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FINAL

**HEATHERWOOD AREA
HOMES ASSOCIATION DECLARATION**

THIS DECLARATION is made as of the 20 day of October, 1997, by The Haven Group L.L.C., a Kansas limited liability company.

WITNESSETH:

WHEREAS, The Haven Group L.L.C. has executed and filed with the Register of Deeds of Johnson County, Kansas three plats of the area known as "HEATHERWOOD"; and

WHEREAS, part of the lots in such plats will be part of the areas commonly known as "Heatherwood" and "Villas of Heatherwood", to wit:

All of Lots 1, 2, 3, and 18 through 32, HEATHERWOOD, a subdivision of land in City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof.

All of Lots 33 through 39 and 62 through 95, HEATHERWOOD, SECOND PLAT, a subdivision of land in City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof.

All of Lots 96 through 132 HEATHERWOOD, THIRD PLAT, a subdivision of land in the City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof.

WHEREAS, The Haven Group L.L.C., as the present owner and developer of the above-described lots, desires to create and maintain a residential neighborhood and a homes association for the purpose of enhancing and protecting the value, desirability, attractiveness and maintenance of the property within the subdivision;

NOW, THEREFORE, in consideration of the premises contained herein, The Haven Group L.L.C., for itself and for its successors and assigns, and for its future grantees, hereby subjects all of the above-described lots to the covenants, charges, assessments and easements hereinafter set forth.

ARTICLE I. DEFINITIONS

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

Recorded 22 Oct 1997
Instrument # 2754545, Book 5345, Page 981

(a) "Lot" means (i) each Duplex Unit and (ii) any other lot as shown as a separate lot on any recorded plat of all or part of the District; provided, however, that if an Owner, other than the Developer, owns adjacent lots (or parts thereof) upon which only one residence has been, is being, or will be erected, then (A) for purposes of determining the amount of annual and special assessments due with respect thereto from time to time, such adjacent property under common ownership shall constitute such whole or partial number of Lots as may be specified in writing by the Developer, and (B) for all other purposes hereunder, such adjacent property under common ownership shall be deemed to constitute only one "Lot."

(b) "Duplex Unit" means collectively (i) one of the two residential units contained in a duplex building that will be, is being, or has been constructed on any platted lot and (ii) the portion of the platted lot that is allocated to such unit.

(c) "Villas Lot" means each Lot other than a Duplex Unit.

(d) "District" means collectively all of the above-described lots and tracts to be part of the Heatherwood (excluding Ashbrook) duplex subdivision and the Villas of Heatherwood villas/patio home subdivision, all Common Areas, and all additional property which hereafter may be made subject to this Declaration in the manner provided herein.

(e) "Developer" means The Haven Group L.L.C., a Kansas limited liability company, and its successors and assigns.

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

(g) "Common Areas" means (i) any entrances, monuments, berms, street islands, and other similar ornamental areas and related utilities, lights, sprinkler systems, trees and landscaping constructed or installed by or for the Developer or the Homes Association at or near the entrance of any street or along any street, and any easements related thereto, in or to the District, (ii) all landscape easements that may be granted to the Developer and/or the Homes Association, for the use, benefit and enjoyment of all Owners within the District, (iii) the Right of Way Amenities, and (iv) all other similar areas and places, together with all improvements thereon and thereto, the use, benefit or enjoyment of which is intended for all of the Owners within the District, whether or not any "Common Area" is located on any Lot.

(h) "Right of Way Amenities" has the meaning set forth in Article XV below.

(i) "Homes Association" means the Kansas not-for-profit corporation to be formed by or for the Developer for the purpose of serving as the homes association for the District.

(j) "Board" means the Board of Directors of the Homes Association, which Board shall be composed of at least three Owners from each of the Heatherwood (excluding Ashbrook) duplex subdivision and the Villas of Heatherwood villas/patio home subdivision. min
6 members

(k) "Certificate of Substantial Completion" means a certificate executed, acknowledged and recorded by the Developer stating that all or, at the Developer's discretion, substantially all of the Lots in the District (as then composed or contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are substantially completed; provided, however, that the Developer may execute and record a Certificate of Substantial Completion or similar instrument in lieu thereof in its absolute discretion at any time and for any limited purpose hereunder. The execution or recording of a Certificate of Substantial Completion shall not, by itself, constitute an assignment of any of the Developer's rights to the Homes Association or any other person or entity.

(l) "Turnover Date" means the earlier of: (i) the date as of which 90% of all of the Lots in the District (as then composed or contemplated by the Developer) have been sold by the Developer and the residences have been constructed thereon, or (ii) the date Developer, in its absolute discretion, selects as the Turnover Date for all or any specific portion of this Declaration.

(m) "City" means the City of Overland Park, Kansas.

ARTICLE II. HOMES ASSOCIATION MEMBERSHIP

Until the Turnover Date, the Homes Association shall have two classes of membership, namely Class A and Class B. The Developer shall be the sole Class A member. Each Owner of a Lot, including the Developer as an Owner, shall be a Class B member. Until the Turnover Date, all voting rights shall be held by the Class A member, except that the Class B members shall have the sole right to vote on increases in annual assessments as provided in clause (c) of Section 3 of Article IV below.

After the Turnover Date, there shall be only one class of membership which shall consist of the Owners of the Lots in the District and every such Owner shall be a member.

Where voting rights exist based on Lot ownership, each member shall have one vote for each Lot for which he is the Owner; provided, however, that when more than one person is an

Owner of any particular Lot, all such persons shall be members and the one vote for such Lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one vote be cast with respect to such Lot. During any period in which a member is in default in the payment of any assessment levied by the Homes Association under this Declaration, the voting rights of such member shall be suspended until such assessment has been paid in full.

Subject to the foregoing, the Homes Association shall be the sole judge of the qualifications of each Owner to vote and their rights to participate in its meetings and proceedings.

ARTICLE III. POWERS AND DUTIES OF THE HOMES ASSOCIATION

1. In addition to the powers granted by other portions of this Declaration or by law but subject to all of the limitations set forth in this Declaration, the Homes Association shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by the Board to carry out and effectuate the purposes of this Declaration, including, without limitation:

(a) To enforce, in the Homes Association's name, any and all building, use or other restrictions, obligations, agreements, reservations or assessments which have been or hereafter may be imposed upon any of the Lots or other part of the District; provided, however, that this right of enforcement shall not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the parties having the right to make such waivers, changes, releases or modifications under the terms of the deeds, declarations or plats in which such restrictions, obligations, agreements and reservations are set forth. The expense and cost of any such enforcement proceedings by the Homes Association shall be paid out of the general funds of the Homes Association, except as herein provided. Nothing herein contained shall be deemed or construed to prevent the Developer or any Owner from enforcing any building, use or other restrictions in its or his own name.

(b) To acquire and own title to or interests in, to exercise control over, and to improve and maintain the Common Areas, subject to the rights of any governmental authority, utility or any other similar person or entity therein or thereto.

(c) To maintain public liability, worker's compensation, fidelity, fire and extended coverage, director and officer liability, indemnification and other insurance with respect to the activities of the Homes Association, the Common Areas and the property within the District.

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

(e) To enter into and perform agreements from time to time with the Developer, other homes associations and other parties regarding the performance of services and matters benefiting such parties and its members and the sharing of the expenses associated therewith.

(f) To enter into and perform agreements with the Developer, other developers, other homes associations and other parties relating to the joint use, operation and maintenance of any recreational facilities and other similar common areas, whether in or outside the District, and the sharing of expenses related thereto.

(g) To have employees and otherwise engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the Homes Association, including, without limitation, keeping of books and records, operation and maintenance of Common Areas, and planning and coordination of activities.

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

(i) To provide for the collection and disposal of rubbish and garbage; to pick up and remove loose material, trash and rubbish of all kinds in the District; and to do any other things necessary or desirable in the judgment of the Board to keep any property in the District neat in appearance and in good order.

(j) To exercise any architectural, aesthetic or other control and authority given and assigned to the Homes Association in this Declaration or in any other deed, declaration or plat relating to all or any part of the District.

(k) To make, amend and revoke reasonable rules, regulations, restrictions and guidelines (including, without limitation, regarding the use of Common Areas) and to provide means to enforce such rules, regulations and guidelines.

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

2. In addition to the duties required by other portions of this Declaration and by law, the Homes Association shall have the following duties and obligations with respect to providing services to Owners within the District:

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(a) To the extent not provided as a service by any governmental authority, the Homes Association shall provide for the collection and disposal of rubbish and garbage for each residence one day per week (which day, if possible, shall be the same for all residences).

(b) The Homes Association shall at all times, from and after its date of formation and at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all Common Areas (except any part thereof that is within any Lot and has not been landscaped or otherwise improved by or for the Developer or the Homes Association), subject to any control thereover maintained by any governmental authority, utility or other similar person or entity.

(c) The Homes Association shall properly maintain the Right of Way Amenities and otherwise satisfy its and the Owners' obligations with respect thereto, as contemplated in Article XV. ←

(d) The Homes Association shall provide lawn care, consisting of mowing, edging, fertilizing and weed control of grass areas (excluding designated natural areas), on all Lots, and shall trim trees along the street on the Lots, but such services shall not include the replanting or reseeding of sod or grass, the replacement of trees, the trimming of trees not located along the streets, the care of bushes, shrubbery, gardens or flowers, or the care of any areas which have been enclosed by an Owner with fencing or hedging or otherwise made inaccessible to the Homes Association. ← No Road

(e) The Homes Association shall provide snow removal for driveways and front yard sidewalks (but not porches or patios) on the Lots as soon as possible when the accumulation reaches three inches or more. SNOW Rem

(f) With respect to the Duplex Units only, and solely out of funds supplied by the Duplex Units under Section 2 of Article IV below, the Homes Association shall paint the painted exterior and exterior trim on each residence on the Duplex Units on a periodic basis determined by the Board, but such service shall not include the repair or replacement of any wood, windows, gutters or other materials or the cleaning of any gutters. Paint

(g) With respect to the Villas Lots, and solely out of funds supplied by the Villas Lots under Section 2 of Article IV below, the Homes Association shall paint the painted exterior and exterior trim on each residence on the Villas Lots on a periodic basis determined by the Board, but such service shall not include the repair or replacement of any wood, windows, gutters or other materials or the cleaning of any gutters.

3. The Board shall have the right to further determine the scope and timing of the services to be provided under Section 2 above and to establish and expend reserves for such services. The Homes Association shall create a special reserve solely for the painting services to be

provided to the Duplex Units under Section 2(f) above. The Homes Association shall create a special reserve solely for the painting services to be provided to the Villas Lots under Section 2(g) above.

ARTICLE IV: MONTHLY ASSESSMENTS

1. For the purpose of providing a general fund to enable the Homes Association to exercise the powers, render the services and perform the duties provided for herein, all Lots in the District, other than Lots then owned by the Developer, shall be subject to a monthly assessment to be paid to the Homes Association by the respective Owners thereof as provided in this Article IV. The amount of such monthly assessment per Lot shall be fixed periodically by the Homes Association, and, until further action of the Homes Association, shall be \$80.00 per month (subject to Section 5 of this Article IV below.

2. (a) In addition, for the purpose of providing a special fund to enable the Homes Association to render the painting services described in Section 2(f) of Article III above, each Duplex Unit shall pay a supplemental monthly assessment in such amount as may be determined by the Board from time to time. Until further action of the Board, the amount of such supplemental monthly assessment per Duplex Unit shall be \$31.50.

(b) In addition, for the purpose of providing a special fund to enable the Homes Association to render the painting services described in Section 2(g) of Article III above, each Villas Lot shall pay a supplemental monthly assessment in such amount as may be determined by the Board from time to time. Until further action of the Board, the amount of such supplemental monthly assessment per Villas Lot shall be \$41.66.

3. The rate of monthly assessment upon each Lot in the District under Section 1 above may be increased (a) by the Board from time to time, without a vote of the members, by up to 10% over the rate of monthly assessment in effect for the preceding year for each of the second through sixth years of the existence of the Homes Association; (b) after the sixth year of existence, by the Board from time to time, without a vote of the members, by up to 5% over the rate of monthly assessment in effect for the preceding year, or (c) at any time by any amount in excess of clause (a) or (b) by a vote of the members (being for this limited purpose solely the Class B members prior to the Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when a majority of the members present at such meeting and entitled to vote thereon authorize such increase by an affirmative vote for the proposed increase. Notwithstanding the foregoing limits on monthly assessments, the Board, without a vote of the members, shall always have the power to set, and shall set, the rate of monthly assessment at an amount that will permit the Homes Association to perform its duties as specified in Section 2(a) through (e) of Article III above.

4. The monthly assessments provided for herein shall be due and payable on the first day of each calendar month; provided, however, that the first assessment for each Lot shall be due and payable only upon a transfer of title to the Lot from the Developer to a third party (including a home builder) and shall be prorated as of the date thereof. No Lot shall be entitled to receive any services to be provided by and through the Homes Association until such time as the first monthly assessment has been paid with respect thereto.

5. Notwithstanding Sections 1, 2 and 3 above, from and after the transfer of title to a Lot from the Developer to a third party (including a home builder) and prior to the initial occupancy of the residence on the Lot, the rate of monthly assessment for such Lot shall be only 25% of the amount of monthly assessment under Sections 1, 2 and 3 above. No trash services shall be provided by the Homes Association to such Lot during any such period.

ARTICLE V. SPECIAL ASSESSMENTS

In addition to the monthly assessments provided for herein, the Board (a) shall have the authority to levy from time to time a special assessment against any Lot and its Owner to the extent the Homes Association expends any money (for services or materials, or legal fees and expenses) to correct or eliminate any breach by such Owner of any agreement, obligation, reservation or restriction contained in any deed, declaration or plat covering such Lot (including, without limitation, to maintain or repair any Lot or improvement thereon) and (b) shall levy from time to time special assessments against each and every Lot (other than any Lot then owned by the Developer) in an equal amount that is sufficient, when aggregated, to enable the Homes Association to perform its duties as specified in Section 2(a) through (e) of Article III above that require any expenditure during any period in an amount in excess of the general and reserve funds of the Homes Association available therefor. Each such special assessment shall be due and payable upon giving notice of the assessment to such Owner.

ARTICLE VI. DELINQUENT ASSESSMENTS

1. Each assessment shall be a charge against the Owner and shall become automatically a lien in favor of the Homes Association on the Lot against which it is levied as soon as the assessment becomes due. Should any Owner fail to pay any assessment within 30 days after the due date thereof, then thereafter such assessment shall be delinquent and bear interest at the rate of 10% per annum from the delinquency date until paid, which interest shall become part of the delinquent assessment and the lien on the Lot. Should the Homes Association engage the services of an attorney to collect any assessment hereunder, all costs of collecting such assessment, including court costs and reasonable attorneys' fees, shall, to the extent permitted by applicable law, be added to the amount of the assessment being collected and the lien on the Lot. Each assessment, together with interest thereon and collection costs, shall also be the personal obligation of the Owner of the Lot at the time when the assessment became due.

2. All liens on any Lot for assessments provided for herein shall be inferior and subordinate to the lien of any valid purchase money first mortgage now existing or which may hereafter be placed upon such Lot. A foreclosure sale or deed in lieu of foreclosure thereunder shall automatically extinguish the lien hereunder for such assessments to the extent applicable to periods prior to such foreclosure or deed in lieu thereof but shall not release such Lot from liability for any assessment applicable to periods thereafter.

3. Payment of a delinquent assessment may be enforced by judicial proceedings against the Owner personally and/or against the Lot, including through lien foreclosure proceedings in any court having jurisdiction of suits for the enforcement of such liens. The Homes Association may file certificates of nonpayment of assessments in the office of the Register of Deeds of Johnson County, Kansas, and/or the office of the Clerk of the District Court for Johnson County, Kansas, whenever any assessment is delinquent, in order to give public notice of the delinquency. For each certificate so filed, the Homes Association shall be entitled to collect from the Owner of the Lot described therein a fee of \$100.00, which fee shall be added to the amount of the delinquent assessment and the lien on the Lot.

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

5. The Homes Association may cease to provide any or all of the services (including, without limitation, trash, lawn and snow removal services, and if applicable, painting services) to be provided by or through the Homes Association with respect to any Lot during any period that the Lot is delinquent on the payment of an assessment due under this Declaration, and no such cessation of services shall result in a reduction of any amount due from the Owner before, during or after such cessation. No Owner may waive or otherwise avoid liability for any assessment by not using any Common Areas or declining any services provided through the Homes Association.

ARTICLE VII. LIMITATION ON EXPENDITURES

The Homes Association shall at no time expend more money within any one year than the total amount of the assessments for that particular year, plus any surplus and available reserves which it may have on hand from prior years. The Homes Association shall not have the power to enter into any contract which binds the Homes Association to pay for any obligation out of the assessments for any future year, except for (i) contracts for utilities, maintenance or similar services or matters to be performed for or received by the Homes Association or its members in subsequent years, and (ii) matters contemplated in Section 2 of Article III above.

ARTICLE VIII. NOTICES

1. The Homes Association shall designate from time to time the place where payment of assessments shall be made and other business in connection with the Homes Association may be transacted.

2. All notices required or permitted under this Declaration shall be deemed given if deposited in the United States Mail, postage prepaid, and addressed to the person or last known person entitled to such notice at the address of the Lot. Notice to one co-Owner shall constitute notice to all co-Owners.

ARTICLE IX. EXTENSION OF DISTRICT

The Developer shall have, and expressly reserves, the right (but not the obligation), from time to time, to add to the existing District and to the operation of the provisions of this Declaration other adjacent or nearby lands (without reference to any street, park or right of way) by executing, acknowledging and recording an appropriate written declaration or agreement subjecting such additional property to all of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof; provided, however, that such declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable as solely determined by the Developer in its absolute discretion.

ARTICLE X. AMENDMENT AND TERMINATION

1. This Declaration may be terminated, amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by (a) the Owners of at least two-thirds (2/3) of the Lots within the District as then constituted and (b) if prior to the recording of the Certificate of Substantial Completion, the Developer; provided, however, the written consent of the City shall be required for the termination of this Declaration in its entirety or to any amendment, modification or termination of any provision of this Declaration regarding the Right of Way Amenities. If such consent of the City is requested, it shall be made in writing to the City clerk. The City shall have 60 days, after receipt of the request, to rule on the request.

2. Anything set forth in Section 1 of this Article X to the contrary notwithstanding, except any provision relating to the requirement of the City's consent, the Developer shall have the absolute, unilateral right, power and authority to modify, revise, amend or change any of the terms and provisions of this Declaration, as from time to time amended or supplemented, by executing, acknowledging and recording an appropriate instrument in writing for such purpose, if (i) either the Veteran's Administration or the Federal Housing Administration or any successor agencies thereto

shall require such action as a condition precedent to the approval by such agency of the District or any part of the District or any Lot in the District, for federally-approved mortgage financing purposes under applicable Veterans Administration, Federal Housing Administration or similar programs, laws and regulations, or (ii) the City requires such action as a condition to approval by the City of some matter relating to the development of the District.

3. If the rule against perpetuities is applicable to any right, restriction or other provision of this Declaration, such right, restriction or other provision shall terminate (if not earlier terminated) upon lapse of 20 years after the death of the last survivor of the now-living children and grandchildren of the individuals signing this Declaration on behalf of the Developer as of the date of such execution.

ARTICLE XI. ASSIGNMENT

1. The Developer shall have the right and authority, by appropriate agreement made expressly for that purpose, to assign, convey, transfer and set over to any person(s) or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Developer, and upon such assignment the assignee shall then for any or all such purposes be the Developer hereunder with respect to the rights, benefits, powers, reservations, privileges, duties and responsibilities so assigned. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

2. The Homes Association shall have no right, without the written consent of the Developer, to assign, convey, or transfer all or any part of its rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

ARTICLE XII. COVENANTS RUNNING WITH THE LAND

1. All provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon all subsequent grantees of all parts of the District. By accepting a deed to any of the Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the provisions of this Declaration as applied to the Lot owned by such Owner. The provisions of this Declaration shall not benefit or be enforceable by any creditor of the Homes Association (other than the Developer) in such capacity as a creditor.

2. No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of or default under this Declaration shall impair any of such rights or remedies; nor shall any such delay or failure be construed as a waiver of that or any other violation or default.

3. No waiver of any violation or default shall be effective unless in writing and signed and delivered by the person or entity entitled to give such waiver, and no such waiver shall extend to or affect any other violation or situation, whether or not similar to the waived violation. No waiver by one person or entity shall affect any rights or remedies that any other person or entity may have.

ARTICLE XIII. SEVERABILITY

Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgment or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions or parts.

ARTICLE XIV. COMMON AREAS

The Developer covenants and agrees to convey by special warranty deed all of its rights, title and interest in the Common Areas (except any part thereof that is within any Lot or outside of the District) to the Homes Association, without any cost to the Homes Association, at such time(s) as the Developer, in its absolute discretion, may determine, but in all events not later than one month after the Developer has recorded the Certificate of Substantial Completion. Notwithstanding the actual date of transfer, except as otherwise provided in an agreement with the Developer, the Homes Association shall at all times, from and after the date of its formation and at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all Common Areas (except any part thereof that is within any Lot and has not been landscaped or otherwise improved by the Developer or the Homes Association), subject to any control thereover maintained by any governmental authority, utility or similar person or entity. Any transfer of title by the Developer shall not constitute an assignment by the Developer of any of its rights, as the developer of the District, pursuant to this Declaration or any other instrument, contract or declaration. In insuring the Common Areas, the Homes Association shall cause the Developer to be named as an additional insured on the insurance coverage until the recording of the Certificate of Substantial Completion.

ARTICLE XV. RIGHT OF WAY AMENITIES

1. The City has agreed to allow the Developer to construct certain Common Area improvements within certain of the public right-of-way associated with streets in the District (the "Right of Way Amenities"), subject to the terms and conditions of a certain Right of Way Maintenance Agreement between the Developer and the City. The following provisions of this Article XV are required to be in this Declaration pursuant to such Right of Way Maintenance Agreement.

2. The Right of Way Amenities, although located within City right-of-way, are the sole responsibility of the Owners, which Owners shall maintain the Homes Association to be used as the vehicle by which to fulfill the obligations of the Homes Association under this Article XV. Such delegation shall not, however, relieve the Owners of their responsibilities under this Article XV.

3. The City is hereby released from any and all past, present or future liability for any damage that may be caused at any time to any person or to any real or personal property resulting from or related to, directly or indirectly, the City allowing the Right of Way Amenities to be located in its right-of-way, or otherwise acting or failing to act with respect to the maintenance of the Right of Way Amenities. The City further is hereby released from any and all past, present or future obligations to expend any public funds or to take any other action to maintain or improve the Right of Way Amenities.

4. The Homes Association, or upon its failure, the Owners, will indemnify and hold harmless the City, its Mayor, the members of the City Council and the employees and agents of the City from and against any and all losses, damages, costs and expenses, including reasonable attorneys fees, that may be incurred or suffered by any of them as a result of or in connection with any claims that may be asserted against any of them in connection with the Right of Way Amenities. The Homes Association, or upon its failure, the Owners, will further be required to promptly reimburse the City for any public funds the City may expend with respect to maintenance of the Right of Way Amenities in the event the Homes Association fails to maintain the same, although the City is under absolutely no obligation to so maintain.

5. The Developer, the Homes Association and the Owners understand and agree, if the City or the City's designee does damage to the Right of Way Amenities, repair or replacement of the same shall not be the responsibility of the City or the City's designee.

6. The Developer, the Homes Association and the Owners understand and agree, should the City determine that the Right of Way Amenities are endangering the public health, safety or welfare or have become unsightly or a nuisance, or interfere in any way with the City's use of the right-of-way, that upon request of the City, the Homes Association will remove or cause to be removed any or all Right of Way Amenities from the City's right-of-way. Should the Homes Association fail to comply with the City's removal request, the City may remove the same and the Homes Association, or upon its failure, the Owners, shall be obligated to reimburse the City for the removal.

7. The Homes Association, or upon its failure, the Owners shall maintain adequate liability insurance to cover all reasonably insurable risks associated with the maintenance of the Right of Way Amenities and the covenants contained in this Article XV.

8. The Developer and the City shall be third-party beneficiaries of all provisions of this Declaration relating to the Right of Way Amenities and the Developer and the City shall have the

right to enforce all restrictions, obligations and other provisions regarding the Right of Way Amenities.

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

THE DEVELOPER:

THE HAVEN GROUP L.L.C.

By: [Signature]
James R. Lambie, Member

By: [Signature]
John R. Geer, Member

By: [Signature]
Donald C. Geer, Member

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

This instrument was acknowledged before me on October 20, 1997 by James R. Lambie, John R. Geer and Donald C. Geer, as members and on behalf of The Haven Group L.L.C., a Kansas limited liability company.

[Signature]

Notary Public in and for
Said County and State

Print Name: Deborah Hoschouer

My Commission Expires:

1-17-2000

[SEAL]

DEBORAH HOSCHOUER
Notary Public - State of Kansas
My Appt. Expires 1-17-2000

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