



DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR PRAIRIE VILLAGE

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR PRAIRIE VILLAGE is made and entered into this 25 day of SEPTEMBER, 2019.

Notice of Intent

This Declaration provides for an extensive degree of control in the Developer, including but not limited to (i) control of the Community Association and supervision over the type and design of improvements which may be constructed within the Community and upon the Lots located therein (with substantial fines for noncompliance); (ii) the right to amend this Declaration; and (iii) substantial flexibility in developing the Community. The provisions hereof also contain limitations on the liability of the Developer. Each Owner, by accepting title to a Lot, and each Community Association Member, by accepting such membership, acknowledges, agrees to, and accepts the Developer's control of the Community and the limited liability of the Developer provided for in this Declaration. Such control is an integral part of this Declaration and the general scheme of development and operation of the Community. Capitalized terms used in this and the following introductory paragraphs are defined in Article I of this Declaration.

WITNESSETH:

WHEREAS, Developer is the record owner of that certain real property situated in Manhattan, Riley County, Kansas, described on Exhibit "A" attached hereto and by reference made a part hereof, which shall constitute the Community; and

WHEREAS, the Developer desires to submit and subject the Community, together with all buildings, improvements, and permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances, and privileges belonging or in any way pertaining thereto, to the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights contained herein; and

WHEREAS, the Developer deems it desirable to establish easements, covenants, conditions, obligations, and restrictions upon the Community and each and every portion thereof with respect to the proper use, occupancy, and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Community; and

WHEREAS, Prairie Village Homeowners Association, a Kansas corporation not organized for profit, has been or will be incorporated under the laws of the State of Kansas for the purpose of exercising such powers and functions; and

WHEREAS, the Developer desires and intends that the Owners, Mortgagees, Mortgagors, Occupants, and all other Persons hereafter acquiring any interest in the Community shall at all times enjoy the benefits of, and shall hold their interest subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights herein set forth, all of which are declared to be in furtherance of a plan to promote and protect the Community.

NOW, THEREFORE, the Developer, for the purposes above set forth, declare that all real property within the Community shall hereafter be held, transferred, sold, conveyed, leased, occupied, and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights hereinafter set forth, all of which shall run with the real property and be binding upon all real property within the Community and all parties having or acquiring any right, title, or interest in or to any real property within the Community, or any part thereof, and shall inure to the benefit of and be a burden upon each Owner and each Member of the Association.

ARTICLE I Definitions

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows. Defined terms appear throughout this Declaration with the initial letter of each word of such term capitalized.

1.1 “Annexation Property” means any additional real property which is annexed to the Community, thereby becoming a part thereof and subject to this Declaration, in accordance with the provisions hereof.

1.2 “Assessments” shall include the following:

(a) “Regular Assessment” means the amount which is to be paid by each Owner as such Owner’s Proportionate Share of the Common Expenses incurred by the Community Association pursuant to the terms hereof.

(b) “Special Assessment” means: (i) a charge against a particular Owner directly attributable to such Owner to reimburse the Community Association for costs incurred in bringing the Owner into compliance with the provisions of this Declaration, the Community Association Rules, or the Community Association Articles or Community Association Bylaws, (ii) any other charge designated as a Special Assessment in this Declaration, the Community Association Articles, Community Association Bylaws, or the Community Association Rules, and

(iii) attorney's fees and other charges payable by such Owner as a Special Assessment pursuant to the provisions of this Declaration.

1.3 "City" means the City of Manhattan, Kansas, a municipal corporation of the State of Kansas.

1.4 "Common Expenses" mean the actual costs incurred by the Community Association in conducting activities in connection with the Community for which the Community Association is responsible pursuant to the terms hereof. Common Expenses contemplated hereby shall include, but not be strictly limited to the following:

(a) The cost of maintenance, management, operation, repair, and replacement of all areas and facilities within the Community which are maintained or operated by the Community Association, including without limitation Common Properties and any structures thereon including a Clubhouse;

(b) unpaid Assessments;

(c) the cost of management and administration of the Community Association including, but not limited to compensation paid by the Community Association to managers, accountants, attorneys, other professionals and employees;

(d) the cost of utilities (including, but not limited to, water, electricity, gas, sewer, trash pick-up and disposal which are provided directly to the Community Association and not individually metered or assessed by Lot), landscaping maintenance, snow removal, and other services which generally benefit and enhance the value and desirability of the Community and which are provided by the Community Association;

(e) the cost of any insurance maintained by the Community Association;

(f) reasonable reserves for contingencies, replacements, and other proper purposes as deemed appropriate by the Community Association;

(g) the cost of bonding which may be acquired with respect to any person handling the funds of the Community Association;

(h) taxes paid by the Community Association;

(i) costs incurred by the committees established by the Community Association, Community Association Articles, Community Association By-laws, Board or President;

(j) the costs of any other item or items to be provided or performed by the Community Association pursuant to this Declaration, Community Association Articles or

Community Association Bylaws, or in furtherance of the purposes of the Community Association or in the discharge of any duties or powers of the Community Association;

(k) the cost of maintaining the Common Properties including reserves for long term repair and replacement thereof; or

(l) the common maintenance expense described as Community Association Maintenance responsibilities.

1.5 "Common Properties" shall include all that part of the Properties, and all improvements located thereon, owned by the Community Association for the common use and enjoyment of the Owners including the following:

(a) All paved private drives, streets and parking areas located upon real estate owned by the Community Association.

(b) All installations of central services for the benefit of more than one owner such as but not limited to television antennas, incinerators, trash receptacles, sewer lines, irrigation lines and equipment, pipes, wires, conduits, drainage ways, drainage facilities, and other utility lines and facilities situated thereon.

(c) All easements, rights and appurtenances belonging thereto necessary to the existence, maintenance and safety of the Common Properties.

(d) All personal property owned by the Community Association intended for use in connection with facilities of the Community Association.

1.6 "Community" means the real property described on Exhibit "A," together with any Annexation Property, and the residential development thereon.

1.7 "Community Association" means Prairie Village Homeowners Association, a Kansas Corporation not organized for profit.

1.8 "Community Association Articles" means the Articles of Incorporation, as such may be amended from time to time, of the Community Association.

1.9 "Community Association Board" means the elected officers of the Community Association.

1.10 "Community Association Bylaws" means the bylaws of the Community Association adopted in accordance with the Community Association Articles, as such bylaws may be amended from time to time.

1.11 "Community Association Declaration" or "this Declaration" means this Declaration and any amendments or modifications thereof.

1.12 "Community Association Member" means any Person who holds a membership in the Community Association.

1.13 "Community Association President" means the duly elected or appointed president of the Community Association.

1.14 "Community Association Rules" mean the rules and regulations adopted by the Community Association.

1.15 "Default Rate of Interest" means an annual rate of interest equal to the prime rate as published daily in the *Wall Street Journal* from time to time while interest is accruing (with interest hereunder adjusted as and when said prime rate is adjusted) plus four percent (4%) per annum, but never less than eighteen percent (18%) (so that if during any periods while interest is accruing said prime rate plus four percent (4%) per annum is less than eighteen percent (18%) per annum, interest shall accrue during said periods at eighteen percent (18%) per annum). Notwithstanding herein to the contrary, if, during any period the highest lawful rate of interest which may be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the interest payable by such Person during said period shall be at the highest lawful rate.

1.16 "Design Review Committee" means the committee provided for in Article VIII entitled to architectural and landscape control.

1.17 "Developer" means Schultz Construction, Inc., a Kansas corporation, its successors and assigns, or any person to whom the Developer's rights hereunder are hereafter assigned by a recorded instrument.

1.18 "First Mortgage" means a Mortgage which is the first and most senior of all Mortgages upon the same property. "First Mortgagee" means the holder of a First Mortgage.

1.19 "Lot" means a tract within the Community deeded separately to an Owner within the Community as shown on the applicable Plat.

1.20 "Majority," where not specifically designated otherwise, means at least fifty and one-tenth percent (50.1%) of the total votes entitled to be cast with respect to a given matter.

1.21 "Mortgage" means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration (which is not a fraudulent conveyance under Kansas law) as security for the performance of an obligation, including without limitation, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.22 "Mortgagee" means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed of trust. "Mortgagor" means the party granting the Mortgage.

1.23 "Occupant" means any Person, other than an Owner, in rightful possession of a Lot, whether as a guest, tenant or otherwise.

1.24 "Owner" means the record owner, whether one or more Persons, of fee simple title, whether or not subject to any Mortgage, to any Lot which is part of the Community, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.25 "Owner's Proportionate Share" means a fraction, the numerator of which is the number of Lots then owned by such Owner within the Community and the denominator of which is the total number of Lots then within the Community that are subject to Assessments. This Section shall be subject to the provisions preventing subdivision of any individual Lot.

1.26 "Person" means an individual, corporation, partnership, trustee or other entity capable of including title to real property, and their respective heirs, successors, and assigns.

1.27 "Plat" means collectively each plat of subdivision of the Community as Recorded in the official records of Riley County, Kansas, and as thereafter from time to time amended or supplemented.

1.28 "Record" or "Recording" means an instrument of record in, or the act or recording an instrument with the office of the Register of Deeds of Riley County, Kansas.

1.29 "Supplemental Declaration" means a declaration of easements, covenants, conditions and restrictions, or similar instrument, annexing additional real property to the Community and subjecting such real property to this Declaration.

1.30 "Unit" means a residential living unit within the Community located on a Lot deeded separately to an Owner within the Community as shown on the applicable Plat.

ARTICLE II The Declaration

Developer hereby establishes the Community and this Community Association Declaration to govern the use and occupancy of Lots within the Community.

ARTICLE III
Community Association

3.1 (a) Purpose of the Community Association. The Community Association has been or will be incorporated as a corporation not organized for profit under the laws of Kansas. The Community Association shall be responsible for the protection, improvement, alteration, maintenance, repair, replacement, administration, and operation of the Community, including taking such action as is necessary for the Assessment of expenses, payment of losses, disposition of casualty insurance proceeds (if any) and other matters as provided in or contemplated by this Declaration, the Community Association Articles, the Community Association Bylaws, the Community Association Rules.

(b) Duties of the Community Association. In addition to the duties delegated to the Community Association by the Articles, the Community Association Bylaws, and this Declaration, and without limiting the generality thereof, the Association has the following duties:

(1) Maintenance and Management. To maintain in a safe and first class condition, manage and preserve the Common Properties and any other property not otherwise maintained by individual Owners. The Community Association has the authority to assure that property maintained by the individual Owners meets these criteria.

(2) Insurance. To obtain and maintain in force appropriate policies of insurance, which shall include without limitation, directors and officers liability coverage, a comprehensive policy of public liability insurance coverage covering the Common Properties and any off-site easements owned by the Community Association with a limit of not less than one million dollars (\$1,000,000) for claims for personal injury and/or property damage arising out of a single occurrence.

(3) Rules. To make, amend and repeal the Community Association Rules.

(4) Taxes and Assessments. To pay all taxes and Assessments which are or could become a lien on the Common Properties.

(5) Budgets and Financial Statements. The Community Association shall cause the financial statements for the Community Association to be regularly prepared and copies to be distributed to each Community Association Member as follows:

(A) A pro forma statement (budget) for each accounting year of the Community Association other than the first accounting year shall be proposed and adopted by the Community Association Board on an annual basis. Prior to the adoption of the budget: (a) all Community Association Members must receive notice that the Community Association Board is proposing said budget at least ten (10) days in advance; (b) a copy of the proposed budget must be available to any Community Association Member who requests it; and (c) Community Association

Members must be given a reasonable opportunity to comment on the proposed budget before the Community Association Board adopts the budget. The budget shall include all of the following: (i) a statement of estimated revenue and expenses; (ii) the total amount of cash reserves of the Community Association currently available for replacement or major repair of Common Properties and for contingencies; (iii) an itemized estimate of the current replacement costs of the remaining life of or additions to major components of the Common Properties and Community Association property for which the Community Association is responsible; and (iv) a general statement setting forth the procedures used by the Community Association Board in the calculation and establishment of reserves to defray the costs of future repair, replacement or additions to the Common Properties for which the Community Association is responsible.

(B) An annual report consisting of the following shall be distributed after the close of each fiscal year: (i) a balance sheet as of the end of such accounting year; (ii) an operating (income) statement for such accounting year; and (iii) any information required to be reported under the Kansas Corporation Code.

(6) Enforcement. To perform such other acts, whether, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration, the Community Association Articles, the Community Bylaws, the Community Association Rules.

(7) Maintenance Responsibility. The Community Association shall be responsible for and have a blanket easement upon, across, over, and under all Lots and Common Properties to perform certain maintenance on and beside all Lots as described in this section. All maintenance on a Lot not described in this Section as specifically a Community Association Maintenance Responsibility will remain a responsibility of the individual Lot Owner. Community Association Maintenance Responsibility includes the following:

(A) Yard Maintenance. The Community Association shall provide a lawn maintenance program to include mowing, trimming, fertilization, irrigation water, and irrigation repair and maintenance for all developed Lots. The lawn maintenance program will include maintaining all plants, shrubs and trees on each Owner's Lot. Each Lot Owner will be responsible for the replacement cost of trees, plants and shrubs, if needed for said Owner's Lot.

The Community Association reserves the right to apply Special Assessment(s) to any Lot that requires above what would be considered normal maintenance. This condition would apply to Lots that have approved fences, considerable plants/planting beds or high maintenance plants within or on the Owner's Lot. These Lots will be evaluated by the landscape maintenance provider hired by the Community Association for the property amount of Special Assessment. The base numbers used to determine normal conditions for this section will be twenty-five (25) plants and/or shrubs within the landscape beds along with the required four (4) two inch (2") caliper trees.

(B) Trash and Snow Removal. The Community Association may contract with the City or private contractors, as required, for the weekly pickup of trash at

each Lot and the timely removal of snow and ice from the common paved areas, sidewalks, walkways, and private driveways of each Lot in the Community. The Community Association's obligations to remove snow shall commence at such time as the snow accumulation exceeds two inches (2"). Charges for these services shall be paid out of Regular Assessments.

(C) Easements.

(i) Utility Easements. Developer will install or cause to be installed lines, pipes, conduits, members and other utility facilities referred to as "utility lines" for the purpose of allowing individual Lots to obtain sewer, electricity, gas, water and telephone services to such individual Lots. To insure that such utility lines shall be kept, maintained, restored, repaired and replaced, Developer hereby grants to the Community Association, its successors and assigns, and to the City and to any and all public utilities, for the benefit of the Lot Owners, the following permanent rights, licenses and easements:

(a) An easement to keep, maintain, restore, repair and replace any such utility lines over, under and across any portion of the Community or the Lots for the purpose of maintaining, restoring, repairing, or replacing any utility lines, and for the purpose of reading any meter installed with respect to any utility line.

(b) If, in order to maintain, restore, repair or replace the utility line that serves any one Lot, it becomes necessary to break through walls, excavate or otherwise damage a Lot or the Community entered, the damages caused by such entry shall be repaired and the Lot or the Community entered into shall be restored to substantially the same condition as prior to such damage, at the expense of Owner of the Lot served by such utility line; and if such Lot Owner shall fail to directly pay for such expenses, the cost of such maintenance, restoration, repair and/or replacement may be paid by the Community Association and in such case shall be added and become a Special Assessment to such Owner. Further, expenses, including without limitation lawn and landscape repair, applicable to removal of obstructions and/or maintenance to utility line(s) between the connection with the utility main line and a private line to a Lot, shall be assumed and paid by the Owner of such Lot and shall not be a common expense payable by the Community Association out of the Regular Assessment. If there is any obstruction in a main sewer line in the City's right of way, expenses applicable to removal of such obstruction should be paid by the City, but to the extent the City fails to pay for lawn and landscape repair caused by such removal, the Community Association may pay for such expenses and in such case said expenses shall be a common expense payable by the Community Association out of the Regular Assessment.

(c) If it becomes necessary to maintain, restore, repair, or replace utility lines which serve more than one Lot, then the cost of such maintenance, restoration, repair or replacement to its former condition shall be a common expense payable by the Community Association out of the Regular Assessment.

(ii) Easements for Minor Encroachments. Each Lot and all improvements constructed upon the Common Properties shall be subject to an easement created by the construction of any overhang of the structures built by Developer. A valid easement for said encroachment and for the maintenance of same, so long as the structure stands, shall and does exist. In the event any such improvements are partially or totally destroyed and then rebuilt, the Community Association and the Owners of each Lot agree that valid easements shall exist for any encroachment therefrom.

(iii) Blanket Easement. There is hereby created a blanket easement upon, across, over and under all the Lots and Common Properties for ingress and egress, installation, operation, replacing, repairing and maintaining utilities, including but not limited to water, sewer, telephone, television, CATV cables, electricity, gas, for drainage facilities and floodway purposes, together with the right to remove any obstruction that may be placed in such easement area that would constitute interference with the use of such easement, or with the use, maintenance, operation of installation of such utilities, drainage and floodway courses. By virtue of this easement, it shall be expressly permissible for the utility companies or Developer to affix and maintain pipes, wires, conduits or other service lines on, above, across and under the roofs and exterior walls of the Lots. Notwithstanding anything to the contrary contained in this paragraph, or in this Declaration, no sewer, electrical line, water line or other utilities may be installed or relocated upon the Common Properties or the Lots until approved by Developer so long as Developer owns any of the Common Properties and thereafter by the Board of Directors of the Community Association. Neither Developer nor any utility company or other authorized entity using the easements shall be liable for any damage done by them, their employees or agents, to shrubbery, trees, flower or other improvements located on the land covered by said easements. The Owners of the respective Lots shall not be deemed to separately own pipes, wires, conduits or other service lines running through their property, which are utilized for or serve other Lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Lot.

(iv) Easement for Ingress and Egress. Developer hereby dedicates and creates to itself, its successors and assigns, and hereby grants to the Community Association, its successors and assigns, for the benefit of each Lot Owner, an easement for ingress and egress to each Lot over and across each Lot and all of the Common Properties.

(v) Community Association Easement. Developer hereby establishes and reserves to itself, its successors and assigns, an easement over, under and across, all of the Lots and the Common Properties subject to this Declaration, for the benefit of each Lot Owner, for the purposes of executing any of the powers, rights or terms of this declaration, or the Articles of Incorporation and By-Laws of the Community Association.

(D) No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any of the Common Properties by any public or municipal agency, authority or utility and no public or

municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any said Common Properties.

3.2 Membership in Community Association.

(a) Subject to provisions herein providing for Developer control, Each Owner shall be entitled to only one (1) Community Association Membership and one (1) vote in the Community Association for each Lot owned so long as the Owner is the Owner of such Lot(s), and such Owner shall specify in writing to the Community Association the name of the individual who will hold the Community Association Membership. In the absence of such written specification, Assessments shall nevertheless be charged against the Lot and Owner thereof, but there shall be no right to vote the membership. The Community Association Member must be an individual who, is either an Owner, or be an individual who is a partner if the Owner is or includes a partnership, an officer of a corporation if the Owner is or includes a corporation, a member of a limited liability company if the Owner is or includes a limited liability company, or a beneficiary of the trust if the Owner is or includes a trust, or an owner of the entity if the Owner is or includes a Person other than an individual, a partnership, a corporation, a limited liability company, or a trust.

(b) Subject to the provisions of the preceding paragraph, once a Community Association Member has been specified by an Owner of a Lot, a new Community Association Member may only be specified for that Lot upon at least fifteen (15) days' notice prior to any meeting to the President of the Community Association; provided, however, the foregoing shall not impair the provisions of the next paragraph.

(c) A membership in the Community Association shall not be transferred, pledged, or alienated in any way, except as herein expressly provided. Subject to the provisions contained in this Section, Community Association Membership shall automatically be transferred to the new Owner upon the transfer of the Lot to which it appertains (and then only to such transferee), whether by sale, intestate succession, testamentary disposition, foreclosure of a Mortgage or other legal process transferring fee simple title to such Lot.

(d) Where a Lot is owned in common, either by joint tenancy or tenancy in common, each Lot ownership group will be able to designate one Member of the ownership group to vote for that Lot and no votes may be split.

(e) The Community Association Members must meet annually at a time, date and place in accordance with the Community Association Bylaws. Special meetings of the Community Association Members may be held to address any matter affecting the Community Association if the Community Association President, a Majority of the Community Association Board, or at least ten percent (10%) (or less than ten percent (10%), if set forth in the Community Association Bylaws) of the Community Association Members call such a meeting. If a special meeting has not been set within thirty (30) days, the parties requesting the special meeting may directly notify all of the non-requesting Community Association Members of the meeting.

Notifications for both annual and special meetings shall be made at least ten (10) days and no more than sixty (60) days beforehand, and shall include: (1) statement of the general nature of any proposed revisions to the Declaration or the Community Association Bylaws; (2) any Community Association budget proposals or changes; and (3) any proposal to remove a member of the Community Association Board or an officer of the Community Association.

3.3 Pledge of Voting Rights. Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to the Owner's Community Association Membership with respect to the Owner's Lot to a Mortgagee as additional security, the vote of such Mortgagee will be recognized only if a copy of such proxy, or other instrument pledging such vote, has been filed with the Community Association. In the event that more than one (1) such instrument has been filed, the Community Association shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves.

3.4 Assignment of Developer's Voting Rights. If any lender to whom the Developer has assigned, or hereafter assigns, as security all or substantially all of its rights under this declaration, succeeds to the interests of the Developer by virtue of said assignment as provided herein, the Developer's rights shall not be terminated thereby, and such lender shall hold the Developer's memberships and voting rights on the same terms as they were held by the Developer pursuant hereto.

3.5 Board of Directors of the Community Association.

(a) The affairs of the Community Association shall be conducted by the Community Association Board as herein provided and in accordance with the Community Association Articles, Community Association Bylaws, and this Declaration. Each director shall be a Community Association Member or the spouse of a Community Association Member. If a director shall cease to meet such qualifications during the director's term, the director will thereupon cease to be a director and the director's place on the Community Association Board shall be deemed vacant.

(b) The members of the Community Association shall have the power and right to appoint and remove the members of the Community Association Board as provided in the Community Association Articles and Community Association Bylaws.

(c) Any member of the Community Association Board may be removed from office, by action of the Community Association members, in accordance with the following procedures: Upon the presentation to the Community Association President of a petition duly executed by thirty-four percent (34%) or more of all of the Community Association Members in favor of the removal from office of the member or members of the Community Association Board therein named, a special referendum meeting of the Community Association Members shall be promptly held to determine whether such member or members of the Community Association Board should be removed from office. Notice of such meeting shall be provided in accordance with the provisions set forth in Article III, Section 3.2(e) above, except that the proposal to remove

such member or members of the Community Association Board must be listed as an item in the notice of such meeting. At said meeting, upon the affirmative vote of two-thirds (2/3) of all of the Community Association Members then-entitled to vote to remove such member or members of the Community Association Board from office, such member or members of the Community Association Board shall be so removed. However, the member or members of the Community Association Board being considered for removal must have a reasonable opportunity to speak at said meeting prior to the vote of the Community Association Members. Any vacancy on the Community Association Board created by the removal of a member of the Community Association Board as herein provided shall be filled by an election of all of the Community Association Members in the manner provided in the Community Association Articles or Community Association Bylaws for the election of directors.

(d) Meetings of the Community Association Board and its committees must be open to the Community Association Members except for executive sessions of the Community Association Board, which are limited to discussions involving: (1) consultation with the Community Association's attorney; (2) litigation or related alternative dispute resolution proceedings; (3) labor or personnel matters; (4) leases, commercial transactions or purchase if information released would compromise the Community Association's position; and (5) matters that would violate the privacy of any Person. The Community Association Board must meet at least annually, always at the Community Association's location or at a convenient place for Community Association Members. Unless the Community Association Board meeting is either an emergency or in a notice previously provided to all Community Association Members, the Community Association Board must notify the Community Association Members of a Community Association Board meeting at least five (5) days in advance of such meeting. Notice of a Community Association Board meeting shall include the time, date, place and agenda of such meeting. Copies of materials distributed to the Community Association Board except for unapproved minutes or materials for executive sessions shall be reasonably made available to Community Association Members.

(e) Notwithstanding the foregoing, the Community Association Board may not perform any of the following acts: (1) amend the Declaration, except as provided by law; (2) amend the Community Association Bylaws; (3) terminate the Community Association; (4) elect a member or members of the Community Association Board except to fill vacancies on such board until the next election of members to the Community Association Board; (5) determine the Community Association Board's qualifications, powers, duties, or terms of office; and (6) terminate any contract with Developer without the Developer's written consent.

3.6 Duties and Powers of the President of the Community Association.

(a) To the extent not prohibited by law, or as otherwise herein expressly limited, including without limitation the following paragraph, the President of the Community Association shall be empowered to exercise control over the affairs of the Community Association and to act on behalf of, and bind, the Association in every instance wherein the Association is

required or permitted to take any action. The actions of the President shall at all times be subject to the review of the Board of the Community Association.

(b) Notwithstanding anything in the preceding paragraph to the contrary, the President shall not have the power to borrow any funds on behalf of the Community Association, make any expenditures on behalf of the Community Association which are, in the aggregate, more than five percent (5%) in excess of the total amount of the Community Association's budget, or increase the amount of or levy any Assessment (except a Special Assessment), without the prior approval of the elected officers of the Community Association.

(c) The Community Association President may appoint such assistants as the President deems necessary and appropriate. No compensation shall be paid to the President or any assistant except as provided in the budget of the Community Association or as otherwise approved by the Board of the Community Association.

(d) Any right or power herein given or delegated to the Community Association President which cannot be exercised by such President, whether by reason of law, or otherwise, shall be deemed to be a right or power to be exercised by the Board of the Community Association.

3.7 President's Determination Binding. In the event of any dispute or disagreement between any Owner, Community Association Members, or any other Persons subject to this Declaration relating to the Community, or any question of interpretation, or application of the provisions, of this Declaration, the Community Association Articles or Community Association Bylaws, any Community Association Rules, or other rules of the Community Association the determination thereof by the Community Association President shall be final and binding on each and all of such Owners, Community Association Members, or Persons. The Community Association President may, at the President's election, delegate the resolution of such dispute or disagreement, to the Community Association Board or a committee appointed by the Community Association President.

3.8 Approval of Members. Unless elsewhere otherwise specifically provided in this Declaration, the Community Association Articles or Community Association Bylaws, any foregoing provision that requires the vote or written assent of the Community Association Members shall be deemed satisfied by the following:

(a) Majority vote in person, electronically, or by proxy, of a quorum of Community Association Members, as defined in the Community Association Bylaws, entitled to vote at a meeting duly called and noticed pursuant to the provisions of the Community Association Articles or Community Association Bylaws, dealing with annual or special meetings of the Members of the Community Association.

(b) Written Consents signed by the Members then entitled to vote as provided in the Community Association Bylaws.

3.9 Additional Provisions in Community Association Articles and Community Association Bylaws. The Community Association Articles and Community Association Bylaws may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents, and Members not inconsistent with law or this Declaration.

3.10 Community Association Rules. In order to be able to address specific matters relating to the administration, operation, and development of, or other matters relating to, the Community, the Community Association Board shall be empowered to adopt, amend, or repeal such rules and regulations as it deems reasonable and appropriate (the "Community Association Rules"). However, prior to adopting, amending or repealing any Community Association Rules, the Community Association Board shall notify the Community Association members of its intent and shall provide the text of the proposed Community Association Rule and the date on which the proposed Community Association Rule shall be considered. The Community Association Rules shall not be inconsistent with the terms of this Declaration. The Community Association Rules may not unreasonably or unlawfully discriminate among Owners and Community Association Members. A copy of the Community Association Rules as they may from time to time be adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Community Association Rules shall be delivered to each Community Association Member in the same manner established in this Declaration for the delivery of notice pursuant to Article XIV, Section 14.1. Upon completion of the notice requirements, the Community Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and Community Association Members, and all other Persons having any interest in, or making any use of, the Community Association, whether or not actually received thereby. After adopting, amending or repealing any Community Association Rule, the Community Association Board shall provide the Community Association Members with a copy of the text of the change. The Community Association Rules, as adopted, amended, or repealed, shall be available at the principal office of the Community Association to each Owner, Community Association Member, or other Person reasonably entitled thereto, upon request. In the event any conflict between any provision of the Community Association Rules and any provisions of this Declaration or the Community Association Articles or Community Association Bylaws, the provisions of the Community Association Rules shall be deemed to be superseded by the provisions of this Declaration or such Community Association Articles or Community Association Bylaws to the extent of any such conflict.

3.11 Indemnification. To the fullest extent permitted by law, every director, every elected officer of the Community Association, and the Developer (to the extent a claim may be brought against the Developer by reason of its appointment, removal, or control over members of the Community Association Board) shall be indemnified by the Community Association, and every other person serving as an employee, or direct agent of the Community Association, or direct agent of the Community Association, or on behalf of the Community Association as a member of a committee or otherwise, may, in the discretion of the Board of the Community Association, be indemnified by the Community Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon any aforesaid party in connection with

any proceeding or any settlement thereof to which any aforesaid party may be a part, or in which any aforesaid party may become involved, by reason of being or having served in such capacity on behalf of the Community Association or in the case of the Developer by reason of having appointed, removed, or controlled, or failed to control members of the Community Association Board whether or not such party is a director or an officer or serving in such other specified capacity at the time such expenses are incurred; provided, however, that prior to agreeing to any such indemnification, the Board of Directors of the Community Association shall determine, in good faith, that such officers, director, other Person, or the Developer did not act, fail to act, or refuse to act willfully, or with gross negligence, or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Persons may be entitled at law or otherwise. Appropriate insurance may be obtained pursuant to provisions of this Declaration to cover any liability exposure created by virtue of the foregoing indemnification.

3.12 Non-Liability of Officials. To the fullest extent permitted by law, neither the Developer, the Community Association President, any directors or officers of the Community Association, nor any other members of committees of the Community Association shall be liable to any Community Association Member or any Owner, Occupant, or other Person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, inaction, omission, error, negligence, or the like made in good faith and which the Developer, the President, any presidential assistants, any officer or any member of such committees reasonably believed to be within the scope of his duties.

3.13 Easements. The Community Association is authorized and empowered to grant upon, across, or under real property owned or controlled by the Community Association such permits, licenses, easements, and rights of way for sewer lines, water lines, underground conduits, storm drains, television cable, and other similar public or private utility purposes, roadways, or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation, and enjoyment of all or any part of the Community or the preservation of the health, safety, convenience, and welfare of the Owners.

3.14 Records. The Community Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner and Community Association Member the books, records (including but not limited to minutes of meetings), and financial statements of the Community Association together with current copies, as amended from time to time, of this Declaration and the Community Association Articles, Community Association Bylaws, and Community Association Rules. The Community Association shall retain copies of the following records for a period of five (5) years: (a) all receipts and expenditures; (b) minutes of all meetings except for executive sessions of the Community Association Board; (c) names of all Owners and/or Community Association Members, in alphabetical order, with addresses; (d) the Declaration, Community Association Bylaws and Community Association Rules; (e) names and addresses of current members of the Community Association Board; (f) the Community Association's most recent annual report, if any; (g) copies of current contracts to which the

Community Association is a party; (h) records of architectural approvals, if any; and (i) ballots, proxies and other records relating to voting by Community Association Members for one (1) year after the election, action or vote to which they pertain. The Community Association must also retain copies of all financial statements and tax returns of the Community Association for a period of five (5) years. Notwithstanding the foregoing, the Developer shall be under no obligation to make its own books and records available for inspection by the Community Association, or any Owner, Community Association Member, or other Person.

3.15 Managing Agent. Any powers, duties, and rights of the Community Association created pursuant hereto, or of the Community Association President, or Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Community Association of its obligation to perform any such delegated duty. Any agreement for professional management, or any other contract providing for services, shall not exceed a term of three (3) years, which term may be renewed by agreement of the parties for successive one-year periods, and shall further provide for termination by either party with or without cause and without payment of a termination fee upon ninety (90) days' prior written notice.

3.16 Developer's Control of the Community Association. Notwithstanding anything in this Article or elsewhere in this Declaration to the contrary, the Developer shall maintain absolute and exclusive control over the Community Association, including appointment and removal of the President and all other officers of the Community Association, all directors of the Community Association Board, until one hundred percent (100%) of the Lots in the Community (as the Community exists from time to time) have been sold to third parties. Until such time, only the Developer will be entitled to cast any votes with respect to the election and removal of Community Association officers or directors, or any other matter requiring the vote or approval of Community Association Members. The Developer voluntarily may (but shall not be required to) at any time relinquish all or any part of the Developer's control and rights under this Section.

3.17 Mediation and Binding Arbitration. In the event of a dispute with the Community Association President's decision as elsewhere provided herein, between one (1) or more of the Owners, Community Association Members, the Community Association or any other Persons subject to this Declaration, relating to any question of interpretation, or application of the provisions of this Declaration, or any Community Association Rules unless otherwise agreed by all parties to the dispute or disagreement, the parties shall submit the dispute or disagreement to a mutually acceptable mediator or, if there is no mutually acceptable mediator, then to a mediator selected by the Board of Directors of the Association. If such mediator is unable to mediate the dispute or disagreement to the satisfaction of the parties involved, the dispute may be submitted to binding arbitration through the American Arbitration Association under its rules and procedures then in effect for disputes or disagreements of such nature or, in the absence of any such standard rules or procedures, then under such rules and procedures as it designates. The costs of such mediation or arbitration shall be assessed against the parties to such process. Notwithstanding and in addition to the foregoing, disputes between any of the parties set forth above shall mandatorily

be submitted to non-binding alternative dispute resolution (in the form of mediation as set forth above or otherwise) as a pre-requisite to filing a lawsuit.

ARTICLE IV Creation of Lien and Personal Obligations

Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to covenant and agree to pay all of the following to the Community Association in accordance with the terms hereof: Regular Assessments and Special Assessments. Such Assessments shall be collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees, and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon such Owner's Lot against which the Assessments are made. Each Assessment, together with such interest and other costs, shall also be the personal obligation of the Owner to whom such Assessment relates. The personal obligation for delinquent payments shall not pass to an Owner's successor unless expressly assumed by the Owner's successor. If an Owner shall consist of more than one Person, the obligations of the Owner for the payment of Assessments on such Owner's Lot shall be joint and several. Notwithstanding the foregoing, no Lot(s) owned by Developer shall be subject to Assessments.

4.1 Purpose of Assessments. Except as otherwise herein set forth, the Assessments levied by the Community Association shall be used: (a) to promote the health, safety, and welfare of Owners; (b) to enhance the value of the Community; (c) to pay the costs of administration of the Community Association; (d) to pay all other Common Expenses; (e) to establish reasonable reserves; (f) to pay the costs associated with maintenance and repair of the grass planted in common areas and on each Lot and any landscaping and lawn areas installed by the Developer within the landscape easements as defined on the Plat and within center islands within public right of way; or (g) to otherwise further the interests of the Community. Where a Lot has separate gas, electrical, sewer, or other similar utilities service, the cost of the same shall be the personal obligation of each Owner. Maintenance of sewer lines serving a Lot shall be the responsibility of its Owner.

4.2 Regular Assessments.

(a) Except as otherwise specifically provided herein, each Owner of a Lot shall pay as its Regular Assessment the Owner's Proportionate Share of the Common Expenses. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as may be provided in the Community Association Articles or Community Association Bylaws, or as determined by vote of the Community Association.

(b) The Community Association shall at the time of budget adoption determine the amount of the Regular Assessment to be paid by each Owner and thereafter notify the Owner thereof. Each Owner shall thereafter pay to the Community Association its entire Regular Assessment as determined on or before the beginning of the Community Association's fiscal year,

which date shall be set forth in the written notice sent to Owners. The Community Association fiscal year will be a calendar year ending December 31 each year. The bylaws may provide for quarterly or monthly payment of dues upon vote of the Community Association Board.

(c) If the Community Association subsequently determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation for the Community Association's budget for that year, the Community Association President shall then determine the approximate amount of such inadequacy and, with the consent of the Community Association Board, issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Owner for the balance of the year, and the date or dates when due. Each Owner shall be notified at least thirty (30) days in advance of the additional amount required to be paid and the due date of such payment, and each Owner shall pay the additional amount when due. If the estimated total Regular Assessments for a current year prove to be excessive in light of the actual Common Expenses, the Community Association may, at the discretion of the Community Association Board, retain such excess as additional working capital, reserves, or reduce the amount of the Regular Assessments for the next fiscal year. No reduction or abatement of Regular Assessments because of any such anticipated surplus may diminish the quantity, or quality, or services upon which the Common Expenses for the year in question are based, and if supplemental Assessments are required, they shall be made as set forth above.

4.3 Special Assessments. Special Assessments shall be levied by the Community Association against an Owner to reimburse the Community Association for:

(a) Costs incurred in bringing an Owner or the Owner's Lot into compliance with the provisions of this declaration, the Community Association Articles, Community Association Bylaws, or the Community Association Rules.

(b) Fines levied or fixed by the Community Association Board as provided herein.

(c) Attorneys' fees, interest, and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this Declaration, the Community Association Articles or Community Association Bylaws, or the Community Association Rules.

(d) Any other charge designated as a Special Assessment in this Declaration, the Community Association Articles, Community Association Bylaws, or the Community Association Rules.

The Community Association Board may propose and adopt a Special Assessment at any time, but all Community Association Members must receive notice of such Special Assessment at least ten (10) days in advance of such proposed adoption. A copy of the proposal for such Special

Assessment must also be available to any Community Association Member who requests it. Community Association Members must be given a reasonable opportunity to comment on the Special Assessment before the Community Association Board takes action to adopt a Special Assessment.

4.4 Uniform Assessment. All Regular Assessments imposed upon an Owner shall be based upon such Owner's Proportionate Share. However, Special Assessments need not be uniform in amount to all Lots, but shall be proportionate to the costs incurred for the individual Lot.

4.5 Exempt Property. All real property dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein. All property owned by the Developer will be exempt and no payment of expense or assumption of Community Association duties by the Developer in one (1) year shall create an implied duty to pay such expense in succeeding years.

4.6 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to each Lot and that Lot's Owner on the date a Lot is first deeded from the Developer. The Regular Assessment shall be equitably adjusted as required for short periods.

4.7 Time and Manner of Payment; Late Charges and Interest. Assessments shall be due and payable by Owners as specified above and otherwise in such manner and at such times as the Community Association shall designate in accordance with the terms hereof. If not paid within ten (10) days after its due date, each such Assessment shall have added to it a late charge equal to ten percent (10%) of the amount of Assessment and thereafter bear interest at the Default Rate of Interest until paid. The Community Association may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A delinquent Owner shall, to the extent allowed by then applicable law, be liable for attorneys' fees and other related costs incurred by the Community Association as a result of such delinquency, and if any suit, action, or proceeding is brought to collect any such Assessment or charge, then there will be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon.

4.8 No Offsets. All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that: (a) the Community Association, its Board, its President, or the Developer is not properly exercising its duties and powers as provided in this Declaration or documentation associated therewith; (b) an Owner has performed any duty or paid any debt of the Community Association; or (c) Assessments for any period exceed Common Expenses.

4.9 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration or documentation associated herewith (whether such liens are now in existence or are created at any time in the future), the benefit of

any redemption, homestead or exemption laws of the State of Kansas now in effect, or in effect from time to time hereafter.

4.10 Reserves. Reserves included in any budget for Common Expenses which are collected as part of Regular Assessments shall be deposited by the Community Association in a separate account to be held in trust for the purposes for which they are budgeted and are to be segregated from and not commingled with any other funds of the Community Association, except to the extent that the Community Association's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws (tax or otherwise) of the State of Kansas or the United States relating to corporations not organized for profit, or homeowners associations. Such reserves shall be deemed a contribution to the capital account of the Community Association. The responsibility of the Community Association Board whether while controlled by the Developer or the Members of the Community Association shall be only to provide for such reserves as such Board in good faith deems reasonable, and neither the Developer, such Board or any member thereof shall have any liability to the Community Association or any Owner, Community Association Member, if such reserves prove to be inadequate. Individual Owners have no right, title or interest in or to the Reserves or any Proportionate Share thereof. In the event of termination of the Community Association, then all Reserves will be disbursed in accordance with the rules of the Internal Revenue Service with respect to not-for-profit corporations.

4.11 Subordination of Lien. Any lien which arises against a Lot by reason of the failure or refusal of an Owner to make timely payment of any Assessment shall be subordinate to the lien of a prior recorded First Mortgage (together with any interest, cost, reasonable attorneys' fees and any late charge related thereto) on the Lot, acquired in good faith and for value, except for the amount of the unpaid Assessment which accrues from and after the date on which a First Mortgagee comes into possession of, or acquires title to the Lot, whichever occurs first. If any lien for unpaid Assessments has not been extinguished by the process by which such First Mortgagee came into possession of or acquired title to the Lot, such First Mortgagee shall not be liable for unpaid Assessments arising prior to the aforesaid date and, upon written request by such First Mortgagee to the Community Association, such lien shall be released in writing by the Community Association. Any unpaid Assessments which are extinguished pursuant to the foregoing sentence shall continue to be the personal obligation of the delinquent Owner even though re-allocated by the Community Association among all other Owners as part of the Common Expenses. However, any Assessments accruing after the date title is transferred to a Mortgagee will be a debt of the Mortgagees in possession in the same fashion as any other Owner.

4.12 Certificate of Non-Payment. Any person acquiring an interest in any Lot shall upon request be entitled to a certificate from the Community Association setting forth the amount of due but unpaid Assessments relating to such Lot, if any, and such Person shall not be liable for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Assessments which occur, or become due, after the date of the certificate, and any interest, costs, attorneys' fees, and any late charges related to such unpaid Assessments.

4.13 Enforcement of Lien. Any lien provided for in this Article may be foreclosed by the Community Association in any manner provided, or permitted, for the foreclosure of realty mortgages in the State of Kansas. All of the provisions of this Article relating to the enforcement of any lien provided for herein (including without limitation the subordination provisions provided herein) shall apply with equal force in each other instance provided for in this Declaration or the Community Association Rules or the Community Association Articles or Community Association Bylaws, wherein it is stated that payment of a particular Assessment, charge or other sum shall be secured by a lien. Nothing herein shall be construed as requiring that the Community Association take any action allowed hereunder in any particular instance, and the failure of the Community Association to take such action at any time shall not constitute a waiver of the right to take such action at a later time, or in a different instance.

4.14 Pledge of Assessment Rights as Security. The Community Association shall have the power to pledge the right to exercise its assessment powers and rights as security for any obligation of the Community Association; provided, however, any such action shall require the prior affirmative vote, or written assent, of the Developer, if it controls the Community Association, or otherwise, a majority of all the Members of the Community Association. The Community Association's power to pledge its assessment powers shall include, but not be limited to the ability to make an assignment of Assessments which are then payable to, or which will become payable to the Community Association, which assignment may then be presently effective but shall allow said Assessments to continue to be paid to the Community Association and used by the Community Association as required, unless and until the Community Association shall default on its obligations secured by said assignment.

ARTICLE V Insurance

Each Owner shall maintain fire and extended coverage insurance against loss or damage by fire or other casualty to the full replacement value of the Unit. Each Owner shall cause the Association to be shown as an additional insured on such policies owned by an Owner, and will furnish to the Association a certificate of insurance displaying the coverage required of an Owner under the terms of this paragraph.

ARTICLE VI Maintenance, Repairs and Replacements

6.1 Maintenance by Owner. Owner acknowledges that the Owner's Lot is subject to zoning requirements and landscaping and development policies of the City. In order to preserve the natural beauty of the Common Properties, each Owner shall be responsible for compliance with all applicable development guidelines and policies of the City. Except as otherwise provided in this Declaration, each Owner shall maintain the Owner's Lot and all improvements on such Owner's Lot and Unit in a clean and attractive condition, and in accordance with this Declaration.

6.2 Right of Access. An authorized representative of the Community Association and all contractors, repairmen or other agents employed or engaged by the Community Association, shall be entitled to reasonable access to each of the Lots as may be required to perform any of the Community Association's responsibilities hereunder.

ARTICLE VII Architectural and Landscape Control

7.1 Specific Issues.

(a) HVAC. No window or wall air conditioning or heating units will be permitted. All HVAC units will be screened from view of the street and other Lots. Screening by use of vegetation shall be allowed, if approved by the Community Association Board.

(b) Swimming Pools, Outside Recreation Equipment, and Tennis Courts. There shall be no above-ground pools or tennis courts. In-ground pools may be installed, if approved in writing by the Community Association Board. All recreation equipment will be screened from view of the street or from other Units. The aforesaid restrictions shall not apply to any clubhouse and related improvements that Developer may construct within the Community. Screening by use of vegetation shall be allowed, if approved by the Community Association Board.

(c) Fences and Walls. Unless approved by the Community Association Board, fences are not permitted. Privacy screens may be permitted so long as the materials and design are in harmony with the Unit. Retaining walls shall be made of natural materials or faced with quality materials.

(d) Mailbox. Each Lot will have its own mailbox which shall be constructed and maintained as specified by the Developer until Developer no longer owns any Lots in the Community and thereafter by the Design Review Committee. No other mailboxes are permitted.

7.2 Public Approvals. All pertinent requirements of public agencies shall be followed in the development of the Lot, and all plans must be approved by the appropriate departments of the City and/or County. Each Owner must verify code requirements at the time of purchase and development.

ARTICLE VIII Architectural and Landscape Control; General Restrictions

8.1 Design Review Committee. The Community Association shall have a Design Review Committee consisting of not less than three (3) nor more than five (5) persons, as specified

from time to time by the Developer during periods in which the Developer has the right to appoint the members of the Design Review Committee, and thereafter, by resolution of the Board of the Community Association. The Developer shall retain the right to appoint, augment, or replace all members of the Design Review Committee for the Community until one hundred percent (100%) of all Lots have been sold to third parties. Thereafter, members of the Design Review Committee shall be appointed by the Board of the Community Association. Persons appointed to the Design Review Committee, other than those Persons appointed by the Developer, must be Community Association Members. Even after control is thus relinquished by Developer, Developer shall retain final authority over the decisions of the Design Review Committee until all Lots are sold. The Developer voluntarily may (but shall not be required to) permit Community Association Members to appoint or replace one or more members of the Design Review Committee at any time.

8.2 Design Standards. The Design Review Committee may set forth Design Standards through a separate Design Standards Booklet, which if developed shall be incorporated into and made a part of this Declaration. This booklet if developed shall be available for distribution to prospective Lot Owners. The Design Standards, if any, may from time to time be amended, repealed, or augmented by way of an amendment to this Declaration, which shall refer thereto and shall be placed of Record in Riley County, Kansas.

8.3 Architectural Control. No building, fence, wall, or other structure, whether temporary or permanent, shall be commenced, erected, or maintained upon the properties, nor shall any exterior addition to or change or alteration in any building (including painting and staining) be made until the plans and specifications showing the nature, kind, shape, heights, materials, exterior color scheme, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding buildings and topography by the Design Review Committee.

8.4 Interpretation and Waiver. In order to meet special situations which may not be foreseen, it may be desirable from time to time for the Design Review Committee to allow variances of certain requirements. Any variance granted is considered not to be precedent setting because the decision is being made in the context of the specific project in question with the welfare of the overall Community in mind. All approvals and consents of the Design Review Committee shall be in writing, and oral approvals or consents shall be of no force or effect.

8.5 Design Review Committee Authority and Limits of Liability.

(a) The Design Review Committee may delegate its plan review responsibilities, except final review and approval as may be required by developed Design Standards, to one or more of its members or architectural consultants retained by the Design Review Committee. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Design Review Committee.

(b) The address of the Design Review Committee shall be the address established from time to time by resolution of the Community Association. Such address shall be the place for the submittal of plans and specifications.

(c) The establishment of the Design Review Committees and Design Standards shall not be construed as impairing the obligation of any Owner to maintain or repair his Lot as may otherwise be specified in this Declaration, the Community rules, or Community Association Articles or Bylaws.

(d) No Unit, fence, wall, or other structure, or improvement of whatever type shall be commenced, erected, or maintained within the Community, nor shall there be any addition to or change to the exterior of any residence, or other structure or improvement upon a Lot, or the landscaping, grading, or drainage thereof, including, without limitation, the painting of exterior walls, patio covers, and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee. The Design Review Committee may reject plans and specifications, without citing specifics, for the following reasons, among others: (i) insufficient information to adequately evaluate the design or its intent; (ii) poor overall design quality; (iii) incompatible design elements; (iv) inappropriate design concept or design treatment; and (v) a design found to have an adverse effect on the character of the Community or its residents. In recognition of the fact that the overall impact of improvements on any Lot involves issues of taste and judgment which cannot be completely reduced to Design Standards, the appropriate Design Review Committee shall also have the right to reject plans and specifications conforming to the Design Standards if the Committee believes that the overall aesthetic impact of any proposed improvement, addition, alteration, or change is detrimental to the Community.

(e) By its approval of plans and specifications, the Design Review Committee shall not be deemed to have approved the same for engineering design, or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the Design Review Committee, the members thereof, the Community Association, any of its members, its officers, its Board, nor the Developer assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the Design Review Committee, any member thereof, the Community Association, its officers, its Board, nor the Developer shall be liable to any Owner or other Person for any damage, loss, or prejudice suffered or claimed on account of (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development, or manner of development, of any property within the Community; or (iv) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that such action, on the basis of the actual knowledge possessed

by the Person in question, was taken in good faith. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances and regulations including, but not limited to, zoning ordinances and building codes.

(f) Any member or authorized consultant of the Design Review Committee, the Developer or its representatives, or any authorized officer, director, employee, or agent of the Community Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot, after reasonable notice to the Owner, in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been, or are being, built in compliance with the plans and specifications approved by the Design Review Committee, any Design Standards, and this Declaration. The Design Review Committee shall cause such an inspection to be undertaken within a reasonable time (not to exceed 30 days) of a request therefor from any Owner as to his or her Lot which request shall contain an affirmative statement by such Owner of such Owner's good faith belief that such Owner is in compliance with the approved plans and specifications, the Design Standards, and the other provisions hereof.

(g) The Community Association may promulgate such rules and regulations as it deems to be appropriate and as are not in conflict with this Declaration or the Master Declaration in order to enforce compliance with the Design Standards set forth herein. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE COMMUNITY ASSOCIATION BOARD MAY FIX A FINE OF UP TO \$10,000 FOR FAILURE TO OBTAIN ANY REQUIRED APPROVAL FROM THE DESIGN REVIEW COMMITTEE OR TO COMPLY WITH ANY SUCH APPROVAL. The Community Association may further take such legal action, as it deems necessary, to enforce such compliance.

8.6 Public Approvals. All pertinent requirements of public agencies shall be followed in the development of the Lot, and all plans must be approved by the appropriate departments of the City. Each Owner must verify code requirements at the time of purchase and development. Although based in part on local zoning and subdivision regulations, the Design Standards may be more restrictive in land use, site development standards, landscape requirements, or in other matters. In every case in which the Design Standards or approvals given by the Design Review Committee are at variance with the public agency requirements, the more restrictive regulations shall govern. Final legal approvals permitting development and occupancy of the property will be made by the City.

8.7 General Restrictions.

(a) *Buildings or Uses Other Than for Residential Purposes.* No part of any Lot or Unit shall be used for other than private residential and ancillary purposes. The foregoing restrictions

shall not be construed in such manner as to prohibit an Owner from: (a) maintaining a personal professional library therein; (b) keeping personal business or professional records or accounts therein; (c) handling personal business or professional calls or correspondence; or (d) undertaking any other activity not otherwise prohibited by this Declaration when such activity has been expressly approved in advance by the Association Board. No Owner shall create undivided interests or any other interests in such Owner's Lot or Unit for time-sharing or similar commercial purposes. An in-home business having appropriate City permits with not more than one outside employee and not more than one customer car on premises at any one time is permitted. No signs or external evidence of conduct of business are permitted.

(b) *Antennas and Clotheslines.* Other than one (1) 18" to 24" satellite dish per Lot, no external radio, television, or other antennas of any kind or nature (including, but not limited to, "satellite dishes") or other devices for the reception or transmission of radio, microwave, or other similar signals, shall be placed or maintained upon any Lot without the prior approval of the Design Review Committee. The location of a compliant satellite dish must be approved by the Design Review Committee prior to the installation of such satellite dish on a Lot and such satellite dish shall not be located on the roof or any portion of any building on a Lot, but must instead be placed on the grounds of such Lot and not be visible from any public street. No portion of any Lot outside the structure located thereon shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the buildings to be constructed on each Lot.

(c) *Vehicles and Parking.* No commercial truck, commercial bus, taxicabs or other commercial vehicle of any kind, boats, trailers, campers, recreational vehicles and motor homes shall be parked in any visible location on the Community Association without the prior written approval of the Association Board. No oversized commercial vehicle (a vehicle wider than and/or longer than a standard parking space, and/or heavier than a $\frac{3}{4}$ ton truck or a standard 8 passenger SUV) may park on the premises. No disabled vehicle or vehicle on which current registration plates or other required permits such as inspection stickers are not displayed shall be parked on any Lot or on Common Properties. The repair or extraordinary maintenance of vehicles shall not be carried out in a manner that is visible from any Lot or on the Common Properties. The Association may enforce the provisions of this Section by towing any non-complying vehicle at the vehicle owner's sole risk and expense. This provision shall not preclude: (i) commercial vehicles located in the Community temporarily (less than 24 hours) to provide services to the Association or a resident; (ii) parking of recreational vehicles and motor homes for up to twenty-four (24) hours for purposes of loading and unloading said vehicles; and (iii) parking of vehicles of each Owner's guests, but not to exceed two (2) consecutive days.

(d) *Signs.* No permanent sign of any kind shall be displayed to the public view, or from any Lot, or any Common Maintenance Areas, without approval of the Community Association, or the responsible Design Review Committee, except for the following temporary signs ("Permitted Signs"): (a) such signs as may be used by Developer in connection with the development and sale of Lots in the Community; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; (c) such signs as may be required for traffic control and

regulation of Common Maintenance Areas; (d) such signs advertising the Lot as being for sale, except that: (i) the sign must be located only on the lot to be sold; and (ii) no real estate signs shall be placed in any Common Maintenance Area; and (iii) only one real estate for sale sign shall be placed on each lot; (e) signs promoting political candidates, but only 30 days before and 5 days after the day of election, and only located upon the lot of the owner; (f) builder signs, one per lot. Permitted signs shall not exceed five square feet in total area or be more than three feet in height. Nothing contained herein shall be deemed to limit the Developer's rights as set forth herein. The Developer or the Community Association shall have the right to remove any sign that violates these sign conditions and to remove signs erected on the right-of-way, common grounds, or on private property.

(e) *Animals.* No animals, including, but not limited to, livestock, birds, fish or poultry of any kind, shall be raised, bred or kept within any Lot, except as approved by the Developer or the Community Association and subject to applicable City ordinances. Dogs, cats, and tropical birds approved by the Community Association Board may be kept on the Lots; provided, (a) such pets are not kept, bred or maintained for any commercial purposes, (b) such pets are primarily kept indoors and not allowed to sleep outdoors, and (c) for any Lot, the maximum number of dogs shall be two (2) and the maximum number of all animals shall be three (3). Each and every dog and cat must carry an identification tag which contains the address of the Owner of same.

Each and every Owner (or other person in care of any dog) shall at all times when walking such dog, carry appropriate feces collection and disposal equipment (pooper scooper). Each and every Owner of any pet shall immediately clean, remove and dispose all animal waste materials (such as dog defecation), and shall dispose of the same on such Owner's Lot. No Owner shall allow any pet to be or run at large unless such pet is securely restrained by a substantial leash not exceeding twenty (20) feet in length and is in the charge and control of a person competent to keep such pet under effective control. No pet which engages in excessive barking or other noise making which results in any annoyance to residents in the area may be kept in or upon any Lot. Each and every Owner of a pet shall be liable to each and all other Owners, their families, guests and invitees, and to the Community Association for any and all damage to person or property caused by any pet(s) brought upon or kept upon any Lot or the Common Areas and/or Common Properties by such Owner, members of such Owners family, guests or invitees. Each and every Owner shall comply with Community Association Rules governing the keeping of pets. Buried lines for shock collars are permitted; chaining of dogs is not permitted. Animal "runs," kennels or enclosures purely for the confinement of animals are not permitted.

(f) *No Noxious or Offensive Activities Permitted.* No noxious or offensive activity shall be carried on within the Properties, nor shall any trash, ashes, or other refuse be thrown, placed, or dumped upon any exposed area nor shall anything ever be done which may be or become an annoyance or nuisance to the owners of the Properties. Each Lot Owner shall refrain from making or permitting any disturbing noise by himself or herself, his or her family, employees, agents, visitors, licensees, lessees, and pets, and to refrain from permitting anything by such persons or pets that will interfere with the rights, comfort, or convenience of the other Lot Owners.

Barbecue and/or smoker grills shall not be considered noxious or offensive under this subparagraph.

(g) *Garbage.* No garbage or trash shall be kept, maintained, or contained in any Lot so as to be visible from another Lot, the Common Maintenance Areas, or public streets. No incinerator shall be kept or maintained on any Lot. No refuse pile, garbage, or unsightly objects shall be allowed to be placed, accumulated, or suffered to remain anywhere on a Lot. Trash shall be placed in such designated locations and containers as may be established from time to time by the Design Standards or by the Association.

(h) *Drainage.* Each Lot Owner shall refrain from interference with the established drainage pattern over his or her, or from adjoining or other, Lots, and shall make adequate provision for proper drainage from any such other Lot in the event the established drainage over his or her Lot is changed or altered.

(i) *Storage.* No exterior storage tank for fuel or anything else shall be allowed on any Lot.

(j) *Lights.* No spotlights, flood lights, or other lighting, shall be placed or utilized upon any Lot or Unit in a manner which unreasonably interferes with the enjoyment of adjoining Lots. All exterior lighting shall have a concealed energy source and a white color within the range of 2700° to 4500° K. Golden, yellow, blue, or reddish colors are not permitted. No exterior lighting shall be installed or maintained on any Lot or Unit if the Design Review Committee shall object thereto. Holiday lights shall not be lit before Thanksgiving or after New Year's Day. Holiday lights shall be taken down by February 15 of the following year, or as weather permits.

(k) *Fences.* No fences shall be constructed or maintained on any Lot without first obtaining approval from the Design Review Committee.

(l) *Power Tools.* No power tool shall be used outside of any dwelling between the hours of the later of 6:00 p.m. or sunset and 6:30 a.m., except in an emergency, and no tool shall be used which causes unreasonable noise or potential interference with cable TV.

(m) *Mining.* No portion of the Community shall be used in any manner to explore for or remove any water, oil or other hydrocarbons, or minerals of any kind, or earth substance of any kind.

(n) *Basketball Goals.* No basketball goals shall be attached to any building on a Lot. All basketball goals shall be free standing and when located on a Lot having a side entry garage shall be located behind the front building set back line shown on the applicable plat. When located on a Lot having a front entry garage, the goal may be within the front setback but back as far as practical. The location of all basketball goals on a Lot is subject to the approval of the Design Review Committee.

(o) *No Further Subdivision.* No Lot shall be divided and/or subdivided.

(p) *Outbuildings Prohibited.* No building or other detached structure may be erected on any Lot.

(q) *Garage Doors.* Each garage shall be equipped with an automatic garage door apparatus to open and close the garage door. Garage doors shall be kept closed except when opened for the removal or the parking or replacing of a vehicle or other item from the garage. A garage shall not be used as or converted to a residence/living space.

(r) *Rental of Lots.* No Owner of a Lot shall lease to another any such Lot or portion thereof unless such lease shall be in writing for an initial term of not less than six (6) months and shall expressly provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration and the Community Association Articles, Community Bylaws, and Community Rules, and that any failure by the lessee to comply with the terms of such documents shall be a default under such lease.

(s) *Solar Panels.* Solar panels shall not be erected on any Lot without the approval of the Design Review Committee. Solar panels may only be considered for approval if they are in no way visible from any street in the Community.

(t) *Lawn Ornamentation.* No lawn ornaments of any kind are permitted in yards visible from any street without the approval of the Design Review Committee.

(u) *Gardens.* Each Lot shall be permitted to have one (1) small garden in the back of the Lot provided the following requirements are met: (i) the area of the garden shall not exceed ten feet by ten feet (10' x 10'); (ii) the garden shall not be visible from any street; (iii) the garden shall be edged with hardscape material acceptable to the Design Review Committee; (iv) the garden must be regularly and frequently maintained; and (v) the garden shall be free of dead plant material from November 1 of each year through February 29 of the subsequent year.

(v) *Enforcement.* The Community Association and the Design Review Committee, or their authorized agents, may, but is not required to, enter any Lot on which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses, and such fines as may be imposed pursuant to this Declaration or the Community Association Rules shall be a Special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of this Declaration. The Community Association or other Owners of Lots are not limited to the remedy of correction and all remedies described in this Declaration and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Occupant or other Person of any provision of this Article.

ARTICLE IX
Rights of First Mortgagees

9.1 General Provisions. Notwithstanding and prevailing over any other provisions of this Declaration or Community Association Articles, Community Association Bylaws or Rules, the provisions of this Article shall apply to and benefit each holder of a First Mortgage upon a Lot.

9.2 Liability for Assessments. A First Mortgagee who comes into possession or becomes record Owner of a mortgaged Lot by virtue of foreclosure of its Mortgage, or through any equivalent proceedings, such as, but not limited to the taking of a deed or assignment in lieu of foreclosure on any third party purchaser at a foreclosure sale or trustee's sale, will not be liable for such Lot's unpaid dues, charges or Assessments under this Declaration which may accrue prior to the time such First Mortgagee or third party purchaser comes into possession of such Lot, or becomes record Owner of the Lot, whichever occurs first, and shall acquire title free and clear of any lien authorized by or arising out of the provisions of this Declaration which secures the payment of any such dues, charges or Assessments accrued prior to the earlier of the time such First Mortgagee or third party purchaser came into possession of such Lot or became record Owner of the Lot. Any such unpaid dues, charges or Assessments against the Lot foreclosed shall be deemed to be a Common Expense. Nevertheless, in the event the Owner against whom the original Assessment was made is the purchaser of or redeems the Lot, the lien shall continue in effect and may be enforced for the respective Lot's Assessment that was due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment shall continue to exist as the personal obligation of the defaulting Owner of the respective Lot to the Community Association, and the Community Association Board may use reasonable efforts to collect the same from said Owner even after the Owner is no longer a member of the Community Association or the Owner of the Lot.

9.3 Enforcement after Foreclosure Sale. An action to abate the breach of any of these covenants, conditions, restrictions, and reservations may be brought against the purchasers who have acquired title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an interest in such Lot.

9.4 Exercise of Owner's Rights. During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption), or from the time a trustee under a first deed of trust has been given notice of sale pursuant to power of sale conferred under a deed of trust and pursuant to law, the First Mortgagee, or a receiver appointed in any such action may but need not exercise any or all of the rights and privileges of the Owner in default including, but not limited to the right to vote as a Member of the Community Association in the place and stead of the defaulting Owner.

9.5 Subject to Declaration. At such time as the First Mortgagee shall come into possession of or become record Owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this declaration, including, but not limited to, the obligation to pay all Assessments and charges accruing thereafter, in the same manner as any other Owner.

ARTICLE X
Annexation of Additional Property

10.1 Development of the Project. Additional real property may be annexed to and become subject to this Declaration as hereinafter set forth in this Article at such time as the Developer or Community Association may elect.

10.2 Supplemental Declarations. A Supplemental Declaration shall be a writing in recordable form which annexes Annexation Property to this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements, and other provisions of this Declaration and shall contain such other provisions as are necessary to designate such property. Supplemental Declarations may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexation Property and as are not inconsistent with this Declaration. In no event, however, shall any such Supplemental Declaration revoke, modify or add to the covenants established by this Declaration with respect to the portion of the Community already subject to this Declaration, except that it may reduce an Owner's Proportionate Share.

10.3 Annexation without Approval of Community Association. If added at the election of the Developer, the Annexation Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Community Association without the approval, assent or vote of the Community Association provided that a Supplemental Declaration covering the Annexation Property shall be recorded by the Developer. The recordation of said Supplemental Declaration shall constitute and effectuate the annexation of the Annexation Property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdictions of the Community for all intents and purposes of this Declaration and all of the Owners of Lots in the Annexation Property shall automatically be Owners in accordance with the terms hereof.

ARTICLE XI
Exemption of the Developer from Restrictions

Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of the Developer, its employees, agents and subcontractors, or parties designed by it in connection with the construction, completion, sale or leasing of the Lots, or development of a residence on any individual Lot, construction, development, or improvement of Common Areas and/or Common Properties on any part of the Community. The Developer may provide funding to the Community Association at such levels as the Developer, in the Developer's sole discretion, may believe necessary and proper. No funding stream from the Developer in any given year shall be deemed to imply a similar funding stream in any subsequent year. The Developer is specifically exempt from the payment of any Assessment, Regular or Special, as to any Lot owned by the Developer within the subdivision until that Lot has been transferred from the Developer to the first Owner other than the Developer.

ARTICLE XII
Remedies

12.1 General Remedies. In the event of the default by any Owner, Occupant or other Person under the provisions of this Declaration, the Community Association, or the successors, assigns, or agents thereof or the Developer, shall have each and all of the rights and remedies which may be provided for in this Declaration, or which may be available at law or equity, and may prosecute any action or other proceedings against such defaulting Owner, Occupant, or other Persons for an injunction, whether affirmative or negative, or for enforcement or foreclosure of any lien herein provided and the appointment of a receiver for the Lot, or for damages, or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief, all without notice and without regard to the value of the Lot or the solvency of such Owner.

12.2 Expenses of Enforcement. All expenses of the Community Association or the Developer or other Person granted rights of enforcement hereunder, in connection with any action or proceeding described or permitted by this Article, including court costs and reasonable attorney's fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against such defaulting Owner, or other Person and shall be a Special Assessment against such Owner or other Person, and the Community Association or Developer shall have a lien as provided in this Declaration. In the event of any default by any Owner or other Person, the Community Association and the Developer, and any permitted manager or managing agent, if so authorized, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against such defaulting Owner or other Person as a Special Assessment, which shall constitute a lien against the defaulting Owner's Lot as provided herein. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Community Association or the Developer.

12.3 Legal Action. In addition to any other remedies available under this Article, but subject to the alternative dispute resolution provisions provided in Article III, Section 3.17, if any Owner (either by Owner's conduct or by the conduct of any Occupant of such Owner's Lot or family member, guest, invitee, or agent of such Owner) shall violate any of the provisions of this Declaration or any other document contemplated hereby, as then in effect, then the Community Association, the Developer, or any affected or aggrieved Owner, shall have the power to file an action against the defaulting Owner for a judgment, or injunction against the Owner or such other Person requiring the defaulting Owner or any other Person to comply with the provisions of this Declaration, or any other document contemplated hereby, and granting other appropriate relief, including money damages. Further, in the event judicial proceedings concerning the Community Association unrelated to enforcement of the Declaration, the Community Association Articles, Community Association Bylaws or Community Association Rules, the Community Association shall promptly provide notice to the Community Association Members of such proceedings.

12.4 Effect on Mortgage. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any other document contemplated hereby, shall not defeat or adversely affect the lien of any covenants, Mortgagee upon any Lot but, except as herein or therein specifically provided, each and all of said covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or Owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

12.5 Limitation of Remedies. Notwithstanding the provisions of this Article XII, the Community Association, by and through the Community Association Board or otherwise, shall not have the power to: (1) deny any Owner access to his or her Lot; (2) suspend any Owner's right to vote for Community Association purposes, except on financial issues; and (3) withhold services from any Owner that would endanger such Owner's health and/or safety.

ARTICLE XIII Amendment

13.1 Amendments to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets for the entire amendment. Subject to Section 13.3, any proposed amendment must be approved by a Majority of the Community Association Board Members prior to its adoption by the Community Association Members. Amendments may be adopted at a meeting of the Community Association Members upon the approval thereof of eighty percent (80%) of all the Community Association Members entitled to vote thereat, or without any meeting if all Community Association Members have been duly notified and if eighty percent (80%) of all the Community Association Members entitled to vote at such a meeting, if held, consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of the President of the Community Association and shall be attested by the secretary, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Community Association. Amendments once properly adopted, shall be effective upon recording of the Amendment to Declaration in the office of the Riley County Register of Deeds.

13.2 Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Declaration property adopted will be completely effective to amend any and all of the easements, covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration, unless otherwise specifically provided in the Section be amended or the amendment itself.

13.3 Required Approvals. Notwithstanding the provisions of the foregoing Sections of this Article, if this Declaration or any applicable provision of law requires the consent or agreement of additional parties, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all parties, as required by this Declaration or by said law.

13.4 Developer's Right to Amend. Until one hundred percent (100%) of all the Lots in the Community (as it exists from time to time) have been sold to third parties the Developer reserves the absolute right to amend this Declaration or Community Association Rules without the approval of the Community Association, Community Association Board, or any Owner or other Person; provided, however, that no such amendment shall have the effect of changing the Plat of an Owner's Lot without the consent of the Owner.

ARTICLE XIV General Provisions

14.1 Notice. Notices provided for in this Declaration, the Community Association Bylaws, or the Community Association Rules, shall be in writing and shall be addressed to the Community Association at the address specified in the Community Association Bylaws. The Community Association may designate a different address or addresses for notice by giving written notice of such change of address to all Community Association Members at such time. All notices to Community Association Members shall be to the last mailing address and/or electronic mail address (to the extent that a Community Association Member has an electronic mail address) of a Community Association Member designated by such Community Association Member and shown on the records of the Community Association. In the absence of such a designation by a Community Association Member, notice may be given by hand delivery, U.S. Mail or commercial delivery service, electronically, or any other method reasonably calculated to provide notice to such Community Association Member. Any Community Association Member may designate a different address or addresses for notice to it by giving written notice of its change of address to the Community Association. Notices addressed as set forth above shall be deemed delivered when mailed by United State registered or certified mail or when delivered in person with written acknowledgment thereof. In the interest of establishing a reasonable method of communication between the Community Association and the Community Association Members, or between Community Association Members, the Community Association shall provide the designated mailing address and/or electronic mail address of all Community Association Members to any Community Association Member who shall request such information.

14.2 Captions and Exhibits; Construction. Captions given to various Sections herein, and the Table of Contents for this Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The Exhibit referred to herein is incorporated is incorporated as though fully set forth where such reference is made. The provisions of this Declaration shall be construed to effectuate its purpose of creating a uniform plan for the development and operation of the Community as hereinabove set forth.

14.3 Severability. If any provision of this Declaration, the Community Association Articles or Community Association Bylaws, or Community Association Rules, or any Section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, the Community Association Articles or Community Association Bylaws, or Community Association Rules, and of the application of any such provision, Section, sentence, clause, phrase or work in any other circumstances shall not be affected thereby, and the remainder of this Declaration, the Community Association Articles or

Community Association Bylaws, or Community Association Rules shall be construed as if such invalid part were never included therein.

14.4 Term. This Declaration shall continue in full force and effect (subject, however, to the right to amend as herein provided) until January 1, 2095. Thereafter, unless one (1) year prior to January 2, 2095, there shall be Recorded an instrument directing the termination of this Declaration signed by at least two-thirds (2/3) of all Community Association Members then entitled to vote, this Declaration shall automatically continue without any further notice for an additional period of ten (10) years and thereafter for successive periods of ten (10) years each; provided however, that within one (1) year prior to the expiration of any such ten (10) year period, this Declaration may be terminated as set forth in this section.

14.5 Rule Against Perpetuities. If any of the options, easements, privileges, covenants, or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until twenty-one (21) years after the death of the survivor of any currently living person in Riley County, Kansas.

14.6 Mortgage of Lots. Each Owner shall have the right, subject to the provisions hereof, to separately Mortgage that Owner's Lot. No Owner shall have the right or authority to make, or create, or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Community of any part thereof, except only to the extent of that Owner's Lot.

14.7 Power of Attorney. Whenever the Community Association is granted rights, privileges, or duties in this Declaration, the President shall have the authority to act for the Community Association, unless such right and power is hereby expressly reserved to the Community Association Board. Further, unless otherwise specifically restricted by the provisions of this Declaration, wherever the Community Association is empowered to take any action or do any act, which may at any time be deemed to require the act of an Owner or Community Association Member, the Owners and Community Association Members, and each of them, hereby constitute and appoint the Community Association as their attorney in fact, as may be appropriate, for the purposes of taking such action or doing such acts including, but not limited to executing, acknowledging, and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming a Member of a Community Association, or by the acceptance of a deed for a Lot, or by signing a contract for purchase of a Lot, or by succeeding in any other manner to the ownership of a Lot, or any interest therein, each Owner and Community Association Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.

ARTICLE XV Rights and Obligations

Each grantee of the Developer or of any Owner, by the acceptance of a deed or conveyance, and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale, and each Person acquiring a membership in the Community Association, and the heirs, successors and assigns of the foregoing Person, accepts the same subject to all

restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the real property and equitable servitudes, and shall bind any person having at any time any interest or estate in said real property, and shall inure to the benefit of any such Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or instrument evidencing or creating such interest.

ARTICLE XVI

Party Walls

16.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of a Unit on each Unit and then placed on the dividing line between two (2) Lots, as well as each wall/screen/divider that separates and demarcates each patio of a Unit, shall constitute a party wall, and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

16.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of such wall.

16.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, other than by the willful or negligent act of an Owner of a Unit that is adjacent to a party wall, each of the Owners of the Units that are adjacent to each party wall shall bear an equal share of the expense to repair or rebuild the party wall. If an Owner of a Unit that is adjacent to a party wall or his guests, tenants, lessees, invitees or licensees shall willfully or negligently cause damage to or destruction of a party wall, such Owner shall bear the entire cost of repair or reconstruction thereof.

16.4 Weatherproofing. An Owner who by his negligent or willful act causes the party wall to be damaged or exposed to the elements (except for such party walls on a patio of a Unit) shall be assessed for the entire cost of furnishing the necessary repair or protection against such elements.

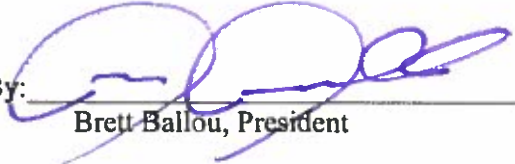
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Signature Page

Declaration of Easements, Covenants, Conditions and Restrictions for Prairie Village

IN WITNESS WHEREOF, the below-signed individual, on behalf of Schultz Construction, Inc., a Kansas corporation, has caused this Declaration of Easements, Covenants, Conditions and Restrictions for Prairie Village to be duly executed on the date set forth above.

SCHULTZ CONSTRUCTION, INC.,
a Kansas Corporation

By: 
Brett Ballou, President

DEVELOPER

STATE OF KANSAS, COUNTY OF RILEY, ss:

BE IT REMEMBERED, that on this 25 day of SEPTEMBER, 2019, before me the undersigned, a Notary Public in and for the County and State aforesaid, came Brett Ballou, President of Schultz Construction, Inc., a Kansas corporation, who is known to me to be the same person who executed the foregoing instrument and duly acknowledged the execution of the same.

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



My appointment expires


Notary Public

Exhibit "A"

Lots 75A through 81B, inclusive, Prairie Village at The Highlands, Unit One, an Addition to the City of Manhattan, Kansas. **RILEY COUNTY**