



Sedgwick County
Register of Deeds - Tonya Buckingham

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Authorized By:

Tonya Buckingham

Date Recorded: 01/21/2022 11:08:01 AM

AFTER RECORDING RETURN TO:

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

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS
AND DISCLOSURES FOR AUBURN VILLAS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND DISCLOSURES FOR AUBURN VILLAS ("Declaration") is made effective the 20 day of January, 2022, by Auburn Villas, LLC, a Kansas limited liability company (hereinafter referred to as the "Developer").

WITNESSETH, THAT:

A. Developer deems it desirable to adopt and establish covenants, conditions and restrictions for the Property (as hereinafter defined); and

B. It is desirable to establish binding covenants, conditions and restrictions applicable to the Property for the proper development thereof, adequate maintenance and governance of certain Property, and to specify the rights and obligations of the Developer and the Owners (as hereinafter defined); and

C. The Association (as hereinafter defined) will be incorporated for the purpose of exercising certain powers and functions hereunder, subject to a transfer of a part or all of such powers and functions as permitted herein or in other Association documents; and

D. Developer intends to construct two (2) villas on each Lot, but reserves the right to construct one (1) villa with two (2) residential sides on a Lot; and

E. Developer will convey title to all of the Lots and Common Area (as hereinafter defined), 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.

553-20

AFTER RECORDING RETURN TO:

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

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ARTICLE I

DEFINITIONS

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

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

1.2 "Association" shall mean and refer to the Auburn Villas Homeowners' Association (or such other corporate name as Developer shall hereafter select), a nonprofit corporation, incorporated under the laws of the State of Kansas, its successors and assigns.

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

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

1.5 "Common Area" shall mean Reserves B and C, Dugan West Kellogg Commercial 2nd Addition, Wichita, Sedgwick County, Kansas.

1.6 "Design Committee" shall mean the Design Committee as reference in Article VIII hereof.

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

1.8 "HOA Turnover Date" means the date Developer fully and completely transfers pursuant to Section 6.1 B below its right to initially operate the Association and the Board.

1.9 "Lot" shall mean and refer to each platted lot within the Property upon which there shall be constructed a single villa containing two (2) residences, or two (2) separate villas; provided, that where land has been attached to or detached from any Lot, the enlarged or diminished Lot shall be deemed to be a Lot hereunder. In some instances, Owners will own approximately one-half of a Lot upon which one-half of a villa shall be constructed, and in other instances Owners will own approximately one-half of a Lot upon which a separate villa shall be constructed.

1.10 "Member" shall mean and refer to every person or entity who or which is an Owner of a fee or undivided fee interest in any Lot, but not including any Owner who has sold his interest in a portion of a Lot under an executory contract and no longer has possession of his Lot, or portion thereof. During the time any such executory contract is in force, the contract vendee shall be considered to be the Member rather than the contract seller. When more than

2.2 Voting Rights. As noted above, either a villa with two residential sides, or two separate villas, will be constructed on one Lot. The Owners of each side/one-half of a villa, or the Owner of each of the two separate villas, constructed on a Lot, 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 Owner of a side/one-half of a villa constructed on a Lot of the Association, or, if

2.1 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 apportioned to, and shall not be separated from, the ownership of any Lot.

MEMBERSHIP AND VOTING RIGHTS

ARTICLE II

1.14 "Structure" shall mean and include any thing or device, the placement of which upon any portion of a Lot may affect the drainage or appearance of such portion of a Lot, including, by way of illustration, any building, solar panel, garage, gazebo, porch, shed, greenhouse, covered or uncovered patio, screening materials, light pole, clothesline, sandbox, radio or television antenna, fence, flag pole, water fountain, outdoor recreation/play equipment, curbing, paving, wall, satellite dish, signboard, mailbox and related structure, or any temporary or permanent improvement to such portion of a Lot. "Structure" shall also include any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of surface water from, upon or across any portion of a Lot, in accordance with the master drainage and grading plan for the Property as referenced below, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any portion of a Lot, and any change in the grade of any portion of a Lot other than in accordance with drainage guidelines, standards and plans established by the Developer, the Board and the municipality having jurisdiction over the Property, or a Lot specific drainage plan, whichever are most stringent.

1.13 "SS Fee" shall mean the surveillance security fee as defined in Section 4.15 below

Commercial 2nd Addition, Wichita, Sedgwick County, Kansas
inlusive, Block C; and the Common Area located in Dugan West Kellogg
Lots 5-37, inlusive, Block A; Lots 1-10, inlusive, Block B; Lots 1-15,

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

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

one person holds an interest in a portion of a Lot, or portion thereof, all such persons shall be Members.

a Lot contains two (2) villas, then the Owner of each separate villa shall have one (1) vote, subject to the following exceptions and conditions:

A. When any side/one-half of a villa, or an entire villa, 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 one (1) vote for their Structure, and if such Members cannot jointly agree as to how that vote should be cast, no vote shall be allowed with respect to such portion of a Lot. Fractional votes shall not be permitted, and, except as provided in subsection B below, in no event shall more than one (1) vote be cast with respect to any side/one-half of a villa, or separate villa, on a Lot.

B. Notwithstanding the foregoing, or anything to the contrary contained herein, the Developer shall have five (5) votes for each side/one-half of a villa, or separate villa; provided, if a villa has not been constructed on a Lot owned by Developer, Developer shall have ten (10) votes for such Lot.

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

D. The Association shall adopt the Bylaws, consistent with the terms hereof, the Articles and the laws of the State of Kansas, as it deems advisable for any meeting of Owners with regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Owners for voting purposes, and such other matters concerning the conduct of meetings or such other proceedings or processes of the Association permitted by the Bylaws and voting as it shall deem proper; provided, to the extent permitted by applicable laws (i) no Owner may vote by proxy, (ii) following the date the Developer ceases to appoint members to the Board, unless specifically authorized in writing by Developer, no person may serve as a member of the Board or officer of the Association for a duration of more than four (4) years out of any six (6) consecutive year period, and (iii) other than with respect to Board members appointed by Developer, a member of the Board may be removed from the Board by a majority of the other members of the Board or by a majority of the members of the Association in attendance at a special or annual meeting of the Association or in any other manner of voting permitted under the Bylaws. In the event of any conflict between the terms of the Declaration and the Bylaws, the terms hereof shall control.

2.3 Formation; Conveyance. Developer shall form the Association promptly following recordation hereof and shall convey legal title to the Common Area to the Association. Developer shall convey, and the Association shall accept, the Common Area to the Association by special warranty deed, in an "AS IS, WITH ALL FAULTS" condition, subject to all easements, rights-of-way, mortgages permitted hereunder, encumbrances, liens for non-delinquent ad valorem taxes and special assessments, and other matters of record. Thereafter, the

Board, as designated in the Articles, shall elect the officers and adopt the bylaws of the Association. Except as otherwise specifically provided herein, the Board shall diligently carry on the duties of the Association as specified in this Declaration.

ARTICLE III

3.1 Owners' Use of Common Area. Except as otherwise provided in this Article III or elsewhere in this Declaration, every Owner, and any occupant of a villa thereof shall have a nonexclusive license to use the portion of the Common Area located in the Property, exclusively as an emergency access roadway, and such license shall be appurtenant to and shall pass every Lot, or one-half of a Lot, subject to the following provisions and to the other provisions of this Declaration:

A. The right of the Developer until villas have been constructed on all Lots and are first occupied, or the HOA Turnover Date, whichever first occurs, and thereafter the Board, to establish other rules, regulations and/or requirements regarding the activities on or uses of the Common Area, including, but not limited to, the recreational facilities thereon, and to restrict or eliminate some or all types of activities or uses thereof and limit the persons, and the number of persons, entitled to use the same. All Owners, and occupants, must strictly adhere to such rules, regulations and requirements;

B. The Board shall engage a management company on behalf of the Association and delegate to such company (or persons designated by such company) the right to determine whether violations of this Declaration, and rules or regulations have occurred with regarding to the Common Area, including, but not limited to, compliance with each maintenance and repaid obligations hereunder; and

C. The covenants and restrictions contained herein.

3.2 Extension of Rights to Family; Guests; Limitations With Regard to Entities; Guests. An Owner's right of enjoyment in the Common Area shall automatically extend to all occupants and the members of his or her immediate family residing in a villa on a Lot with such Owner. Subject to applicable rules and regulations, occupants of villas may invite guests to use the Common Area permitted hereunder.

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

3.4 Alteration of the Common Area. Notwithstanding anything to the contrary provided herein, the Developer or the Board, at any time, whether before or after the completion of the construction of a villa on each Lot, may reconfigure, convey, eliminate, remove and reduce, alter or reconfigure the Common Area from time to time by replatting, lot split, boundary shift or other subdivision procedures or deeding land, for the purpose of adding land to, or removing land from, the Common Area.

3.5 Damage to Common Area, Etc., Prohibited. No Owner, or villa occupant, or guest or invitee thereof, shall do or allow to be done any act which causes or threatens to cause any damage, encroachment or disrepair to the Common Area, street rights-of-way, the villa or portion of any Lot of any other Owner, or any improvements thereon. Specifically, each Owner shall repair any damage sustained to ***any other Lot, Common Area or street right-of-way*** in connection with the construction of Structures on such Owner's portion of a Lot, including, but not limited to, damage to vegetation areas, concrete or paving, landscaping, sprinkler systems and other improvements as a result of the installation of sanitary sewer or heat pump lines or other construction or excavation activities. Owners are hereby advised that DIG SAFE (a service which may be consulted in advance of excavation to locate existing utility lines) does not identify sprinkler system lines or other underground electrical or plumbing lines which have been installed.

3.6 Water For Irrigation. Developer, or Association, may drill a well or wells for water to irrigate portions of the Common Area, the Lots and road right-of-way. If Developer, or Association, is unsuccessful in obtaining appropriate permits or authorizations for such well(s); is unable to complete a satisfactory well or wells; or if the well or wells cease to produce sufficient water, then water from the city in which the Property is located may be used for such irrigation, at a higher cost.

3.7 Owner's Consent to Water Well Spacing. *From time-to-time, the Association, or the Developer, for the benefit of the Association, will seek authorization from the proper authorities to drill water well(s) within the Common Area, or on one or more Lots for the purpose of irrigating the Common Area, certain road right-of-way areas and other Lots from time-to-time. All current and future Owners are deemed to have irrevocably consented to the granting of such authorization and irrevocably waives any objection thereto for any reason, or no reason, including, but not limited to, the spacing distance between the well location(s) sought by the Association, or Developer, and the current or future well location(s) of Owners on their respective portions of the Lots. Each Owner hereby irrevocably grants to the Developer a power of attorney coupled with an interest to executed on behalf of each Owner any waiver necessary or convenient to consent to the application of Developer or the Association to obtain authorization from the proper authorities for drilling a water well(s) in the Common Area or one or more Lots, from time-to-time.*

3.8 Common Area Amenities Developer may install amenities within the Common Area as determined in its discretion, from time-to-time.

3.9 No Irrigation in Common Area. The Developer does not plan to provide any irrigation, seeding or sodding in the Common Area, but retains the right to do so if it so chooses.

ARTICLE IV

COVENANTS CONCERNING ASSESSMENTS AND LIENS

4.1 Annual Budget. The Board or Developer may prepare a budget based on all of the anticipated costs and expenses of the Association for the ensuing calendar year, or remainder of such year, if applicable. Bids may be obtained for some Association services, where deemed appropriate by the Board. Subject to the exemptions permitted hereunder, all costs and expenses of the Association for a calendar year, or remainder of such year, if applicable, relating to the overall maintenance of the Property or operation of the Association and not related to specific Owners and their villas (or portion thereof), shall be invoiced monthly to all Owners of one-half Lots upon which a villa has been completed, in accordance with Section 4.2 below. Lots, or one-half Lots upon which a villa has not been completed, are exempted from general assessments.

4.2 General Assessments. For the purpose of providing funds for the Common Area and operation of the Association, and for performance of its rights and duties hereunder and taking such actions as the Board, or Developer, on its behalf, shall deem appropriate, and to afford the Association the means and resources necessary to carry out its rights, duties and functions, the Board, or Developer on the Board's behalf, shall, in each year, assess against each one-half of a Lot on which a villa has been completed, or a separate villa has been constructed, as applicable, and each Owner thereof, which is otherwise not exempt hereunder, general assessments, which general assessments shall subject each one-half of a Lot to a lien to secure payment thereof. If a villa has not been completed on a Lot, or one-half Lot prior to the date an assessment is assessed, but a villa is completed during the applicable assessment period, the Board, or the Developer on its behalf, shall prorate such assessment to such Owner, as it deems appropriate, in its discretion. As used in this Declaration, the terms "assessments" include general assessments, special assessments, transfer assessments and SS Fees, as applicable. *The Board or Developer shall on a monthly basis notify the Owners concerning all costs and expenses ("Total HOA Costs") of the Association, which Total HOA Costs shall be divided proportionately by the number of one-half Lots which are required to pay assessments hereunder, and the Owners of such one-half Lots shall be notified of the portion ("Allocated Costs") of the Total HOA Costs to be paid by them respectively. The Owners shall pay the Allocated Costs to the Board or Developer, as requested, within fifteen (15) days following the date the notice of the Allocated Costs are sent to them by the Board.*

4.3 Basis of Assessment; Exemptions; Transfer Assessment; Proration.

A. All assessments shall be made against the Owners for each one-half of Lot or fraction thereof owned by the Owner or Owners upon the purchase of a Lot, or one-half Lot, as applicable, and/or completion of a villa thereon, as provided in Sections 4.1 and 4.2 above.

B. 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, shall be exempt from imposition of any assessment, whether general, special, or transfer fee, with respect to any Lot so long as Developer or such contractor holds legal title thereto.

C. At any time legal title to a side/one-half of a Lot transfers, the transferee shall pay at the time of the closing of such transfer to the working capital of the Association an amount equal to two hundred fifty dollars (\$250.00); if a full villa (that is, both sides of a duplex is transferred) is transferred, then the transfer fee shall be five hundred dollars (\$500.00); provided, the requirement to pay such transfer fee shall not apply to a transfer by Developer to an affiliated entity; a transfer of Developer's interest as "developer" of the Property to a third-party; the transfer of a Lot, or a portion thereof, to a building contractor by an Owner for the purpose of constructing a villa for such Owner; or the transfer by an Owner to a trust; a transfer by a trust or estate to a beneficiary or a transfer from an Owner to a grandchild, child, parent or sibling; or under such other circumstances that the Developer (until villas have been constructed on all Lots and are first occupied, or the HOA Turnover Date, whichever first occurs), or the Board determine to be appropriate shall excuse the requirement of the payment of such transfer fee.

4.4 Special Assessments. In addition to general assessments and other assessments hereunder, and subject to the exemptions which apply hereunder, the Developer, so long as it is performing the functions of the Board and the Association, and thereafter the Board, may, from time to time, at a regular meeting or a special meeting called upon notice for such purpose, establish a special assessment to be levied equally against each portion of a Lot following the completion of a villa thereon 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 prior special assessment shall be valid except upon the approval of all Owners. Further, the Board shall have the authority (without any approval of the Members) to establish and fix a special assessment the applicable portion of a Lot/villa, or applicable portion thereof, to secure the liability of the Owner of such portion of a Lot to the Association for any breach by such Owner of any of the provisions of this Declaration, which breach results in an expenditure by the Association for repair or remedy of such breach. 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.

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

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

4.7 Notice of Delinquency. At any time after any assessment or SS Fee against any portion of a 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 portion of a Lot, which Notice shall state therein the amount of such delinquency and that it is a lien, and the interest, costs (including attorneys' fees and expenses) fines and late fees, which have accrued thereon, a description of such portion of a Lot against which the same has been assessed, and the name of the Owner thereof, and such Notice shall be signed by an officer of the Association. Upon payment or other satisfaction of said assessment, interest, late fees, fines and costs and expenses in connection with which notice has been recorded, the Association shall record a further notice stating the satisfaction and the release of the lien thereof.

4.8 Right of Enforcement by the Association. By the acceptance of title to a portion of a Lot, subject to the limitations contained in Section 11.11 below, each Owner shall be held to vest in the, the Association the right and power to prosecute all suits, arbitrations, legal, equitable, or otherwise, which may be necessary or advisable for the collection of assessments, SS Fees, and the enforcement of any provision of this Declaration or the Bylaws, charges or fines, and the Association shall have the right to sue for and collect a reasonable sum to reimburse it for its attorneys' fees and any other expenses reasonably incurred in enforcing its rights hereunder. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration or documentation associated therewith (whether such liens are now in existence or are created at any time in the future) the benefit of any redemption, homestead or exemption laws of the State of Kansas now in effect, or in effect from time to time hereafter. **The Association and the Board may delegate such rights of enforcement, including the right to give notices and take other actions under this Article IV, to a management firm it selects from time-to-time, and the acts and requirements of such management firm shall be deemed the acts of the Board and the Association.**

4.9 Enforcement of Liens. Notwithstanding Section 11.11 below, each lien established pursuant to the provisions of this Declaration and which is specified in a Notice of Delinquency as hereinabove provided, may be foreclosed in like manner as a mortgage on real property as provided by the laws of Kansas. Each current and future Owner hereby consents to the foreclosure procedures specified in this Article. In any action to foreclose any such lien, the Association shall be entitled to its costs and expenses, including reasonable attorneys' fees, and expenses, and such late fees, fines and accrued interest for delinquent charges and assessments as shall have been established by the Association. The Association shall have the right to bid on a

portion of a Lot, or a Lot, at the foreclosure sale. The foreclosure proceedings with respect to liens established pursuant to this Declaration, may be foreclosed at anytime within fifteen (15) years following the filing of the Notice of Delinquency; provided, if at the expiration of such fifteen (15) year period suit shall have been instituted for collection of the assessment, the lien shall continue until payment in full or termination of the suit and sale of the applicable Lot, or portion thereof.

4.10 Subordination to Mortgages. Each and every assessment, SS Fee 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, or portion thereof, purchased at foreclosure shall be bound by the restrictions, assessments, SS Fees and liens set out in this Declaration, not including, however, any assessment or lien arising prior to the foreclosure sale.

4.11 Personal Liability. In addition to the covenants and agreements heretofore set forth herein, each Owner of a Lot, or portion thereof, by the acceptance of a deed therefor, whether or not it shall be so expressed in such deed, shall be deemed to have agreed to be personally liable for the payment of each general and special assessment, SS Fee, late fee, interest and fine levied against such Lot, or portion thereof, during the period of ownership and for all other payment obligations specified in this Declaration.

4.12 Late Fee and Interest on Delinquent Assessments. In the event assessment charges (general, special, transfer or SS Fee), fine or other sums due under this Declaration shall remain due and unpaid thirty (30) days after the same are due the Owner shall be charged a late fee of five percent (5%) of the unpaid amount and the unpaid amount shall bear interest at the rate of fifteen percent (15%) per annum, or such other rate as may be established from time to time by the Board; provided, however, that such interest rate shall never exceed the maximum allowed by law.

4.13 Fines. The Board, shall have the authority to assess fines for any violation of this Declaration by an Owner, which fines shall be determined in the sole discretion of the Board; provided, a fine may not exceed fifty dollars (\$50.00) per day of violation unless unanimously approved by Developer or all members of the Board. Prior to assessing such fine, the Board shall mail written notice to the last address known to the Board concerning the noncompliant Owner, specifying the violation. If the noncompliant Owner fails to cure the violation within ten (10) days following the mailing of such notice by the Board, or if there is a reoccurrence of the violation during such ten (10) day period, then in addition to any other liability or obligation arising under the Declaration, the Board may assess a fine against the noncompliant Owner and his Lot, or portion thereof, in an amount permitted above, which shall be paid within ten (10) days following the date notice thereof is given to such Owner by written notice deposited in the mail to the Owner's address last known to the Board, or personal delivery thereof to the residence of such Owner. Until paid in full, the amount of such fine shall constitute a lien on the noncompliant Owner's portion of a Lot, and shall be subject to enforcement and foreclosure in the same manner as an assessment under this Article IV. Attorney's fees, including any expenses, costs and charges relating thereto, shall, to the extent allowed by law, be deemed part of the sums due hereunder.

4.14 Limitation on the Association's Expenditures. The Owners covenant not to increase the costs and expenses for the operation of the Association from year to year more than is reasonably necessary to perform the responsibilities of the Association as currently specified in this Declaration. Neither the Owners nor Association shall expand the scope of the Association's duties under this Declaration which results in an increase of operating costs or expenses of the Association without the prior written approval of all of the Owners.

4.15 Surveillance Security Fee. At such times, if any, that the Developer or the Board elects to obtain surveillance security services (installing a limited number of security cameras within the Property) for the Association, then in addition to the assessments referenced above, each Lot and the Owner(s) thereof, shall be assessed with a surveillance security fee ("SS Fee") to be paid by such Owner(s) to the Association. If the surveillance security services are in effect, the amount of the SS Fee shall be determined on a per Lot basis by the Declarant from time-to-time until a residence has been completed on each Lot and is first occupied, and thereafter the Board, on a proportionate basis, subject to the exemptions contained herein.

ARTICLE V USE, OCCUPANCY AND CONDUCT RESTRICTIONS

5.1 General. The Property is subject to the conditions, covenants, restrictions, reservations and easements hereby declared to ensure the most appropriate development and improvement of each Lot for the construction and rental of villas; to guard against the erection thereon of poorly designed or proportioned improvements and improvements built of improper or unsuitable materials; to ensure the development of the Property; to encourage and secure the erection and long term maintenance of villas of appropriate size and appearance thereon, with appropriate locations thereof on Lots; 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, or portion thereof, onto adjacent Lots, or portions thereof and to and from the Common Area. ADDITIONALLY, ALL OBLIGATIONS AND LIABILITIES OF ANY OWNER UNDER THIS DECLARATION SHALL, IN ADDITION TO THE OWNER OF A LOT, OR PORTION THEREOF, BE BINDING ON THE TENANT/OCCUPANT OF SUCH OWNER DURING THE TERM OF SUCH OCCUPANCY, NOTWITHSTANDING THAT THE PROVISIONS HEREOF DO NOT SPECIFICALLY REFERENCE SUCH TENANT OR OCCUPANT. ALL OWNERS MUST ATTACH A COPY OF THIS DECLARATION TO EACH LEASE OR RENTAL AGREEMENT AND THE LEASE OR RENTAL AGREEMENT SHALL SPECIFICALLY REQUIRE THE TENANT/OCCUPANT TO COMPLY WITH ALL OBLIGATIONS AND LIABILITIES UNDER THIS DECLARATION, INCLUDING, BUT NOT LIMITED TO, THIS ARTICLE, WITH RESPECT TO THE APPLICABLE LOT, OR PORTION THEREOF, AND THE OWNER THEREOF.

5.2 Construction Requirements. Unless approval is otherwise approved by the Design Committee, the following construction guidelines shall be complied with:

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

i. Exterior walls and facings of all buildings, Structures and appurtenances thereto constructed on any Lot, or portion thereof, shall be of brick or Masonite siding, or any combination thereof.

ii. Roof materials installed on the roof of each villa or other Structure shall be exclusively composition material approved in advance of the initial construction of the applicable villa by the New Construction DRC, including approval concerning the color, or colors, thereof ("Approved Composition"). Approved Composition, as it may be changed from time-to-time by the New Construction DRC, shall continue to be the exclusive roofing material used for replacement of roofs within the Lots.

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

i. All basketball backboards shall be either white or glass and shall be placed or installed only in the rear yard, unless otherwise approved by the Design Committee.

ii. All recreation and play equipment shall be located in the rear of any Lot.

iii. All vegetable gardens shall be in the back yards only.

iv. Dog runs must be screened from view from neighboring homes with fencing or other appropriate material.

v. All exterior wood surfaces on homes must be painted, or stained and sealed (excluding decking) and otherwise properly maintained for a good appearance.

vi. All forms of sculpture or "yard art" must first be approved by the Design Committee.

vii. Unless otherwise approved in writing by the Developer, before occupancy of a villa unit and immediately following completion of a villa on a Lot, or as soon as it is seasonal to do so after such completion, the Owner thereof shall install an underground irrigation system and sod the lawn area on the entire Lot (not just a side/one-half of a Lot) and plant a minimum of six (6) perennial shrubs and/or bushes in the front of each Lot (with at least 3 shrubs/bushes for each half of the villa), and with a minimum of two (2) trees planted in the front of each Lot (at least 1 tree for each half of the villa), with the trunk of each tree being a minimum of two (2) inches in diameter; provided, Developer may reduce the number of trees, shrubs or bushes required to be planted, without amending this Declaration. Furthermore, the Developer may determine that a specific Lot is

too small to permit the planting of all of the trees, shrubs or bushes required under this Section and may grant a variance to reduce such requirements on a Lot-to-Lot-basis.

viii. Pad elevations and all exterior drainage shall be verified by the Association's engineer at the cost of Owner and any deviation therefrom and any resulting liability, damage, or costs incurred as a result thereof, shall be the responsibility of the Owner.

ix. Mail box Structures shall be approved by the Design Committee prior to construction.

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

C. *Villas; No Sheds.* No building shall be erected, altered, placed or permitted to remain on any Lot, other than one or two villa residences for private use, with a private garage and other Structures incidental to residential use, which are approved by the Design Committee as specified herein. No prefabricated or modular buildings will be permitted to be constructed or installed on any Lot, or portion thereof, without the prior written approval of the Design Committee. This subsection prohibits, without limitation, the following: the installation of any shed, storage facility, playhouse or other detached improvement.

D. *Minimum Square Footage.* The minimum size of each one-half of a villa constructed on a Lot shall be 1,000 square feet of floor area on the ground floor; each full villa building constructed on a Lot shall be a minimum of 2,000 square feet of floor area on the ground floor; provided, when two (2) villas are constructed on a Lot, each such villa shall be a minimum of 1,000 square feet of floor area on the ground floor.

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

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

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

5.6 No Storage; Trash. No trash, ashes, dirt, rock or other refuse may be thrown or dumped on any Lot or building site, or portion thereof. 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 villa 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.

5.7 No Businesses Allowed. Except as otherwise specified in this Declaration or as authorized herein or in writing by the Developer, prior to the date on which both sides of the villas have been completed on each Lot, and first occupied, or the HOA Turnover Date, whichever first occurs, and, thereafter, the Board, no business, trade or similar activity; no retail, wholesale, manufacturing or repair business of any kind; no group home (that is, any licensed residential facility occupied or intended to be occupied by persons with a disability [as defined under Kansas law], or one or more staff residents, none of which need be related by blood; or a residential facility providing cooking, sleeping and sanitary accommodations for a group of people, not defined as a family on a weekly or longer basis); drug or other addiction or similar rehabilitation facility; no correctional placement residence; and no bed and breakfast inn or facility or VRBO, Airbnb or similar facilities shall be permitted to be conducted on any Lot, or portion thereof, 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. Subject to compliance with any applicable ordinances or laws and any rules adopted by the Board from time-to-time, the following home occupations are hereby expressly authorized so long as insubstantial traffic results therefrom within the Property; the hours of business operation shall be approved in writing by the Developer or the Board, and no signage for any such business activity may be permitted: child daycare limited to a maximum of three (3) children at any one time, unless the Developer or the Board shall authorize a greater number in writing; building contractors; realtors; pet grooming; and beauty salon. "Insubstantial traffic" shall mean that no more than two (2) vehicles are parked at a villa unit by customers and employees/workers in relation to such business activity at any one time. This Section shall not limit or prohibit to any activity conducted by the Developer, and any builder or contractor constructing a villa or other improvements within the Property.

5.8 Temporary Buildings. Except as authorized by the Board, no partially completed residence, tent, shack, garage, barn or outbuilding erected on a Lot, or portion thereof, 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.

5.9 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, or portion thereof, subject to this Declaration.

5.10 Animals. No snakes, exotic animals, birds, poultry, pigs, bees, animals or insects shall be kept or maintained on any Lot, or any portion thereof, except dogs and cats and other commonly accepted household pets approved from time to time by the Developer or the Board. Under no circumstances shall any commercial or agricultural business enterprise involving the use or breeding of animals be conducted on the Property. The Developer or 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, or any portion thereof, and the Owners shall strictly comply therewith. Dogs, cats and all other approved pets shall be confined at all times to the Lot, or any portion thereof, other than when outside the Lot, or any portion thereof, on a leash. No dogs, cats or other approved pets shall be tethered to a stake or similarly confined on any Lot, or any portion thereof. All pets must be properly immunized as required by applicable ordinances, codes and laws. Owners must prevent such animals from barking or making other noises at any time which the Developer or Board determines are annoying or a nuisance to neighbors or those using the Common Area. Among other remedies available to the Board, it may fine the Owner(s) of Lots, or any portion thereof, pursuant to Section 4.13 with regard to animals which are determined by the Board to be an annoyance or nuisance or not approved hereunder.

5.11 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 or the Common Area; provided, however, that permission is hereby granted for the erection of unlighted, temporary, standard sized signs by real estate firms for the sole and exclusive purpose of advertising for sale or rental the Lot and the villa and any political signs during a political season (such signs shall be removed within one (1) week after the applicable election).

5.12 Antennas. Except as authorized by the Design Committee, there shall not be erected any external television or radio antennas or permanent clothesline structures, either permanently or temporarily, upon the Lots, villas, or portion thereof; provided, notwithstanding the foregoing, an Owner may install within his or her portion of a Lot a television satellite dish having a diameter of not more than twenty-four inches (24"), so long as the location of such dish is satisfactory to the Design Committee and is not visible from the front or side of the villa. Should any part or all of the restrictions set forth in this Section be unenforceable because the same violate a statute or the First Amendment or any other provision of the United States Constitution, the Design Committee shall have the right to establish rules and regulations regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections within the Property and any such rules and regulations shall be binding upon all of the Lots and the Owners thereof.

5.13 Vehicles and Trailers. No boat, boat trailer, house trailer, camper, recreational motor vehicle, camper trailer or similar vehicles be stored or **permanently, continually or regularly parked on any street, driveway or in the open on any Lot, or portion thereof, or the Common Area**; provided, that a camper or recreational vehicle/motor home may be parked within an Owner's driveway for a period not to exceed seven (7) consecutive days, or no more than fifteen (15) days in the aggregate, within a thirty (30) day period. *This Section 5.13 shall not be ignored, not enforced, waived, amended or modified by the Board or Association without the prior written consent of the Developer.*

5.14 Fences.

A. Except as specifically provided below, all fences and gates installed on a Lot shall be made of wood, vinyl or better, such as black wrought iron, black aluminum or tubular steel material. Cedar wood fencing material shall be installed in the backyard thereof as fencing between the two adjoining villa garages. Wood and vinyl fences shall be six feet (6') in height. Metal fences permitted hereunder shall be five feet (5') in height. Approved fences located between garages of adjoining villas shall be a minimum of four feet (4') in height.

B. All fences installed within drainageways shall have a minimum of four inches (4") clearance above the ground level (other than posts installed in the ground) in order to not divert or disrupt water drainage from the Lot.

C. All gates in fences shall be four (4') or five feet (5') in width.

D. All fences shall be approved by the Design Committee prior to the initial construction or installation thereof on any Lot. Fences on a Lot, or one-half Lot, may not be removed except to replace the removed fence promptly with a fence permitted under this Section. All replacement fencing must be approved prior to installation by the Design Committee. No fence, wall, berm, series of trees, living fence or other Structure may be installed on a Lot except as authorized in writing by the Design Committee.

5.15 Airport. The Property may be located in the vicinity of an airport. Each purchaser of a Lot, or portion thereof, assumes that risk (if any) associated therewith.

5.16 View. No Owner has any right to an unobstructed view beyond the boundaries of the Owner's Lot, or portion thereof. No Owner shall be entitled to prevent the construction or location of any Structure, planting material or other item on any other part of the Property, which is permitted by this Declaration, because such Structure, planting material or other item obstructs any view from such Owner's Lot, or portion thereof.

5.17 Erosion; Water Pollution Control Permit and Related Matters; Compliance With Laws. Each Owner shall comply strictly with any law or ordinance regarding erosion or runoff, including, if applicable, a Stormwater Pollution Prevention Ordinance, the Kansas Water Pollution Control General Permit And Authorization To Discharge Stormwater Run-Off From Construction Activities Under the National Pollutant Discharge Elimination System or similar ordinance or law adopted by the city or other governing body having jurisdiction over the Property. Such permit, laws, and regulations, together with laws and ordinances of the city and county in which the Property is located, require that erosion and sediment control measures be implemented in connection with construction activities on such Lot, or portion thereof, including, but not limited to, site work such as clearing, excavating, and grading the Lot, or portion thereof, in order to eliminate or substantially reduce stormwater discharge, the discharge of pollutants and water quality violations. Significant penalties may be imposed in the event activities on any Lot, or portion thereof, are not conducted in full compliance with the aforementioned permit, laws, regulations and ordinances. Each Owner agrees to conduct activities, including construction activities, on his or her Lot, or portion thereof, strictly in

accordance with this Declaration, all laws, rules, regulations, and ordinances now or hereafter in effect, including, but not limited to, those referenced above, by reason of the aforesaid permit, regulations, rules and ordinances and shall indemnify and defend Developer and the Association from any consequences of such Owner's, or his contractors' or subcontractors', failure to so comply, including but not limited to all damages, liabilities, fines, penalties and costs and expenses, including reasonable legal fees and expenses.

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

5.19 Enforcement by Management Company. The Board may delegate to the management company hired by the Association all, or any portion of, the rights of the Developer or the Association under this Article and elsewhere in this Agreement.

5.20 Storage Pods. Except as otherwise permitted from time to time by the Board, storage pods, containers or other similar storage facilities shall not be located in the open on a Lot, or portion thereof, except on a temporary basis. A "temporary basis" as used in the proceeding sentence shall mean (a) usage by the building contractors during the initial construction of the villa, or during substantial remodeling activity (which shall be performed as soon as reasonably possible), and (b) following the completion of the initial villa, then only by the Owner(s) in connection with their move into the residence or a move out of the villa for a period not to exceed ten (10) consecutive days in connection with each move in or move out. Whether to allow exceptions to the prohibition contained in this Section is in the discretion of the Board, but Developer recognizes that in times of substantial remodeling of a villa, or portion thereof, and possibly other circumstances, it would be appropriate for the Board to allow such items to be stored in the open for a short time.

5.21 Covenants For Maintenance; Obligations Of Association and Owners; Enforcement.

A. *Coordination for Certain Damages*. From time-to-time, contractors providing mowing, irrigation or other services on the Lots may accidentally damage the exterior of a villa. Upon request from an Owner, the Board shall cooperate and attempt to assist the Owner of each villa so damaged by contacting the contractor that caused the damage to arrange the repair of such damage and the payment of the costs therewith by the contractor.

B. *Limited Lawn Care*. The Association shall engage one or more contractors to perform the following limited lawn care duties with respect to each side/one-half of a Lot:

i. The annual startup and winterizing of water sprinkler systems, including the "turn on" of the system, setting controls, testing PVB(s), adjusting clocks throughout the watering season to insure reasonable coverage, adjustment of heads as needed to insure reasonable coverage, blowing lines free of water and the "turn off" of system at the end of the season and otherwise maintaining, repairing and replacing the water sprinkler systems;

ii. Set the sprinkler system for irrigating the lawn, and fertilizing and applying weed control to the lawn as necessary, in the opinion of the Board;

iii. Regular mowing and edging of the open lawn areas (excluding lawn areas within enclosed patio areas on any applicable Lot, or areas with playground or other equipment, with respect to which the Owners of the applicable side/one-half of a Lot shall contract directly with the company providing lawn care service to the Association, to arrange for mowing and edging within such enclosed area). The mowing service will not move playground equipment or other backyard items and will not mow closely around any such equipment or items or in any area where a dog is maintained (the Owner(s) of the applicable Lot is required to maintain those areas which are not mowed by the mowing service); and

iv. Fertilizing, and pruning, all as determined by the Association, of all trees, shrubbery, and other plantings which have been approved in writing by the Design Committee prior to their installation.

C. *Certain Maintenance and Repairs Performed for the Owners.* The Association shall engage a management company to inspect the Lots from time-to-time to determine if portions of lawn areas, trees, shrubs or other plantings should be removed and replaced and if fences and gates or irrigation system and equipment should be maintained, repaired and replaced so that the same are in good appearance and operating condition. If it is determined that any maintenance, repair or replacement should be performed, the Board shall notify the applicable Owner(s) of such need. Unless the applicable Owner(s) notify the Board of its agreement to complete such maintenance, repair or replacement on a schedule acceptable to the Board, the Board shall direct the inspecting contractor(s) to perform such work at the cost of the applicable Owner(s). If an Owner agrees to perform such Work on a schedule satisfactory to the Board and fails to do so, the Board may direct the inspecting contractor(s) to complete such work in lieu of the applicable Owner(s). Developer hereby grants a nonexclusive, perpetual easement for the Association's contractors to access the Lots to perform such inspections and to perform the maintenance, repairs and replacements determined to be necessary by the Developer or the Board. Upon completion of the performance of such maintenance, repair and replacement on a Lot, the Association shall invoice the Owner of such Lot for the actual cost thereof to the Association and such Owner and the Owner shall remit payment in full without thirty (30) days following receipt of an invoice therefor. Such charges, while being invoiced directly by contractors, shall be deemed a special assessment by the Association against such Owner pursuant to the third sentence in Section 4.4 above and is subject to all rights and remedies available under Article IV in the event the Owner fails to timely pay the same.

D. *Insurance To Be Obtained And Maintained By Owners.* **Each Owner shall maintain in full force and effect a policy of fire and extended coverage insurance against loss or damage by fire or other casualty to the full replacement value of the Structures located on such Owner's Lot, excluding land, foundation,**

and excavations. Upon request by the Developer, a Board member or officer of the Association, an Owner shall provide such evidence as may be requested to confirm that such insurance is in effect. NEITHER THE DEVELOPER NOR THE ASSOCIATION WILL OBTAIN OR MAINTAIN ANY INSURANCE REGARDING ANY VILLA, OR PORTION THEREOF, ON A LOT; IT IS SOLELY THE OBLIGATION OF THE OWNERS TO OBTAIN AND MAINTAIN ANY SUCH INSURANCE.

E. *Maintenance By Owner.* Except with respect to those limited maintenance obligations which are specifically required to be performed by the Association pursuant to this Declaration, each Owner shall keep all Lots owned by it, and all improvements, including the villa (or such Owner's portion thereof), garage, fence/gates, irrigation system and other improvements therein or thereon, in good order, condition, repair and replacement. Each Owner shall paint (or perform other appropriate external care) its villa, or portion thereof, deck, Structures, and other improvements owned by it, 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. Each Owner of a portion of a Lot which is contiguous to any public road right-of-way, shall sod and irrigate, and otherwise maintain in good, sightly condition, a lawn area between the boundary of such Lot and the actual road within such public right-of-way or other area. Each Owner shall promptly replace any lawn area, repair and replace the irrigation system and any trees and shrubbery that become diseased or substantially dead on such Owner's Lot, or portion thereof, and the adjoining road right-of-way, so that the same are in good appearance and condition at all times. Replacement trees and shrubbery shall be of approximately the same size as the replaced trees or shrubs. **All Owners acknowledge that the Property, including the Lots and improvements thereon, lawns, streets, trees, shrubbery be kept in a high quality appearance for the long term to maintain a high value of the Property.** Each Owner's obligation hereunder shall commence upon the acquisition of such Owner's full, or portion of, a Lot.

If any Owner fails to perform such duties, or otherwise breaches such Owner's obligations as specified in this Declaration, the Association, upon approval by the Board, and after fifteen (15) days written notice to such Owner to remedy such default, shall have the right (in addition to any other rights and remedies available hereunder or at law or equity), but not the obligation, through its agents and employees, to enter upon the Lot, or portion thereof, involved and to repair, maintain, repaint, remove, and restore such Lot, or portion thereof, or such improvements, trees, shrubs and lawn areas or otherwise bring such Lot or such improvements into conformity herewith and the cost thereof (hereinafter sometimes called the "Compliance Charge") shall be a binding personal obligation of such Owner which shall constitute a lien enforceable in the same manner as a mortgage upon the Lot(s), or portion thereof, in question in the following manner: The Association may record an Affidavit of Nonpayment of Compliance Charge in the Office of the Register of Deeds of Sedgwick County, Kansas, stating (a) the legal description of the property upon which the lien is claimed, (b) the name(s) of the Owner(s) of said property as last known to the Association, and (c) the amount of the Compliance Charge which is unpaid. The lien may be foreclosed in the like manner as a mortgage on real

property as provided by the laws of Kansas at anytime within twenty (20) years following recordation of the Affidavit of Nonpayment of Compliance Charge. In any action to enforce an Owner's obligation hereunder and/or foreclose any such lien, the Association shall be entitled to recover its costs, including reasonable attorney's fees, and such penalties for delinquent charges and assessments as shall have been established by the Association. The lien referenced herein shall be created at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the applicable Lot, or a portion thereof, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes and other public charges as are by applicable law made superior. The Compliance Charge shall accrue interest at the rate established from time to time by the Board as referenced in Section 4.12 hereof. The rights under this Section shall be cumulative and in addition to all rights and remedies otherwise available at law or equity.

5.22 Villa Residences to Remain as Such. If a villa is constructed with two (2) sides, such villa shall at all times contain two (2) separate, but attached, units.

5.23 Conduct of Occupants. No Owner or occupant of a villa unit, or invitees thereof, shall use, keep, or permit to be used or kept, any foul or noxious gas or substances in his or her unit, or permit or suffer his or her unit to be occupied or used in a manner offensive or reasonably objectionable to the Board or other Owners or occupants of the Property by reason of odors, or interfere in any way with the Owners or occupants of other Lots.

No occupant of a villa, or invitee thereof, shall commit or suffer to be committed any waste or nuisance upon the applicable Lot.

No Owner or occupant of a villa, or the invitees thereof, shall do or permit anything to be done in or about the applicable unit or Lot, or bring anything therein, which will in any way conflict with any law, ordinance, order, rule, regulation or requirement affecting the occupancy or use of the unit which is or may hereafter be enacted or promulgated by governmental authorities, or in any way obstruct or interfere with the rights of others, nor shall any such Owner occupant or invitee thereof, use or allow the villa or Lot to be used for any improper, immoral or objectionable purposes as reasonably determined by the Board.

5.24 Loudspeaker; Noise. No Owner or occupant of a villa, or invitees thereof, shall use, play or discharge any television, radio, stereo, loudspeaker, vibrations, musical instrument(s), horn, whistle, bell, or other sound device so as to be audible to occupants of other side of the applicable villa building or other villas beyond the applicable Lot, except alarm devices used exclusively for security purposes is hereby prohibited.

5.25 Emergency Access. There may be access by emergency vehicles and equipment to and from the Property and a public road at a location within the Common Area established hereafter by Developer after the date hereof. Emergency access improvements may be constructed in connection therewith. The emergency access improvements shall be maintained

and repaired by the Association in a good and useable condition, and as required by the Wichita Fire Department.

5.26 No Above Ground Pools/Trampolines. No above ground swimming pool (other than small wading pools for temporary use by children), trampoline or similar items may be placed or installed on any Lot.

5.27 No Solar Panels. No solar panels, or associated equipment, may be installed on any Villa or on any Lot, or portion thereof.

ARTICLE VI

THE ASSOCIATION

6.1 Powers, Duties and Rights.

A. The Association shall have the rights and powers as set forth in its Articles and Bylaws, together with its general powers as a nonprofit corporation, and it shall perform each and every duty required of it by this Declaration.

B. Developer may carry out all of the rights and powers herein delegated to the Association and the Board so long as it owns a Lot, or portion thereof, after which time, or on such earlier date as Developer shall elect, such duties and powers 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. The date Developer relinquishes and turns over all of such rights and powers is the "HOA Turnover Date" as referenced in Section 1.08 above. Developer's rights hereunder include the right to solely designate the Board members. 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 maintain such insurance as the Board deems necessary and advisable.

D. The Association shall have the right to create and establish financial reserves as determined by the Board from time to time.

E. The Association, through the Board, shall have the right to adopt, and modify from time to time, such rules and regulations as it may deem advisable for the maintenance, use, conservation and beautification of the Property and for the health, comfort, safety, enjoyment and general welfare of the Owners and occupants of Lots, or portion thereof.

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

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

H. The Board shall employ from time to time on behalf of the Association a management company to serve as the management and/or enforcement personnel, which personnel shall have the right to determine whether violations of rules or regulations have occurred, and perform such other duties as the Board shall designate.

I. The Board shall have a single director, initially, Jay W. Russell, who shall serve in such a capacity until his death or voluntary resignation. So long as Mr. Russell serves as a director, no other person may be designated as a director without his written consent. However, Mr. Russell may designate other person (s) to serve as directors with him from time-to-time.

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

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction or rule being enforced is, or may be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria to pursue enforcement action.

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

6.2 Operations and Expenses. The Developer, or the Board, may engage accountants, legal counsel and other consultants as may be reasonably necessary for the discharge of its duties hereunder.

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

ARTICLE VII

OTHER EASEMENTS AND ACCESS CONTROL

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

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

7.3 Easements in Favor of Developer and Association. Developer specifically reserves unto itself, its successors and assigns, and grants to the Association, a perpetual, nonexclusive easement and right-of-way over the Lots and Common Area for maintenance, repair and replacement or other action permitted hereunder or reasonably determined to be necessary or appropriate by Developer or the Association, including, but not limited to, a perpetual, nonexclusive easement over, under and across the Common Area and each Lot for the construction, installation, replacement and maintenance, repair, replacement and operation of a water well and electrical equipment and related equipment and materials and piping and other irrigation materials or equipment. Developer may have installed a sign advertising the residential development for the Property on a Lot or Common Area. Developer, its successors and assigns, hereby retain an easement for the placement, and replacement, of any such advertising sign until all Lots have been sold by Developer or its successors and assigns.

ARTICLE VIII

DESIGN COMMITTEE; ARCHITECTURAL CONTROL

8.1 Committee. A design committee (the "Design Committee") shall have responsibility for the review, approval or disapproval of plans relating to the construction, remodeling, additions and other changes to Lots, or portions thereof, and Structures, including a villas.

8.2 Membership. The original member of the Design Committee shall be Jay W.

Russell. Upon the death or voluntary resignation by Jay W. Russell from the Design Committee, the Developer shall appoint one or more successor(s) until such time, if any, that Developer specifically relinquishes (separate and apart from any transfer that occurs under Section 6.1B above) that right to the Board. Mr. Russell may not be removed from the Design Committee and other members may not be added to the Design Committee without Mr. Russell's prior written consent. The decision of the Design Committee shall be binding; provided, the Design Committee may delegate its rights and responsibilities hereunder to one or more of its members from time to time by the Association, Board or Member.

8.3 Approval Required of Plans and Specifications. Except as otherwise specifically provided in this Declaration, prior to construction, remodeling, additions, changes, and reconstruction of the initial villa and related Structures on a Lot, or portion thereof, no Structure shall be commenced, erected, placed, moved on or permitted to remain on such Lot, or portion thereof, unless plans and specifications, grading elevations, square footage, exterior materials, exterior lighting, location, general landscaping plans, and exterior color scheme, therefor shall have been submitted to and approved in writing by the Design Committee. Subsequent to construction and completion of the initial villa and related Structures on a Lot, or portion thereof, no existing Structure upon any Lot, or portion thereof, may be remodeled or altered in any manner as materially changes the exterior appearance thereof (including exterior color scheme) or Lot, or portion thereof, drainage and grading plan, nor shall any new Structure be placed on such Lot, or portion thereof, unless plans therefor shall have been submitted and approved in writing by the Design Committee. The plans and specifications shall be in such form and shall contain such information as may be required by the Design Committee, including, as requested by such committee, (i) a site plan of the Lot or Lots, or portions thereof, showing the nature, exterior color scheme, kind, shape, size, height, materials and location with respect to the particular Lot or Lots, or portions thereof, (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, or portions thereof; and (ii) a finished grade plan for the particular Lot or Lots, or portions thereof, as prepared in accordance with the master drainage and grading plan. Plans and specifications shall be deemed to be submitted to the Design Committee at such time as the Owner requesting such approval shall deliver the same to a member of such committee and shall have obtained a written receipt from such member acknowledging receipt of the same.

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

8.5 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, or portions thereof, 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 portions thereof. Approval of any such plans and specifications relating to any Lot, or portion thereof, however, shall be final as to that Lot, or portion thereof, 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, or portion thereof, in question.

8.6 Right of Inspection. Representatives of the Board or the Design Committee or any of its agents thereof may, at any reasonable time or times, enter upon and inspect any Lot, or portion thereof, or any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot, or portion thereof, and the maintenance, construction, or alteration of Structures thereon are in compliance with the provisions hereof, and neither the Design Committee, the Association, nor any such agent, shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

8.7 Violation. If any Structure shall be constructed, remodeled, altered, erected, placed or maintained upon any Lot, or any new use commenced on any Lot, or portion thereof, otherwise than in accordance with plans and specifications approved by the Design Committee pursuant to the provisions of this Article VIII, such construction, remodeling alteration, erection, maintenance, placement or use shall be deemed to have been undertaken in violation of this Article VIII and without the approval required herein, and, upon written notice from the Association, any such Structure so constructed, remodeled, altered, erected, placed or maintained upon any Lot, or portion thereof, 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, or portion thereof, upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the violation, the Association, after approval by a two-thirds decision of the Board, shall have the right, through its agents, contractors and representatives to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the violation and such Owner shall pay the Association for the cost thereof, together with an additional amount equal to twenty percent (20%) of such cost, within ten (10) days following demand therefor, which payment shall be a binding personal obligation on such Owner, and the Board may establish a special assessment and lien on such Lot, or portion thereof, for such cost and charge, together with interest thereon at the rate specified in Section 4.12 above, on such Lot for the cost thereof and enforce the same as provided in Article IV hereof. The lien established as a result of this Section shall be superior to all liens and encumbrances which may thereafter arise, excepting liens for taxes and other public charges which are by applicable law made superior.

8.8 No Liability. Neither of the Design Committee, the Developer, the Association, the Board, nor any officer, director, member, representative, designee, agent or employee thereof, shall be personally liable to any Owner or to any person, firm, corporation or other entity for any damages arising from any mistake in judgment, negligence, nonfeasance, performance or nonperformance of any duties, the approval, disapproval or failure to approve

any matter submitted for approval, for the adoption, amendment or revocation of any rules, regulations, restrictions pursuant to this Declaration, guidelines or the Association's Articles or Bylaws, responsibilities or functions under this Declaration, including, but not limited, to this Article, or for any defect in any Structure constructed from any approved plans and specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Developer, the Association, the Design Committee, the Board, or the officers, directors, members, employees, and agents of any of them to recover any of the aforesaid damages and hereby releases, quitclaims, and covenants not to sue for any claims, demands, and causes of action arising out of or in connection with any judgment, negligence, nonfeasance, performance, nonperformance, approval, disapproval or failure to approve and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

ARTICLE IX

DRAINAGE

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

The Design Committee or persons designated by the Design Committee (including the management company engaged by the Association) shall have the right to enter upon any Lot upon reasonable advance notice to the Owner thereof for the purpose of determining whether the Lot is in compliance with such drainage guidelines, standards and plans and the Lot specific grading and drainage plan which each Owner is to have prepared by Baughman Company, P.A. as referred to above. A determination by the Design Committee concerning whether or not a Lot, or portion thereof, is in compliance with such guidelines, standards and plans, shall be final and binding on all Owners. In the event at any time the Design Committee determines that a Lot, or portion thereof, is not in compliance with the aforesaid guidelines, standards and plans, the Design Committee shall give notice to the Owner thereof and demand that such corrective action be taken as is necessary to achieve compliance. If fifteen (15) days after the notice of such violation, or such additional time as may be specified by the Design Committee, the Owner of such Lot, or portion thereof, has not taken reasonable steps to correct the same, the Board on behalf of the Association and the Design Committee shall have the right (but not the obligation) in addition to any other rights or remedies available under this Declaration, through its agents and contractors, to enter the Lot, or portion thereof, and to take such steps that may be necessary to bring the same into compliance. The Owner of the Lot, or portion thereof, so corrected shall reimburse the Association for the costs of such compliance and pay the Association a fee equal to twenty percent (20%) of such amount. In the event such Owner fails to pay such reimbursement in full within ten (10) days following demand thereof, the Board may thereafter establish a special assessment applicable to such Owner and his Lot for the costs thereof and enforce the same as provided in Article IV hereof. Developer recommends that any time a Lot is surveyed by an Owner, whether in connection with mortgage financing or otherwise, that the surveyor verify that the grading and drainage pins located in the rear of the Lot, or portion

thereof, are at the elevations required by the master and Lot specific drainage and grading plans referred to above. It is the Board's (but not the Developer's) responsibility or obligation to enforce compliance with the master drainage and grading plans, to the extent the Board deems it appropriate under the applicable circumstances. The Design Committee and the Developer, or the members thereof, shall have no liability or responsibility to any builder, contractor, Owner or other party for the failure of a builder or Owner to final grade or maintain any Lot, or portion thereof, in accordance with the master drainage and grading plan or any approved lot drainage and grading plan or for the Design Committee or the Developer not requiring a lot drainage and grading plan or compliance therewith or for the quality or compaction of any soil. The rights of the Design Committee, the Board and the Association hereunder are cumulative and in addition to any rights and remedies otherwise available at law or equity.

ARTICLE X

NOTICE OF POSSIBLE SPECIAL ASSESSMENTS

Notice is hereby given to each purchaser of a Lot, or portion thereof, that special assessments will be spread by the City Wichita, Kansas, to Lots, or portions thereof, in the future, due to the installation of residential streets, sanitary and storm sewers, sidewalks, etc., to the extent the same are applicable to the Property.

ARTICLE XI

MISCELLANEOUS

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

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

11.3 Construction and Validity of Restrictions. All of the restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such restrictions, conditions, covenants, reservations, liens or charges, or any part thereof, are invalid or for any reason

become unenforceable, no other restriction, condition, covenant, reservation, lien or charge, or any part thereof, shall be affected or impaired.

11.4 Waiver and Exceptions. The failure by the Association, 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.

11.5 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.

11.6 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.

11.7 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.

11.8 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, or portion thereof, subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty-five (35) years from the date hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by all of the 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.

11.9 Amendments. Except as otherwise provided in this Declaration, amendments including waivers, modifications, alterations, removals, changes and additions hereto to this Declaration may be made by Developer, or its successors and assigns, in its sole discretion, from time to time, up to a date twenty (20) years following the recordation of this Declaration. Following the date Developer, or its successors and assigns, no longer have the right to unilaterally amend this Declaration, 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. 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 shall be cast in person as provided for herein and in the Bylaws.

Notwithstanding the foregoing, no provisions contained in this Declaration that requires all Owners to approve an action may be modified or changed to require less than all Owners without the prior written approval of all Owners.

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 has the unilateral right to amend this Declaration, the Secretary of the Association shall file a certificate along with such amendment, certifying that the meeting at which the vote was taken was either the annual meeting of the Association or a special meeting of the Association, duly called in accordance with the Bylaws of the Association, and that the proper number of votes approving the amendment was obtained. Such certificate will be filed as part of or with such amendment.

No amendment by the Owners materially impairing the rights of any mortgagee shall be binding on such mortgagee unless consented to in writing by such mortgagee.

11.10 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.

11.11 Enforcement and Arbitration. 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, or portion thereof, 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, or portion thereof).

Except as otherwise specified in this Declaration, the Developer, the Owner(s) or prior Owner(s) of any Lot, family members and guests of Owners, and the Association shall resolve disputes, seek enforcement of and/or to prevent the breach of the terms and conditions set forth herein and any rules or regulations established as permitted herein. Any action relating to any rights and obligations arising under, or in connection with, (a) this Declaration, the Articles and Bylaws and any rules adopted by the Developer or Board from time to time, including, but not limited to, an action to seek enforcement of and/or to prevent the breach of any of the covenants and restrictions contained herein, including, but not limited to, enforcing the payment of assessments, SS Fees, fines and other sums payable hereunder, (b) pertaining to a Lot, or portion thereof, or the condition thereof, or Common Area and (c) any claim asserted an Owner or Owners, former Owner(s), and contract purchasers, against the Association or Developer for any reason and/or any real estate broker, agent or sales person participating in the sale of a Lot, or portion thereof, or the construction of a villa or side thereof, 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, notwithstanding the provisions of this Section 11.11 shall not prevent a party from obtaining a temporary injunction (whether prohibitive or mandatory) from a court of general jurisdiction pending designation of the arbitrators; from judicial foreclosure or enforcement of any liens by the Association, or claims for liens, established pursuant to this Declaration, or otherwise arising at law or equity, and, in connection with such any such foreclosure or enforcement; from a judicial proceeding undertaken by the Association with respect to any Owner for the collection of any sums due the Association which gave rise to any such lien, or claimed lien; and from enforcement of any order or decision of the arbitrators as provided herein. After the arbitrators have been selected and accepted such appointment, any temporary injunction order by the court of general jurisdiction shall be dissolved, and the arbitrators shall have exclusive power to resolve the subject matter of such injunction. The arbitration procedure is as follows:

A. Any of the aforementioned parties may request arbitration of any matter in dispute. The party requesting arbitration shall do so by giving written notice to the other party/parties, specifying in the notice the name and address of the person designated to act as arbitrator on the first party's behalf. Within ten (10) days after the service of this notice, the other party/parties shall give notice to the first party, specifying the name and address of the person designated to act as arbitrator on the second party's/parties' behalf. If the second party/parties fails to notify the first party of the appointment of such party's arbitrator within the time specified, then the first arbitrator appointed shall appoint the second arbitrator. The two arbitrators so chosen shall meet within ten (10) days after the second arbitrator is appointed and the two arbitrators shall together appoint a third arbitrator. If the two arbitrators are unable to agree upon that appointment within twenty (20) days after the appointment of the second arbitrator, then the parties to such dispute may apply, upon notice to the other party, to the Wichita Builders Association 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.

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

C. The arbitrators may grant any remedy or relief the arbitrators deem just and equitable (including the granting of a temporary or permanent injunction, whether prohibitive or mandatory) and within the scope of the agreement of the parties. The arbitrators shall specifically have the power to order equitable relief, including, but not limited to, injunctions or specific performance. The arbitrators shall not have the power to award any punitive or exemplary damages. Any arbitration instituted hereunder shall be held in Wichita, Kansas. The arbitrators shall have the power to determine the procedure to be followed, whether discovery is to be allowed and to what extent, and to establish a schedule for resolving the controversy. The arbitrators shall hold proceedings providing each party with a fair opportunity to present its side of the dispute, together with any documents or other evidence relevant to resolution of the dispute, all to the extent determined by the arbitrators in their discretion. The decision of a majority of the

arbitrators shall be the decision of the arbitrators. All decisions shall be in writing. 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.

D. If as part of any award any party is ordered to pay another party money, the amount to be so paid shall accrue interest at the rate of fifteen percent (15%) per annum from fifteen (15) days following the date of the award until the same is paid in full.

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

F. In no event may a demand for arbitration be made after the date when institution of legal or equitable proceedings based upon the claim would have been barred by the applicable statute of limitations.

G. Should any dispute between the parties be determined not to be subject to arbitration, to the extent permitted by law, the parties hereby irrevocably waive trial by jury in any action, proceeding or counterclaim brought by either party against the other on any matter arising out of or in any way connected with this Agreement and/or the Lot or any condition or circumstance related thereto.

11.12 Limitation on Liability.

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

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

11.13 Perpetuities; Alienation. It is expressly provided that the rule of property known as the rule against perpetuities and the rule of property restricting unreasonable restraints against alienation shall not be applied to defeat any provisions of this Declaration.

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

DEVELOPER:

Auburn Villas, LLC

By:

Jay W. Russell, Manager

STATE OF KANSAS)
)
COUNTY OF SEDGWICK)

ss:

BE IT REMEMBERED, that on this 20 day of January, 2022, before me the undersigned, a Notary Public in and for the County and State aforesaid, came Jay W. Russell, Manager of Auburn Villas, LLC, a Kansas limited liability company, personally known to me to be the same person who executed the above and foregoing instrument in writing on behalf of said limited liability company and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

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

NOTARY PUBLIC

My Commission Expires: 8-10-24

