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**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS,  
DISCLOSURES AND EASEMENTS  
OF  
Castlegate**

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THIS DECLARATION OF COVNENANTS, CONDITIONS, RESTRICTIONS, DISCLOSURES AND EASEMENTS OF CASTLEGATE ("Declaration"), is made this 18<sup>th</sup> day of September, 2018, by Castlegate Development, LLC., a Kansas corporation (hereafter referred to as "Declarant").

RECITALS:

- A. Declarant is the owner of Property (as defined below) in Wichita, Sedgwick, County, Kansas, and desires to establish and develop a single family residential community therein;
- B. Declarant desires to establish binding covenants, conditions and restrictions applicable to the Property;
- C. It is the purpose and intention of the Declarant that the Property shall be held and/or conveyed subject to the provisions of this Declaration; and
- D. Declarant desires to create the Association (as defined below) for carrying out the responsibilities set forth herein.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the following easements, covenants, and conditions, and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title, or interest therein, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of the Declarant and each Owner thereof.

ARTICLE I – DEFINITIONS

The following terms used in these covenants, conditions and restrictions shall be applicable to this Declaration and are defined as follows:

**Section 1.01.** "Adjoining Limited Use Common Area" shall mean the portion of the Common Area and shown on Schedule 1.01 hereto which adjoins each of Lots.

**Section 1.02.** "Association" shall mean Castlegate owners' Association, a non-profit corporation to be created under the laws of the State of Kansas.

**Section 1.03.** "Board" shall mean the Board of Directors of the Association.

**Section 1.04.** "Common Area" shall mean, subject to Sections 3.04 and 3.06 below, those portions of the Property and improvements thereon, to be owned by Declarant or the Association, as follows:

Reserves A, B, C, D, E, F & G (a portion of which is currently being replatted for other Addition), together with the sidewalks, if any, constructed by Declarant or the Association within the Reserve.

**Section 1.05.** "Declarant" shall mean Castlegate Development, LLC., a Kansas corporation, and its successors and assigns; provided any such successors or assigns shall acquire for the purpose of development or sale all or any portion of the remaining unsold Lots, and in the instrument of conveyance to any such successor or assign, such successor or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the

time of such conveyance. Upon such designation of a successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.

**Section 1.06. "Drainage Reserve Area or Pipeline"** The Drainage Reserve Areas or Pipeline are part of the Common Area. Each Drainage Reserve Area shall be appurtenant to the Lot contiguous thereto. No Drainage Reserve Area or Pipeline may be conveyed or owned separately from the Lot to which it is appurtenant.

**Section 1.07. "DRC"** shall mean the design review committee referenced in Section 6.01 hereof.

**Section 1.08. "First Addition"** shall mean Castlegate Addition, An Addition Wichita, Sedgwick County, Kansas, as such plat is hereafter modified from time to time.

**Section 1.09. "Lot"** shall mean each platted residential lot located within the Property, plus the portion, if any, of any platted reserve within the Property conveyed at any time by the Declarant or the Association to an Owner and any Drainage Reserve Area appurtenant to such Lot; provided, that where land has been attached or detached from any Lot, the enlarged or diminished Lot shall be deemed to be a "Lot" and two or more Lots which are combined into a single home site shall be deemed one "Lot" hereunder; subject to all requirements and obligations applicable to Lots as provided in this Declaration. "Lots" shall mean more than one Lot.

**Section 1.10. "Member"** shall mean and refer to each and every person or entity holding membership in the Association.

**Section 1.11. "Owner"** shall mean the record owner, whether one or more persons or entities, of a fee simple title to a Lot, excluding Owners who have sold their interest under an executory contract and are no longer occupying their Lot; during the term of such a contract, the purchaser shall be considered the Owner hereunder.

**Section 1.12. "Property"** shall mean and refer to the Castlegate Addition.

**Section 1.13. "Structure"** shall mean and include anything or device, the placement of which upon any Lot may affect the appearance or drainage of such Lot, including, by way of illustration and not limitation, any building, garage, gazebo, porch, shed, greenhouse or bathhouse, covered or uncovered patio, screening materials, swimming pool, tennis court, light pole, clothesline, radio or television antenna, fence, flag pole, playhouse, curbing, paving, wall, satellite dish, signboard, mailbox and related structure or any temporary or permanent improvement to such Lot. "Structure" shall also include (i) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface water from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot and (ii) any change in the grade of any Lot other than in accordance with drainage guidelines, standards and plans established by the Declarant, DRC, the municipality having jurisdiction over the Lots or the Lot specific drainage plan, whichever is most stringent.

**Section 1.14. "Wrought Iron Fence Lots"** All lots in Castlegate Addition shall be wrought iron.

## **ARTICLE 2 – MEMBERSHIP AND VOTING RIGHTS, ASSOCIATION FORMATION AND**

## VOTING RIGHTS

**Section 2.01. Membership.** The Association shall have as Members Only Owners. All Owners shall, upon becoming such, be deemed automatically to have become Members (whether or not any Owner is occupying a residence on his Lot), and there shall be no other qualification for membership. There shall be only one membership per Lot. If any Lot is owned by more than one person or entity, all co-owners shall share the privileges of such a membership, subject to all provisions hereof, and in the bylaws. The membership rights of any Owner which is not a natural person, may be exercised by any officer, director, partner or trustee, or by individual designated from time to time by the Owner in a written instrument provided to the Association. Membership shall be appurtenant to, and shall not be separated from, the ownership of any Lot.

**Section 2.02. Voting Rights.** All Members, so long as they shall qualify under this Article 2, shall be entitled to vote on each matter submitted to a vote at a meeting of the Members. Each Member shall have one (1) vote for each Lot owned by such Member subject to the following exceptions and conditions:

- A. When any such Lot is owned or held by more than one (1) Member as tenants in common, joint tenancy or any other manner of undivided, joint or common ownership or interest, such Members shall collectively be entitled to only one (1) vote relative to such Lot, as they agree among themselves to advise the secretary or other officer conducting such meeting. Absent such joint advice, if more than one Member for a Lot shall cast a vote, then the vote for such Lot shall be suspended. Fractional votes shall not be permitted;
- B. Any Member who is in violation of this Declaration, as determined by the Declarant or the Board, shall not be entitled to vote during any period during which such violation continues. Any Member who fails to pay any assessments established pursuant to the terms hereof shall not be entitled to vote during the period in which such assessments are due and unpaid. The Declarant or the Board shall be the sole judge of the qualifications of each Member to vote and the right to participate in meetings and proceedings of the Association;
- C. Notwithstanding the foregoing, Declarant shall be entitled to ten (10) votes for each single Lot owned by it; and
- D. The Board shall adopt such bylaws, consistent with the terms hereof, the articles of incorporation and the laws of the State of Kansas, as it deems advisable for any meeting of Owners with regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Owners for voting purposes, voting by proxy and such other matters concerning the conduct of meetings and voting as it shall deem proper. In the event of any conflict between the terms of the Declaration and the bylaws, the terms hereof shall control.

**Section 2.03. Formation.** The Association shall be organized as a nonprofit corporation for a perpetual term under the laws of the State of Kansas. Declarant shall form the Association following recordation hereof, and shall convey the Common Area to the Association on or before the date it fully transfers its rights as referred to in Section 2.04 below, by quitclaim deed, in an "AS IS" condition subject to all easements, rights-of-way, restrictions and covenants of record, amenity mortgage financing liens pursuant to Section 11.02 below, liens for non-delinquent ad valorem taxes and special assessments, and other matters pertaining to such Common Area. The deeding of the Common Area by Declarant to

the Association is a ministerial task that does not require acceptance by the Association.

**Section 2.04. Initial Operation.** Notwithstanding the provisions of this Declaration, the operation of the Association and the Board shall be within the absolute and exclusive control of the Declarant until such time as Declarant fully and completely transfers its rights pursuant to Section 8.01 B below, written notice of which transfer shall be given to the Association by Declarant. During the initial operation of the Association and the Board by Declarant, Declarant may perform and exercise any and all rights and obligations hereunder related to the Association and the Board and Declarant shall appoint and remove in its discretion the members of the Board. Each Owner, by acceptance of a deed to a Lot, vests Declarant with the authority to fully exercise its rights under this Section 2.04 and in Sections 6.07 and 8.01 B hereof. Further, the appointment of the members of the DRC, pursuant to Section 6.07 hereof, shall be made by Declarant until such time as Declarant specifically assigns such right by written instrument, in accordance with Section 6.07, separately and apart from the transfer of Declarant's rights under Section 8.01 B hereof.

**Section 2.05. Board of Directors.** All actions of the Association shall be taken on its behalf by the Board, or committees established thereunder, except for (a) when a vote of the Members is specifically required by this Declaration, the articles of incorporation, or the bylaws, and (b) the initial operation thereof by Declarant as referenced herein.

### ARTICLE 3 – PROVISIONS CONCERNING THE COMMON AREA

**Section 3.01. Use.** Subject to the provisions of Sections 3.04 and 3.06 below, every Member shall have a license to use the Common Area other than the adjoining limited use common area, which area is hereby reserved for use and for use and occupancy only by the owner(s) and occupants of the lot immediately adjacent Adjoining limited use common area, and such license shall extend to every Lot, subject to the following provisions and to the other provisions of this Declaration:

- A. The right of the Board to limit the number of guests;
- B. The right of the Board to establish uniform rules and regulations pertaining to the use of the Common Area, including, but not limited to, the recreational facilities thereof and to restrict or eliminate activities or uses thereon;
- C. In addition to provisions of Section 11.02, Amenity Mortgage Financing, the right of the Declarant or the Board on behalf of the Association, to borrow money for the purpose of improving the Common Area and facilities and to mortgage the Common Area; provided that the rights of such mortgagees shall be subordinate to the rights of the Owners hereunder;
- D. The right of the Board to suspend the use of the Common Area and any recreational facilities thereon by a Member and family and guests for any period during which any assessment against his Lot(s) remains unpaid and delinquent, for any violation hereof or any infraction of the bylaws, rules and regulations of the Association. The Board shall have the right to employ third parties on behalf of the Association and to delegate to such parties the right to determine whether violations of this Declaration or rules or regulations have occurred with regard to the Common Area;
- E. The right of the Board to limit guests and to charge reasonable admission and other fees for the use of any recreational facilities situated on the Common Area;

- F. The right of the Declarant or the Board, on behalf of the Association, to grant easements, dedicate or transfer all or any part of the Common Area to any public agency, authority, utility for such purposes and subject to such conditions as may be determined by the Board or Declarant as applicable;
- G. All easements, rights-of-way, covenants and restrictions now or hereafter recorded in the real estate records, for the county in which the Property is located, including those contained herein; and
- H. No Owner, occupant or guest thereof shall conduct themselves within the Common Area in a manner which unreasonably interferes with the use and enjoyment thereof by others.

**Section 3.02. Families and Guests.** A Member's license for use of the Common Area referenced above shall automatically extend to all members of his immediate family residing on his Lot. No guests shall be entitled to exercise such right of enjoyment or to any use of the Common Area except as provided in, and subject to, such rules and regulations as may be promulgated by the Board.

**Section 3.63. Waiver of Use.** No Member may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his Lot.

**Section 3.04. Title to the Common Area; Conveyance and Reconfiguration of the Common Area.**  
Declarant may retain the title to the Common Area until it desires to convey title to the Association; provided, however, title shall be conveyed no later than the time that Declarant fully transfers its rights as provided in Section 3.01 B. below. Declarant shall convey the Common Area to the Association by quitclaim deed, subject to all matters of record. The Declarant, or Association may grant rights-of-way and easements across any Common Area from time to time. Notwithstanding anything to the contrary provided herein, the Declarant or the Association, may alter, reconfigure the Common Area from time to time in any manner it shall deem appropriate by replatting, lot split, boundary shift or other subdivision procedures or deeding land, for the purpose of adding land to, or removing land from, the Common Area. Automatically, without the necessity of amending this Declaration, upon the completion of any such alteration or reconfiguration, any land (a) removed from such area shall cease to be the Common Area, and, upon such removal, no Owner, occupant and guest shall have any license, easement, right of use or access thereto by reason of this Declaration and (b) added to the Common Area shall become a part thereof, and upon such addition each Owner, occupant and guest shall have a nonexclusive license to use the same as provided in Section 3.01 above.

**Section 3.05. Maintenance of Common Areas, Road Rights-of-Way, Pipeline; Other Common Expenses.** Subject to the obligation of the Owners of Lots with Adjoining Limited Use Common Areas, the Association shall maintain and keep in good repair and appearance the Common Area, road rights-of-way adjoining certain arterial roads determined to be desirable by the Declarant or the Board, and certain planting areas within public roads as determined to be desirable by the Declarant or the Board, including, without limitation, all landscaping and improvements, all grass, trees, shrubbery or other plantings, fences, walls, gates, benches, trash receptacles, sprinkler systems and informational signage installed by Declarant within the Common Area, such road rights-of-way and planting areas and any other property the Declarant or the Association designates as a maintenance obligation of the Association. Further, the Association shall bear the responsibility for all utility charges incurred

because of fountains, lights, and sprinkler systems or other equipment that are installed on or about the Common Area EXCLUDING THE ADJOINING LIMITED USE COMMON AREA and shall pay all insurance premiums attributable to or connected with any portion of the Common Area or the activities of the Association.

**Section 3.06. Reservation of Rights in the Common Area.** Notwithstanding any other provision of this Declaration, Declarant reserves for itself and the Association the right to grant easements within the Common Area for the installation, repair, and maintenance of water mains, sewers, drainage courses, public walkways, and other public utilities; provided that such utilities shall be installed in such manner as to minimize damage to the natural features of the Common Area. Additionally, Declarant specifically reserves for itself, its successors and assigns, and for the Association, a perpetual, non-exclusive easement and right-of-way to enter upon any Lot as reasonably necessary in order to construct, install, erect, maintain, improve, repair and/or replace any entrance treatment, fence, wall, walkway, water sprinkler system, plantings and other landscaping (including water wells, sprinkler controls and electric meters and lines associated therewith) or any signage pertaining to or serving the Property or Common Area within any wall, utility and/or drainage easement shown on the current or any future plat of the Property, or located on any Lot due to oversight.

**Section 3.07. Damage by Owner.** Notwithstanding anything to the contrary appearing elsewhere herein, in the event that any plantings, wall, fence, hedge, landscaping or other improvements within the Common Area are damaged or destroyed through the negligence of an Owner, including, but not limited to failing to correct faulty drainage or improper use of weed killer, such Owner shall pay for the cost of the repair and replacement thereof.

**Section 3.08. Access over Sidewalks.** Declarant hereby reserves perpetually for its benefit and the benefit of the Owners, family members residing on such Owner's Lot and their guests, a nonexclusive, perpetual easement for pedestrian access to sidewalks or walking trails within Reserve of Castlegate Addition, an addition to Wichita, Sedgwick County, Kansas. If the Declarant elects to construct a sidewalk, it may do so at the specific locations selected by it within such Lots and Drainage Reserve. Declarant hereby retains for itself, and for the Association, a perpetual, nonexclusive easement over such Lots and Drainage Reserve to construct, maintain, repair and replace a sidewalk, and the Association shall be responsible for maintaining, repairing and replacing such sidewalk. Declarant hereby reserves for itself the Association and its contractors, a perpetual, nonexclusive easement to so maintain such area.

**Section 3.09. Adjoining Limited Use Common Area.** The Owner(s) of each Lot with Adjoining Limited Use Common Area as shown on Schedule 1.01 hereto shall have the exclusive license for the use and enjoyment of the Adjoining Limited Use Common Area, but subject to the rights, including, but not limited to, access thereto of the Association and Board with respect to all Common Area. As provided in Article 5 below, the Owner(s) of a Lot with an Adjoining Limited Use Common Area shall be fully responsible for the maintenance of such area. Building improvements and Structures shall not be constructed within the Adjoining Limited Use Common Area other than the fencing permitted under Section 7.05 below, landscaping, grass and irrigation system, patio, gazebo and children's play area, subject to obtaining the approval of the DRC as required hereunder. No Owner may transfer the exclusive license or right of use and enjoyment granted hereunder concerning an Adjoining Limited Use Common Area to any other Owner or third-party separate and apart from such Owner's Lot. The license for use and enjoyment of an Adjoining Limited Use Common Area shall at all times be appurtenant to the adjoining Lot.

**Section 3.10. Reserve E Berm.**

**Section 3.11. Water for Irrigation.** Declarant may drill a well or wells for water to irrigate the Common Area and other areas it is responsible for maintaining. If Declarant is unsuccessful in obtaining appropriate permits or authorizations for such well(s); is unable to complete a satisfactory well or wells; or if the well or wells cease to produce sufficient water, then water from the City of Wichita will be used for such irrigation, at a higher cost.

## **ARTICLE 4 – COVENANTS CONCERNING ASSESSMENTS AND LIENS**

**Section 4.01. General Assessments.** For the purpose of providing funds for the operation of the Association, for the purposes described in Section 4.12 below and for the operation, maintenance, care and improvement of the Common Area, and to afford the Association (and Declarant, during such time as it is performing the duties and powers of the Association pursuant to Section 8.01 B. hereof) the means and resources necessary to carry out its duties and functions, the Association shall have the right, in each year, to assess, except as specifically provided in this Article, against each Lot a general assessment, which general assessment shall subject each Lot to a lien to secure payment thereof. The general assessment may be paid annually, semiannually, quarterly or monthly, as specified by the Board (or the Declarant in lieu thereof), from time to time. The amount of the initial general assessment shall be established by Declarant and shall commence on the date specified by Declarant upon notice given to the Owners. In the event a Lot is initially transferred by Declarant other than the 1st day of a calendar year, the assessment for such initial calendar year shall be prorated. The Board (or Declarant) will notify all Owners stating the amount of the assessment and when payment is due; provided, in no event shall payment be due sooner than thirty (30) days following the notice of such assessment is mailed by the Board or Declarant. The obligation of any Owner to pay such assessments shall commence upon the purchase of a Lot (or such later date as may be designated by Declarant) and is not dependent upon there being improvements erected thereon. Suspension of the right to use the Common Area or voluntary non-use thereof shall not relieve any Owner of any obligation to pay assessments. Neither shall any Owner have any right to withhold payment of assessments hereunder by virtue of the nonpayment thereof by any other Owner or the violation of these covenants, conditions and restrictions or any rule or regulation promulgated by the Declarant or the Board.

**Section 4.02. Determination of General Assessments.** Each year the Board or the Declarant on behalf of the Board shall, prior to January 1 (or as soon thereafter as practicable), determine the total amount to be raised by the general assessment charges for the next succeeding year. Subject to any exemptions permitted by this Declaration, each Lot shall be assessed an equal amount for general assessments. Should the Board at any time determine, in its sole discretion, that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Association, or in the event of emergencies, the Board shall have the authority to levy such additional assessment or assessments as it shall deem necessary.

**Section 4.03. Basis of Assessment; Exemptions; Transfer Assessment; Proration.**

- A. All general assessments shall be made against the Owners on an equal basis for each Lot, or fraction thereof owned by the Owner or Owners, except that in view of the substantial expenditures incurred by Declarant in connection with the Common Area, Declarant, and any properly licensed general contractor owning a Lot for the purpose of constructing a residence thereon and offering the same for sale, shall be exempt from imposition of any assessment, whether general or special, with respect to any Lot so long as Declarant or such contractor holds

legal title thereto (provided, the assessment exemption for such general contractors shall not extend beyond twelve (12) months from the date an applicable Lot is conveyed to such contractor and shall cease if the Lot and residence thereon is occupied for residential purposes).

- B. In the event any Lot would be subject to a general or special assessment in any calendar year, if it were not for an exemption available under subsection A immediately above, at such time as such exemption is no longer in effect during such calendar year, the applicable assessment shall be prorated for such year (based on the remaining portion of such year) and be paid by the then Owner at the time he acquires the Lot.
- C. At any time, legal title to a Lot transfers, the transferee shall pay at the time of the closing of such transfer to the working capital of the Association an amount equal to Two Hundred Dollars (\$200.00); provided the requirement to pay such a fee shall not apply to either:
  - a. the transfer by Declarant to an affiliated entity, or the transfer of Declarant's interest as developer of the Property;
  - b. the transfer of title to any Lot to a properly licensed general contractor for purposes of constructing a residence thereon for the purpose of offering the same for sale; or
  - c. any transfer by an Owner to such Owner's trust; a transfer due to the marriage of an Owner; or for other reasons which are determined by the Declarant or the Board to be of such a nature so that the payment of a transfer fee is inappropriate.

#### Section 4.04. Special Assessments.

- A. In addition to general assessments, the Board (or the Declarant under Section 3.01 B. hereof) may, from time to time, at a regular meeting or a special meeting called upon notice for such purpose, establish a special assessment to be levied equally against each Lot (subject to the exemptions contained in Section 4.03 A above) for the purpose of providing additional funds (not sufficiently available through general assessments) to carry out its duties and other functions and purposes contemplated hereunder and to make improvements or expenditures. No such special assessment to all Lots under this subsection A shall be valid unless two-thirds (2/3) of the votes cast, in person or by proxy, at an annual or special meeting of the Members. Any special assessments shall become a lien against each individual Lot (subject to the exemption specified in Section 4.03 A above) in the same manner otherwise provided for in this Article.
- B. The Board, on behalf of the Association, shall have the authority to establish and fix a special assessment on any Lot to secure the liability of the Owner to the Association for any breach by such Owner of any of the provisions of this Declaration, which breach shall result in an expenditure by the Association for repair or remedy. Any special assessments shall be payable in full (unless a schedule for payment in installments is specified) on the first day of the second calendar month next following the date that the same shall be established by the Board.

#### Section 4.05. Collection and Expenditures.

The Board (or the Declarant, so long as it is carrying out the duties and powers of the Association) shall have the sole authority to collect and enforce the collection of all general and special assessments provided for in this Declaration, and may, in addition to such assessments, charge and assess costs, including reasonable attorneys' fees, and penalties and interest for the late payment or nonpayment thereof. The Board shall have the authority to expend all monies

collected from such assessments, costs, penalties and interest for the payment of expenses and costs in carrying out the duties, rights and powers of the Association as provided for in this Declaration and the articles of incorporation and bylaws of the Association. However, the Association shall not be obligated to spend in any year all the sums collected in such year by way of assessments, or otherwise, and may carry forward, as surplus or in reserves, any balances remaining; nor shall the Association be obligated to apply any such surpluses or reserves to the reduction of the amount of the assessments in the succeeding year, but may carry forward from year to year such surplus as the Board, in its absolute discretion, may determine to be desirable for the greater financial security of the Association and the effectuation of its purposes.

**Section 4.66. Assessments and Liens Delinquency.** Thirty (30) days after any general or special assessment shall be due and payable, and remains unpaid or otherwise not satisfied, the same shall be and become delinquent and automatically become a lien on the Lot and shall so continue until the amount of said charge and assessment, together with all costs, penalties and interest as herein provided, has been fully paid or otherwise satisfied.

**Section 4.67. Notice of Delinquency.** At any time after any general or special assessment against any Lot has become a lien and delinquent, the Declarant or an officer of the Association may record in the office of the Register of Deeds, Sedgwick County, Kansas, a Notice of Delinquency as to such Lot, which notice shall state therein the amount of such delinquency and that it is a lien, and the interest, costs (including attorneys' fees) and penalties which have accrued thereon, a description of the Lot against which the same has been assessed, and the name of the Owner thereof, and such notice shall be signed by an officer of the Association. Upon payment or other satisfaction of said assessment, interest, penalties and costs in connection with which notice has been recorded, the Association shall record a further notice stating the satisfaction and the release of the lien thereof.

**Section 4.68. Enforcement of Liens.** Each lien established pursuant to the provisions of this Declaration and which is specified in a Notice of Delinquency as hereinabove provided, may be foreclosed in like manner as a mortgage on real property as provided by the laws of Kansas at any time within twenty (20) years following the recording of a Notice of Delinquency. In any action to foreclose any such lien, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, and such penalties for delinquent charges and assessments as shall have been established by the Board. In connection with any liens created pursuant to this Declaration or documentation associated therewith (whether such liens are now in existence or are created at any time in the future), each Owner to the extent permitted by law, hereby waives the benefit of any redemption, homestead or exemption laws of the State of Kansas now in effect, or in effect from time to time hereafter.

**Section 4.69. Subordination of Assessment Lien.** Each assessment and lien, together with any costs, penalties and interest reserved under this Declaration, shall be subordinate to the lien of any valid bona fide first mortgage which has been, or may hereafter be, given in good faith and for value by any bank, savings and loan or other institution in the business of regularly conducting residential lending on any interest of any Owner covered by this Declaration. Any unpaid assessments shall be deemed to be common expenses collectible from assessments made to all Lots. Nothing contained herein shall release a person or entity from his or its personal liability for any assessments assessed while such person or entity owns a Lot which becomes delinquent prior to any such foreclosure.

**Section 4.10. Personal Liability.** In addition to the covenants and agreements heretofore set forth herein, each Owner, by the acceptance of title to such owner's Lot, whether or not it shall be so expressed in such deed, shall be deemed to have agreed to be personally liable for the payment of each general or

special assessment levied against such Lot during the period of ownership (subject to the exemptions specified in Section 4.03 A above).

**Section 4.11. Interest on Delinquent Assessments.** All assessment charges (general or special) which remain due and unpaid thirty (30) days after the same are due shall thereafter be subject to interest at the rate of eighteen percent (18%) per annum, or such other rate as may be established from time to time by the Board; provided, however, that such interest rate shall never exceed the maximum allowed by law.

**Section 4.12. Use of General Assessment Funds.** The Association's general assessment fund, shall be used for such of the following purposes as the Board or the Declarant on behalf of the Board shall determine necessary and advisable: for the use, benefit and enjoyment of the Owners, including improving, maintaining, repairing and replacing the Common Area and improvements thereon (except as otherwise specifically provided in this Declaration) which shall, include, but are not limited to, expenses incurred in connection with the proper operation, maintenance and repair of any improvements located within the Common Area; collecting and disposing of garbage and rubbish within the Common Area; employing night watchmen, if the Board elects to engage a security service; for caring for vacant property (including the mowing of vacant Lots not owned by Declarant); for removing grass or weeds; for street cleaning; for street signs; for snow removal; for constructing, purchasing, maintaining, or operating any community service including publishing a directory of the membership of said Association; payment of insurance premiums; management, accounting and legal fees; payment of all costs, expenses, principal and interest related to all amenity financing referred to in Section 11.02 below; expenses incidental to the enforcement of this Declaration, the articles of incorporation, bylaws, and rules and regulations established by the Board or DRC; the payment of operating expenses of the Association; social activities involving the Members of the Association; doing any other thing necessary or advisable in the opinion of the Board for the general welfare, safety, and enjoyment of the Owners and/or for any other purpose within the purposes for which the Association is incorporated.

## **ARTICLE 5 – COVENANTS FOR MAINTENANCE; ENFORCEMENT**

Each Owner (other than Declarant; provided it will cause all Lots owned by it to be periodically mowed) shall keep each Lot owned by such Owner, together with the Adjoining Limited Use Common Area and Drainage Reserve Area owned by such Owner in connection with his Lot, if applicable, and all improvements therein or thereon in good order, condition and repair, including, but not limited to, seeding or sodding grass, watering, fertilizing, weed control, mowing of all lawns, the pruning and trimming of all trees and shrubbery, removal of diseased or dead trees within a reasonable time, weeding of plant beds, the painting, maintenance, repair and replacement, (including the painting or other appropriate exterior care) of all Structures, buildings and other improvements, roofs, gutters, downspouts, exterior building surfaces and other exterior improvements, any enclosed courtyards, decks, exterior doors, windows, glass walls, chimney flues, and structural items, as well as the patio, patio fence, fence or wall, if any, driveways and sidewalks appurtenant to such Lot, all in a manner and with such frequency as is consistent with good property management in relation to a quality residential neighborhood such as will exist in the Lots. Each Owner of a Lot shall maintain the grass areas within street rights-of-way adjoining such Owner's Lot, by watering such area and the regular mowing thereof, to the same condition as such Owner's Lot. Specifically, each Owner (other than Declarant) of a Lot with Adjoining Limited Use Common Area or appurtenant Drainage Reserve Area shall maintain the Adjoining Limited Use Common Area or Drainage Reserve Area, as applicable, in the manner described above (including, but not limited to, seeding or sodding grass, watering and mowing such

area). However, except as provided below, if there is a bank of a lake or pond within an Adjoining Limited Use Common Area or Drainage Reserve Area, the Association, rather than the Owner, shall be responsible for making any repairs to such bank which are determined by the Board to be necessary from time-to-time, at the Association's expense. Furthermore, if any Lot boundary extends to and includes a lake or pond bank, notwithstanding that the bank is within the Lot, then, except as provided below, the Association, not the Lot Owner(s), shall have the right and responsibility to make repairs to such bank at the expense of the Association when the Board has determined that such repairs are needed. The Declarant hereby retains a perpetual nonexclusive easement for itself and the Association, and their respective representatives and contractors onto each Lot, Adjoining Limited Use Common Area, or Drainage Reserve Area which includes a pond or lake bank for access in order to repair such bank from time to time. In any instance when a lake or pond bank requires repair in the opinion of the Board, and such repair is necessitated due to the acts of the Owner or his contractor(s), including the construction or installation of landscaping or other improvements, then, in lieu of the Association repairing such lake or pond bank as provided above, the Owner shall do so promptly at his sole cost and expense. Each Owner's obligation hereunder shall commence upon the acquisition of such Owner's Lot.

If in the opinion of the DRC, any Owner fails to perform such duties, or otherwise breach such Owner's obligations as specified in this Declaration, the Association, upon approval by the Board and after fifteen (15) days written notice to such Owner to remedy such default, shall have the right (in addition to any other rights and remedies available hereunder or at law or equity), through its agents and employees, to enter upon the Lot(s) or Adjoining Limited Use Common Areas and Drainage Reserve Area and to seed, sod, water, fertilize, perform weed control, mow, prune, remove, repair, maintain, repaint, remove, and restore such Lot, Drainage Reserve Area, or such improvements, or otherwise bring such Lot(s), Adjoining Limited Use Common Area or Drainage Reserve Area or such improvements into conformity herewith, and the cost thereof (hereinafter sometimes called the "Compliance Charge") shall be a binding personal obligation of such Owner which may mature into a lien enforceable in the same manner as a mortgage upon the Lot(s) in question in the following manner: The Association shall record an Affidavit of Nonpayment of Compliance Charge in the Office of the Register of Deeds of Sedgwick County, Kansas, stating (a) the legal description of the property upon which the lien is claimed, (b) the name(s) of the Owner(s) of said property as last known to the Association, and (c) the amount of the Compliance Charge which is unpaid. The lien may be foreclosed in the like manner as a mortgage on real property as provided by the laws of Kansas at any time within twenty (20) years following recordation of the Affidavit of Nonpayment of Compliance Charge. In any action to foreclose any such lien, the Association shall be entitled to recover its costs, including reasonable attorney's fees, and such penalties for delinquent charges and assessments as shall have been established by the Association. The lien referenced herein shall be created at the time of the filing and recording of the aforesaid Affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the Lot, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes and other public charges as are by applicable law made superior. The Compliance Charge shall accrue interest at the rate established from time to time by the Board, but in no event less than eighteen percent (18%) per annum or such lesser rate as permitted by law.

## ARTICLE 6 – ARCHITECTURAL CONTROL; POLICY GUIDELINES; BUILDER APPROVAL.

**Section 6.01. Approval Required.** No Structure, projection from a Structure, or improvement shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change or

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alteration therein or thereto be made, until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing by the design review committee (hereafter the "DRC"), its agents, assignees, or successors, as to (a) harmony of external design and location in relation to and effect upon surrounding Structures, topography and the overall community design of the Property; (b) the character and color of the exterior materials; (c) the quality of the exterior workmanship; and (d) the location thereof on the Lot. In the event the DRC fails to approve or disapprove such design and location within thirty (30) days after the complete plans and specifications, including a drainage plan as required by Section 6.02 hereof, have been submitted to and received by it, approval will not be required, and this Article will be deemed to have been fully complied with. After the date the Declarant has relinquished its right to designate the members of the DRC under Section 6.07 below, the applicant may appeal an adverse decision to the Board, which may reverse or modify such decision by a two-thirds (2/3) vote of those directors present and voting at a meeting at which a quorum is present. The Board shall establish the schedule for disposition of such appeal upon written notice to the Owner taking appeal. The Declarant or DRC may, from time to time, develop and promulgate policy guidelines for the application of the design review provisions. The DRC may deny approval for any proposed Structure if the Owner is delinquent as to any assessments due hereunder. The policy guidelines may include (x) review procedures, (y) aspects and objectives of review, and (z) principles and criteria used as standards in determining the achievement of the required objectives. The policy guidelines may also include specific design practices that, though optional, are generally acceptable methods for achieving the required objectives in particular design problems frequently encountered. The policy guidelines are intended to assist the DRC and the Owners in the ongoing process of community design. The guidelines may be modified and supplemented from time to time by the DRC, subject to the approval of the Board. The initial guidelines are contained in Section 6.08 hereof. Additionally, the Declarant or DRC may establish other guidelines outside this Declaration from time to time. The provisions of this Section are not applicable to any Lots owned by Declarant.

The laws, rules and regulations of the City of Wichita, FEMA and other governmental authorities may limit or prohibit the construction or installation of Structures within an Adjoining Limited Use Common Area or within a Drainage Reserve Area. Prior to any such construction or installation, the Owner(s) of such areas shall investigate and satisfy himself regarding whether or not a proposed Structure is permitted by such authorities.

**Section 6.02. Form of Plans and Specifications.** Any Owner seeking approval of the DRC shall, at its expense, submit plans and specifications in such form and shall contain such information as may be required by the DRC, but in any event shall include (a) a site plan of the Lot or Lots showing the nature, exterior color scheme, kind, shape, height, materials, and location with respect to the particular Lot or Lots (including proposed front, rear, and side set-backs) of all Structures, (b) the location thereof with reference to Structures on adjoining portions of the property, (c) and the number and location of all parking spaces and driveways on the Lot or Lots, and (d) a Lot specific drainage plan prepared by an engineering firm designated by Declarant in accordance with the then current master grading and drainage plan applicable to the Lot or Lots.

**Section 6.03. Removal and Alteration of Structures, Liens.**

- A. If any Structure shall be altered, erected, placed, or maintained upon any Lot, Adjoining Limited Use Common Area or a Drainage Reserve Area, or any new use of a Structure is commenced on any Lot, Adjoining Limited Use Common Area or Drainage Reserve Area, otherwise than in accordance with plans and specifications approved by the DRC pursuant to the provisions of this Article, such alteration, erection, placement, maintenance, or use shall be

deemed to have been undertaken in violation of this Article and without the approval required herein, and, upon written notice from the DRC, any such Structure so altered, erected, placed, maintained or used upon any Lot, Adjoining Limited Use Common Area or Drainage Reserve Area in violation hereof shall be removed or realtered, and any such use shall be terminated by the Owner(s) of such Lot within a reasonable period of time established by the DRC, so as to extinguish such violation.

B. If fifteen (15) days after notice of such a violation, the Owner of the Lot upon which such violation exists (or the Adjoining Limited Use Common Area or Drainage Reserve Area on which such violation exists) shall not have taken reasonable steps toward the removal or termination of the same, and continued the pursuit thereof with diligence, the Association or the DRC shall have the right, through their agents and employees, to enter upon such Lot, Adjoining Limited Use Common Area and Drainage Reserve Area, if applicable, and to take such steps as may be necessary to extinguish such violation, and the cost of such removal and alteration shall be a binding, personal obligation of such Owner and, if not paid in full by such Owner on demand by the Board, the cost shall mature into a lien upon the Lot(s) in question in the following manner: The Association or the DRC shall record an Affidavit of Nonpayment of Removal or Alteration Charges in the Office of the Register of Deeds of Sedgwick County, Kansas, stating (i) the legal description of the property upon which the lien is claimed, (ii) the name(s) of the Owner(s) of said Lot as last known to the Association, and (iii) the amount of the removal and alteration charges which are unpaid. The lien shall be created at the time of the filing and recording of the affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the Lot whether arising for imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes or other public charges as are by applicable law made superior. The lien may be foreclosed in the like manner as a mortgage on real property as provided by the laws of Kansas at any time within twenty (20) years following recordation of an Affidavit of Nonpayment of Removal or Alteration Charges. In any action to foreclose any such lien, the Association shall be entitled to recover its costs, including reasonable attorney's fees, and such penalties for delinquent charges and assessments as shall have been established by the Association. The lien referenced herein shall be created at the time of the filing and recording of the affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the Lot, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes and other public charges as are by applicable law made superior. The costs incurred by the Association shall accrue interest at the rate established from time to time by the Board, but in no event less than eighteen percent (18%) per annum or such lesser rate as permitted by law.

C. In the event a lien is created pursuant to this Section and thereafter the Affidavit of Nonpayment of Removal or Alteration Charges, plus accrued interest and penalties and other costs and expenses shall be fully paid, the Association or the DRC shall, within ten (10) days following payment, file with the Register of Deeds of Sedgwick County, Kansas, an Affidavit of Payment of Removal or Alteration Charges, which affidavit shall (i) refer to and identify the Affidavit of Nonpayment of Removal or Alteration Charges which created the lien which has been satisfied, (ii) state the legal description of the Lot affected, and (iii) state the name(s) of the Owner(s) of the Lot.

**Section 6.04. Certificate of Compliance.** Upon completion of the construction or alteration of any

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Structure in accordance with plans and specifications approved by the DRC, it shall, upon written request of the Owner thereof, issue a Certificate of Compliance in form suitable for recordation, identifying such Structure and the Lot, Adjoining Limited Use Common Area or Drainage Reserve Area, on which such Structure is placed, and stating that to the best knowledge of the DRC without extensive review or inspection of the Structure, the plans and specifications, the location of such Structure, and the use or uses to be conducted thereon have been approved and that such Structure complies therewith. Preparation and recording of such Certificate shall be at the expense of such Owner. All costs and expenses incurred by the DRC in evaluating compliance with such plans, specifications and other matters and in preparation and recordation of the Certificate of Compliance, shall be paid by the requesting party at the time specified by the DRC. Any Certificate of Compliance issued in accordance with the provisions of this Section shall be *prima facie* evidence of the facts therein stated, and, as to any purchaser or encumbrance in good faith and for value, or as to any title insurer or title examiner, such Certificate of Compliance shall be conclusive evidence that all Structures on the Lot, and the use or uses described therein comply with all the requirements of this Declaration as to which the DRC exercises any discretionary or interpretive powers.

**Section 6.65. Right of Inspection.** A representative of the Board or DRC or any of its agents thereof may, at any reasonable time or times, enter upon and inspect any Lot, Adjoining Limited Use Common Area or Drainage Reserve Area and any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, repair, construction, or alteration of Structures thereon are in compliance with the provisions hereof, and neither the DRC, the Association, nor any such agent, shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**Section 6.66. No Liability.** Neither the DRC, Declarant, the Association, nor any officer, director, member, agent, nor employee thereof, shall be liable to any Owner or to any person, firm, corporation, or other entity for any damages arising from any performance or nonperformance of any duties or functions under this Article.

**Section 6.67. Membership of DRC.** The original member(s) of the DRC shall be one or more persons appointed by Declarant. Upon the death or resignation of any member of the DRC, or the removal of a member thereof by Declarant, Declarant shall appoint a successor, unless at such time, Declarant has relinquished its rights hereunder as hereinafter provided. The act of a majority of the committee shall be binding and the majority of the committee may designate a representative to act for it. Declarant shall retain its rights hereunder until the same are relinquished by Declarant to the Association by written instrument. At such time as Declarant desires to do so, Declarant shall relinquish its rights or any portion thereof under this Section to the Association by advising the Association in writing of its intent to do so. In any event, Declarant shall relinquish its rights under this Section on or before such time as the construction of residences on all of the Lots have been completed.

**Section 6.68. Initial Policy Guidelines.** The following initial policy guidelines have been established and the same may be changed from time to time pursuant to the provisions of Section 6.01 hereof but without the necessity of filing any formal amendment to this Declaration. Accordingly, inquiry should be made of the DRC to determine current policy guidelines. Each Owner shall comply strictly with the policy guidelines hereunder in effect from time-to-time.

- A. There shall be no rock or gravel yards and all yard areas, exclusive of improvements, shall be at least eighty percent (80%) grass. All vegetable gardens shall be in the Lot backyards only.

- B. No buffalo, zoysia or Bermuda grass lawn shall be permitted within a Lot or any Drainage Reserve Area, though buffalo grass may be permitted within Common Area maintained in a natural state and condition by the Association.
- C. All roofs shall be Heritage 30 Weathered Wood composition shingles, Weathered Wood Composition shingles or equivalent, as approved in writing by the DRC from time to time;
- D. There shall be no underground homes.
- E. In the event of the construction of any retaining walls the plan and materials utilized must be previously approved in writing by the DRC.
- F. All basketball goal backboards shall be either white or glass. No "home-made" basketball backboards or supports shall be permitted. All basketball goal backboard and supports shall be first approved by the DRC.
- G. All recreation and play equipment shall be located in the rear of any Lot except that basketball goals may be placed in either the rear or front of a Lot.
- H. There shall be no above-ground swimming pools. Any temporary covering of a swimming pool, tennis court, patio, or otherwise, of a rigid or "bubble" type shall be deemed a Structure that is subject hereto.
- I. All tennis courts must have a black wrought iron is utilized and any windscreen shall be black or green inside fence. No fence may exceed ten feet (10') in height. The light source used for tennis courts shall be natural in color. Incandescent or metal halide lights are recommended. No other type of lighting may be utilized without the specific written approval of the DRC. The light housing shall be a shoe box type fixture like the Envirolight II by Elsco, designed to minimize ambient light loss. Lighting poles shall not exceed sixteen feet (16') in height without specific written approval of the DRC. All tennis court plans must specify the light source and intensity; pole height; manufacturer of light; location of light standards around the court. Tennis courts may be built to the property line, subject to any applicable building codes.
- J. Pool buildings or gazebos may be constructed within any rear yard setback area established by the plat of the platted Lots (but pool buildings shall not be constructed within an Adjoining Limited Use Common Area or Drainage Reserve Area); provided that the same shall not exceed one story in height and are allowed by applicable building codes.
- K. No storage sheds shall be permitted except in very limited circumstances as may be specifically approved by the DRC as to design and materials. Any approved out-building shall be constructed of the same material as the home.
- L. Dog runs must be placed behind the residence and must be screened from view from neighboring homes and the street with fencing or other appropriate material.
- M. All exterior wood surfaces (exclusive of redwood, cedar, or other "decking" materials approved by the DRC) on homes must be painted or stained and sealed.
- N. Bay or bow windows or daylight windows may exceed setbacks by not more than three feet

- (3'), if allowed by applicable building codes.
- O. No window shall contain any reflective material such as aluminum foil.
- P. Pad and grading and drainage elevations shall be set by Declarant's engineer at the cost of Owner and any deviation therefrom and any resulting damage shall be the responsibility of the Owner.
- ✓ Q. No Christmas lights shall be lighted before Thanksgiving and shall be taken down no later than February 15 of the following year.
- R. All flagpoles and the type of flag that may be flown must be first approved by the DRC.
- S. All firewood stacks more than two cords of wood shall be screened from view from other Lots.
- ✓ T. All forms of lawn ornamentation, sculpture or "yard art" must first be approved by the DRC.
- U. Trash and refuse container storage areas shall be located inside the garage or shall be installed at a location approved by the DRC and shall be screened in a manner approved by the DRC.
- V. Lawns shall be mowed regularly at an appropriate height so as to maintain a neat appearance.
- W. Roof pitch of any building shall, at a minimum, be 6/12, except as otherwise approved by the DRC.

**Section 6.89. Disclaimer as to DRC Approval.** Plans and specifications are not reviewed for any systems, mechanical, plumbing, electrical, engineering, or structural design, or quality of materials, and by approving such plans and specifications neither the DRC, the members thereof, nor the Association assumes any liability or responsibility therefor, nor for any defect in any Structure constructed from such plans and specifications. Neither Declarant, the Association, the DRC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the DRC, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, quitclaims, and covenants not to sue for any claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance, and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

**Section 6.10. Approved Builder.** Notice is hereby given to each Owner that the initial construction and completion of the residence, garage and related improvements on the Lot shall only be performed by a general building contractor approved in writing in advance by the Declarant, which approval shall be made in Declarant's sole discretion. Each approved builder shall be required to execute a builder's agreement with Declarant on terms satisfactory to Declarant prior to commencement of construction. Each Owner is hereby informed that, among other things, an approved builder is required to pay a marketing fee (the "Marketing Fee") based on the total value of the initial residence, garage and related

improvements, as provided in such builder's agreement, and if such builder fails to pay the same, the Owner of such Lot shall be required to pay the delinquent amount. The Marketing Fee shall be paid at the time of substantial completion of such initial residence and related improvements, or no later than five (5) days prior to the occupancy thereof, whichever occurs first. The specific party to be paid the Marketing Fee and the calculation of the Marketing Fee shall be included as part of the initial sales contract concerning a Lot. Any Owner, or prospective Owner, desiring further information concerning the Marketing Fee should contact the marketing representative for the Property.

**Section 6.11. Mailboxes.** Declarant or the Association shall designate the type and design of the mailboxes to be used for all Lots. Declarant, the Association or the United States Post Office shall install a mailbox for each Lot following the completion of construction of a residence thereon and shall collect from the Owner(s) of such Lot the cost, if any, for such mailbox, support structures and installation of same at the closing for the residence. If not collected at the closing, the applicable Owner(s) shall pay such invoice within fifteen (15) days following receipt thereof or the same shall accrue interest at the rate established from time to time by the Board, but in no event less than eighteen percent (18%) per annum or the maximum rate permitted by applicable law, whichever is lower. Notice is hereby given that the United States Post Office, not Declarant or the Association, designates the location of the mailbox for each Lot.

**Section 6.12. No Waiver of Future Approvals.** Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the architectural guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Structure until the Structure is completed, in which case it may be unreasonable to require changes to the improvements involved, but the DRC may refuse to approve similar proposals in the future. Approval of applications or plans for any Structure, whether completed or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

**Section 6.13. Variances.** The DRC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; or (b) prevent the DRC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

## **ARTICLE 7 – GENERAL COVENANTS, RESTRICTIONS AND DISCLOSURES**

**Section 7.01. Structures.** No previously approved Structure located on any Lot shall be used for any purpose other than that for which it was originally designed.

**Section 7.02. Division of Lots.** No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise without prior approval of the Board.

**Section 7.03. Antennas.** No facilities, including poles and wires, for the transmission of electricity, telephone messages, and the like shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas of any kind including satellite receiving antennas may be so

maintained upon any Lot unless completely enclosed within the attic of the residence, except by Declarant during the construction period for any home. Notwithstanding the foregoing, certain satellite receiving antennas of the approximate size of twenty-four inches (24") in diameter or less, if appropriately installed so that the same are unobtrusive may be permitted if previously approved in writing by the DRC. Neither the Declarant nor the DRC shall interpret or apply this Section 7.03 in any way, or adopt any rules or regulations pursuant hereto, that unreasonably delays or prevents the installation, maintenance or use, unreasonably increases the cost of installation, maintenance or use, or precludes reception of an acceptable quality signal with respect to any television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services in violation of applicable law or governmental regulations.

**Section 7.04. Vehicles and Trailers.** No semi-trailer or truck, commercial (which shall include vehicles which advertise a commercial activity) or recreational vehicle and/or trailers, boat, boat trailer, house trailer, camper, truck with camper, camper trailer, self-propelled or towable equipment or machinery of any sort, or similar items, or any item deemed offensive or unsightly by the Declarant or the Board, in their sole discretion, may be stored or regularly or frequently parked in the open on a driveway within any Lot or street right-of-way located adjacent to any of the Lots; provided, the foregoing shall not be construed to prevent contractors or others performing work or services on a Lot or Structures thereon from parking on the street or in a driveway in connection with performing work or services. No vehicle which is abandoned, wrecked, dismantled, inoperative, rusted, junked, in disrepair or neglect, or in a partially dismantled condition may be parked, stored or displayed in the open on any Lot or street located within the Property. Furthermore, no vehicle shall remain parked, stored or displayed in the open on any Lot or on a street within the Property without being moved outside of the Property for a period of twenty-four (24) hours or more each ten (10) consecutive day period, except with the written consent of the Declarant, or the Board or DRC.

**Section 7.05. Fences.**

- A. No fences shall be installed or constructed without the prior approval in writing by Declarant or the DRC. Fences in compliance with this Section 7.05 may be installed within an Adjoining Limited Use Common Area and, to the extent permitted by the City of Wichita, FEMA and other legal authorities, a Drainage Reserve Area.
- B. Except as provided elsewhere herein, wrought iron or tubular steel fences five feet (5') only.
- C. Only approved wrought iron and tubular steel fences constructed pursuant to specifications provided by the DRC will be permitted on Wrought Iron Fence Lots and within the Adjoining Limited Use Common Area and a Drainage Reserve Area. Privacy fences immediately adjacent to patios that are appurtenant to a home constructed on a Wrought Iron Fence Lot shall be permitted upon the prior approval of the DRC.

**Section 7.06. Off-street Parking Requirement.** Each of the Lots shall provide four (4) off-street parking spaces per dwelling unit, including garages and driveway.

**Section 7.07. Trees.** No tree, bush or shrub having a trunk diameter of four inches (4") or more (measured from point two feet (2') above ground level) shall be removed from any Lot or materially trimmed or otherwise altered without the express written authorization of the DRC, except if such tree is substantially diseased or damaged or except as may be reasonably required for the installation, maintenance, repair or replacement of underground utility lines. The DRC may designate certain trees,

regardless of size, as not removable without written authorization. No trees shall be removed from any Adjoining Limited Use Common Area and Drainage Reserve Area without the prior written authorization of the DRC.

**Section 7.08. Animals.** No birds, reptiles, animals, or insects shall be kept or maintained on any Lot except for domestic purposes. Under no circumstances shall any commercial or agricultural business enterprise involving the use or breeding of animals be conducted without the express written consent of the Association. The Association may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot, Adjoining Limited Use Common Area and the Drainage Reserve Area. Dogs, cats and all other pets or animals shall be confined at all times to the residence site and must be kept on a leash when outside the Lot, Adjoining Limited Use Common Area and any appurtenant Drainage Reserve Area. No dogs or other animals shall be continually or regularly staked or chained in any front or side yards. All domestic pets must be properly immunized as required by applicable ordinances, codes and laws.

**Section 7.09. Signs.** No sign or other advertising device of any nature shall be placed upon any Lot, Adjoining Limited Use Common Area or Drainage Reserve Area except a sign or devise may be placed on a Lot which is (a) installed by Declarant, (b) approved by the Declarant or the Board, and (c) for the usual and customary real estate broker signs advertising a Lot as "for sale" or "sold." The Board may, in its discretion, adopt and promulgate rules and regulations relating to signs. The Declarant or Board may remove non-conforming signs upon three (3) days' notice to the Owner, such removal to be at the cost of said Owner.

**Section 7.10. Temporary Buildings/Modular Homes.** No temporary building, trailer, garage, basement, tent, outbuilding, or building during construction shall be used temporarily or permanently as a residence on a Lot. Modular or pre-engineered homes are prohibited except for use by Declarant for administrative or sales office purposes.

**Section 7.11. No Storage; Trash.** No lumber, metals, bulk materials, refuse, or trash shall be kept, stored, or allowed to accumulate on any Lot or on the Common Area, except building materials may be stored on a Lot during the course of construction of any approved Structure (or on such Common Area). All trash containers used for a person or persons occupying a residence shall be stored within a garage or other trash container storage area which prevents such container from being seen by neighbors. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis using containers which are placed near the street side ends of driveways, such containers may be placed near the street side ends of driveways only on the trash pickup days and shall be removed to the storage area on the pickup day.

**Section 7.12. Utilities; Pipes.** All utilities and water sprinkler systems within any Lot shall be installed below the surface of the ground. No water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained on any Lot above the surface of the ground, except hoses used for temporary irrigation purposes. No Lot shall be used for boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

**Section 7.13. Association's Right to Trim or Prune.** Representatives of the Declarant or the Board shall have the right to enter upon any Lot on which a residence has been constructed and the Adjoining Limited Use Common Area and Drainage Reserve Area and trim or prune, at the expense of the Owner, any hedge or other planting which, in the opinion of the Association, by reason of its location upon the Lot or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining property

or obscures the view of street traffic or is unattractive in appearance; provided, however, that the Owner shall be given not less than fifteen (15) days prior written notice of such action.

**Section 7.14. Sight Lines.** No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two feet (2') and six feet (6') above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at point twenty-five feet (25') from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street lines extended past the corner. The same sight line restrictions shall apply to any Lot within ten feet (10') from the intersection of a Street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to avoid obstruction of such sight lines in the opinion of the DRC.

**Section 7.15. Noxious Dangerous and Offensive Activities Prohibited.** No noxious or dangerous activity or thing shall be carried on or permitted on any Lot, nor shall anything be done which may be or may become a nuisance to the Owners of other Lots.

**Section 7.16. Home Professions and Industries.** No profession or home industry shall be conducted in or on any part of a Lot, Adjoining Limited Use Common Area or Drainage Reserve Area, or in any improvements thereon without the specific written approval of the Board. The Board, in its discretion, upon consideration of the circumstances in each case and particularly the effect on surrounding property, may permit a Lot or any improvement thereon to be used in whole or in part for the conduct of a profession or home industry. No such profession or home industry shall be permitted, however, unless it is considered, by the Board, to be compatible with a good-quality residential neighborhood. The members of the Board shall have no liability to the Association or any Owner or occupant of a Lot as a result of authorizing or failing to authorize a profession or home industry activity hereunder. This Section shall not apply to any activity conducted by the Declarant, within the Property.

**Section 7.17. Model Homes and Real Estate Offices.** All else herein notwithstanding, any Lot owned by Declarant or persons so authorized by Declarant may be used for a model home or for a real estate office including a temporary mobile or modular Structure until all homes in the development are sold.

**Section 7.18. Laundry and Machinery.** No clothing or any other household fabric shall be ~~hung~~ in the open on any Lot, Adjoining Limited Use Common Area or Drainage Reserve Area, except with specific written approval of the Board. No machinery shall be placed or operated upon any Lot, except such machinery as is usual in the maintenance of a private residence.

**Section 7.19. Rules and Regulations.** Each Owner and his family and guests, shall obey and comply with all applicable public laws, ordinances, rules and regulations, and all rules and regulations now or hereafter promulgated, as provided for in this Declaration. No activity which may be or become a nuisance to the neighborhood shall be carried on upon the Common Area, Adjoining Limited Use Common Area or Drainage Reserve Area.

**Section 7.20. Land Use.** None of the Lots and Drainage Reserve Areas may be improved, used, or occupied for other than the uses as designated by the recorded plat thereof, applicable zoning regulations; and this Declaration, the most restrictive thereof to control in the event of any conflict.

**Section 7.21. Damage to Common Area, Etc., Prohibited.** No Owner shall do or allow to be done any act which causes or threatens to cause any damage or disrepair to the Common Area, including the

Adjoining Limited Use Common Area, and no Owner shall permit members of his family or guests to cause such damage or disrepair.

**Section 7.22. Requirement to Plant Lawn.** Within ninety (90) days after occupancy of a residence on a Lot, the Owner thereof shall plant or sod the entire lawn on such Lot, Adjoining Limited Use Common Area and the Drainage Reserve Area, if applicable, unless it is not seasonal to do so within such period in which event the planting or sodding shall occur as soon as reasonably possible in the next following planting season; provided, an Owner of a Lot may elect to maintain the Adjoining Limited Use Common Area or Drainage Reserve Area in a natural condition rather than a manicured condition. In the event such lawn is not so installed, Declarant may, after giving written notice to any Owner of such Owner's failure to comply herewith, at any time after fifteen (15) days have expired from the date of such notice, install said lawn, and collect from such Owner the cost thereof. Declarant is hereby granted the right to enter upon any such Lot for performing same.

**Section 7.23. Use or Operation of Vehicles or Equipment on the Common Area.** Other than the operation of bicycles and skateboards within sidewalks in the Common Area (subject to any rules and regulations established by the Board from time to time), motor scooters, bicycles, minibikes, skateboards, boats, trailers, vehicles or similar items shall not be operated, parked or stored within the Common Area except within any area, if any, designated by the Board.

**Section 7.24. Set-Back Requirements.** Unless otherwise approved by the DRC and subject to any more restrictive provisions contained in this Declaration and the codes and ordinances of the City of Wichita, no Structure or other improvements may be constructed or maintained on any Lot within the set-back areas shown on the plat of the Lots; provided, unless prohibited by applicable codes or ordinances, so long as the drainage to and from the Lot is not impaired, such platted set-back requirements shall not be applicable to any improvement, building, or structure constructed below the surface level of the ground, or to swimming pools constructed in the ground, or to any tennis courts, paddle tennis courts, or similar sports surfaces constructed at ground level, but nothing contained in this provision shall be deemed to permit the installation or operation of any lighting equipment in such areas, except as may be specifically permitted by the DRC.

**Section 7.25. No Disturbances of Streams.** No lake, pond, stream or water drainage facilities within the Common Area, Adjoining Limited Use Common Area or Drainage Reserve Area, natural or manmade, shall be disturbed other than by Declarant or the Board.

**Section 7.26. Restrictions Not Exclusive.** The restrictions contained in this Declaration shall not be taken as permitting any action or thing prohibited by, applicable zoning laws, or the laws, rules, or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases, or this Declaration shall govern and control.

**Section 7.27. Boating Skating.** Except as approved from time to time by the Board (or the Declarant under Section 8.01 B.), no boat (motorized or not), raft, canoe, surfboard or similar craft shall be operated or stored upon any body of water, if any, within the Common Area. No ice skating or other ice activities shall be permitted on any lakes or ponds within the Common Area. Any use of any lake, pond or other body of water shall be strictly in compliance with the rules and regulations adopted from time to time by the Board.

**Section 7.28. Drainage.** Declarant has caused its engineering firm to prepare a master drainage and

grading plan for the Lots, which plan may be revised by such firm from time to time, and each Owner shall strictly comply with the same. No Owner shall place or install any Structures, including, but not limited to, trees, shrubbery, landscaping, sand boxes, gardens, retaining walls or playground equipment in any drainage easement or channel.

Prior to the commencement of construction of the initial residential improvements and landscaping on a Lot, the Owner, or Owner's building contractor, shall hire the subdivision's engineering firm (Baughman Company P.A. 316-262-7271) at its expense to prepare a Lot Grading Plan for the Lot in a manner similar to the Lot Grading Plan attached hereto as Exhibit B. Each Owner shall comply with the Lot specific drainage plan which is prepared by such firm. Promptly following the completion of construction of the initial residential improvements on such Lot, the Owner, or Owner's building contractor, shall hire the same engineering firm to determine the grading of the Lot at that time and complete the City of Wichita, Kansas, Subdivision Lot Plan Certification form, which is also attached hereto as Exhibit B-1. Upon request, the Owner, or Owner's building contractor, shall provide a copy thereof to the Association. Each Owner shall provide a copy of the Lot Grading Plan and the City of Wichita, Kansas, Subdivision Lot Plan Certification pertaining to such Owner's Lot to any person installing a lawn, landscaping, fencing or other lawn improvements and require them to maintain the grade levels shown therein. Declarant, and the Association, shall have no liability or responsibility to any Owner due to the failure of the builder which constructs the residence on the Lot (whether or not such builder is a participant in the Builder's Program for the development), adjoining property Owner(s), or the lawn, landscaping or fencing contractor, to comply with the aforementioned grading and drainage requirements, or for any resulting effect on the Lot, or Owner's improvements, whether or not the appropriate DRC shall have approved any plans for such work.

The DRC or persons designated by the DRC (including the management company engaged by the Association) shall have the right to enter upon any Lot upon reasonable advance notice to the Owner thereof for the purpose of determining whether the Lot is in compliance with such drainage guidelines, standards and plans and the Lot specific grading and drainage plan which each Owner is to have prepared by Baughman Company, P.A. as referred to above. A determination by the DRC concerning whether or not a Lot is in compliance with such guidelines, standards and plans, shall be final and binding on all Owners and; provided, so long as Declarant owns a Lot, the Declarant (due to the unique expertise of its owners, managers, and/or officers) shall have the right to override any decision of the Association DRC under this Section 7.28 upon the specific request of any Owner and, in the event Declarant so overrides a specific decision of the Association DRC, any subsequent reference in this Section 7.28 to the DRC shall refer to the Declarant in lieu of the DRC as to the specific decision in question. In the event at any time the DRC determines that a Lot is not in compliance with the aforesaid guidelines, standards and plans, the DRC shall give notice to the Owner thereof and demand that such corrective action be taken as is necessary to achieve compliance. If fifteen (15) days after the notice of such violation, or such additional time as may be specified by the DRC, the Owner of such Lot has not taken reasonable steps to correct the same, the Board on behalf of the Association DRC shall have the right, through its agents and contractors, to enter the Lot and to take such steps that may be necessary to bring the same into compliance. The Owner of the Lot so corrected shall reimburse the Association for the costs of such compliance and pay the Association a fee equal to twenty percent (20%) of such amount. In the event such Owner fails to pay such reimbursement in full within ten (10) days following demand thereof, the Board may thereafter establish a special assessment applicable to such Owner and his Lot for the costs thereof and enforce the same as provided in Article IV hereof. It is not the Declarant's responsibility or obligation to enforce compliance with the master drainage and grading plans. The DRC and the Declarant shall have no liability or responsibility to any builder, Owner or other party for the failure of a builder or Owner to final grade or maintain any Lot in

accordance with the master drainage and grading plan or any approved lot drainage and grading plan or for the DRC or the Declarant not requiring a lot drainage and grading plan or compliance therewith or for the quality or compaction of any soil. The rights of the DRC, the Board and the Association hereunder are cumulative and in addition to any rights and remedies otherwise available at law or equity.

**Section 7.29. Fishing.** Fishing in any body of water, if any, within the ponds located in the Common Area will be permitted only on a "catch and release" basis at such times and at such places, if any, as may be determined by the Board (or the Declarant pursuant to Section 8.01 .B.) pursuant to rules and regulations promulgated from time to time concerning such use. Persons authorized to fish in such ponds shall be limited to those permitted to use the Common Area pursuant to Section 3.02 above.

**Section 7.30. No Excavations.** No excavations, except such as are necessary for the construction of a residence or improvements, shall be permitted on any Lot, Adjoining Limited Use Common Area or appurtenant Drainage Reserve Area without written permission of the DRC.

**Section 7.31. Used Houses; Trailers.** No used, secondhand or previously erected house or building of any kind can be moved or placed, either in sections or as a whole, upon any Lot, Adjoining Limited Use Common Area or Drainage Reserve Area, nor shall any trailer be moved, placed or permitted to remain upon a Lot, Adjoining Limited Use Common Area or Drainage Reserve Area subject to this Declaration; provided that Declarant may install for construction, administrative and sales purposes trailers or modular structures upon a Lot(s) or Common Area.

**Section 7.32. No Rights beyond Property.** Notwithstanding the proximity of lakes or other amenities to the Property, except as specifically provided herein, no Owner shall have any right, pursuant to this Declaration for access, use or enjoyment of any lakes or other amenities which are not included in the Common Area.

**Section 7.33. Airport.** Notice is hereby given that the Lots may be located in the area of an airport and each Owner assumes that risk (if any) associated therewith.

**Section 7.34. Boat Docks.** No boat docks, piers, moorings, boathouses, slips or similar Structures may be constructed within any Common Area (including the Adjoining Limited Use Common Area and Drainage Reserve Area) or Lot other than by, or with the prior written consent of, the Board.

**Section 7.35. View.** Subject to any specific provisions in this Declaration to the contrary, no Owner has any right to an unobstructed view beyond the boundaries of the Owner's Lot, Adjoining Limited Use Common Area or Drainage Reserve Area. No Owner shall be entitled to prevent the construction, installing or location of any Structure, planting material or other item on any other part of the Property, which is permitted by this Declaration, because such Structure, planting material or other item obstructs any view from such Owner's Lot, Adjoining Limited Use Common Area or Drainage Reserve Area.

**Section 7.36. Erosion; Water Pollution Control Permit and Related Matters.** Each Owner shall comply strictly with any law or ordinance regarding erosion or runoff, including, if applicable, a Storm water Pollution Prevention Ordinance, the Kansas Water Pollution Control General Permit and Authorization To Discharge Storm water Run-Off From Construction Activities Under the National Pollutant Discharge Elimination System or similar ordinance or law adopted by the city or other governing body having jurisdiction over the Property. Such permits, laws, and regulations, together with laws and ordinances of the city and county in which the Property is located, require that erosion and sediment

control measures be implemented in connection with construction activities on a Lot, Adjoining Limited Use Common Area or Drainage Reserve Area, including, but not limited to, site work such as clearing, excavating, and grading the Lot, Adjoining Limited Use Common Area or Drainage Reserve Area, in order to eliminate or substantially reduce storm water discharge, the discharge of pollutants and water quality violations. Significant penalties may be imposed in the event activities are not conducted in full compliance with the aforementioned permit, laws, regulations and ordinances. Each Owner agrees to conduct activities including construction activities, on his Lot, Adjoining Limited Use Common Area and appurtenant Drainage Reserve Area, if applicable, strictly in accordance with this Declaration, all laws, rules, regulations, and ordinances now or hereafter in effect, including, but not limited to those referenced above, and shall indemnify and defend Declarant and the Association from any consequences of such Owner's, or his contractors' or subcontractors', failure to so comply, including but not limited to all damages, liabilities, fines, penalties and costs and expenses (including reasonable legal fees and expenses).

**Section 7.37. Construction Work.** Except in an emergency, or when other unusual circumstances exist as determined by the Board, outside construction work or noisy interior construction work shall be permitted only after 6:00 A.M. and before 9:00 P.M.

**Section 7.38. Window Coolers.** No window or wall type air conditioners or water coolers shall be permitted to be used, erected or maintained on or in any residence or other Structure on any Lot.

**Section 7.39. Water Encroachment; Flood Insurance.** Notice is hereby given to anyone acquiring a Lot, or having use of an Adjoining Limited Use Common Area or a Drainage Reserve Area, that due to the grading and drainage of such Lot (which is necessary to enhance the views from residences, particularly those with "walk-out" or "view-out" basements) and Adjoining Limited Use Common Area and Drainage Reserve Area, at times following considerable amounts of rainfall, water may encroach into the yard areas within the Drainage Reserve Area and such Lot. Water may accumulate in areas of the Lot, the Adjoining Limited Use Common Area and the Drainage Reserve Area, if applicable, which has been graded at lower elevations to provide drainage. If the Lot or appurtenant Drainage Reserve Area are adjacent to a lake, pond, stream or other waterway, water from such areas may spill over into the Lot as a result of such rainfall. Since the Adjoining Limited Use Common Area adjoins a lake, pond, stream or other waterway, water from such areas will extend onto the Adjoining Limited Use Common Area and the Lots adjacent thereto. Depending upon how much water accumulates within such areas and how long it remains, damage could occur to the residence, yard trees, vegetation, fences, gazebos, patios, playground equipment or other improvements or installations of Structures. Neither Declarant nor the Association shall have any liability or responsibility for any such damage resulting from such water encroachment.

**Section 7.40. Water Levels in Lakes and Ponds.** There is no assurance that lakes, ponds and other bodies of water within the Property, if any, shall continue in the future to contain water levels consistent with the levels existing on the date hereof and, in fact, such lakes, ponds and bodies of water may at some point in the future become dry or substantially empty of any water. Neither Declarant, the Association, the Board nor any member officer or employee of Declarant or the Association shall have any liability or responsibility to Owners for any change in the water levels in any such lakes, ponds, or bodies of water, including if such bodies of water become dry or substantially empty of water.

**Section 7.41. Mowing Assessment.** In addition to the general assessments hereunder, any unimproved Lot shall be assessed Fifty Dollars (\$50.00) for each calendar month during the mowing season between the date the same is acquired by an Owner (other than the Declarant) and the commencement

of construction of a residence thereon, in order to reimburse the Declarant or the Association for the cost of periodically mowing such Lot so that it remains in a slightly condition; provided, such cost may be reasonably increased or decreased from time to time by Declarant or the Association based on the actual mowing costs. An easement is hereby established to permit the Declarant, the Association and contractors of either to enter upon a Lot for mowing prior to the commencement of construction of a residence thereon.

**Section 7.42. Maintenance of Drainage Channels and Swales.** Each Owner shall maintain, mow, and keep in good repair and condition, in accordance with the master drainage plan, all drainage channels and swales located on any Lot owned by such Owner and Adjoining Limited Use Common Area and Drainage Reserve Area, if applicable. In the event storm drains are installed within any Lot, Adjoining Limited Use Common Area or Drainage Reserve Area, the Owner thereof shall maintain the drain inlets in an unobstructed manner. Any drainage channels and swales at the roadside shall be grass, unless other vegetation or material is approved by the DRC.

**Section 7.43. Odors; Burning.** No activity (other than reasonable and customary construction activity) which emits foul or obnoxious odors, fumes, dust, smoke, or pollution outside the Lot, Adjoining Limited Use Common Area or Drainage Reserve Area, or which creates noise, unreasonable risk of fire or explosion, or other conditions which are a nuisance shall not be conducted within a Lot, Adjoining Limited Use Common Area or Drainage Reserve Area. No outside burning of trash, leaves, debris or other materials shall be permitted on a Lot, Adjoining Limited Use Common Area or Drainage Reserve Area.

**Section 7.44. Clippings; Debris.** Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any storm sewer, drainage ditch, and any other component of the storm drainage system serving the Property, or any stream, pond, or lake, or elsewhere within the Property is prohibited.

**Section 7.45. Safety and Security.** Each Owner and occupant of a Lot, and the respective guests and invitees thereof, shall be responsible for their own personal safety and the security of their property in the subdivision within the Property. The Association may, but shall not be obligated to, maintain or support certain activities in the subdivision within the Property designed to enhance the level of safety or security which each person provides for himself and his property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within the subdivision within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and shall be responsible for informing all occupants of a Lot that the Association, its Board and committees, and Declarant are not guarantors of security or safety and that each person or entity using the subdivision in the Property assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots improvements thereon, resulting from acts of third parties.

**Section 7.46. Responsibility for Repair and Replacement.** Each Owner further covenants and agrees that in the event of damage to or destruction of Structures on his Lot, Adjoining Limited Use Common Area or appurtenant Drainage Reserve Area, if applicable, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 6. Alternately, the Owner shall clear the Lot, Adjoining

Limited Use Common Area or appurtenant Drainage Reserve Area, if applicable, and maintain it in a neat and attractive landscaped condition consistent with the requirements of this Declaration. The Owner shall pay any costs which are not covered by insurance proceeds.

**Section 7.47. Possibility of Abandoned Wells.** In the past, oil and gas wells were drilled in the area of the Property. It is possible wells were drilled and abandoned within the Property and each Owner shall investigate such possibility to the extent it deems appropriate and Declarant shall have no liability or responsibility therefor.

**Section 7.48. Water for Irrigation.** Declarant may drill a well or wells for water to irrigate the Common Area. If Declarant is unsuccessful in obtaining appropriate permits or authorizations for such well(s); is unable to complete a satisfactory well or wells; or a well or wells ceases to produce sufficient water volumes, then water from a city or other body or district may be used for such irrigation, at a higher cost.

**Section 7.49. Storage Pods and Other Facilities.** Except as otherwise permitted from time to time by the Board, temporary storage pods, containers or other similar storage facilities shall not be located in the open on a Lot, except on a temporary basis. A "temporary basis" as used in the proceeding sentence shall mean (a) usage by the building contractors during the initial construction of the residence, and (b) following the completion of the initial residence, then only by the Owner(s) in connection with their move into the residence or a move out of the residence for a period not to exceed thirty (30) consecutive days in connection with each move in or move out. Whether to allow exceptions to the prohibition contained in this Section is in the discretion of the Board, but Declarant recognizes that in times of substantial remodeling of a residence, and possibly other circumstances, it would be appropriate for the Board to allow such items to be stored in the open for a short time.

## ARTICLE 8 – THE ASSOCIATION

### Section 8.01. Powers and Duties.

- A. The Association shall have the rights and powers as set forth in its articles of incorporation and bylaws, together with its general powers as a nonprofit corporation, and it shall perform each and every duty required of it by this Declaration, including, but not limited to, those enumerated in this Article 8. The initial Board shall consist of three (3) directors, each of whom shall be a designee of Declarant, and who shall be appointed, removed and replaced from time to time by Declarant, in its sole discretion, until Declarant has relinquished such duties and powers as provided in subsection B below.
- B. Declarant may carry out all of the duties and powers herein delegated to the Association and the Board for a period up to one (1) year after the date it no longer owns a Lot, after which time the same shall be turned over to the Association and the Board, as applicable, which shall then exercise the powers and duties herein set out; provided, however, that the Declarant may, at its option, at any earlier time, partially or wholly transfer all or any part of such duties and powers to the Association or the Board by written instrument. In the event of a transfer of a portion of Declarant's powers and duties by the Declarant to the Association or the Board, the Declarant shall retain all other powers and duties which are not so specifically transferred. The Association and Declarant shall cooperate fully in the transition of the powers and duties hereunder. No act or omission shall be deemed a relinquishment of Declarant's rights under this subsection. Relinquishment of all, or any, of its rights under this subsection, shall not constitute a relinquishment of Declarant's rights to designate members of the DRC under

Section 6.07 above.

- C. The Association shall own, maintain, and keep clean the Common Area (other than the Adjoining Limited Use Common Area) and the areas within any public road right-of-ways adjacent to the Common Area, except to the extent Owners are required to assume such responsibility is to be carried out as provided elsewhere herein. It further shall maintain, repair and/or replace the decorative entrance treatments, fence(s) and walls erected and installed by Declarant or the Association within the Common Area (other than the Adjoining Limited Use Common Area).
- D. The Association shall maintain such insurance on the Common Area and facilities thereon as it deems necessary and advisable.
- E. The Association may improve the Common Area (other than the Adjoining Limited Use Common Area) in any manner that it shall find to be necessary, desirable or beneficial to the interest of the Members.
- F. The Board shall have the right to create and establish financial reserves for the repair, restoration or replacement of any improvement it has the duty to repair, restore or replace hereunder.
- G. The Board shall have the right to adopt such policies, rules and regulations as it may deem advisable for the maintenance, use, conservation and beautification of the Common Area and for the health, comfort, safety and general welfare of the Owners.
- H. The Board shall be empowered to determine the manner and extent of operating, maintaining, improving, restoring, mowing, trimming and keeping clean the Common Area and caring for, watering, spraying, protecting, and replanting trees, shrubbery, grass and sod within the Common Area and within any public road rights-of-way adjacent to the Common Area.
- I. The Association shall have the right, but not the obligation, to plow and remove snow from the improvements within the Common Area (other than the Adjoining Limited Use Common Area).
- J. Other than the Adjoining Limited Use Common Area, the Board, on behalf of the Association, shall have the right to construct, reconstruct, relocate, maintain and repair any walls or fencing within the Common Area; maintain, repair and replace sprinkler systems, playgrounds, walkways, jogging trails, entrances, drinking fountains, seating areas, monuments and other improvements or features now existing or hereafter erected, created or established within the Common Area; and clean and maintain any lakes, streams, or natural or manmade water courses within the Common Area, including draining thereof when necessary.
- K. The Association shall have the right to provide and maintain such lighting as it may deem advisable within the Common Area (other than the Adjoining Limited Use Common Area).
- L. The Association shall have the right to erect, maintain, repair and replace signage as deemed appropriate and necessary by the Board within the Common Area (other than the Adjoining Limited Use Common Area).
- M. The Association shall pay the taxes and assessments applicable to the Common Area.

- N. The Board shall have the right to levy and collect the assessments and charges provided for in this Declaration and to enforce the liens thereby created in the manner herein provided.
- O. The Board, on behalf of the Association, may mortgage a part, parts, or all of the Common Area (other than the Adjoining Limited Use Common Area) in connection with the borrowing of money in the furtherance of any of its purposes authorized herein and shall have the right to take such steps as are necessary to comply with such mortgage and to prevent foreclosure and any similar proceedings thereunder; provided any such mortgage shall be subject to the rights of the Members under Section 3.01 above.
- P. The Board, on behalf of the Association, shall enter into, renew or refinance, and perform the borrower's obligations under the amenity financing referred to in Section 11.02 below.
- Q. Since the Declarant will convey land to the Association as Common Area at no cost to the Association, the Association shall, upon Declarant's written request, reconvey to Declarant any portions of such Common Area which are unimproved by material Structures, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.
- R. As referenced in Article 9, the Association, through the Board, may enforce violations of this Declaration. The decision to have the Association pursue enforcement action in any particular case shall be left to the Boards' discretion. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:
  - a. the Association's position is not strong enough to justify taking any or further action;
  - b. the covenant, restriction or rule being enforced is, or may be construed as, inconsistent with applicable law;
  - c. although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
  - d. It is not in the Association's best interest, based upon hardship, expense, or other criteria to pursue enforcement action.Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.
- S. The Association may engage a management company to manage the operations of the Association.

**Section 3.02. Operations and Expenses.** The Association may establish committees and may engage a manager, secretaries, engineers, auditors, accountants, legal counsel and other employees or consultants as may be reasonably necessary for the discharge of its duties hereunder. The expenses of committees, the salaries of a manager and other employees and the fees of consultants shall be established and paid for by the Association. The Association shall pay for all other expenses necessary or incidental to the conduct or carrying on of its business concerning the Property.

**Section 3.03. Repair and Restoration of Improvements on Common Area.** Should any improvements on the Common Area (other than the Adjoining Limited Use Common Area), or any part or portion

80  
80 thereof, be damaged or destroyed by fire or other casualty, the Board shall determine whether or not the Association shall repair or restore the same.

**Section 8.04. Conveyance of Common Area.** If Declarant conveys property to the Association as Common Area at no cost to the Association, the Association shall, upon Declarant's written request, recover to Declarant any portions of such Common Area (other than the Adjoining Limited Use Common Area) which are unimproved by material building Structures, to the extent conveyed by Declarant in error or required by Declarant to make minor adjustments in property lines.

#### ARTICLE 9 – Enforcement

The Association and Declarant shall have the right to enforce, by any proceeding at law or in equity (including, but not limited to, obtaining an injunction, whether prohibitive or mandatory), all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration insofar as the same are for the benefit of the Association or Declarant, respectively. The Association and Declarant shall have the right to include in their claim for relief a reasonable sum to reimburse them for their attorneys' fees and any other expenses reasonably incurred in enforcing their rights hereunder. Failure by the Association or Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Neither shall failure by the Association or the Declarant to enforce the provisions hereof against any Owner shall be deemed a waiver of any provision hereof as to any other Owner.

#### ARTICLE 10 – ADDITIONAL LAND; REMOVAL OF PROPERTY

Declarant may, from time to time, during the twenty (20) year period following the date hereof, annex additional land to the Common Area and/or to the Property, and thereby subject the same to the terms, provisions and conditions of this Declaration (as such provisions may be changed, altered, supplemented, deleted or modified solely as to the annexed land specifically by the document annexing such additional land), by the execution and filing for recordation with the Register of Deeds of the County in which the Property is located, of an instrument expressly stating an intention to so annex and describing such additional property to be so annexed. During the fifteen (15) year period commencing with the date of the recordation of this Declaration, Declarant, its successors and assigns, may annex such additional real property in its absolute discretion. From and after the expiration of such twenty (20) year period, such additional land may be annexed; provided that such annexation is approved by two-thirds (2/3) of the votes of the Members in attendance, in person or by proxy, at a special or annual meeting of the Members.

So long as it is performing the duties and powers referenced in Section 8.01 B. above, Declarant reserves the right to amend this Declaration (which right of amendment shall be in addition to and not limited by Section 13.10 below) for the purpose of withdrawing and removing from the coverage of this Declaration any portion of the Property which has not yet been improved with building Structures. Such amendment shall not require the consent of the Association or any Owner other than the Owner(s) of the land to be withdrawn and removed, if not the Declarant. If the withdrawn land is Common Area, the Association shall promptly take whatever action is necessary to convey such land to Declarant, free from any rights, easements or encumbrances which are not in existence at the time of the conveyance of such land by Declarant to the Association.

#### ARTICLE 11 – NOTICE OF POSSIBLE SPECIAL ASSESSMENTS; AMENITY FINANCING

**Section 11.01. Assessments.** Notice is hereby given to each purchaser of a Lot that special assessments

will be spread by the City of Wichita, Kansas, or other government bodies, to Lots in the future, due to the installation of arterial streets, residential streets, lakes, ponds, sanitary and storm sewers, sidewalks, etc. Additionally, from time to time, the Lots may become subject to special assessments by reason of work performed by the City of Wichita to major arterial streets in the vicinity of the Property. Each Owner must independently obtain such information as such Owner desires or deems sufficient concerning the amount of special assessments which currently, and in the future will, affect such Owner's Lot.

**Section 11.02. Amenity Mortgage Financing.** Notice is hereby given that Declarant and/or Association has or will obtain, and renew and refinance from time to time, mortgage secured loan or loans in order to pay the cost of installing or constructing improvements and amenities within the Common Area (other than the Adjoining Limited Use Common Area) for the use and benefit of the Owners. When the Declarant initially obtains such loan(s), the Association shall continue to renew such loan(s), or obtain a different loan(s), as requested by Declarant from time to time. All or any portion of the Common Area (other than the Adjoining Limited Use Common Area) shall be mortgaged from time to time to secure such loan(s), as required by the lender(s). Assessments or funds collected by the Association under Article 4 hereof (including transfer fees), shall be utilized for repayment of the interest and principal arising from any such loan(s) in accordance with the terms of such financing. Upon obtaining such loan(s) (and the renewal and refinancing thereof from time to time), neither the Declarant nor the Association shall be required to give notice thereof to the Members of the Association. The Association shall indemnify, defend and hold Declarant, and its members, harmless from any proceedings, judgments, claims, liabilities, costs and expenses, including attorney's fees, arising out of any such loan or mortgage, and any guarantees thereof, including the failure to repay any amounts due thereunder.

## **ARTICLE 12 – ASSIGNMENT; LIMITATION OF LIABILITY; EASEMENTS AND ACCESS CONTROL**

**Section 12.01. Assignment.** No Owner shall have the right to assign, independently of a transfer or conveyance of a Lot, any rights or obligations created by or arising under this Declaration and any such attempt at assignment shall not be merely voidable but shall be absolutely null and void.

**Section 12.02. Limitation of Liability.** Notwithstanding anything to the contrary contained herein, it is expressly agreed that neither the Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any member or shareholder in Declarant (or any such assignee) or any director, officer, employee, or consultant of Declarant thereof shall have any personal liability to the Association or any Owner or other person or entity, arising under, in connection with, or resulting from (including, without limitation) any action or failure to act with respect to this Declaration, the articles of incorporation or bylaws of the Association, or rules of the Association, the design guidelines of the DRC, or for any action taken, or not taken, pursuant to authority granted Declarant thereunder or with respect thereto. To the fullest extent permitted by law, neither the Declarant, the Association, their respective shareholders, members (or any assignee), the officers, employees, consultants or directors of the Association, any DRC member, nor any other members of committees of the Association shall be liable to the Association or any Owner or other person or entity for damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval of plans and specifications (whether or not defective), course of action, inaction, omission, negligence or the like made in good faith and which the Declarant or the Association, any member, director, officer, consultant or employee thereof, or member of any such committee reasonably believed within the scope of his duties.

Section 12.03. Public Utility and Floodway Easements Dedicated. Easements for the installation and maintenance of all public utilities and for floodway within the Common Area and the Drainage Reserve Areas are dedicated as shown on the recorded plat(s) of the Property or as established by other instruments.

Section 12.04. Easements in Favor of Declarant and Association. Declarant specifically reserves unto itself, its affiliated entities, designees, successors and assigns, and grants to the Association, and the contractors and representatives thereof, in connection with the use, operation, construction of improvements and amenities, and maintenance of the Common Area, a perpetual, nonexclusive easement and right-of-way over the Lots and the Common Area for the purposes of mowing, trimming and caring for plantings within the Common Area and for constructing, maintaining, repairing, replacing and rebuilding improvements within the Common Area, or any easement areas; including, but not limited to, water sprinkler systems, including water lines, water wells, and related equipment, sprinkler controls, and electric meters and lines, underground pipelines, drains and/or mains for the purpose of transporting gas, water, sewerage and electricity over, across and through such Lots and Common Area, together with the right to excavate and level ditches and/or trenches for the location of said wells, lines, pipes, drains and/or mains. Declarant, or its marketing company, may have installed a sign advertising the residential development, or the sale of Lots and/or residences, on a Lot or the Common Area prior to the sale of such Lot or transfer of the Common Area to the Association. Declarant, its successors and assigns, for itself, its affiliates, and marketing company, hereby retain an easement for the placement, and replacement, of any such advertising sign on the Common Area until all residences within the Property have been sold by Declarant or its successors and assigns.

Section 12.05. Some Easements Not Shown on Plat. Owners should not rely on the plat of the Property to determine the location of utility or other easements or rights-of-way. Such easements or rights-of-ways are often created by separate instruments not shown on the plat and are disclosed on each Owner's title insurance policy.

Section 12.06. Easements of Encroachment. Declarant reserves for itself, its successors, assigns, affiliates, and designees, and grants to the Association a nonexclusive easement of encroachment, and for maintenance and use of any permitted encroachment of any Common Area improvement onto adjoining Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered on the Common Area to a distance of not more than three feet (3'), as measured from any point on the common boundary along a line perpendicular to such boundary.

Section 12.07. Inspection Easement. Declarant reserves for itself, its successors and assigns, and grants to the Association a nonexclusive easement over the Property as necessary to enable the Association, the Board, the DRC and its representatives, designees and contractors to fulfill their respective responsibilities under this Declaration. The Association, and its contractors and representatives, shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with, and to enforce this Declaration, articles of incorporation, bylaws and rules and regulations in effect from time to time. Such easements and rights may be exercised by any member of the Board or by Declarant (as long as it is conducting the initial operation of the Board and Association) and their duly authorized agents and assigns, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

Section 12.08. Easements to Additional Land. Declarant hereby reserves for itself and its affiliates and

designees, and its successors, assigns, and mortgagees, a perpetual, nonexclusive easement over the Common Area for the purposes of access, and development of additional land, whether or not such land is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing any and all utilities to such other land. Declarant or such affiliate, successor or assign shall restore any damage to the Common Area resulting from the use of such easement.

## ARTICLE 13 - MISCELLANEOUS

**Section 13.01. Provisions Binding on Grantee.** The Association and each grantee hereafter of any part or portion of the Property covered by this Declaration, and any purchaser under any grant, contract of sale or lease covering any part or portion of such Property, accepts the same subject to all of the restrictions, liens and charges and the jurisdiction rights and powers of the Association and Declarant provided for in this Declaration.

**Section 13.02. Interpretations of Restrictions.** In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners. It is not the intent of this Declaration to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of buildings, premises or Common Area; nor is it the intention of this Declaration to interfere with or abrogate or annul easements, covenants or other agreements between parties; provided, however, that where this Declaration imposes a greater restriction upon the use or occupancy of any residence site or upon the construction of buildings or Structures, or in connection with any other matters that are imposed or required by such provisions of law or ordinances or by such rules, regulations or permits, or by such covenants, easements and agreements, then, in that case, the provisions of this Declaration shall control.

**Section 13.03. Construction and Validity of Restrictions; Severability; Perpetuities.** All of the restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such restrictions, conditions, covenants, reservations, liens or charges, or any part thereof are invalid or for any reason become unenforceable, no other restriction, condition, covenant, reservation, lien or charge, or any part thereof, shall be affected or impaired and shall remain in full force and effect. It is expressly provided that the rule of property known as the rule against perpetuities and the rule of property restricting unreasonable restraints against alienation shall not be applied to defeat any provision of this Declaration.

**Section 13.04. Assignment of Powers.** Any and all rights and powers of Declarant provided for in this Declaration and any modification or amendment hereof may be delegated, transferred, assigned, conveyed or released by Declarant to any third party and/or to the Association. The Declarant's assignee shall accept the same upon the recording of a notice thereof, and the same shall be effective for the period and to the extent stated therein. Upon the effective date of such assignment, the assigning party shall be released of any and all liabilities of whatever nature arising out of acts or omissions prior to the effective date of the assignment. Except as set forth in this Section, no Member or Owner shall have the right to assign, independently of a transfer or conveyance of a Lot, any rights or obligations created by or arising under this Declaration, and any such assignment shall not merely be voidable but shall be absolutely null and void.

**Section 13.05. Non-Waiver.** The failure by the Association, Declarant, any Owner or any other person

to enforce any of the restrictions, conditions, covenants, reservations, liens or charges and assessments to the Lots or any part thereof is established hereby, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other restriction, condition, covenant, reservation, lien or charge. This non-waiver provision may only be waived in writing by the Board and the Declarant; provided, Declarant's consent shall not be required after residences have been constructed and completed on all of the Lots.

**Section 13.06. Titles.** All titles used in this Declaration are intended solely for convenience of reference, and the same shall not affect that which is set forth in the terms and conditions of this Declaration nor the meaning thereof.

**Section 13.07. Singular and Plural, Masculine and Feminine.** The singular shall include the plural and the plural the singular, unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine and neuter, as the context requires.

**Section 13.08. Successors-in-Interest.** Reference herein to either the Association or Declarant shall include its respective successor, and each such successor shall succeed to the rights, powers and authority hereunder of its predecessor, whether by appointment or otherwise.

**Section 13.09. Term.** The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, Declarant, and the Owners, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of five years each, unless an instrument, signed by Owners of not less than seventy-five percent (75%) of the Lots, has been recorded, agreeing to abolish or change these covenants, conditions and restrictions, in whole or in part.

**Section 13.10. Amendments.** Amendments, including restatements, waivers, modifications, alterations, deletions, supplements, changes or additions to this Declaration may be made by Declarant, or its successors and assigns, in its sole discretion, until such date as Declarant (or its successors and assigns) relinquishes its powers and duties hereunder in full to the Association pursuant to 8.01.B hereof. Following the date Declarant, its successors and assigns, has so fully relinquished such powers and duties, any provision contained in this Declaration may be restated, amended, altered, supplemented, waived, modified, deleted, changed, repealed, or additional provisions added to this Declaration, as follows:

- A. Notice.** Notice of the subject matter of the proposed amendment shall be included in a notice to the Members of a meeting of the Association, at which the proposed amendment shall be considered.
- B. Resolution.** A resolution adopting a proposed amendment may be proposed by the Board or Declarant. Unless otherwise specified in this Declaration, any proposed amendment must be approved by the Members casting not less than a two-thirds (2/3) of the aggregate number of votes cast in person or by proxy at such meeting. Such votes may be cast in person or by proxy as provided for herein and in the Bylaws of the Association.
- C. Recording.** A copy of each amendment provided for in this Section shall be certified by the Board as having been duly adopted and shall be effective when filed of record in the office of the Register of Deeds of Sedgwick County, Kansas.

**D. Declarant's Consent.** Notwithstanding the foregoing, so long as a residence has not been completed on each Lot, any such amendment (including, but not limited to, those modifying the "Initial Policy Guidelines" referenced in Section above) shall require the written consent of Declarant in order to be effective.

A copy of each amendment provided for in this Section shall be filed of record in the Register of Deeds for the County in which the Property is located. With respect to amendments, following the date the Declarant has fully relinquished its powers and duties to the Association, the Secretary of the Association shall file a certificate along with such amendment, certifying that the meeting at which the vote was taken was either the annual meeting of the Association or a special meeting of the Association, duly called in accordance with the bylaws of the Association, and that the proper number of votes approving the amendment was obtained. Such certificate will be filed as part of or with such amendment.

**Section 13.11. Limitation on Liability.**

**A.** Notwithstanding anything to the contrary contained herein, it is expressly agreed that neither the Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any member in Declarant (or any such assignee) or any officer, employee, or consultant of Declarant or any member thereof shall have any personal liability to the Association or any Owner or other person or entity, arising under, in connection with, or resulting from (including, without limitation) from action or failure to act with respect to Declaration, the articles of incorporation or bylaws, or rules of the Association, or for any action taken or not taken pursuant to authority granted Declarant thereunder or with respect thereto. To the fullest extent permitted by law, neither the Declarant or its members (or any assignee), the officers or directors of the Association, nor any other members of committees of the Association shall be liable to the Association or any Owner or other person or entity for damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval or plans and specifications (whether or not defective), course of action, inaction, omission, negligence or the like made in good faith in which the Declarant, any director, officer or member of such committee is reasonably believed within the scope of his duties.

**B.** **TO THE EXTENT ALLOWED BY LAW AND EQUITY, NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL HAVE ANY LIABILITY HEREUNDER TO ANY OWNER, FORMER OWNER, PROSPECTIVE OWNER, LOT OCCUPANT, OR ANY LICENSEE OR INVITEE THEREOF FOR CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES.**

**Section 13.12. Mortgage Protection Clause.** No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any mortgage made in good faith and for value, but all of these covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure sale or deed in lieu thereof.

**Section 13.13. No Liability.** Declarant has, using good faith, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant

shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a or possession of a Structure, acknowledges that Declarant shall have no such liability.

**Section 13.14. Declarant's Activities.** The Declarant specifically reserves the right to carry on its business within the Property, so long as it owns a Lot, including, but not limited to, maintaining sales offices, model homes, business offices and other facilities necessarily convenient for the business of Declarant.

**Section 13.15. Twin Homes; Multifamily; Commercial; Office; Industrial and/or Public-School Development.** Each Owner is hereby advised that real property adjacent to, or near, the Property may be developed and operated for twin homes, apartments and other multifamily, commercial, office, industrial and/or public-school purposes or purposes other than for single family residences. If the Lots are near a railroad line it is possible that such railroad line may be converted for use as a trail or park area. Each Owner is responsible to inform himself or herself concerning the possibility of such developments and no Owner shall rely on any statements made by sales persons concerning future development or uses of any such real property. Declarant does not have any responsibility to advise the Owners or the Association concerning any actual or proposed zoning or other land use proceedings relating to any real property located within or outside of the Property.

**Section 13.16. Pipeline.**

**Section 13.17. Additional Notes:**

Monthly HOA dues (to be paid quarterly \$180.00 per quarter)

After completion of residence—Patio Maintenance Plan Begins

Monthly Maintenance Plan HOA dues (to be paid quarterly \$540.00 per quarter)

Initiation Fee \$200.00 Due at closing

Mailbox Fee \$200.00 Due at closing

Mowing: Is a part of the Maintenance plan for HOA on the Patio Homes.

Snow Removal: Only if more than 1" of snow is part of the Maintenance plan for Patio Homes.

Painting Exterior: All exterior painting to be handled by homeowners  
(Colors to be handled by HOA)

[Signature page follows.]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

Declarant:

Castlegate Development, LLC.

By:

Rodney Ketzner

Name:

RODNEY KETZNER

Title: Member

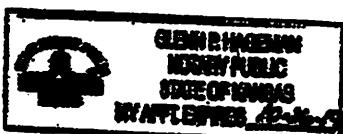
STATE OF KANSAS

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ss:  
)

COUNTY OF SEDGWICK

BE IT REMEMBERED, that on this 11<sup>th</sup> day of September, 2018, before me, a Notary Public within the County and State aforesaid, personally appeared Rodney Ketzner, Member of Castlegate Development, LLC., a Kansas corporation, who is personally known to me and known to me to be the identical person who subscribed the name of the maker thereof to the within and foregoing Declaration of Covenants, Conditions, Restrictions, Disclosures and Easements of Castlegate; and said person acknowledge to me his execution thereof as and for his free and voluntary act and deed, and for and on behalf of and as the free and voluntary act and deed of said corporation, on behalf of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.



Glen E. Hayes  
NOTARY PUBLIC

My Appointment Expires:

10-26-19

EXHIBIT "A"  
LOT GRADING PLAN

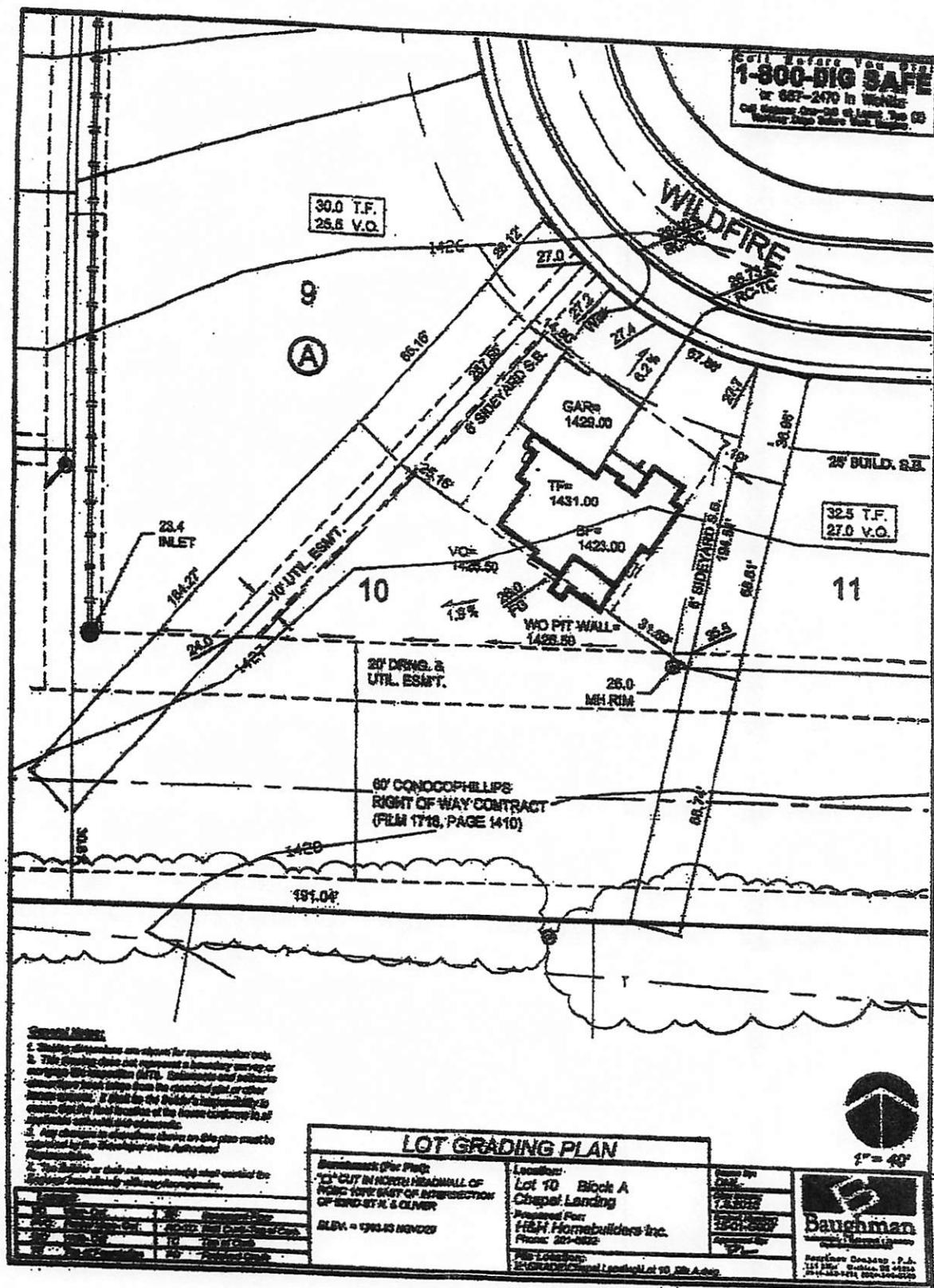


EXHIBIT "A-1"  
SUBDIVISION LOT PLAN CERTIFICATION FORM



Doc. #/File Pg: 29799609  
Receipt #: 2081151  
Pages Recorded: 2

Recording Fee: 0.00

Cashier: jrcarter

Authorized By: *John Baughman*

Date Recorded: 09/18/2018 02:29:16 PM

CASTLEGATE  
NOTICE OF LOT GRADING PLAN

THIS CASTLEGATE NOTICE OF LOT GRADING PLAN ("Notice") is executed this  
11/1 day of September, 2018, by Castlegate Development, LLC., a Kansas  
corporation (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is developing a residential subdivision known as Castlegate and legally  
described as Castlegate Addition to Wichita, Sedgwick County, Kansas (the "Addition"); and

WHEREAS, about the development of the Addition, Declarant's engineering firm prepared and  
filed with the City of Wichita, Kansas (the "City") a grading plan showing the overall grading required  
for the drainage within the Addition, which plan may be amended from time to time, and is hereafter  
referred to as the "Grading Plan"; and

WHEREAS, Declarant desires to give public notice of the existence of the Grading Plan.

NOW, THEREFORE, Declarant hereby gives the following notice to current and future owners of  
residential lots within the Addition:

1. The Grading Plan may be amended from time to time in the future, and it is the  
responsibility of the owners of a lot in the Addition to obtain from Baughman Company,  
P.A., (316-262-7271), or the successor engineering firm, for the Addition, and comply with  
the most recent Grading Plan at the time of construction of a residence or performing any  
landscaping or other improvements. Lot owners shall not rely on a Grading Plan from any  
other source, including the filings with the City.
2. Prior to the commencement of such construction, landscaping or improvements each owner  
or building contractor will obtain at their expense a current grading plan prepared by  
Baughman Company, P.A. specifically for the owner's lot.
3. Declarant shall not have any liability or responsibility to any party acquiring any residential  
lot within the Addition, or any subsequent owner of such lot, due to the failure of any other  
lot owner, or building contractor, to comply with the Grading Plan in effect from time to  
time.
4. Any person or entity acquiring an interest in a residential lot within the Addition, acquires  
the same subject to, and is deemed to have consented to, surface water drainage across such  
lot, from time to time, in the manner shown on the Grading Plan in effect from time to time.
5. The Declaration of Covenants, Conditions, Restrictions, Disclosures and Easements Of  
Castlegate, as may be amended from time to time, addresses other matters pertaining to the  
grading and drainage of residential lots within the Addition, including Section 307 (Damage  
by Owner), Section 6.02 (Form of Plans and Specifications), Section 6.08 (Initial Policy

Guidelines) and Section 7.28 (Drainage).

IN WITNESS WHEREOF, this Notice was executed the day and year first above written.

Castlegate Development, LLC.,  
a Kansas corporation

Name: Rodney Ketzner

Title: Member

Rodney Ketzner Member

STATE OF KANSAS

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)ss:

COUNTY OF SEDGWICK

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BE IT REMEMBERED, that on this 14 day of September, 2018, before me, a Notary Public within the County and State aforesaid, personally appeared Rodney Ketzner, Member of Castlegate Development, LLC., a Kansas corporation, personally known to me to be such Member and the same person who executed, as such Member, the above and foregoing instrument in writing on behalf of said corporation and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.



GLENN HAGEMANN  
NOTARY PUBLIC  
STATE OF KANSAS  
MY NOTARY ID: 42-244

My Appointment Expires:

10-26-19

Glenn P. Hagemann

NOTARY PUBLIC



Register of Deeds - Tonga Buckingham  
Doc.#/Flm-Pg: 29788610  
Receipt #: 2081151  
Pages Recorded: 2

Recording Fee: \$38

Cashier: jcwefor

Authorized By

Date Recorded: 09/18/2016 02:28:47 PM



**Please do not remove this cover page, it has become part of this document**

Grantor	CASTLEGATE DEVELOPMENT LLC
Grantee	CASTLEGATE ADDITION
Type of Document	PLAT.NOT
Recording Fees	\$38.00
Mtg Reg Tax	\$0.00
Total Amount	\$38.00
Return Address	CASTLEGATE DEVELOPMENT LLC 3530 NORTH BEACH CLUB CIRCLE WICHITA KS 67205

## NOTICE OF POSSIBLE WATER ENCROACHMENT

This Notice of Possible Water Encroachment ("Notice") is executed this 11th day of September, 2018, by Castlegate Development, LLC., a Kansas corporation (the "Declarant"), pertaining to a residential subdivision legally described as Castlegate Addition to Wichita, Sedgwick County, Kansas (hereinafter "Castlegate").

Notice is hereby given to anyone acquiring a residential lot within Castlegate (any such lot is hereafter referred to as "Lot") that due to the grading and drainage of such Lot (which is necessary to enhance the views from residences, particularly those with "walk-out" or "view-out" basements), at times following considerable amounts of rainfall, water may encroach into the yard areas within such Lot. Water may accumulate in areas to the rear of the Lot, which has been graded at lower elevations to provide drainage away from the residence to be constructed on the Lot, or if the Lot is adjacent to a lake, stream or other waterway, water from such areas may spill over into the Lot because of such rainfall. Depending upon how much water accumulates on the Lot and how long it remains, damage could occur to the yard, trees, vegetation, fences, gazebos, patios, playground equipment or other improvements or installations within the yard area. Neither Declarant, building contractors nor brokers/licensees involved in the development of the residential area, sale of the Lot, or construction of a residence on a Lot, shall have any liability or responsibility for any such damage resulting from such water encroachment.

IN WITNESS WHEREOF, this Notice was executed the day and year first above written.

Castlegate Development, LLC.,  
a Kansas corporation

Rodney Ketner  
Name: Member Title: Member

STATE OF KANSAS

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ss:  
)

COUNTY OF SEDGWICK

BE IT REMEMBERED, that on this 11th day of September, 2018, before me, a Notary Public within the County and State aforesaid, personally appeared Rodney Ketner, Member of Castlegate Development, LLC., a Kansas corporation, personally known to me to be such Member and the same person who executed, as such Member, the above and foregoing instrument in writing on behalf of said corporation and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

My Appointment Expires:



John P. Hayes  
NOTARY PUBLIC

10-26-19

## NOTICE OF POSSIBLE WATER ENCROACHMENT

This Notice of Possible Water Encroachment ("Notice") is executed this 11th day of September, 2018, by Castlegate Development, LLC., a Kansas corporation (the "Declarant"), pertaining to a residential subdivision legally described as Castlegate Addition to Wichita, Sedgwick County, Kansas (hereinafter "Castlegate").

Notice is hereby given to anyone acquiring a residential lot within Castlegate (any such lot is hereafter referred to as "Lot") that due to the grading and drainage of such Lot (which is necessary to enhance the views from residences, particularly those with "walk-out" or "view-out" basements), at times following considerable amounts of rainfall, water may encroach into the yard areas within such Lot. Water may accumulate in areas to the rear of the Lot, which has been graded at lower elevations to provide drainage away from the residence to be constructed on the Lot, or if the Lot is adjacent to a lake, stream or other waterway, water from such areas may spill over into the Lot because of such rainfall. Depending upon how much water accumulates on the Lot and how long it remains, damage could occur to the yard, trees, vegetation, fences, gazebos, patios, playground equipment or other improvements or installations within the yard area. Neither Declarant, building contractors nor brokers/licensees involved in the development of the residential area, sale of the Lot, or construction of a residence on a Lot, shall have any liability or responsibility for any such damage resulting from such water encroachment.

IN WITNESS WHEREOF, this Notice was executed the day and year first above written.

Castlegate Development, LLC.,  
a Kansas corporation

Rodney Ketner  
Name: Member  
Title: Rodney Ketner Member

STATE OF KANSAS

COUNTY OF SEDGWICK )  
ss: )

BE IT REMEMBERED, that on this 11th day of September, 2018, before me, a Notary Public within the County and State aforesaid, personally appeared Rodney Ketner, Member of Castlegate Development, LLC., a Kansas corporation, personally known to me to be such Member and the same person who executed, as such Member, the above and foregoing instrument in writing on behalf of said corporation and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

My Appointment Expires:

10-26-19



Glenn R. Higginson  
NOTARY PUBLIC