



Sedgwick County
Register of Deeds - Tonya Buckingham
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Authorized By *Tonya Buckingham*

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Grantor	WHISPERING LAKES LLC
Grantee	WHISPERING LAKES ESTATES ADDITION
Type of Document	PLAT.RCOV
Recording Fees	\$202.00
Mtg Reg Tax	\$0.00
Total Amount	\$202.00
Return Address	T R MCLEMORE LAW CHARTERED 550 N 159TH ST E STE 106 WICHITA KS 67230

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR WHISPERING LAKES ESTATES ADDITION**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WHISPERING LAKES ESTATES ADDITION ("Declaration") is made this 19th day of December, 2016, by Whispering Lakes, LLC, hereinafter referred to as "Developer."

WITNESSETH, THAT:

WHEREAS, Developer deems it desirable to adopt and establish covenants, conditions and restrictions for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property, pursuant to the provisions of this Declaration, to ratify the creation of such corporation to which may be delegated and assigned the powers of administering and enforcing these covenants, conditions and restrictions, and collecting and disbursing funds pursuant to the assessments and charges hereinafter referred to; and

WHEREAS, Whispering Lakes Homeowners' Association, a nonprofit corporation, has been incorporated under the laws of the State of Kansas for a perpetual term, for the purpose of exercising some of the powers and functions aforesaid; and

WHEREAS, Developer, or its assigns, will convey title to all of the Lots in the Property described below, subject to the covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE Developer hereby declares and covenants:

1. That Lot 12, Block 5, Whispering Lakes Estates Addition, Wichita, Sedgwick County, Kansas, has been reserved for a pool and/or playground; and the remainder of 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 the Property described herein and the Owners thereof, their successors and assigns.

2. That in the existing 25 ft. set back on Lot 13, Block 1 and Lot 16, Block 2, Whispering Lakes Estates Second Addition, Wichita, Sedgwick County, Kansas, (re-plat of Lot 25, Block 8 and Lot 18, Block 9 or Arbor Lakes Estates Addition, Wichita, Sedgwick County, Kansas) the Association will maintain the rail fence, entry markers, sprinkler system and plantings. That the water for the sprinkler system and electric for lighting on the entry markers shall be supplied by the Owners of Lot 13, Block 1 and Lot 16, Block 2. That the rail fence, markers, and plantings shall not be altered without the consent of the Architectural Control Committee.

ARTICLE I
DEFINITIONS

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

1.01 “Lot” shall mean and refer to each Lot within the Property upon which there may be constructed a single-family residence.

1.02 “Architectural Control Committee” shall mean and refer to the committee of persons charged with the establishment and preservation of the aesthetics and appearance of the development.

1.03 “Association” shall mean and refer to Whispering Lakes Homeowners’ Association, a nonprofit corporation incorporated under the laws of the State of Kansas, its successors and assigns.

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

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

1.06 “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, excluding Developer, its assigns, contract sellers, and those having such interest merely as security for the performance of an obligation.

1.07 “Common Area” shall mean those portions of the Property to be owned by Developer, its assigns, or the Association for the common use and enjoyment of the members of the Association. The Common Area to be conveyed to and owned by the Association is described as follows:

Reserves A, B, C, D, E, F and G Whispering Lakes Estates Addition to Wichita, Sedgwick County, Kansas.

1.08 “Property” shall mean and refer to all of the property described as:

Whispering Lakes Estates Addition to Wichita, Sedgwick County, Kansas.

1.09 “Structure” shall mean and refer to any thing or device (other than trees, shrubbery, hedges and landscaping), the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building, garage, porch, shed, greenhouse or bathhouse, covered or uncovered patio, swimming pool, tennis court, clothesline, radio or television antenna, fence, curbing paving, wall more than two (2) feet in height, signboard or any temporary or permanent improvement to such Lot. “Structure” shall also mean (i) any excavation, fill, ditch, diversion dam or

other thing or device which affects or alters the natural flow of surface water from, upon or across any natural or artificial stream, wash or drainage channel from, upon or across any Lot; and (ii) any change in the grade of any Lot of more than six (6) inches from that existing at the time of purchase by each Owner.

ARTICLE II
USE, OCCUPANCY AND CONDUCT RESTRICTIONS

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

2.02 Construction Requirements. Unless approval is otherwise granted by the Architectural Control Committee, the following construction requirements shall be complied with:

Exterior walls of all buildings, Structures and appurtenances thereto constructed on any Lot shall be of brick, stone, Heritage II or equal weathered wood color shingles, wood siding, wood paneling, glass, glass blocks or any combination thereof. All window frames shall be of wood or vinyl, except in basement windows. All single-story family residence or dwelling, exclusive of basements, porches and garages, shall not be less than thirteen hundred (1,300) square feet of floor area. A bi-level family residence or dwelling shall not be less than thirteen hundred (1,300) square feet, upper floor only. A front-to-back split level shall not be less than fifteen hundred (1,500) square feet, ground level and raised portion. A 2-story family residence or dwelling shall not be less than eighteen hundred (1,800) square feet, 1,000 square feet minimum ground floor. Garages shall be side-load construction whenever practicable.

2.03 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.

2.04 Damage to Other Lots. No Owner shall do or allow to be done any act which causes or threatens to cause any damage, encroachment or disrepair to a residence or Lot of any other Owner.

2.05 Single-Family Residences; Fences; Entrance Treatments. No building shall be erected, altered, placed or permitted to remain on any building site subject to this Declaration, other than one new single-family residence for private use, with a private garage and other Structures incidental to residential use, which are approved by the Architectural Control Committee. It is intended that no prefabricated outbuildings will be permitted to be constructed on the Lot. However, notwithstanding the foregoing, Developer may (and hereby reserves the right to), in its sole discretion and at its own expense, construct or install a fence, wall or entrance treatment (of a style and of materials satisfactory to Developer) within the utility easement areas shown on the Plat. Except as provided in the prior sentence, no fence may be constructed or installed on a Lot adjacent to lake areas, or Common Areas, other than one made of black wrought iron, which shall be of a style and type approved by the Architectural Control Committee and shall be no less than four (4) feet in height and not materially obstruct the passage of light and air. Wooden fences on other lots shall not exceed six (6) feet in height behind a residence and/or garage on any such Lot, as approved by the Architectural Control Committee; provided, however, such fences shall be installed no closer than a distance of ten (10) feet from the rear and any side-yard property line thereof which abuts a Common Area. Notwithstanding anything to the contrary appearing herein, no wooden or other fencing shall be installed behind a wrought iron fence installed around the perimeter of portions of the Property by Developer or the Association without the approval of the Architectural Control Committee. No chain link fence may be constructed or installed on a Lot.

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

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

2.08 Trash Service. A common trash service shall be used by all Owners, the agreement therefor to be negotiated between the trash hauler and the Architectural Control Committee, the fees for trash hauling services to be included in the Homeowners' Association annual dues.

2.09 No Business Allowed. Except as authorized by the Developer, no retail, wholesale, manufacturing or repair business of any kind, nor so-called home occupations, shall be permitted on any building site or in any residence or appurtenant Structure erected thereon, even though this does not include the employment of any additional person or persons in the performance of such services. This shall not prevent a home office.

2.10 Temporary Buildings. Except as authorized by the Architectural Control Committee, no basement, tent, shack, garage, barn or outbuilding erected on a building site covered by this Declaration shall at any time be used for human habitation, temporarily or permanently, nor shall any Structure of a temporary character be used for human habitation.

2.11 Used House; 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 building site subject to this Declaration; provided that Developer may install for administrative and sales purposes a trailer or trailers upon the Lot.

2.12 Animals. No birds, animals or insects, except dogs, cats or other household pets, shall be kept or maintained on any Lot. Under no circumstances shall any commercial or agricultural business enterprise involving the use of animals be conducted on the Property.

2.13 Signs. No signs, advertisements, billboards or advertising Structures of any kind may be erected or maintained on any of the Lots; provided, however, that permission is hereby granted for the erection and maintenance of not more than one temporary, unlighted, unanimated signboard on each building site as sold and conveyed, which signboard shall not be more than ten (10) square feet in size and may be used for the sole and exclusive purpose of advertising for sale or lease the Lot and residence upon which it is erected and improvements thereon, if any.

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

2.15 Antennas. Except as authorized by the Architectural Control Committee, there shall not be erected any external television or radio antennas or permanent clothesline structures.

2.16 No Joyriding. Except as otherwise authorized by the Architectural Control Committee, motor scooters, minibikes or similar vehicles shall be operated for transportation only, and no joyriding on the street or any Lot shall be allowed except on a designated bike or cycle trail, if any.

2.17 Requirement to Keep Lot in Good Order and Repair. Each Owner (other than Developer or its assigns, which shall cause all unsold Lots owned by it to be mowed periodically) shall keep all Lots owned by him, and all improvements therein or thereon, in good order and repair, including, but not limited to, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other

appropriate external care) of all buildings and other improvements, all in a manner and with such a frequency as is consistent with good property management in relation to a quality residential neighborhood such as will exist in the Property. If, in the opinion of the Architectural Control Committee, any Owner fails to perform the duties imposed by the preceding sentence, the Architectural Control Committee, after approval by a two-thirds (2/3) decision of the Committee, and after fifteen (15) days written notice to Owner to remedy the condition in question, shall have the right, through its agents and employees, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot or such improvements, and the cost thereof shall be a binding personal obligation of such Owner and the Architectural Control Committee may establish a special assessment on such Lot for the cost thereof and enforce the same.

2.18 Requirement to Plant Lawn and Trees, etc. The Resident Owner of each Lot shall plant at least two (2) two-inch caliber trees of a species type acceptable to the Architectural Control Committee and six (6) perennial shrubs and/or bushes. Each Resident Owner shall submit his or her plan concerning the planting of trees, shrubs and bushes to said Architectural Control Committee within thirty (30) days following completing of a residence on the Lot. Within thirty (30) days following final approval by the Architectural Control Committee (as modified in accordance with the requirements of such committee), each Resident Owner shall plant the trees, shrubs and/or bushes referred to above and shall either sod or seed the front yard and remaining lawn portion of such Lot; provided, however, that if such thirty (30) day period is not within the usual growing season, planting may be delayed until the first thirty (30) days of the next growing season. In the event weather conditions or circumstances reasonably prevent any Resident Owner from complying with the time schedules noted above, Developer shall extend such time requirements as may be reasonably necessary in order to perform his or her obligations hereunder.

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

2.20 Drainage. Prior to commencement of construction of improvements, the Owner of each Lot shall cause each Lot to be graded so as to strictly comply with drainage guidelines, standards and plans concerning water drainage from such Lot to other Lots, as such guidelines, standards and plans are established prior to the commencement of such construction by Ruggles and Bohm, P.A. or the Architectural Control Committee. No stream or water drainage facilities, natural or erected, shall be disturbed.

2.21 Boating. No boat, raft, canoe or surfboard shall be operated upon the lake on the Property without the prior written approval of the Architectural Control Committee, and if such approval is granted, such operation shall conform to all rules and regulations promulgated by such Committee for such use.

2.22 Swimming. There shall be no swimming or wading in the lake (not including swimming pool), if any, located on the Property.

2.23 Fishing. Fishing on the Lake will be permitted at such times and at such places as may be determined by the Association (or the Developer pursuant to rules and regulations promulgated from time to time concerning such use).

2.24 Taxes and Assessments. Each Owner shall be obligated to pay the taxes or assessments assessed by the County Assessor against his own Lot and personal property located thereon.

ARTICLE III EASEMENTS AND ACCESS CONTROL

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

3.02 Easements in Favor of Developer and of Association. Developer specifically reserves unto itself, its successors and assigns, a perpetual, nonexclusive easement and right-of-way over the Common Area for the purpose of constructing, maintaining, repairing, replacing and rebuilding underground pipelines, drains and/or mains for the purpose of conveying gas, water, and sewage over, across and through the lands hereinabove described, together with the right to excavate and level ditches and/or trenches for the location of said pipes, draining and/or mains.

The Association is hereby granted a perpetual, nonexclusive easement to enter upon any Lot on which is situated an entrance treatment, fence or wall installed or erected by Developer (or on which Developer desires to install or erect such a treatment, fence or wall), for the purpose of installing, erecting, maintaining, improving, repairing and/or replacing the same.

Developer further reserves unto itself, its successors and assigns, the authority to grant an easement for ingress and egress in and to the following described parcel, without the approval of any Lot owners of Whispering Lake Estates Addition being required:

Access to all Common Areas and that part of Lot 22, Block 5, Whispering Lakes Estates Addition and that part of Lot 1, Block 1, Whispering Lakes Estates 2nd Addition and Reserve A in Whispering Lakes Estates 2nd Addition to Sedgwick County, Kansas, described as beginning at the S.E. Corner of said Lot 22; thence

29660299

west, along the south line of said Lot 22, 6 feet; thence north, parallel with the east line of said Lot 22, 6 feet; thence north, parallel with the east line of said Lot 22, 150 feet to the north line of said Reserve A; thence east, along the north line of said Reserve A, 12 feet; thence south, parallel with the west line of said Lot 1, 150 feet to the south line of said Lot 1; thence west, along the south line of said Lot 1 to the place of beginning.

Article IV
Architectural Committee; Architectural Control

4.01 Membership. The members of the Architectural Control Committee shall be the members of Whispering Lakes, LLC, to serve until Developer no longer owns a Lot in any phase of Whispering Lakes Estates Addition, at which time it will appoint four (4) homeowners to serve as the Architectural Control Committee. Upon the death or resignation of any member of the committee, the remaining members shall appoint a successor, unless at such time the Architectural Control Committee has relinquished its rights hereunder as hereinafter provided. The act of a majority of the committee shall be binding, and the majority of the committee may designate a representative to act for it. The Architectural Control Committee may relinquish its rights under this paragraph by advising the Owners in writing of its intent to do so, and in such event, the Owners shall establish a committee which shall have the authority of the former Architectural Control Committee.

4.02 Approval Required of Plans and Specifications. No Structure shall be commenced, erected, placed, moved on or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any manner which materially changes the exterior appearance thereof, nor shall any new use be commenced on any Lot, unless plans and specifications (including a description of any proposed new use) therefor shall have been submitted to and approved in writing by the Architectural Control Committee. Such plans and specifications shall be in such form and shall contain such information as may be required by the Architectural Control Committee, but in any event shall include (i) a site plan of the Lot or Lots, showing the nature, exterior color scheme, kind, shape, size, height, materials and location with respect to the particular Lot or Lots (including proposed front, rear, and side setbacks) of all Structures, the location thereof with reference to Structures on adjoining portions of the Property, and the number and location of all parking spaces and driveways on the Lot or Lots; and (ii) a finished grade plan for the particular Lot or Lots.

4.03 Disapproval of Plans and Specifications. The Architectural Control Committee shall have the right to disapprove any plans and specifications submitted hereunder because of any of the following:

- (A) the failure of such plans or specifications to comply with any of the terms of this Declaration;
- (B) failure to include information in such plans and specifications as may have been reasonably requested;

- (C) objection to the exterior design, appearance or materials of any proposed Structure;
- (D) incompatibility of any proposed Structure or use with existing Structure or uses upon other Lots in the vicinity;
- (E) objection to the location of any proposed Structure upon any Lot or with reference to other Lots in the vicinity;
- (F) objection to the finished grade plan for any Lot;
- (G) objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any proposed Structure;
- (H) objection to parking areas proposed for any Lot on the grounds of
 - (1) incompatibility to proposed uses and Structures on such Lot or
 - (2) the insufficiency of the size of parking areas in relation to the proposed use of the Lot;
- (I) objection to the plan for the drainage of water from the Lot onto adjacent Lots; or
- (J) any other matter which, in the judgment of the Architectural Control Committee, would render the proposed Structure, Structures or uses inharmonious with the general plan of improvements of the Property or with Structures or uses located upon the Lots in the vicinity.

In any case where the Architectural Control Committee shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case, the Architectural Control Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

Whatever shall be the decision of the Architectural Control Committee hereunder, its decision shall be final and conclusive, and no member of the committee shall be liable whatsoever for failure or neglect to approve any plans and specifications submitted.

4.04 Retention of Approved Plans and Specifications. Upon approval by the Architectural Control Committee of any plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall, at the committee's request, be deposited for permanent record with the committee, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

4.05 Rules and Statement of Policy. The Architectural Control Committee may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on Lots, including, without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the Architectural Control Committee at any time, and no inclusion in, omission from, or amendment of any such rules or statements shall be deemed to bind the Architectural Control Committee to approve or disapprove any feature or matter subject to approval or to waive the exercise of the Architectural Control 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 Architectural Control Committee's right, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Lot or Lots. Approval of such plans and specifications relating to any Lot, however, shall be final as to that Lot, and such approval may not be revoked or rescinded thereafter, provided that (i) the Structures or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in this Declaration, and (ii) the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all Structures on and uses of the Lot in question.

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

4.06 Violation. If any Structure shall be altered, erected, placed or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the Architectural Control Committee pursuant to the provisions of this Article IV, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this Article IV and without the approval required herein, and, upon written notice from the Architectural Control Committee, any such Structure, so altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or re-altered, and any such use shall be terminated, so as to extinguish such violation.

If, fifteen (15) days after the notice of such a violation, the Owner of the Lot upon which such a violation exists shall not have taken reasonable steps toward the removal or termination of the same the Architectural Control Committee shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation and to charge the cost thereof to the Owner. If said charges are not paid within thirty (30) days, the Architectural Control Committee may file a lien for said charges upon the Lot where the violation occurred.

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ARTICLE V
FORMATION AND FUNCTIONS OF THE ASSOCIATION

5.01 Formation of Association. The Association has been incorporated as a non-profit corporation for a perpetual term under the laws of the State of Kansas.

5.02 Purpose of Association. The Association has been formed to further the common interests of the Members and to perform the functions hereinafter required or permitted to be performed by the Association.

5.03 Rules and Regulations. The Association shall be authorized to and shall have the power to adopt and enforce rules and regulations to regulate use of the Property and may provide for enforcement of any of such rules and regulations through reasonable and uniformly applied fines. Each Owner shall be obligated to comply with and to see that such Owner's tenants, guests and invitees comply with any such rules and regulations.

ARTICLE VI
OPERATION OF THE ASSOCIATION; ASSESSMENTS

6.01 Membership in the Association. The Owner of a Lot shall automatically be the holder of a membership in the Association appurtenant to that Lot, and the Association membership for that Lot shall automatically pass with fee simple title to that Lot Owner. However, in the event any Owner shall have entered into a contract to sell his or her interest in a Lot during the time such contract is in force, if the contract vendee is in possession of the Lot, he or she shall be considered to be the Member rather than the Owner. There shall be one (1) vote for each Lot. When more than one person holds an interest in any Lot, all of such persons shall be Members but except as provided below, in no event shall more than one (1) vote be cast with respect to any Lot. The vote for such Lot shall be exercised as the Owners of such Lot may determine among themselves, provided that if they are unable to so determine, none of any such Members shall be entitled to vote. Notwithstanding the foregoing, Developer and/or its assigns shall be entitled to three (3) votes for each single Lot of which it is the Owner.

6.02 Board of Directors. The affairs of the Association shall be managed by the Board, which may, however, by resolution, delegate any portion of its authority to an Executive Committee or an Officer, Executive Manager or Director of the Association. The members of the Board shall be elected by the Members.

6.03 Certificate of Incorporation and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Members shall be amplified by provisions of the Articles of Incorporation and Bylaws of the Association. Such Articles and Bylaws include provisions with respect to corporate matters, including provisions such as notices, record dates and quorums for meetings of directors and Members, but no such provisions may be inconsistent with any provision of this Declaration.

6.04 Powers and Duties.

- (A) The Association shall have the rights and powers as set forth in its Articles of Incorporation and Bylaws, together with its general powers as a nonprofit corporation, and it shall perform each and every duty required of it by this Declaration.
- (B) The Association shall own, maintain, mow and keep clean the Common Area. It further shall mow and maintain plantings within the decorative entrance treatments and maintain, repair and/or replace the decorative entrance treatments, fence(s), waterfall, and walls erected and installed by Developer.
- (C) The Association shall have the right to establish and/or maintain established reserves for the repair, restoration or replacement of any improvement it has the duty to repair, restore or replace hereunder.
- (D) The Association, through the Board, shall have the right to adopt such rules and regulations as it may deem advisable for the maintenance, use, conservation and beautification of the Property and for the health, comfort, safety and general welfare of the Owners and occupants of Lots in the Property.

6.05 Initial Lot Assessments. Upon transfer of title to any Lot by Developer to the initial purchaser(s) thereof, such initial purchaser(s) shall pay an initial assessment in the amount of \$200.00 to provide immediate funds available for the uses described in Section 6.04 (C) hereof.

Any City of Wichita or Sedgwick County licensed builder shall be exempt from the above-mentioned initial assessment for a period of one (1) year from and after conveyance of any Lot from Developer to Builder.

6.06 Annual Assessment.

- (A) The assessment for the period from January 1, 2017 through December 31, 2017 shall be \$495.00, which shall include the cost of trash service. The annual assessment by the Board for any subsequent year to an amount which is not increased more than 10% compounded above the maximum permitted annual assessment for the previous year without a vote of the Members as provided in (B) below.

Any City of Wichita or Sedgwick County licensed builder shall be exempt from the above-mentioned annual assessment for a period of one (1) year from and after conveyance of any Lot from Developer to Builder.

- (B) The annual assessment for any calendar year commencing in 2017 may be increased to an amount greater than that permitted by subsection (A) of this

29660299

Section 6.06 only by an affirmative vote of the majority of the Members who are voting in person or by proxy at a meeting duly called for such purpose.

- (C) Developer and/or its assigns shall be exempt from assessment of fees on all lots owned by Developer or its assigns.

6.07 Use of Assessment Funds. Assessment funds shall be used for purposes as the Association shall determine necessary and advisable, which may include but shall not be limited to the following: for improving and maintaining the Common Areas and other property of the Association, including entry areas, monuments and fencing, if any; for planting trees and shrubbery and the care thereof; for payment of expenses incidental to the proper operation and maintenance and repair of recreational facilities located within the Common Areas; for collecting and disposing of garbage, ashes and rubbish; for employing night watchmen; for caring for vacant property; for removing grass or weeds; for street cleaning; for street signs and street lights; for construction, purchasing, maintaining or operating any community service; for purchase of insurance; for legal costs and expenses; for supplies and fertilizers; for snow removal; for doing any other thing necessary or advisable, in the opinion of the Association, for the general welfare of the Owners and expenses incidental to the enforcement of these restrictions; for the payment of operating expenses of the Association; or for any other purpose within the purposes for which the Association is incorporated.

6.08 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any new construction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.09 Lien for Assessments and Fines. The Association shall have a lien against each Lot to secure payment of any assessment, fine or other amount due and owing the Association by the Owner of that Lot, plus interest from the date such amount was due and payable at a rate equal to 4% per annum over the prime interest rate charged from time to time by Bank of America, N.A., Wichita, Kansas, adjusted on each day on which there occurs a change in said prime interest rate (provided that the interest rate shall never exceed the maximum allowed by law), in addition to all costs and expenses of collecting the unpaid amount, including but not limited to reasonable attorney's fees. The lien may be foreclosed in the manner for foreclosure of mortgages in the State of Kansas. The lien provided herein shall be junior to the lien of any first mortgage on any Lot taken in good faith and for value and perfected by recording in the office of the Register of Deeds for the County of Sedgwick, Kansas, prior to the time and recording in said office of a Notice of Lien, describing the Lot affected by the lien and specifying the name or names last known to the Association or the Owner or Owners of the Lot. Each Owner acknowledges and agrees by acceptance of title to a Lot that the lien of the Association for assessments due hereunder from an Owner, shall be superior to any homestead exemption as is now or

may hereafter be provided by Kansas or federal law. The acceptance of a deed or other interest to a Lot subject to this Declaration shall constitute an express waiver of the homestead exemption as against all sums which may become due the Association from the Owner of such Lot.

6.10 Successor's Liability for Assessments. The Association's lien for delinquent assessments, damages, costs, expenses, attorney's fees and all other charges allowed hereunder against a Lot shall pass to an Owner's successors in title, regardless of whether said obligation was expressly assumed by them, except with respect to the sale or transfer of any Lot which is subject to any mortgage pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, which became due prior to such sale or transfer. Upon acquisition of title to a Lot, an Owner shall be bound by the terms hereof.

6.11 No Offsets. All assessments shall be payable in the amount specified in the levy thereof, and no offsets or reductions thereof shall be permitted for any reason, including without limitation any claim of non-use of the Common Areas or any claim that Developer, the Association, the Board or the Architectural Control Committee is not or has not been properly exercising its duties and powers under this Declaration.

ARTICLE VII PROPERTY RIGHTS

7.01 Easement in Common Areas. Developer hereby dedicates and conveys to each Owner a right and easement of enjoyment in and to the Common Areas; provided, however, that use of the Common Areas and recreational improvements placed thereon shall be governed by any rules and regulations adjusted by the Board from time to time. Said right and easements shall not be personal but shall be considered to be appurtenant to said Lots, whether specifically set forth in deeds to the Lots or not. Developer hereby covenants for itself, its successors and assigns that it will convey by quit claim deed, at such times Developer no longer owns any Lot, or such earlier date as Developer shall determine in its sole discretion, a fee simple title to the Common Areas to the Association, free and clear of all encumbrances and liens except any current ad valorem or special assessment taxes. The Association shall accept title to such Common Areas, together with the responsibility to perform any and all functions and duties of taxes and insurance on the Common Areas and for the proper maintenance of the open spaces. The title to the Common Areas vested in the Association shall be subject to the rights and easements of enjoyment in and to such Common Areas by its Members.

7.02 Description of Common Areas. The Common Areas consist of the following real estate and any improvements now or hereafter located thereon:

Lot 12, Block 5, Whispering Lakes Estates Addition to Wichita, Sedgwick County, Kansas; Reserves A, B, C, D, E, F and G of Whispering Lakes Estates Addition to Wichita, Sedgwick County, Kansas.

7.03 Reservation of Rights in Common Areas. Notwithstanding any other provision of this Declaration, Developer reserves the right to grant easements within the Common Areas for the installation, repair and maintenance of water main, sewers, drainage courses, public walkways and other public utilities shall be installed in such a manner so as to minimize damage to the natural features of the Common Areas.

7.04 Mortgage for Conveyance of Common Areas. The Common Areas cannot be mortgaged or conveyed without the consent of at least two thirds ($\frac{2}{3}$) of the Lot Owners (excluding the Developer).

7.05 Ingress or Egress through Common Areas. If ingress or egress to any residence is through the Common Area, any conveyance or encumbrance of such areas is subject to the Lot Owner's easement.

ARTICLE VIII MISCELLANEOUS

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

8.02 Interpretations of Restrictions. In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners of the Property. It is not the intent of this Declaration to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of buildings or premises; nor is it the intention of this Declaration to interfere with or abrogate or annul easements, covenants or other agreements between parties; provided, however, that where this Declaration impose a greater restriction upon the use or occupancy of any residence site or upon the construction of buildings or Structures, 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.

8.03 Construction and Validity of Restrictions. All of the restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such restrictions, conditions, covenants, reservations, liens or charges, or any part thereof, are invalid or for any reason become unenforceable, no other restriction, condition, covenant, reservation, lien or charge, or any part thereof, shall be affected or impaired.

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8.04 Assignment of Powers. Any and all rights and powers of the Developer provided for in this Declaration and any modification or amendment hereof may be delegated, transferred, assigned, conveyed or released by Developer to the Architectural Control Committee, and the Architectural Control Committee shall accept the same upon the recording of a notice thereof, and the same shall be effective for the period and to the extent stated therein. In a like manner and for a like term, such powers and duties may be assigned to any other reasonable entity who assumes the obligations assigned to it. Upon the effective date of such assignment, the assigning party shall be released of any and all liabilities of whatever nature arising out of acts or omissions prior to the effective date of the assignment.

8.05 Waiver and Exceptions. The failure by the Developer, Architectural Control Committee, 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.

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

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

8.08 Successors-in-Interest. Reference herein to the Architectural Control Committee 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.

8.09 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Architectural Control Committee, Developer and the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty-five (35) years from the date hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of one (1) year each, unless an instrument, signed by Owners of no less than seventy-five percent (75%) percent of the Lots, has been recorded, agreeing to abolish or change these covenants, conditions and restrictions, in whole or in part.

8.10 Amendments. Any provision contained in this Declaration may be amended or repealed, or additional provisions added to this Declaration, by the recording of a written instrument or instruments specifying the amendment or repeal, executed by the Owners as shown by the records in the Office of the Registrar of Deed of Sedgwick County, Kansas, who have a majority of the votes of all members, of not less than a

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majority of the Lots then subject to this Declaration; provided that so long as the Developer owns three (3) Lots, any such instrument or instruments shall require the written consent of the Developer, and further provided that no amendment materially impairing the rights of any mortgagee shall be binding on such mortgagee unless consented to in writing by such mortgagee.

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

8.12 Enforcement. The covenants set forth herein shall run with the land and bind the present Owner, its successors and assigns, and all parties claiming by, through or under it, and shall be taken to hold, agree and covenant with the Owner of each building site, its successors and assigns, and with each of them, 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 its, his or their title to said land) and Developer or the Owner or Owners of any of the Property or the Architectural Control Committee shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the terms and conditions set forth herein, in addition to ordinary legal action for damages.

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

WHISPERING LAKES, LLC

By 
Eugene Vitarelli, Managing Member

State of Kansas)
County of Sedgwick)

This instrument was acknowledged before me on December 19th, 2016 by Eugene Vitarelli as Managing Member of Whispering Lakes, LLC.

Witness my hand and official seal.

Signature 

