



Sedgwick County
Register of Deeds - Bill Meek
DOC.#/FLM-PG: 29428938

Receipt #: 1883303
Pages Recorded: 41
Cashier Initials: CP

Recording Fee: \$168.00
Authorized By 

Date Recorded: 1/9/2014 11:59:41 AM



After Recording Return To:

Ron H. Harnden
Triplett, Woolf & Garretson, LLC
2959 N. Rock Road, Suite 300
Wichita, KS 67226

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS
AND DISCLOSURES FOR LAKEWOOD HILLS ESTATES ADDITION**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND DISCLOSURES FOR LAKEWOOD HILLS ESTATES ADDITION ("Declaration") is made effective the 3 day of January, 2014, by PCDC, LLC, a Kansas limited liability company (hereinafter referred to as the "Developer").

WITNESSETH, THAT:

WHEREAS, Developer desires to adopt and establish covenants, conditions, restrictions and easements for the purposes of developing, enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined); maintaining and operating the Common Area (as hereinafter defined); and specifying the rights and obligations of the Developer and the Owners (as hereinafter defined); and

WHEREAS, the Association (as hereinafter defined) will be incorporated for the purpose of exercising certain powers and functions hereunder.

NOW, THEREFORE, Developer hereby covenants, agrees and declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements and disclosures, which are hereby declared to be for the benefit of all of Developer, the Property and the Owners thereof, their successors and assigns.

41/
168.00 ✓
Seal

402354 01/03/14

20 87172 TM

000029428938

ARTICLE I

DEFINITIONS

The following terms shall be applicable to this Declaration and are defined as follows:

1.1 “Articles” shall mean the Articles of Incorporation of the Association which shall be filed in the office of the Secretary of State of Kansas, as such Articles may be amended from time to time.

1.2 “Association” shall mean and refer to the Lakewood Hills Estates Homeowners’ Association (or such other corporate name as Developer shall hereafter select), a nonprofit corporation, incorporated under the laws of the State of Kansas, its successors and assigns.

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 Reserve A of the Property (on which the Development Access Road shall be constructed), as the same may be modified from time to time, by additions or removals as permitted hereunder, together with the Pond Access and Use Area, as the same may be modified from time to time, by additions or removals as permitted hereunder, and all improvements constructed or installed thereon from time to time.

1.6 “Design Committee” shall mean the Design Committee as defined in Article VIII below.

1.7 “Developer” shall mean PCDC, LLC, a Kansas limited liability company, and its successors and assigns; provided, any such successors or assigns shall acquire for the purpose of development or sale all or any portion of the remaining unsold Lots, and in the instrument of conveyance to any such successor or assign, such successor or assign is designated as the “Developer” hereunder by the grantor of such conveyance, which grantor shall be the “Developer” hereunder at the time of such conveyance. Upon such designation of a successor Developer, all rights and obligations of the former Developer in and to such status as “Developer” hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the “Developer” hereunder at any one time.

1.8 “Development Access Road” shall mean the entry area, security gate, roadway, bridge and associated improvements constructed within Reserve A of the Common Area to provide access to the Lots to and from 53rd Street North, Park City, Kansas.

1.9 “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, assessments or charges hereunder

shall continue to be assessed or charged for each separately platted Lot. Except with respect to the Pond Access and Use Area, a "Lot" shall not include Common Area (as modified from time to time).

1.10 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.11 "Pond Access and Use Area" shall mean the easements for ingress and egress over a portion of Lot 8, Lot 9 and Lot 10, Block A of the Property within the boundaries of the 10' and the 25' Public Access Easements, all as shown on the plat of the Property and the area between such easements and Public Access Easements and the southern, western and eastern water's edge of the pond located on Lot 9, Block A, of the Property, as the pond expands and contracts from time-to-time, in order to provide pedestrian access to such pond for the purpose of fishing within the pond from the pond bank areas and associated activities. The Pond Access and Use Area is ✓ depicted on Schedule 1.11 attached hereto. The portion of such Lot 9 located to the north of the pond on such Lot may not be accessed for use of the pond.

1.12 "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:

Lakewood Hills Estates Addition, Park City, Sedgwick County, Kansas

1.13 "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, porch, bathhouse, covered or uncovered patio, screening materials, tennis/sport court, swimming pool, light pole, sandbox, fence, flag pole, water fountain, playground, curbing, paving, wall, satellite dish, tree, mailbox, Lot entry area, including culvert and retainers, into each Lot and interior Lot access road from Development Access Road, and related structure, or any temporary or permanent improvement to such Lot. "Structure" shall also include any excavation, fill, ditch, diversion dam, internal Lot access road or other thing or device which affects or alters the flow of surface water from, upon or across any Lot, in accordance with the master drainage and grading plan for the Property as referenced below, 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 any change in the grade of any Lot other than in accordance with drainage guidelines, standards and plans established by the Developer, the Design Committee, the municipality having jurisdiction over the Property or a Lot-specific drainage plan, whichever are most stringent.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

2.1 Membership. The Association shall have as members only Owners. All Owners shall, upon acquiring a Lot, be deemed automatically to have become members (whether or not

any Owner is occupying a residence on his Lot) of the Association, and there shall be no other qualification for membership. There shall be only one membership per Lot. If any Lot is owned by more than one person or entity, all co-owners shall share the privileges of such a membership, subject to all provisions hereof, and in the Bylaws. The membership rights of any Owner which is not a natural person, may be exercised by any officer, director, partner or trustee, or by individual designated from time to time by the Owner in a written instrument provided to the Association. Membership shall be appurtenant to, and shall not be separated from, the ownership of any Lot.

2.2 Voting Rights. Subject to the following, all members of the Association, so long as they shall qualify under this Article II and the Bylaws, shall be entitled to vote on each matter submitted to a vote at a meeting of members. There shall be only one (1) vote, the first voting class, for each Lot subject to the following exceptions and conditions:

A. When any such Lot is owned or held by more than one (1) Owner as tenants in common, joint tenancy or any other manner of undivided, joint or common ownership or interest, such Owners shall collectively be entitled to only one (1) vote relative to such Lot, and if such Owners cannot jointly agree as to how that vote should be cast, no vote shall be allowed with respect to such Lot. Fractional votes shall not be permitted, and in no event shall more than one vote be cast with respect to any Lot.

B. Except to the extent prohibited by applicable law, in addition to any other penalties provided for in this Declaration, any Owner (other than Developer) 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 solely 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, the second voting class, for each single Lot owned by it.

D. The Board shall adopt such Bylaws, consistent with the terms hereof, the Articles and the laws of the State of Kansas, as it deems advisable for any meeting of Owners with regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Owners for voting purposes, voting by proxy and such other matters concerning the conduct of meetings and voting as it shall deem proper. In the event of any conflict between the terms of the Declaration and the Bylaws, the terms hereof shall control.

2.3 Formation. Developer shall form the Association promptly following recordation hereof, and legal title to the Common Area (excluding the Pond Access and Use Area) shall be conveyed to the Association at a time determined by Developer by special warranty deed, in an "AS IS" condition subject to this Declaration and all easements, rights-of-way, encumbrances, liens for non-delinquent ad valorem taxes and special assessments, and other matters of record.

2.4 Initial Operation. Notwithstanding the provisions of this Declaration, the rights, powers and operations of the Association and the Board shall be within the absolute and exclusive control of the Developer until such time as Developer fully and completely transfers its rights pursuant to Section 6.1 L below, written notice of which transfer shall be given to the Association by Developer. During the initial operation of the Association and the Board by Developer, Developer may perform and exercise any and all rights and obligations hereunder related to the Association and the Board and Developer shall appoint and remove in its discretion the members of the Board and the officers of the Association. Each Owner, by acceptance of a deed to a Lot, vests Developer with the authority to fully exercise its rights under this Section 2.4, in Sections 6.1 L and 8.2 hereof. Further, the appointment of the members of the Design Committee, pursuant to Section 8.2 hereof, shall be made by Developer until such time as Developer specifically assigns such right of appointment by written instrument, in accordance with Section 8.2, separately and apart from the transfer of Developer's rights under Section 6.1 L hereof.

2.5 Board of Directors. All actions of the Association shall be taken on its behalf by the Board, or committees established thereunder, except for (a) when a vote of the Members is specifically required by this Declaration, the Articles, or the Bylaws, and (b) the initial operation thereof by Developer as referenced herein.

ARTICLE III

LICENSE FOR THE COMMON AREA AND OTHER COMMON AREA MATTERS

3.1 Owners' Enjoyment. Subject to the terms hereof, Developer hereby retains and grants a perpetual, nonexclusive license for the benefit of Developer, to the Association and the Owners and the invitees thereof for ingress and egress over the 10' and 25' Public Access Easements in portions of Lots 8 and 10, Block A of the Property shown on Schedule 1.11 attached hereto. Except as otherwise provided in this Article III or elsewhere in this Declaration, the Owners of all Lots shall have a nonexclusive license to use the Pond Access and Use Area, the Development Access Road and other portions of Reserve A of the Property for the purposes permitted hereunder. The use of the Pond Access and Use Area shall be limited to 8:00 a.m. to 9:00 p.m. each day. The foregoing licenses shall be appurtenant to and shall pass every Lot, subject to the following provisions and to the other provisions of this Declaration:

A. The right of the Board to establish other rules, regulations and/or requirements regarding the activities on or uses of the Common Area, including, but not limited to, the recreational facilities thereon, and to restrict or eliminate some or all types of activities or uses thereof and limit the persons, and the number of persons, entitled to use the same. All Owners must strictly adhere to such rules, regulations and requirements;

B. The right of the Board to suspend the use of the Pond Access and Use Area by an Owner and other persons authorized to use the same by reason of such Owner for any period during which any assessment against such Owner's Lot remains unpaid

and delinquent or such Owner or family member otherwise violate the terms of this Declaration, or any other rules or regulations in effect from time to time;

C. The covenants and restrictions contained herein; and

D. **In the event of a default in the payment of any assessments, charges or fees, including, but not limited to, the Infrastructure Assessment provided for in Article IV below by any Owner, then the Board may suspend the license for use of the Pond Access and Use Area by the defaulting Owner for the duration of such default. Upon such suspension, the suspended Owners, family members or guests shall not have access to or use of such area.**

E. The license and rights for the access to, and use of, the Pond Access and Use Area shall be limited to the rights granted by the Pond Access And Use Easement, as amended, granted by Melody C. Miller and dated of even date herewith if such rights are more restrictive than the rights established under this Declaration.

3.2 Extension of Rights. Except as otherwise provided in the rules, regulations or requirements of the Association adopted from time to time by the Board or Developer, an Owner's license for use of the Development Access Road, the Pond Access and Use Area shall automatically extend to all members of his or her immediate family residing on a Lot with such Owner. Guests and invitees shall be entitled to use the Development Access Road to access Lots but may not use the Pond Access and Use Area except as provided in, and subject to, such rules and regulations as may be promulgated by the Board or Developer.

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 Common Area and the facilities thereon or by abandonment of his or her Lot.

3.4 Alteration of the Pond Access and Use Area. Notwithstanding anything to the contrary provided herein, either the Developer or the Association may reconfigure, convey, eliminate, reduce or alter the Pond Access and Use Area from time to time in agreement with the Owner of Lot 8, Lot 9 and Lot 10, Block A, of the Property, as applicable. Automatically, without the necessity of amending this Declaration, upon the completion of any such reconfiguration, elimination, reduction, alteration or reconfiguration, any land (a) removed from such Pond Access and Use Area shall cease to be Pond Access and Use Area, and, thereupon, no Owner shall have any license or right of use or access thereto and (b) added to the Pond Access and Use Area shall become a part thereof, and thereupon each Owner shall have a nonexclusive license and right of use or access thereto as provided in Section 3.1 above.

3.5 Damage to Lot and 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, Development Access Road, bridge, lighting, fence, wall or other improvements in connection with the

construction of Structures on such Owners' Lot, including, but not limited to, damage to lawn areas, concrete or paving, 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 DIG SAFE (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.

3.6 Common Area, Other Amenities, Improvements and Maintenance. Developer shall finance on behalf of the Association the cost of constructing or installing the original improvements and amenities to the Common Area as referenced on Exhibit "A"; provided, ✓ Developer and/or the Board on behalf of the Association may install additional amenities or improvements as either elects from time to time. Developer, the Association, their respective contractors and any subcontractors, and the employees thereof, shall have a perpetual, nonexclusive easement and right of access upon the Common Area for the inspection, construction, installation, maintenance, repair, replacement and/or modification of Common Area improvements and amenities. *The Association shall be solely and fully responsible for all costs of maintaining, repairing, replacing and operating the Common Area and the other amenities and improvements listed on Exhibit "A" hereof, including, but not limited to the Pond Access and Use Area, Development Access Road, wall/fence/plantings installed by Developer within the twenty-five feet (25') wall easement along the southern portion of the Property; the security gate, equipment and improvements related thereto, the street lights and fertilizing, watering and replacement of lawns, shrubs, flowers, planting, trees and other landscaping planted therein or in the 53rd Street North right-of-way area following the initial planting thereof by Developer, the mowing of lawn areas within such right-of-way, wall easement area and Reserve A of the Property, payment of taxes and assessments for Reserve A of the Property, if any, the payment of liability and property insurance premiums, and utility costs.*

3.7 Development Access Road. Access to the Lots to and from 53rd Street North shall be by way of the Development Access Road, which Development Access Road shall be constructed by the Developer. Following the initial construction thereof, all portions of the Development Access Road shall be maintained, repaired and replaced from time to time by the Association. EACH OWNER AND OTHER PERSON WHO UTILIZES THE DEVELOPMENT ACCESS ROAD SHALL DO SO SOLELY AT **THEIR OWN RISK** AND ASSUME ALL LIABILITY AND RESPONSIBILITY FOR THEIR ACTS OR OMISSIONS IN CONNECTION THEREWITH AND THE CONDITION THEREOF FROM TIME-TO-TIME. The maximum speed limit for vehicular traffic within the Development Access Road shall be twenty-five miles per hour (25 m.p.h.). All Owners, their respective family members and invitees and licensees shall utilize the Development Access Road in compliance with all laws and regulations as if the street were a public roadway. Each Owner for such Owner and the Owners' family, invitees and licensees hereby release, and are deemed to have released, and agreed to defend and hold the Developer, and the members thereof, and the Association harmless from all such liabilities and responsibilities and from any damage or destruction to property and injury or death to any such Owners, the Owners' family, invitees and licensees arising in connection with Development Access Road.

3.8 Water For Irrigation. Developer may drill a well or wells for water to irrigate portions of the Common Area. If Developer is unsuccessful in obtaining appropriate permits or authorizations for such well(s); is unable to complete a satisfactory well or wells; or if the well or wells cease to produce sufficient water, then water from some other source may be used for such irrigation, at a higher cost.

3.9 No Disturbances. No pond, stream or water drainage facilities, natural or erected within the Common Area shall be disturbed without the prior written approval of the Board or Developer.

3.10 Construction of Lot Entry Areas, Roads, Mailbox and Irrigation System. Each Owner shall construct an entry area into his Lot, including culvert, retainers and an access road from the Lot entry area into such Owner's Lot within Reserve A of the Common Area, together with a masonry mailbox and an underground irrigation system for the portion of the Reserve A of the Property extending from such Owner's Lot boundary to the actual Development Access Road, subject to all other provisions and limitations contained in this Declaration. Such construction and installations shall be completed no later than the date a residence on the applicable Lot is occupied. All such improvements are subject to prior approval of the Design Committee pursuant to Article VIII below.

3.11 Pond Access and Use Area. The Developer does not own the Pond Access and Use Area, but it is available as Common Area hereunder due to an easement granted by the Owners of Lots 8, 9 and 10, Block A, of the Property and the use of such area by the Owners, and their families and guests shall be subject to the terms of such easements in addition to other rules and regulations adopted by the Developer or the Board from time to time. Subject to any rules and regulations hereafter established from time-to-time, the Pond Access and Use Area shall be used exclusively for fishing and associated activities in the pond area adjoining the Pond Access and Use Area, which pond is located on Lot 9, Block A of the Property.

ARTICLE IV

COVENANTS CONCERNING ASSESSMENTS; LIENS;

LEGAL AND EQUITABLE REMEDIES

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 Area as the Board shall deem appropriate, and to afford the Association the means and resources necessary to carry out its rights, duties and functions hereunder and under its Articles and Bylaws, 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. Initially, the general assessment shall be in the amount of Seven Hundred Twenty and no/100 Dollars (\$720.00) per year which shall be payable in two (2) biannual installments of Three Hundred Sixty and no/100 Dollars (\$360.00) each January 1 and July 1 of each calendar year commencing January 1, 2014; assessments for any partial year shall

be prorated. Subject to the Developer's exemption 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.

A. Except as provided above, all general assessments referenced in Section 4.1 and special assessments assessed pursuant to Section 4.5A. below shall be made against the Owners on an equal basis for each Lot or fraction thereof owned by the Owner or Owners, except that, the Developer shall be exempt from the imposition of such general or special assessments, with respect to any Lot so long as Developer holds legal title thereto. Notwithstanding the foregoing, if two (2) or more Lots are combined for a building site for one (1) residence, general, special and Infrastructure Assessments shall continue to be required to be paid for each separate Lot so combined.

B. At any time legal title to a Lot transfers, the transferee/buyer shall pay at the time of the closing of such transfer to the working capital of the Association an amount equal to Three Hundred Fifty and no/100 Dollars (\$350.00); provided the requirement to pay such transfer fee shall not apply to either the transfer by Developer to an affiliated entity; a the transfer of Developer's interest as "developer" of the Property; the transfer of a Lot to a building contractor by an Owner for the purpose of constructing a residence for such Owner; the transfer by an Owner to a trust in which an Owner is the grantor of the trust; or under such other circumstances that the Developer or the Board determine shall excuse the payment of such transfer fee.

4.3 Increase of General Assessments. The amount of the general assessment during any year may be increased for any subsequent year by the Board without a vote of the membership of the Association.

4.4 Infrastructure Assessment. Normally, infrastructure improvements associated with the development of a residential subdivision would be assessed against residential lots by the municipality or other governing body having jurisdiction over such subdivision as annual installments of special assessments. In the case of development of the subdivision within the Property, the infrastructure improvements, including, but not limited to, the purchase, design, construction and/or installation of the Development Access Road, bridge, a residential security gate, lighting, berms, walls, fencing, landscaping and irrigation and other costs, will be paid initially by Developer, or an affiliate thereof. In lieu of repayment of those infrastructure costs by way of special assessments through a municipality or other governing body, the Owner of each Lot shall pay to the Developer an assessment against the Lot (referred to as the "Infrastructure Assessment") in the amount, for each separate Lot, equal to Twenty-One Thousand and 00/100 Dollars (\$21,000.00) over a twenty (20) year period of time, bearing interest at the rate of 4.5% per annum, payable in two (2) annual installments of Seven Hundred Ninety-Eight and 00/100 Dollars (\$798.00), on each January 1st and July 1st of each year within such twenty (20) year period commencing as to each Lot on the date such Lot is sold to an Owner other than Developer. So long as a Lot is owned by Developer, Developer and such Lot shall be exempt from payment of the Infrastructure Assessment. The Infrastructure Assessment for any partial

year shall be prorated. If a Lot is transferred by an Owner after the commencement of the time for the payment of an Infrastructure Assessment for such Lot, then automatically at the time of such transfer the entire amount of the outstanding principal and accrual interest comprising the total amount of the Infrastructure Assessment (for all remaining years) shall accelerate and be due and payable to Developer in one lump sum on such date; provided, notwithstanding the foregoing, if Developer transfers a Lot to a person or entity that is a licensed building contractor, such building contractor may construct a residence on such Lot and transfer the Lot and residence to another person or persons ("Residence Buyer(s)") following the construction of a residence, and the applicable Infrastructure Assessment shall not so accelerate or be due and payable but shall continue until the next transfer by the Residence Buyer(s). The Infrastructure Assessment shall subject each Lot to a lien to secure payment of the Infrastructure Assessment applicable to such Lot. Such Infrastructure Assessment lien shall be superior to any other lien thereon except as otherwise specifically provided by law, and specifically shall be prior to any mortgage lien granted by the Owner of a Lot. The Infrastructure Assessment may be prepaid by an Owner at any time upon a minimum of ten (10) days advance written notice given to Developer. Developer may amend this Section 4.4 from time-to-time in any manner which does not materially, adversely affect any Lot Owner.

4.5 Special Assessments.

A. In addition to general assessments, the Association may, from time to time, at a regular meeting or a special meeting called upon notice for such purpose, establish a special assessment to be levied equally against each Lot for the purpose of providing additional funds (when funds through general assessments are insufficient) to carry out its duties and other functions and purposes contemplated hereunder; to perform maintenance, repairs or replacements which are the responsibility of the Association hereunder; and to make improvements to the Common Area; and generally for the Association's operations. No such special assessment shall be valid except upon the approval of Owners holding at least sixty percent (60%) of the votes represented, in person or by proxy, at the meeting duly called for the purpose of approving the same.

B. Further, the Board shall have the authority to establish and fix a special assessment on any Lot to secure the liability of the Owner of such Lot to the Association for any breach by such Owner of any of the provisions of this Declaration, which breach results in an expenditure by the Association for repair or remedy of such breach.

C. 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 Association or Board.

4.6 Collection and Expenditures. The Association shall have the sole authority to collect and enforce the collection of all general and special assessments, and the Developer shall have the sole authority to collect and enforce the collection of all Infrastructure Assessments, provided for in this Declaration, and may, in addition to such assessments, charge and assess costs and expenses, including reasonable attorneys' fees and costs, and penalties and interest for the late payment or nonpayment thereof. At Developer's request, the Association shall invoice

the Owners for the Infrastructure Assessments along with the Association's invoicing of the Owners for general assessments hereunder, and each Owner is authorized to pay the Infrastructure Assessment to the Association for the benefit of Developer. 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 of the Association. However, the Association shall not be obligated to spend in any year all the sums collected in such year by way of assessments, or otherwise, and shall either carry forward, as surplus, in reserves, any balances remaining or repay any indebtedness of the Association; 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 apply such surpluses or reserves to indebtedness of the Association or carry forward from year to year such reserve or 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.

4.7 Assessments and Liens; Delinquency. Thirty (30) days after any general or special assessment or Infrastructure Assessment shall be due and payable, and unpaid or otherwise not satisfied, the same shall be 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, expenses, legal fees and costs, late fees, fines, penalties and interest as herein provided, has been fully paid or otherwise satisfied. 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 or Developer for assessments or other charges due hereunder shall be subject to setoffs or counterclaims made by any Owner.

4.8 Notice of Delinquency. At any time after any general, special assessment, or Infrastructure Assessment, against any Lot has become a lien and delinquent, the Association (with respect to the general or special assessments) and Developer (with respect to the Infrastructure Assessment) 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, or Developer, as applicable. Upon payment or other satisfaction of said assessment, or Infrastructure Assessment, as applicable, interest, late fees, fines and costs and expenses in connection with which notice has been recorded, the Association, or Developer, in the case of an Infrastructure Assessment, shall record a further notice stating the satisfaction and the release of the lien thereof.

4.9 Right to Enforce Payment of Assessments.

A. By the acceptance of title to a Lot, each Owner shall be held to vest in the Association, through the Board, with the right and power to prosecute all suits, legal,

equitable, or otherwise, which may be necessary or advisable for the collection of assessments, charges, fines and other sums due to the Association from an Owner, 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 with regard to 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.

B. By the acceptance of title to a Lot, each Owner shall be held to vest in the Developer, with the right and power to prosecute all suits, legal, equitable, or otherwise, which may be necessary or advisable for the collection of Infrastructure Assessments, charges, fines and other sums due to the Developer from an Owner, and the Developer 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 with regard to 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.

4.10 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, or as applicable, Developer shall be entitled to recover all of its costs and expenses, including reasonable attorneys' fees, and expenses, and such late fees, fines and accrued interest for delinquent charges and assessments as are permitted hereunder. 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 but not completed, the lien shall continue until payment in full or termination of the suit and sale of the applicable Lot.

4.11 Subordination of Assessment Lien. Each and every general or special assessment (BUT NOT ANY INFRASTRUCTURE ASSESSMENT) and lien thereon, together with any costs, penalties and interest reserved under this Declaration, shall be subordinate to the lien of any valid bona fide first mortgage which has been, or may hereafter be, given in good faith and for value by any bank, savings and loan association or other institution in the business of regularly conducting residential lending on a residential lot. 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 general or special assessment or lien arising prior to the foreclosure sale. Such unpaid general or special assessments shall be deemed to be common

expenses collectible from general assessments made to all Lots. Nothing contained herein shall release a person or entity from his or its personal liability for any assessments, general or special, assessed when such person or entity owned a Lot which becomes delinquent prior to any such foreclosure.

4.12 Personal Liability. In addition to the covenants and agreements heretofore set forth herein, each Owner of each Lot, by the acceptance of a deed therefor, 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, Infrastructure Assessment, late fee, interest, charge, fees, costs and expenses, and fine levied against such Lot during the period of ownership and for all other payment obligations specified in this Declaration.

4.13 Late Fee and Interest on Delinquent Assessments. In the event assessment charges (general or special assessment or Infrastructure Assessment), 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 fifteen percent (15%) 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 or Developer, in the case of Infrastructure Assessment; provided, however, that such interest rate shall never exceed the maximum allowed by law.

4.14 Fines. The Board shall have the authority to assess fines against Owners and Lots for any violation of this Declaration and rules adopted by the Board from time to time 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 of such notice by the Board, or if there is a reoccurrence of the violation during such twenty (20) day period, 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, which 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.

4.15 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner of any of the terms, covenants, restrictions or conditions contained in this Declaration, including, but not limited to, this Article IV, the Developer with respect to the Infrastructure Assessment and Developer during the period Developer is exercising the rights of the Association and Board pursuant to Section 6.1 below, and thereafter the Association and Board, as applicable, shall be cumulative and in addition to any other rights and remedies available at law or equity. Any Owner (other than Developer) which is in default of any provision in this Declaration shall pay the Developer or Association, as applicable, an amount

equal to all costs and expenses incurred by Developer or Association, as applicable, to enforce, or exercise such remedies or rights hereunder, including, but not limited to, legal fees, costs and reimbursements.

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 Rules and Regulations. Each Owner shall obey and comply with all applicable public laws, ordinances, rules and regulations, now or hereafter promulgated by the Board from time to time. No activity which may be or become a nuisance to the neighborhood shall be carried on upon the Property.

5.3 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 expressly permitted by the Design Committee incidental to residential use, which are approved by the Design Committee as specified herein. No prefabricated or modular buildings or residences will be permitted to be constructed or installed on any Lot without the prior written approval of the Design Committee.

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

5.5 Storage; Trash. No trash, ashes, dirt, rock 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.

5.6 Limited Business Activities. Except as otherwise specified in this Declaration or as authorized herein or in writing by the Board, no retail, wholesale, manufacturing or repair business of any kind; no group home (that is, any licensed residential facility occupied or intended to be occupied by persons with a disability [as defined under Kansas law], or one or

more staff residents, none of which need be related by blood); no group residence (a residential facility providing cooking, sleeping and sanitary accommodations for a group of people, not a family unit on a weekly or longer basis); no correctional placement residence; and no bed and breakfast inn or facility shall be permitted to be conducted 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. No business, trade, garage sale, moving sale, rummage sale or similar activity shall be permitted on a Lot without the prior written authorization of the Developer or the Board. Subject to compliance with any applicable ordinances or laws and any rules adopted by the Board from time-to-time, the following home occupations are hereby authorized: child daycare (providing the Board may limit the number of children); building contractors 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. This Section shall not limit or prohibit to any activity conducted by the Developer, and any builder or contractor constructing a residence(s) or other improvements within the Property.

5.7 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.

5.8 Used Houses; Trailers. No used, secondhand or previously erected house or building of any kind can be moved or placed, either in sections or as a whole, upon 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).

5.9 Animals. No birds, animals or insects, 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 facilities and improvements required by the Board for the confinement, housing or maintenance of specific animals, 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 or 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. Among other remedies available to the Board, it may fine the Owner(s) of Lots pursuant to Section 4.14 with regard to animals which are determined by the Board to be an annoyance or nuisance.

5.10 Signs. Except as (a) authorized by the Board, and (b) 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 or Common Area; 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 the sale of 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. Such political signs shall be removed no later than seven (7) days following the applicable election.

5.11 Antennas. Except as authorized by the Design Committee, there shall not be erected on any Lot any external television, radio antennas, satellite dish or other antenna or similar device; provided, notwithstanding the foregoing, an Owner may install within his or her Lot a 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 Design Committee. 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 Design committee shall have the right to establish rules and regulations 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.

5.12 Vehicles, Trailers and Boats. No automobile, truck, motorcycle, motorbike, boat, house trailer, boat trailer or trailer, recreational vehicle/motor home or any other vehicle of any type or description as determined by the Board in its sole discretion may be stored upon any of the Common Area. Furthermore no boat, commercial truck or van or a truck or van with the name of a business painted or otherwise placed thereon, boat trailer, house trailer, camper, recreational motor vehicle, camper trailer or similar items be stored or permanently, continually or regularly parked in the open on any Lot; provided, persons visiting any Owner may park a camper or recreational vehicle/motor home within such Owner's driveway for a period not to exceed seven (7) consecutive days. No vehicle of any sort may be parked on the Development Access Road.

5.13 Requirement to Keep Lot and Structures in Good Order and Repair. Each Owner (other than Developer) shall keep each Lot owned by it, and all Structures and improvements therein or thereon, and the Lot entry area, culvert and retainers, mailbox, irrigation system and lawn/landscaping and the interior Lot access roadway serving such Lot, whether on the Lot or the adjoining Reserve A of the Common Area, in good order, repair and appearance, including, but not limited to, all lawn areas, landscaping, roadway, parking area, Structures 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 the Property. Due to the sizes of Lots, Developer acknowledges that some Owners may elect not to irrigate and maintain manicured lawn areas except in the areas required by Section 8.3.C below. If, in the opinion of the Board, any Owner fails to perform the duties imposed by this Section, the Board, after approval by a two-thirds (2/3) decision of the Board, and after fifteen (15) days written notice to Owner to remedy the condition in question, shall have the right, through its contractors

and representatives, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot or such Structures, improvements entry areas, culverts and retainers, mailbox, interior Lot access roadway, lawn areas, landscaping, parking area, improvements, and such Owner shall pay the Association for the cost thereof, together with additional amount equal to twenty percent (20%) of such cost, within ten (10) days following demand therefor, which payment shall be a binding personal obligation of such Owner, and the Board may establish a special assessment and lien on such Lot for such cost and charge, together with interest thereon at the rate specified in Section 4.13 above, and enforce the same as provided in Article IV hereof. The lien established as a result of this Section shall be superior to all other liens or encumbrances which may thereafter arise, excepting liens for taxes and other public charges as are by applicable law made superior.

5.14 Division of Lots Prohibited. Except as authorized by the Design Committee or the Developer, 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.

5.15 Fences.

A. Developer shall construct and install a fence, "living fence" (a combination of trees and other fencing or wall materials), or wall within the 25' wall easement area located just south of the 53rd Street North right-of-way of a style, design and such materials as are selected by Developer, in its sole discretion. Developer shall also install an automated gate at the entrance into the Property on Development Access Road, along with such entry area signage, and plantings areas as Developer determines are appropriate.

B. All fences and walls shall be approved by the Design Committee prior to construction or installation on any Lot.

C. All fences and walls installed within drainageways established by the master drainage and grading plan referenced in Section 9.1 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.

5.16 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 by Developer, 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.

5.17 No Rights Beyond Property. Notwithstanding the proximity of amenities to the Common Area and/or Property, but which are not located in such areas, no Owner shall have any right of access, use or enjoyment of any amenities outside the Property.

5.18 Artificial Vegetation. No artificial flowers, trees or other vegetation shall be permitted on the exterior of any residence or in the yard without the consent of the Design Committee.

5.19 View. While certain measures will be taken by the Developer and Design Committee to limit the construction of improvements which obstruct views, no Owner is entitled 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 and the Design Committee, because such Structure, planting material or other item obstructs any view from such Owner's Lot.

5.20 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.

5.21 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.

5.22 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 elsewhere within the Property is prohibited.

5.23 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, including the Common Area. 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 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.

5.24 Gated Community; No Security Assurances. NOTWITHSTANDING THAT THE PROPERTY WILL BE A "GATED" RESIDENTIAL COMMUNITY, THE DEVELOPER MAKES NO ASSURANCES THAT THE RESIDENTIAL COMMUNITY WITHIN THE PROPERTY WILL BE SECURE FROM ACCESS BY NONRESIDENTS OR UNDESIRABLE PERSONS. NOTWITHSTANDING THE EXISTENCE OF A GATE LIMITING VEHICULAR ACCESS TO THE PROPERTY, EACH OWNER AND HIS OR HER FAMILY SHOULD BE AWARE THAT ENTRY INTO THE PROPERTY MAY BE GAINED BY OTHER MEANS. ADDITIONALLY, WHILE CONSTRUCTION IS BEING CONDUCTED WITHIN THE PROPERTY, AND AT OTHER TIMES, FROM TIME TO TIME THEREAFTER, THE GATE WILL REMAIN OPEN FOR EXTENDED PERIODS.

5.25 Building Setback Distances. The plat of the Property specifies setback distances for the front, side and rear yards of Lots within which buildings and other Structures or plantings which are reasonably expected to grow more than three feet (3') in height above ground level may not be constructed, erected, installed, place or planted without the prior written consent of the Design Committee. **Additionally, the Design Committee may designate setback distances on a Lot-by-Lot basis at the time its approval of the residence to be constructed on the Lot.** Each Owner of each Lot shall comply with such building setback requirements and shall not construct any Structure, building or any such planting within the setback distances applicable to such Lot unless a waiver or variance is granted in writing by the Design Committee.

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

5.27 Trash Removal Services. The Board shall select a single trash removal service contractor to provide regular weekly trash removal and recycling services to all residences within the Property. Each Owner or occupant of a completed residence shall utilize such trash and recycling services exclusively for such weekly services.

5.28 Sex Offender Laws. Kansas law requires persons who are convicted of certain sexually violent crimes after April 14, 1994, to register with the sheriff of the county in which they reside. If any Owner desires information regarding those registrants, he may find information on the homepage of the Kansas Bureau of Investigation at <http://www.Kansas.gov/kbi> or by contacting the local sheriff's office.

5.29 Storage Pods and other Facilities. Except as otherwise permitted from time to time by the Board, temporary storage pods, containers or other similar storage facilities shall not be located in the open on a Lot. A "temporary basis" as used in the proceeding sentence shall mean (a) usage by the building contractors during the initial construction of the residence, and (b) following the completion of the initial residence, then only by the Owner(s) in connection with their move into the residence or a move out of the residence for a period not to exceed thirty (30) consecutive days in connection with each move in or move out. Whether to allow exceptions to the prohibition contained in this Section is in the discretion of the Board, but Developer

recognizes that in times of substantial remodeling of a residence, and possibly other circumstances, it would be appropriate for the Board to allow such items to be stored in the open for a short time.

5.30 All Electrical Residences. Unless otherwise agreed in writing by Developer, and except with respect to Lot 9, Block A, of the Property, all residences and out buildings on a Lot shall be "all electric" and propane or natural gas may not be connected for service to any residence; provided, the foregoing shall not prohibit the use of propane for outdoor grills.

5.31 Access Road and Entry Area Into Each Lot. The location of the access entry area into each Lot from the Development Access Road, as well as the number and spacing of such access entry area(s), must be approved in advance of the construction or installation thereof in writing by the Design Committee; the grade levels of each such entry area and the interior Lot access road to be constructed on each Lot shall be established by the engineering firm designated by the Design Committee in the manner approved by the Design Committee; the culvert installed under an access entry area shall include retainers on each side of such culvert, which retainers shall be designed and constructed based on such criteria and specifications as the Design Committee shall approve in writing from time-to-time. The interior Lot access road constructed within a Lot shall contain hardscape materials approved in writing by the Design Committee in advance of the installation thereof.

5.32 Matters Relating to Trees. Trees, shrubs and other plants located on a Lot which die shall be promptly removed by the Owner of the Lot. Without the prior written approval of the Design Committee in connection with a landscape plan submitted by an Owner, or otherwise, no Owner shall directly or indirectly, cause any tree on such Owner's Lot (having a trunk diameter of four inches (4") or more measured at least four feet (4') above the ground level) to be removed, pruned excessively or intentionally damaged and each such Owner shall use good faith efforts to maintain such trees in good condition.

5.33 Garage/Estate/Public Sales. No garage, estate or other public sales may be conducted within the Property without the prior written authorization of the Board.

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 and elsewhere in this Declaration, together with its general powers as a nonprofit corporation, and it shall perform each and every duty required of it by this Declaration.

B. The Association shall maintain, mow and irrigate (except areas the Board elects to maintain in a natural or native condition), and keep clean the Common Area and the portions of the green space within 53rd Street North adjacent to the perimeter of Property. It further shall maintain, repair and/or replace the security gate, related

equipment, decorative entrance treatments, fence(s) and walls, the Development Access Road, lights, irrigation equipment, landscaping, bridge and other improvements and areas as provided in this Declaration.

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 it shall find to be necessary, desirable or beneficial to the interest of the Common Area and the Owners.

E. The Association 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 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, and improvements thereon, to be maintained by it hereunder.

H. The Board shall select a contractor to provide the exclusive trash removal service within the Property and all Owners shall exclusively use such company for such services. The cost of such trash removal services from each Lot shall be paid by the Owner(s) of each Lot. The Board may select from time to time a different company to provide trash removal service for all residences on the Lots and shall make the Owners aware of such decision. 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.

I. The Board shall have the authority to assess fines for any violation of the provisions contained in this Declaration. Prior to assessing any fine, the Board shall mail written notice to the last address known to the Board concerning the noncompliant Owner. If the noncompliant Owner fails to cure the violation within fifteen (15) days following the mailing of such notice by the Board or if there is a recurrence of the violation during that fifteen (15) day period, 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 or her Lot in an amount determined by the Board to be appropriate in its discretion and until paid in full, the fine shall accrue interest at the rate of fifteen percent (15%) per annum, shall constitute a lien on the noncompliant Owner's Lot, and shall be subject to enforcement and foreclosure in the same manner as a general assessment as referenced in Article IV of this Declaration.

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 Association, through the Board, may enforce violations of this Declaration. The decision to have the Association pursue enforcement action in any particular case shall be left to the Boards' discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(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.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

L. Developer shall exclusively carry out all of the rights, duties and powers herein of the Association (including the designation of the Board members and the officers of the Association) and the Board for a period up to one (1) year after the date it no longer owns a Lot, after which time the same shall be turned over to the Association and the Board, as applicable, which shall then exercise the powers and duties herein set out; provided, however, that the Developer may, at its option, at any earlier time, partially or wholly transfer all or any part of such duties and powers to the Association or the Board by written instrument. In the event of a transfer of a portion of Developer's powers and duties by the Developer to the Association or the Board, the Developer shall retain all other powers and duties which are not so specifically transferred. The Association and Developer shall cooperate fully in the transition of the powers and duties hereunder. No act (other than a written transfer as referenced above) or omission shall be deemed a relinquishment of Developer's rights under this subsection. Relinquishment of all, or

any, of its rights under this subsection, shall not constitute a relinquishment of Developer's rights to designate members of the Design Committee under Section 8.2 above.

6.2 Operations and Expenses. The Board may engage accountants, legal counsel and other consultants as may be reasonably 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 promptly after the happening of the destruction or damage occasioning 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.

ARTICLE VII

CERTAIN EASEMENTS, LICENSES 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 all of them, 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, and improvements thereon or therein, and right-of-way over the Lots and Common Area, for the purpose of inspecting, constructing, maintaining, mowing, repairing, replacing and rebuilding water sprinkler systems, including water lines and related equipment, water wells, sprinkler controls, and electric meters and lines,

underground pipelines, drains and/or mains for the purpose of transporting water, sewerage and electricity over, across and through such Lots and Common Area, together with the right to excavate and level ditches and/or trenches for the location of said wells, lines, pipes, drains and/or mains. Reference to the foregoing improvements is not assurance that any such improvements shall be constructed or installed. 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 or prior to the sale 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 Inspection Easement. Developer grants to the Board, its members, the Association, and the employees and representatives thereof, and the Developer hereby retains for itself and its members, representatives and contractors, a perpetual easement over the Property as necessary to enable the Association to fulfill its responsibilities under this Declaration, including entry upon any Lot for emergency, security, and safety reasons, to perform maintenance, repairs and changes to any Lot or the improvements thereon which are not in compliance with this Declaration 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. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

ARTICLE VIII

ARCHITECTURAL CONTROL; DESIGN COMMITTEE

8.1 Committee. A Design Committee shall have the rights and responsibilities for the review, approval or disapproval of plans relating to the construction of Structures on each Lot. Furthermore, the Design Committee shall review, approve or disapprove all matters pertaining to the construction and completion of the initial residence and related Structures on each Lot and shall review, approve or disapprove all specifications, plans and other matters pertaining to fencing; drainage matters as referenced in Section 9.1 below 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, re-roofing, additions, and the repainting of 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 Design Committee shall be up to three (3) persons, to be appointed by Developer. Upon the death or resignation of any member of the

Design Committee, or in the event Developer removes any member, Developer shall appoint a successor. The decision of a majority of the Design Committee shall be binding; provided, the 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 Section 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 and in such event, the Association shall have the authority of Developer under this Section.

8.3 Construction Requirements. Unless approval is otherwise given in writing by the Design Committee, the following construction guidelines shall be complied with as to each Lot:

A. *Materials; Basement and Roof.* As to all Lots, but subject to such waivers or modifications as are permitted by the Design Committee, the applicable construction requirements shall be as follows:

i. 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, or any combination thereof, but not steel siding.

ii. All roofs on all building improvements on any Lot shall be tile, slate concrete tile, or "Heritage II Weatherwood" asphalt shingles or other equivalent composition shingles approved in writing by the Design Committee from time to time. **The color of the roof material for original roofs, and replacement roofs, concerning all of the residences on the Lots shall be approved in advance by the Design Committee.**

B. *Windows.* Window frames for buildings on Lots shall be wood or vinyl or other composition materials as approved from time to time by the Design Committee.

C. *Initial Landscape.* As soon as practicable, but in any event, no later than the planting season immediately following completion of a residence on a Lot, the Owner thereof shall establish by sodding or planting an irrigated lawn area to the front of the residence extending a minimum of forty feet (40') therefrom, along the area between the boundary of the Lot and the actual road within the Development Access Road, and extending a minimum of twenty feet (20') on each side of the interior Lot access roadway.

D. *Retaining Wall Materials.* In the event of the construction of any retaining wall on a Lot the plan and materials utilized must be previously approved in writing by the Design Committee.

E. *Dog Runs.* No dog runs may be constructed on any Lot within twenty feet (20') from an adjoining Lot.

F. *Exterior Wood Surfaces.* All exterior wood surfaces on homes (excluding decking) must be painted, or stained and sealed.

G. *Coverings.* No temporary covering of a swimming pool, tennis court, patio, or otherwise, of a rigid or “bubble” type shall be permitted on a Lot.

H. *Structures.* No building improvement, planting or other Structure more than three feet (3') feet in height above ground level (or reasonably expected to grow to that height) may be planted, erected, constructed, placed or installed, including but not limited to, pool buildings, gazebos, playground and playhouse, within the set back areas referred to in Section 5.25.

I. *Firewood Stacks.* All firewood stacks shall be screened from view from neighboring Lots and not located within the front of the residence.

J. *Yard Art.* All forms of sculpture or “yard art” must first be approved by the Design Committee.

K. *Pad Elevations.* 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.

L. *Mailbox Structures.* Developer or the Board shall approve the materials and design of the mailboxes to be constructed and used for all Lots and each Owner shall use only the designated mailboxes. The exterior of mailboxes shall be masonry material.

M. *Trash.* 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.

N. *Interior Road and Entry.* The Lot entry access area and interior Lot roadway shall consist of a hardscape material approved by the Design Committee.

8.4 Approval Required of Plans and Specifications and Other Matters. The roofs on all Structures shall be the same color as specified by the Design Committee. Except as otherwise specifically provided in this Declaration, no Structure shall be commenced, erected or permitted to remain on such Lot, unless plans and specifications, square footage, lawn irrigation, landscape and planting or sodding plan, tree removal plan, exterior materials, exterior lighting, location, and exterior color scheme relating thereto shall have been submitted to and approved in writing by the Design Committee. Subsequent to construction and completion of the initial residence and related Structures, no existing Structure upon any Lot may be remodeled or altered in any manner which materially changes the exterior appearance thereof (including, but not limited to, the exterior color scheme and lighting) or Lot drainage plan, nor shall any new Structure be placed on such Lot, unless plans therefor shall have been submitted and approved in writing by the Design Committee. The plans and specifications shall be in such form and shall contain such information as may be required by the 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; (ii) a landscaping plan, including a plan for any trees which will be removed due to such construction; (iii) the Lot entry area and interior Lot access road on the Lot or Lots; (iv) a lawn/landscaping plan for the Lot; and (v) a Lot specific grading plan as referenced in Section 9.1 below. Plans and specifications shall be deemed to be submitted to the 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 Design Committee shall have sole and full authority to determine matters of aesthetic judgment and the determination by the 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. No approval of the Design Committee 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.

8.5 Decisions; Appeals. So long as Developer continues to designate members of the Design Committee, all decisions of such committee shall be final and conclusive. As to the Design Committee, after the date Developer has relinquished the right to designate the members of the Design Committee, in the event any Owner believes a decision of the Design Committee, such Owner may appeal such decision to the Board upon written notice given to the Board within fifteen (15) days following the date the Owner is notified of the decision of the Design Committee, with respect to which such Owner desires to appeal. At the time the Owner files a notice of appeal with the Board, such Owner shall pay to the Association a fee related to such appeal in the amount of Two Hundred Dollars (\$200.00). The Board shall notify the appealing Owner at least one (1) week before the date the Board wishes to consider such appeal, and such Owner shall have the right to provide written materials and appear before the Board on such matter. In the event an Owner is dissatisfied with the decision of the Board with respect to such appeal, such Owner may further contest the decision of the Design Committee and the Board solely and exclusively by arbitration in accordance with the Act referenced in Article X below, and in accordance with the procedures specified in such Section. The decision on such matter rendered by the arbitrators shall be final and conclusive on the subject thereof.

8.6 Rules and Statements of Policy. The Design Committee 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 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's 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 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.

8.7 Right Of Inspection. Representatives of the Board and 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 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.

8.8 Violation. If any Structure shall be constructed, remodeled, altered, erected, placed or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved pursuant to the provisions of this Article VIII, such construction, remodeling alteration, erection, maintenance, placement or use shall be deemed to have been undertaken in violation of this Article VIII and without the approval required herein, and, upon written notice from the Board, any such Structure so constructed, remodeled, altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or re-altered, and any such use shall be terminated, so as to extinguish such violation. If, fifteen (15) days after the notice of such a violation, the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the violation, the Association, after approval by a two-thirds (2/3) decision of the Board, shall have the right, through its agents, contractors and representatives to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the violation and such Owner shall pay the Association for the cost thereof, together with an additional amount equal to twenty percent (20%) of such cost, within ten (10) days following demand therefor, which payment shall be a binding personal obligation on such Owner, and the Board may establish a special assessment and lien on Lot for such cost and charge, together with interest thereon at the rate specified in Section 4.13 above, on such Lot for the cost thereof and enforce the same as provided in Article IV hereof. The lien established as a result of this Section shall be superior to all liens and encumbrances which may thereafter arise, excepting liens for taxes and other public charges which are by applicable law made superior. The rights of the Board and Association hereunder are cumulative and in addition to any other rights or remedies available at law or equity.

8.9 No Liability. Neither of the Design Committee, 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 9.1 below, 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 Committee, the 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.

8.10 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 Design Committee may refuse to approve similar proposals in the future. Approval of applications or plans for any Structure completed or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

8.11 Variances. The 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 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

DRAINAGE; VARIOUS WATER RELATED MATTERS

9.1 Drainage. No Owner shall place or install any Structures, including, but not limited to, trees, shrubbery, landscaping, sand boxes, gardens, retaining walls or playground equipment in any drainage easement, channel or swale or otherwise at a location which impedes the natural flow of surface water drainage from adjoining Lots or prevent continuous drainage.

Prior to the commencement of construction of the initial residential improvements and landscaping on a Lot, the Owner shall hire the subdivision's engineering firm (KeMiller Engineering 316-264-0242) at its expense to prepare a Lot specific grading plan and deliver the same to the Design Committee for its review and written approval. The Owner of the applicable Lot shall comply with the Lot specific drainage plan which is prepared by such firm and

approved by the Design Committee. 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 work on the Lot at that time complies with the Lot specific drainage plan. Upon request, the Owner shall provide a copy thereof to the Association. Each Owner shall provide a copy of the Lot Grading Plan 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, and the Association, shall have no liability or responsibility to any Owner due to the failure of the builder which constructs the residence on the Lot; adjoining property Owner(s); or the lawn, landscaping or fencing contractor to comply with the aforementioned grading and drainage requirements, or for any resulting affect on the Lot, or Owner's improvements, whether or not the Design Committee shall have approved any plans for such work.

The Design Committee or persons designated by the Design Committee 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 approved Lot specific drainage plan. A determination by the Design Committee concerning whether or not a Lot is in compliance with such guidelines, standards and plans, shall be final and binding on all Owners. In the event at any time the Design Committee determines that a Lot is not in compliance with the aforesaid plan, the Design Committee shall give notice to the Owner thereof and demand that such corrective action be taken as is necessary to achieve compliance. If fifteen (15) days after the notice of such violation, or such additional time as may be specified by the Design Committee, the Owner of such Lot has not taken reasonable steps to correct the same, the Board on behalf of the Design Committee shall have the right, through its agents and contractors, to enter the Lot and to take such steps that may be necessary to bring the same into compliance. The Owner of the Lot so corrected shall reimburse the Association for the costs of such compliance and pay the Association a fee equal to twenty percent (20%) of such amount. In the event such Owner fails to pay such reimbursement in full within ten (10) days following demand thereof, the Board may thereafter establish a special assessment applicable to such Owner and his Lot for the costs thereof and enforce the same as provided in Article IV hereof. It is not the Developer's responsibility or obligation to enforce compliance with the applicable drainage plan. The Design Committee 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 comply with the Lot specific drainage plan. The rights of the Design Committee, the Board and the Association hereunder are cumulative and in addition to any right sand remedies otherwise available at law or equity.

9.2 Water Encroachment; Flood Insurance. Notice is hereby given to anyone acquiring a Lot that at times following considerable amounts of rainfall, water may pond in areas within such Lot. 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 Sedgwick County, 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 encouraged to verify, through its contractor, compliance with the requirements of Park City and the other applicable agencies, consider inherent risks and determine whether to obtain and maintain flood insurance. Neither Developer nor the Association, building contractor or 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.

9.3 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 Stormwater Pollution Prevention Ordinance, 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 similar ordinance or law adopted by Park City or Sedgwick County or other governing body having jurisdiction over the Property. Such permit, laws, and regulations, together with laws and ordinances of the city and county in which the Property is located, require that erosion and sediment control measures be implemented in connection with construction activities on such Lot, including, but not limited to, site work such as clearing, excavating, and grading the Lot, in order to eliminate or substantially reduce stormwater 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. IT SHALL BE THE SOLE RESPONSIBILITY OF THE ASSOCIATION (AND NOT THE RESPONSIBILITY OF THE DEVELOPER OR LOT OWNER) TO REPAIR, PREVENT OR REPLACE THE EROSION OF ANY LOT.

9.4 Water Levels Ponds. There is no assurance that the ponds adjoining the Pond Access and Use Area shall continue in the future to contain water levels consistent with the levels existing on the date hereof and, in fact, the 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, any real estate marketing company, broker or agent nor any officer or employee of Developer, any such real estate marketing company, or the Association shall have any liability or responsibility to Owners for any change in the water levels in the ponds, or bodies of water, including if such bodies of water become dry or substantially empty of water.

9.5 Boating; Swimming; and Ice Skating. No Owner or such Owner's children, guests, licensees or invitees shall conduct any activity within the pond adjoining the Pond Access and Use Area (including, but not limited to, boating, canoeing, swimming and ice skating or other similar activities) other than strictly in accordance with this Declaration or rules adopted from time to time by the Board or Developer.

000029428938

ARTICLE X ARBITRATION

10.1 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 claim, dispute, controversy, conflict, proceeding, or action relating to any rights and obligations arising under, or in connection with, (a) this Declaration and any rules adopted by the Board from time-to-time, including, but not limited to, an action to seek enforcement of and/or to prevent the breach of any of the covenants and restrictions contained herein, (b) pertaining to a Lot or all or any portion of the Common Area or the condition thereof, and (c) 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 Kansas Uniform Arbitration Act (the "Act"), as modified from time to time, in accordance with the procedure set out below. However, the provisions of this Section 10.1 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, from foreclosure or enforcement of any liens established pursuant to this Declaration or from enforcement of any order or decision of the arbitrators as provided herein. 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 designated 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 of 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.

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 or 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 or occupancy of any residence site or upon the construction of buildings or Structures, or in connection with any other matters that are imposed or required by such provisions of law or ordinances or by such

rules, regulations or permits, or by such covenants, easements and agreements, then, in that case, the provisions of this Declaration shall control.

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 Non-Waiver. 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 Lot 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. This non-waiver provision may only be waived in writing by the Board and the Developer; provided, Developer's approval shall not be required after residences have been constructed and completed on all Lots.

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 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 fifty (50) 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 an instrument, signed by Owners of

not less than ninety percent (90%) 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 (collectively called an "amendment") 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 so that the number of votes attributable to Developer's 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 provided above, any provision contained in this Declaration may be amended, restated, repealed, or additional provisions added to this Declaration, as follows:

A. Notice. Notice of the subject matter of the proposed amendment shall be included in a notice to the 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. Such votes may be cast in person or by proxy as provided for herein and 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, following the date the Developer, or its successors and assigns, no longer has the unilateral right to amend this Declaration, the Secretary of the Association shall file a certificate along with such amendment, certifying that the meeting at which the vote was taken was either the annual meeting of the Association or a special meeting of the Association, duly called in accordance with the Bylaws of the Association, and that the proper number of votes approving the amendment was obtained. Such certificate will be filed as part of or with such amendment.

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 8.3 above) shall require the prior written consent of Developer in order to be effective.

11.11 Mortgage Protection Clause. No enforcement of any lien provisions herein related to general or special assessments as referenced herein, shall defeat or render invalid the lien of any mortgage made in good faith and for value in favor of a bank or other financial institution, 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 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.

11.13 Subdivision Disclosure And Purchaser Acknowledgment. Developer has prepared a Subdivision Disclosure And Purchaser Acknowledgment Concerning Lakewood Hills Estates Addition ("Disclosure"), which discloses important information concerning the Property. The Disclosure is subject to change from time to time by the Developer or the Association. **At the time any Owner transfers legal title to a Lot, such Owner shall, as part of the transaction, cause its transferee to execute the Disclosure and return the same to the Developer or the Association.**

11.14 Twin Homes; Multifamily; Commercial; Office And/Or Industrial Development. Each Owner is hereby advised that real property in the vicinity of the Property is or will be developed and operated for twin homes, apartments and other multifamily, commercial, office or industrial purposes or purposes other than for single family residences. Each Owner is responsible to inform himself or herself concerning the possibility of such developments and no Owner shall rely on any statements made by sales persons concerning future development or uses of any such real property.

11.15 Information Concerning Zoning and Land Use; Opposition to Zoning and Other Matters. 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 Owners 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 Owners will have the same opinions concerning the applicable request or application. Nothing herein is intended to restrict any Owner 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, at (316) 268-4421 and/or Park City, Kansas (316) 744-2026. 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 on 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 the 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, PROSPECTIVE OWNER, LOT OCCUPANT, OR ANY LICENSEE OR INVITEE THEREOF FOR CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES.

11.17 No Liability for Drafting. 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 the Association or an Owner (or any other person or entity), 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.

11.18 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.

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

DEVELOPER:

PCDC, LLC

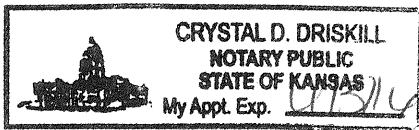
By: 

Gaylan W. Nett, Jr., Manager

STATE OF KANSAS)
) ss:
 COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this 3 day of January, 2014, before me a Notary Public in and for the County and State aforesaid, personally appeared Gaylan W. Nett, Jr., Manager, of PCDC, LLC, a Kansas limited liability company, personally known to me to be the same person who executed the above and foregoing instrument in writing on behalf of said limited liability company and such person 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.



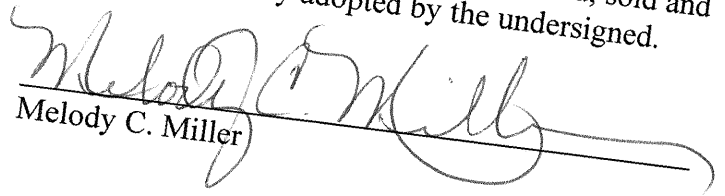
Crystal Driskill
 NOTARY PUBLIC

My appointment expires:

000029428938

Consent to Declaration:

The undersigned Owner of Lot 9, Block A, of the Property hereby consents to the Declaration and declares that such Lot 9, Block A, of the Property shall be owned, held, sold and conveyed subject to the Declaration, which Declaration is hereby adopted by the undersigned.

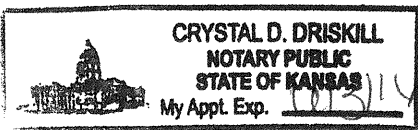
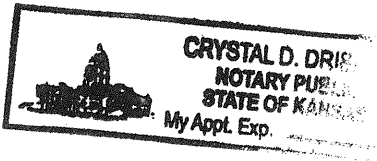

Melody C. Miller

STATE OF KANSAS)
)ss:
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this 3 day of January, 2014, before me, a Notary Public in and for the County and State aforesaid, personally appeared Melody C. Miller, personally known to me to be the same person who executed the within instrument of writing, and such person duly acknowledged the execution of the same.

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


NOTARY PUBLIC
My appointment expires:



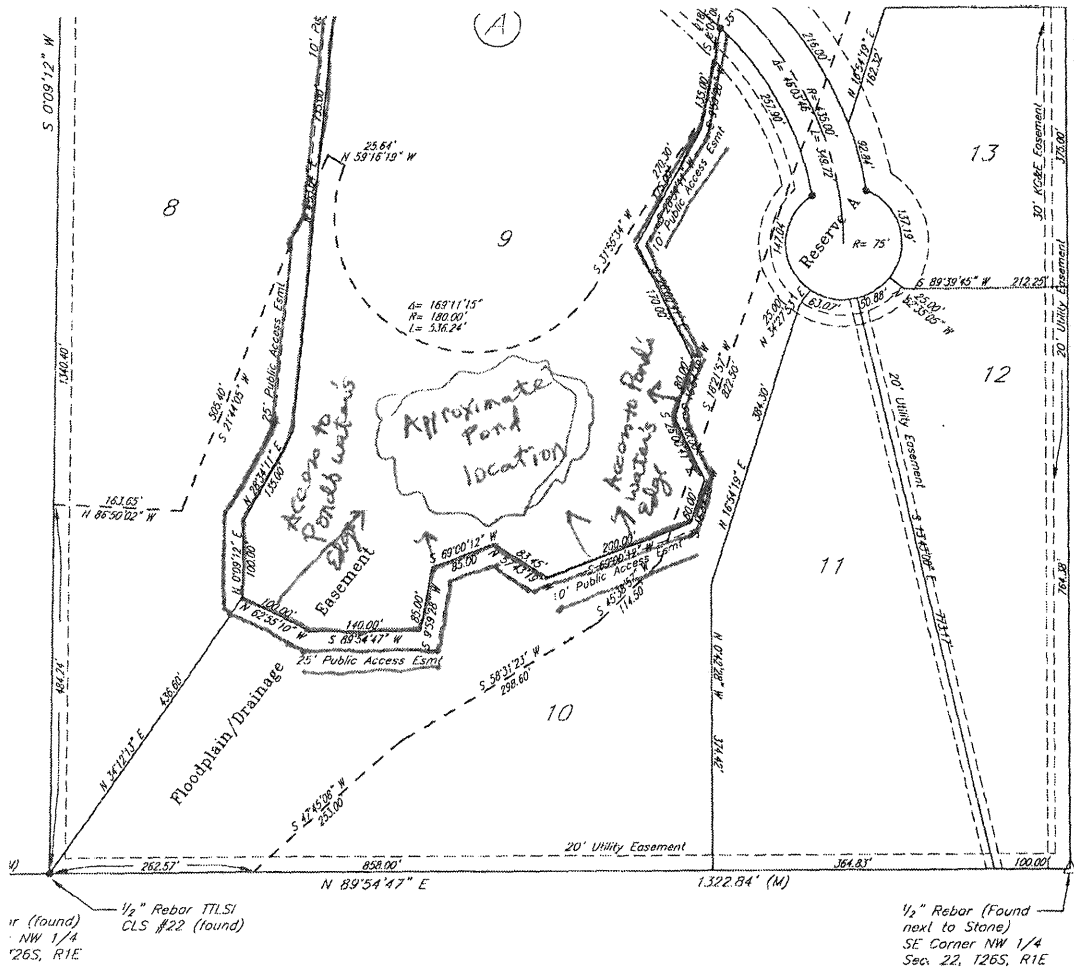
29428938

EXHIBIT "A"

Amenities to be installed in the Common Area and other areas.

<u>Amenities</u>	<u>Improvements</u>	<u>Cost or Financing</u>
Reserve A	Development Access Road, security gate, equipment and improvements installed in connection therewith	Initially paid by Developer or an affiliate thereof and reimbursed by Infrastructure Assessments
	Wall, fence, plantings, landscape and irrigation within the Development Access Road and the 53rd Street North road right-of-way; Park City Water; Westar Service; and Street Lights	Initially paid by Developer or an affiliate thereof and reimbursed by Infrastructure Assessments

Schedule 1.11



BENCHMARK:

"□" cut on North Hbqd of
RCBC 300 feet East of the
section corner of Hydraulic
and 53rd Street North.
Elev. = 1375.91 (29)

MINIMUM PAD ELEVATIONS:

Lot 8	1365.3
Lot 9	1364.9
Lot 10	1359.3
Lot 11	1361.3
Lot 12	1361.3
Lot 13	1364.3
Lot 14	1365.0
Lot 15	1366.1
Lot 16	1367.5
Lot 17	1367.9
Lot 18	1368.9
Lot 19	1369.8
Lot 20	1370.6
Lot 21	1371.3

All in Block A