

* 2006120700702 *

JANICE M. HAMMONDS, RECORDER OF DEEDS
ST. LOUIS COUNTY MISSOURI
41 SOUTH CENTRAL, CLAYTON, MO 63105

TYPE OF INSTRUMENT: RESTR
GRANTOR: ASHTON WOODS ETAL
TO:
GRANTEE:

PROPERTY DESCRIPTION: SUR 1897 T 43 R 3

Lien Number

Notation

Locator

NOTE: I, the undersigned Recorder of Deeds, do hereby certify that the information shown on this Certification Sheet as to the TYPE OF INSTRUMENT, the NAMES of the GRANTOR and GRANTEE as well as the DESCRIPTION of the REAL PROPERTY affected is furnished merely as a convenience only, and in the case of any discrepancy of such information between this Certification Sheet and the attached Document, the ATTACHED DOCUMENT governs. Only the DOCUMENT NUMBER, the DATE and TIME of filing for record, and the BOOK and PAGE of the recorded Document is taken from this CERTIFICATION SHEET.

RECORDER OF DEEDS DOCUMENT CERTIFICATION

STATE OF MISSOURI)
SS.
COUNTY OF ST. LOUIS)

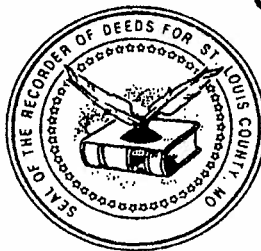
Document Number
702

I, the undersigned Recorder of Deeds for said County and State, do hereby certify that the following and annexed instrument of writing, which consists of 28 pages, (this page inclusive), was filed for record in my office on the 7 day of December 2006 at 09:32 AM and is truly recorded in the book and at the page number printed above.

In witness whereof I have hereunto set my hand and official seal the day, month and year aforesaid.

John Reber
Deputy Recorder

Janice M. Hammonds
Recorder of Deeds
St. Louis County, Missouri



Mail to:

[Empty box for mailing address]

Destination code: 5 P

- ___ N.P.
- ___ N.P.C.
- ___ N.N.C.
- ___ N.N.I.

RECORDING FEE \$102.00
(Paid at the time of Recording)

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|----|-----------------------------------|--|
| 1. | Title of Document: | Bylaws, Covenants, and Restrictions for
The Ashton Woods |
| 2. | Date of Document: | December 1, 2006 |
| 3. | Grantor(s): | JBA Eureka, LLC |
| 4. | Grantee(s): | Ashton Woods
Homeowners Association |
| 5. | Grantee's Mailing Address: | c/o J.H. Berra Construction Co., Inc.
5091 New Baumgartner Road
St. Louis, Missouri 63129 |
| 6. | Legal Description: | See <u>Exhibit A</u> annexed to the document |
| 8. | Book/Page Reference(s): | N/A |

Note: The terms "Grantor" and "Grantee" as used in this Cover Page are for recording and indexing purposes only. The instrument itself may refer to the parties by other designations.

BYLAWS, COVENANTS, AND RESTRICTIONS
FOR THE ASHTON WOODS SUBDIVISION

THESE BYLAWS, COVENANTS, AND RESTRICTIONS FOR THE ASHTON WOODS (the "Bylaws"), made and entered into this 1st day of December, 2006, by and between JBA EUREKA, LLC, ("Grantor"), and THE ASHTON WOODS HOMEOWNERS ASSOCIATION, a Missouri not-for-profit corporation, hereinafter referred to as the "Association" or, "Grantee."

WITNESSETH THAT:

WHEREAS, Grantor is the owner of a tract of real property (the "Property") located in St. Louis County, Missouri, as more particularly described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, Grantor has caused the Property to be subdivided under the name "The Ashton Woods" (sometimes hereinafter referred to as the "Subdivision"), and has caused or will cause the record plat(s) of the Subdivision to be recorded in the St. Louis County Records; and

WHEREAS, common ground and resource preservation areas have been or will be reserved on the plat(s) of the Subdivision, and there has been or will be designated, established and recited on such plat(s) certain streets and easements which are for the exclusive use and benefit of the residents of the Subdivision, except those streets or easements which are or may hereafter be dedicated to public bodies and agencies and which have been provided for the purpose of constructing, maintaining and operating sidewalks, sewers, pipes, poles, wires, storm water drainage, parks and other facilities and public utilities for the use and benefit of the residents of the Subdivision; and

WHEREAS, Grantor, being the owner of the entire tract, may desire, from time to time, to encumber and dispose of parts thereof; and

WHEREAS, it is the purpose and intention of the Bylaws to protect the Property, subdivided as aforesaid, against certain uses, and mutually to benefit, guard and restrict future residents of the Subdivision and to foster their health and safety; and

WHEREAS, all reservations, limitations, conditions, easements and covenants herein contained (sometimes hereafter termed "restrictions") are jointly and severally for the benefit of all persons who may purchase, hold or reside upon the Property.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, covenants and agreements made by the parties hereto each to the other, the receipt and sufficiency of which is hereby acknowledged, the parties hereto COVENANT and AGREE to and with each other, collectively and individually, for themselves, their heirs, successors and assigns, and for and upon behalf of all persons who may hereafter derive title to or otherwise hold through them, together with their heirs, successors or assigns, any of the lots and parcels of land in the Subdivision, all as herein-after set forth:

ARTICLE I

DEFINITION OF TERMS

The following terms when used in the Bylaws (unless the context requires otherwise) shall have the following meanings:

1. "Architectural Control Committee" shall have the meaning set forth in Article VI hereof.
2. "Association" shall mean and refer to The Ashton Woods Association, a Missouri not-for-profit corporation, and its successors and assigns.

3. "Board" or "Directors" shall mean the Board of Directors of the Association.
4. "Common Ground" shall mean and refer to all real property and the improvements thereon owned by the Association and all easements, licenses and other rights held by the Association for the common use and enjoyment of all Owners, including, without limitation, parks, open spaces, cul-de-sac islands, and recreational facilities, lakes, streets, alleys, walkways, storm water (including detention basins), sanitary sewers and drainage facilities, retaining walls, subdivision entrance ways and monuments, street lights, and other such areas and facilities as may be shown on the record plat of the Subdivision. Nothing hereinabove contained shall be deemed a representation that any of the enumerated facilities are or will be included in the Subdivision or that any such facilities will be constructed upon Common Ground.
5. "Consumer Price Index" shall mean and refer to the Consumer Price Index For All Urban Consumers, All Items, St. Louis, Missouri (1993-95=100) published by the Bureau of Labor Statistics, United States Department of Labor.
6. "County" shall mean and refer to St. Louis County, Missouri.
7. "Governmental Authority" shall mean and refer to the City of Eureka, Missouri.
8. "Grantor" shall mean and refer to JBA Eureka, LLC, its successors and assigns, including, but not limited to, any builder or developer who purchases vacant Lots or parcels of land within -the Subdivision for the purpose of building residences thereon for sale to third persons.
9. "Bylaws" shall mean and refer to the Bylaws, Covenants, and Restrictions for the Ashton Woods Subdivision, as from time to time amended.
10. "Lot" shall mean and refer to any plot of land, with the exception of Common Ground, shown on the recorded subdivision plat of the Property.
11. "Member" shall mean and refer to a member in the Association.
12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers but excluding those having such interests as security for the performance of an obligation and excluding Grantor.
13. "Plat(s)" shall mean the record plat(s) of the Subdivision as approved by the Governmental Authority and recorded in the County Records.
14. "Property" shall mean and refer to the real property described on Exhibit A attached hereto and incorporated herein by reference.

ARTICLE II

TERM

Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of the Bylaws shall run with and bind the Property for a term which is the longer of: (i) thirty (30) years from the date of recordation of the Bylaws, after which said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots subject hereto has been recorded agreeing to terminate the Bylaws as of the end of any such ten (10) year period, but in no event prior to the vacation of all plats of the Subdivision by the Governmental Authority, or its successors; or (ii) as to any subdivision of the Property, for the duration of the subdivision encumbered hereby unless continued in effect by the vote of two-thirds (2/3) of the Lots in such subdivision by an appropriate instrument filed of record prior to the vacation of the plats of such subdivision as aforesaid. No such agreement of termination shall be effective unless made and recorded one (1) year in advance of the effective date of such

termination, and unless written notice of the proposed agreement of termination is sent to every Owner at least ninety (90) days in advance of any action taken.

ARTICLE III

RESERVATION OF EXPENDITURES

Grantor reserves the right to receive and retain any money consideration which may be refunded or allowed on account of any sums previously expended or subsequently provided for sewers, gas pipes, water pipes, conduits, poles, wires, street lights, roads, streets, recording fees, subdivision fees, consultation fees, or fees, charges and expenses incurred with respect to the Property.

ARTICLE IV

THE ASSOCIATION AND ITS MEMBERS

1. Function of Association. The Association is responsible for management, maintenance, operation and control of the Common Ground and for enforcement of the Bylaws.
2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Article IV, Section 3 of the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.
3. Voting. The Association shall have two classes of membership, i.e., Class "A" and Class "B."
 - (a) Class "A." Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Article IV, Section 2 of the Bylaws, except that there shall be only one vote per Lot. No vote shall be exercised for any property which is exempt from assessment under Article X, Section 7 of the Bylaws.
 - (b) Class "B." The Class "B" Member shall be the Grantor. The Class "B" Member shall be entitled to three (3) votes for each Lot owned.

The Class "B" membership shall terminate upon the earlier of:

- (i) when the total number of votes held by the Class "A" Members equal the total number of votes held by the Class "B" Member; or
- (ii) December 31, 2020; or
- (iii) when Grantor, in its sole discretion, so determines and declares in an instrument recorded in the St. Louis County Records.

Upon termination of the Class "B" membership, Grantor shall be a Class "A" Member entitled to Class "A" votes for each Lot which it owns.

ARTICLE V

DESIGNATION AND SELECTION OF DIRECTORS

AND MEETINGS OF MEMBERS

1. Original Directors. The Board of Directors of the Association shall consist of three (3) Members. The original Directors shall be Mary Johns, John Berra, Jr., and Susan Dewinter, who, by their signatures hereto, consent to serve in such capacity until their successors are elected or appointed as hereinafter provided. Should an original Director or a successor Director appointed by Grantor resign other than as required by Section 2 of this Article V, refuse to act, become disabled or die, Grantor shall have the power to appoint a successor Director who shall serve until his successor is elected by the Members in the manner hereinafter provided.

2. Election of Directors. Within ninety (90) days after the Governmental Authority has issued occupancy permits ("Permits") for fifty percent (50%) of the Lots authorized to be developed in the Subdivision, or at such earlier time as Grantor may determine, Grantor shall cause the resignation of one (1) of the original Directors, and a successor Director shall be elected by the then Class "A" Members. Within ninety (90) days after the Governmental Authority has issued Permits for ninety-five percent (95%) of the Lots authorized to be developed in the Subdivision, or at such earlier time as Grantor may determine, Grantor shall cause the resignation of a second original Director, and a successor Director shall be elected by the then Class "A" Members. The two (2) Directors elected by the Class "A" Members pursuant to the foregoing provisions shall serve until thirty (30) days after the Governmental Authority has issued Permits for all Lots in the Subdivision, whereupon the term of such elected Directors shall expire, Grantor shall cause the resignation of the third original Director then serving hereunder, and the then Class "A" Members shall elect three (3) successor Directors, one (1) of which shall be elected to serve for one (1) year, one (1) of which shall be elected to serve for two (2) years, and one (1) of which shall be elected to serve for three (3) years from the date of election (the first annual meeting of the Members to be held under Section 7 of this Article shall be held within one year from the date of such election). Thereafter, all Directors shall be elected for terms of three (3) years.

3. Manner of Conducting Elections. (a) The elections for the first two (2) successor Directors under Article V, Section 2 of the Bylaws shall be by mail. Notice of call for nominations shall be sent to all Class "A" Members, and shall require all nominations be received within thirty (30) days thereafter. Upon receipt, all nominations shall be compiled on an election ballot and mailed to all Class "A" Members, who shall have thirty (30) days thereafter to cast their votes and return their ballots to Grantor. The person receiving the most votes shall be elected the successor Director; provided, however, if the person elected declines to serve, the person receiving the next highest number of votes shall be declared the Director. In the event of a tie, a runoff election shall be conducted by mail in the aforesaid manner. For purposes hereof, nominations and ballots shall be deemed timely received if postmarked by the United States Postal Authority no later than midnight on such thirtieth (30th) day.

(b) Except as provided in Article V, Section 3(a) of the Bylaws, all elections by Class "A" Members shall be held at the annual meetings to be held pursuant to Section 7 of this Article, and shall be preceded by notice signed by the Directors then in office, or should there be no Directors, then by three (3) such Members, sent by mail to or personally served upon all Class "A" Members at least ten (10) days before the date fixed for the meeting to be held for the purpose of electing Directors. The notice shall specify the time and place of meeting, which shall be in St. Louis County. At such meeting or at any adjournment thereof, the majority of the Class "A" Members attending such meeting, in person or by proxy, shall have the power to elect such Directors, who shall thereupon serve until their successors have been duly appointed or elected and qualified. At such meeting, each Class "A" Member, whether attending in person or by proxy, shall be entitled to one (1) vote, which, when the Member constitutes more than one person or entity, shall be cast as they among them shall determine; in no event shall more than one (1) vote be cast with respect to any Lot. The result of any election of Directors shall be certified by the persons elected as chairman and secretary at the meeting, and their certification shall be acknowledged and recorded in the St. Louis County Records.

4. Qualification of Directors. (a) Any Director elected under the provisions of this Article shall be an Owner in the Subdivision, or an officer or agent of a corporate Owner, and if such Owner sells his or her Lot or resigns, refuses to act, becomes disabled or dies, the remaining Directors shall appoint an Owner to act as the successor for the unexpired term. Where the provisions of this instrument cannot be fulfilled by reason of unfilled vacancies among the Directors, the Governmental Authority, or its successor may, upon petition of any concerned resident or Owner in the Subdivision, appoint one or more Directors to fill the vacancies until such time as Directors are elected or selected in the manner provided in the Bylaws. Any person so appointed who is not an Owner within the Subdivision shall be allowed a reasonable fee for his/her services by the order of appointment, which fee shall be levied as a special assessment against the Lots and which fee shall not be subject to any limitations on special assessments contained in the Bylaws or elsewhere.

(b) Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position to be filled by the Class "A" Members. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner. Nominations also may be permitted from the floor.

Except with respect to directors selected by the Class "B" Member, nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a Chairperson, who shall be a member of the Board, and three or more Members or representatives of Members. Members of the Nominating Committee shall be appointed by the Board not less than thirty (30) days prior to each annual meeting to serve a term of one (1) year and until their successors are appointed, which such appointment shall be announced in the notice of each election.

The Nominating Committee may make as many nominations for election to the Board as it shall, in its discretion, determine.

Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

5. Election Procedures. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

6. Removal of Directors. (a) Any Director elected by the Class "A" Members may be removed, with or without cause, by the vote of a majority of the votes entitled to be cast for the election of such Director. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such Director.

(b) Any Director elected by the Class "A" Members who has three (3) consecutive unexcused absences from Board meetings, or who is more than thirty (30) days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

(c) In the event of the death, disability, or resignation of a Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members may elect a successor for the remainder of the term.

(d) This Section shall not apply to Directors appointed by the Class "B" Member. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a Director appointed by or elected as a representative of the Class "B" Member.

7. Annual Meetings. The first meeting of the Members of the Association shall be held within one year after the date of the election referenced in Section 2 of this Article V. Subsequent regular annual meetings shall be set by the Board to occur during the same quarter of the Association's fiscal year as that in which the first such election occurred on a date and at a time set by the Board.

8. Special Meetings. Special meetings of the Members may be called by the President, and shall be called by the President or Secretary if so directed by resolution of the Board or upon written request by (10%) of the total Class "A" Members of the Association.

9. Notice of Meetings. (a) Written or printed notice stating the time and place of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting. In addition, in the case of a special meeting, the notice shall state the purpose or purposes for which the meeting is called; no business shall be transacted at a special meeting except as stated in the notice.

(b) If mailed, notice shall be deemed delivered when deposited with the United States Postal Service, postage prepaid, addressed to the Member at his or her address as it appears on the Association's records.

(c) Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting, and waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Attendance at a meeting by a Member shall be deemed a waiver of notice unless such Member attends for the limited and specific purpose of objecting to lack of proper notice.

10. Quorum. (a) The presence of Members representing thirty percent (30%) of the total Class "A" votes in the Association shall constitute a quorum at all Association meetings.

(b) If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. Notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

(c) Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

11. Voting and Proxies. (a) The voting rights of the Members shall be as set forth in the Bylaws. When a quorum is present at any duly called meeting, a majority of the votes cast shall decide any question brought before the meeting, unless the question is one which, by express provision of the Missouri Not-For-Profit Corporation Act (the "Act") or the Bylaws, requires a different vote, in which case such express provision shall govern and control the decision of such question.

(b) Members may vote in person or by proxy. On any matter as to which a Member is entitled personally to cast the vote for his or her Unit, such vote may be cast in person or by proxy, subject to the limitations of the Act relating to the use of general proxies and subject to any specific provision to the contrary in the Bylaws.

