

**AMENDED AND RESTATED
WILSHIRE BY THE LAKE
HOMES ASSOCIATION DECLARATION**

THIS AMENDED AND RESTATED DECLARATION is made as of the 29th day of March, 2013, by WILSHIRE BY THE LAKE, LLC, a Kansas limited liability company ("Developer"), for the purpose of amending and restating, in its entirety, the Wilshire By The Lake Homes Association Declaration recorded with the Register of Deeds of Johnson County, Kansas in Book 201207 at Page 010325, so that it reads in its entirety as follows:

WITNESSETH:

WHEREAS, plats have been executed and filed with the Register of Deeds of Johnson County, Kansas, for the subdivision to be known as "Wilshire By The Lake", which plats include the following described lots and tracts:

Lots 1 through 7, 25, 26, 27, 38, 39, 41 through 44 and 47 through 61, and Tracts A, B, C, D, E, F and G, THE VINEYARD, a subdivision in the City of Overland Park, Johnson County, Kansas (except those parts thereof replatted as part of Wilshire By The Lake, First Plat).

Lots 25, 26, 36, 37, 45, 46, 47, 62 and 63 and Tracts A and B, WILSHIRE BY THE LAKE, FIRST PLAT, a subdivision in Overland Park, Johnson County, Kansas.

WHEREAS, Developer, as the developer of all of the above-described real property, 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 and tracts to the covenants, charges, assessments and easements hereinafter set forth.

ARTICLE I DEFINITIONS

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

- (a) "Board" means the Board of Directors of the Homes Association.
- (b) "Certificate of Substantial Completion" means a certificate executed, acknowledged and recorded by the Developer with the Recording Office stating that all of the Lots in the Subdivision (as then contemplated by the Developer) have been sold by the Developer and all of the residences to be constructed thereon are substantially completed and sold; provided, however, that the Developer may execute and record a Certificate of Substantial Completion or similar instrument in lieu thereof in Developer's absolute discretion at any earlier 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.
- (c) "City" means the City of Overland Park, Kansas.
- (d) "Common Areas" means (i) Tracts A through G of The Vineyard, and Tracts A and B of Wilshire By The Lake, First Plat, (ii) the Private Lake, Stormwater Treatment Facilities, Open Areas, Right-of-Way Amenities and Pool Area, (iii) 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 Subdivision, (iv) all platted landscape easements and all 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 Subdivision, 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 Subdivision.
- (e) "Declaration" means this instrument, as the same may be amended, supplemented or modified from time to time.
- (f) "Developer" means Wilshire By The Lake, LLC, a Kansas limited liability company, and its successors and assigns.
- (g) "Homes Association" means the Kansas non-profit corporation to be formed by or for the Developer for the purpose of serving as the homes association for the Subdivision.
- (h) "Lot" means any lot as shown as a separate lot on any recorded plat of all or part of the Subdivision (other than Lot 40, The Vineyard); 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 periodic 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."

(i) "Open Spaces" means Tracts A through G of The Vineyard and Tracts A and B of Wilshire By The Lake, First Plat and any other areas that may be designated by the Developer in writing in the future as being an "Open Space".

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

(k) "Pool Area" has the meaning set forth in Article VIII below.

(l) "Private Lake" has the meaning set forth in Article XI below.

(m) "Recording Office" means the Office of the Register of Deeds of Johnson County, Kansas or such other governmental office in which deeds, mortgages and other instruments relating to real property in Johnson County, Kansas are to be recorded to give public notice thereof.

(n) "Right-of-Way Amenities" has the meaning set forth in Article IX below.

(o) "Stormwater Treatment Facilities" has the meaning set forth in Article XII below.

(p) "Subdivision" means collectively all of the above Lots in The Vineyard, all Common Areas, and all additional property (if any) which hereafter may be made subject to this Declaration in the manner provided herein.

(q) "Turnover Date" means the earlier of: (i) the date as of which 95% of all of the Lots in the Subdivision (as then contemplated by the Developer) have been sold by the Developer and the residences have been constructed thereon and sold, or (ii) the date the Developer, in its absolute discretion, selects as the Turnover Date for all or any specific portion of this Declaration.

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 4.2 below and to vote on any special assessments as provided in clause (III) of Section 5.1(b) below.

After the Turnover Date, there shall be only one class of membership which shall consist of the Owners of the Lots in the Subdivision, 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.

To the extent permitted by law, 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 Board shall be the sole judge of the qualifications of each Owner to vote and to participate in its meetings and proceedings of the Homes Association.

ARTICLE III POWERS AND DUTIES OF THE HOMES ASSOCIATION

3.1 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 Subdivision; 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 or otherwise by law. 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 own, lease and otherwise deal with real property and personal property.

(c) 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.

(d) To maintain public liability, worker's compensation, fidelity, property 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 Subdivision.

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

(f) 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.

(g) 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 Subdivision, and the sharing of expenses associated therewith.

(h) 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, operating and maintaining Common Areas, and planning and coordination of activities.

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

(j) 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 Subdivision; and to do any other things necessary or desirable in the judgment of the Board to keep any property in the Subdivision neat in appearance and in good order.

(k) 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 Subdivision.

(l) To make, amend and revoke reasonable rules, regulations, restrictions and guidelines (including, without limitation, those regarding the use of Common Areas) and to provide means to enforce such rules, regulations, restrictions and guidelines, and the recorded declarations, by establishing, levying and collecting fines and other enforcement charges and taking such other lawful actions as the Homes Association, in its discretion, deems appropriate.

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

3.2 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 Subdivision:

(a) To the extent not provided as a service by any governmental authority, the Homes Association shall provide for the normal 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). The Homes Association, however, shall not be obligated to provide or pay for any recycling services, except where required by law.

(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 satisfy its obligations with respect to any Pool Area, as set forth in Article VIII below.

(d) The Homes Association shall properly maintain the Right-of-Way Amenities, the Open Spaces, the Private Lake and the Stormwater Treatment Facilities, and otherwise satisfy its and the Owners' obligations with respect thereto, as contemplated in Articles IX, X, XI, and XII, respectively.

(e) In the event individual mailboxes are required by the U.S. Post Office, the Homes Association shall purchase, install and maintain and replace (as necessary) all such mailboxes and mailbox posts.

3.3 The Board, in its discretion, may cause the Homes Association to provide other services for the Lots that are not part of the required services described above. The Board shall have the right to determine the scope and timing of the required and discretionary services to be provided by the Homes Association, and shall have the right (but not the obligation) to establish, maintain and expend reserve funds for the improvements on the Common Areas and the services to be provided by the Homes Association. Neither the Developer, the Homes Association, nor any of their officers, directors, managers, representatives or agents shall be liable to any Owner or other party for any failure to establish or maintain any such reserves or if any such reserves are inadequate.

**ARTICLE IV
ANNUAL ASSESSMENTS AND INITIATION FEE**

4.1 For the purpose of providing funds to enable the Homes Association to exercise the powers, render the services and perform the duties provided for herein, all Lots in the Subdivision (other than Lots then owned by the Developer and Lots then owned by a builder or other party prior to the initial occupancy of the residence thereon as a residence) 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 assessable Lot shall be fixed periodically by the Board, subject to Section 4.2 below, and, until further action of the Board, shall be \$800.00 per year.

4.2 The rate of annual assessment upon each assessable Lot in the Subdivision may be increased as to and for each calendar year:

(a) For each of years 2013 through 2015, by the Board from time to time, without a vote of the members, by up to 20% over the rate of annual assessment in effect for the preceding calendar year;

(b) After year 2015, 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 calendar 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 both prior to and after 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 3.2 above.

4.3 The annual assessments provided for herein shall be based upon the calendar year (commencing in 2012) and shall be due and payable on January 10th of each year; provided, however, that (i) the first annual assessment for each Lot shall be due and payable only upon commencement of occupancy of the residence on the Lot as a residence for the residence on the Lot, and shall be prorated as of the date thereof and (ii) the Board may allow the annual assessment to be paid in two or more installments during the year. 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. Notwithstanding any other provision of this Declaration to the contrary, no Lot or its Owner shall be entitled to receive any services or to use any Common Areas to be provided by and through the Homes Association until such time as the first annual assessment has been paid with respect to such Lot.

4.4 A portion of the annual assessments may be allocated to reserves to provide funds for repair or maintenance of major items and for other contingencies. Neither the Developer nor the Homes Association nor any member of the Board shall have any liability to any Owner or member of the Homes Association if no reserves are established or maintained or if any reserves are inadequate.

4.5 An initiation fee of \$350.00 shall be payable by the new Owner to the Homes Association, for use as part of the general funds of the Homes Association, upon each of the following events with respect to the applicable Lot:

(a) The initial occupancy of the residence on the Lot as a residence after the residence is constructed (which initiation fee is in addition to the first regular annual assessment, as it may be prorated); and

(b) Each subsequent transfer of ownership of the Lot for value.

ARTICLE V SPECIAL ASSESSMENTS

5.1 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 (I) a fine has been assessed by the Homes Association against the Owner or (II) the Homes Association expends any money (for services, materials, and legal fees and expenses) to correct or eliminate (by enforcement, self-help or otherwise) 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 such Lot or any improvement thereon); and

(b) shall levy from time to time special assessments against each and every Lot then subject to annual assessments under Article IV in an equal amount that is sufficient, when aggregated, to enable the Homes Association (I) to perform its duties, as specified in Section 3.2 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, (II) to pay the costs of any emergency expenditures deemed necessary by the Board and (III) to pay the costs of any capital improvements approved 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 votes of the members present at such meeting (in person or by proxy) and entitled to vote thereon authorize such special assessment for the proposed capital expenditure by an affirmative vote.

5.2 In the event an Owner fails properly to maintain, repair, repaint, or 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 and 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 the Owner and the Owner's Lot.

5.3 If any Owner commences a lawsuit or files a counterclaim or crossclaim 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, counterclaim or crossclaim, the Homes Association, Board of Directors, committee, 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, counterclaim or crossclaim, including reasonable attorneys' fees and court costs. Such recovery right shall constitute a special assessment against the Owner and the Owner's Lot.

5.4 Each special assessment shall be due and payable by the Owner of the Lot upon the Homes Association giving written notice of the special assessment to the Owner of the Lot, shall be a lien on the Lot until paid in full, and shall be enforceable as provided in this Declaration.

ARTICLE VI DELINQUENT ASSESSMENTS

6.1 Each assessment regarding a Lot 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 with respect to the Owner's Lot 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 the greater of \$25.00 or 5% of the unpaid amount, and the unpaid amount shall bear interest at the rate of 10% per annum, compounded monthly (or, if lower, the maximum rate permitted by law) 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, without limitation, 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(s) of the Lot, jointly and severally, at the time when the assessment became due.

6.2 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 earlier of (i) the entry of the order allowing such foreclosure, or (ii) 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 or any creditor of the

Owner (other than the applicable first mortgage lender) subsequently redeems the Lot from the foreclosure sale, the lien hereunder shall automatically be reinstated retroactively in full.

6.3 Payment of a delinquent assessment with respect to a Lot 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 and which fee amount may be increased by the Board from time to time to reflect cumulative increases in an appropriate consumer price index (as selected by the Board) after December 31, 2013.

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

6.5 To the extent permitted by law, the Homes Association may cease to provide any or all of the services (including, without limitation, use of Common Areas and 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 use privileges or 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 by declining any services provided through the Homes Association.

6.6 No claim of the Homes Association for assessments and charges shall be subject to setoffs or counterclaims made by any Owner. To the extent permitted by law, each Owner hereby waives the benefit of any redemption, homestead and exemption laws now or hereafter in effect, with respect to the liens created pursuant to this Declaration.

6.7 Assessments shall run with the land, are necessary to continue the care, repair and maintenance of Lots and the Subdivision, and are necessary for the continued provision of services, and, accordingly, assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.

ARTICLE VII LIMITATION ON EXPENDITURES

Except for matters contemplated in Section 3.2 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 3.2 above.

ARTICLE VIII COMMON AREAS

8.1 The Developer shall have the right (but is not obligated) to construct and erect a swimming pool, parking lot, cabana and/or other recreational facilities ("Pool Area") in a place within the Subdivision or on property near the Subdivision and to make such facilities available for use by residents of the Subdivision. The size, location, nature and extent of the improvements and landscaping of the Pool Area, and all other aspects of the Common Areas that are provided by the Developer, shall be determined by the Developer in its absolute discretion.

8.2 If the Pool Area is so constructed and made available for use by residents of the Subdivision, the following shall apply:

(a) Following substantial completion and opening for use (as determined by the Developer), the Developer shall convey, without charge and free and clear of all mortgages, security interests, and mechanic's liens, title to the Pool Area (or the completed portion thereof) to the Homes Association. Such title transfer shall be by special warranty deed. The Homes Association shall cause adequate property and liability insurance to be continuously maintained on the Pool Area and, so long as Developer owns any Lots in the Subdivision, cause the Developer to be named as an additional insured on such insurance coverage.

(b) The Homes Association shall pay (i) all operating expenses (as defined below) and (ii) all post construction capital expenditures (as defined below) relating to the Pool Area. The Homes Association shall pay the amounts due from it under this subsection out of the assessments collected from the Owners of the Lots in accordance with this Declaration.

(c) For purposes hereof, the "operating expenses" of the Pool Area generally has the meaning attributed thereto under generally accepted accounting principles, consistently applied, but shall not include (i) any costs of the Developer of acquiring, developing, improving, constructing or erecting the Pool Area or the site on which such facilities are located, (ii) any depreciation or amortization of the costs described in clause (i) above, or (iii) any financing or debt service expenses related to the costs described in clause (i) above.

(d) For purposes hereof, "post construction capital expenditures" means any expenditures to be made or incurred after the initial completion (as specified by the Developer) of the Pool Area for equipment, furniture, or other capital assets, including the expansion, addition or replacement of any equipment or facilities, and any other expenditures that would be capitalized under generally accepted accounting principles,

consistently applied. All post construction capital expenditures shall be made by and at the discretion of the Homes Association.

(c) By acceptance of a deed to a Lot, all Owners acknowledge and accept the inherent risks and hazards (whether foreseeable or not) associated with use of a swimming pool and any diving board and/or slide and any playground equipment that may be installed as part of the Common Areas. The Developer and the Homes Association and their respective officers, directors, managers, representatives and agents shall have no liability or responsibility to any Owner or other party with respect to such inherent risks and hazards. To the maximum extent required by law, each Owner, for himself, the members of his family, his guests and invitees, shall be deemed to have released and agreed never to make a claim against the Developer or the Homes Association or any of their respective officers, directors, managers, representatives or agents for any personal injury or death that may be suffered or incurred by any of such releasing parties in connection with use of the Common Areas, and each of them shall be deemed to have waived any and all claims and causes of action that any of them may ever have against any of such released parties with respect thereto.

8.3 Subject to Section 8.2 above and Section 8.5 below, the 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 solely a landscape easement or is within any Lot or outside of the Subdivision) 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. Such transfer shall be free and clear of all mortgages, deeds of trust, security interests and mechanic's liens. Developer shall not be required to provide the Homes Association with any title insurance policy for any of the Common Areas. Any transfer of title by the Developer shall not require the consent of the Homes Association and shall not constitute an assignment by the Developer of any of its rights, as the developer of the Subdivision, pursuant to this Declaration or any other instrument, contract or declaration.

8.4 Notwithstanding the actual date of transfer, the Homes Association shall at all times, from and after the date of its 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 the Developer or the Homes Association), subject to any control thereover maintained by any governmental authority, utility or similar person or entity. 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.

8.5 Each of the Developer and the Homes Association, in its discretion, shall have the right to reconfigure and/or replat all or any part of the Subdivision then owned by it, including, without limitation, to make part of a Common Area tract a part of a Lot, and vice versa. In addition, each of the Developer and the Homes Association shall have the right to transfer to the

City (but only with the City's consent) title to or easements over all or any part of the Common Areas so that they become public areas maintained by the City.

8.6 Prior to the filing of the Certificate of Substantial Completion, Developer and the project marketing company shall have the right to use any building that is part of the Common Areas for office, sales and storage purposes without payment of rent or utility reimbursement by the Developer or the project marketing company to the Homes Association.

ARTICLE IX RIGHT-OF-WAY AMENITIES

9.1 Pursuant to the terms and conditions of a Right-of-Way Maintenance Agreement between the initial developer of the Subdivision or the Developer and the City, the City has allowed the initial developer and may allow the Developer to construct certain Common Area improvements within certain of the public right-of-way associated with streets in the Subdivision (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.

9.2 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.

9.3 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.

9.4 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.

9.5 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.

9.6 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.

9.7 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.

9.8 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.

ARTICLE X OPEN SPACES

10.1 From and after the date of its formation, the Homes Association shall operate and maintain the Open Spaces in accordance with the requirements of the City at all times. The Homes Association shall at all times comply with the Developer's obligations under the Non-Development Agreements between the City and the initial developer of the Subdivision or the Developer relating to the Open Spaces, which have been or will be executed and recorded in the Recording Office and are hereby incorporated into this Declaration by this reference. The duties and obligations of the Homes Association with respect to the maintenance of the Open Spaces shall include the requirements set forth in the Non-Development Agreements.

10.2 Each of the Developer and the City shall be third party beneficiaries of all provisions of this Declaration relating to the Open Spaces, and each of the Developer and the City shall have a continuing right (but not the obligation) to enforce all restrictions, obligations and other provisions regarding the Open Spaces. Such rights shall survive the conveyance of title to the Open Spaces from the Developer to the Homes Association.

ARTICLE XI PRIVATE LAKE

11.1 The Common Areas of the Subdivision contain or will contain a private lake (the "Private Lake") that is for the use, benefit and enjoyment of the Owners of the Lots. The Homes Association shall at all times comply with the Developer's obligations under the Private Lake Agreements between the City and the initial developer of the Subdivision or the Developer relating to the Private Lake, which Private Lake Agreements have been or will be recorded in the Recording Office and are hereby incorporated into this Declaration by this reference.

11.2 The Private Lake is the sole responsibility of the Owners, which Owners shall maintain the Homes Association to be used as the vehicle by which to fulfill their obligations under the Private Lake Agreements and this Article. Such delegation shall not, however, relieve the Owners of their responsibilities under the Private Lake Agreements or this Article.

11.3 The Homes Association, or upon its failure, the Owners, shall be solely responsible for properly maintaining the Private Lake, including, without limitation, obviating the effects of detrimental erosion or other damage caused by the flow of water and other materials into the Private Lake from the surrounding property.

11.4 The Homes Association shall enter into an agreement with the Developer regarding the sharing of the expenses of the maintenance and other costs associated with the Private Lake in proportion to the number of lots in the Subdivision that have been sold versus unsold by the Developer, except that the Developer's obligation to contribute periodically to the expenses shall cease once the Developer transfers title to the Private Lake to the Homes Association and title to all of the Lots to other parties.

11.5 With regard to the provisions contained in this Declaration relating to the Private Lake, each of the Developer and the City shall be deemed third party beneficiaries with a continuing right (but not the obligation) to enforce all restrictions, obligations and other provisions regarding the Private Lake. Such right shall survive the conveyance of title to the Private Lake from the Developer to the Homes Association.

11.6 The City is under no past, present or future obligation to expend any public funds or to take any other action to maintain or improve the Private Lake. No such maintenance or improvement request will ever be made of the City.

11.7 Notwithstanding any other provision of this Declaration to the contrary, no provision in this Declaration regarding the Private Lake may be amended, modified or terminated, nor may the Declaration be terminated in its entirety, without the City's written consent.

11.8 By acceptance of a deed to a Lot, all Owners acknowledge and accept the inherent risks and hazards (whether foreseeable or not) associated with the lake that is part of the Common Area. The Developer and the Homes Association and the officers, directors, managers, representatives and agents of the Developer and the Homes Association shall have no liability or responsibility to any Owner or other party with respect to such inherent risks and hazards. To the maximum extent permitted by law, each Owner, for himself, the members of his family, his guests and invitees, shall be deemed to have released and agreed never to make a claim against the Developer, the Homes Association and/or any officer, director, manager, representative or agent of the Developer or the Homes Association for any personal injury or death that may be suffered or incurred by any of such releasing parties in connection with use of the lakes, and each of them shall be deemed to have waived any and all claims and causes of action that any of them may ever have against any of such released parties with respect thereto.

ARTICLE XII
STORMWATER TREATMENT FACILITIES

12.1 The Common Areas of the Subdivision contain stormwater treatment facilities (the "Stormwater Treatment Facilities") that are for the use, benefit and enjoyment of the Owners of the Lots. The Homes Association shall at all times comply with the Developer's obligations under the Stormwater Treatment Facility Maintenance Agreement between the City and the Developer relating to the Stormwater Treatment Facilities, which Stormwater Treatment Facility Maintenance Agreement has been or will be recorded in the Recording Office and is hereby incorporated into this Declaration by this reference.

12.2 The Stormwater Treatment Facilities are the sole responsibility of the Owners, which Owners shall maintain the Homes Association to be used as the vehicle by which to fulfill their obligations under the Stormwater Treatment Facility Maintenance Agreement and this Article. Such delegation shall not, however, relieve the Owners of their responsibilities under the Stormwater Treatment Facility Maintenance Agreements or this Article.

12.3 The Homes Association, or upon its failure, the Owners, shall be solely responsible for properly and adequately maintaining and (as necessary) replacing the Stormwater Treatment Facilities in compliance with all legal requirements, including, without limitation, sediment removal and disposal, maintenance of inlet and outlet works, trash and debris removal, vector control, and management of vegetation in order to insure that the facilities remain in proper working condition in accordance with design standards and all applicable legal requirements, the prevention of unauthorized activities and improvements which interfere with the function of the facilities, and periodic inspections by a qualified professional.

12.4 With regard to the provisions contained in this Declaration relating to the Stormwater Treatment Facilities, each of the Developer and the City shall be deemed third party beneficiaries with a continuing right (but not the obligation) to enforce all restrictions, obligations and other provisions regarding the Stormwater Treatment Facilities. Such rights shall survive the conveyance of title to the Stormwater Treatment Facilities from the Developer to the Homes Association.

12.5 The City is under no past, present or future obligation to expend any public funds or to take any other action to maintain or improve the Stormwater Treatment Facilities. No such maintenance or improvement request will ever be made of the City.

12.6 Notwithstanding any other provision of this Declaration to the contrary, no provision in this Declaration regarding the Stormwater Treatment Facilities may be amended, modified or terminated, nor may the Declaration be terminated in its entirety, without the City's written consent.

ARTICLE XIII NOTICES

13.1 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.

13.2 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 Owner at the address of the Lot. Notice to one co-Owner shall constitute notice to all co-Owners.

ARTICLE XIV EXTENSION OF SUBDIVISION

The Developer shall have, and expressly reserves, the right (but not the obligation), from time to time, to add to the existing Subdivision and to the operation of the provisions of this Declaration other adjacent or nearby lands (without reference to any tract, street, park or right-of-way) 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 XV AMENDMENT AND TERMINATION

15.1 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 60% of the Lots within the Subdivision as then constituted and (b) if prior to the recording of the Certificate of Substantial Completion, the Developer; provided, however, 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 Private Lake or the Stormwater Treatment Facilities. 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. Subject to the foregoing proviso, after recording of the Certificate of Substantial Completion or with the Developer's written consent, this Declaration also may be terminated, amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written instrument executed by the Homes Association after the proposed amendment, modification or termination has been first approved by the affirmative vote of 75% or more of the full number of directors on the Board of the Homes Association and then approved by the members of the Homes Association at a duly held meeting of the members of the Homes Association (called in whole or in part for that purpose) by the affirmative vote of Owners owning at least 60% of the Lots. Notwithstanding the foregoing, no amendment adopted under this Section 14.1 may remove, revoke or modify any

right or privilege of Developer under this Declaration at any time without the prior written consent of Developer.

15.2 Anything set forth in Section 15.1 to the contrary notwithstanding, except the provision relating to the City'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) any of the Veteran's Administration, the Federal Housing Administration, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, or any successor or similar agencies thereto shall require such action as a condition precedent to the approval by such agency of the Subdivision or any part of the Subdivision or any Lot in the Subdivision, for federally-approved mortgage financing purposes under applicable 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 Subdivision, (iii) the amendment is necessary to cause this Declaration to comply with any applicable law, (iv) in the opinion of the Developer, a typographical or factual error or omission needs to be corrected, (v) such action is appropriate, in Developer's discretion, in connection with a replat of all or any part of the Subdivision or (vi) until December 31, 2018, to make any other amendment the Developer may determine to be appropriate. No such amendment by the Developer shall require the consent of any Owner or the Homes Association.

15.3 If the rule against perpetuities or any rule against restraints on alienation or similar restriction 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 individual(s) signing this Declaration on behalf of the Developer and the now-living descendants of the individual(s) signing this Declaration on behalf of the Developer as of the date of such execution.

ARTICLE XVI ASSIGNMENT

16.1 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.

16.2 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 XVII
COVENANTS RUNNING WITH THE LAND**

17.1 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 Subdivision. 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 nor be enforceable by any creditor of the Homes Association (other than the Developer) in such capacity as a creditor.

17.2 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.

17.3 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 XVIII
GOVERNING LAW AND SEVERABILITY**

18.1 This Declaration shall be governed by and construed in accordance with the laws of Kansas.

18.2 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 XIX
USE RIGHTS**

For so long as Kirk J. Porteous and Karen L. Porteous (or any of their heirs or trusts) own Lot 21 of Tu'Lakes, a subdivision in Overland Park, Kansas, Kirk J. Porteous, Karen L. Porteous and their heirs (collectively, "Permitted Users") shall have the right to use and enjoy the Common Areas in the Subdivision without the payment of any dues and assessments to the Homes Association. Such use and enjoyment by the Permitted Users shall be subject to any rules and regulations that may be in effect from time to time and applicable to all users of the Common Area. The Permitted Users shall not be members of the Homes Association. The provisions of this Article XVIII may not be amended or terminated without the prior written consent of the Permitted Users who may then be the owners of record of such Lot 21.

[Signature page follows.]

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

THE DEVELOPER:

WILSHIRE BY THE LAKE, LLC

By: _____

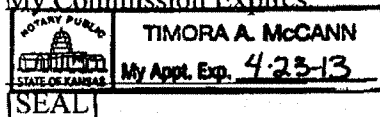
Name: Jeffrey E. Ashner

Title: Vice President

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

This instrument was acknowledged before me, a Notary Public, on March 29, 2013 by Jeffrey E. Ashner, as Vice President of Wilshire By The Lake, LLC, a Kansas limited liability company.

My Commission Expires:



Timora A. McCann

Notary Public in and for said County and State

Print Name: TIMORA A. McCANN