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**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,**  
**EASEMENTS AND DISCLOSURES FOR**  
**THE MOORINGS 10<sup>TH</sup> ADDITION**

Following recording return to:  
Christopher L. Arellano  
Hinkle Law Firm LLC  
8621 East 21<sup>st</sup> Street North, Suite 200  
Wichita, Kansas 67206

**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,**  
**EASEMENTS AND DISCLOSURES FOR**  
**THE MOORINGS 10<sup>TH</sup> ADDITION**

THIS AMENDED AND RESTATED DECLARATION, made this 31st day of December, 2013, by CBB Northlakes, LLC, a Kansas limited liability company (hereinafter referred to as the "Developer").

WITNESSETH, THAT:

WHEREAS, Developer is the owner of certain property in Wichita, Sedgwick County, Kansas, which is more particularly described as: Lots 1 thru 18, Block 1; Lots 1 thru 10, Block 2; Lots 1 and 3 thru 23, Block 3; Lots 1 thru 18 and 21 thru 23, Block 4; Lot 1, Block 5; all in The Moorings 10<sup>th</sup>, an Addition to Wichita, Sedgwick County, Kansas;

WHEREAS, Developer previously established binding covenants, conditions and restrictions applicable to Lots 1 thru 18, Block 1; Lots 1 thru 10, Block 2; Lots 1 thru 24, Block 3; Lots 1 thru 23, Block 4; Lots 1-5, Block 5; all in The Moorings 10<sup>th</sup>, an Addition to Wichita, Sedgwick County, Kansas (hereinafter referred to as the "Addition") all as more fully set forth in that Declaration of Covenants, Conditions, Restrictions, Easements and Disclosures for The Moorings 10<sup>th</sup> Addition which document was recorded with the Sedgwick County Register of Deed at Document # 29016164 on October 24, 2008; and

WHEREAS, Developer reserved the right to amend the previously recorded Declaration provided Developer retained title to a sufficient number of Lots (herein defined) that the number of votes attributable to such Lots constitutes a majority of the total votes attributable to all Lots within the Property (herein defined); and

WHEREAS, the total number of Lots attributable to the Property is 80 of which the Developer currently holds title to 61 and, as a result, the Developer is entitled to cast a majority of the total votes attributable to all Lots; and

WHEREAS, Developer desires to amend and restate in its entirety the previously filed Declarations;

NOW, THEREFORE, Developer hereby declares that the Addition shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, said real

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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 insure to the benefit of each owner thereof.

## **ARTICLE 1**

### **DEFINITIONS**

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

1.1 “Association” shall mean and refer to Moorings 10<sup>th</sup> Homeowners’ Association (or such other corporate name as the Developer shall hereafter select), a nonprofit corporation, incorporated under the laws of the State of Kansas, its successors and assigns.

1.2 “Association DRC” shall mean and refer to the committee identified in Section 8.1 as the Association DRC.

1.3 “Board” shall mean and refer to the Board of Directors of the Association.

1.4 “Bylaws” shall mean the Bylaws of the Association as such Bylaws may be amended from time to time.

1.5 “Common Area” shall mean

Reserves A, B, C and D, Moorings 10<sup>th</sup> Addition to Wichita, Sedgwick County, Kansas.

Provided, however, to the extent any of the foregoing is subsequently conveyed or transferred as allowed elsewhere in this Declaration the term “Common Area” shall specifically exclude such conveyed or transferred portion. Additionally, to the extent a Lot or the Property is conveyed to or acquired by the Association and the Board designates it a Common Area, such Lot or portion of Property shall become part of the Common Area and treated as such in all respects i.e. no voting rights and no assessments. At any time after the Association obtains title to a Lot, it may designate such Lot or de-designate such Lot as part of the Common Area.

1.6 “Design Committee” shall mean the Association DRC and/or New Construction DRC, as applicable, according to the context.

1.7 “Developer” shall mean CBB Northlakes, LLC, a Kansas limited liability company, and its successors and assigns. If Developer assigns less than all of its rights, obligations and interests to one or more entities, the term “Developer” as used herein shall thereafter refer to both the Developer and all successor developers unless the context clearly means otherwise.

1.8 "Lake" shall mean and refer to that portion of real property which is part of the existing lake (as it may ebb and flow) owned by any of the current and/or future parties to the Lake Use Agreement and which is subject to the Lake Use Agreement.

1.9 "Lake Access" shall mean and refer to an Owner's right to access the water surface areas of the Lake.

1.10 "Lake Use Agreement" shall mean and refer to that agreement captioned Moorings/Landowners/Homeowners Lake Use Agreement originally by and between The Moorings Home Owners Association, The Moorings Townhouse Owner's Association, The Moorings Fourth Additional Home Owners Association, The Moorings Fifth Additional Home Owners Association, The Moorings Seventh Addition Home Owners Association, The Moorings North Addition Homeowners Association, MIBAC, Inc. and Bill Bachman & Associates, Inc., as may be amended from time to time to include additional parties, additional land, and/or to otherwise modify its terms and conditions. A copy of such Lake Use Agreement in its current form is attached hereto as Exhibit A.

1.11 "Lot" shall mean and refer to each platted Lot within the Property upon which there may be constructed a residence; provided, that where land has been attached to or detached from any Lot, the enlarged or diminished Lot shall be deemed to be a Lot hereunder; provided, if two or more Lots are combined into a single residential site, each such Lot shall be considered a separate Lot for all purposes herein but all such Lots combined for a single residential site shall be jointly and severally liable for any assessment or charge to any Lot comprising such single residential site. Some Lots may be enlarged by the deeding of a portion of the Common Area to the Owners thereof, and in such cases the Lot and such deeded Common Area shall be considered a "Lot" hereunder; subject to all requirements and obligations applicable to Lots as provided in this Declaration.

1.12 "Moorings Associations" shall mean The Moorings Home Owners Association, The Moorings Townhouse Owner's Association, The Moorings Fourth Additional Home Owners Association, The Moorings Fifth Additional Home Owners Association, The Moorings Seventh Addition Home Owners Association, The Moorings North Addition Homeowners Association and, upon formation, the Association.

1.13 "New Construction DRC" shall mean and refer to the committee identified in Section 8.1 as the New Construction DRC.

1.14 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot; provided, however, to the extent the record owner of a Lot sales his/her/its interest in such Lot under an executory contract, contract for deed, or similar type of arrangement, then the term "Owner", as it pertains to any rights, privileges and benefits set forth in this Declaration (including voting rights in the Association) shall refer to such contract vendee, but the burdens associated with such Lot (including the duty to pay assessments) shall be the joint and several responsibility of both the fees simple record title owner of the Lot and the contract vendee.

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1.15 “Property” shall mean and refer to all of the property described as follows, together with such other land as may be added and excluding land removed hereunder by the terms of this Declaration:

The Moorings 10<sup>th</sup> Addition, Wichita, Sedgwick County, Kansas

1.16 “Structure” shall mean and include any thing or device, the placement of which upon any Lot may affect the drainage or appearance of such Lot, including, by way of illustration and not limitation, any building, garage, gazebo, porch, shed, greenhouse, bathhouse, covered or uncovered patio, screening materials, swimming pool, tennis court, light pole, clothesline, fence, curbing, paving, wall, dock, 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 Developer, Design Committee, the municipality having jurisdiction over the Property or the Lot specific drainage plan, whichever is most stringent.

## **ARTICLE II**

### **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

2.1 Formation of Association. Developer shall form the Association within a reasonable period of time following recordation of the Declaration. In connection with formation of the Association, the Developer shall, as incorporator, adopt Bylaws governing the operation of the Association consistent with the terms of this Declaration, the Articles of Incorporation of the Association, and the laws of the State of Kansas.

2.2 Membership. The Association shall have as members only Owners. All Owners shall be deemed automatically to have become members (whether or not the Owner is occupying a residence on his Lot) and there shall be no other qualification for membership. 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 Member in a written instrument provided to the Association. Membership shall be appurtenant to the ownership of any Lot and cannot be assigned, transferred or conveyed separate and apart from a Lot.

2.3 Voting Rights. All Owners, so long as they shall qualify under this Article II, shall be entitled to vote on each matter submitted to a vote at a meeting of members of the Association. Each Owner shall have one (1) vote for each Lot owned by the Owner, subject to the following exceptions and conditions:

A. When any Lot is owned or held by more than one (1) Owner as tenants in common, joint tenancy or any other manner of joint or common ownership or interest,

such Owners shall collectively be entitled to only one (1) vote relative to such Lot. If only one of such Owners is present at a meeting, that Owner is entitled to cast the votes allocated to the Lot. If more than one of the Owners is present at a meeting or if a vote is taken without a meeting, the vote of such Owners may be cast only in accordance with the agreement of a majority in interest of such Owners; provided, however, such agreement is on record with the Secretary of the Association prior to the meeting or the day the vote is to be cast. If such agreement is not timely presented to the Secretary, then no vote shall be allowed with respect to such Lot. Fractional votes shall not be permitted.

B. Except to the extent prohibited by Kansas law, any Owner who is in violation of this Declaration (including, but not limited to, the failure to timely pay assessments or other sums due hereunder), as determined by the Board, shall not be entitled to vote during any period in which such violation continues. The Board shall be the sole judge of the qualifications of each Owner to vote and the right to participate in meetings and proceedings of the Association.

C. Notwithstanding the foregoing, Developer shall be entitled to ten (10) votes for each single Lot owned by it.

2.4 Initial Operation of Association. Notwithstanding the provisions of this Declaration, the operation of the Association and the control of the Board shall be within the absolute and exclusive control of the Developer until such time as Developer fully and completely transfers its rights to the Association by written notice delivered to the then current President of the Association. Until such time as Developer fully and completely transfers its rights pursuant to this Section 2.4, Developer may perform and exercise any and all rights and obligations hereunder related to or delegated to the Association and/or the Board, and shall appoint and remove in its discretion the members of the Board. Each Owner vests Developer with the authority to fully exercise its rights as reserved under this Declaration, including, but not limited to its rights under Section 2.4, Sections 8.2, and Article VI hereof.

2.5 Transfer of Common Areas. Within a reasonable period of time after recordation of this Declaration and formation of the Association, Developer shall transfer, to the extent owned by Developer, the Common Area to the Association by quit claim deed, in their "AS IS" condition subject to the Lake Use Agreement and all easements, rights of way, covenants, restrictions, mortgages (including those granted in connection with financing referenced in Section 9.2 below), encumbrances, and liens for non-delinquent ad valorem taxes and special assessments, and all terms and provision of this Declaration.

### **ARTICLE III**

#### **PROPERTY RIGHTS IN THE COMMON AREAS; MAINTENANCE:**

3.1 Easements of Enjoyment. Except as otherwise provided in this Declaration and subject to the limitations and/or restrictions set forth in this Declaration, every Owner shall have



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rights and easements in and to the Common Area. Such rights and easements shall be appurtenant to and shall pass with every Lot.

3.2 Extension of Rights. An Owner's right of enjoyment in the Common Area shall automatically extend to all members of his or her immediate family residing on a Lot with such Owner. 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 regulations as may be promulgated by the Board.

3.3 Waiver of Use. No Owner may exempt himself or herself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the facilities thereon or by abandonment of his or her Lot.

3.4 Subsidy of Common Area Operations. As of the date Developer conveys the Common Area to the Association, Developer will own most of the Lots. It is in the Developer's interest, as well as the Associations' interest, that sufficient revenues be generated from assessments under Article IV of the Declaration, so that the Common Area, including improvements thereon, and street rights-of-way, may be maintained and operated in a reasonable fashion for the use and benefit of the Owners. Developer hereby agrees to supplement the Association revenues by paying, upon reasonable notice, an amount equal to the difference between (a) the revenue required by the Approved Budget then in effect for the maintenance and operation of the Common Area and the street rights-of-way for the applicable period, and (b) the aggregate amount of revenues to be received by the Association due to the timely payment of assessments by all non-exempt Owners during the applicable time period, plus the amount of revenue reasonably expected to be received during such time period as transfer assessments under Section 4.2B of the Declaration. Promptly following appointment of the initial Board by Developer, the Developer and the Board shall establish a budget of the Association for maintenance and care of the Common Area and street rights-of-way for the portion of the calendar year following establishment of such budget, which budget is herein referred to as the "Approved Budget." For each subsequent calendar year, the Association shall propose to Developer on or before December 1 of each subsequent calendar year a budget for the next ensuing calendar year. The intent of Developer and the Association is that the Approved Budget shall be adequate, in all respects, for the reasonable maintenance and operation of the Common Area, as well as the ability to provide debt service for payment of mortgage financing established by Developer for construction of improvements within the Common Area. Developer shall respond as soon as reasonably possible to each budget proposed by the Association, and, thereafter, the Association and Developer shall endeavor in good faith to mutually agree upon the Approved Budget for such year; provided, if such parties are unable to so agree by January 30 following submission of the proposed budget to Developer, the Approved Budget in effect for the immediately preceding calendar year shall be the Approved Budget for the new year. Notwithstanding anything appearing herein, Developer shall have no obligation to pay any portion of the costs incurred by the Association for the construction of improvements within the Common Area or street rights-of-way or for hiring or engaging third parties to manage or otherwise render services to the Association. Developer and the Association hereby agree that

Developer's obligation to supplement Association revenues as provided in this Section above shall discontinue as of the date within the calendar year during which the amount of revenues required by the Approved Budget will be generated due to the timely payment of assessments by non-exempt Owners during such calendar year, together with the reasonably anticipated transfer assessments referred to above.

3.5 Conveyance of Portions of the Common Area and/or Reserves. Notwithstanding anything to the contrary provided herein and to the extent owned, the Developer and/or Association may convey portions of the Common Area to the Owner's of adjoining Lots, or other adjoining real property owners, from time to time, and thereupon such portions shall cease to be a Common Area. Upon such conveyance, no Owners shall have any easement or right of access thereto, unless specifically assigned by mutual agreement or as part of common easements with other Moorings Associations and/or Developer pursuant to the Lake Use Agreement.

3.6 Common Area, Reserves and Street Rights-of-Way, Amenities, Improvements and Maintenance. Developer shall either pay for or finance (as referenced in Section 9.2 below) the cost of constructing or installing the improvements and amenities made by it to the Common Area, Reserves and the street rights-of-way. Developer and/or the Association may install additional amenities or improvements as either elects from time to time. Developer, its contractors and any subcontractors and the employees thereof, shall have an easement and right of access upon the Common Area for the construction and installation of Common Area improvements and amenities. Following completion of the construction and installation of improvements and amenities, as applicable, the Association shall inspect the same and provide Developer in writing within ten (10) days following Developer's request for such inspection, a detailed listing of any defects concerning any such amenities and improvements which results in the same not being in a reasonable condition. Other than any matters timely objected to hereunder by the Association, such amenities and improvements shall be deemed to be fully and unconditionally accepted by the Association. Due to the timing of the occurrence of the inspection of the amenities or improvements, it may not be appropriate for Developer to make corrections at that time, particularly to lawn or landscaping items, in which case, Developer shall make the corrections and improvements during the next growing season or when such corrections are otherwise appropriate. From and after the initial request to an officer of the Association for inspection of the Common Area amenities and improvements installed by Developer, the Association shall be solely and fully responsible for all costs of owning, maintaining and operating the Common Area and improvements thereon, including, but not limited to, all fertilizing, watering and replacement of lawns, shrubs, flowers, plantings and trees following the initial planting thereof, the mowing of lawn areas, payment of taxes and assessments, payment of liability and property insurance premiums, and lake and swimming pool operations (if any), maintenance, repairs and replacements of the improvements, if applicable. The Developer will not mow or maintain the Common Area following the date of its initial request for inspection thereof by the Association.

3.7 Lake Use and Maintenance. Notwithstanding the rights granted herein to use the Common Area, any portion of the Common Area that is a part of the Lake is subject to the following restrictions as to use and maintenance:



A. Lots 1-18 of Block 1, Lots 1-10 of Block 2, and Lots 1-24 of Block 3 of the Property shall not have access to the Lake nor the right to use the Lake.

B. Lots 1-23 of Block 4 of the Property (the "Lake Lots") shall have access to the Lake via that portion of the Common Area that abuts such Lot. The rights to utilize the Lake by the Owners of such Lots shall be as set forth in the Lake Use Agreement and any rules and regulations imposed by the committee in charge of lake as referenced in the Lake Use Agreement (the "Lake Committee"). Developer hereby reserves the right to join the Association as a party to the Lake Use Agreement. Assessments and dues for these Lake Lots shall include additional assessments and charges for the maintenance, upkeep, insurance and taxes of the Lake which amount shall be determined by the Lake Committee. Maintenance and upkeep shall include maintenance and upkeep of the entry monument, maintenance and replacement of the pump, and boat ramp fees.

C. Lots 1-5 of Block 5 of the Property (the "Beach Circle Lots") shall have access to the Lake via that portion of the Common Area that abuts such Lot. The rights to utilize the Lake by the Owners of such Lots shall be as set forth in the Lake Use Agreement and any rules and regulations imposed by the Lake Committee. Developer hereby reserves the right to join the Association as a party to the Lake Use Agreement. Assessments and dues for these Beach Circle Lots shall include additional assessments and charges for the maintenance, upkeep, insurance and taxes of the Lake which amount shall be determined by the Lake Committee. Maintenance and upkeep shall include maintenance and upkeep of the entry monument, maintenance and replacement of the pump, and boat ramp fees.

D. Any individual and/or entity that owns any portion of a lot or the property that is platted as part of The Morning North Addition which lot or portion abuts the Lake shall have the right to access and utilization of the Lake subject to the Lake Use Agreement and shall also have the right to build a dock similar in size to those constructed by others homeowners in the area who have built docks onto the Lake.

Additionally, these Lots shall maintain a 50' common reserve area on the north side of Crystal Beach Court to be platted as part of The Moorings 11<sup>th</sup> and later deeded to The Moorings 10<sup>th</sup> Association.

## **ARTICLE IV**

### **COVENANTS CONCERNING ASSESSMENTS, FINES AND LIENS**

4.1 **General Assessments.** For the purpose of providing funds for the operation of the Association, and for the operating, maintaining, caring, insuring, improving and conducting such other activities and taking such other actions pertaining to the Common Areas as the Association shall deem appropriate, and to afford the Association the means and resources necessary to carry out its rights, duties and functions, the Board shall have the right, in each year, but subject to the exemptions provided below, to assess against each Lot and each Owner thereof, a general

assessment, which general assessment shall subject each Lot to a lien to secure payment thereof. The general assessment may be paid annually, quarterly or monthly as specified by the Board from time to time. Initially, the general assessment shall be paid monthly in the following amounts

- A. As to those Lots in Block 1 or Block 2 of the Property, Ten dollars (\$10.00);
- B. As to those Lots in Block 3 of the Property, Twenty dollars (\$20.00);
- C. As to those Lots in Block 4 of the Property, Thirty dollars (\$30.00);
- D. As to those Lots in Block 5 of the Property, Forty dollars (\$40.00).

Each assessment noted above is subject to increase as deemed necessary by the Association; provided, however, any general and/or special assessments which are hereinafter implemented shall be proportioned between and among the Lots in a similar portion to those noted above (the "Proportionate Share") (i.e. each Lot in Block 3 will be assessed double the amount of the assessment of each Lot in Block 1; each Lot in Block 4 will be assessed triple the amount of the assessment for each Lot in Block 2, etc). Each Owner of a Lot shall pay the assessment owed as to such Lot on the first day of each calendar month commencing upon at least sixty (60) days advance notice from the Developer. Assessments for any partial year shall be prorated. Subject to the exemptions specified herein, the obligation of each Owner to pay assessments hereunder shall commence on the date title is conveyed to such Owner and is not dependent upon there being a residence erected thereon.

#### 4.2 Basis of Assessment; Exemption; Transfer Assessment; Proration:

A. All general assessments shall be made against the Owners based on the Proportionate Share (if an Owner owns a fraction of a Lot, then such Owner shall bear a proportionate amount assessed against such Lot based on the fraction of ownership), except that in view of the substantial expenditures incurred by Developer in connection with the Common Area, and notwithstanding any language in this Declaration to the contrary, Developer (and its successors or assigns) 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 Developer 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 contractor occupies the same as a residence).

B. 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 a fee equal to Two Hundred Fifty Dollars (\$250.00); provided the requirement to pay such a fee shall be at the Developer's discretion if either:

- i. the transfer by Developer to an affiliated entity, or the transfer of Developer's interest as developer of the Property; or
- ii. 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.

#### 4.3 Limitations on General Assessments.

A. The maximum general assessment for any year may not be increased to an amount which is more than twenty percent (20%) above the annual assessment for the previous year, without a vote of the membership of the Association.

B. The general assessment for any year may be increased to an amount greater than that permitted by subparagraph A of this Section 4.3 only upon the affirmative vote of the Members holding more than sixty percent (60%) of the total votes represented in person or by proxy at a duly called meeting.

4.4 Special Assessments. In addition to general assessments, the Board 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 against each Lot, with each Lot bearing its Proportionate Share, for the purpose of providing additional funds (not available through general assessments) to carry out its duties and other functions and purposes contemplated hereunder. No such special assessments shall be valid except upon the approval of Members holding at least sixty percent (60%) of the total votes represented in person or by proxy, at the meeting duly called for the purpose of approving the same. 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.

4.5 Collection and Expenditures. The Board shall have the sole authority to collect and enforce the collection of all general and special assessments provided for in this Declaration on behalf of the Association (but may delegate that authority to a third party company and/or retain attorneys and others for assistance), and may, in addition to such assessments, charge and assess costs and expenses, including reasonable attorney's fees, and penalties and interest for the late payment or nonpayment thereof. The Board may exercise its rights as to the enforce collection of general and special assessments by such means and in such manner as it reasonably determines so long as the same is not inconsistent with Kansas law. The Association 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 and Bylaws. However, the Association shall not be obligated to spend in any year all the sums collected in such year by way of general 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.

4.6 Assessments and Liens; Delinquency. Thirty (30) days after any general or special assessment shall be due and payable, and unpaid or otherwise not satisfied, the same shall be and become delinquent and shall automatically constitute a lien on the applicable Lot and shall so continue until the amount of said charge and assessment, together with all costs, late fees, fines, penalties and interest as herein provided, has been duly paid or otherwise satisfied. Except to the extent prohibited by Kansas law, the Association may cease to provide all and any of the services provided by or through the Association with respect to any Lot during any period that an Owner is delinquent in the payment of any sum due under this Declaration, or due to any other default hereunder, and no such cessation of services shall result in reduction of any amount due from the Owner before, during or after such cessation. No claim of the Association for assessments or other charges due hereunder shall be subject to setoffs or counterclaims made by any Owner.

4.7 Notice of Delinquency. At any time after any general or special assessment against any Lot has become a lien and delinquent, 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 expenses) fines and late fees, 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, late fees, fines and costs and expenses 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.

4.8 Right of Association to Enforce Payment of Assessment. By the acceptance of title to a Lot, each Owner shall be held to vest in the Association the right and power to prosecute all suits, legal, equitable, or otherwise, which may be necessary or advisable for the collection of assessments, charges or fines, and the Association shall have the right to sue for and collect a reasonable sum to reimburse it for its attorneys' fees and any other expenses reasonably incurred in enforcing its rights hereunder. Each Owner, to the extent permitted by law, hereby waives, to the extent of 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) the benefit of any redemption, homestead or exemption laws of the State of Kansas now in effect, or in effect from time to time hereafter.

4.9 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. Each current and future Owner hereby consents to the foreclosure procedures specified in this Article. In any action to foreclose any such lien, the Association shall be entitled to its costs and expenses, including reasonable attorneys' fees, and such late fees, fines and accrued interest for delinquent charges and assessments as shall have been established by the Association. The Developer and/or the Association shall have the right to bid on a Lot at the foreclosure sale. The foreclosure proceedings with respect to liens established pursuant to this Declaration, may be foreclosed at anytime within fifteen (15) years following the filing of the Notice of Delinquency; provided, if at the expiration of such fifteen (15) year period suit shall have been instituted for



collection of the assessment, the lien shall continue until payment in full or termination of the suit and sale of the applicable Lot.

4.10 Subordination to Mortgages. Each and every 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 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 providing residential lending, on any interest of any Owner covered by this Declaration. Any subsequent Owner of any Lot purchased at foreclosure shall be bound by the restrictions, assessments and liens set out in this Declaration, not including, however, any assessment or lien arising prior to the foreclosure sale.

4.11 Personal Liability. In addition to the covenants and agreements heretofore set forth herein, each Owner of each Lot, by the acceptance of a deed therefore, 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 and special assessment, late fee, interest, fine and other items levied against such Lot during the period of ownership and for all other payment obligations specified in this Declaration.

4.12 Late Fee and Interest on Delinquent Assessments. In the event assessment charges (general or special), fine or other sums due under this Declaration shall remain due and unpaid thirty (30) days after the same are due the Owner shall be charged a late fee of five percent (5%) of the unpaid amount and the unpaid amount shall bear interest at the rate of fifteen percent (15%) 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.

4.13 Fines and Remedies. In addition to and not in lieu of any other remedy granted to the Developer, Association and/or Board as set forth in this Declaration:

A. the Board shall have the authority to assess fines for any violation of this Declaration by an Owner, which fines shall be determined in the sole discretion of the Board; provided, a fine may not exceed fifty dollars (\$50.00) per day of violation unless unanimously approved by all members of the Board. Prior to assessing such fine, the Board shall mail written notice to the last address known to the Board concerning the noncompliant Owner, specifying the violation. If the noncompliant Owner fails to cure the violation within twenty (20) days following the mailing or hand delivery of such notice by the Board then in addition to any other liability or obligation arising under the Declaration, the Board may assess a fine against the noncompliant Owner and his Lot in an amount determined by the Board to be appropriate in its discretion; provided, however, if an Owner has received notice of a violation and within any 24 month period after such notice commits a similar violation, the Board shall have the authority to immediately assess a fine and within a reasonable period of time thereafter, provide notice of the same to the Owner. Any fine assessed shall be paid within ten (10) days following the date notice thereof is given to such Owner by written notice deposited in the mail to the Owner's address last known to the Board, or personal delivery thereof to the residence of such Owner. Until paid in full, the amount of such fine shall constitute a



lien on the noncompliant Owner's Lot, and shall be subject to enforcement and foreclosure in the same manner as an assessment under this Article IV.

B. The Developer, Association and/or Board, or any agent acting on their behalf, shall have a right to take any action deemed necessary or appropriate to cure any violation or breach by a noncompliant Owner if the same is not cured by the noncompliant Owner within twenty (20) days following the mailing or deliver of notice to the noncompliant Owner specifying the noncompliant behavior or condition; provided, however, twenty (20) days notice shall not be required if the noncompliant Owner has previously been notified of noncompliant behavior or condition and repeats or allows to exist such noncompliant behavior or condition within twenty (24) months of the prior notification. In furtherance of its rights herein, each Owner hereby grants an easement and license to the Developer, Association and/or Board and/or any agent acting on their behalf to enter upon a Lot (but not the residence located thereon) and to take such action as such party deems reasonably necessary to cure or attempt to cure such noncompliant behavior or condition including, but not limited, the right to mow lawns, paint houses, tow vehicles, and remove Structures. The costs, fees, expenses, and charges incurred, including any attorneys fees, together with a penalty equal to 20% of the total of all the foregoing shall be charged and assessed to the noncompliant Owner and, upon providing written notice thereof to the noncompliant Owner, shall constitute a lien on the noncompliant Owner's Lot and shall be subject to enforcement and foreclosure in the same manner as an assessment under this Article IV. Each Owner hereby releases the Developer, Association and/or Board and/or any agent acting on their behalf from and against any and all damages, losses, costs, fees, expenses, injuries, liabilities, and claims arising out of or related to such party's actions and/or activities as permitted by this Section 4.13.

## ARTICLE V

### USE, OCCUPANCY AND CONDUCT RESTRICTIONS

5.1 General. The Property is subject to the conditions, covenants, restrictions, reservations and easements hereby declared to ensure the best use and the most appropriate development and improvement of each Lot; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the erection thereon of poorly designed or proportioned improvements and improvements built of improper or unsuitable materials; to ensure the best development of the Property; to encourage and secure the erection of attractive homes of appropriate size and appearance thereon, with appropriate locations thereof on building sites; to secure and maintain proper setback from streets and adequate free spaces between Structures; and, in general, to provide adequately for proper drainage from each Lot onto adjacent Lots and Common Area.

5.2 Construction Requirements. Unless otherwise approved in writing by the Design Committee that has authority to act and/or deal with such matters pursuant to this Declaration, the following guidelines shall be complied with:

A. Materials; Size; Basement and Roof. Exterior walls and facings of all buildings, Structures and appurtenances thereto constructed on any Lot shall be of brick, stone, stucco, wood siding, wood paneling, glass, glass blocks, vinyl or steel siding, or any combination thereof. The size and total number of square feet of finished floor area to be contained in each residence must be approved by the Design Committee and meet the requirements set forth by the Design Committee from time to time in its sole discretion. All roofs on all building improvements on any Lot shall be wood, tile or Approved Composition. As used in this Declaration, "Approved Composition" shall mean Heritage II Weathered Wood or such other equivalent composition roofing materials as are approved in writing by the New Construction DRC from time to time.

B. Flat roofs and Windows. No flat roof shall be permitted. Roof pitch shall, at a minimum, be 6/12. Window frames shall be wood, metal or vinyl or other composition materials as approved from time to time by the Design Committee.

C. Initial Policy Guidelines. The following initial policy guidelines have been established for the Lots, and the same may be waived, changed or revoked from time to time by the appropriate Design Committee but without the necessity of filing any formal amendment to this Declaration. Accordingly, inquiry should be made of the appropriate Design Committee to determine current policy guidelines.

i. Front yard areas, exclusive of improvements, shall generally be at least eighty percent (80%) grass. All paving and flatwork is to be either concrete or paving stone and design must be previously approved by the appropriate Design Committee.

ii. In event of the construction of any retaining walls the plan and materials utilized must be previously approved in writing by the appropriate Design Committee.

iii. There shall be no underground homes. Solar panels, ground-source heat-pumps and similar efficiency systems must be approved by the appropriate Design Committee.

iv. All basketball backboards shall be either white or glass and shall be placed or installed only in the rear yard, unless otherwise approved by the Association DRC. All basketball backboards and supports shall be approved by the Association DRC prior to installation. *No temporary or moveable basketball pole/backboard/goals shall be placed or allowed to the front of the residence, whether on the driveway, street, or patio area or in the yard.*

v. All recreation and play equipment shall be located in the rear yard of a Lot except for basketball goals.

vi. There shall be no above-grade swimming pools.

- vii. All vegetable gardens shall be in the back yards only.
- viii. All flagpoles and the type of flag that may be flown must be first approved by the Design Committee.
- ix. Dog runs must be approved by the Association DRC.
- x. All exterior wood surfaces on homes (excluding decking) must be painted, or stained and sealed.
- xi. 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.
- xii. No window shall contain any reflective material such as aluminum foil.
- xiii. All firewood stacks in excess of two cords of wood shall be screened from view from neighboring Lots, and no stack (a) shall exceed six feet (6') in height and/or (b) be stacked in a location no closer to the public street adjoining such Lot than the front façade of the residence on the Lot.
- xiv. All forms of sculpture or "yard art" must first be approved by the Association DRC.
- xv. As soon as practicable, but in any event, no later than the planting season immediately following completion of a dwelling on a Lot, the Owner thereof shall plant a lawn and at least twenty (20) perennial shrubs and/or bushes and trees on the Lot, with a minimum of two (2) trees being planted in the both front and rear yard of the Lots and the trunk of each tree being a minimum of two inches (2") in diameter.
- xvi. No Christmas lights shall be lighted before Thanksgiving and shall be taken down no later than March 15 of the following year
- xvii. No permanent or outdoor storage tanks shall be placed or permitted on any lot.
- xviii. Pad elevations and all exterior drainage shall be verified by Developer's engineering firm at the cost of Owner and any deviation therefrom and any resulting liability, damage, or costs incurred as a result thereof, shall be the responsibility of the Owner.
- xix. Mail box structures, other than cluster mail boxes installed by the postal service, shall be approved by the Design Committee prior to construction

xx. Trash and refuse container storage areas shall be installed at a location approved by the Design Committee and shall be screened in a manner approved by the Design Committee

D. Prohibition of Sheds and Other Outbuildings. Except upon the prior approval of the Design Committee, no building improvements may be erected, constructed or installed on a Lot other than the residence and attached garage approved as required by the Declaration. The prior sentence shall prohibit, without limitation, the following without such prior approval: pool buildings, gazebos, any shed, storage facility, playhouse or other improvement which may obstruct the views from other Lots. Any such building must be constructed from the same materials as the house and be approved prior to construction by the Design Committee.

5.3 Rules and Regulations. Each Owner 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 Property.

5.4 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, encroachment or disrepair to the Common Area, street rights-of-way, the residence or Lot of any other Owner. Specifically, each Owner shall repair any damage sustained to any other Lot, Common Area or street right-of-way in connection with the construction of Structures on such Owner's Lot, including, but not limited to, damage to lawn areas, landscaping and sprinkler systems as a result of the installation of sanitary sewer or heat pump lines or other construction or excavation activities. Owners are hereby advised that KANSAS ONE CALL (a service which may be consulted in advance of excavation to locate existing utility lines) does not identify sprinkler system lines or other underground electrical or plumbing lines which have been installed.

5.5 Residences. No building shall be erected, altered, placed or permitted to remain on any Lot, other than one new single-family residence for private use, with a private garage and other Structures incidental to residential use, which are approved by the appropriate Design Committee as specified herein. No prefabricated or modular buildings will be permitted to be constructed or installed on any Lot without the prior written approval of the New Construction DRC.

5.6 No Excavations. No excavations, except such as are necessary for the construction of a residence or improvements, shall be permitted on any Lot without written permission of the Design Committee.

5.7 No Storage; Trash. No trash, ashes, dirt, rock, lawn clippings, dead landscape materials or other refuse may be thrown or dumped on any Lot or building site. No building materials of any kind or character shall be placed or stored upon any building site more than thirty (30) days before the commencement of construction of a residence or improvements, and then such materials shall be placed within the property lines of the building site upon which they are to be erected and shall not be placed in the street or between the curb and property line.

5.8 No Business Allowed. Except as otherwise specified in this Declaration or as authorized herein or by the Board, no retail, wholesale, manufacturing or repair business of any kind, shall be permitted on any Lot or in any residence or appurtenant Structure erected thereon even though such activity does not include the employment of any additional person or persons in the performance of such services. The following home occupations are hereby approved: Amway, Avon and similar sales representatives; child care; and realtors, so long as insubstantial traffic (that is, except in circumstances otherwise determined by the Board to be appropriate due to applicable parking limitations, no more than four vehicles parked at the residence by visitors in relation to such business activity at any one time) is associated with such activities. The renting or leasing of a residence shall not be construed as a business prohibited hereunder. This Section shall not apply to any activity conducted by the Developer, builder or contractor within the Property.

5.9 Temporary Buildings. Except as authorized by the Board, no basement of a partially completed residence, tent, shack, garage, barn or outbuilding erected on a Lot covered by this Declaration shall at any time be used for human habitation, temporarily or permanently, nor shall any Structure of a temporary character be used for human habitation.

5.10 Used Houses: Trailers. No used, secondhand or previous erected house or building of any kind can be moved or placed, either in sections or as a whole, upon the Property, nor shall any trailer be moved, placed or permitted to remain upon a Lot subject to this Declaration; provided that Developer may install for construction, administrative and sales purposes a trailer or trailers upon a Lot(s).

5.11 Animals. No birds, animals, reptiles, or insects (collectively "animals"), except dogs, cats or other household pets, shall be kept, bred or maintained on any Lot except a reasonable number of commonly accepted household pets approved from time to time by the Board. Under no circumstances shall any commercial or agricultural business enterprise involving the use or breeding of animals be conducted on the Property without the express written consent of the Board. The Board 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 and the manner of restraint of the same, and the Owners shall strictly comply therewith. Dogs, cats and all other pets or animals shall be confined at all times to the Lot and must be kept on a leash when outside the Lot. No dogs other animals shall be continually or regularly staked or chained on any Lot. All domestic pets must be properly immunized as required by applicable ordinances, codes and laws. Owners must prevent such animals from barking or making other noises at any time which the Board determines are annoying or a nuisance to neighbors or those using the Common Area.

5.12 Signs. Except as authorized by the Board, and except for those installed by Developer, its marketing representatives or builders or contractors as authorized by Developer, no signs, advertisements, billboards or advertising Structures of any kind may be erected or maintained on any of the Lots; provided, however, that permission is hereby granted for the erection of unlighted, temporary, standard sized signs by real estate firms for the sole and exclusive purpose of advertising for sale or lease the Lot and residence upon which it is erected



and improvements thereon, if any, and during the one hundred twenty (120) day period prior to any election, political signs may be placed in yards.

5.13 Sight Lines. No fence, masonry wall, hedge or mass planting shall be permitted to extend beyond the minimum front setback lines established on the plat of the Property. No hedge, shrub, mass planting or tree shall be allowed by the Owner to obstruct sight lines at any Lot corner. Trees, shrubs and other plants which die shall be promptly removed from the Property.

5.14 Antennas; Clotheslines and Other Wires. Except as authorized by the Association DRC, there shall not be erected any external television or radio antennas, permanent or temporary clotheslines or similar structures, or external wires that traverse portions of the Lot (except common utility lines); provided, notwithstanding the foregoing, an Owner may install within his or her Lot one (1) television satellite dish having a diameter of not more than twenty-four inches (24"), so long as the location of such dish is satisfactory to the Association DRC. Should any part or all of the restrictions set forth in this Section be unenforceable because the same violate a statute or the First Amendment or any other provision of the United States Constitution, the Association DRC shall have the right to establish rules and regulation regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections within the Property and any such rules and regulations shall be binding upon all of the Lots and the Owners thereof.

5.15 Vehicles and Trailers. Except as authorized by the Board, no automobile, truck, motorcycle, motorbike, ATV, boat, personal watercraft, house trailer, boat trailer, horse trailer, camper, recreational motor vehicle, camper trailer or similar items shall be stored or permanently, continually or regularly parked on any street, driveway or in the open on any Lot.

5.16 No Joyriding. Except as otherwise authorized by the Board, ATV's, motor scooters, minibikes, go-karts or similar vehicles shall be operated for transportation only, and no joyriding on the streets, a Lot or the Common Area shall be allowed except on a designated bike or cycle trail.

5.17 Requirement to Keep Lot in Good Order and Repair. Each Owner (other than Developer, provided it shall cause all Lots owned by it to be mowed periodically) shall keep all Lots owned by it, and all improvements therein or thereon, in good order and repair, including, but not limited to, the seeding, watering by an underground water sprinkler system and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other improvements, 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 Property. Except as otherwise provided herein, if any portion of the Common Area is deeded to the Owner of an adjoining Lot, the Owner of each Lot shall maintain such area in the same manner as the Lot. Furthermore, except as may be otherwise approved by the Association DRC, each Owner of a Lot which is contiguous to a street right-of-way (other than an arterial street right-of-way on the perimeter of a portion of the Property) shall seed, water, install and operate an underground water sprinkler system, mow and otherwise maintain in good, sightly condition, a lawn area between the boundary of such Lot and the street

within such right-of-way. Additionally, except as may be otherwise approved by the Association DRC, each Owner of a Lot contiguous to any Common Area reserve on which a lake is located shall install and operate a water sprinkler system, seed, mow and otherwise maintain in good, slightly condition, a lawn area between the boundary of such Lot and the water's edge of the lake located in such Common Area; provided, in lieu of a lawn, the distance of thirty-five feet (35') from the water's edge may be covered entirely by a sand beach, so long as the Owner maintains such area in good, slightly condition.

5.18 Division of Lots Prohibited. Except as authorized by the New Construction DRC, no platted Lot shall be split or divided into more than one Lot or building site, but more than one Lot may be used as a building site for one dwelling.

5.19 No Disturbances of Streams. No lake, pond, stream or water drainage facilities, natural or erected within the Common Area shall be disturbed other than by Developer or the Board.

5.20 Boating; Lake Use. Except as permitted by the rules adopted by the Lake Committee no boat (motorized or not), raft, canoe or surfboard shall be operated within the Lake and, except as permitted by the rules adopted by the Board, no boat (motorized or not), raft, canoe or surfboard shall be operated on any portion of the Common Area. Any use of any lake, pond or other body of water within the Common Area shall be strictly in compliance with the rules and regulations adopted from time to time by the Board.

5.21 Fishing. Fishing in any body of water, if any, within the Common Area will only be permitted at such times and at such places only to the extent, if any, permitted by the rules adopted by the Board from time to time concerning such use.

#### 5.22 Fences.

A. Developer may, and hereby reserves the right to, in its sole discretion, construct and install a fence, "living fence" (a combination of trees and other fencing or wall materials), wall or entrance treatment of a style and of materials satisfactory to the Developer, in its sole discretion, within any of the fence or wall easement areas, any entry areas shown on the plat of the Property, within other easement areas established by other easement instruments, or within Common Areas. With respect to any Lot on which Developer has constructed any entry monument, fence, "living fence" or wall, the Owner(s) may not install or construct any fence or wall which is visible from adjacent streets without the approval of the Association DRC.

B. All fences shall be approved by the Association DRC prior to construction or installation on any Lot.

C. All fences installed within drainage ways established by the master drainage and grading plan referenced in Sections 5.24 and 5.25 shall have a minimum of four inches (4") clearance above the ground level (other than posts installed in the ground) in order to not divert or disrupt water drainage from the Lot.

5.23 Model Homes and Real Estate Offices. Notwithstanding anything to the contrary appearing elsewhere in this Declaration, any Lot owned by Developer, or any person or entity so authorized may be used for a model home or for a real estate or administrative office pertaining to the development of the Property (including temporary, mobile, modular, prefabricated or a permanent Structure) until all the Lots have been sold to consumers for construction of residences thereon.

5.24 Drainage. From and after the date of commencement of construction of improvements on a Lot, the Owner of such Lot shall cause such Lot to be graded so as to strictly comply with the master drainage and grading plan relating to the Lot (the "Drainage Plan"). Developer has caused its engineering firm to prepare Drainage 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. It is the responsibility of each Owner of each Lot to obtain from the Developer's engineering firm (MKEC 411 N. Webb Road, Wichita, KS 67206) and comply with the most recent Drainage Plan at the time of construction of a residence or landscaping such Owner's Lot rather than obtaining such Drainage Plan from any other source, including, any filings with the City of Wichita. Each Owner shall comply with the Drainage Plan and the "Lot Grading Plan" (as defined in the next paragraph).

Prior to the commencement of construction of the initial residential improvements and landscaping on a lot, the Owner shall hire a qualified engineering firm to prepare a Lot Grading Plan for the Lot in a manner required by the New Construction DRC and which is consistent with the Drainage Plan. Promptly following the completion of construction of the initial residential improvements on such Lot, the Owner 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. Upon request, the Owner shall provide a copy thereof to the Association and the New Construction DRC. 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.

Developer, Design Committee, Board and the Association, shall have no liability or responsibility to any Owner or the Owner of an adjacent Lot due to the builders and/or others failure (even if such builder is Developer's approved builders), to comply with the aforementioned grading and drainage requirements, or for any resulting effect on the Lot, Owner or Owner's improvements.

The Association DRC or persons designated by the Association DRC 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 the Drainage Plan and Lot Grading Plan. In the event at any time the Association DRC determines that a Lot is not in compliance with the aforesaid guidelines, standards and plans, the Association DRC shall give notice to the Owner thereof and demand that such corrective action be taken as is necessary to achieve compliance with the aforesaid guidelines, standards and plans, the Association DRC shall give notice to the Owner thereof and demand that such corrective action be taken as is necessary to achieve

compliance. The decision of the Association DRC is final and binding unless, within fifteen (15) days of being notified of such decision, the Owner requests, by written correspondence, that such matter be reviewed by the Developer. The right to appeal to the Developer shall only be allowed in the event Developer owns a Lot. Upon receipt of the written request for review, the Developer shall have thirty (30) days thereafter to determine whether the action of the Association DRC shall be affirmed or reversed or modified. If the Developer fails to issue a written opinion within such thirty (30) day period, then the decision of the Association DRC will be deemed to have been affirmed and thereafter shall be binding. The Developer shall have the sole right and discretion to affirm, reverse or modify the decision of the Association DRC and the decision of the Developer shall be binding.

Developer recommends that any time a Lot is surveyed by an Owner, whether in connection with mortgage financing or otherwise, that the surveyor certify that the grading and drainage pins located in the rear of the Lot are at the elevations required by the master and Lot specific drainage and grading plans referred to above. It is not the Developer's responsibility or obligation to enforce compliance with the master drainage and grading plans. The Design Committees and the Developer 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 Drainage Plan and/or Lot Grading Plan or for the applicable Design Committee or the Developer not requiring a lot drainage and grading plan or compliance therewith or for the quality or compaction of any soil.

No Owner shall place or install any Structures, including, but not limited to, trees, shrubbery, landscaping, sand boxes, gardens, retaining walls, playgrounds, or playhouses in any drainage easement or channel.

**5.25 Water Encroachment; Flood Insurance.** Notice is hereby given to anyone acquiring a 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 of the Lot, which has been graded at lower elevations to provide drainage, or if the Lot is adjacent to a lake, stream or other waterway, water from such areas may spill over into the Lot as a result of such rainfall. Depending upon how much water accumulates on the Lot 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 within the Lot. Some Lots may have previously been located in a designated flood plain, in which situations the Developer, or another party, has caused the same to be removed from the flood plain by increasing the elevation thereof with fill as required by the City of Wichita, Kansas, the Kansas Department of Water Resources, the Federal Emergency Management Agency and any other agency having jurisdiction thereof. Prior to construction of a residence or other structures on any such Lot, the Owner thereof is (i) encouraged to verify, through its contractor, compliance with the requirements of such City and the other applicable agencies; (ii) consider inherent risks; and, (iii) determine whether to obtain and maintain flood insurance. Neither Developer, the Association, building contractor nor brokers 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.



5.26 Intentionally Omitted.

5.27 Airport. The Property may be located in the vicinity of an airport. Each Owner assumes that risk (if any) associated therewith.

5.28 Boat Docks. No boat docks, piers, moorings, boathouses, slips or similar Structures may be constructed within any Common Area or Lot, except upon the prior written approval of the appropriate Design Committee. With the prior consent of the Board or the Developer, Owners of certain approved Lots adjoining the Common Area containing a lake may be permitted to construct and utilize, at their SOLE COST, RISK AND EXPENSE, a boat dock within the adjoining Common Area.

5.29 Artificial Vegetation. No artificial flowers, trees or other vegetation shall be permitted on the exterior of any residence or in the yard.

5.30 View. No Owner has any right to an unobstructed view beyond the boundaries of the Owner's Lot. No Owner shall be entitled to prevent the construction 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. Developer reserves the right to restrict plantings and/or structures within specific set-backs on a case-by-case basis.

5.31 Erosion: Water Pollution Control Permit and Related Matters; Compliance With Laws. Each Owner shall comply strictly with any law or ordinance regarding erosion or runoff, including, if applicable, a storm water pollution prevention ordinances, the Kansas Water Pollution Control General Permit And Authorization To Discharge Stormwater Run-Off From Construction Activities Under the National Pollutant Discharge Elimination System or any and all similar ordinances or laws adopted by the city or other governing body having jurisdiction over the Property. A permit to construct may require that erosion and sediment control measures are implemented in connection with construction activities on such Lot, including, but not limited to, site work such as clearing, excavating, and grading the Lot, 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 on any Lot 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 or her Lot 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, by reason of the aforesaid permit, regulations, rules and ordinances and shall indemnify and defend Developer 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.

5.32 Water Levels in Lakes and Ponds. There is no assurance that lakes, ponds and other bodies of water within the Property (including but not limited to the Lake), 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 Developer, the Association, the Board nor any officer or employee of Developer, the Association, or the Board 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 and each Owner waives any claims it may have against Developer, the Association and/or the Board and their officers and employees as a result thereof. Similarly, Developer, the Association and the Board are not responsible to maintain certain levels due to flooding or high-water events. Any damage to walls, beaches and/or shoreline is the responsibility of the Owner of each Lot.

5.33 Approved Builder: Marketing Fee. Any Owner desiring to construct the initial residence and related improvements on a Lot must obtain Developer's written approval concerning the building contractor constructing such residence and related improvements. Owners are required to utilize building contractors from a limited list of approved contractors established by the Developer from time to time; notwithstanding the fact that an Owner wishes to utilize another experienced, qualified building contractor. Notwithstanding the fact that the Owner must utilize a contractor approved by Developer, Developer does not warrant the work of (including quality thereof), the financial condition of, or any other matter concerning such contractor. Owner acknowledges and agrees that it shall look solely to the contractor for any errors or omissions of such contractor and/or for any matter arising out of or related to the design, development, and/or construction of the initial residence and related improvements.

Each approved builder may be required to execute a builder's agreement on terms satisfactory to Developer 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 consideration to be paid and delivered by Owner for the construction of the initial residence, garage and related improvements on the applicable Lot 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 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 is included as part of the initial sales contract concerning a Lot. Any Owner, or prospective Owner, desiring further information concerning a Lot should contact the marketing representative for the Property.

5.34 Off Street Parking. Each of the Lots shall provide four (4) off-street parking spaces for each residence within the garage and driveway areas.

5.35 Laundry. No clothing or any other household fabric shall be hung in the open on any Lot, except with specific written approval of the Association.

5.36 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 or which creates noise, unreasonable risk of fire or explosion, or other conditions which are a nuisance shall not be conducted within a Lot. No outside burning of trash, leaves, debris or other materials shall be permitted on a Lot.

5.37 Loudspeaker; Noise. The use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Lots, except alarm devices used exclusively for security purposes is hereby prohibited.

5.38 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, any other component of the storm drainage system serving the Property, or any stream, pond, or lake, or elsewhere within the Property is prohibited.

5.39 Leasing or Renting Residences. The provisions of the Declaration shall apply to all Owners and occupants of a Lot, as well as to their respective tenants, guest, invitees and family members. The rental or leasing of a residence is not prohibited; provided, however, the same is for a period of six months or more to the same individual unless otherwise approved by the Board. However, no Lot or any part thereof shall be used for transient lodging, hotel purposes, and/or rental to roomers or boarders, including rental to one or more persons unless permitted in writing in advance by the Board. All rental arrangements shall be in writing and shall require the tenant to comply with this Declaration, the Articles and Bylaws and any rules and regulations adopted from time to time by the Board. Any Owner renting a residence to another party shall make available to the tenant copies of the Declaration, Articles, Bylaws and rules in effect at the time of such rental, and shall be responsible for such tenant's compliance therewith. An Owner shall provide the Board with a copy of his rental agreement within five (5) days following the request therefore by the Board.

5.40 Outdoor Recreational Improvement. No permanent outdoor recreational improvements, facilities, pools, or equipment shall be permitted, except with the specific written consent of the Design Committee. Temporary recreational improvements, such as "infant pools", jumping cages or blow-up structures, batting cages or soccer goals, must not remain set up and in use for more than two consecutive days without the written consent of the Design Committee.

5.41 Mineral Development. Oil, gas, and other mineral drilling, development, mining operations of any kind, or quarrying shall not be permitted on any Lot, Common Areas or on the Property. Nor shall oil and gas wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot, Common Areas, or the Property.

5.42 Developer's Exclusive Right to Repurchase Lot. If prior to commencing construction on a Lot a dispute arises between an Owner and the Developer and Developer, in Developer's opinion, determines that the dispute is irresolvable, the Developer, in its sole discretion, may exercise an exclusive right to repurchase Owner's Lot at the purchase price paid by Owner at the time of Owner's Lot closing. Developer shall notify Owner in writing of Developer's exercise of the exclusive right to repurchase. A closing will occur within thirty (30) days of Owner's receipt of the writing notice to repurchase for which Developer shall deliver to Owner the repurchase funds and Owner shall deliver clear title free of liens to Developer under the terms and conditions for title insurance and closing costs, excluding any sales commissions, that existed at the time the Owner closed on the purchase of the Lot.

5.43 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 Developer 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, including any mechanism or system for limiting access to the subdivision within the Property, 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 its tenants and all occupants of a Lot that the Association, its Board and committees, and Developer 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.

## ARTICLE VI

### THE ASSOCIATION

#### 6.1 Powers, Duties and Rights.

A. The Association shall have the rights and powers as set forth in its Articles and Bylaws, together with its general powers as a nonprofit corporation.

B. Except for areas within the Common Area which the Association elects to maintain in a natural condition, the Association shall maintain, water, fertilize, mow, and keep clean the portions of the Common Area which are to be maintained by it hereunder and the portions of the green space within the arterial public street rights-of-way adjacent to the perimeter of Property. It further shall maintain, repair and/or replace the decorative entrance treatments, fence(s) and walls erected and installed by Developer or the Association.

C. The Association shall maintain such insurance on the Common Area, and facilities thereon, and liability and other types of insurance as the Board deems necessary and advisable.

D. The Association may improve the Common Area in any manner that the Board shall find to be necessary, desirable or beneficial to the interest of the Common Area and the Owners.

E. The Board shall have the right to create and establish reserves for the repair, restoration or replacement of the portion of the Common Area to be maintained by it hereunder and any improvements therein.

F. The Association, through the Board, shall have the right to adopt, and modify from time to time, such rules and regulations as it may deem advisable for the maintenance, use, conservation and beautification of the Property and for the health, comfort, safety, enjoyment and general welfare of the Owners and occupants of Lots and those using the Common Areas, including rules and regulations concerning the use and activities on the lake within the Common Area.

G. The Association, through the Board, shall be empowered to determine the manner and extent of operating, maintaining, improving, restoring, mowing, trimming and keeping clean the Common Area to be maintained by it hereunder.

H. The Association, through the Board, may select a company to provide the exclusive trash removal service within the Property. In such event, the Association shall notify the Owners at the time of the initial selection of a trash removal service. All Owners shall exclusively use such company. In the event the Board elects to change trash removal service companies, within ninety (90) days after such company is selected, each Owner shall begin to utilize the company identified by the Board to provide trash removal service at such Owner's Lot and continue to use such company exclusively until such time as the Board designates a different trash service company or notifies the Owners that it is no longer necessary for all Owners to utilize the same trash removal service company. Each Owner shall be responsible for paying all costs and fees associated with trash removal services related to such Owner's Lot.

I. The Board shall have the authority to assess fines for any violation of the provisions contained in this Declaration and/or exercise any other remedy allowed by law and/or this Declaration. Additionally, and to the extent not prohibited by Kansas law, the Board shall have the right to suspend the use of the Common Area and any recreational facilities thereon by an Owner and his family and guests for any period during which any assessment against his/her/its Lot remains unpaid and delinquent and/or by reason of a violation or breach of any rules or regulation related to such Common Area including any restriction created by this Declaration. In exercising its power (or deciding not to exercise its powers), the Board may consider any factors it deems relevant and/or important including the following:

- i. the Association's position is not strong enough to justify taking any or further action;
- ii. the covenant, restriction or rule being enforced is, or may be construed as, inconsistent with applicable law;
- iii. 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

iv. It is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria to pursue enforcement action. Any decision by the Board 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, nor shall it preclude any Owner from taking action at law or in equity to enforce the Declaration, Bylaws and Articles.

J. The Board shall have the right to employ on behalf of the Association third parties as security and/or enforcement personnel (which personnel shall have the right to determine whether violations of rules or regulations have occurred.)

K. The Board may establish rules regarding the activities on or uses of the Common Area including rules that restrict or eliminate some or all type of activities or uses thereof, restrict the number of guests of each Owner, and/or to charge a reasonable admission or other fee for the use of the Common Area or any facilities thereon.

L. If Developer conveys property to the Association as Common Area at no cost to the Association, the Association shall, upon Developer's written request, reconvey to Developer any portions of such Common Area which are unimproved by material building Structures, to the extent conveyed by developer in error or needed by Developer to make minor adjustments in property lines.

6.2 Operations and Expenses. The Association shall establish such committees as may be provided for in its Bylaws and/or to the extent permitted by the Bylaws and the Board may engage accountants, legal counsel and other consultants as may be necessary for the discharge of its duties hereunder.

6.3 Taxes and Assessments. Each Owner shall be obligated to pay the taxes or assessments assessed against such Owner's Lot and personal property located thereon prior to delinquency.

6.4 Repair and Restoration of Improvements on Common Area. Should any improvements on any portion of the Common Area, or any part or portion thereof, which is to be maintained by the Association hereunder, be damaged or destroyed by fire or other casualty or by intentional mischief, the Association shall be responsible for the cost and expense of repair and restoration, and, so long as there are sufficient insurance proceeds collected as a result of such damage or destruction, the same shall be done substantially in accordance with the original plans and specifications for the improvement of same. The repair and restoration work referred to in this Section shall be commenced, the same, and once commenced, the same shall be pursued diligently to completion. Notwithstanding the foregoing, in the event that any such improvements on the Common Area shall be damaged or destroyed through the intentional misconduct or negligence of an Owner, or such Owner's family members or invitees, including, but not limited to, failing to correct faulty drainage or improper use of weed killer, such Owner shall pay on demand the full cost of replacement or repair thereof.



6.5 Opposition to Zoning and Other Matters. The Board, any member thereof and the members of the Association shall not express any opinion on behalf of the Board or the Association pertaining to any applications or requests concerning rezoning, community unit plan approval or amendment, variances, or other land use activity relating to any land in the vicinity of the Property. This prohibition is necessary due to the fact that not all Board members or members will have the same opinions concerning the applicable request or application. Nothing herein is intended to restrict any member of the Association or member of the Board from expressing his or her personal opinions without indication that such opinions represent the opinion of the Association or the Board.

## ARTICLE VII

### EASEMENTS AND ACCESS CONTROL

7.1 Public Utility, Floodway and Drainage Easements Dedicated. Easements for the installation and maintenance of all public utilities and for floodway and drainage on Lots and in the Common Area are dedicated as shown on the recorded plat of the Property.

7.2 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.

7.3 Easements in Favor of Developer and Association. Developer specifically reserves unto itself, its affiliated entities, designees, successors and assigns, and for the Association, and for the contractors and representatives of the Developer and the Association, in connection with the use, operation, construction of improvements and amenities, and maintenance of the portions of the Common Area to be maintained by it hereunder, together with arterial street rights-of-way, as provided herein and improvements thereon or therein, a perpetual, nonexclusive easement and right-of-way over the Lots, Common Area, and such street rights-of-way, for the purpose of inspecting, constructing, maintaining, moving, repairing, replacing and rebuilding water sprinkler systems, including water lines, water wells, sprinkler controls, and electric meters and lines, underground pipelines, drains and/or trenches for the location of said wells, lines, pipes, drains and/or mains. Additionally, Developer specifically reserves unto 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 (including water wells, sprinkler controls, and electric meters and lines associated therewith), or any signage pertaining to or serving the Common Area or the residential development within any wall, utility and/or drainage easement shown on the current or any future plat of the Property, or located on a Lot but, due to oversight, not actually located in the appropriate easement area. Developer may have installed a sign advertising the residential development on a Lot or within the Common Area prior to the sale of such Lot of such Lot or transfer of the Common Area to the Association. Developer, its successors and assigns, hereby retain an easement for the placement, and replacement, of any such advertising sign until all Lots have been sold by Developer or its successors and assigns.

7.4 Easements of Encroachment. Developer grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) 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. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and conduct on the part of, or with the knowledge and consent of, the person claiming the benefit of such easement.

7.5 Association Inspection Easement. Developer grants to the Association easements over the Property as necessary to enable the Association to fulfill its 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 the Declaration, Articles, Bylaws and rules and regulations in effect from time to time. Such easements and rights may be exercised by any number of the Board and its 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.

7.6 Easements to Additional Land. Developer 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 purpose 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. Developer or such affiliate, successor or assign shall restore any damage to the Common Area resulting from the use of such easement.

## ARTICLE VIII

### DESIGN COMMITTEES; ARCHITECTURAL CONTROL

8.1 Committees. Two Design Committees shall have responsibility for the review, approval or disapproval of plans relating to the construction of Structures on each Lot. The applicable Design Committee shall establish minimum above-ground living area and basement square footage requirements for residences to be constructed on a Lot, which requirements may be revised from time to time by the applicable Design Committee. One committee shall be the New Construction DRC which shall review, approve or disapprove all matters pertaining to the construction and completion of the initial residence and related Structures on each Lot. The second committee shall be the Association DRC, shall review, approve or disapprove all specifications, plans and other matters pertaining to fencing; drainage matters as referenced in Section 5.24 above and elsewhere; and (on a Lot by Lot basis) following completion of the initial residence and related Structures on a Lot, all specifications, plans and other matters for remodeling the initial residence and related Structures, including landscaping, and any additional new Structures to be constructed on such Lot.

8.2 Membership. The original members of the New Construction DRC and the Association DRC shall be up to three (3) persons, to be appointed by Developer. Upon the death or resignation of any member of the New Construction DRC or Association DRC, or in the event Developer desires to remove any member, Developer shall appoint a successor. The decision of a majority of each Design Committee shall be binding; provided, each Design Committee may delegate its rights and responsibilities hereunder to one or more of its members from time to time. Developer may relinquish its rights under this paragraph as to either or both Design Committee by executing and recording in the real estate records a written instrument giving notice of its intent to do so, and providing a copy thereof to an officer of the Association; in such event, the Association shall have the authority of Developer under this paragraph. The New Construction DRC may delegate its rights and responsibilities on a limited basis to the Association DRC from time to time without relinquishing its rights and powers hereunder beyond the terms of such limited delegation. Developer shall relinquish its rights hereunder no later than the date a residence has been completed on each Lot.

8.3 Approval Required of Plans and Specifications. Except as otherwise specifically provided in this Declaration, prior to construction of the initial residence and related structures on a Lot, no Structure shall be commenced, erected, placed, moved on or permitted to remain on such Lot, unless plans and specifications, grading elevations, square footage, exterior materials, exterior lighting, location, general landscaping plans, and exterior color scheme, therefore shall have been submitted to and approved in writing by the New Construction DRC. Subsequent to construction and completion of the initial residence and related Structures on a Lot, no existing Structure upon any Lot may be remodeled or altered in any manner which materially changes the exterior appearance thereof (including exterior color scheme) or Lot drainage and grading plan, nor shall any new Structure be placed on such Lot, unless plans therefore shall have been submitted and approved in writing by the Association DRC. The plans and specifications shall be in such form and shall contain such information as may be required by the applicable Design Committee, including, as requested by such committee, (i) a site plan of the Lot or Lots, showing the nature, exterior color scheme, kind, shape, size, height, materials and location with respect to the particular Lot or Lots (including proposed front, rear and side setbacks, of all Structures, the location thereof with reference to structures on adjoining portions of the Property, and the number and location of all parking spaces and driveways on the Lot or Lots; and (ii) a completed Lot grading plan and the City of Wichita, Kansas Subdivision Lot Plan Certification, as referenced in Section 5.24 above, at the Owner's expense, in accordance with the then-current master drainage and grading plan for the Property. Plans and specifications shall be deemed to have been submitted to the appropriate Design Committee at such time as the Owner requesting such approval shall deliver the same to a member of such committee and shall have obtained a written receipt from such member acknowledging receipt of the same. Except as otherwise specifically provided herein, the applicable Design Committee shall have sole and full authority to determine matters of aesthetic judgment and the determination by the applicable Design Committee as to such matters shall be final and shall not be subject to arbitration review so long as exercised in accordance with the procedures set forth in this Article. The Association DRC (but not the New Construction DRC) shall be deemed to have approved plans and specifications for which an Owner shall have requested approval if it has not notified such Owners of disapproval or the need for additional time for consideration within sixty (60) days following Owner's submittal to such committee. No approval of the New Construction DRC shall be

deemed or implied to have been given hereunder; actual written approval from such committee is required. **THE FAILURE OF ANY OWNER TO OBTAIN THE APPROVALS REQUIRED HEREBY SHALL BE AT SUCH OWNER'S RISK AND LIABILITY.**

8.4 Rules and Statements of Policy. A Design Committee, or either of them, may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on Lots, including, without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, the minimum above ground living area and basement square footage requirements or other matters, which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the applicable Design Committee at any time, and no inclusion in, omission from, or amendment of any such rules or statements shall be deemed to bind the Design Committee to approve or disapprove any feature or matter subject to approval or to waive the exercise of the Design Committee to approve or disapprove any feature or matter subject to approval or to waive the exercise of the Design Committees' discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Lot of any plans or specifications shall not be deemed a waiver of the applicable Design Committee's right, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Lot or Lots. Approval of any such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be revoked or rescinded thereafter; provided that (i) the Structures or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in this Declaration, and (ii) the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all Structures on and uses of the Lot in question.

8.5 Right of Inspection. Representatives of the Board or applicable Design Committee or any of its agents thereof may, at any reasonable time or times, enter upon and inspect any Lot or any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of Structures thereon are in compliance with the provisions hereof and neither the applicable Design Committee, 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.

8.6 No Liability. Neither of the Design Committees, the Developer, the Association, the Board, nor any officer, director, member, representative, designee, agent or employee thereof, shall be personally liable to any owner or to any person, firm, corporation or other entity for any damages arising from any mistake in judgment, negligence, nonfeasance, performance or nonperformance of any duties, the approval, disapproval or failure to approve any matter submitted for approval, for the adoption, amendment or revocation of any rules, regulations, restrictions pursuant to this Declaration, guidelines or the Associations' Articles or Bylaws, responsibilities or functions under this Declaration, including, but not limited, to this Article and Section 5.24 hereof, or for any defect in any Structure constructed from any approved plans and specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Developer, the Association, the Design Committees, the



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Board, or the Officers, directors, members, employees, and agents of any of them to recover any of the aforesaid 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, nonfeasance, performance, nonperformance, approval, disapproval or failure to approve 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.

8.7 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 applicable Design Committee may refuse to approve similar proposals in the future. Approval of applications or plans for any Structure done 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.

8.8 Variances. The applicable Design Committee 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 applicable Design Committee 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 IX

### NOTICE OF POSSIBLE SPECIAL ASSESSMENTS; AMENITY FINANCING

9.1 Assessments. Notice is hereby given to each purchaser of a Lot that special assessments will be spread by the City of Wichita, Kansas and/or other applicable governing 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 or other applicable governmental body to major arterial streets in the vicinity of the Property. Special assessments may extend for a period of up to twenty (20) years. Each purchaser/Owner must independently obtain such information as such purchaser/Owner desires or deems sufficient concerning the amount of special assessments which currently, and in the future will, affect such purchaser's/Owner's Lot.

9.2 Amenity Mortgage Financing. Notice is hereby given that Developer and/or Association will obtain, and renew and refinance from time to time, mortgaged secured loan or loans in order to pay the cost of installing or constructing amenities and improvements within the



Common Area for the use and benefit of the Owners. When the Developer initially obtains such loan(s), the Association shall continue to renew such loan(s), or obtain a different loan(s), as requested by Developer from time to time. All or any portion of the 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 IV hereof (including transfer fees), shall be utilized for repayment of the interest and principal arising from any such loan(s) (and the renewal and refinancing thereof from time to time), neither the Developer nor the Association shall be required to give notice thereof to the members of the Association. The Association shall indemnify, defend and hold Developer, 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 guaranties thereof, including the failure to repay any amounts due thereunder.

## **ARTICLE X**

### **ADDITIONAL LAND; REMOVAL OF LAND**

Developer may in its discretion, from time to time, during the twenty (20) year period following the date hereof, annex additional real property, including additional Common Area, into the Property, and thereby subject the same to the terms, provisions and conditions of this Declaration (as provisions hereof may be changed, altered, supplemented, deleted or modified solely as to the annexed land specifically by the document annexing such additional real property), 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 twenty year period commencing with the date of the recordation of this Declaration, Developer, its successors and assigns, may annex such addition real property in its absolute discretion. From and after the expiration of such twenty (20) year period, such addition and may be annexed; provided that such annexation is approved by members of the Association at a duly convened meeting at which a quorum is present.

During the twenty (20) year period referenced above, Developer reserves the right to amend this Declaration (which right of amendment shall be in addition to and not limited by Section 11.10 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 Developer. If the withdrawn land is Common Area, the Association shall promptly take whatever action is necessary to convey such land to Developer, free from any rights, easements or encumbrances which are not in existence at the time of the conveyance of such land by Developer to the Association.

## ARTICLE XI

### MISCELLANEOUS

11.1 Provisions Binding on Grantees. 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 Developer provided for in this Declaration.

11.2 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 construction, use of occupancy of buildings or premises; 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 construction, use of 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 the Declaration shall control.

11.3 Construction and Validity of Restrictions. 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.

11.4 Assignment of Powers. Any and all rights and powers of Developer provided for in this Declaration and any modification or amendment hereof may be delegated, transferred, assigned, conveyed or released by Developer to any third party and/or to the Association. The Developer'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 subsequent to the effective date of the assignment.

11.5 Waiver and Exceptions. The failure by the Association, Developer, any Owner or any other person to enforce any of the restrictions, conditions, covenants, reservations, liens or charges to which the Property or any part thereof is subject, 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.

11.6 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

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Declaration nor the meaning thereof.

11.7 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.

11.8 Successors-in-Interest. Reference herein to either the Association or Developer 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.

11.9 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, Developer, and the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty-five (35) years from the date hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of ten (10) years each, unless and 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.

11.10 Amendments. Amendments, including restatements, waivers, modifications, deletions, alterations, removals, changes and additions hereto, to this Declaration may be made by Developer, or its successors and assigns, in its sole discretion, from time to time, so long as Developer (or its successors and assigns) retains ownership of a sufficient number of Lots that the number of votes attributable to such Lots under Section 2.2 of this Declaration constitutes a majority of the total authorized number of votes attributable to all Lots within the Property pursuant to such Section 2.2. Following the date Developer, or its successors and assigns, no longer has the right to unilaterally amend this Declaration as provide above, any provisions added to this Declaration, as follows:

A. Notice. Notice of subject matter of the proposed amendment shall be included in a notice to the Owners 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 Developer. Unless otherwise specified in this Declaration, any proposed amendment must be approved by the Owners casting not less than two-thirds (2/3) of the aggregate number of votes cast by the Owners present at such meeting at which a quorum is present. Such votes may be cast in person or by proxy to the extent provided for in the Bylaws of the Association.

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 which require a meeting of the Association in order to approve, 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

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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.

Notwithstanding the foregoing, so long as Developer or any assignee thereof, owns one (1) Lot any such amendment (including, but not limited to, those modifying any "Construction Requirements" contained in Section 5.2 above) shall require the written consent of Developer in order to be effective. No amendment by the Owners materially impairing the rights of any mortgagee shall be binding on such mortgagee unless consented to in writing by such mortgagee.

11.11 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.

11.12 Enforcement and Arbitration.

A. The covenants set forth herein shall run with the land and bind each owner, its successors and assigns, and all parties claiming by through or under each Owner, and shall be taken to hold, agree and covenant by the Owner of each Lot, its successors and assigns, to conform and observe this Declaration and each and every term and condition hereof (but no restrictions herein set forth shall be personally binding upon any corporation, person or persons, except in respect to breaches committed during the term of its, his or their ownership of a Lot).

B. The Developer, the Owner or Owners of any of the Property and the Association shall have the right to seek enforcement of and/or to prevent the breach of the terms and conditions set forth herein and any rules or regulations established as permitted herein. Any action relating to any rights and obligations arising under, or in connection with any claim asserted by the Association, an Owner or Owners, former Owner(s) and contract purchasers, against Developer for any reason and/or any real estate broker, agent or sales person participating in the sale of a Lot, shall be resolved solely and exclusively by arbitration in accordance with the procedure set below. However, the provisions of this Section 11.12 shall not either prevent a party from obtaining a temporary injunction (whether prohibitive or mandatory) from a court of general jurisdiction pending designation of the arbitrators. After the arbitrators have been selected and accepted such appointment, any temporary injunction order by the court of general jurisdiction shall be dissolved, and the arbitrators shall have exclusive power to resolve the subject matter of such injunction. The arbitration procedure is as follows:

i. Any of the aforementioned parties may request arbitration of any matter in dispute. The party requesting arbitration shall do so by giving written notice to the other party/parties, specifying in the notice the name and address of the person designate to act as arbitrator on the first party's behalf. Within ten (10) days after the service of this notice, the other party/parties shall give notice to the



first party, specifying the name and address of the person designated to act as arbitrator on the second party's/parties' behalf. If the second party/parties fails to notify the first party of the appointment of such party's arbitrator within the time specified, then the first arbitrator appointed shall appoint the second arbitrator. The two arbitrators so chosen shall meet within ten (10) days after the second arbitrator is appointed and the two arbitrators shall together appoint a third arbitrator. If the two arbitrators are unable to agree upon that appointment within twenty (20) days after the appointment of the second arbitrator, then the parties to such dispute may apply, upon notice to the other party, to the Kansas District Court located in the County in which the Property is located for the appointment of the third arbitrator. In rendering their award, the arbitrators' shall have no power to modify any of the covenants, conditions and restrictions contained herein.

ii. The arbitrators so selected must be at least thirty-five (35) years old; may not be an Owner or occupant of a Lot; and shall have a minimum of five (5) years experience in the residential real estate business, as either a sales agent, a residential developer or home builder.

iii. The arbitrators may grant any remedy or relief the arbitrators deem just and equitable (including the granting of temporary or permanent injunction, whether prohibitive or mandatory) and within the scope of the agreement of the parties. The arbitrators shall specifically have the power to order equitable relief, including, but not limited to, injunctions or specific performance. The award resulting from any arbitration hereunder shall be final and binding on the parties and judgment may be entered on the award and shall be enforced in accordance with the laws of the State of Kansas. If as part of any award any party is ordered to pay another party money, the amount to be so paid shall accrue interest at the rate of fifteen percent (15%) per annum from fifteen (15) days following the date of the award until the same is paid in full.

iv. The losing party in any such arbitration proceeding, as determined by the arbitrators, shall pay the prevailing party's costs and expenses of such arbitration, including, without limitation, reasonable attorneys' fees and costs. If no party is determined to have prevailed in such arbitration proceeding, then each party shall pay the fees and expenses of the original arbitrator appointed by that party; the fees and expenses of the other arbitrator and all other expenses of the arbitration shall be borne equally by the parties and each party shall bear the expense of his own counsel, experts, and preparation and presentation of proof and the costs and expenses related thereto.

11.13 Exclusion of Applicability. The Developer and its assigns shall have the power at any time to waive any or all of the restrictions or covenants contained herein as to the Lots which are unimproved and under its ownership or the ownership of its assigns or licensed residential construction contractors at the time of such waiver. The Developer specifically reserves the right to carry on its business in 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 Developer.

11.14 Twin Homes; Multifamily; Commercial And/Or Industrial Development. Each Owner is hereby advised that real property in the vicinity of the Property may be developed and operated for twin homes, apartments and other multifamily, commercial, office or industrial purposes other than for single family residences. If the Lots are in the vicinity of 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 or Developer concerning future development or uses of any such real property.

11.15 Information Concerning Zoning and Land Use. Developer 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. The Board, any member thereof and the Members of the Association shall not express any opinion on behalf of the Board or the Association pertaining to any applications or requests concerning rezoning, community unit plan approval or amendment, variances, or other land use activity relating to any land in the vicinity of the Property. This prohibition is necessary due to the fact that not all Board members or Members will have the same opinions concerning the applicable request or application. Nothing herein is intended to restrict any Member or member of the Board from expressing his or her personal opinions without indication that such opinions represent the opinion of the Association or the Board. Information concerning the zoning status and land use alternatives applicable to the Property and any other real estate in the vicinity of the Property may be obtained from the Metropolitan Area Planning Department in Wichita, Kansas, or other governmental entity or agency having jurisdiction over development and zoning matters.. Each Owner must independently obtain any and all information such Owner desires regarding such zoning and potential land use alternatives, including development of commercial, office, apartment or other multifamily uses within the Property or the vicinity thereof.

#### 11.16 Limitation of Liability.

A. Notwithstanding anything to the contrary contained herein, it is expressly agreed that neither the Developer (including without limitation any assignee of the interest of Developer hereunder) nor any member in Developer (or any assignee) or any officer, employee, or consultant of Developer 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 or Bylaws, the rules of the Association, the design guidelines of the Design Committee, or for any action taken, or not taken, pursuant to authority granted Developer thereunder or with respect thereto. To the fullest extent permitted by law, neither the Developer, its members, the Association, the officers, employees, consultants or directors thereof or any Design Committee 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 or plans and specifications (whether or

not defective), course of action, inaction, omission, negligence or the like made in good faith and which the Developer or the Association, any member, director, officer, consultant or employee thereof, or member of any such committee is reasonably believed within the scope of his duties.

B. TO THE EXTENT ALLOWED BY LAW AND EQUITY, NEITHER THE DEVELOPER NOR THE ASSOCIATION SHALL HAVE ANY LIABILITY HEREUNDER TO ANY OWNER, FORMER OWNER OR PROSPECTIVE OWNER FOR CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES IN ANY EVENT.

11.17 Perpetuities; Alienation. 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 provisions of this Declaration.

11.18 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full-force and effect.

11.19 No Liability. Developer 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, Developer 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 Lot or possession of a Structure, acknowledges that Developer shall have no such liability.

11.20 Patio Homes. Lots 1 through 18 of Block 1 and Lots 1 through 10 of Block 2 of the Property shall be referred to as the Patio Home Lots. Developer reserves the right to file an additional declaration containing covenants, restrictions, rights, duties and obligations as to such Patio Home Lots which additional declaration shall be in addition to and not in lieu of this Declaration. In connection with filing an additional declaration, Developer shall have the right to form and create a homeowners association for the Patio Home Lots which homeowners association shall deal with items common to such Patio Home Lots including but not limited to common lawn care, snow removal, exterior maintenance, shrub and tree care. The homeowners association shall have authority to assess (general and/or special assessments) each Patio Home Lot and Owner thereof for fees, costs, and expenses.

*[Signatures on following page.]*

IN WITNESS WHEREOF, Developer has executed this AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND DISCLOSURES FOR THE MOORINGS 10TH ADDITION the day and year first above written.

DEVELOPER:

CBB NORTHLAKES LLC, a Kansas limited liability company

By: Kurt W. Bachman

Kurt W. Bachman, member

By: Brad C. Bachman

Brad C. Bachman, member

STATE OF KANSAS )

) ss:

COUNTY OF SEDGWICK )

BE IT REMEMBERED, that on this 31<sup>st</sup> day of December, 2013, before me a Notary Public in and for the County and State aforesaid, personally appeared Kurt W. Bachman and Brad C. Bachman, members of CBB Northlakes LLC, a Kansas limited liability company, personally known to me to be members of said company and the same persons who executed, as members, the above and foregoing instrument in writing on behalf of said limited liability company and such persons duly acknowledged the execution of the same to be the act and deed of said limited liability company.

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

My appointment expires:

October 13, 2017

Nancy L. Stahl  
NOTARY PUBLIC

