited liability company, and that said instrument was signed in behalf of said limited liability company by authority of its members, and they acknowledged the instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office the day and year last above written.

Belinda K. Buchanan  
Notary Public

My commission expires: \_\_\_\_\_

BELINDA K. BUCHANAN  
Notary Public-Notary Seal  
State of Missouri-County of Clay  
My Commission Expires June 6, 1997

EXHIBIT A  
TO DECLARATION OF PROTECTIVE COVENANTS

Lots 20 thru 48, and  
Lots 66 thru 70,  
CHARLESTON HARBOR, FIRST PLAT

*By Mary Macauley*  
*Deputy*

STAFF OF MO.  
CLAY COUNTY  
CLERK OF COURTS  
RECORDS  
9600 - 1 AM 8:33 6  
RECORDED BOOK # 2607 PAGE # 468  
MAY 11 1968  
RECORDED OF DEEDS