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AMENDMENT AND RESTATEMENT OF HOMES ASSOCIATION DECLARATION

THIS AMENDMENT AND RESTATEMENT, made as of the ____ day of _____, 2000, by Whispering Hills Homes Association,

a Kansas nonprofit corporation.

WITNESSETH:

WHEREAS, on June 10, 1971, Rich Eckel Construction Co., Inc. caused to be recorded a Homes Association Declaration, recorded as Document No. 880860 in Book 220 at Page 87 of the Register of Deeds of Johnson County, Kansas;

WHEREAS, the 1971 Homes Association Declaration has been amended and extended from time to time by the following documents:

Homes Association Declaration recorded May 31, 1973 as Document No. 953072 in Book 909 at Page 673;

Amendment to Homes Association Declaration recorded November 3, 1981 as Document No. 1345961 in Book 1719 at Page 839;

Amendment to Homes Association Declaration recorded August 6, 1986 as Document No. 1628873 in Book 2398 at Page 381;

Amendment to Homes Association Declaration, Whispering Hills, and Agreement regarding Whispering Hills Estates, recorded August 6, 1986 as Document No. 1628874 in Book 2398 at Page 404;

Amendment to Whispering Hills Homes Association Declaration and Agreement regarding Tract 1 and Tract 10, Whispering Hills Section III, recorded on July 31, 1991 as Document No. 2044929 in Book 3400 at Page 58;

Amendment to Whispering Hills Homes Association Declaration and Agreement regarding Whispering Hills, Section 5, recorded July 31, 1991 as Document No. 2044930 in Book 3400 at Page 65; and

Amendment to Homes Association Declaration recorded March 12, 1998 as Document No. 2802220 in Book 5496 at Page 941.

WHEREAS, the Association, as hereinafter defined, and its Members, as hereinafter defined, desire to amend, consolidate and update the homes association declarations applicable to its District, as hereafter defined, for ease of application.

NOW, THEREFORE, in order to assist it and its grantees in providing the means necessary to bring this about, the Association and its Members do now and hereby subject all land in the District, as hereafter defined, to the covenants, charges and assessments set forth and contained in this Declaration.

DEFINITIONS OF TERMS USED.

The term "Association", as used in this Declaration, shall mean the Whispering Hills Homes Association, a Kansas nonprofit corporation, or its successors.

The term "Board", as used in this Declaration, shall mean the Board of Directors of the Association.

The term "Common Area", as used herein, means each Street, each park and any similar areas, as may be described from time to time in the Restrictions.

The term "District", as used in this Declaration, shall mean all property now or hereafter subjected to this Declaration, and includes, without limitation, the following:

Lots 1-41 and Tracts 1-7 platted in Plat of Whispering Hills, Section I;

Lots 24-29, 31-40, 43, 45, 47, 34A-40A, 42A, 44A, 46A, 15C, 17C, 19C, 21C-33C, 10D-21D, and Tracts 8-19 platted in Plat of Whispering Hills, Section 2;

Lots 99-138 and 140-159 and Tracts 1-11 platted in Plat of Whispering Hills, Section III, but except that part of the forgoing described parcel which were conveyed to the City of Lenexa for Woodland Road right-of-way, more particularly described as follows:

Commencing at the Southwest Corner of the Southeast Quarter of Section 26; thence North 88E 04' 12" East, along the South line of said Quarter Section, a distance of 1204.05 feet; thence North 01E 55' 48" West, a distance of 1006.94 feet to the existing Westerly right of way of Woodland Road and the TRUE POINT OF BEGINNING; thence South 81E 38' 34" East, a distance of 65.61 feet to a point; thence South 01E 43' 34" East a distance of 60.94 feet to a point; thence North 81E 38' 34" West, a distance of 15.23 feet to a point on the existing Westerly right of way of Woodland Road; thence along the said Westerly right of way of Woodland Road and a curve to the right having an initial Tangent Bearing of North 40E 42' 43" West, a radius of 686.62 feet and an arc length of 85.65 feet to the TRUE POINT OF BEGINNING;

Tracts 1-7 and Tract A platted in Plat of Whispering Hills, Section 5;

Lots 1-4, 17-19, 40-63 and Tracts A and B platted in Plat of Whispering Hills Estates;

Lots 20, 21 and 32-39 and Tract A platted in Whispering Hills Estates, Second Plat;

Lots 5-16 and Tract A platted in Plat of Whispering Hills Estates, Third Plat;

Lots 26 and 27 platted in Plat of Whispering Hills Estates, Fourth Plat, and Lots 22, 23, 24, 25, 28 and Tract A platted in Whispering Hills Estates, Fifth Plat;

The following described property:

The Northwest Quarter of Section 35, Township 12, Range 23, Johnson County, Kansas, except part platted as Section III, Whispering Hills, and except Beginning at a point 1,157.65 feet West of and 747.25 feet South of the Northeast corner of the Northwest Quarter of Section 35, thence North 37E 35' 49" West a distance of 190.0 feet thence

South 23E 20' 54" West a distance of 102.96 feet thence South 17E 45' 35" West a distance of 122.36 feet, thence South 82E 53' 39" East a distance of 150.0 feet, thence in a Northeasterly direction along a curve to the right having a radius of 118.26 feet, a distance of 93.49 feet to the point of beginning, except part in roads. (Portions of the foregoing property have been platted as Whispering Hills Estates, Estates Second Plat, Estates Third Plat, Estates Fourth Plat, Estates Fifth Plat, all which were added to the District by Agreement recorded as Doc. No. 1629977 in Book 2400 at page 899.); and

Lots 1-11 and Tracts A-G, Plat of Whispering Hills, Section 6.

The term "Improved Property", as used herein, shall be deemed to mean a single Lot or Tract under a single ownership and use, and on which Lot or Tract a residence has been erected or is in the process of erection, or on which any other building not in violation of the Restrictions then of record thereon is erected or is in the process of erection. Any such Lot or Tract may consist of one or more contiguous Lots or part thereof. Any other land covered by this Declaration shall be deemed to be vacant and unimproved.

The word "Lot" shall mean any numbered lot as platted or one or more lots or part or parts of one or more numbered lots as platted, and upon which a residence may be created in accordance with the Restrictions, which is now or hereafter within the District. The Lots in the District currently include, without limitation, the following:

Lots 4-21; Lot 22 and all that part of Tract 3, lying North of and adjoining Lot 22, WHISPERING HILLS - SECTION 1, a subdivision in the City of Lenexa, Johnson County Kansas. Being more particularly described as follows; Beginning at a point in the North line of Lot 22, said point being 24.59 feet Westerly from the Northeastern corner of Lot 22; thence North 85 degrees, 05 minutes, 40 seconds West, along the North line of Lot 22, a distance of 50.50 feet; thence North 0 degrees, 54 minutes, 20 seconds East 18.50 feet; thence South 89 degrees, 05 minutes, 40 seconds East 50.50 feet; thence South 05 degrees, 54 minutes, 20 seconds West 18 feet to the point of beginning; Lots 23-41 platted in Plat of Whispering Hills, Section I;

Lots 24-29, 31-40, 43, 45, 47 (together with and Tract A, Plat of Whispering Hills, Section 6, 34A-38A, 39A and the following: Part of Tract 13, Whispering Hills, Section 2, subdivision in Lenexa, Johnson County, Kansas, more particularly as follows: Beginning at the Northeast Corner of Lot 39A of said Whispering Hills, Section 2; thence N 24E59'57" E along a projection of the Easterly Line of said Lot 39A, 38.57 feet; thence N 89E46'53" W 80.00 feet; thence S 24E59'57" W, 38.57 feet to the North line of said Lot 39A thence S 89E46'53" E along the North line said Lot 39A, 80.00 feet to the Point of Beginning; 40A42A, 44A, 46A, 15C, 17C, 19C, 21C-33C, 10D-21D platted in Plat of Whispering Hills, Section 2;

Lots 99-138, 140, 141 (together with Tract C, Plat of Whispering Hills, Section 6, 142 (together with Tract D, Plat of Whispering Hills, Section 6), 143-145, 146 and Tract 4, and 147-159 platted in Plat of Whispering Hills, Section III;

Tracts 1-7 platted in Plat of Whispering Hills, Section 5;

Lots 1-4, 17-19, 40-63 platted in Plat of Whispering Hills Estates;

Lots 20, 21, 32-39 platted in Whispering Hills Estates, Second Plat;

Lots 5-16 platted in Plat of Whispering Hills Estates, Third Plat;

Lots 26 and 27 platted in Plat of Whispering Hills Estates, Fourth Plat;

Lots 22, 23, 24, 25 and 28 platted in Plat of Whispering Hills Estates, Fifth Plat; and

Lots 1-11, Plat of Whispering Hills, Section 6.

The term "Members", as used herein, means the Owners, who are members of the Association.

The term "Owners", as used herein, shall mean those persons or entities who may from time to time own the land within the District.

The word "Restrictions", as used herein, means the declaration of restrictions currently applicable to the District from time to time. The current restrictions are evidenced by that certain

Second Amendment and Restatement of Declaration of Restrictions of Whispering Hills and Whispering Hills Estates dated March 10, 1998 and recorded in the Office of the Register of Deeds of Johnson County, Kansas on March 12, 1998 as Document No. 2802221 in Book 5497 at Page 1.

The word "Street" shall mean the private streets, roads, avenues or terraces of whatever name as shown on the plats in the District which are recorded in the office of the Register of Deeds of Johnson County, Kansas, and designated thereon as such, and shall include, without limitation the following Tracts:

Tract 7 of Whispering Hills, Section I;

Tract 17 (also labeled Trail "A", Trail "C", Trail "D" and "Whispering Dr.") of Whispering Hills, Section 2;

Part of Lots 99, 100 and Tract 10 of Whispering Hills, Section 3, a subdivision in Johnson County, Kansas, more particularly described as follows:

Beginning at the S.W. corner of said Lot 100; thence N. 88E21'29" E., a distance of 254.74 feet to a point on a curve; thence on said curve to the left in a northeasterly direction, having a central angle of 26E27'52", a radius of 267.66 feet, and a length of 123.63 feet to a point; thence N. 64E10'39" E., a distance of 547.23 feet to a point on a curve; thence on said curve to the right in a easterly direction, having a central angle of 36E26'04", a radius of 425.00 feet, and a length of 270.26 feet to a point; thence S. 79E23'17" E., a distance of 96.45 feet to a point in the westerly right-of-way of Woodland Road, as now established; thence S. 0E31'43" W., along the said westerly right-of-way, a distance of 60.94 feet to a point; thence N. 79E23'17" W., a distance of 107.12 feet to a point on a curve; thence on said curve to the left in a westerly direction, having a central angle of 36E26'02", a radius of 365.00 feet and a length of 232.10 feet to a point; thence S. 55E23'56" W., a distance of 113.13 feet to a point; thence S. 62E23'47" W., a distance of 372.43 feet to a point on a curve; thence on said curve to the right in a westerly direction, having a central angle of 42E28'14", a radius of 386.90 feet, and a length of 286.79 feet to a point; thence N. 75E07'58" W., a distance of 168.43 feet to a point on a curve; thence on said curve to the left in a northwesterly direction, having a central angle of 04E43'52", a radius of 353.16 feet, and a length of 29.16 feet to the Point of Beginning but except that part of the forgoing described parcel which was conveyed to the City of Lenexa for Woodland Road right-of-way, more particularly described as follows: Commencing at the Southwest Corner of the Southeast Quarter of Section 26; thence North 88E 04' 12" East, along the South line of said Quarter Section, a distance of 1204.05 feet; thence North 01E 55' 48" West, a distance of 1006.94 feet to the existing Westerly right of way of Woodland Road and the TRUE POINT OF BEGINNING; thence South 81E 38' 34" East, a distance of 65.61 feet to a point; thence South 01E 43' 34" East a distance of 60.94 feet to a point; thence North 81E 38' 34" West, a distance of

15.23 feet to a point on the existing Westerly right of way of Woodland Road; thence along the said Westerly right of way of Woodland Road and a curve to the right having an initial Tangent Bearing of North 40E42'43" West, a radius of 686.62 feet and an arc length of 85.65 feet to the TRUE POINT OF BEGINNING;

Tract 11 (also labeled "Meadow Lane", "Old Trail Rd.", "Crickett Lane" and "Mill Road") of Whispering Hills, Section III;

Tract A (also labeled as "Bridle Dale") of Plat of Whispering Hills Section 5;

Tract A (also labeled as "Sunset Drive", "Meadow Lane" and "89th Terrace") of Plat of Whispering Hills Estates;

Tract A (also labeled as "Sunset Drive" and "90th Street") of Plat of Whispering Hills Estates, Second Plat;

Tract A (also labeled as "Redbud Lane") of Plat of Whispering Hills Estates, Third Plat;

Tract A (also labeled "Sunset Drive" and "90th Terrace") of Plat of Whispering Hills Estates, Fifth Plat; and

Tract F (also labeled Deer Run and Deer Run Terr.) of Plat of Whispering Hills, Section 6.

The word "Tract" is used to designate those areas on a plat within the District identified as a Tract thereon, and any unplatted property within the District. The tracts presently include, without limitation, the following:

Tracts 1 and 2; Tract 3 except all that part of Tract 3, lying North of and adjoining Lot 22, WHISPERING HILLS - SECTION 1, a subdivision in the City of Lenexa, Johnson County Kansas. Being more particularly described as follows; Beginning at a point in the North line of Lot 22, said point being 24.59 feet Westerly from the Northeastern corner of Lot 22; thence North 85 degrees, 05 minutes, 40 seconds West, along the North line of Lot 22, a distance of 50.50 feet; thence North 0 degrees, 54 minutes, 20 seconds East 18.50 feet; thence South 89 degrees, 05 minutes, 40 seconds East 50.50 feet; thence South 05 degrees, 54 minutes, 20 seconds West 18 feet to the point of beginning; Tracts 4-7 platted in Plat of Whispering Hills, Section I;

Tract 8-19 platted in Plat of Whispering Hills, Section 2;

Tracts 1-3 and 5-11 platted in Plat of Whispering Hills, Section III, but except that part of the forgoing described parcel which was conveyed to the City of Lenexa for Woodland Road right-of-way, more particularly described as follows: Commencing at the Southwest Corner of the Southeast Quarter of Section 26; thence North 88E 04' 12" East, along the South line of said Quarter Section, a distance of 1204.05 feet; thence North 01E 55' 48" West, a distance of 1006.94 feet to the existing Westerly right of way of Woodland Road and the TRUE POINT OF BEGINNING; thence South 81E 38' 34" East, a distance of 65.61 feet to a point; thence South 01E 43' 34" East a distance of 60.94 feet to a point; thence North 81E 38' 34" West, a distance of 15.23 feet to a point on the existing Westerly right of way of Woodland Road; thence along the said Westerly right of way of Woodland Road and a curve to the right having an initial Tangent Bearing of North 40E42'43" West, a radius of 686.62 feet and an arc length of 85.65 feet to the TRUE POINT OF BEGINNING; and except the Northwest 18.5 feet of Lot 146;

Tract A platted in Plat of Whispering Hills, Section 5;

Tracts A and B platted in Plat of Whispering Hills Estates;

Tract A platted in Whispering Hills Estates, Second Plat;

Tract A platted in Plat of Whispering Hills Estates, Third Plat;

Tract A platted in Plat of Whispering Hills Estates, Fifth Plat;

The following described property:

The Northwest Quarter of Section 35, Township 12, Range 23, Johnson County, Kansas, except (i) part platted as Section III, Whispering Hills; and (ii) except Beginning at a point 1,157.65 feet West of and 747.25 feet South of the Northeast corner of the Northwest Quarter of Section 35, thence North 37E 35' 49" West a distance of 190.0 feet thence South 23E 20' 54" West a distance of 102.96 feet thence South 17E 45' 35" West a distance of 122.36 feet, thence South 82E 53' 39" East a distance of 150.0 feet, thence in a Northeasterly direction along a curve to the right having a radius of 118.26 feet, a distance of 93.49 feet to the point of beginning; and (iii) except part platted as Whispering Hills Estates; and (iv) except part platted as Whispering Hills Estates Second Plat; and (v) except part platted as Whispering Hills Estates Third Plat; and (vi) except part platted as Whispering Hills Estates Fourth Plat; and (vii) except part platted as Whispering Hills Estates Fifth Plat; and (viii) except part in Plat of Whispering Hills, Section 6; and (ix) except part in public roads; and

Tracts B, E, F, and G, Plat of Whispering Hills, Section 6.

SECTION 1. MEMBERSHIP IN ASSOCIATION.

The Owners, together with the owners of any other land that may from time to time be made subject to all of the terms and provisions of this Declaration in the manner hereinafter provided for, shall be the members of the Association, which is hereby authorized. Membership in the Association shall be limited to the Owners as they exist from time to time. The Association, through its Board of Directors, shall be the sole judge of the qualification of Members and of their rights to participate in its meetings and proceedings.

SECTION 2. LAND ENTITLED TO BENEFITS.

No land shall be entitled to any of the benefits, improvements or services provided by the Association unless the Owner shall have subjected his or her land to the terms of this Declaration and to the assessments herein provided for.

SECTION 3. OTHER LANDS - HOW THEY MAY BE ADDED.

Additional lands may be added to the District by (1) the affirmative vote of a majority of the Members present at a special meeting of the Association called in the manner prescribed in the Bylaws of the Association and (2) the written approval of at least seventy percent (70%) of the Board, which approval shall be evidenced by an instrument duly executed and acknowledged by at least seventy percent (70%) of the Board and recorded in the office of the Register of Deeds of Johnson County, Kansas; provided, however, that any and all land so added to the District shall at the time of its addition be subjected to all of the terms of this Declaration and all future modifications or amendments hereof. The Bylaws of the Association shall also control with respect to voting rights and the requirements of a quorum at any special meeting called pursuant to this Section.

SECTION 4. POWERS AND DUTIES OF THE ASSOCIATION.

The Association shall have the following powers and duties, which it may exercise and perform whenever, in its discretion, it may deem them necessary or desirable, to-wit:

(1) To enforce, either in its own name or in the name of any Owner, this Declaration, the Restrictions and any restrictions which may have been heretofore or may hereafter be imposed upon any of the land in the District, either in the form as originally placed thereon or as modified subsequently thereto; provided, however, that this right of enforcement shall not serve to prevent such changes, releases or modifications of this Declaration, the Restrictions or any restrictions or reservations being made by the parties having the right to make such changes, releases or modifications as are permissible in the deeds, declarations, contracts or plats in which such restrictions and reservations are set forth, nor shall it serve to prevent the assignment of those rights by the proper parties, wherever and whenever such rights of assignment exist.

The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association unless the Association prevails in such proceedings, in which event the expenses and costs of enforcement shall be charged to the party against whom enforcement was attained. Nothing herein contained shall be deemed or construed to prevent any Owner having the contractual right to do so from enforcing in his or her own name any such restrictions or reservations.

(2) To manage and control all Common Areas and the improvements located thereon in the District, provided that

such management and control of said area and improvements shall at all times be subject to that had and exercised by any City, County and State, or any of them, in which the land within the District is located.

(3) To provide for the collection and disposal of rubbish and garbage, when adequate services of that type are not available from any public source.

(4) To care for, spray, trim, protect and replant trees on all Streets and in the Common Areas where trees have once been planted, when such services are not available from any public source; and to care for, protect and replant shrubbery, and resow grass and replace sod in the parks which are in the Streets and in any Common Areas or parks set aside for the general use of the Owners, or to which the Owners have access and the use thereof.

(5) To mow, care for, maintain and remove rubbish from vacant and unimproved property and to do any other things necessary or desirable in the judgment of the Association to keep any vacant and unimproved property and the parking in front of any property in the District neat in appearance and in good order.

(6) To provide for the plowing and removal of snow from sidewalks and Streets, when such services are not available from any public source.

(7) To provide for the maintenance of any tennis courts, playgrounds, bridle paths, pedestrian ways, gateways, entrances, drinking fountains, and ornamental features now existing or which may hereafter be erected or created in the District in any Common Area or park, or on any land set aside for the general use of the Owners, or to which all of the Owners have access and the use thereof; and also to provide for the maintenance of any streams and natural water-courses within the District.

(8) To provide for the operation and maintenance of swimming and beach facilities for the exclusive use and enjoyment of Members and members of their families who reside in the District, and establish rules for the use and management of such facilities.

(9) To provide such lights as the Association may deem advisable on streets, parks, parkings, pedestrian ways, gateways, entrances or other features, and in other Common Areas when such facilities are not available from any public source.

(10) To provide for the cleaning of Streets, gutters, catch basins, sidewalks and pedestrian ways, and for the repair and maintenance of Streets, storm sewers and appurtenant drainage facilities when such services are not available from any public source.

(11) To erect and maintain signs for the marking of Streets, and safety signs for the protection of children and other persons, when such signs are not available from any public source.

(12) To employ duly qualified security officers for the purpose of providing such security protection as the Association may deem necessary or desirable in addition to that rendered by public authorities; however, the Association shall not be required to provide any security.

(13) To exercise control over such easements as it may acquire from time to time.

(14) To acquire by lease or own the title to such real estate as may be reasonably necessary in order to carry out the purposes of the Association, and to pay taxes on such real estate as may be owned or leased by it; and to pay such taxes as may be assessed against land in Common Areas.

(15) To levy and collect the assessments which are provided for in this Declaration, including without limitation, the filing of liens and the enforcement thereof.

(16) To convey by sale, lease or easement such real estate as may not be necessary in order to carry out the purposes of the Association.

SECTION 5. METHOD OF PROVIDING GENERAL FUNDS.

(1) For the purpose of providing a general fund to enable the Association to exercise its powers, maintain the improvements and render the services herein provided for, all land within the District shall be subject to an annual assessment which may be levied by the Association from year to year and shall be paid to the Association annually in advance by the Owners of the assessable land subject thereto, which assessable land shall be deemed to be all of the Lots, except as herein provided, together with such other land as may from time to time be added to the District. The Association shall from year to year fix and determine the total amount required in its general fund.

(a) The Association may levy and collect an annual assessment of \$350 or less for each assessable Lot within the District provided that, at a meeting of the Members, a majority vote of the Members present at such meeting authorize such assessment by an affirmative vote therefor.

(b) The Association may levy and collect an annual assessment of between \$351 and \$700 for each assessable Lot within the District provided that, at a meeting of the Members specially called for that purpose, a two-thirds (2/3rds) vote of the Members present at such meeting authorize such an assessment by an affirmative vote therefor.

(c) The Association may levy and collect an annual assessment of between \$701 and \$1,050 for each assessable Lot within the District provided that, at a meeting of the Members specially called for that purpose, three-fourths (3/4ths) of the Members present at such meeting authorize such an assessment by an affirmative vote therefor.

(d) The base assessment provided in Subsection (a), above, and the assessments described in Subsections (b) and (c), above, shall increase automatically, annually to account for inflation. The assessment limits shall be increased by a percentage equal to the percentage increase in the Consumer Price Index from December 31, 2000, to September 1st of the year during which the assessment amount is determined, which assessment would be applicable to the next calendar year. The specific Consumer Price Index used shall be Consumer Price Index for Urban Wage Earners and Clerical Workers for Kansas City, All Items, not seasonally adjusted, (1967 = 100), published by the Bureau of Labor Statistics of the United States Department of Labor. If the Consumer Price Index shall be revised or shall cease to be compiled and published during the term of this Declaration, then the Bureau of Labor Statistics shall be requested to furnish a

statement converting the index to a figure that would be comparable in another index, and such index shall be used in computing the adjustment provided for herein. In no event shall the aforesaid maximum annual assessment be reduced by an adjustment described herein.

(2) Commencing in December 2000, assessments shall be paid in advance and be due on or before December 31st of that year. The Association shall notify all Owners whose address is listed with the Association on or before November 15th annually, giving the amount of the assessment owed by them and the date when such assessment is due. Failure of the Association to levy the assessment on or before November 15th of each year for the next succeeding year shall not invalidate any such assessment made for that particular year; nor shall failure to levy an assessment for any one year affect the right of the Association to do so for any subsequent year. In the event the assessment is made subsequent to November 15th of any year, it shall become due and payable not later than forty-five (45) days from the date of levying the assessment. For years prior to calendar year 2001, assessments were for such periods as determined by the Board.

(3) If any Lot shall be divided into one or more building sites, each of which building sites being for a single residence and consists of a part or parts of one or more Lots, then for the purpose of levying this assessment, each of such building sites shall constitute one separate assessment unit and shall be liable for each annual assessment in the same way and manner as one platted Lot under a single ownership. For the purpose of levying this assessment, the Association shall be the sole judge as to what may from time to time constitute a building site under the provisions of this Section.

(4) Any Lot in the following portions of the District shall not be subject to any assessments until the earlier to occur of (a) one (1) year following the first sale of a Lot by Michael S. Hales and Marlene S. Hales to any builder involved in the residential construction business who is building a speculative residence thereon, or (b) the sale of any Lot to any person other than a builder involved in the residential construction business who is building a speculative residence thereon: Whispering Hills Estates plat; Whispering Hills Estates, Second Plat; Whispering Hills Estates, Third Plat; Whispering Hills Estates, Fourth Plat; Whispering Hills Estates, Fifth Plat; and Whispering Hills, Section 6. Upon the first to occur of (a) or (b) above, the Lot shall become subject to one hundred percent (100%) of the assessments (both general and special) then being levied in the District.

(5) Without limiting anything herein which specifies another method of providing notices, a written or printed notice, deposited in the United States Post Office, with postage thereon prepaid, and addressed to an Owner at the last address listed with the Association, shall be deemed to be sufficient and proper notice for purposes in this Declaration where notices are required.

(6) In the event that payment on an assessment is not received within thirty-one (31) days after it was due, the amount of such assessment shall be increased by interest at the rate of one and one-half percent (1.5%) per month, or part thereof, or such lower rate as permitted by law, compounded monthly. All payments shall be applied first to collection expenses and fees, then to interest, and then to assessments overdue.

SECTION 6. LIEN ON REAL ESTATE.

(1) The assessment, any interest and collection costs and fees shall become a lien on the real estate against which it is levied on April 1st of the assessment year (the "Lien Date"). Such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate securing the payment of a loan which is insured or guaranteed by any agency of the United States government.

(2) The lien on said real estate may be enforced in proceedings in any court in Johnson County, Kansas, having jurisdiction of suits for the enforcement of such liens. It shall be the duty of the Association to bring suits to enforce such liens before the expiration thereof. The Association may, at its discretion, file certificates of nonpayment of assessments in the Office of the Register of Deeds on or after the Lien Date. For each certificate so filed, the Association shall be entitled to collect from the Owner a fee of twenty-five percent (25%) of the outstanding assessment, which fee may be included in the lien upon the real estate so described in said certificate.

SECTION 7. EXPENDITURES LIMITED TO ASSESSMENTS FOR CURRENT YEAR.

The Association shall at no time expend more money within any one year than the total amount of the assessment for that particular year, plus any surplus which it may have on hand; nor shall said Association enter into any contract for the payment of money which binds the assessments of any future year to pay for any such obligation, and no such contract shall be valid or enforceable against the Association, except for contracts for utilities; it being the intention that the assessment for each year shall be applied as far as practicable toward payment of the obligations of that year.

SECTION 8. ASSOCIATION TO NOTIFY MEMBERS OF ADDRESS.

The Association shall notify all Owners, insofar as the addresses of the Owners are listed with the Association, of the address of the officers of the Association, of the place and time of the regular meetings of the Board, and the place where payments shall be made and any other business in connection with the Association may be transacted, and in the case of any change of such address, the Association shall notify all the Owners, insofar as their addresses are listed with the Association, of the new address.

SECTION 9. DELETED.

SECTION 10. TO OBSERVE ALL LAWS.

The Association shall at all times observe all State, County, City and other laws, and if at any time any of the provisions of this Declaration shall be found to be in conflict therewith then such parts of this Declaration as are in conflict with such laws shall become null and void, but no other part of this Declaration not in conflict therewith shall be affected thereby. The Association shall have the right to (1) make such reasonable rules and regulations, through the Board; and (2) provide such means and employ such agents as will enable it to adequately and properly carry out the provisions of this Declaration, subject, however, to the limitations of its rights to contract as are herein provided for.

SECTION 11. AMENDMENT.

This Declaration may be modified and amended by (1) the affirmative vote of a majority of the Members present at a special meeting of the Association; and (2) the written approval of at least seventy percent (70%) of the Board, which written approval shall be evidenced by an instrument duly executed and recorded in the office of the Register of Deeds of Johnson County, Kansas. Notice of any special meeting of the Association called for the purpose of amending this Declaration shall be sufficient and effective if given in the manner prescribed in the Bylaws of the Association, the provisions of which shall also control with respect to voting rights and the requirement of a quorum.

SECTION 12. HOW TERMINATED.

This Declaration may be terminated by seventy-five percent (75%) of the Members executing and acknowledging an appropriate agreement for that purpose and filing the same for record in the office of the Register of Deeds of Johnson County, Kansas. Notice of any special meeting of the Association called for the purpose of terminating this Declaration shall be sufficient and effective if given in the manner prescribed in the Association's Bylaws, the provisions of which shall also control with respect to voting rights and the requirement of a quorum.

SECTION 13. COVENANTS RUNNING WITH THE LAND.

All of the provisions of this Declaration shall be deemed to be covenants running with the land within the District, and shall be binding thereupon.

IN WITNESS WHEREOF, the Association, by authority of its Board, has caused this instrument to be executed by its President, the day and year first above written.

SECTION 11 STATEMENT

To satisfy Section 11(1) of the Declaration, the undersigned Secretary of the Association executes this Statement to document that the Association held a special meeting of the Association called by written notice from the Board to the

Members, given in the manner prescribed by the Bylaws of the Association, and at such meeting the Amendment and Restatement of Homes Association Declaration to which this Statement is attached received the affirmative vote of a majority of the Members of the Association present at such meeting.

To satisfy Section **11(2)** of the Declaration, the undersigned, representing at least seventy percent (70%) of the Board, execute this Statement to document their written approval of the Amendment and Restatement of Homes Association Declaration to which it is attached.

Certain words used in this Statement are defined in the Declaration to which it is attached.