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STATE OF KANSAS }  
COUNTY OF JOHNSON } SS  
FILED FOR RECORD }  
FINAL

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SARA FULLMANH  
REGISTER OF DEEDS

**THE LINKS AT LIONSGATE  
AREA HOMES ASSOCIATION DECLARATION**

THIS DECLARATION is made as of the 27 day of July, 2000, by LionsGate Golf Developers, L.L.C., a Kansas limited liability company ("Developer").

WITNESSETH:

WHEREAS, Developer has executed and filed with the Register of Deeds of Johnson County, Kansas a plat of the subdivision known as "The Links at LionsGate", which plat includes the following described lots and tracts:

Lots 1 through 21, 25 through 52, 117 through 126, 128 through 145, and 215 through 237, and Tract A, THE LINKS AT LIONSGATE, a subdivision in the City of Overland Park, Johnson County, Kansas.

WHEREAS, such plat is the first plat in the overall area to be known generally as "The Links at LionsGate";

WHEREAS, Developer, as the present owner and developer of the Lots, desires to create and maintain a residential neighborhood and a homes association for the purpose of enhancing and protecting the value, desirability, attractiveness and maintenance of the property within the subdivision;

NOW, THEREFORE, in consideration of the premises contained herein, Developer, for itself and for its successors and assigns, and for its future grantees, hereby subjects all of the above-described lots to the covenants, charges, assessments and easements hereinafter set forth.

**ARTICLE I. DEFINITIONS**

For purposes of this Declaration, the following definitions shall apply:

(a) "Lot" means any lot as shown as a separate lot on any recorded plat of all or part of the District; provided, however, that if an Owner, other than the Developer, owns adjacent lots (or parts thereof) upon which only one residence has been, is being, or will be erected, then (i) for purposes of determining the amount of annual and special assessments due with respect thereto from time to time, such adjacent property under common ownership shall constitute such whole or partial number of Lots as may be specified in writing by the Developer, and (ii) for all other purposes hereunder, such adjacent property under common ownership shall be deemed to constitute only one "Lot."

(b) "District" means collectively all of the above-described lots in The Links at LionsGate, all Common Areas, and all additional property which hereafter may be made subject to this Declaration in the manner provided herein.

(c) "Developer" means LionsGate Golf Developers, L.L.C., a Kansas limited liability company, and its successors and assigns.

(d) "Owner" means the record owner(s) of title to any Lot, including the Developer.

(e) "Common Areas" means (i) any entrances, monuments, berms, street islands, and other similar ornamental areas and related utilities, lights, sprinkler systems, trees and landscaping constructed or installed by or for the Developer or the Homes Association at or near the entrance of any street or along any street, and any easements related thereto, in the District (ii) all platted and other landscape easements that may be granted to the Developer and/or the Homes Association, for the use, benefit and enjoyment of all Owners within the District, whether or not within the District, (iii) the Right of Way Amenities, (iv) the Green Areas, and (v) all other similar areas and places, together with all improvements thereon and thereto, the use, benefit or enjoyment of which is intended for all of the Owners within the District, whether or not any "Common Area" is located on any Lot.

(f) "Green Areas" means Tract A above and any other green areas that may be platted in the District as a tract and not as a residential lot.

(g) "Right of Way Amenities" has the meaning set forth in Article XVI below.

(h) "Homes Association" means the Kansas not-for-profit corporation to be formed by or for the Developer for the purpose of serving as the homes association for the District.

(i) "Board" means the Board of Directors of the Homes Association.

(j) "Certificate of Substantial Completion" means a certificate executed, acknowledged and recorded by the Developer stating that all or, at the Developer's discretion, substantially all of the Lots in the District (as then composed or contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are substantially completed; provided, however, that the Developer may execute and record a Certificate of Substantial Completion or similar instrument in lieu thereof in the Developer's absolute discretion at any time and for any limited purpose hereunder. The execution or recording of a Certificate of Substantial Completion shall not, by itself, constitute an assignment of any of the Developer's rights to the Homes Association or any other person or entity.

(k) "Turnover Date" means the earlier of: (i) the date as of which 90% of all of the Lots in the District (as then composed or contemplated by the Developer) have been

sold by the Developer and the residences have been constructed thereon, or (ii) the date Developer, in its absolute discretion, selects as the Turnover Date for all or any specific portion of this Declaration.

(l) "City" means the City of Overland Park, Kansas.

(m) "Club" has the meaning set forth in Article XV below.

(n) "Consumer Price Index" means the "Annual Average, All Items" for Kansas City SMSU of the Consumer Price Index for All Urban Consumers, CPI-U (1982-84=100), as published by the United States Department of Labor, Bureau of Labor Statistics for the applicable period.

(o) "Social Membership Dues" has the meaning set forth in Article XV below.

(p) "Recording Office" means the office of the Register of Deeds of Johnson County, Kansas.

## ARTICLE II. HOMES ASSOCIATION MEMBERSHIP

Until the Turnover Date, the Homes Association shall have two classes of membership, namely Class A and Class B. The Developer shall be the sole Class A member. Each Owner of a Lot, including the Developer as an Owner, shall be a Class B member. Until the Turnover Date, all voting rights shall be held by the Class A member, except that the Class B members shall have the sole right to vote on increases in annual assessments as provided in clause (c) of Section 2 of Article IV below.

After the Turnover Date, there shall be only one class of membership which shall consist of the Owners of the Lots in the District and every such Owner shall be a member.

Where voting rights exist based on Lot ownership, each member shall have one vote for each Lot for which he is the Owner; provided, however, that when more than one person is an Owner of any particular Lot, all such persons shall be members and the one vote for such Lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one vote be cast with respect to such Lot. During any period in which a member is in default in the payment of any assessment levied by the Homes Association under this Declaration, the voting rights of such member shall be suspended until such assessment has been paid in full.

Subject to the foregoing, the Homes Association shall be the sole judge of the qualifications of each Owner to vote and their rights to participate in its meetings and proceedings.

After the Turnover Date, the Board of the Homes Association shall be divided into a number of classes equal to the number of subdivisions in the District, with each separate subdivision in the District being entitled to elect from the members of the Homes Association residing in such subdivision the member(s) of the Board of the class of directors assigned to such subdivision. The size of the Board shall be at least seven (7) in number with the relative number of

positions in each class for each subdivision being as proportional as possible to the relative number of Lots in each subdivision.

### ARTICLE III. POWERS AND DUTIES OF THE HOMES ASSOCIATION

1. In addition to the powers granted by other portions of this Declaration or by law but subject to all of the limitations set forth in this Declaration, the Homes Association shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by the Board to carry out and effectuate the purposes of this Declaration, including, without limitation:

(a) To enforce, in the Homes Association's name, any and all building, use or other restrictions, obligations, agreements, reservations or assessments which have been or hereafter may be imposed upon any of the Lots or other part of the District; provided, however, that this right of enforcement shall not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the Homes Association or other parties having the right to make such waivers, changes, releases or modifications under the terms of the deeds, declarations or plats in which such restrictions, obligations, agreements and reservations are set forth. The expense and cost of any such enforcement proceedings by the Homes Association shall be paid out of the general funds of the Homes Association, except as herein provided. Nothing herein contained shall be deemed or construed to prevent the Developer or any Owner from enforcing any building, use or other restrictions in its or his own name.

(b) To acquire and own title to or interests in, to exercise control over, and to improve and maintain the Common Areas, subject to the rights of any governmental authority, utility or any other similar person or entity therein or thereto.

(c) To maintain public liability, worker's compensation, fidelity, fire and extended coverage, director and officer liability, indemnification and other insurance with respect to the activities of the Homes Association, the Common Areas and the property within the District.

(d) To levy the assessments and related charges which are provided for in this Declaration and to take all steps necessary or appropriate to collect such assessments and related charges.

(e) To enter into and perform agreements from time to time with the Developer and other parties regarding the performance of services and matters benefiting both the Developer or other parties and the Homes Association and its members, and the sharing of the expenses associated therewith.

(f) To enter into and perform agreements with the Developer, other developers, other homes associations and other parties relating to the joint use, operation

and maintenance of any recreational facilities and other similar common areas, whether in or outside the District, and the sharing of expenses related thereto.

(g) To have employees and otherwise engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the Homes Association, including, without limitation, keeping of books and records, operation and maintenance of Common Areas, and planning and coordination of activities.

(h) To engage the services of a security guard or security patrol service.

(i) To provide for the collection and disposal of rubbish and garbage; to pick up and remove loose material, trash and rubbish of all kinds in the District; and to do any other things necessary or desirable in the judgment of the Board to keep any property in the District neat in appearance and in good order.

(j) To exercise any architectural, aesthetic or other control and authority given and assigned to the Homes Association in this Declaration or in any other deed, declaration or plat relating to all or any part of the District.

(k) To make, amend and revoke reasonable rules, regulations, restrictions and guidelines (including, without limitation, regarding the use of Common Areas) and to provide means to enforce such rules, regulations and guidelines.

(l) To exercise such other powers as may be set forth in the Articles of Incorporation or Bylaws of the Homes Association.

2. In addition to the duties required by other portions of this Declaration and by law, the Homes Association shall have the following duties and obligations with respect to providing services to all Owners within the District:

(a) To the extent not provided as a service by any governmental authority, the Homes Association shall provide for the collection and disposal of rubbish and garbage for each residence one day per week (which day, if possible, shall be the same for all residences).

(b) The Homes Association shall at all times, from and after its date of formation and at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all Common Areas (except any part thereof that is within any Lot and has not been landscaped or otherwise improved by or for the Developer or the Homes Association), subject to any control thereover maintained by any governmental authority, utility or other similar person or entity.

(c) The Homes Association shall properly maintain any Right of Way Amenities and otherwise satisfy its and the Owners' obligations with respect thereto, as contemplated in Article XVI.

#### ARTICLE IV. ANNUAL ASSESSMENTS

1. For the purpose of providing a general fund to enable the Homes Association to exercise the powers, render the services and perform the duties provided for herein, all Lots in the District, other than Lots then owned by the Developer, shall be subject to an annual assessment to be paid to the Homes Association by the respective Owners thereof as provided in this Article IV. The amount of such annual assessment per Lot shall be fixed periodically by the Board, subject to Section 2 below, and, until further action of the Board, shall be \$300.00 per year (commencing in 2000).

2. The rate of annual assessment upon each Lot in the District may be increased:

(a) By the Board from time to time, without a vote of the members, by up to 10% over the rate of annual assessment in effect for the preceding year for each of 2001 through 2005;

(b) After 2005, by the Board from time to time, without a vote of the members, by up to 5% over the rate of annual assessment in effect for the preceding year; or

(c) At any time by any amount by a vote of the members (being for this limited purpose solely the Class B members prior to the Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when a majority of the members present at such meeting and entitled to vote thereon authorize such increase by an affirmative vote for the proposed increase.

Notwithstanding the foregoing limits on annual assessments, the Board, without a vote of the members, shall always have the power to set, and shall set, the rate of annual assessment at an amount that will permit the Homes Association to perform its duties as specified in Section 2 of Article III above.

3. The annual assessments provided for herein shall be based upon the calendar year (commencing in 2000) and shall be due and payable on January 1st of each year; provided, however, that the first assessment for each Lot shall be due and payable only upon a transfer of title to a third party (including a home builder) and shall be prorated as of the date thereof. If the effective date of any increase in the rate of assessment is other than January 1st, a proper portion (as determined by the Board) of the amount of such increase for the remainder of such year shall be due and payable on such effective date. No Lot shall be entitled to receive any services to be provided by and through the Homes Association until such time as the first annual assessment has been paid with respect thereto.

4. Notwithstanding sections 1, 2 and 3 above, from the transfer of title to a Lot from Developer to a third party (including a home builder) until the occupancy of the residence on the Lot, the assessment for such Lot shall be flat \$200.00. No trash services shall be provided by the Homes Association to such Lot during any such period.

5. Upon the initial occupancy of the residence on each Lot, the Owner of the Lot shall pay to the Homes Association a one-time initiation fee equal to the full amount of annual assessment that is then in effect, which initiation fee shall be for the general funds of the Association. The initiation fee shall be in addition to the first regular annual assessment (as it may be prorated).

#### ARTICLE V. SPECIAL ASSESSMENTS

1. In addition to the annual assessments provided for herein, the Board (a) shall have the authority to levy from time to time a special assessment against any Lot and its Owner to the extent the Homes Association expends any money (for services, materials, and legal fees and expenses) to correct or eliminate any breach by such Owner of any agreement, obligation, reservation or restriction contained in any deed, declaration or plat covering such Lot (including, without limitation, to maintain or repair any Lot or improvement thereon) and (b) shall levy from time to time special assessments against each and every Lot (other than any Lot then owned by the Developer) in an equal amount that is sufficient, when aggregated, to enable the Homes Association to perform its duties as specified in Section 2 of Article III above that require any expenditure during any period in an amount in excess of the general and reserve funds of the Homes Association available therefor.

2. In the event an Owner fails to properly maintain, repair, repaint, and replace any improvements on the Owner's Lot, the Homes Association, acting through the Board and after giving adequate notice to the Owner of the need for the maintenance, repair, repainting, or replacement, may enter onto the Lot to perform such maintenance, repair, repainting, or replacement. The Homes Association's costs thereof, plus a reasonable overhead and supervisory fee, shall be payable by the Owner of the Lot and shall be a special assessment against and lien upon the Lot until paid by the Owner.

3. If any Owner commences a lawsuit or files a counterclaim against the Homes Association, the Board of Directors, or any committee, or any individual director, officer or committee member of the Homes Association, and such Owner fails to prevail in such lawsuit or counterclaim, the Homes Association, Board of Directors, or individual director, officer or committee member sued by such Owner shall be entitled to recover from such Owner all litigation expenses incurred in defending such lawsuit or counterclaim, including reasonable attorneys' fees. Such recovery right shall constitute a special assessment against the Owner's Lot and shall be enforceable against such Lot as provided herein.

4. Each special assessment shall be due and payable upon the Homes Association giving notice of the assessment to the Owner of the Lot.

#### ARTICLE VI. DELINQUENT ASSESSMENTS

1. Each assessment shall be a charge against the Owner and shall become automatically a lien in favor of the Homes Association on the Lot against which it is levied as soon

as the assessment becomes due. Should any Owner fail to pay any assessment in full within 30 days after the due date thereof, then such assessment shall be delinquent, the Owner shall be charged a late fee of 5% of the unpaid amount and the unpaid amount shall bear interest at the rate of 10% per annum from the delinquency date until paid, which late fee and interest shall become part of the delinquent assessment and the lien on the Lot. Should the Homes Association engage the services of an attorney to collect any assessment hereunder, all costs of collecting such assessment, including court costs and reasonable attorneys' fees, shall, to the extent permitted by applicable law, be added to the amount of the assessment being collected and the lien on the Lot. Each assessment, together with late fees, interest thereon and collection costs, shall also be the personal obligation of the Owner of the Lot at the time when the assessment became due.

2. All liens on any Lot for assessments provided for herein shall be inferior and subordinate to the lien of any valid purchase money first mortgage now existing or which may hereafter be placed upon such Lot, as provided below. A foreclosure sale or deed in lieu of foreclosure thereunder shall automatically extinguish the lien hereunder for such assessments to the extent applicable to periods prior to the entry of the order allowing such foreclosure or the execution of a deed in lieu thereof but shall not release such Lot from liability for any assessment applicable to periods thereafter. If the Owner subsequently redeems the Lot from the foreclosure sale, the lien hereunder shall automatically be reinstated retroactively in full.

3. Payment of a delinquent assessment may be enforced by judicial proceedings against the Owner personally and/or against the Lot, including through lien foreclosure proceedings in any court having jurisdiction of suits for the enforcement of such liens. The Homes Association may file certificates of nonpayment of assessments in the Recording Office, and/or the office of the Clerk of the District Court for Johnson County, Kansas, whenever any assessment is delinquent, in order to give public notice of the delinquency. For each certificate so filed, the Homes Association shall be entitled to collect from the Owner of the Lot described therein a fee of \$150.00, which fee shall be added to the amount of the delinquent assessment and the lien on the Lot.

4. Such liens shall continue for a period of five years from the date of delinquency and no longer, unless within such period suit shall have been instituted for collection of the assessment, in which case the lien shall continue until payment in full or termination of the suit and sale of the property under the execution of judgment establishing the same.

5. The Homes Association may cease to provide any or all of the services (including, without limitation, trash services) to be provided by or through the Homes Association with respect to any Lot during any period that the Lot is delinquent on the payment of an assessment due under this Declaration, and no such cessation of services shall result in a reduction of any amount due from the Owner before, during or after such cessation. No Owner may waive or otherwise avoid liability for any assessment by not using any Common Areas or declining any services provided through the Homes Association.

6. No claim of the Homes Association for assessments and charges shall be subject to setoffs or counterclaims made by any Owner.



## ARTICLE VII. LIMITATION ON EXPENDITURES

Except for matters contemplated in Section 2 of Article III above, the Homes Association shall at no time expend more money within any one year than the total amount of the assessments for that particular year, plus any surplus and available reserves which it may have on hand from prior years. The Homes Association shall not have the power to enter into any contract which binds the Homes Association to pay for any obligation out of the assessments for any future year, except for (i) contracts for utilities, maintenance or similar services or matters to be performed for or received by the Homes Association or its members in subsequent years, and (ii) matters contemplated in Section 2 of Article III above.

## ARTICLE VIII. NOTICES

1. The Homes Association shall designate from time to time the place where payment of assessments shall be made and other business in connection with the Homes Association may be transacted.

2. All notices required or permitted under this Declaration shall be deemed given if deposited in the United States Mail, postage prepaid, and addressed to the person or last known person entitled to such notice at the address of the Lot. Notice to one co-Owner shall constitute notice to all co-Owners.

## ARTICLE IX. EXTENSION OF DISTRICT

The Developer shall have, and expressly reserves, the right (but not the obligation), from time to time, to add to the existing District and to the operation of the provisions of this Declaration other adjacent or nearby lands (without reference to any street, park or right of way) (regardless of whether the additional property is part of the property platted as The Links at LionsGate or is known by a name other than The Links at LionsGate) by executing, acknowledging and recording in the Recording Office a written instrument subjecting such additional property to all of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof; provided, however, that such declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable, as solely determined by the Developer in its absolute discretion.

## ARTICLE X. AMENDMENT AND TERMINATION

1. This Declaration may be terminated, amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by (a) the Owners of at least two-thirds (2/3) of the Lots within the District as then constituted and (b) if prior to the recording of the Certificate of Substantial Completion, the Developer; provided, however, (i) the written consent of the City shall be required for the termination of this Declaration in its entirety or to any amendment, modification or termination of

any provision of this Declaration regarding the Right of Way Amenities and (ii) the written consent of the record owner of the Club shall be required for the termination of this Declaration in its entirety or to any amendment, modification or termination of any provision of this Declaration regarding the Club. If such consent of the City is requested, it shall be made in writing to the City clerk. The City shall have 60 days, after receipt of the request, to rule on the request.

2. Anything set forth in Section 1 of this Article to the contrary notwithstanding, except the provision relating to the requirement of the City's and the Club's consent, the Developer shall have the absolute, unilateral right, power and authority to modify, revise, amend or change any of the terms and provisions of this Declaration, as from time to time amended or supplemented, by executing, acknowledging and recording in the Recording Office a written instrument for such purpose, if (i) either the Veteran's Administration or the Federal Housing Administration or any successor agencies thereto shall require such action as a condition precedent to the approval by such agency of the District or any part of the District or any Lot in the District, for federally-approved mortgage financing purposes under applicable Veterans Administration, Federal Housing Administration or similar programs, laws and regulations, (ii) the City requires such action as a condition to approval by the City of some matter relating to the development of the District, (iii) a typographical or factual error or omission needs to be corrected in the opinion of the Developer, or (iv) until the Turnover Date, the Developer desires to amend this Declaration for any other reason or in any other manner. No such amendment by the Developer shall require the consent of any Owner.

3. If the rule against perpetuities is applicable to any right, restriction or other provision of this Declaration, such right, restriction or other provision shall terminate (if not earlier terminated) upon lapse of 20 years after the death of the last survivor of the now-living children and grandchildren of the individuals signing this Declaration on behalf of the Developer as of the date of such execution.

#### ARTICLE XI. ASSIGNMENT

1. The Developer shall have the right and authority, by written agreement made expressly for that purpose, to assign, convey, transfer and set over to any person(s) or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Developer, and upon such assignment the assignee shall then for any or all such purposes be the Developer hereunder with respect to the rights, benefits, powers, reservations, privileges, duties and responsibilities so assigned. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

2. The Homes Association shall have no right, without the written consent of the Developer, to assign, convey, or transfer all or any part of its rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

## ARTICLE XII. COVENANTS RUNNING WITH THE LAND

1. All provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon all subsequent grantees of all parts of the District. By accepting a deed to any of the Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the provisions of this Declaration as applied to the Lot owned by such Owner. The provisions of this Declaration shall not benefit or be enforceable by any creditor of the Homes Association (other than the Developer) in such capacity as a creditor.

2. No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of or default under this Declaration shall impair any of such rights or remedies; nor shall any such delay or failure be construed as a waiver of that or any other violation or default.

3. No waiver of any violation or default shall be effective unless in writing and signed and delivered by the person or entity entitled to give such waiver, and no such waiver shall extend to or affect any other violation or situation, whether or not similar to the waived violation. No waiver by one person or entity shall affect any rights or remedies that any other person or entity may have.

## ARTICLE XIII. SEVERABILITY

Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgment or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions or parts.

## ARTICLE XIV. COMMON AREAS

Developer covenants and agrees to convey, by special warranty deed, all of its rights, title and interest in the Common Areas (except any part thereof that is within any Lot or outside of the District) to the Homes Association, without any cost to the Homes Association, at such time(s) as the Developer, in its absolute discretion, may determine, but in all events not later than one month after the Developer has recorded the Certificate of Substantial Completion. Any transfer of title by the Developer shall not constitute an assignment by the Developer of any of its rights, as the developer of the District, pursuant to this Declaration or any other instrument, contract or declaration. In insuring the Common Areas, the Homes Association shall cause the Developer to be named as an additional insured on the insurance coverage until the recording of the Certificate of Substantial Completion.

## ARTICLE XV. CLUB MEMBERSHIP

1. Each Owner of a Lot (beginning with the initial occupancy thereof) shall be required to execute and deliver a membership agreement to become a "Social Member" at the golf club facility (the "Club") to be located adjacent to the District. The Club is not being developed by and

will not be owned or operated by the Developer or any party affiliated with or related to the Developer.

2. Pursuant to such membership agreement (which shall be the Club's then standard form), the Owner will be required from the date of the opening of the Club's swimming pool to pay annual dues to the Club in the amount of Five Hundred Dollars (\$500.00) (as adjusted annually by the Club to reflect changes from December 31, 1998 in the Consumer Price Index) ("Social Membership Dues"). Such Social Membership Dues shall be prorated (as determined by the Club) for the first year if the pool is not opened by Memorial Day weekend and for the initial year of occupancy of the Lot. The Social Membership Dues shall be due and payable for the first year upon opening of the pool and thereafter on January 1st of each year. The Social Membership Dues shall be remitted by the Owner directly to the Club pursuant to the membership agreement between the Club and the Owner. There shall be no initiation or similar one time fee or any special assessments levied by the Club against any Owner as a Social Member. In the event that an Owner is also a "golf member" of the Club, the annual Social Membership Dues shall be applied to and credited against that member's Club dues as a golf member and such Owner shall be subject to all other initiation fees or similar one time fees and special assessments levied by the Club against golf members. As a Social Member, each Owner will be allowed to utilize the Club's swimming pool, dining facilities and other facilities as set forth in the Club's bylaws and the membership agreement.

3. The annual Social Membership Dues shall be a charge against the Owner and shall become automatically a lien in favor of the Club on the Owner's Lot as soon as the Social Membership Dues become due. Should any Owner fail to pay the Social Membership Dues within 30 days after the due date thereof, then thereafter such Social Membership Dues shall be delinquent and bear interest at the rate of 10% per annum from the delinquency date until paid, which interest shall become part of the delinquent Social Membership Dues and the lien on the Lot.

4. All liens on any Lot for Social Membership Dues provided for herein shall be inferior and subordinate to the lien of any valid purchase money first mortgage now existing or which may hereafter be placed upon such Lot, as provided below. A foreclosure sale or deed in lieu of foreclosure thereunder shall automatically extinguish the lien hereunder for such Social Membership Dues to the extent applicable to periods prior to the entry of the order allowing such foreclosure or the execution of a deed in lieu thereof but shall not release such Lot from liability for any Social Membership Dues applicable to periods thereafter. If the Owner subsequently redeems the Lot from the foreclosure sale, the lien hereunder shall automatically be reinstated retroactively in full.

5. Payment of delinquent Social Membership Dues may be enforced by the Club by judicial proceedings against the Owner personally and/or against the Lot, including through lien foreclosure proceedings in any court having jurisdiction of suits for the enforcement of such liens. The Club may file certificates of nonpayment of Social Membership Dues in the Recording Office, and/or the office of the Clerk of the District Court for Johnson County, Kansas, whenever any Social Membership Dues are delinquent, in order to give public notice of the delinquency. For each certificate so filed, the Club shall be entitled to collect from the Owner of the Lot described therein

a fee of \$150.00, which fee shall be added to the amount of the delinquent Social Membership Dues and the lien on the Lot.

6. Such liens shall continue for a period of five years from the date of delinquency and no longer, unless within such period suit shall have been instituted for collection of the Social Membership Dues, in which case the lien shall continue until payment in full or termination of the suit and sale of the property under the execution of judgment establishing the same.

7. No Owner may waive or otherwise avoid liability for Social Membership Dues by not using the Club or declining any services provided through the Club or by refusing to execute and deliver or by revoking the membership agreement.

8. The Homes Association shall have no authority, rights, responsibilities or duties with respect to the Club and the Owners' relationship as members thereof. The Club facilities shall not constitute Common Areas of the District.

#### ARTICLE XVI. RIGHT OF WAY AMENITIES

1. Pursuant to the terms and conditions of a Right of Way Maintenance Agreement between the Developer and the City, the City may allow the Developer to construct certain Common Area improvements within certain of the public right-of-way associated with streets in the District (the "Right of Way Amenities"). The following provisions of this Article are required to be in this Declaration pursuant to such Right of Way Maintenance Agreement.

2. The Right of Way Amenities, although located within City right-of-way, are the sole responsibility of the Owners, which Owners shall maintain the Homes Association to be used as the vehicle by which to fulfill the obligations of the Homes Association under this Article. Such delegation shall not, however, relieve the Owners of their responsibilities under this Article.

3. The City is hereby released from any and all past, present or future liability for any damage that may be caused at any time to any person or to any real or personal property resulting from or related to, directly or indirectly, the City allowing the Right of Way Amenities to be located in its right-of-way, or otherwise acting or failing to act with respect to the maintenance of the Right of Way Amenities. The City further is hereby released from any and all past, present or future obligations to expend any public funds or to take any other action to maintain or improve the Right of Way Amenities.

4. The Homes Association, or upon its failure, the Owners, will indemnify and hold harmless the City, its Mayor, the members of the City Council and the employees and agents of the City from and against any and all losses, damages, costs and expenses, including reasonable attorneys fees, that may be incurred or suffered by any of them as a result of or in connection with any claims that may be asserted against any of them in connection with the Right of Way Amenities. The Homes Association, or upon its failure, the Owners, will further be required to promptly reimburse the City for any public funds the City may expend with respect to

maintenance of the Right of Way Amenities in the event the Homes Association fails to maintain the same, although the City is under absolutely no obligation to so maintain.

5. The Developer, the Homes Association and the Owners understand and agree, if the City or the City's designee does damage to the Right of Way Amenities, repair or replacement of the same shall not be the responsibility of the City or the City's designee.

6. The Developer, the Homes Association and the Owners understand and agree, should the City determine that the Right of Way Amenities are endangering the public health, safety or welfare or have become unsightly or a nuisance, or interfere in any way with the City's use of the right-of-way, that upon request of the City, the Homes Association will remove or cause to be removed any or all Right of Way Amenities from the City's right-of-way. Should the Homes Association fail to comply with the City's removal request, the City may remove the same and the Homes Association, or upon its failure, the Owners, shall be obligated to reimburse the City for the removal.

7. The Homes Association, or upon its failure, the Owners shall maintain adequate liability insurance to cover all reasonably insurable risks associated with the maintenance of the Right of Way Amenities and the covenants contained in this Article.

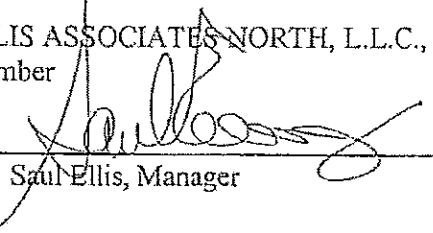
8. The Developer and the City shall be third-party beneficiaries of all provisions of this Declaration relating to the Right of Way Amenities, and the Developer and the City shall have the right to enforce all restrictions, obligations and other provisions regarding the Right of Way Amenities.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed the day and year first above written.

THE DEVELOPER:

LIONSGATE GOLF DEVELOPERS, L.L.C.

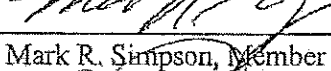
By: ELLIS ASSOCIATES NORTH, L.L.C.,  
Member


By:   
Saul Ellis, Manager

By: GREAT PLAINS INVESTMENT CO.,  
L.L.C., Member

By: SAILORS BUILDING  
COMPANY, L.L.C., Member

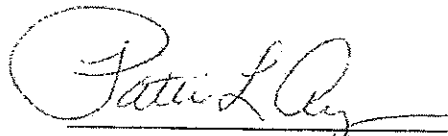
By:   
Bobby F. Sailors, Member

By:   
Mark R. Simpson, Member

By:   
Leo E. Ashner, Trustee of Leo E. Ashner  
Restated Trust dated November 16,  
1994, as amended, Member

STATE OF KANSAS       )  
                                  ) ss.  
COUNTY OF JOHNSON    )

This instrument was acknowledged before me on July 27<sup>th</sup>, 2000 by Saul Ellis, as manager and on behalf of Ellis Associates North, L.L.C., a Kansas limited liability company; Mark R. Simpson; Leo E. Ashner, Trustee of Leo E. Ashner Restated Trust dated November 16, 1994, as amended; and Bobby F. Sailors, as a member in and on behalf of Sailors Building Company, L.L.C., a Kansas limited liability company, as a member in and on behalf of Great Plains Investment Co., L.L.C., a Kansas limited liability company; in each person's or entity's capacity as a member in and on behalf of LionsGate Golf Developers, L.L.C., a Kansas limited liability company.



Notary Public in and for Said County and State

Print Name: Patti L. Ayers

My Commission Expires:

