



**AMENDED AND RESTATED DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR THE
GRAND MERE PROPERTY RESIDENTIAL DISTRICT MASTER ASSOCIATION**

THIS RESTATEMENT is made and entered this 11th day of November, 2015,
by Grand Mere Development, Inc., a Kansas corporation (hereinafter the "Developer").

WITNESSETH:

WHEREAS, the Developer has placed of record the Declaration of Easements, Covenants, Conditions and Restrictions for the Grand Mere Property Residential District Master Association dated January 8, 2001 (the "Declaration"), which Declaration was recorded on January 9, 2001 at Book 791, Page 276, in the office of the Register of Deeds of Riley County, Kansas; and

WHEREAS, the Declaration was amended on December 22, 2011 and said amendment was recorded on December 23, 2011 at Book 848, Page 3121, in the office of the Register of Deeds of Riley County, Kansas; and

WHEREAS, the Declaration affects certain real estate situated in Manhattan, Riley County, Kansas, described on Exhibit "A" attached hereto and by reference made a part hereof; and

WHEREAS, pursuant to Article XVII, Section 17.4 of the Declaration, the Declaration may be amended by the Developer without the approval of any other party until ninety-five percent (95%) of all land that is residential in nature as shown on the Grand Mere Master Plan (defined as the "Master Plan" in the Declaration) attached at Exhibit "B" attached hereto and by reference made a part hereof (also referred to in the Declaration as the "Residential District"), has been sold to third parties and the Developer owns less than two (2) acres of land that is residential in nature as shown on said Master Plan; and

WHEREAS, ninety-five percent (95%) of all land that is residential in nature as shown on the Master Plan has not been sold to third parties and Developer owns more than two (2) acres of land that is residential in nature as shown on the Master Plan; and

WHEREAS, Developer desires to amend and restate the Declaration upon the terms hereinafter set forth.

NOW THEREFORE, Developer hereby amends and restates the Declaration as follows:

Notice of Intent

This Declaration and the Community Association Declarations to be implemented in accordance herewith provide for an extensive degree of control in the Developer, including but not limited to: (i) control of the Master Association, control of all Community Associations, supervision over the type and design of improvements which may be constructed within the

various communities and upon the Lots located therein (with substantial fines for non-compliance), and control of the use, and limitations upon use, of the Common Maintenance Areas; (ii) the right to amend this Declaration; and (iii) substantial flexibility in developing the Residential District. The provisions hereof also contain limitations on the liability of the Developer. Each Owner, by accepting title to a Lot, and each Community Association Member and Master Association Member, by accepting such membership, acknowledges, agrees to, and accepts the Developer's control of the Residential District and the Communities comprising the Residential District and the limited liability of the Developer as provided for in this Declaration. Such control is an integral part of this Declaration and the general scheme of development and operation of the Residential District. Capitalized terms used in this and the following introductory paragraphs are defined in Article I of this Declaration.

WITNESSETH:

WHEREAS, Developer desires to submit and subject the Residential District, together with all buildings, improvements, and permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances, and privileges belonging or in any way pertaining thereto, to the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights contained herein; and

WHEREAS, Developer desires that the Residential District be developed along with certain other contiguous and nearby parcels of land in accordance with a master plan and general scheme of development; and

WHEREAS, Developer deems it desirable to establish easements, covenants, conditions, obligations, and restrictions upon the Residential District and each and every portion thereof with respect to the proper use, occupancy, and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Residential District; and

WHEREAS, Developer deems it desirable for the efficient management of the Residential District, to create the Master Association which shall exercise the powers of (i) managing, maintaining, and administering the Common Maintenance Areas within the Residential District; (ii) administering and enforcing the easements, covenants, conditions, and restrictions set forth herein, (iii) collecting and disbursing funds, pursuant to the assessments, spending procedures, and charges hereinafter created; (iv) coordinating the activities of the various Community Associations; and (v) performing such other acts as are herein provided for which generally benefit its members, the Residential District, or the owners of any interests therein; and

WHEREAS, the Grand Mere Residential District Master Association, a corporation not organized for profit, has been, incorporated under the laws of the State of Kansas for the purpose of exercising such powers and functions; and

WHEREAS, Developer also deems it desirable for the harmonious development and efficient management of the Residential District to create certain Community Associations which shall, along with the Developer, comprise the membership of the Master Association and which

shall be responsible for (i) coordinating their respective Community's activities with the activities of the Master Association; (ii) administering and enforcing the easements, covenants, conditions and restrictions set forth in their respective Community Declarations; (iii) collecting and disbursing funds, pursuant to the assessments, spending procedures and charges created in their respective Community Declarations; and (iv) performing such other acts as are provided for in their respective Community Declarations; and

WHEREAS, in furtherance of the foregoing, certain Community Associations have been, or will be, incorporated as not-for-profit corporations under the laws of the State of Kansas for the purpose of exercising such powers and functions; and

WHEREAS, the Developer may, but is not obligated to, annex additional real property to the Residential District, and thereby subject such property to this Declaration, and bind the owners of any interests therein to the easements, covenants, conditions, and restrictions contained in this Declaration; and

WHEREAS, Developer desires and intends that the Owners, mortgagees, mortgagors, Occupants, and all other Persons hereafter acquiring any interest in the Residential District shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Residential District.

NOW, THEREFORE, Developer, for the purposes above set forth, declares that all property within the Residential District shall hereafter be held, transferred, sold, conveyed, leased, occupied, and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights hereinafter set forth, all of which shall run with the land and be binding upon all property within the Residential District and all parties having or acquiring any right, title, or interest in or to any property within the Residential District, or any part thereof, and shall inure to the benefit of and be a burden upon each Owner, the Master Association, the Community Associations, each member of the Master Association, and each member of a Community Association.

ARTICLE I

Definitions

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows. Defined terms appear throughout this Declaration with the initial letter of each word of such term capitalized.

- 1.1 "Annexation Property" means any additional real property which is annexed to the Residential District, thereby becoming a part thereof and subject to this Declaration in accordance with the provisions of Article XIV.
- 1.2 "Assessments" shall include the following:

- (a) “Regular Assessment” means the amount to be paid by each Owner as such Owner’s Proportionate Share of the Common Expenses incurred by the Master Association pursuant to the terms hereof.
 - (b) “Special Assessment” means: (i) a charge against a particular Owner directly attributable to such Owner to reimburse the Master Association for costs incurred in bringing the Owner into compliance with the provisions of this Declaration, the Residential District Rules or the Articles or Bylaws of the Master Association; (ii) any other charge designated as a Special Assessment in this Declaration, the Master Association Articles or Bylaws, or the Residential District Rules; and (iii) attorneys’ fees and other charges payable by such Owner as a Special Assessment pursuant to the provisions of this Declaration.
 - (c) “Reconstruction Assessment” means the amount which is to be paid by each Owner representing such Owner’s Proportionate Share of the cost to reconstruct any portion of the Common Maintenance Areas.
 - (d) “Improvement Assessment” means the amount which is to be paid by each Owner representing such Owner’s Proportionate Share of the cost to install or construct any capital improvements authorized hereby on any of the Common Maintenance Areas.
- 1.3 “City” means the City of Manhattan, Kansas, a municipal corporation of the State of Kansas.
- 1.4 “Common Maintenance Areas” shall mean: (i) all neighborhood recreation center(s); (ii) all statuary, fountains, landscaping, irrigation systems, utilities, entry markers, signs, security buildings and other improvements and fixtures located within any islands, medians, cul-de-sacs and the like within any public streets located at the east side of the intersection of Kimball Avenue and Grand Mere Parkway and within the medians of Grand Mere Parkway; (iii) all street lights not maintained by the city and/or individual Community Associations intended to light the public streets in the Residential District; (iv) all real property and the improvements thereon including, without limitation, landscaping and irrigation systems, which may from time to time be owned or leased by the Master Association or in which the Master Association has been granted easement rights if such easement areas are required to be maintained by the Master Association; and (v) all other areas and improvements required to be maintained by the Master Association pursuant to agreements with the City or any other governmental body, including all the stormwater detention areas throughout the Residential District and Little Kitten Creek. Any real property and improvements thereon, which are described as Common Maintenance Areas in a Supplemental Declaration, shall be deemed to be “Common Maintenance Areas” as that term is defined herein, and shall, for all purposes, be integrated into and deemed to be a part of the Common Maintenance Areas subject to this Declaration.

- 1.5 “Common Expenses” means the actual costs incurred by the Master Association in administering, maintaining, managing, repairing, replacing, insuring, and operating the Common Maintenance Areas and in conducting activities in connection with the Residential District for which the Master Association is responsible pursuant to the terms hereof. Common Expenses contemplated hereby shall include, but not be strictly limited to, the following:
- (a) the cost of maintenance, management, operation, repair, and replacement of the Common Maintenance Areas and all other areas and facilities within the Residential District which are maintained or operated by the Master Association;
 - (b) unpaid Assessments;
 - (c) the cost of management and administration of the Master Association including, but not limited to, compensation paid by the Master Association to managers, accountants, attorneys, other professionals, and employees;
 - (d) the cost of utilities (including but not limited to water, electricity, gas, sewer, trash pick-up and disposal which are provided directly to the Master Association and not individually metered or assessed by Lot), landscaping maintenance, and other services which generally benefit and enhance the value and desirability of the Residential District and which are provided by the Master Association;
 - (e) the cost of fire, casualty, liability, workmen’s compensation, and other insurance covering the Common Maintenance Areas;
 - (f) the cost of any other insurance obtained by the Master Association;
 - (g) reasonable reserves for contingencies, replacements, and other proper purposes as deemed appropriate by the Master Association, which reserve fund shall be adequate to meet the costs and expenses of maintenance, repairs, and replacement of those Common Maintenance Areas which must be maintained, repaired, or replaced on a periodic basis;
 - (h) the cost of bonding any person handling the funds of the Master Association;
 - (i) taxes paid by the Master Association;
 - (j) amounts paid by the Master Association for discharge of any lien or encumbrance levied against the Common Maintenance Areas or portions thereof;
 - (k) costs incurred by committees established by the Master Association Board or President;

- (l) costs of security guards, security vehicles, maintenance, and any other costs incurred in respect of security systems or services installed, operated, or contracted for by the Master Association;
 - (m) other expenses incurred by the Master Association for any reason whatsoever in connection with the Common Maintenance Areas (except that reconstruction costs and capital improvements shall be limited as otherwise provided for herein), or the costs of any other item or items designated, or to be provided or performed, by the Master Association pursuant to this Declaration or its Articles or Bylaws, or in furtherance of the purposes of the Master Association or in the discharge of any duties or powers of the Master Association.
- 1.6 “Community” means a semi-autonomous and distinctive residential development within the Residential District, which has its own Community Association pursuant to the terms hereof and which is a member of the Master Association.
- 1.7 “Community Association” means an Owner’s association established pursuant to the terms hereof for any Community within the Residential District.
- 1.8 “Community Association Articles” means the Articles of Incorporation, as such may be amended from time to time, of a Community Association, or any successor thereto.
- 1.9 “Community Association Board” means the Board of Directors of a Community Association.
- 1.10 “Community Association Bylaws” means the bylaws of a Community Association, or of any successor thereto, adopted in accordance with its Community Association Articles, as such bylaws may be amended from time to time.
- 1.11 “Community Association Declaration” means any Declaration setting forth the covenants, conditions, easements, and restrictions which shall govern the development and operation of a Community subject to and in conjunction with this Declaration.
- 1.12 “Community Association Member” means any Person who holds a membership in a Community Association.
- 1.13 “Community Association President” means the duly elected or appointed president of a Community Association.
- 1.14 “Community Association Rules” means the rules and regulations adopted by a Community Association.
- 1.15 “Community Developer” means an entity or individual that is developing a Community within the Residential District with the intent of selling Lots to build on in such Community.

- 1.16 “Declaration” means this instrument, as from time to time amended.
- 1.17 “Default Rate of Interest” means an annual rate of interest equal to the base rate as publicly announced by Commerce Bank, Kansas City, Missouri (as the rate publicly announced as available to its largest and most creditworthy customers) from time to time while interest is accruing (with interest hereunder adjusted as and when said prime rate is adjusted) plus four percent (4%) per annum, but never less than eighteen percent (18%), interest shall accrue during said periods at eighteen percent (18%) per annum). Notwithstanding anything herein to the contrary, if, during any period, the highest lawful rate of interest which may be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the interest payable by such Person during said period shall be the highest lawful rate. If Commerce Bank should cease doing business or no longer announces its base rate as described above, the Master Association may compute interest hereunder upon the publicly announced base rate of any other bank doing business in Kansas. If banks should cease announcing base rates, the Master Association may elect to use eighteen percent (18%) as the Default Rate of Interest, or may specify the rate, in lieu of said base rate, for purposes of the computation hereunder which the Master Association would reasonably have to pay to borrow money at the time.
- 1.18 “Design Standards” means the rules, regulations, restrictions, architectural standards, and construction guidelines set forth in this Master Declaration and each Community Declaration and as otherwise from time to time adopted by the Master Design Review Committee or a Community Association Design Review Committee, as the case may be.
- 1.19 “Community Association Design Review Committee” means each of the Community Association Design Review Committees provided for each Community in Article XI, Section 11.1(b) below.
- 1.20 “Developer” means Grand Mere Development, Inc., a Kansas corporation, its successors and assigns, or any person to whom the Developer’s rights hereunder are hereafter assigned by Recorded instrument.
- 1.21 “First Mortgage” means a Mortgage which is the first and most senior of all Mortgages upon the same property. “First Mortgagee” means the holder of a First Mortgage.
- 1.22 “Golf Club” means the Colbert Hills Golf Course and related facilities to be constructed on property (portions of which are contiguous to the Residential Property), including all buildings, vehicles, and equipment associated therewith, together with the clubhouse. The Golf Club will not exist as a Community subject to the terms hereof.
- 1.23 “Golf Course” means the Colbert Hills Golf Course constituting a part of the Golf Club.
- 1.24 “Lot” means a subdivided lot, a villa, a townhouse, a condominium unit, or a residential dwelling unit within the Residential District as shown on the applicable Plat.

- 1.25 “Majority,” where not specifically designated otherwise, means at least fifty and one-tenth percent (50.1%) of the total votes entitled to be cast with respect to a given matter.
- 1.26 “Master Association” means the Grand Mere Property Residential District Master Association, a corporation not organized for profit under the laws of the State of Kansas, its successors and assigns, which shall be responsible for implementing the terms of this Declaration.
- 1.27 “Master Association Articles” means the articles of incorporation, as such may be amended from time to time, of the Master Association or of any successor thereto.
- 1.28 “Master Association Board” means the Board of Directors of the Master Association.
- 1.29 “Master Association Bylaws” means the bylaws of the Master Association, or of any successor thereto, adopted in accordance with the Master Association Articles, as such bylaws may be amended from time to time.
- 1.30 “Master Association Member” means every Person described in Article III, Section 3.3 below.
- 1.31 “Master Association President” means the duly elected or appointed president of the Master Association.
- 1.32 “Master Design Review Committee” means the Master Design Review Committee provided for the Master Association in Article XI, Section 11.1(a) below.
- 1.33 “Master Plan” means the plan for the overall development of Grand Mere. The Master Plan is attached as Exhibit “B” to this Declaration.
- 1.34 “Mortgage” means any recorded, filed, or otherwise perfected instrument given in good faith and for valuable consideration (which is not a fraudulent conveyance under Kansas law) as security for the performance of an obligation, including, without limitation, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.
- 1.35 “Mortgagee” means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed of trust. “Mortgagor” means the party granting the mortgage.
- 1.36 “Occupant” means any person, other than an Owner, in rightful possession of a Lot, whether as a guest, tenant, or otherwise.
- 1.37 “Owner” means the Record owner, whether one or more Persons, of fee simple title, whether or not subject to any mortgage, to any Lot which is a part of the Residential

District, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

- 1.38 “Owner’s Proportionate Share” means a fraction, the numerator of which is equal to the number of Lots owned by an Owner and the denominator of which is the total number of Lots that are platted from time to time within the Residential District.
- 1.39 “Person” means an individual, corporation, partnership, trustee, or other entity capable of holding title to real property, and his or her respective heirs, successors, and assigns.
- 1.40 “Plat” means collectively each plat of subdivision of the Residential District as first Recorded in the official records of Riley County, Kansas, and as thereafter from time to time amended or supplemented.
- 1.41 “Record” or “Recording” means an instrument of record in, or the act of recording an instrument with, the office of the Register of Deeds for Riley County, Kansas.
- 1.42 “Residential District” means that parcel of real property referred to in the recitals hereof and described in Exhibit ”A” hereto and all Annexation Property, if any, together with all buildings, improvements, and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances, and privileges belonging or in any way pertaining thereto.
- 1.43 “Residential District Rules” means the rules adopted by the Master Association Board pursuant to the provisions of Section 3.13 of Article III of this Declaration.
- 1.44 “Screen” means to partition in a manner such that one cannot see through the partition.
- 1.45 “Supplemental Declaration” means a declaration of easements, covenants, conditions, and restrictions, or similar instrument, annexing additional real property to the Residential District and subjecting such real property to this Declaration.

ARTICLE II

Communities

In accordance with the Developer’s Master Plan of development for the Residential District, certain portions of the Residential District are to be developed by the Developer as Communities, which may include, for example, areas for independent single family dwellings, townhomes and villa homes, and condominiums; provided, however, Developer may at any time, without notice, change its Master Plan, as Developer shall determine in its sole discretion. If the Developer deems it desirable to create a Community Association, the Developer, shall cause to be recorded a Community Association Declaration which shall, in combination with this Declaration, govern the use and occupancy of Lots within the Community. In the event of any conflict between this Declaration and any provision of a Community Association Declaration, this Declaration shall in all cases control. A Community Association may, pursuant to its Community

Association Declaration, adopt such rules and regulations as it deems appropriate provided the same are not inconsistent with the provisions of this Declaration or any Residential District Rules. A Community Association Declaration shall provide for the establishment of a Community Association to maintain and administer the Community. Notwithstanding anything to the contrary contained herein, no Community Association Declaration or amendment or supplement thereto shall be effective unless it shall have been approved by the Master Association as evidenced by its signature thereon.

ARTICLE III

Master Association and Community Associations

- 3.1 Purpose of Master Association. The Master Association Members shall be as set forth in Article III, Section 3.3 below; provided, however, that until ninety-five percent (95%) of all land that is residential in nature (including land within any Annexation Property) as shown on the Master Plan, attached here to and incorporated herein as Exhibit "B", has been sold to third parties, and Developer owns less than two (2) acres of land that is residential in nature as shown on said Master Plan, Developer shall have the sole and controlling vote in the Master Association. The Master Association has been, or will be, incorporated as a corporation not organized for profit, to administer and delegate responsibility for the protection, improvement, alteration, maintenance, repair, replacement, administration, and operation of the Residential District, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Declaration, the Master Association Articles or Bylaws or Residential District Rules and to generally serve as the supervising and coordinating body for all of the Community Associations. The Master Association shall not be deemed to be conducting a business of any kind, and all funds received by the Master Association shall be held and applied by it for the benefit of the Residential District in accordance with the provisions of this Declaration and the Master Association Articles and Bylaws. The Master Association shall promote and coordinate the harmonious development and operation of the Residential District. The Master Association shall be primarily responsible for implementing and enforcing the provisions of this Declaration.
- 3.2 Purpose of the Community Associations. The Community Associations have been, or will be, incorporated as corporations not organized for profit. The Community Associations shall be responsible for the protection, improvement, alteration, maintenance, repair, replacement, administration, and operation of their respective Communities, including taking such action as is necessary for the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in or contemplated by this Declaration and the respective Community Association Articles, Community Association Bylaws, Community Association Rules, or Community Design Standards. The various Community Associations shall not be deemed to be conducting a business of any kind, and all funds received by a Community Association shall be held and

applied by it for the benefit of its Community in accordance with the provisions of its Community Declaration, Community Association Articles, and Community Association Bylaws.

- 3.3 Membership in Master Association. Membership in the Master Association shall be comprised of the Developer and each Owner of a Lot located within the Residential District that is in good standing with the Master Association. The ownership of a Lot within the Master Association shall entitle the Owner of the Lot to one (1) Master Association Membership. In the event that an Owner shall own more than one (1) Lot in the Master Association, the Owner shall be entitled to Master Association Memberships equal to the number of Lots owned by such Owner. Each such Master Association Membership shall have identical rights and obligations. For example, an Owner of three (3) Lots in the Master Association shall entitle the Owner to three (3) votes at the meetings of the Master Association Members, but the Owner shall likewise be required to pay the Owner's Proportionate Share of the Common Expenses based upon the Owner's ownership of those three (3) Lots. Each Owner of a Lot located within the Residential District shall be entitled to any and all privileges, as well as responsible for any and all obligations under this Declaration and applicable state and federal law (including, but not limited to Article III, Section 3.4 below), as if the Master Association were a Community Association and each Owner of a Lot located within the Residential District were a Community Association Member.

Notwithstanding the preceding paragraph, until ninety-five percent (95%) of all land that is residential in nature (including land within any Annexation Property) as shown on the Master Plan, attached hereto and incorporated herein as Exhibit "B", has been sold to third parties, and Developer owns less than two (2) acres of land that is residential in nature as shown on said Master Plan, the Developer shall have the sole and controlling vote of the Master Association as provided in Section 3.1 of this Article III.

The Master Association Members must meet at least annually at a time, date and place in accordance with the Master Association Bylaws. Special meetings may also be held to address any matter affecting the Master Association if the Master Association President, a majority of the Master Association Board, or at least ten percent (10%) of the Master Association Members call such a meeting. If a special meeting has not been set within thirty (30) days, the requesting Master Association Members may directly notify all the Master Association Members of the meeting. All notifications of meetings must be at least ten (10) days and no more than sixty (60) days beforehand, and include: (1) a statement of the general nature of any proposed revisions to the declaration or bylaws; (2) any budget proposals or changes; and (3) any proposal to remove an officer or director. Master Association Members must be given a reasonable opportunity to comment during all meetings.

Due to the size of the Master Association, any action taken by the Master Association Members, including, but not limited to, the election of the Master Association Board, the amendment of this Declaration, the amendment of the Master Association Bylaws, the

termination of the Master Association, and determining the Master Association Board's qualifications, powers, duties, or terms of office may be completed by ballot. In the event that an action by mail ballot is taken such that a vote without a meeting occurs, each of the Master Association Members shall be notified; the Master Association shall deliver all ballots; the ballot shall explain each issue being voted upon and allow for yes or no voting; and the ballot shall explain the deadline for returning the ballot, as well as the required percentage of the Master Association Members that is necessary to pass each issue being voted upon.

The delivery of ballots shall be made in a reasonable manner based upon the most recent contact information provided by each Master Association Member to the Master Association. For ease and reduced expense of delivery, ballots shall be first be sent to the email address of each Master Association Member that was most recently made available to the Master Association. In the event that a Master Association Member does not: (i) have an email address; or (ii) wish to be provided a ballot by email; and the Master Association Member provides the Master Association with notice of the same, then a ballot sent via regular United States Postal Service mail shall be sent to the Master Association Member at the postal address for the Master Association Member that was most recently made available to the Master Association. Unless a Master Association Member otherwise notifies the Master Association, a Master Association Member's receipt of a ballot shall be deemed to have occurred upon sending of an email or placing the ballot in the mail as set forth above. No Master Association Member shall be permitted to invalidate a vote of the Master Association Members on the grounds of non-receipt of a ballot if the above-described methods of sending ballots to the Master Association Members are used, absent evidence of fraud or malfeasance.

3.4 Membership in a Community Association.

- (a) Subject to the provisions of Section 3.20 of Article III hereof, each Owner (notwithstanding the number of Lots owned) shall be entitled to only one (1) Community Association Membership and one (1) vote in the Community Association formed in connection with the Community in which such Owner's Lot(s) is(are) located so long as he or she is the Owner of such Lot(s), and such Owner shall specify in writing to such Community Association the name of the individual who will hold the Community Association Membership. In the absence of such written specification, Assessments shall nevertheless be charged against the Lot and Owner thereof, but there shall be no right to vote the membership. The Community Association Member must be an individual who is either an Owner, or if the Owner is or includes a Person other than an individual, the Community Association Member may be an individual who is a partner if the Owner is or includes a partnership, or an officer of a corporation if the Owner is or includes a corporation, or a trustee or beneficiary of the trust if the Owner is or includes a trust, or an owner of the entity if the Owner is or includes a Person other than an individual, a partnership, a corporation, or a trust.

- (b) Subject to the provisions of Subsection 3.4(a) of Article III, once a Community Association Member has been specified by an Owner of a Lot, a new Community Association Member may only be specified for that Lot by the Owner thereof upon at least fifteen (15) days' prior notice to the President of the Community Association; provided, however, the foregoing shall not impair the provisions of Subsection 3.4(c) of Article III.
 - (c) A membership in a Community Association shall not be transferred, pledged, or alienated in any way, except as herein expressly provided. Subject to the provisions of subsection 3.4(a) of this Article III, Community Association Membership shall automatically be transferred to the new Owner upon the transfer of the Lot to which it appertains (and then only to such transferee), whether by sale, intestate succession, testamentary disposition, foreclosure of a Mortgage or other legal process transferring fee simple title to such Lot.
- 3.5 Pledge of Voting Rights. Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to his Community Association Membership with respect to his Lot to a Mortgagee as additional security, the vote of such Mortgagee will be recognized only if a copy of such proxy, or other instrument pledging such vote, has been filed with the Community Association. In the event that more than one such instrument has been filed, the Community Association shall recognize the rights of the First Mortgagee to so file, regardless of the priority of the Mortgages themselves.
- 3.6 Assignment of Developer's Voting Rights. If any lender to whom the Developer has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration succeeds to the interests of the Developer by virtue of said assignment, the absolute voting rights of the Developer as provided in Sections 3.1 and 3.2 of this Article III shall not be terminated thereby, and such lender shall hold the Developer's memberships and voting rights on the same terms as they were held by the Developer pursuant hereto.
- 3.7 Master Association Board of Directors.
 - (a) The affairs of the Master Association shall be conducted by its Board as herein provided and in accordance with the Master Association Articles and Bylaws. Except for directors elected by the Developer, each director shall be a Master Association Member. If a director shall cease to meet such qualifications during his term, he or she will thereupon cease to be a director and his or her place on the Master Association Board shall be deemed vacant.
 - (b) The Developer shall have the sole and absolute power and right to appoint and remove the members of the Master Association Board until ninety-five percent (95%) of all land that is residential in nature (including land within any Annexation Property) as shown on the Master Plan, attached here to and incorporated herein as

Exhibit "B," has been sold to third parties, and Developer owns less than two (2) acres of land that is residential in nature as shown on said Master Plan. After that date, the Master Association Board shall be comprised as follows:

- (1) A single designated representative from each Community Association Board, to be elected by the members of each Community Association's Board at a meeting of each respective Community Association Board; and
 - (2) A minimum of one (1) and a maximum of five (5) "at-large" representative(s) to be comprised of Owners of Lots within the Residential District that are not Members of a Community Association, to be elected by those certain Master Association Members that are Owners of Lots within the Residential District that are not Members of a Community Association at the annual meeting of the Master Association Members or a special meeting of such Owners.
- (c) Any member of the Master Association Board may be removed from office by action of the Master Association Members in accordance with the following procedures: Upon the presentation to the Master Association President of a petition duly executed by thirty-four percent (34%) or more of all of the Master Association Members in favor of the removal from office of the member or members therein named of the Board, a referendum of the Master Association Members shall be promptly held to determine whether such member or members of the Board should be removed from office. Upon the affirmative vote of two-thirds (2/3) of all of the Master Association Members to remove such member or members of the Master Association Board from office, such member or members shall be deemed removed from office. The attempt to remove such member or members of the Master Association Board must have been listed as an item in the notice for the Master Association Members' meeting. Also at such meeting, the member or officer being considered for removal must have a reasonable opportunity to speak before the vote of the Master Association Members. Any vacancy on the Master Association Board created by the removal of a member of such Board as herein provided shall be filled by an election of all of the Master Association Members in the manner provided in the Master Association Articles or Bylaws for the election of directors.
- (d) Meetings of the Master Association Board must take place at least twice per year at the Master Association's principal office or at a location convenient for the Master Association Members during the period of the Developer's control of the Association as set forth in Article III, Section 3.3 above, or once per year otherwise. Meetings of the Master Association Board and its committees must be open to the Master Association Members.
- (e) Notwithstanding the foregoing, the Master Association Board may not perform any of the following acts: (1) amend the Declaration, except as provided by law; (2)

amend the Master Association Bylaws; (3) terminate the Master Association; (4) elect a member or members of the Master Association Board except to fill vacancies on such board until the next election of members to the Master Association Board; and (5) determine the Master Association Board's qualifications, powers, duties, or terms of office.

3.8 Board of Directors of Community Associations.

- (a) The affairs of each Community Association shall be conducted by a Community Association Board as herein provided and in accordance with the Community Association Articles and Community Association Bylaws. Except for directors elected by the Developer as provided for in Section 3.20 of Article III, each director shall be a Community Association Member or the spouse of a Community Association Member. If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director and his place on the applicable Community Association Board shall be deemed vacant.
- (b) Except for directors elected by the Developer as provided for in Section 3.20 of Article III, the members of a Community Association shall have the power and right to appoint and remove the members of its Community Association Board as provided in its Community Association Declaration, Articles, and Bylaws.
- (c) Any member of a Community Association Board may be removed from office by action of the Community Association Members in accordance with the following procedures: Upon the presentation to the applicable Community Association President of a petition duly executed by thirty-four percent (34%) or more of all of such Community Association's Members in favor of the removal from office of the member or members of the Community Association Board therein named, a referendum of such Community Association's Members shall be promptly held to determine whether such member or members of the Community Association Board should be removed from office. Upon the affirmative vote of two-thirds (2/3) of all of such Community Association Members then entitled to vote to remove such member or members of such Community Association Board from office, such member or members shall be deemed removed from office. Any vacancy on such Community Association Board created by the removal of a member of such Community Association Board as herein provided shall be filled by an election of all of such Community Association's Members in the manner provided in such Community Association Articles or Bylaws for the election of directors.

3.9 Duties and Powers of the President of the Master Association and Presidents of the Community Associations.

- (a) To the extent not prohibited by law, or as otherwise herein expressly limited, including without limitation Subsection 3.9(b) of Article III, the President of the Master Association or a Community Association shall be empowered to exercise

control over the affairs of such association and to act on behalf of, and bind, such association in every instance wherein such association is required or permitted to take any action. The action of each president shall at all times be subject to the review of the board of the association in question.

- (b) Notwithstanding anything in Subsection 3.9(a) of Article III to the contrary, no president shall have the power to borrow any funds on behalf of an association, make any expenditures on behalf of an association which are, in the aggregate, more than five percent (5%) in excess of the total amount of such Association's budget, or increase the amount of or levy any Assessment, without the prior approval of the board of the association in question.
- (c) A Community Association President may appoint such assistants as he deems necessary and appropriate. No compensation shall be paid to any assistant except as provided in the budget of the association in question or as otherwise approved by the board of the association in question.
- (d) Any right or power herein given or delegated to an association president which cannot be exercised by such president, whether by reason of law or otherwise, shall be deemed to be a right or power to be exercised by the board of the association in question.

3.10 Master Association President's Determination Binding. In the event of any dispute or disagreement between any Owners, Master or Community Association Members, or any other Persons subject to this Declaration relating to any question of interpretation or application of the provisions of this Declaration, the Master Association Articles or Bylaws, any Residential District Rule, or other rules of the Master Association, the determination thereof by the Master Association President shall be final and binding on each and all of such Owners, Master and Community Association Members, and Persons. The Master Association President may, at his election, delegate the resolution of such dispute or disagreement to the Master Association Board or a committee appointed by the President.

3.11 Approval of Members. Unless elsewhere otherwise specifically provided in this Declaration, a Community Association Declaration, or the articles or bylaws of a Community Association, any provision contained in the foregoing which requires the vote or written assent of the members of a Community Association shall be deemed satisfied by the following:

- (a) The vote in person or by proxy of the specified percentage of members then entitled to vote at a meeting duly called and noticed pursuant to the provisions of the applicable articles or bylaws dealing with annual or special meetings of the members of the association in question.

- (b) Written consents signed by the specified percentage of members then entitled to vote as provided in the bylaws of the association in question.
- 3.12 Additional Provisions in Articles and Bylaws. The articles and bylaws of an association may contain any provision relating to the conduct of the affairs of that association and the rights and powers of its directors, officers, employees, agents, and members not inconsistent with law or this Declaration.
- 3.13 Residential District Rules. In order to be able to address specific matters relating to the administration, operation, and development of, or other matters relating to, the Residential District, the Master Association Board shall be empowered to adopt, amend, or repeal such rules and regulations as it deems reasonable and appropriate (the "Residential District Rules"). The Residential District Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments or otherwise. The Residential District Rules shall not be inconsistent with the terms of this Declaration. The Residential District Rules may not unreasonably or unlawfully discriminate among Owners and Community Association Members. A copy of the Residential District Rules as they may from time to time be adopted, amended, or repealed, or a notice setting forth the adoption, amendment, or repeal of specific portions of the Residential District Rules shall be delivered to each Master Association Member in the same manner established in this Declaration for the delivery of notices. Upon completion of the notice requirements, said Residential District Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners, Community Associations, and Community Association Members, and all other Persons having any interest in, or making any use of, the Residential District, whether or not actually received thereby. The Residential District Rules, as adopted, amended, or repealed, shall be available at the principal office of the Master Association to each Owner, Community Association, Community Association Member, or other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Residential District Rules and any provisions of this Declaration or the Master Association Articles or Bylaws, the provisions of the Residential District Rules shall be deemed to be superseded by the provisions of this Declaration or such articles or bylaws to the extent of any such conflict. In the event of any conflict between the Residential District Rules and any provisions of a Community Association Declaration, Design Standards, or any Community Association Articles or Community Association Bylaws, the provisions of the Residential District Rules shall be controlling to the extent of any such conflict.
- 3.14 Indemnification. To the fullest extent permitted by law, every director and every officer of the Master or any Community Association, the members of any Design Review Committee, and the Developer (to the extent a claim may be brought against the Developer by reason of its appointment, removal, or control over members of any board or Design Review Committee), shall be indemnified by the Master Association and the respective Community Associations, and every other person serving as an employee or direct agent of any association, or on behalf of an association as a member of committee or otherwise, may, in the discretion of the board of the association in question, be indemnified by such

association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him or her in connection with any proceeding or any settlement thereof to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having served in such capacity on behalf of such association (or in the case of the Developer by reason of having appointed, removed, or controlled, or failed to control members of a board, or Design Review Committee) whether or not he or she is a director, an officer, or a member of a Design Review Committee, or serving in such other specified capacity at the time such expenses are incurred; provided, however, that prior to agreeing to any such indemnification, the board of the association in question shall determine, in good faith, that such officer, director, member of a Design Review committee, or other Person, or the Developer, did not act, fail to act, or refuse to act willfully, or with gross negligence, or fraudulent or criminal intent in the performance of his or her duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Persons may be entitled at law or otherwise. Appropriate insurance may be obtained pursuant to Article VII to cover any liability exposure created by virtue of the foregoing indemnification.

- 3.15 Non-Liability of Officials. To the fullest extent permitted by law, neither the Developer, any president, any directors, any officers, any Design Review Committee member, nor any other members of committees of an association shall be liable to any Master Association Member or Community Association Member, Owner, Occupant, the Master Association, any Community Association, or any other Person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval, or disapproval of plans or specifications (whether or not defective), course of action, inaction, omission, error, negligence, or the like made in good faith and which the Developer, any president, any director, any officer, or any member such committees reasonably believed to be within the scope of his or her respective duties.
- 3.16 Easements. The Master Association is authorized and empowered to grant upon, across, or under real property owned or controlled by the Master Association, such permits, licenses, easements, and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable, and other similar public or private utility purposes, roadways, or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation, and enjoyment of the Common Maintenance Areas or all or any other part of the Residential District, or the preservation of the health, safety, convenience, and welfare of the Owners.
- 3.17 Accounting. The Master Association and each Community Association at all times shall keep, or cause to be kept, true and correct records of account on a cash basis in accordance with generally accepted accounting principles, and shall have available for the inspection of all Master Association Members at reasonable times during regular business hours, books which shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise.

- 3.18 Records. The Master Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Master Association Member the books, records, and financial statements of the Master Association together with current copies, as amended from time to time, of this Declaration and the Master Association Articles and Bylaws and Residential District Rules. The Master Association shall retain copies of the following records for a period of five (5) years: (1) all receipts and expenditures; (2) minutes of all meetings except for executive sessions of the Master Association Board; (3) names of all Owners and/or Master Association Members, in alphabetical order, with addresses; (4) the Declaration, Master Association Bylaws and Master Association Rules; (5) names and addresses of current members of the Master Association Board; (6) the Association's most recent annual report, if any; (7) copies of current contracts to which the Master Association is a party; (8) records of architectural approvals, if any; and (9) ballots, proxies and other records relating to voting by Master Association Members for one (1) year after the election, action or vote to which they pertain. The Master Association must also retain copies of all financial statements and tax returns of the Master Association for a period of three (3) years. Notwithstanding the foregoing, the Developer shall be under no obligation to make its own books and records available for inspection by the Master Association, any Community Association, Owner, Community Association Member, or other Person.
- 3.19 Managing Agent. Any powers, duties, and rights of an association created pursuant thereto, or of any president or any board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve any association of its obligation to perform any such delegated duty. Any agreement for professional management, or any other contract providing for services, shall not exceed a term of three years, which term may be renewed by agreement of the parties for successive one-year periods, and shall further provide for termination by either party with or without cause and without payment of a termination fee upon sixty (60) days' prior written notice.
- 3.20 Developer's Control of Master and Community Associations. Notwithstanding anything in this Declaration to the contrary (but subject to Section 11.1 of Article XI in respect of Design Review Committees), the Developer shall maintain absolute and exclusive control over the Master Association each Community Association and each Design Review Committee, including appointment of all presidents and members thereof, until ninety-five percent (95%) of all land that is residential in nature (including land within any Annexation Property) as shown on the Master Plan, attached here to and incorporated herein as Exhibit "B", has been sold to third parties, and Developer owns less than two (2) acres of land that is residential in nature as shown on said Master Plan. Until such time, only the Developer will be entitled to cast any votes with respect to the election of directors to any board, removal of directors from any board, or any other matter requiring the vote or approval of members of any association. Developer may impose more stringent control standards over a Community Association or its Design Review Committee in the applicable Community Declaration. The Developer voluntarily may (but shall not be required to) at any time (i) permit the members of an association to assume control of an association at

any time, and (ii) relinquish all or any part of the Developer's other control and rights under this Section and Sections 3.1, 3.3 and Subsection 3.7(b) of Article III, in which event the association shall assume said control and rights. Such permission granted with respect to one or more associations shall not extend to other associations, nor shall any partial relinquishment of other control or rights be deemed to relinquish any other control or rights.

ARTICLE IV

Use of Common Maintenance Areas

- 4.1 No Delegation of Use. No Owner may delegate any rights (if any) he may have of use and enjoyment of the Common Maintenance Areas to any Person, except to the members of his immediate family, or to his guests and invitees.
- 4.2 Waiver of Use. No Owner may exempt himself, and no Owner shall be exempt, from personal liability for Assessments or be able to release any lot owned by such person from the liens, charges, and other provisions of this Declaration, the Master Association Articles, the Community Association Articles, the Master Association Bylaws, Community Association Bylaws, Residential District Rules, Community Association Rules, or Design Standards, by voluntary waiver of, or suspension, or restriction of such Owner or Community Association Member's rights (if any) to the use and enjoyment of the Common Maintenance Areas, or the abandonment of such Owner or Community Association Member's Lot or membership.

ARTICLE V

Developer and Master Association Easement

There is hereby created an affirmative, non-exclusive easement in favor of Developer and the Master Association, for ingress and egress over all Common Maintenance Areas and for the right to go over, under, and across, and to enter and remain upon all Common Maintenance Areas for all purposes consistent with development and maintenance of the Residential District.

ARTICLE VI

Creation of Lien and Personal Obligation

Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to covenant and agree to pay all of the following to the Master Association in accordance with the terms hereof: Regular Assessments, Special Assessments, Reconstruction Assessments, and Improvement Assessments. Such Assessments shall be collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees, and court costs, and other costs of collection thereof as hereinafter provided shall be a continuing lien upon such Owner's Lot against which the Assessments are made. Each Assessment, together with such interest and other costs, shall also be the personal obligation of the Owner to whom such Assessment relates. The personal obligation for delinquent payments shall not pass to an Owner's successor unless expressly assumed by him or her. If an Owner shall consist of more

than one Person, the obligations of the Owner for the payment of Assessments on such Owner's Lot shall be joint and several.

6.1 Purpose of Assessments. Except as otherwise herein set forth, the Assessments levied by the Master Association shall be used: (a) to promote the health, safety, and welfare of Owners, (b) to enhance the value of the Residential District, (c) to pay the costs of administration of the Master Association, (d) to pay all other Common Expenses, or (e) to otherwise further the interests of the Residential District. Where a Lot has separate gas, electrical, sewer, or other similar utility service, the cost of same shall be the personal obligation of each Owner. Maintenance of sewer lines serving a Lot shall be the responsibility of its Owner.

6.2 Regular Assessments.

- (a) Except as otherwise specifically provided herein, each Master Association Member shall pay as its Regular Assessment its Proportionate Share of the Common Expenses. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as may be provided in the Master Association Articles or Bylaws, or as determined by the Master Association.
- (b) A budget shall be proposed and adopted by the Master Association Board on an annual basis. The Master Association shall at that time determine the amount of the Regular Assessment to be paid by each Owner and notify the Owner thereof. Prior to the adoption of said budget: (1) all Master Association Members must receive notice that the Master Association Board is proposing said budget at least ten (10) days in advance; (2) a copy of the proposed budget must be available to any Master Association Member who requests it; and (3) Master Association Members must be given a reasonable opportunity to comment on the proposed budget before the Master Association Board adopts the budget. Each Owner shall thereafter pay to the Master Association its entire Regular Assessment as so determined no later than forty five (45) days from the beginning of the Master Association's fiscal year, which date shall be set forth in the written notice sent to the Master Association Members.
- (c) If the Master Association subsequently determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Master Association's budget for that year, the Master Association President shall then immediately determine the approximate amount of such inadequacy and, with the consent of the Master Association Board, issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Owner for the balance of the year, and the date or dates when due. Each Owner shall then be notified of the additional amount required to be paid and the due date

of such payment, and each Owner shall pay the additional amount when due. If the estimated total Regular Assessments for a current year prove to be excessive in light of the actual Common Expenses, the Master Association may, at the discretion of the Master Association Board, retain such excess as additional working capital or reserves, or reduce the amount of the Regular Assessments for the next fiscal year. No reduction or abatement of Regular Assessments because of any such anticipated surplus may diminish the quantity, or quality, of services upon which the Common Expenses for the year in question are based, and if supplemental assessments are required, they shall be made as set forth above.

6.3 Special Assessments. Special Assessments shall be levied by the Master Association against an Owner to reimburse the Master Association for:

- (a) Costs incurred in bringing an Owner or his or her Lot into compliance with the provisions of this Declaration, the Master Association Articles or Bylaws, or the Residential District Rules.
- (b) Fines levied or fixed by the Master Association Board as provided herein.
- (c) Attorneys' fees, interest, and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this declaration, the Master Association Articles or Bylaws, or the Residential District Rules.
- (d) Any other charge designated as a Special Assessment in this Declaration, the Master Association Articles or Bylaws, or the Residential District Rules.

In the event the Master Association undertakes to provide materials or services which benefit individual Owners or Lots and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be a Special Assessment.

6.4 Improvement Assessment. The Master Association may levy, in any fiscal year thereof, an Improvement Assessment applicable only for that year, for the purpose of defraying, in whole or in part, the costs of any action or undertaking on behalf of the Master Association in connection with any construction or replacement of a capital improvement upon the Common Maintenance Areas, including the necessary fixtures and personal property related thereto; provided, however, such expenses shall only apply to the extent the same is not covered by the provisions affecting Reconstruction Assessments in Article VIII entitled "Damage and Destruction of Common Maintenance Areas." Without the vote of a Majority of its members, the Master Association shall not impose an Improvement Assessment in an amount which in any one (1) year exceeds five percent (5%) of the estimated current annual Regular Assessment. Any reserves collected and held by the Master Association for the future shall not be included in determining the foregoing limitation on any annual Improvement Assessment.

- 6.5 Uniform Assessment. All Regular Assessments and Improvement Assessments imposed upon an Owner shall be based upon such Owner's Proportionate Share.
- 6.6 Exempt Property. All properties owned or acquired by a public authority shall be exempt from the Assessments created herein. Additionally, all properties owned by the Developer shall be exempt from the Assessments created herein unless the Developer elects at its discretion to pay the assessments on said properties so owned.
- 6.7 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to each Owner on the date of its creation. The Regular Assessment shall be equitably adjusted as required for short periods.
- 6.8 Time and Manner of Payment, Late Charges, and Interest. Assessments shall be due and payable by Owners in such manner and at such times as the Master Association shall designate in accordance with the terms hereof. If not paid within ten (10) days after its due date, each such Assessment shall have added to it a late charge equal to ten percent (10%) of the amount of Assessment and thereafter bear interest at the Default Rate of Interest until paid. The Master Association may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A delinquent Owner shall, to the extent allowed by then applicable law, be liable for attorneys' fees and other related costs incurred by the Master Association as a result of such delinquency, and if any suit, action, or proceeding is brought to collect any such Assessment or charge, then there shall be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon.
- 6.9 No Offsets. All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (a) the Master Association, its Board, its President, or the developer is not properly exercising its duties and powers as provided in this Declaration or documentation associated therewith; or (b) Assessments for any period exceed Common Expenses.
- 6.10 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, any Community Association Declaration or documentation associated with either (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.
- 6.11 Reserves. Reserves included in any budget for Common Expenses which are collected as part of Regular Assessments shall be deposited by the Master Association in a separate bank account to be held in trust for the purposes for which they are budgeted and are to be segregated from and not commingled with any other funds of the Master Association,

except to the extent that the Master Association's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws (tax or otherwise) of the State of Kansas or the United States relating to corporations not organized for profit, or homeowners associations. Such reserves shall be deemed a contribution to the capital account of the Master Association. The responsibility of the Master Association Board (whether while controlled by the Developer or otherwise) shall be only to provide for such reserves as such Board in good faith deems reasonable, and neither the Developer, such board, nor any member thereof shall have any liability to any Owner, association or member thereof, if such reserves prove to be inadequate.

- 6.12 Subordination of Lien. Any lien which arises against a Lot by reason of the failure or refusal of an Owner to make timely payment of any assessment shall be subordinate to the lien of a prior recorded First Mortgage (together with any interest, cost, reasonable attorneys' fees, and any late charges related thereto) on the Lot, acquired in good faith and for value, except for the amount of the unpaid Assessment which accrues from and after the date on which a first mortgagee comes into possession of, or acquires title to the Lot, whichever occurs first. If any lien for unpaid Assessments which accrued prior to the date the First Mortgagee comes into possession of or acquires title to the Lot has not been extinguished by the process by which such first mortgagee came into possession of or acquired title to the Lot, such First Mortgagee shall not be liable for unpaid Assessments arising prior to the aforesaid date and, upon written request by such First Mortgagee to the Master Association, such lien shall be released in writing by the Master Association. Any unpaid Assessments which are extinguished pursuant to the foregoing sentence shall continue to be the personal obligation of the delinquent Owner and may also be re-allocated by the Master Association among all Owners as part of the Common Expenses.
- 6.13 Certificate of Non-Payment. Upon request, any Person acquiring an interest in any lot shall be entitled to a certificate from the Master Association setting forth the amount due but unpaid Assessments relating to such Lot, if any, and such Person shall not be liable for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Assessments which occur, or become due, after the date thereof and any interest, costs, attorneys' fees, and any late charges related to such unpaid Assessments.
- 6.14 Enforcement of Lien. Any lien provided for in this Article VI may be foreclosed by the Master Association in any manner provided or permitted for the foreclosure of realty mortgages in the State of Kansas. All of the provisions of this Article VI relating to the enforcement of any lien provided for herein (including without limitation the subordination provisions in Section 6.12 of Article VI or the provisions of this Section 6.14 of Article VI) shall apply with equal force in each other instance provided for in this Declaration or the Residential District Rules or the Master Association Articles or Bylaws wherein it is stated that payment of a particular Assessment, charge, or other sum shall be secured by a lien. Nothing herein shall be construed as requiring that the Master Association take any action allowed hereunder in any particular instance, and the failure of

the Master Association to take such action at any time shall not constitute a waiver of the right to take such action at a later time, or in a different instance.

- 6.15 Pledge of Assessment Rights as Security. The Master Association shall have the power to pledge the right to exercise its assessment powers and rights as security for any obligation of the Master Association; provided, however, any such action shall require the prior affirmative vote or written assent of the Developer, if it controls the Master Association, or otherwise, a Majority of all of the Master Association Members. The Master Association's power to pledge its assessment powers shall include, but not be limited to, the ability to make an assignment of Assessments which are then payable to, or which will become payable to, the Master Association, which assignment may then be presently effective but shall allow said Assessments to continue to be paid to the Master Association and used by the Master Association as required, unless and until the Master Association shall default on its obligations secured by said assignment.

ARTICLE VII

Insurance

- 7.1 Authority to Purchase. The Master Association shall purchase and maintain all required insurance upon the Common Maintenance Areas including, but not limited to, the insurance described in Section 7.3 of Article VII. Such policies and endorsements thereon, or copies thereof, shall be deposited with the Master Association. The Master Association shall make same available to each Master Association Member in order to permit such Master Association Member to determine which particular items are included within the coverage. If they so desire, any Owners or Community Association Members may insure themselves as they see fit if any risks which they wish to have covered are not insured by the insurance purchased by the Master Association. No Community Association shall purchase any insurance which shall impair or adversely affect any insurance maintained by the Master Association.
- 7.2 Member's Responsibility. It shall be each Owner's responsibility to purchase, at his or her own cost, such insurance as he or she deems appropriate for his or her own Lot, improvements thereon, furnishings and personal property therein, personal property stored elsewhere within the Residential District, personal liability, and such other insurance which the Owner desires; provided, however, no Owner or Community Association Member shall maintain any insurance, whether on his Lot or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Master Association in the event of damage to the improvements or fixtures on the Common Maintenance Areas.
- 7.3 Coverage. To the extent appropriate for the improvements on the Common Maintenance Areas, the Master Association shall maintain and pay for policies of insurance as follows:
- (a) A multi-peril type policy covering all of the improvements on or which constitute Common Maintenance Areas providing, as a minimum, fire and extended

coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location, and use, including, without limitation, perils normally covered by an “all-risk” policy, in an amount determined by the Master Association.

- (b) A policy of comprehensive public liability insurance covering all of the Common Maintenance Areas in an amount determined by the Master Association but not less than \$3,000,000.00 per occurrence, for personal injury or death and/or property damage. The scope of such coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location, and use, including without limitation, liability for non-owned and hired automobiles, liability for property of others, liability arising in connection with the operation, maintenance, or use of the Common Maintenance Areas, liability assumed by contract or contractual liability, and liability arising out of any employment contracts of the Master Association.
- (c) The Master Association shall, at its election, obtain fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees, or volunteers responsible for handling funds belonging to or administered by the Master Association. If funds of the Master Association are handled by a management agent, then fidelity bond coverage shall also be obtained for the officers, employees, or agents thereof handling, or responsible for, Master Association funds. The fidelity bond, or insurance, must name the Master Association as the named insured and shall be written to provide protection in an amount not less than the lesser of: (i) one-half (1/2) times the Master Association’s estimated annual operating expenses and reserves; (ii) a sum equal to three (3) months’ of the Master Association’s aggregate Regular Assessments plus reserves; or (iii) the estimated maximum amount of funds, including reserves, in the custody of the Master Association (and its management agent) at any one time. In connection with such coverage, an appropriate endorsement shall be added to the policy to cover any person who serves without compensation if the policy would not otherwise cover volunteers.
- (d) A workmen’s compensation policy covering the Master Association to meet the requirements of law.
- (e) The Master Association shall, at its election, obtain a policy of “directors and officers” liability insurance covering the Master Association.
- (f) Such other insurance, and in such amounts, as the Master Association shall determine from time to time to be desirable.

7.4 Required Provisions. The insurance policies purchased by the Master Association shall, to the extent available at a reasonable cost, contain the following provisions:

- (a) The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by any Owner or First Mortgagee.
- (b) The conduct of any one or more Owners or Master or Community Association Members shall not constitute grounds for avoiding liability on any such policies.
- (c) There shall be no subrogation with respect to the Master Association or any Community Association, its agents or employees, Owners, members, or members of their households or families and employees, or any Mortgagee of all or any part of the Residential District or of any Lot. The policy(ies) should name said persons as additional insureds and each policy must contain a waiver of any defenses based on co-insurance, or on invalidity arising from the acts of any insured.
- (d) A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of a Master Association Member, Owner, or Community Association Member because of the conduct or negligent acts of the Master Association and its agents, or other Master or Community Association Members or Owners.
- (e) Any "no other insurance" claims shall exclude insurance purchased by Owners, Community Association Members, or First Mortgagees.
- (f) Coverage must not be prejudiced by: (i) any act or neglect of Master Association Members, Owners, or Community Association Members when such act or neglect is not within the control of the Master Association; or (ii) any failure of the Master Association to comply with any warranty of condition regarding any portion of the Residential District over which the Master Association has no control.
- (g) Coverage may not be cancelled or substantially modified without at least thirty (30) days' (or such longer period as the Master Association may reasonably deem appropriate) prior written consent notice to the Master Association.
- (h) Any policy of property insurance which gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that such election is not exercisable without the prior written approval of the Master Association, or when in conflict with the insurance trust provisions contained herein, or any requirement of law.
- (i) A recognition of any insurance trust agreement entered into by the Master Association.
- (j) Each hazard insurance policy shall be written or satisfactorily reinsured by a hazard insurance carrier which has a financial rating as designated in Best's Key Rating Guide of Class VI or better, or if such rating service be discontinued, an equivalent

rating by a successor thereto or a similar such rating service. Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Kansas.

- (k) Policies shall not be utilized where, under the terms of the carrier's charter, bylaws, or policy, contributions or assessments may be made against the Master Association Members, Owners, Community Association Members, or the Master Association, or where loss payments are contingent upon action by the carrier's board of directors, policyholders, or members.

7.5 Non-Liability of Master Association/Board/President. Notwithstanding the duty of the Master Association to obtain insurance coverage as stated herein, neither the Master Association nor any member of its Board nor any officer of the Master Association nor the Developer shall be liable to any Owner, Master Association Member or Community Association Member, Mortgagee, or other Person, if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Master Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner may desire.

7.6 Premiums. Premiums upon insurance policies purchased by the Master Association shall be paid by the Master Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the user, misuse, occupancy, or abandonment of a Lot, or its appurtenances, or of the Common Maintenance Areas, by an Owner, shall be assessed against that particular Owner in a Special Assessment.

7.7 Insurance Claims. The Master Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Master Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The President of the Master Association has full and complete power to act for the Master Association in this regard and may, at his discretion, appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority to negotiate losses under any policy purchased by the Master Association.

7.8 Benefit. Except as otherwise provided herein, all insurance policies purchased by the Master Association shall be for the benefit of, and any proceeds of insurance received by the Master Association or any insurance trustee, shall be held or disposed of in trust for the Master Association and the Owners, as their interests may appear.

ARTICLE VIII Damage and Destruction of Common Maintenance Areas

- 8.1 Duty of Master Association. In the event of partial or total destruction of the Common Maintenance Areas constituting improvements, it shall be the duty of the Master Association to restore and repair the same as promptly as practical, pursuant to this Article VIII. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for such purpose, subject to the prior rights of Mortgagees whose interest may be protected by said policies.
- 8.2 Automatic Reconstruction. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any non-committed or unreserved capital of the Master Association, shall be at least seventy-five (75%) of the estimated cost of restoration and repair, a Reconstruction Assessment shall be levied by the Master Association to provide the necessary funds for such reconstruction in excess of the amount of the funds available for such purpose. The Master Association shall thereupon cause the damaged or destroyed improvements constituting Common Maintenance Areas to be restored to substantially the condition the Common Maintenance Areas were in prior to the destruction or damage.
- 8.3 Vote for Members. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Master Association, shall be less than seventy-five (75%) of the estimated cost of restoration and repair, the Common Maintenance Areas shall be replaced or restored unless Members holding two-thirds (2/3) of the total votes of the Master Association then entitled to be cast, at a special meeting held for such purpose, may disapprove of such replacement or restoration. If such Members approve the proposed replacement or restoration, the Master Association shall levy a Reconstruction Assessment and cause the damaged or destroyed Common Maintenance Areas to be restored as closely as practical to their former condition prior to the destruction or damage. If the Members disapprove of the repair or restoration of the damaged or destroyed improvements on the Common Maintenance Areas as provided above, the Common Maintenance Areas so damaged or destroyed shall be cleared of debris and put in a neat and slightly condition and the costs thereof shall be paid with the insurance proceeds.
- 8.4 Excess Insurance Proceeds. In the event any excess insurance proceeds remain after any reconstruction by the Master Association pursuant to this Article VIII, the Master Association, in its sole discretion, may retain such sums in the general funds of the Master Association or may distribute all or a portion of such excess to the Owners in their respective Proportionate Shares, subject to the prior rights of Mortgagees whose interest may be protected by the insurance policies carried by the Master Association. The rights of a Mortgagee of a Lot as to such distribution shall be governed by the provisions of the Mortgage encumbering such Lot.
- 8.5 Use of Reconstruction Assessments. All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Article VIII and shall be deposited by the Master Association in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other funds of the Master

Association and shall be deemed a contribution to the capital account of the Master Association. Any Reconstruction Assessment shall be secured by the lien provided for in Article VI.

- 8.6 Contract for Reconstruction. In the event the Master Association undertakes the repair and restoration of the Common Maintenance Areas, the Master Association shall contract with a licensed contractor or contractors who may be required to post a suitable performance or completion bond. The contract with such contractor or contractors shall provide for the payment of a specified sum for completion of the work described therein and shall provide for periodic disbursements of funds, which shall be subject to the prior presentation of an architect's, or similar, certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the Master Association.
- 8.7 Insurance Proceeds Trust. Upon the receipt by the Master Association of any insurance proceeds, the Master Association may, at its option, cause the insurance proceeds to be paid directly to a bank, savings and loan association, or trust company located in Riley County, Kansas, as designated trustee (the "Insurance Trustee") by the Master Association. Such funds shall be received, held, and administered by the Insurance Trustee subject to a trust agreement consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Master Association. Disbursements to contractors performing any repair or reconstruction upon the Common Maintenance Areas shall be made periodically, as the work progresses, in a manner consistent with procedures then followed by prudent lending institutions in Riley County, Kansas.

ARTICLE IX Eminent Domain

- 9.1 Definition of Taking. The term "taking" as used in this Article IX shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Maintenance Areas.
- 9.2 Representation in Condemnation Proceedings. In the event of a threatened taking of all or any portion of the Common Maintenance Areas, the Owners and all members of all associations hereby appoint the Master Association through such persons as the Master Association Board may delegate to represent all of the Owners and members in connection therewith. The Master Association shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale in lieu of engaging in a condemnation action.
- 9.3 Award for Common Maintenance Areas. Any awards received by the Master Association on account of the taking of Common Maintenance Areas shall be paid to the Master Association. The Master Association may, in its sole discretion, retain any award in the general funds of the Master Association or distribute all, or any portion thereof, to the Owners in their respective Proportionate Shares. The rights of an Owner and the

Mortgagee of his or her Lot as to any distribution shall be governed by the provisions of the Mortgage encumbering such lot.

ARTICLE X Maintenance, Repairs, and Replacements

- 10.1 Owner's Responsibility. Except as may otherwise be provided for herein, each Owner, at his or her own expense shall furnish and be responsible for all of the maintenance, repairs, and replacement within his or her own Lot.
- 10.2 Maintenance of Common Maintenance Areas. Except as otherwise provided herein to the contrary, maintenance, repairs, and replacements of the Common Maintenance Areas shall be furnished by the Master Association as part of the Common Expenses and shall be subject to the Master Association Bylaws and Residential District Rules. If, due to the act or neglect of an Owner, or an invitee, guest, or other authorized visitor of an Owner, or an Occupant of such Owner's Lot, damage shall be caused to the Common Maintenance Areas or maintenance, repairs, or replacement shall be required which would otherwise be a Common Expense, such Owner shall pay for the damage and for such maintenance, repairs, and replacements as may be determined necessary or appropriate by the Master Association. Such obligation shall be collected by way of a Special Assessment, the payment of which shall be secured by the lien provided for in Article VI.
- 10.3 Right of Access. An authorized representative of the Master Association and all contractors, repairmen, or other agents employed or engaged by the Master Association, shall be entitled to reasonable access to each of the Lots as may be required in connection with maintenance, repairs, or replacements of or to the Common Maintenance Areas or any equipment, facilities, or fixtures affecting or serving the Common Maintenance Areas, or to perform any of the Master Association's responsibilities hereunder.

ARTICLE XI Architectural and Landscape Control

- 11.1 Design Review Committees. The Master Association shall have a Design Review Committee and each Community Association may have a Design Review Committee.
- (a) Master Design Review Committee. A Master Design Review Committee is established by this Declaration with composition as follows: Until ninety-five percent (95%) of all land that is residential in nature (including land within any Annexation Property) as shown on the Master Plan, attached hereto and incorporated herein as Exhibit "B," has been sold to third parties, and Developer owns less than two (2) acres of land that is residential in nature as shown on the Master Plan, the Master Design Review Committee shall be comprised of the Developer and/or such representatives of the Developer as the Developer may appoint from time to time. The Developer shall retain the right to appoint, augment, or replace all members of the Master Design Review Committee during such time.

After ninety-five percent (95%) of all land that is residential in nature (including land within any Annexation Property) as shown on the Master Plan, attached hereto and incorporated herein as Exhibit "B," has been sold to third parties, and Developer owns less than two (2) acres of land that is residential in nature as shown on the Master Plan, the Master Design Review Committee shall be comprised of five (5) representatives that are each appointed by resolution of the Master Association Board. Persons appointed to the Master Design Review Committee, other than those persons appointed by the Developer, must be Owners of Lots within the Residential District.

- (b) Community Association Design Review Committee. Each Community Association may have a Community Association Design Review Committee consisting of not less than three (3) nor more than five (5) persons, or as specified from time to time by resolution of the Community Association Board in question. Members of each Community Association Design Review Committee shall be appointed by the Board of the Community Association thereof. Persons appointed to a Community Association Design Review Committee must be Community Association Members of the Community in question.

11.2 Establishment of Design Standards. In order to achieve uniformity and coordination within the Residential District and each Community Association, the Master Association and each Community Association shall establish Design Standards. The Master Association and various Community Associations may, from time to time, amend, repeal, or augment such Design Standards. The Master Design Review Committee shall approve all Community Design Standards and any amendments, deletions, or supplements thereto. The Design Standards for each Community shall be in conformity with the restrictions, procedures, and limitations set forth in this Article XI and in Article XII. All Design Standards shall meet the certain minimum design standard criteria set forth in Article XI, Section 11.6 below.

11.3 General Provisions of the Design Standards.

- (a) Provisions shall be made for the establishment of building and other improvement setbacks for each lot.
- (b) Conformity of completed improvements to plans and specifications approved by the applicable Design Review Committee shall be required.
- (c) Such other limitations and restrictions shall be established as the Master Design Review Committee or each Community Association Design Review Committee, in its reasonable discretion, shall adopt, including, without limitation, the regulation of all landscaping (including without limitation absolute prohibition of certain types of landscaping, trees, and plants), construction, reconstruction, exterior addition, change or alteration to, or maintenance of, any building, structure, wall, or

fence, including without limitation, the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement.

- (d) The Master Design Review Committee and each Community Association Design Review Committee may delegate plan review responsibilities, except final review and approval as may be required by such Design Standards, to one (1) or more of its members or architectural consultants retained by said Design Review Committees. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entirety of said Design Review Committees.
- (e) The address of the Master Design Review Committee and each Community Association Design Review Committee shall be the address established from time to time by resolution of the Master Association or a particular Community Association, as the case may be. Such address shall be the place for the submittal of plans and specifications.
- (f) The establishment of the Master Design Review Committee and each Community Association Design Review Committee and the Design Standards therefor shall not be construed as changing the obligation of any Owner.
- (g) No residence, fence, wall or other structure, or improvement of whatever type shall be connected, erected, or maintained within the Residential District, nor shall there be any addition to or change to the exterior of any residence, or other structure or improvement upon a Lot or the landscaping, grading, or drainage thereof, including without limitation, the painting (other than painting with the same color of paint as previously existed) of exterior walls and patio covers, except in compliance with plans and specifications therefor which have been submitted to and approved by the appropriate Design Review Committee. In recognition of the fact that the overall impact of improvements on any Lot involves issues of taste and judgment which cannot be completely reduced to Design Standards, the Master Design Review Committee and/or each Community Association Design Review Committee shall have the right and authority to reject plans and specifications conforming to the Design Standards if the committee believes that the overall aesthetic impact of the proposed improvement, addition, alteration, or change is detrimental to the Residential District or a particular Community.
- (h) By its approval of plans and specifications, the Master Association Design Review Committee and/or each Community Association Design Review Committee shall not be deemed to have approved the same for engineering design, or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the Master Design Review Committee, each Community Association Design Review Committee, any members of any Design Review Committee, the Master Association and any of its members, its officers, or its Board, the Community Association in question and any of its members, its officers,

or its Board, nor the Developer assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications.

Neither the Master Design Review Committee, each Community Association Design Review Committee, any members of any Design Review Committee, the Master Association and any of its members, its officers, or its Board, the Community Association in question and any of its members, its officers, or its Board, nor the Developer shall be liable to any Owner or other Person for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development, or manner of development, of any property within the Residential District; or (iv) the execution and filing of any estoppel certificate pursuant to Subsection 11.3(i) of Article XI or otherwise, whether or not the facts therein are correct; provided, however, that such action, on the basis of the actual knowledge possessed by the Person in question, was taken in good faith. Approval of plans and specifications by the Master Association Design Review Committee or a Community Association Design Review Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances and regulations including, but not limited to, zoning ordinances and building codes.

- (i) Any member or authorized consultant of a responsible Design Review Committee (including, but not limited to, the Master Design Review Committee), the Developer or its representatives, or any authorized officer, director, employee, or agent of the Master Association or Community Association in question, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot, after reasonable notice to the Owner, in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been, or are being, built in compliance with the plans and specifications approved by the Master Design Review Committee and/or the applicable Community Association Design Review Committee, the applicable Design Standards, this Declaration and the applicable Community Association Declaration. The responsible Design Review Committee shall cause such an inspection to be undertaken within a reasonable time (not to exceed sixty (60) days) after a request therefor from any Owner as to his or her Lot, which request shall contain an affirmative statement by such Owner of such Owner's good faith belief that such Owner is in compliance with the terms hereof, the approved plans and specifications, and any applicable Community Association Declaration and Design Standards. If such inspection reveals that the improvements located on such Lot have been completed in compliance with this Declaration, the plans and specifications as approved by the applicable Design Review Committee and the applicable Design Standards, such Design Review Committee shall certify the compliance with the provisions of this Declaration, the approved plans and specifications, and the applicable Design

Standards as to the improvements described, but as to such improvements only.

- (j) The reconstruction by the Master Association after destruction by casualty, or otherwise, of any Common Maintenance Areas which is accomplished in substantial compliance with "as built" plans for such Common Maintenance Areas shall not require compliance with the provisions of this Article XI or the applicable Design Standards.
 - (k) The Master Association may promulgate such rules and regulations as it deems to be appropriate and as are not in conflict with this Declaration in order to enforce compliance with the applicable Design Standards. Without limiting the generality of the preceding sentence, the Master Association, Master Association Board, or applicable Community Association Board may fix a fine of up to Ten Thousand Dollars (\$10,000) for failure to obtain any required approval from the appropriate design review committee or to comply with any such approval. The Master Association may further take such legal action as it deems necessary to enforce such compliance.
 - (l) Notwithstanding the provisions of Section 11.2 of Article XI pertaining to uniformity, to the extent necessary or convenient, the provisions of the Design Standards for each Community will differ from those applicable to other Communities as may be required to accommodate the style of residence to be constructed within such Community. However, regardless of the style of residence to be constructed within a particular Community, all Design Standards must meet the minimum Design Standards set forth in Article XI, Section 11.6 below.
- 11.4 Public Approvals. All pertinent requirements of public agencies shall be followed in the development of the Residential District, and all plans must be approved by the appropriate departments for the City. Each Owner must verify code requirements at the time of purchase and development. Although based in part on local zoning and subdivision regulations, the Design Standards may be more restrictive in land use, site development standards, landscape requirements, or other matters. In every case in which the Design Standards or approvals given by a Design Review Committee are at variance with public agency requirements, the more restrictive regulations shall govern. Final legal approvals permitting development and occupancy of the property will be made by the City.
- 11.5 Utilities. All utilities shall be placed underground.
- 11.6 Minimum Design Standards. Notwithstanding anything in this Article XI, or in Article XII below, to the contrary, the Design Standards for the Master Association, each Community Association and all other residential Lots within the Residential District that are not governed by a Community Association, must meet the following minimum criteria:
- (a) Landscape Plan Review. Landscaping shall be reviewed for its general content, and

its ability to handle runoff and prevent erosion. Landscape plans shall be submitted to the applicable Design Review Committee at the same time building plans are submitted.

- (b) Landscape Construction. The following standards shall apply to landscape construction:
- (1) *Erosion Control*. All lots shall be maintained in a clean and orderly manner during construction periods. Erosion control shall be the responsibility of each Lot Owner and in conformance with the stormwater permits issued by the City and /or the State of Kansas.
 - (2) *Easements*. Within utility easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the maintenance of utilities, or which may change the direction of flow of drainage channels in the easements. The easement area of each lot, except for those improvements for which a public authority or utility company is responsible, and the public right-of-way located adjacent to all curb lines shall be maintained by the property owners.
 - (3) *Decks, Arbors, Pools, Gazebos, and Other Outdoor Amenities*. All decks, arbors, pools, gazebos, and other outdoor amenities shall be approved by the applicable Design Review Committee, and their design should be included in the plans submitted for the residence.
 - (4) *Swimming Pools*. No above-ground-level swimming pool may be installed on any Lot.
 - (5) *Trees*. A minimum of two (2) trees in the front of each Lot and two (2) trees in the back of each Lot shall be provided. Such trees must each be at least two and one-half inches (2 ½") in diameter.
 - (6) *Irrigation*. All areas of each Lot shall be irrigated except for the portion of any Lot where natural conditions and/or native grasses are to be maintained. Where native grasses are to be preserved or re-established, the Owner should refer to the certain document set forth on the Developer's or the Master Association's website and/or otherwise made available by the Master Association for an explanation regarding the proper procedures for such preservation or re-establishment. In the event such document is unavailable, the Owner should follow the certain procedures recommended by the Kansas State University Research and Extension office regarding the preservation and maintenance of such natural conditions and/or native grasses as such procedures may be promulgated and made available to the Owner from time to time.

- (c) Landscape Lighting. All outdoor lighting shall be directed so as to avoid glare and excessive light spillage on adjacent property and fronting streets. Tennis court lighting is not allowed. Holiday lights may be displayed from November 15 until January 30, but must be taken down by January 30.
- (d) Construction Period Requirements. During the period that a site and/or building are under construction, the following minimum measures shall be required to minimize disturbance to adjacent sites:
 - (1) No Lot is to be cleared or construction otherwise started without prior written approval of the plans for that Lot by the applicable Design Review Committee.
 - (2) Contractors will assume complete responsibility for the actions of their workers as well as those of their sub-contractors.
- (e) Residence Design.
 - (1) The design of each residence shall be submitted to the applicable Design Review Committee for approval prior to the commencement of construction.
 - (2) No turbines or solar panels shall be permitted which can be seen from any street or the Golf Course.
 - (3) No extremely contemporary residence designs shall be allowed.
- (f) HVAC. No window or wall air conditioning or heating units shall be permitted.
- (g) Swimming Pools and Tennis Courts. All pool areas, tennis courts, equipment associated therewith, and screening shall be approved by the applicable Design Review Committee. No tennis court lighting shall be allowed.
- (h) Satellite Dishes. All satellite dishes shall be placed on ground-mounted pedestals and not on rooftops. Landscaping should be incorporated to screen satellite dishes from public view from streets and the Golf Course.
- (i) Maximum Number of Materials. There shall be a maximum of three (3) different materials used on any given elevation of a house.
- (j) Termination of Exterior Materials. All exterior materials shall terminate at the inside corners.
- (k) Shutters. Shutters shall be sized to fit the windows.

- (l) Window Trim. All windows shall be trimmed in some fashion.
- (m) Deck and Porch Supports. Deck and porch supports shall be a minimum of twelve inches (12") in diameter (if circular) or twelve inches (12") in cross section if rectangular.

The Master Design Review Committee and each Community Association Design Review Committee may impose criteria that are more restrictive than the criteria set forth above, but in no event shall the Master Design Review Committee or any Community Association Design Review Committee allow for Design Standards which fail to meet the above-described minimum criteria.

- 11.7 Interpretation and Waiver. In order to meet special situations which may not be foreseen, it may be desirable from time to time for the Master Design Review Committee to allow variances of certain requirements. Any variance granted is considered not to be precedent setting because the decision is being made in the context of the specific project in question with the welfare of the Residential District in mind. All approvals and consents of the Master Design Review Committee shall be in writing, and oral approvals and/or consents shall be of no force or effect.
- 11.8 Review Process. The design for any construction on a Lot shall be submitted to the applicable Design Review Committee for approval prior to the commencement of construction. The Master Design Review Committee shall be responsible for the review and approval of all plans related to the new construction of a residence on any Lot within the Residential District. All plans for the new construction of a residence submitted to the Master Design Review Committee shall be accompanied by a deposit payable to the Master Association in an amount to be determined from time to time by the Master Association, in the Master Association's sole discretion. Upon the completion of a residence, including any and all landscaping associated with such residence, in accordance with the plans for the residence submitted to the Master Design Review Committee, the Master Association shall refund a portion of the deposit, with the amount of such portion to be determined from time to time by the Master Association in the Master Association's sole discretion.

Each Community Association Design Review Committee shall be responsible for the review and approval of all plans for all types of construction on any Lot other than plans related to the new construction of a residence within the certain Community associated with the Community Association Design Review Committee. The review and approval of all plans for all types of construction on a Lot other than plans related to the new construction of a residence within the Residential District that is not part of a specific Community Association will be submitted to the Master Design Review Committee.

Plan approval by the applicable Design Review Committee shall be required prior to the undertaking of any site improvements, construction, or installation, including clearing, grading, paving, signs, structures, landscaping, building additions or alterations, and

subdivisions. Review shall be coordinated with the required governmental approvals. Submission to the City for building permits or site plan approval should not be made until final plans have been approved by the applicable Design Review Committee. All submissions to the applicable Design Review Committee are to be made within the time periods established by such Design Review Committee and in a format approved by such Design Review Committee.

ARTICLE XII Use and Occupancy Restrictions

12.1 Residential Use. Each Lot within the Residential District may be used only for residential purposes and no other, except that home occupations, as defined in this Article shall be permitted. The following are intended to be examples of home occupations that are permitted:

- (a) Dressmakers, seamstresses, tailors.
- (b) Music teachers, dance or art instructors, provided that instructions shall be limited to one pupil at a time, except for occasional groups.
- (c) Artists, sculptors and authors or composers.
- (d) Ministers, rabbis, priests.
- (e) Offices.
- (f) Home crafts, such as model making, rug weaving, cabinet making, etc.

No home occupation shall be permitted unless it complies with the following restrictions:

- (a) No stock in trade shall be displayed, rented, sold, or stored on the premises, except for articles produced by persons residing on the premises, and except for items customarily stored or sold through a home occupation.
- (b) No alteration of the principal residential building shall be made which changes the character thereof as a dwelling.
- (c) No more than twenty-five percent (25%) of the dwelling unit shall be devoted to a home occupation. In addition, the total area of the premises devoted to the home occupation shall not exceed fifty percent (50%) of the living area of the dwelling unit.
- (d) There shall be no outdoor storage of equipment or materials used in the home occupation.

- (e) No person shall be employed by the home occupation, unless they reside in the dwelling unit.
- (f) The home occupation shall be conducted entirely within the principal residential building or in a permitted structure accessory thereto.
- (g) No sign shall be permitted.
- (h) There shall be no noise, smoke, dust, odor, or vibrations emanating from the property which unreasonably either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of persons off of said property.

In the event of a question regarding whether a proposed or existing home occupation complies with this Article, the decision of the Master Association Board or Community Association Board, as the case may be, shall control. No business or commercial building may be erected on any Lot and no business or commercial enterprise, or other non-residential use, may be conducted on any part thereof. No temporary buildings, structures, or trailers may be erected, placed, or maintained on any Lot, except as expressly permitted by, and in compliance with, the applicable Design Standards. Nothing herein contained shall be deemed to limit the Developer's rights as set forth in Article XV.

- 12.2 Violation of Law or Insurance. No Owner shall permit anything to be done or kept on his Lot, or in, or upon any Common Maintenance Areas, which will result in the cancellation of any insurance thereon or which would be in violation of any law. In the event that any law is more restrictive than the provisions hereof, such law shall govern.
- 12.3 Signs. No permanent sign of any kind shall be displayed to the public view, or from any Lot, or any Common Maintenance Areas, without approval of the Master Association, the applicable Community Association, or the responsible Design Review Committee, except for the following temporary signs ("Permitted Signs"): (a) such signs as may be used by Developer and/or a Community Developer in connection with the development and sale of Lots in the Residential District; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law, including, but not limited to, political signs covered by K.S.A. 58-3820; (c) such signs as may be required for traffic control and regulation of Common Maintenance Areas; (d) such signs advertising the Lot as being for sale, except that: (i) the sign must be located only on the Lot to be sold; and (ii) no real estate signs shall be placed in any Common Maintenance Area; and (iii) only one (1) real estate for sale sign shall be placed on each lot; (e) signs promoting political candidates, but only forty-five (45) days before and two (2) days after the day of election, and only located upon the Lot of the Owner; and (f) builder signs, one (1) per Lot. Permitted Signs shall not exceed six (6) square feet in total area. Nothing contained herein shall be deemed to limit the Developer's rights as set forth in Article XV below.
- 12.4 Animals. No animals, including horses or other domestic farm animals, fowl, or poisonous reptiles of any kind may be kept, bred, or maintained on any Lot, or in or upon

any Common Area, except a reasonable number of commonly accepted household pets in accordance with the Residential District Rules. No animals shall be kept, bred, or raised within the Residential District for commercial purposes. In no event shall any domestic pet be allowed to run free away from its owner's Lot, or so as to create a nuisance.

- 12.5 Nuisances. No Owner shall permit or suffer anything to be done or kept about or within his Lot, or on or about any portion of the Residential District, which will obstruct or interfere with the rights of other Owners, Occupants, or Persons, or annoy them by unreasonable noises or otherwise, nor will he commit or permit any nuisance, or commit or suffer any illegal act to be committed therein. Each Owner shall comply with the Residential District rules and the requirements of all health authorities and other governmental authorities having jurisdiction over the property.
- 12.6 Boats and Motor Vehicles. No boats, trailers, buses, motor homes, campers, or other recreational vehicles shall be parked or stored in or upon the Common Maintenance Areas, any public street or Lot except within an enclosed garage. No vehicle shall be repaired (excepting minor repairs) or rebuilt on any Lot or upon the Common Maintenance Areas. The Master Association or appropriate Community Association may remove, or cause to be removed, any unauthorized vehicle or other items prohibited hereby at the expense of the owner thereof in any manner consistent with law.
- 12.7 Lights. No spotlights, flood lights, or other lighting shall be placed or utilized upon any Lot in a manner which unreasonably interferes with the enjoyment of adjoining Lots. All exterior lighting shall have a concealed energy source and a white color within the range of 2700E to 4500E K. Golden, yellow, blue, or reddish colors are not permitted. No exterior lighting shall be installed or maintained on any Lot if the appropriate Design Review Committee shall object thereto.
- 12.8 Antennas and Satellite Dishes. One (1) residential-sized satellite dish may be placed per unit upon location approved by the appropriate Design Review Committee. No external radio, television, or other antennas of any kind or nature or other device for the reception or transmission of radio, microwave, or other similar signals, shall be placed or maintained upon any Lot without the prior approval of the appropriate Design Review Committee. In addition, the appropriate Design Review Committee shall not approve such devices to be placed upon the roof of any structure.
- 12.9 Garbage. No garbage or trash shall be kept, maintained, or contained in any Lot so as to be visible from another Lot, the Common Maintenance Areas, the Golf Course, or public streets. No incinerator shall be kept or maintained on any Lot. No refuse pile, garbage, or unsightly objects shall be allowed to be placed, accumulated, or suffered to remain anywhere on a Lot. Trash shall be placed in such designated locations and containers as may be established from time to time in the Design Standards.
- 12.10 Mining. No portion of the Residential District shall be used in any manner to explore for or remove any oil, hydrocarbons, minerals, or earth substance of any kind.

- 12.11 Safe Condition. Without limiting any other provision in this Article XII, each Owner shall maintain and keep his Lot at all times in a safe, sound, and sanitary condition and repair, and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots or the Common Maintenance Areas. All improvements on a Lot which are damaged or destroyed by fire or other casualty shall be repaired and restored by the Owner thereof with due diligence.
- 12.12 Basketball Goals. No basketball goals shall be attached to any building. All basketball goals shall be free standing, and when located on a lot having a side entry garage shall be located behind the front building set back line shown on the applicable plat. When located on a lot having a front entry garage, the goal may be within the front setback but back as far as practical. All basketball goals are subject to the approval of the Design Review Committee.
- 12.13 Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the buildings to be constructed on each Lot.
- 12.14 No Further Subdivision; Compounds. No Lot shall be divided or subdivided except by the Developer. If an Owner owns contiguous Lots, they may be combined into a single homesite but only upon obtaining the prior written approval of the City and the responsible Design Review Committee (each such approved combination of Lots being called a "Combined Lot"); provided, however, (i) for all purposes of determining Owner's Proportionate Share, a Combined Lot shall be deemed only one Lot; (ii) all Assessments in respect of a Combined Lot shall constitute a lien, as provided in Article VI, upon the entire Combined Lot held by the Owner; and (iii) the Owner of each Combined Lot shall be entitled to the rights of only one Community Association Membership in respect of all such Lots so combined. In addition, once two (2) or more Lots have been so combined to form a Combined Lot they shall remain as such, and the Owner(s) thereof shall not be permitted at any time to rent, sell, or otherwise transfer or convey less than all of such Combined Lot. If an Owner wishes to combine Lots in such a manner that it eliminates the need for a portion of the Common Maintenance Areas owned by the Master Association, and if the combination of Lots and abandonment of Common Maintenance Areas is approved by the applicable Design Review Committee and the City, then such portion of the Common Maintenance Areas may be deeded by the Master Association to said Owner or Owners as the Master Association (and the City, if its consent is required) may specify.
- 12.15 No Obstructions to Drainage. No Owner shall erect, construct, maintain, permit, or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any area designated on the Plat, or other binding document, as a "drainage easement," or which has been intentionally contoured to facilitate drainage, except that, with the prior consent of the City and the responsible Design Review Committee, nonpermanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

- 12.16 Outbuildings Prohibited. Other than landscaping features, no building or other detached structure may be erected on any Lot without the consent of the responsible Design Review Committee.
- 12.17 Above-Ground Swimming Pools. No above-ground swimming pools shall be allowed on any Lot.
- 12.18 Storage Tanks. No exterior storage tank for fuel or anything else shall be allowed on any Lot. Specifically, propane tanks and/or tanks containing similar substances (e.g., natural gas, butane, etc.) that are installed on the exterior of any residence/home/unit and/or located on any Lot are prohibited throughout the Residential District. Notwithstanding the foregoing, in all Communities within the Residential District without access to natural gas utility service, propane tanks and/or tanks containing similar substances (e.g., natural gas, butane, etc.) may be installed on the exterior of any residence/home/unit and/or located on any Lot but must be screened by a structure composed of masonry material that is similar to the masonry material located on the residence/home/unit appurtenant to such tanks. Such propane tanks and/or tanks containing similar substances shall not exceed twenty-five (25) gallons in capacity. There shall be no more than two (2) propane tanks and/or tanks containing similar substances per residence/home/unit. The installation and retention of all propane tanks and/or tanks containing similar substances, including the installation and design of any Screen as described above, shall be subject to the inspection and approval of the Manhattan Department of Fire Services and must also be approved by the appropriate Design Review Committee.
- 12.19 Garage Doors. Garage doors shall be kept closed except when opened for the removal or the parking or replacing of a vehicle or other item from the garage.
- 12.20 Rental of Lots. An Owner who leases his or her Lot to any Person shall be responsible for assuring compliance by his or her lessee with all of the provisions of this Declaration, and any applicable articles, bylaws, rules, Design Standards, or Community Association Declaration, all as amended and supplemented from time to time, and shall be jointly and severally responsible for any violations by his or her lessee thereof.
- 12.21 Fences and Walls. All fencing and walls (including, without limitation, the composite and location thereof) shall be subject to the approval of the Design Review Committee. In addition, all perimeter fencing, when approved by the Design Review Committee, shall be black and metal with an open picket style. Privacy Screens of other materials may be permitted by the Design Review Committee around patios so long as the materials and design are in harmony with the unit but in no instance shall such Screens penetrate the building set back lines. Without limiting the generality of the foregoing, no chain link, wire, wood panel or stockade fencing shall be permitted and no opaque fencing is permitted anywhere on Lots adjoining the Golf Course. Retaining walls shall be made of materials approved by the Design Review Committee. All retaining walls on Lots

adjoining the Golf Course must be made of limestone, or if it matches the predominant exterior material of the unit on the respective Lot, of brick.

- 12.22 Enforcement. The Master Association or its authorized agents may enter any Lot on which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses, and such fines as may be imposed pursuant to this Declaration of the Residential District Rules, shall be a Special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of Article VI hereof. All other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Occupant, or other Person of any provision of this Article XII.
- 12.23 Modifications. The Master Association may modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Residential District and the Lots by reasonable rules and regulations of general application within each Community adopted by the Master Association Board from time to time which shall be incorporated into the Residential District Rules.
- 12.24 Certain Real Property Owned by the Master Association. The Master Association owns certain real property legally described as follows:

A tract of land in the Southeast Quarter of Section 3 and the Northwest Quarter of Section 10, Township 10 South, Range 7 East of the 6th Principal Meridian in Riley County, Kansas described as follows:

Tracts C and D in Grand Mere Unit 2, an addition to the City of Manhattan, Riley County, Kansas.

Notwithstanding any other provision in this Declaration to the contrary, the above-described real property is not to be developed for any commercial or residential purpose, or for any other purpose, under any circumstances, but shall instead be maintained by the Master Association in its native and undeveloped state. To ensure that such real property is not developed, the Developer has caused to be recorded certain Restrictive Covenants to bind such real property and to prevent the development of such real property in perpetuity.

ARTICLE XIII Rights of First Mortgagees

- 13.1 General Provisions. Notwithstanding and prevailing over any other provisions of this Declaration, and any applicable articles, bylaws, rules, Design Standards, or Community Association Declaration, the provisions of this Article shall apply to and benefit each holder of a First Mortgage upon a Lot.
- 13.2 Liability for Assessments. A First Mortgagee who comes into possession of or becomes Record Owner of a mortgaged Lot by virtue of foreclosure of its Mortgage, or through any

equivalent proceedings, such as, but not limited to, the taking of a deed or assignment in lieu of foreclosure or any third-party purchaser at a foreclosure sale or trustee's sale, will not be liable for such Lot's unpaid dues, charges, or Assessments under this Declaration which may accrue prior to the time such First Mortgagee or third-party purchaser comes into possession of such Lot, or becomes Record Owner of the Lot, whichever occurs first, and shall acquire title free and clear of any lien authorized by or arising out of the provisions of this Declaration which secures the payment of any such dues, charges, or assessments accrued prior to the earlier of the time such First Mortgagee or third-party purchaser came into possession of such Lot or became Record Owner of the Lot. Any such unpaid dues, charges, or assessments against the Lot foreclosed shall be deemed to be a Common Expense. Nevertheless, in the event the Owner against whom the original assessment was made is the purchaser of or redeems the Lot, the lien shall continue in effect and may be enforced for the respective Lot's Assessment that was due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment shall continue to exist as the personal obligation of the defaulting Owner of the respective Lot to the Master Association, and the Master Association Board may use reasonable efforts to collect the same from said Owner even after he or she is no longer owner of the Lot.

- 13.3 Enforcement After Foreclosure Sale. An action to abate the breach of any of these covenants, conditions, restrictions, and reservations may be brought against the purchasers who have acquired title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an interest in such Lot.
- 13.4 Subject to Declaration. At such time as the First Mortgagee shall come into possession of or become Record Owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration and any applicable Community Association Declaration, including, but not limited to, the obligation to pay all assessments and charges accruing thereafter, in the same manner as any other Owner and may but need not exercise any or all of the rights and privileges of the Owner including, but not limited to, the right to vote as a member of the applicable Community Association in the place and stead of the defaulting Owner.

ARTICLE XIV **Annexation of Additional Property**

- 14.1 Development of the Project. Additional real property may be annexed to and become subject to this Declaration as hereinafter set forth in this Article XIV at such time as the Developer or Master Association may elect.
- 14.2 Supplemental Declarations. A Supplemental Declaration shall be a writing in recordable form which annexes Annexation Property to this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements, and other provisions of

this Declaration and shall contain such other provisions as are necessary to designate such property. Supplemental Declarations may contain such complementary additions and modifications of the covenants, conditions, and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexation Property and as are not inconsistent with this Declaration such as, but not limited to, the formation of a separate Community. In no event, however, shall any such Supplemental Declaration revoke, modify, or add to the covenants established by this Declaration with respect to the Residential District already subject to this Declaration, except that it may reduce the Proportionate Share of any Owner.

- 14.3 Annexation Without Approval of Master Association. If added at the election of the Developer, the Annexation Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Master Association without the approval, assent, or vote of the Master Association or any Community Association or the members of either, or any Owner, provided that a Supplemental Declaration covering the Annexation Property shall be recorded by the Developer. The recordation of said Supplemental Declaration shall constitute and effectuate the annexation of the Annexation Property described therein, making said real property subject to this Declaration and subject to the functions, powers, and jurisdictions of the Master Association, and thereafter said Annexation Property shall be part of the Residential District for all intents and purposes of this Declaration and all of the Owners in accordance with the terms hereof.

ARTICLE XV

Exemption of the Developer from Restrictions

Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of the Developer, its employees, agents and subcontractors, or parties designated by it in connection with the construction, completion, sale, or leasing of the Lots, Common Maintenance Areas, or any part of the Residential District, including, but not limited to, the right to designate areas as temporary sales offices in other areas in the development.

ARTICLE XVI

Remedies

- 16.1 General Remedies. In the event of any default by any Owner, Occupant, or other Person under the provisions of this Declaration, the Master Association, or the successors, assigns, or agents thereof, or the Developer, shall have each and all of the rights and remedies which may be provided for in this Declaration or any other documentation contemplated hereby, or which may be available at law or equity, and may prosecute any action or other proceedings against such defaulting Owner, Occupant, or other Persons for an injunction, whether affirmative or negative, or for enforcement or foreclosure of any lien herein provided and the appointment of a receiver for the Lot, or for damages, or specific performance, or for judgment for payment of money and collection thereof, or for any

combination of remedies, or for any other relief, all without notice and without regard to the value of the Lot or the solvency of such Owner.

- 16.2 Expenses of Enforcement. All expenses of the Master Association or the Developer or other Person granted rights of enforcement hereunder, in connection with any action or proceeding described or permitted by this Article XVI, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against such defaulting Owner or other Person and shall be a Special Assessment against such Owner or other Person, and the Master Association or Developer shall have a lien as provided in Article VI therefor. In the event of any such default by any Owner or other Person, the Master Association and the Developer, and any permitted manager or managing agent, if so authorized, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against such defaulting Owner or other Person as a Special Assessment, which shall constitute a lien against the defaulting Owner's Lot as provided in Article VI. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Master Association or the Developer.
- 16.3 Legal Action. In addition to any other remedies available under this Article XVI, if any Owner (either by his conduct or by the conduct of any Occupant of his Lot or family member, guest, invitee, or agent) shall violate any of the provisions of this Declaration or any other document contemplated hereby, as then in effect, then the Master Association, the Developer, or any affected or aggrieved Owner, shall have the power to file an action against the defaulting Owner for a judgment or injunction against the Owner or such other Person requiring the defaulting Owner or other Person to comply with the provisions of this Declaration, or any other document contemplated hereby, and granting other appropriate relief, including money damages.
- 16.4 Effect on Mortgage. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions, and servitudes provided for in this Declaration, or any other declaration or other document contemplated hereby, shall not defeat or adversely affect the lien of any Mortgage upon any Lot but, except as herein or therein specifically provided, each and all of said covenants, restrictions, reservations, conditions, and servitudes shall be binding upon and effective against any lessee or owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure, or otherwise.
- 16.5 Limitation on the Developer's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed that neither the Developer (including without limitation any assignee of the interest of the Developer hereunder) nor any partner in the Developer partnership (or any such assignee) shall have any personal liability to the Master Association, any Community Association or any Owner or Occupant, Community, or Master Association or

other Person, arising under, in connection with, or resulting from (including without limitation, resulting from action or failure to act with respect to) this Declaration, any Community Declaration, or any Master or Community Association Article, Bylaws, or Rules, any Design Standards, or any Design Review Committee, or for any action taken or not taken pursuant to authority granted Developer therein or with respect thereto, except, in the case of the Developer (or its assignee) to the extent of its interest in the Residential District, and, in the case of a partner in the Developer (or in any such assignee), his interest in the Developer (or such assignee), and, in the event of a judgment against the Developer (or any partner or assignee thereof), no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

- 16.6 Alternative Dispute Resolution. The Master Association or the Developer shall have the power to require that disputes between the Master Association and its Owners be submitted to non-binding alternative dispute resolution as a prerequisite to filing any lawsuit.

ARTICLE XVII Amendment

- 17.1 Amendments to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Article XVII, any proposed amendment must be approved by a Majority of Master Association Members. Amendments may be adopted at a meeting of the Master Association Members entitled to vote thereat, or without any meeting if all such Master Association Members have been duly notified and if two-thirds (2/3) of all of such Master Association Members entitled to vote at such a meeting, if held, consent in writing to such amendment. In all events, the amendment, when adopted, shall bear the signature of the President of the Master Association and shall be attested by the Secretary of the Master Association, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Master Association. Amendments, once properly adopted, shall be effective upon recording of the Amendment to Declaration in the appropriate governmental offices.
- 17.2 Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all of the easements, covenants, conditions, and restrictions contained herein which may be affected and any or all clauses of this Declaration, unless otherwise specifically provided in the Section being amended or the amendment itself.
- 17.3 Required Approvals. Notwithstanding the provisions of the foregoing sections of this Article XVII:
- (a) If this Declaration or any applicable provision of law requires the consent or agreement of additional parties, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying, or

rescinding any provision of this Declaration with respect to such action shall be signed by all such parties, as required by this Declaration or by said law.

- (b) Until ninety-five percent (95%) of all land that is residential in nature (including land within any Annexation Property) as shown on the Master Plan, attached here to and incorporated herein as Exhibit "B," has been sold to third parties, and Developer owns less than two (2) acres of land that is residential in nature as shown on said Master Plan, this Declaration may not be amended by the Master Association Members pursuant to this Article XVII without the written consent of the Developer, which may be withheld for any reason.

- 17.4 Developer's Right to Amend. Notwithstanding any other provision of this Article XVII, until ninety-five percent (95%) of all land that is residential in nature (including land within any Annexation Property) as shown on the Master Plan, attached here to and incorporated herein as Exhibit "B", has been sold to third parties, and Developer owns less than two (2) acres of land that is residential in nature as shown on said Master Plan, the Developer reserves the right to amend this Declaration without the approval of the Master Association Board, the Master Association Members, or any Owner or other Person; provided, however, that no such amendment shall have the effect of changing the Plat of an Owner's Lot without the consent of the Owner.

ARTICLE XVIII

General Provisions

- 18.1 Notice. Notices provided for in this Declaration or the Bylaws or Residential District Rules shall be in writing and shall be addressed to the Master Association at the address specified in the Bylaws. The Master Association may designate a different address or addresses for notice by giving written notice of such change of address to all Master Association Members at such time. All notices to Master Association Members shall be to the last address shown on the records of the Master Association. Any Master Association Member may designate a different address or addresses for notices to it by giving written notice of its change of address to the Master Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.
- 18.2 Captions and Exhibits; Construction. Captions given to various Sections herein, and the Table of Contents for this Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein are incorporated as though fully set forth where such reference is made. The provisions of this Declaration shall be construed to effectuate its purpose of creating a uniform plan for the development and operation of the Residential District as hereinabove set forth.

- 18.3 Severability. If any provision of this Declaration, the Master Association Articles or Bylaws, or Residential District Rules, or any section, clause, sentence, phrase, or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, the Master Association Articles or Bylaws, or Residential District Rules, and of the application of any such provision, section, sentence, clause, phrase, or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration, the Master Association Articles or Bylaws, or Residential District Rules shall be construed as if such invalid part were never included therein.
- 18.4 Term. This Declaration shall continue in full force and effect (subject, however, to the right to amend as herein provided) until January 1, 2070. Thereafter, unless one (1) year prior to January 1, 2070, there shall be Recorded an instrument directing the termination of this Declaration signed by at least two-thirds (2/3) of all Master Association Members then entitled to vote, this Declaration shall be automatically continued without any further notice for an additional period of ten (10) years and thereafter for successive periods of ten (10) years each; provided, that within one (1) year prior to the expiration of any such ten (10) year period, this Declaration may be terminated as set forth in this Section.
- 18.5 Rule Against Perpetuities. If any of the options, easements, privileges, covenants, or rights created by this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue until twenty-one (21) years after the death of the last survivor of the now living descendants of Joseph P. Kennedy.
- 18.6 Mortgage of Lots. Each Owner shall have the right, subject to the provisions hereof, to separately Mortgage his or her Lot. No Owner shall have the right or authority to make, or create, or cause to be made or created any mortgage, or other lien or security interest, on or affecting the Residential District or any part thereof, except only to the extent of his or her Lot.
- 18.7 Power of Attorney. Whenever the Master Association is granted rights, privileges, or duties in this Declaration, the President shall have the authority to act for the Master Association, unless such right and power is hereby expressly reserved to the Master Association Board. Further, unless otherwise specifically restricted by the Provisions of this declaration, wherever the Master Association is empowered to take any action or do any act, including, but not limited to, action or acts in connection with the Common Maintenance Areas or sale thereof, which may at any time be deemed to require the act of an Owner or Community Association Member, the Owners and Community Association Members and each of them hereby constitute and appoint the Master Association as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging, and delivering any instruments or documents necessary, appropriate, or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming a Member of a Community Association, or by the acceptance of a deed for a Lot, or by signing a contract for purchase of a Lot, or by succeeding in any other manner to the ownership of a Lot, or any interest therein, each owner and Community Association

Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.

ARTICLE XIX
Rights and Obligations

Each grantee of the Developer or of any Owner, by the acceptance of a deed of conveyance, and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale, and each Person acquiring a membership in the Master Association or a Community Association, and the heirs, successors, and assigns of the foregoing Persons, accepts the same subject to all restrictions, conditions, covenants, reservations, liens, and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration, and all rights, benefits, and privileges of every character hereby granted, created, and reserved by this Declaration, and all rights, benefits, and privileges of every character hereby granted, created, reserved, or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of any such Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract, or instrument evidencing or creating such interest.

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**Signature Page
Amended and Restated Declaration**

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed.

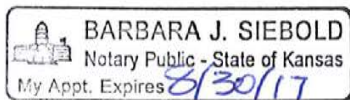
GRAND MERE DEVELOPMENT, INC.

By: Mary L. Vanier
Mary L. Vanier, President

STATE OF KANSAS, COUNTY OF RILEY, ss:

On this 17th day of November 2015, before me, a Notary Public, personally appeared Mary L. Vanier, to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed, and the said Mary L. Vanier further declared that she is the President of Grand Mere Development, Inc., a Kansas corporation, and the execution thereof was authorized on behalf of the corporation.

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



Barbara J. Siebold
Notary Public

My appointment expires: 8/30/17

EXHIBIT "A"

TO AMENDED AND RESTATED DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR THE GRAND MERE
PROPERTY RESIDENTIAL DISTRICT
MASTER ASSOCIATION

Lots 1 through 8, 11 through 31, 33 through 45, 48 through 52, 54, and Tracts A, C, D, E, F, and G, Grand Mere, Unit 1, an Addition to the City of Manhattan, Riley County, Kansas, as set forth on the recorded plat thereof, recorded in Plat Book K, Page 354, in the office of the Register of Deeds of Riley County, Kansas; and

Lot 1 of Trickster's Palatial Estate, an Addition to the City of Manhattan, Riley County, Kansas, as set forth on the recorded plat thereof, recorded in Plat Book BLA, Page 6 in the office of the Register of Deeds of Riley County, Kansas; and

Lot 1 and Tract B of Heartland Addition, an Addition to the City of Manhattan, Riley County, Kansas, as set forth on the recorded plat thereof, recorded in Plat Book K, Page 788 in the office of the Register of Deeds of Riley County, Kansas; and

Lots 1 and 2, Grand Mere Unit 4, an Addition to the City of Manhattan, Riley County, Kansas, as set forth on the recorded plat thereof, recorded in Plat Book K, Page 354 in the office of the Register of Deeds of Riley County, Kansas; and

Lots 1 and 2, Grand Mere Unit 5, an Addition to the City of Manhattan, Riley County, Kansas, as set forth on the recorded plat thereof, recorded in Plat Book LSPLT, Page 11 in the office of the Register of Deeds of Riley County, Kansas; and

Lots 1A through 4B and Lot 5, Founders Village at Colbert Hills PUD, Unit 2, an Addition to the City of Manhattan, Riley County, Kansas, as set forth on the recorded plat thereof, recorded in Plat Book K, Page 388, in the office of the Register of Deeds of Riley County, Kansas; and

Tract A and Tract B, Grand Mere, Unit 2, an Addition to the City of Manhattan, Riley County, Kansas, as set forth in Plat recorded in Plat Book K at Page 371 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 1A through 5A, of Grand Mere, Grand Ridge Townhomes, an Addition to the City of Manhattan, Riley County, Kansas, as set forth in Plat recorded in Plat Book K at Page 392 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 5B through 7B of Grand Mere Grand Ridge Townhomes, Unit 2, an Addition to the City of Manhattan, Riley County, Kansas, as set forth in Plat recorded in Plat Book K at Page 415 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 8 through 11 of Grand Ridge Townhomes, Unit 3, an Addition to the City of Manhattan, Riley County, Kansas, as set forth in Plat recorded in Plat Book K, Page 651 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 1 through 4, and Lots 7 and 8 of Grand Vista, Unit 1, an Addition to the City of Manhattan, Riley County, Kansas, as set forth in Plat recorded in Plat Book K, Page 533 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 9 through 16 of Grand Vista, Unit 2, an Addition to the City of Manhattan, Riley County, Kansas, as set forth in Plat recorded in Plat Book K, Page 707 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 17 through 22 of Grand Vista, Unit 3, an Addition to the City of Manhattan, Riley County, Kansas as set forth in Plat recorded in Plat Book K, Page 735 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 1 through 38, Grand Mere Vanesta, Unit 1, an Addition to the City of Manhattan, Riley County, Kansas, as set forth in Plat recorded in Plat Book K, Page 510 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 39 through 60, 62 through 68, and Tracts A, B, and C, Grand Mere Vanesta, Unit 2, an Addition to the City of Manhattan, Riley County, Kansas, as set forth in Plat recorded in Plat Book K, Page 566 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 69 through 77, 80, and 84 through 90, and Tract A, Grand Mere Vanesta, Unit 3, an Addition to the City of Manhattan, Riley County, Kansas, as set forth in Plat recorded in Plat Book K, Page 575 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 1 and 4, Grand Mere Vanesta Lake Addition, an Addition to the City of Manhattan, Riley County, Kansas, as set forth in Plat recorded in Plat Book K, Page 675 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 1 through 10 of Grand Champions Development, an Addition to the City of Manhattan, Riley County, Kansas, filed at Book K, Page 662 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 1 through 8, 12 through 18, 24 through 31, of Interlachen Addition, an Addition to the City of Manhattan, Riley County, Kansas, filed at Book K, Page 755 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 1 through 21, of Interlachen Addition Unit 2, an Addition to the City of Manhattan, Riley County, Kansas, as set forth on the recorded plat thereof, recorded in Plat Book K, Page 782 in the office of the Register of Deeds of Riley County, Kansas; and

Lots 14 through 37 of Bellerive Addition, an Addition to the City of Manhattan, Riley County, Kansas, filed at Book K, Page 702 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 1A through 7B, and 9A through 13B of Bellerive Unit 2, an Addition to the City of Manhattan, Riley County, Kansas, filed at Book K, Page 716 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 1A and 1B of Bellerive Addition Unit 3, an Addition to the City of Manhattan, Riley County, Kansas, as set forth on the recorded plat thereof, recorded in Plat Book BLA, Page 21 in the office of the Register of Deeds of Riley County, Kansas; and

Lots 1 through 22 of Congressional, an Addition to the City of Manhattan, Riley County, Kansas, filed at Book K, Page 748 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 1 and 2 of Grand Mere Vanesta Unit 4, an Addition to the City of Manhattan, Riley County, Kansas, filed at Book K, Page 717 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 1 and 2 of Grand Mere Vanesta Unit 5, an Addition to the City of Manhattan, Riley County, Kansas, as set forth on the recorded plat thereof, recorded in Plat Book K, Page 575 in the office of the Register of Deeds of Riley County, Kansas; and

Lots 1 and 2 of Grand Mere Vanesta Lake Addition, Unit 2, an Addition to the City of Manhattan, Riley County, Kansas, filed at Book BLA, Page 15 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 2 and 3 of The Reserve, an Addition to the City of Manhattan, Riley County, Kansas, filed at Book K, Page 733 in the Office of the Register of Deeds of Riley County, Kansas; and

Lot 1 of Reserve Unit 2, an Addition to the City of Manhattan, Riley County, Kansas, as set forth on the recorded plat thereof, recorded in Plat Book K, Page 793 in the office of the Register of Deeds of Riley County, Kansas; and

Lots 1 through 33 of Merion Addition, an Addition to the City of Manhattan, Riley County, Kansas, as set forth on the recorded plat thereof, recorded in Plat Book K, Page 778 in the office of the Register of Deeds of Riley County, Kansas; and

Lots 1 through 18 of Grand Luxe Addition, an Addition to the City of Manhattan, Riley County, Kansas, filed at Book K, Page 762 in the Office of the Register of Deeds of Riley County, Kansas; and

Lots 1 through 39 of Olympic Addition, an Addition to the City of Manhattan, Riley County, Kansas, filed at Book K, Page 775 in the Office of the Register of Deeds of Riley County, Kansas, and

Lots 1 through 24, and Tracts A through F of Muirfield Addition, an Addition to the City of Manhattan, Riley County, Kansas, filed at Book K, Page 780 in the office of the Register of Deeds of Riley County, Kansas; and

Lots 1 through 22 of Turnberry Addition, an Addition to the City of Manhattan, Riley County, Kansas, filed at Book K, Page 776 in the office of the Register of Deeds of Riley County, Kansas; and

Lots 1 through 12 of Grand Estates Addition, an Addition to the City of Manhattan, Riley County, Kansas, filed at Book K, Page 784 in the office of the Register of Deeds of Riley County, Kansas; and

Lots 1 through 11 of The Enclave Addition, an Addition to the City of Manhattan, Riley County, Kansas, filed at Book K, Page 767 in the office of the Register of Deeds of Riley County, Kansas.

