

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR HICKORY CREEK ESTATES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HICKORY CREEK ESTATES ("Declaration") is made effective the 10 day of April, 1996, by Hickory Creek L.L.C., a Kansas limited Liability Company (hereinafter referred to as the "Developer").

WITNESSETH, THAT:

WHEREAS, Developer deems it desirable to adopt and establish covenants, conditions and restrictions for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined); and

WHEREAS, Developer deems it desirable for the efficient preservation of the value, desirability and attractiveness of the Property, pursuant to the provisions of this Declaration, to create a corporation to which may be delegated and assigned the powers of maintaining and administering the Common Area (as hereinafter defined), administering and enforcing these covenants, conditions and restrictions, and collecting and disbursing funds pursuant to the assessments and charges hereinafter referred to; and

WHEREAS, Hickory Creek Estates Homeowners' Association, a nonprofit corporation, will be incorporated under the laws of the State of Kansas for the purpose of exercising some of the powers and functions aforesaid; and

WHEREAS, Developer will convey title to all of the Lots (as hereinafter defined) in the Property described below, subject to the covenants, conditions and restrictions hereinafter set forth.

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

ARTICLE I

DEFINITIONS

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

1.01 "Association" shall mean and refer to Hickory Creek Estates Homeowners' Association, a nonprofit corporation to be incorporated under the laws of the State of Kansas, its successors and assigns.

1.02 "Board" shall mean and refer to the Board of Directors of the Association.

1.03 "Common Area" shall mean those portions of the Property to be owned by Developer or the Association for the common use and enjoyment of the members of the Association, as follows:

Reserves A, B, C, D, E, F, G, H, I, J, K and
L, Hickory Creek Estates, Wichita, Sedgwick
County, Kansas.

1.04 "Lot" shall mean and refer to each platted Lot within the Property upon which there may be constructed a single-family residence. It shall not mean or include any part of the Common Area.

1.05 "Member" shall mean and refer to every person or entity who holds membership in the Association.

1.06 "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.

1.07 "Property" shall mean and refer to all of the property described as:

Hickory Creek Estates, Wichita, Sedgwick County,
Kansas.

1.08 "Structure" shall mean and include to any thing or device (other than trees, shrubbery, hedges and landscaping), the placement of which upon any Lot may affect the appearance of such Lot, including, by way of illustration and not limitation, any building, garage, porch, shed, greenhouse or bathhouse, covered or uncovered patio, swimming pool, tennis court, clothesline, radio or television antenna, fence, curbing, paving, wall more than two (2) feet in height, satellite dish, signboard or any temporary or permanent improvement to such Lot. "Structure" shall also include (i) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface water from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot; and (ii) any change in the grade of any Lot of more than six (6) inches from that existing at the time of purchase by each Owner.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

2.01 Membership. The Association shall have as Members only Owners. All Owners shall, upon becoming such, be deemed automatically to have become Members, and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of any Lot.

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

- (A) When any such Lot is owned or held by more than one (1) Member as tenants in common, joint tenancy or any other manner of joint or common ownership or interest, such Members shall collectively be entitled to only two (2) votes relative to such Lot, and if such Members cannot jointly agree as to how that vote should be cast, no vote shall be allowed with respect to such Lot.
- (B) Any Member who is in violation of this Declaration, as determined by the Board, shall not be entitled to vote during any period in which such violation continues. Any Member who fails to pay any assessments established pursuant to the terms hereof shall not be entitled to vote during any period in which any such assessments are due and unpaid.
- (C) Notwithstanding the foregoing, Developer shall be entitled to six (6) votes for each single Lot owned by it.
- (D) The Board shall adopt such Bylaws, consistent with the terms hereof, the Articles of Incorporation of the Association and the laws of the State of Kansas, as it deems advisable for any meeting of Members with regard to

proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, voting by proxy and such other matters concerning the conduct of meetings and voting as it shall deem proper.

ARTICLE III

PROPERTY RIGHTS IN THE COMMON AREA

3.01 Members' Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions and to the other provisions of this Declaration:

- (A) The right of the Association to limit the number of guests of Members;
- (B) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area, including but not limited to the recreational facilities thereof;
- (C) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and to mortgage the Common Area; provided that the rights of such mortgagees shall be subordinate to the rights of the Members;
- (D) The right of the Association to suspend the use of the Common Area and any recreational facilities thereon by a Member and his family for any period during which any assessment against his Lot remains unpaid and delinquent, and for a period not exceeding thirty (30) days for any single infraction of the rules and regulations of the Association;
- (E) To charge reasonable admission and other fees for the use of any recreational facilities situated on the Common Area;
- (F) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be determined by the Association; provided that such dedication or transfer shall not be effective unless authorized by a majority of Members present at a specially convened meeting called for such purpose; and
- (G) The covenants and restrictions contained herein.

3.02 Easement for Developer. In view of its substantial expenditures in connection with the improvement of the Common Area, Developer hereby grants a perpetual easement for the benefit of Developer and its two members/owners, and their invitees, for the use of Reserve "A" of the Common Area and improvements thereon, including the club house and lake facilities. Developer's members/ owners shall be entitled to use such facilities on the same basis as any Member, but, shall not be required to pay any dues or other fees for such use. The rights of Developer shall survive and continue following the transfer of Reserve "A" to the Association and shall extend so long as Developer continues in existence and following the dissolution thereof, its two members/owners shall succeed to the rights and benefit of Developer under this section.

3.03 Delegation of Use. A Member's right of enjoyment in the Common Area shall automatically extend to all members of his or her

immediate family residing on any part of the Property. No guests shall be entitled to exercise such right of enjoyment or to any use of the Common Area except as provided in, and subject to, such regulations as may be promulgated by the Board.

3.04 Waiver of Use. No Member 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.

3.05 Title to the Common Area. Developer may retain the title to the Common Area until such time as it desires to convey title to the Association; provided, however, title shall be conveyed no later than the time that Developer relinquishes in full its right to designate the members of the Design Committee as referenced in Section 8.01 below. Notwithstanding anything to the contrary provided herein, Developer, prior to conveyance of the Common Area to the Association, and after such conveyance to the Association, may incorporate portions of the Common Area in adjoining Lots, from time to time.

ARTICLE IV

COVENANTS CONCERNING ASSESSMENTS AND LIENS

4.01 General Assessments. For the purpose of providing funds for the operation of the Association, and for the operation, maintenance, care and improvement of the Common Area, and to afford the Association (and Developer, during such time as it is performing the duties and powers of the Association pursuant to 6.01(B) hereof) , the means and resources necessary to carry out its duties and functions, the Association shall have the right, in each year, to assess against each Lot (except as provided below) a general assessment, which general assessment shall subject each Lot to a lien to secure payment thereof. The general assessment may be paid annually, monthly or quarterly, as specified by the Association, from time to time. The initial assessment shall be payable on or before the first day of each month in the amount of \$35.00 per calendar month (\$420.00 per full year) and shall commence October 1, 1996.

The Association (or Developer) will notify all Owners stating the amount of the assessment and when payment is due; provided, in no event shall payment be due sooner than thirty (30) days following the notice of such assessment is mailed by the Association or Developer.

4.02 Basis of Assessment; Exemption; Transfer Assessment; Proration.

- (A) All general assessments shall be made against the Owners on an equal basis for each Lot or fraction thereof owned by the Owner or Owners, except that in view of the substantial expenditures incurred by Developer in connection with the Common Area, Developer, and any properly licensed general contractor acquiring a Lot from Developer for the purpose of constructing a residence thereon and offering the same for sale, is exempt from imposition of any assessment, whether general or special, with respect to any Lot so long as Developer or such contractor holds legal title thereto (provided, the assessment exemption for such general contractors shall not extend beyond twelve (12) months from the date an applicable Lot is conveyed to such contractor).
- (B) At any time legal title to a Lot transfers, the transferee shall pay at the time of the closing of such transfer to the working capital of the Association an amount equal to \$150.00; provided the requirement to pay such a fee shall not apply to either:

- (i) the transfer by Developer to an affiliated entity, or the transfer of Developer's interest as developer of the Property/ or
 - (ii) the transfer of title by Developer to any Lot to a properly licensed general contractor for purposes of constructing a residence thereon for the purpose of offering the same for sale/ provided that the assessment exemption under this subparagraph (ii) shall not extend beyond the period of twelve months from the date the applicable Lot is transferred to the contractor.
- (C) In the event any Lot would be subject to a general or special assessment in any calendar year, if it were not for an exemption available under subparagraphs (A) and/or (B) immediately above, at such time as such exemption is no longer in effect during such calendar year, the applicable assessment shall be prorated for such year (based on the remaining portion of such year) and be paid by the then Owner.
- (D) Notwithstanding anything to the contrary appearing elsewhere in this Article IV, if any Owner constructs one residence on two Lots, such Owner shall only be required to pay an assessment (whether general or special) for one Lot even though two Lots are owned.

4.03 Limitations on General Assessments.

- (A) The maximum annual general assessment may be increased for any subsequent year by the Association (or the Developer in lieu thereof), to an amount which is not more than 30% compounded above the annual assessment for the previous year, without a vote of the membership of the Association.
- (B) Except as provided in subparagraph (A) immediately above, the annual assessment for any year may be increased to an amount greater than that permitted by subparagraph (A) of this Section 4.03 only by an affirmative vote of two-thirds of the vote of the Members in attendance, who are voting in person or by proxy, at meeting duly called for such purpose.
- (C) The Board, or, in lieu thereof, the Developer pursuant to Section 6.01(B) hereof, may not fix the annual assessment at an amount in excess of the amounts permitted hereunder.

4.04 Special Assessments. In addition to general assessments, the Association (or the Developer under 6.01(B) hereof) may, from time to time, at a regular meeting or a special meeting called upon notice for such purpose, establish a special assessment to be levied equally against each Lot for the purpose of providing additional funds (not available through general assessments) to carry out its duties and other functions and purposes contemplated hereunder. No such special assessment shall be valid unless two-thirds of the Members present, in person or by proxy, at the meeting duly called approve the same. Any special assessments shall become a lien against each individual Lot (other than any Lot owned by Developer at the time of such assessment) in the same manner otherwise provided for in this Article.

Further, the Association 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 shall result in an expenditure by the Association for repair or remedy.

Any special assessments shall be payable in full (unless a schedule

for payment in installments is specified) on the first day of the second calendar month next following the date that the same shall be established by the Association.

4.05 Collection and Expenditures. The Association (or the Developer, so long as it is carrying out the duties and powers of the Association) shall have the sole authority to collect and enforce the collection of all general and special assessments provided for in this Declaration, and may, in addition to such assessments, charge and assess costs, including reasonable attorneys' fees, and penalties and interest for the late payment or nonpayment thereof. The 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 of Incorporation and Bylaws of the Association. However, the Association shall not be obligated to spend in any year all the sums collected in such year by way of general assessments, or otherwise, and may carry forward, as surplus or in reserves, any balances remaining; nor shall the Association be obligated to apply any such surpluses or reserves to the reduction of the amount of the assessments in the succeeding year, but may carry forward from year to year such surplus as the Board, in its absolute discretion, may determine to be desirable for the greater financial security of the Association and the effectuation of its purposes.

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

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

Upon payment or other satisfaction of said assessment, interest, penalties and costs in connection with which notice has been recorded, the Association shall record a further notice stating the satisfaction and the release of the lien thereof.

4.08 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. In any action to foreclose any such lien, the Association shall be entitled to costs, including reasonable attorneys' fees, and such penalties for delinquent charges and assessments as shall have been established by the Association.

4.09 Subordination to Mortgages. Each and every assessment and lien, together with any costs, penalties and interest reserved under this Declaration, shall be subordinate to the lien of any valid bona fide mortgage which has been, or may hereafter be, given in good faith and for value on any interest of any Owner covered by this Declaration. Any subsequent Owner of any Lot purchased at foreclosure shall be bound by the restrictions, assessments and liens set out in this Declaration, not including, however, any assessment or lien arising prior to the foreclosure sale.

4.10 Personal Liability. In addition to the covenants and agreements heretofore set forth herein, each Owner of each Lot, by the

acceptance of a deed therefore, whether or not it shall be so expressed in such deed, shall be deemed to have agreed to be personally liable for the payment of each general or special assessment levied against such Lot during the period of ownership.

4.11 Interest on Delinquent Assessments. All assessment charges (general or special) which remain due and unpaid thirty (30) days after the same are due shall thereafter be subject to interest at the rate of fifteen (15%) percent per annum, or such other rate as may be established from time to time by the Board; provided, however, that such interest rate shall never exceed the maximum allowed by law.

ARTICLE V

USE, OCCUPANCY AND CONDUCT RESTRICTIONS

5.01 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 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.

5.02 Construction Requirements. Unless approval is otherwise granted by the Design Committee, the following construction requirements shall be complied with as to all Lots:

Exterior walls of all buildings, Structures and appurtenances thereto constructed on any Lot shall be of brick, stone, stucco, wood shingles, wood siding, wood paneling, glass, glass blocks or any combination thereof. A one story residence shall contain not less than 1,600 square feet of finished floor area, exclusive of basements, porches and garages. A one and one-half story and two story residence, exclusive of basements, porches and garages, shall contain not less than 2,000 square feet of finished floor area. The minimum number of square feet to be contained in a bi-level, quad-level or any other residential configuration shall be determined from time to time in the discretion of the Design Committee. Each residence shall, unless otherwise approved by the Design Committee, include a poured concrete basement which shall contain a floor area comprising at least eighty percent (80%) of the ground level floor area contained in such residence, exclusive of porches and garages. Notwithstanding the foregoing provisions of this Section 5.02, the Design Committee may reduce the square footages required to be contained in a one, one and one-half and two story residences, on a residence by residence basis, if such Design Committee determines that the appearance and/or quality of the proposed smaller residence is such (in the sole discretion of the Committee) that a smaller residence does not detract materially from the residences either existing or to be constructed on Lots, which comply with the square footages specified above.

5.03 Flat Roofs and Windows. No flat roof shall be permitted, except with the permission of the Design Committee. Except as otherwise authorized by the Design Committee, the roofs of all structures shall be either wood shingle, slate, tile or Permitted Composition Shingles. "Permitted Composition Shingles" shall be Celetex Presidential, Weathered wood, or other comparable

quality shingles as approved by the Design Committee from time to time. Window frames shall be wood or vinyl or other composition materials as approved from time to time by the Design Committee.

5.04 Rules and Regulations. Each Owner shall obey and comply with all applicable public laws, ordinances, rules and regulations, and all rules and regulations now or hereafter promulgated, as provided for in this Declaration. No activity which may be or become a nuisance to the neighborhood shall be carried on upon the Property.

5.05 Damage to Common Area. Etc., Prohibited. No Owner shall do or allow to be done any act which causes or threatens to cause any damage, encroachment or disrepair to the Common Area or the residence or Lot of any other Owner.

5.06 Single-Family Residences No building shall be erected, altered, placed or permitted to remain on any Lot, other than one new single-family residence for private use, with a private garage and other Structures incidental to residential use, which are approved by the Design Committee. No prefabricated or modular buildings will be permitted to be constructed or installed on any Lot.

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

5.08 No 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.

5.09 No Businesses Allowed. Except as otherwise specified in this Declaration or as authorized by the Board (or the Developer, so long as it is performing the functions of the Association), no retail, wholesale, manufacturing or repair business of any kind, "shall be permitted on any Lot or in any residence or appurtenant Structure erected thereon, even though such activity does not include the employment of any additional person or persons in the performance of such services. Nothing herein shall be construed to prevent child care, residential building contractors, business consultants or Amway or similar retail sales operations, from conducting business on Lots so long as the amount of any traffic associated therewith is acceptable to the Board (or Developer, so long as it is performing the functions of the Association).

5.10 Temporary Buildings. Except as authorized by the Board (or the Developer, so long as it is performing the functions of the Association), no basement, 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.

5.11 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 administrative and sales purposes a trailer or trailers upon Lot(s).

5.12 Animals. No birds, animals or insects, except dogs, cats or other household pets, shall be kept or maintained on any Lot.

Under no circumstances shall any commercial or agricultural business enterprise involving the use 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 Owners shall strictly comply therewith.

5.13 Signs. Except as authorized by the Board, and except for those installed by Developer, its marketing representatives or builders or contractors as authorized by Developer, no signs, advertisements, billboards or advertising Structures of any kind may be erected or maintained on any of the Lots; provided, however, that permission is hereby granted for the erection and maintenance of not more than one temporary, unlighted, unanimated signboard on each Lot as sold and conveyed, which signboard shall not be more than ten (10) square feet in size and may be used for the sole and exclusive purpose of advertising for sale or lease the Lot and residence upon which it is erected and improvements thereon, if any. No signs, advertisements, billboards or advertising structures shall be placed within the Common Area or street right-of-way without the approval of the Design Committee, and in the event of a violation of this Section 5.13, the violating party shall pay a fine to the Association (or in lieu thereof, Developer, if the Common Area has not been conveyed to the Association), in the amount of \$100 for each day the violation continues.

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

5.15 Antennas. Except as authorized by the Design Committee, there shall not be erected any external television or radio antennas or permanent clothesline structures, and no Owner shall erect any Structures, either permanently or temporarily, upon any of the Common Area; provided, notwithstanding the foregoing, an Owner may install within his or her Lot a television satellite dish having a diameter of not more than 24 inches, so long as the location of such dish is satisfactory to the Design Committee.

5.16 Trailers. Except as authorized by the Board, no auto-mobile, truck, motorcycle, motorbike, boat, house trailer, boat trailer or trailer or any other vehicle of any type or description may be stored upon any of the Common Area, nor may any boat, boat trailer, house trailer, camper, camper trailer or similar items be stored in the open on any Lot.

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

5.18 Requirement to Keep Lot in Good Order and Repair. Each Owner (other than Developer/ provided it shall cause all Lots owned by it to be mowed periodically) shall keep all Lots owned by it, and all improvements therein or thereon, in good order and repair, including, but not limited to, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management in relation to a quality residential neighborhood such as will exist in the Property. If, in the opinion of the Board, any Owner fails to perform the duties imposed by the preceding sentence, the Board, after approval by a two-thirds 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 agents and employees, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot or such improvements, and the cost thereof shall be a binding personal obligation of such Owner, and the Board may establish a special assessment on such Lot for the cost thereof and enforce the same as provided in Article IV hereof.

5.19 Division of Lots Prohibited. Except as authorized by the Design Committee, 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.

5.20 Trees. Except as authorized by the Board, no tree having a diameter of six (6) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot without the express written authorization of the Design Committee, other than those which are diseased or materially damaged. The Association, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources upon the Property. Developer or the Association may designate certain trees, regardless of size, as not removable without written authorization.

5.21 Requirement to Plant Lawn. Etc. As soon as practicable after completion of a dwelling on a Lot, the Owner thereof shall plant a lawn and at least ten (10) perennial shrubs and/or bushes and at least two (2) trees, with the trunk of each tree being a minimum of two inches in diameter, on such Lot.

5.22 No Disturbances of Streams. No lake, pond, stream or water drainage facilities, natural or erected, shall be disturbed other than by Developer or the Association.

5.23 Boating. Except as approved from time to time by the Association (or the Developer under 6.01(B)), no boat, raft, canoe or surfboard shall be operated or stored upon any body of water within the Common Area. Provided however, approval is hereby given for the operation of canoes, paddle boats, rowboats, and sailboats that are reasonable, in the sole discretion of the Association, in size, construction, and appearance.

5.24 Fishing. Fishing in any body of water within the Common Area will only be permitted at such times and at such places as may be determined by the Association (or the Developer under 6.01(B)) pursuant to rules and regulations promulgated from time to time concerning such use.

5.25 Fences.

(A) Developer may, and hereby reserves the right to, in its sole discretion, construct and install a fence (including a "living fence"), wall or entrance treatment of a style and of materials satisfactory to the Developer, in its sole discretion, within any of the fence or wall easement areas or entry areas shown on the plat of the Property, or established to other easement instruments.

(B) Certain Lots have been designated (and in the future, other Lots within lands annexed to the Property shall be designated as "Lake Lots," which Lots are Lots which are now or shall in the future be adjacent to a lake. The initial Lake Lots are as follows: Lots 11, 12, 13, 14, 21, 22 and 27 in Block 1; Lots 1, 2, 3 and 4 in Block 3; and Lots 4, 5, 6, 7, 8 and 9 in Block 4. Pre-approved black wrought iron fences which do not exceed six feet in height and which do not materially obstruct the passage of light or air, constructed pursuant to specifications approved by the Design Committee shall be the only fences permitted to be constructed or installed on Lake Lots, except privacy

fences immediately adjacent to patios which are appurtenant to a residence constructed on a Lake Lot shall be permitted, upon the prior approval of the Design Committee. Any dog or animal run areas within Lake Lots shall be constructed using only black wrought iron and/or wood materials (but no chain link fence materials), as approved by the Design Committee.

- (C) All other Lots (other than Lake Lots) may utilize fences made of black wrought iron, wood or both. The same shall not exceed six feet in height and all wood fences shall be what are commonly referred to as "good neighbor" fences. Notwithstanding the foregoing, dog or animal runs may be construed using chain link fence materials, as approved by the Design Committee.
- (D) All fences shall be approved by the Design Committee prior to construction or installation on any Lot. Developer intends to construct a "living fence" on 13th Street, which fence is made of growing plant materials, wrought iron and wood. No Owner of a Lot adjacent to such living fence may attach thereto or construct or install any fencing material to obscure such living fence without the prior approval of the Design Committee.

5.26 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.

5.27 Drainage. Upon the completion of construction of improvements to each Lot, the Owner of such Lot shall cause such Lot to be graded so as to strictly comply with drainage guidelines, standards and plans concerning water drainage from such Lot to other Lots and/or the Common Area, as such guidelines, standards and plans are established by the City and County within which the property is located, Developer or the Design Committee. The Board and persons designated by the Board shall have the right to enter upon any Lot upon reasonable advance notice to the Owner thereof for the purpose of determining whether the Lot is in compliance with such drainage guidelines, standards and plans. A determination by the Board concerning whether or not a Lot is in compliance with such guidelines, standards and plans, shall be final and binding on all Owners and, provided, so long as Developer owns a Lot, the Developer (due to the unique expertise of its owners, managers, and/or officers) shall have the right to override any decision of the Board under this subsection 5.26 on the request of any Owner and, in the event Developer so overrides a decision of the Board, any subsequent reference in this 5.26 to the Board shall mean the Developer. In the event and time the Board determines that a Lot is not in compliance with the aforesaid guidelines, standards and plans, the Board shall give notice to the Owner thereof and demand that such corrective action be taken as is necessary to achieve compliance. If thirty (30) days after the notice of such violation, or such additional time as may be specified by the Board, the Owner of such Lot shall have not have taken reasonable steps to correct the same, the Board shall have the right, through its agents and contractors, to enter the Lot and/or Common area 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 correction together with 20 percent of such amount. In the event such Owner fails to pay such reimbursement in full within ten (10) days following demand thereof, the Association shall establish a special assessment applicable to such Lot for the costs thereof and enforce the same as provided in Article IV hereof.

Pending establishment of the Board, Developer may fully perform the functions of the Board under this Section 5.26.

5.28 American Flag. The Association (and the Developer until it conveys the Common Area to the Association) shall continue to fly the American flag installed by Developer at the entry of the Property and shall replace the flag on an "as needed" basis.

ARTICLE VI

THE ASSOCIATION

6.01 Powers and Duties.

- (A) The Association shall have the rights and powers as set forth in its Articles of Incorporation and Bylaws, together with its general powers as a nonprofit corporation, and it shall perform each and every duty required of it by this Declaration.
- (B) Developer may carry out all of the duties and powers herein delegated to the Association and the Board so long as it owns a Lot, after which time management shall be turned over to the Association, or Board, as the case may be, 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. 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 management.
- (C) The Association shall own, maintain, mow and keep clean the Common Area and facilities thereon. It further shall maintain, repair and/or replace the decorative entrance treatments, fence(s) and walls erected and installed by Developer or the Association.
- (D) The Association shall maintain such insurance on the Common Area and facilities thereon as it deems necessary and advisable.
- (E) The Association may improve the Common Area in any manner that it shall find to be necessary, desirable or beneficial to the interest of the Common Area and the Members.
- (F) The Association shall have the right to create and establish reserves for the repair, restoration or replacement of any improvement it has the duty to repair, restore or replace hereunder.
- (G) The Association, through the Board, shall have the right to adopt 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 and general welfare of the Owners and occupants of Lots in the Property.
- (H) The Association shall be empowered to determine the manner and extent of operating, maintaining, improving, restoring, mowing, trimming and keeping clean the Common Area.

6.02 Operations and Expenses. The Association shall establish such committees as may be provided for in its Bylaws, and may engage a manager, secretaries, engineers, auditors, accountants, legal

counsel and other employees or consultants as may be reasonably necessary for the discharge of its duties hereunder. The expenses of committees, the salaries of a manager and other employees and the fees of consultants shall be established and paid for by the Association. The Association shall pay for all other expenses necessary or incidental to the conduct or carrying on of its business concerning the Property, and Developer has been assigned the right to perform such functions.

6.03 Clubhouse Financing. Notice is hereby given that Developer shall obtain financing for a portion of the cost of constructing a club house on Reserve "A" of the Common Area which financing shall be secured by a mortgage on such Reserve "A." A portion of the assessments payable by Owners under Section 4.01 hereof shall be used by the Association (and Developer, during such time as it is performing the duties and powers of the Association) to pay all principal, interest and other sums due in connection with such financing. NOTICE IS HEREBY GIVEN THAT IN THE EVENT OF A DEFAULT UNDER SUCH FINANCING, THE MORTGAGE HOLDER MAY EXERCISE ITS RIGHTS AT LAW OR EQUITY, INCLUDING ITS RIGHT TO FORECLOSURE. The Association shall take all action in its power to timely pay such financing in full.

6.04 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.

6.05 Repair and Restoration of Improvements on Common Area. Should any improvements on the Common Area, or any part or portion thereof, 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.

ARTICLE VII

EASEMENTS AND ACCESS CONTROL

7.01 Public Utility and Floodway Easements Dedicated. "Easements for the installation and maintenance of all public utilities and for floodway on Lots subject to this Declaration are dedicated as shown on the recorded Plat of the Property.

7.02 Easements in Favor of Developer and Association. Developer specifically reserves unto itself, its successors and assigns, and for the Association, in connection with the use, operation and maintenance of the Common Area, a perpetual, nonexclusive easement and right-of-way over the Lots and Common Area for the purpose of constructing, maintaining, repairing, replacing and rebuilding water sprinkler systems, including water lines, water wells, sprinkler controls, and electric meters and lines, underground pipelines, drains and/or mains for the purpose of transporting gas, water, sewerage and electricity over, across and through such Lots and Common Area, together with the right to excavate and level ditches and/or trenches for the location of said wells, lines, pipes, drains and/or mains. 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.

ARTICLE VIII

DESIGN COMMITTEE; ARCHITECTURAL CONTROL

8.01 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 desires to remove any member, Developer shall appoint a successor, unless at such time Developer has relinquished its rights hereunder as hereinafter provided. Following Developer's relinquishment of its right to designate the members of the Design Committee, the Association shall have full authority to designate all successor members. The act of a majority of the 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 paragraph by executing and recording in the real estate records a written instrument giving notice of its intent to do so, and providing a copy thereof to an officer of the Association; in such event, the Association shall have the authority of Developer under this paragraph. Developer shall relinquish its rights to appoint the members of the Design Committee on or before the date it no longer owns a Lot. The Design Committee may delegate its rights and responsibilities on a limited basis to the Board from time to time without relinquishing its rights and powers hereunder beyond the terms of such limited delegation.

8.02 Approval Required of Plans and Specifications. Except as otherwise specifically provided in this Declaration, no Structure shall be commenced, erected, placed, moved on or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any manner which materially changes the exterior appearance thereof, nor shall any new use be commenced on any Lot, unless plans and specifications (including a description of any proposed new use) therefor shall have been submitted to and approved in writing by the Design Committee. Such 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 and driveways on the Lot or Lots; and (ii) a finished grade plan for the particular Lot or Lots.

8.03 Decision Final. Whatever shall be the decision of the Design Committee hereunder, its decision shall be final and conclusive.

8.04 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, 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.

In the event that, the Design Committee fails to approve or disapprove any plans and specifications as herein provided within thirty (30) days after submission thereof, the same shall be deemed to have been approved, as submitted, and no further action shall be required.

8.05 Violation. If any Structure shall be 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 by the Design Committee pursuant to the provisions of this Article VIII, such alteration, erection, maintenance 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 Design Committee, any such Structure so 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 same, the Association shall have the right, through its agents and contractors, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the Association may establish a special assessment on such Lot for the cost thereof and enforce the same as provided in Article IV hereof.

8.06 No Liability. Neither the Design Committee, Developer, the Association, nor any officer, director, member, agent or employee thereof, shall be liable to any owner or to any person, firm, corporation or other entity for any damages arising from any performance or nonperformance of any duties, responsibilities or functions under this Declaration, including but limited to this Article and Section 5.26 hereof.

ARTICLE IX

NOTICE OF POSSIBLE SPECIAL ASSESSMENTS AND WATER ENCROACHMENT

9.01 Special Assessments. Notice is hereby given to each purchaser of a Lot that special assessments may be spread by the City of Wichita, Kansas, to Lots in the future, due to the installation of streets, sewers, sidewalks, etc.

9.02 Water Encroachment. Notice is hereby given to anyone acquiring a Lot that due to the grading and drainage of such Lot (which is necessary to enhance the views from residences, particularly those with "walk-out" or "view-out" basements), at times following considerable amounts of rainfall, water may encroach into the yard areas within such Lot. Water may accumulate in areas to the rear of the Lot, which has been graded at lower elevations to provide drainage, or if the Lot is adjacent to a lake, stream or other waterway, water from such areas may spill over into the Lot as a result of such rainfall. Depending upon how much water accumulates on the Lot and how long it remains, damage could occur to the yard, trees,

vegetation, or to fences, gazebos, patios, playground equipment or other improvements or installations within the yard area. Neither Developer, 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.

ARTICLE X

ADDITIONAL LAND

Developer may, from time to time, during the fifteen (15) year period following the date hereof, annex additional real property, including additional Common Areas, into the Property, and thereby subject the same to the terms, provisions and conditions of this Declaration, by the execution and filing for recordation with the Register of Deeds of the County in which the Property is located, of an instrument expressly stating an intention to so annex and describing such additional property to be so annexed. During the fifteen year period commencing with the date of the recordation of this Declaration, Developer, its successors and assigns, may annex such additional real property in its absolute discretion. From and after the expiration of such fifteen year period, such additional land may be annexed; provided that such annexation is approved by a majority of the Members of the Association in attendance at a special or annual meeting of the Members.

ARTICLE XI

MISCELLANEOUS

11-01 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.

11.02 Interpretations of Restrictions. In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners of the Property. It is not the intent of this Declaration to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of buildings 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 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.

11.03 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.

11.04 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 prior to the effective date of the assignment.

11.05 Waiver and Exceptions. The failure by the Association, Developer, any Owner or any other person to enforce any of the restrictions, conditions, covenants, reservations, liens or charges to which the Property or any part thereof is subject, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other restriction, condition, covenant, reservation, lien or charge.

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

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

11.08 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.

11.09 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, Developer, and the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty-five (35) years from the date hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of one (1) year each, unless an instrument, signed by Owners of not less than seventy-five percent (75%) of the Lots, has been recorded, agreeing to abolish or change these covenants, conditions and restrictions, in whole or in part.

11.10 Amendments. Amendments to this Declaration may be made by Developer, or its successors and assigns, in its sole discretion, so long as Developer (or its successors and assigns) retains ownership of a minimum of fifty percent (50%) of the Lots within the Property. Following the date Developer, its successors and assigns, no longer owns a minimum of fifty percent (50%) of the Lots, any provision contained in this Declaration may be amended, 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 no longer owns a minimum of fifty percent (50%) of the Lots, 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 owns three (3) Lots, any such amendment shall require the written consent of Developer, and, further, no amendment materially impairing the rights of any mortgagee shall be binding on such mortgagee unless consented to in writing by such mortgagee.

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

11.12 Enforcement and Arbitration.

- (A) The covenants set forth herein shall run with the land and bind each Owner, its successors and assigns, and all parties claiming by, through or under each Owner, and shall be taken to hold, agree and covenant by the Owner of each Lot, its successors and assigns, to conform and observe this Declaration and each and every term and condition hereof (but no restrictions herein set forth shall be personally binding upon any corporation, person or persons, except in respect to breaches committed during the term of its, his or their ownership of a Lot) .
- (B) The Developer or the Owner or Owners of any of the Property or the Association shall have the right to seek enforcement of or to prevent the breach of the terms and conditions set forth herein. Any action relating to any rights and obligations arising under, or in connection with, this Declaration, including, but not limited to, an action to seek enforcement of or to prevent the breach of any of the covenants and restrictions contained herein, 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 paragraph 11.12 shall not either prevent a party from obtaining a temporary injunction from a court of general jurisdiction pending designation of the arbitrators, or from foreclosure of any liens established pursuant to this Declaration. 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, 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 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 behalf. If the second party 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 (30) years old and may not be an Owner or occupant of a Lot, and shall possess a minimum of ten (10) years' experience in the residential construction business.
- (iii) The arbitrators may grant any remedy or relief the arbitrators deem just and equitable 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.
- (iv) In connection with any arbitration proceeding hereunder, the prevailing party in such proceeding, or the non-dismissing party where a dismissal occurs other than by reason of settlement, shall be entitled to recover its reasonable costs and expenses, including, but not limited to, attorneys' fees, from the non-prevailing party and, further, the non-prevailing party shall pay all fees and expenses of the arbitrators and all other expenses of the arbitration.

11.13 Exclusion of Applicability. The Developer and its assigns shall have the power at any time to waive any or all of the restrictions or covenants contained herein as to the Lots which are unimproved and under its ownership or the ownership of its assigns or licensed residential construction contractors at the time of such waiver. The Developer specifically reserves the right to carry on its business in the Property, so long as it owns a Lot, including, but not limited to, maintaining sales offices, model homes, business offices and other facilities necessarily convenient for the business of Developer.

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

Hickory Creek L.L.C., a Kansas
Limited Liability Company

By: _____ Signed _____
Jay W. Russell, a Managing Member

STATE OF KANSAS)
) ss
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this 1996, before me, a Notary Public in and for the County and State aforesaid, personally appeared Jay Russell, a managing member of Hickory Creek L.L.C., a Kansas limited liability company, personally known to me to be such officer and the same person who executed, as such officer, the above and foregoing instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

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

Notary Public

My appointment expires:

May 5, 1997