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**COFFEE CREEK MEADOWS
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS
AND RESTRICTION**

Dated: June 22nd, 2007

First Party: ARB Properties, Inc.

Second Party: Coffee Creek Meadows

Legal Description: See Exhibit "A"

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**COFFEE CREEK MEADOWS
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND
RESTRICTIONS**

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS ("Declaration") is made as of the date on the signature page hereof by ARB PROPERTIES, INC., a Kansas corporation qualified to do business in the State of Kansas (the "Declarant").

Declarant is the owner of the real property described in Exhibit A which is attached and incorporated by reference. This Declaration imposes upon the Properties (as defined in Article I below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, this Declaration provides for the creation of the Coffee Creek Meadows Community Association, Inc., as a Kansas nonprofit corporation, to own, operate and maintain Common Areas and to administer and enforce the provisions of this Declaration, the Bylaws, and the Design Guidelines (as these terms are defined below).

Declarant hereby declares that all of the property described in Exhibit A and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I below) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

**ARTICLE I.
DEFINITIONS**

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "ARC". The Architectural Review Committee, as described in Section 9.2.

1.2 "Area of Common Responsibility". The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenant, contract, or agreement.

1.3 "Articles of Incorporation" or "Articles". The Articles of Incorporation of Coffee Creek Meadows Community Association, Inc., as filed with the Secretary of State of the State of Kansas.

1.4 **"Association"**. Coffee Creek Meadows Community Association, Inc., a Kansas nonprofit corporation, its successors or assigns.

1.5 **"Board of Directors" or "Board"**. The body responsible for administration of the Association, selected as provided in the By-Laws, and generally serving the same role as the board of directors under Kansas corporate law.

1.6 **"Builder"**. Any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers or purchases one or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business. Any Person occupying or leasing a Unit for residential purposes shall cease to be considered a Builder with respect to such Unit immediately upon occupation of the Unit for residential purposes, notwithstanding that such Person originally purchased the Unit for the purpose of constructing improvements for later sale to consumers.

1.7 **"By-Laws"**. The By-Laws of the Association as adopted by the Declarant, as they may be amended.

1.8 **"Class "A" Voting Rights"**. The voting rights of all Owners except the Declarant.

1.9 **"Class "B" Voting Rights"**. The voting rights of the sole Class "B" Member which shall be the Declarant.

1.10 **"Class "B" Period"**. The period of time during which the Class "B" Member is entitled to appoint all members of the Board of Directors as provided in Section 3.2.

1.11 **"Common Area"**. All real and personal property, including easements, which the Association owns, leases or holds possessory or use rights in for the common use and enjoyment of the Owners.

1.12 **"Common Expenses"**. The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation.

1.13 **"Community"**. Every Unit shall be located within a Community; provided, however, unless and until additional Communities are established, the Properties shall consist of one Community.

1.14 **"Community-Wide Standard"**. The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the ARC.

1.15 **"Declarant"**. ARB PROPERTIES, INC., a Kansas corporation, qualified to do business in the State of Kansas, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibit A for the purpose of development

and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided however, there shall be only one Person entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.

1.16 "Design Guidelines". The design and construction guidelines and application and review procedures applicable to the Properties promulgated and administered pursuant to Article 9.

1.17 "General Assessment". Assessments levied on all Units subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 8.1 and 8.3.

1.18 "Governing Documents". The Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, the Design Guidelines and rules of the Association, or any of the above, as each may be amended from time to time.

1.19 "Majority". Those votes, Owners, Members, or other group, as the context may indicate, totaling more than 50% of the total eligible number of votes, owners, members, or other group as the context may indicate.

1.20 "Master Plan". The land use plan or development plan for "Coffee Creek Meadows" approved by the City of Olathe, Kansas, as such plan may be amended from time to time, which includes the property described on Exhibit A and all of such property that Declarant may from time to time subject to this Declaration. Inclusion of any such property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of any property from Exhibit A or from the Master Plan bar its later annexation in accordance with Article 7.

1.21 "Member". A Person subject to membership in the Association pursuant to Section 3.2.

1.22 "Neighborhood". A separately developed area within the Properties, whether or not governed by a Neighborhood Association (as defined below), in which the Owners of Units may have common interests other than those common to all Members of the Association. For example, and by way of illustration and not limitation, each single-family attached or detached housing development may constitute a separate Neighborhood, or a Neighborhood may be comprised of more than one housing type with other features in common.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee, if any (established in accordance with the By-Laws), or Neighborhood Association if any (as defined below), having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries shall be established and modified as provided in Section 3.3.

1.23 "Neighborhood Assessment". Assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Sections 8.1 and 8.4.

1.24 **"Neighborhood Association"**. Any owners' association having concurrent jurisdiction with the Association over any Neighborhood.

1.25 **"Neighborhood Expenses"**. The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Units within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize from time to time and as may be authorized herein or in Supplemental Declarations applicable to such Neighborhood(s).

1.26 **"Owner"**. One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold pursuant to a recorded land sales contract, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.27 **"Person"**. A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.

1.28 **"Properties"**. The real property described on Exhibit A, together with such additional property as is subjected to this Declaration in accordance with Article 7.

1.29 **"Public Records"**. The Office of the Register of Deeds of Johnson County, Kansas.

1.30 **"Special Assessment"**. Assessments levied in accordance with Section 8.6.

1.31 **"Specific Assessment"**. Assessments levied in accordance with Section 8.7.

1.32 **"Supplemental Declaration"**. An instrument filed in the Public Records which subjects additional property to this Declaration, designates Neighborhoods, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument. The term shall also refer to an instrument filed by the Declarant pursuant to Section 3.3(c) which designates Voting Groups.

1.33 **"Unit"**. A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Area, common property owned by any Neighborhood Association, or property dedicated to the public. In the case of a building within a structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to be a single Unit until such time as a subdivision plat or

condominium plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this paragraph.

1.34 **"Voting Delegate"**. The representative selected by the Class "A" Members within each Neighborhood to be responsible for casting all Class "A" votes attributable to Units in the Neighborhood on matters requiring a vote of the membership (except as otherwise specifically provided in this Declaration and in the By-Laws). The term "Voting Delegate" shall also refer to any alternate Voting Delegate acting in the absence of a Voting Delegate and any Owner authorized personally to cast the vote for his or her Unit pursuant to Section 3.3(b).

1.35 **"Voting Group"**. One or more Voting Delegates who vote on a common slate for election of directors to the Board of Directors of the Association, as more particularly described in Section 3.3(c) of this Declaration or, if the context so indicates, the group of Members whose Units are represented thereby.

ARTICLE II. PROPERTY RIGHTS

2.1 Common Area. Declarant hereby grants to every Owner the right to, and a nonexclusive easement of, use, access, and enjoyment in and to the Common Area, which is appurtenant to the title to each Unit, subject to:

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area pursuant to Section 4.4;
- (e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
- (f) The right of the Board to impose reasonable requirements and charge reasonable admission or other use fees for the use of any facility situated upon the Common Area;
- (g) The right of the Board and the Declarant to permit use of any facilities situated on the Common Area by persons other than Owners, their families,

lessees and guests upon payment of reasonable use fees, if any, established by the Board;

(h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(i) Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit;

(j) No Owner may delegate any right (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;

(k) No Owner may exempt himself, and no Owner shall be exempt, from personal liability for Assessments or be able to release any Unit owned by such person from the liens, charges, and other provisions of this Declaration, Association Articles, the Association, the Association By-Laws, Association Rules, or Design Standards, by voluntary waiver of, or suspension, or restriction of such Owner or Association Member's rights (if any) to the use and enjoyment of the Common Areas, or the abandonment of such Owner's Unit or membership; and

(l) Declarant may from time to time convey to the Association, free of charge, real or personal property or easements for the common use and enjoyment of the Owners. The Association hereby covenants and agrees to accept from Declarant all such conveyances of real and personal property as Common Areas. Notwithstanding any legal presumption to the contrary, the fee simple title to such real and personal property designated as Common Area or for public use, together with all rights therein, shall be reserved to Declarant until such time as the real and/or personal property is conveyed to the Association or to the municipality or other governmental body, agency or authority. Nothing contained herein or in any plat shall be construed as to require Declarant to convey any property to the Association.

2.2 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person and no Owner shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.3 Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Delegates representing at least 67% of the total Class "A" votes in the Association and the written consent of the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this

Declaration by the Declarant) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such Improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, and Voting Delegates representing at least 67% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

(b) If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.2(c) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by any individual designated from time to time by the Owner in a written instrument delivered to the secretary of the Association.

3.2 Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 3.1; provided, however, there shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.11. All Class "A" votes shall be cast as provided in Section 3.2(c) below. The consent of a Mortgagee shall not be required for any Member to exercise his vote, and all Mortgagees holding Mortgages which are subordinate to this Declaration waive their right, if any, to require such consent privileges, any terms in the Mortgages notwithstanding.

(b) Class "B".

(i) The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint all members of the Board of Directors during the Class "B" Period which shall continue until the first to occur of the following:

(A) when 100% of the total number of Units permitted by the Master Plan for the property described on Exhibit A, as it may be hereafter amended from time to time, have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders; or

(B) when, in its sole discretion, the Class "B" Member so determines and voluntarily relinquishes such right in writing which shall be recorded in the Public Record by the Association.

(c) Exercise of Voting Rights.

(i) Except as otherwise specified in this Declaration or the By-Laws, the vote for each Unit owned by a Class "A" Member shall be exercised by the Voting Delegate representing the Neighborhood of which the Unit is a part, as provided in Section 3.3(b). The Voting Delegate shall cast all such votes in the manner provided in Section 3.3(b). No vote shall be exercised on behalf of any Unit if any assessment for such Unit is delinquent.

(ii) In any situation where a Member is entitled personally to exercise the vote for his or her Unit and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's right to vote shall be suspended if more than one Person seeks to exercise it.

3.3 Neighborhoods, Voting Delegates and Voting Groups.

(a) Neighborhoods.

(i) Every Unit shall be located within a Neighborhood; provided, however, unless and until additional Neighborhoods are established, the Properties shall consist of one Neighborhood. The Declarant, in its sole discretion, may establish Neighborhoods within the Properties by designation on Exhibit A to this Declaration, a Supplemental Declaration, or a plat. So long as it owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, the Declarant may unilaterally amend this Declaration or any Supplemental Declaration from time to time to assign property to a specific Neighborhood, to redesignate Neighborhood

boundaries, to remove property from a specific Neighborhood, or to revise this Declaration regarding its applicability to a certain Neighborhood.

(ii) Any developer of Units which desires to establish a Neighborhood (a "Neighborhood Declarant"), may, upon the written approval of the Declarant, establish and organize a Neighborhood and a Neighborhood Committee pursuant to this Section 3.3. Neighborhoods which are established by a Neighborhood developer shall be subject, in all respects, to this Declaration and the approvals of the Declarant as required hereby.

(iii) The Units within a particular Neighborhood may be subject to additional covenants and/or the Unit Owners may all be members of a Neighborhood Association in addition to the Association. However, a Neighborhood Association shall not be required except in the case of a condominium or otherwise as required by law. Any Neighborhood which does not have a Neighborhood Association may, but shall not be obligated to, elect a Neighborhood Committee, as described in the By-Laws, to represent the interests of Owners of Units in such Neighborhood.

(iv) Any Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Units in such Neighborhood and, upon the affirmative vote, written consent, or a combination thereof, of Owners of a Majority of the Units within the Neighborhood, the Association may, in its sole discretion, provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment pursuant to Article 8 hereof

(b) Voting Delegates.

(i) The Owners within each Neighborhood shall elect a Voting Delegate who shall be responsible for casting all votes attributable to Units owned by Class "A" Members in the Neighborhood on all Association matters requiring a membership vote, except as otherwise specified in this Declaration or the By-Laws. In addition, each Neighborhood shall elect an alternate Voting Delegate who shall be responsible for casting such votes in the absence of the Voting Delegate. No Person shall be eligible to serve as Voting Delegate or an alternate Voting Delegate if any assessment for such Person's Unit is delinquent. The Voting Delegate and alternate Voting Delegate from each Neighborhood shall be elected on an annual basis, either by written ballot cast by mail or at a meeting of the Class "A" Members within such Neighborhood, as the Board determines; provided however, upon written petition signed by Class "A" Members holding at least 10% of the votes attributable to Units within any Neighborhood, the election for such Neighborhood shall be held at

a meeting. The presence, in person or by proxy, of Class "A" Members representing at least 30% of the total Class "A" votes attributable to Units in the Neighborhood shall constitute a quorum at any Neighborhood meeting.

(ii) The Board shall call for the first election of Voting Delegates for a Neighborhood after 90% of the Units planned for such Neighborhood have been conveyed to Persons other than Builders. Subsequent elections within each Neighborhood shall be held annually. Each Class "A" Member who owns a Unit within the Neighborhood shall be entitled to cast one equal vote per Unit owned. The candidate who receives the greatest number of votes shall be elected as Voting Delegate and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Delegate. The Voting Delegate and the alternate Voting Delegate shall serve a term of one year or until their successors are elected.

(iii) Any Voting Delegate or alternate Voting Delegate may be removed, with or without cause, upon the vote or written petition of Owners of a Majority of the total number of Units owned by Class "A" Members in the Neighborhood which the Voting Delegate or alternate Voting Delegate represents. Any Voting Delegate or alternate Voting Delegate shall be automatically removed and ineligible to cast the votes attributable to Units in such Voting Delegate's Neighborhood if any assessment for such Voting Delegate's Unit is delinquent. Upon removal of a Voting Delegate or an alternate, a successor shall be elected by the Owners of Units within the Neighborhood to fill the vacancy for the remainder of such delegate's term.

(iv) Until such time as the Board first calls for election of a Voting Delegate for any Neighborhood, the Owners within such Neighborhood shall be entitled personally to cast the votes attributable to their respective Units on any issue requiring a vote of the Voting Delegates under this Declaration, the By-Laws, or the Articles.

(v) Prior to taking a vote on any issue requiring membership approval, the Association shall distribute proxies to all Members represented by Voting Delegates allowing each Member to direct in writing how the Member's vote is to be cast with respect to such issue by the Voting Delegate who represents him or her. The Voting Delegates shall be required to cast all votes for which specific proxies are returned in the manner directed in such proxies. All other votes may be cast as the Voting Delegate deems appropriate in its sole discretion. The Board may adopt resolutions establishing additional procedures for polling Members.

(c) Voting Groups.

(i) The Declarant may designate Voting Groups consisting of one or more Neighborhoods for the purpose of electing directors to the Board. The designation of Voting Groups, if any, shall be to promote representation on

the Board of Directors for various groups having dissimilar interests and to avoid a situation in which the Voting Delegates representing similar Neighborhoods are able, due to the number of Units in such Neighborhoods, to elect the entire Board of Directors, excluding representation of others. Following termination of the Class "B" Period, the number of Voting Groups within the Properties shall not exceed the total number of directors to be elected by the Class "A" Members pursuant to the By-Laws. The Voting Delegates representing the Neighborhoods within each Voting Group shall vote on separate slate of candidates for election to the Board, with each Voting Group being entitled to elect the number of directors specified in the By-Laws.

(ii) The Declarant shall establish Voting Groups, if at all, not later than the date of expiration of the Class "B" Period by filing with the Association and in the Public Records a Supplemental Declaration identifying each Voting Group by legal description or other means such that the Units within each Voting Group can easily be determined. Such designation may be unilaterally amended from time to time by the Declarant for so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to the Declaration by the Declarant.

(iii) After expiration of the Declarant's right to amend any designation of Voting Groups as provided above, the Board shall have the right to file or amend any Supplemental Declaration for the purpose of designating Voting Groups. Neither recordation nor amendment of such Supplemental Declaration shall constitute an amendment to this Declaration, and no consent or approval of any Person shall be required except as stated in this paragraph. Until such time as Voting Groups are established, all of the Properties shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been filed, any and all portions of the Properties which are not assigned to a specific Voting Group shall constitute a single Voting Group.

ARTICLE IV. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Function of Association. The Association shall be the entity responsible for management, maintenance, insuring, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Kansas.

4.2 Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to

the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibit A, personal property and leasehold and other property interests. For example, such property may include private streets, entry features and gates, recreational amenities and facilities. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

4.3 Enforcement.

(a) The Board, or the covenants committee if established, may impose sanctions for violation of this Declaration, the By-Laws, any Supplemental Declaration, or any rule or regulation, after compliance with the notice and hearing procedures set forth in Article X of the By-Laws. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines which shall constitute a lien upon the Unit of the violator (in the event that any occupant, guest or invitee of a Unit violates the Declaration, the By-Laws, the Supplemental Declaration, or any rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(ii) filing notices of liens or certificates of non-payment in the Public Records for nonpayment of any assessments or fees;

(iii) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;

(iv) suspending an Owner's right to vote;

(v) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(vi) suspending any services provided by the Association to an Owner or the Owner's Unit (including trash removal service) if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(vii) levying Specific Assessments to cover Costs incurred in bringing a Unit into compliance in accordance with Section 8.7(b); and

(viii) The Association has the right to cure any such violation at Owner's expense, and an easement in gross is hereby reserved for such purpose.

In addition, remedies may include, but not be limited to, injunctive relief, foreclosure of an assessment lien with the appointment of a receiver for the Unit, damages, specific performance, recovery of court costs and attorney fees, and suspension of common area use.

(b) In addition, the Board, or the covenants committee if established, may elect to enforce any provision of this Declaration, the By-Laws, any Supplemental Declaration, or the rules and regulations of the Association by self-help (specifically including, not limited to, the towing of vehicles that are in violation of parking rules) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in the By-Laws.

(c) All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration, the By-Laws, any Supplemental Declaration, or any rule or regulation, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(d) The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or stop the Association from enforcing any other covenant, restriction or rule.

(e) The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit local governments to enforce ordinances on the Properties for the benefit of the Association and its Members.

(f) In the event of a violation or breach or any provisions of this Declaration the Association or Declarant shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violations or breach within fifteen (15) calendar days after the mailing of said written notice, then the Association or Declarant shall have the "Right of Abatement."

(g) The "Right of Abatement," as used herein, means the right of the Association or Declarant, through its agents and employees, to enter at all reasonable times upon any Unit or improvement thereon as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without

being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection and reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or eighteen (18%) percent per annum to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Unit enforceable pursuant to the provisions of this Declaration. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Unit after such entry whether arising from or imposed by judgment or decree or by an agreement, contract, mortgage, deed to secure debt, or other security instrument, excepting only: (i) such liens for taxes or other public charges as are by applicable law made superior and (ii) the liens created under Assessment.

4.4 Implied Rights: Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such express right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Governmental Interests. For so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, the Declarant may designate sites within the Properties for fire, police, and utility facilities, public schools and parks, streets, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents.

4.6 Indemnification.

(a) The Association shall indemnify every officer, director, and ARC and other committee member against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or ARC or other committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and Kansas law.

(b) The officers, directors, and ARC and other committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and ARC and other committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that: such officers, directors or ARC or other committee members may also be Members of the Association). The Association shall

indemnify and forever hold each such officer, director and ARC and other committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or ARC or other committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7 Dedication of Common Area. The Association may dedicate portions of the Common Area to the City of Olathe, Kansas, or to any other local, state, or federal governmental or quasi-governmental entity.

4.8 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security system or other measure, including any mechanism or system for limiting access to the Properties, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and contents of Units, resulting from acts of third parties.

ARTICLE V. MAINTENANCE

5.1 Association's Responsibility.

(a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which may include, but need not be limited to:

- (i) Common Area;
- (ii) Common or community mail boxes;
- (iii) landscaping and vegetation, other parks, lakes, ponds, structures, and improvements, including any entry features, private streets, bike and pedestrian pathways/trails, situated upon the Common Area;
- (iv) all furnishings, equipment and other personal property of the Association;

(v) any landscaping and other flora, buffers, parks, bike and pedestrian pathways/trails, structures and improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board;

(vi) all streams and/or wetlands located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith;

(vii) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may, as a Common Expense, maintain other property and improvements which it does not own, including, without limitation, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (a) such maintenance responsibility is otherwise assumed by or assigned to an Owner or a Neighborhood Association or (b) such property is dedicated to any other local, state or federal governmental or quasi-governmental entity; provided, however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(c) The Association shall maintain the facilities and equipment within the Common Areas in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs.

(d) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of Common Areas shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, the Covenant to Share Costs, other recorded covenants, or agreements with the owner(s) thereof.

5.2 Owner's Responsibility.

(a) Each Owner shall maintain his or her Unit, and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by the Association or a Neighborhood Association. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.7. The Association shall afford the Owner reasonable notice (as determined by the Association) and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. In the event that a Builder fails to commence construction of a residential structure within thirty (30) days of the approval of the ARC of the application for such construction, any Unit for which such construction has not been commenced will be subject to assessments of \$1,000 per week of delay which may be collected as a Specific Assessment. Such assessments may be waived by the Association or the Declarant at their discretion based upon extenuating circumstances. In the event that a Builder ceases construction on a structure for more than 60 days, Declarant or the Association shall have the right, but not the obligation, to finish the exterior of the structure or any landscaping, remove any improvement and place a lien on the property. Cost of completion and maintenance shall be charged to the Builder for the Owner or shall become a lien on the property.

(b) Routine lawn care maintenance, including, but not limited to, mowing, trimming, pruning and landscaping, shall be performed during such hours adopted by the Association or the Declarant and at no other times. Except as otherwise provided herein, or in a Supplemental Declaration, such lawn care maintenance shall be performed by an Owner or an insured lawn care contractor as is engaged by each respective Owner and as is approved by the Association, the cost of which will be borne by each Owner for the cost of their respective Units.

5.3 Neighborhood's Responsibility.

(a) By Supplemental Declaration, the Owners of Units within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain improvements and services within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and greenspace between the Neighborhood and adjacent public roads, lawn care, snow clearance, insurance, private streets within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided however, all Neighborhoods which are similarly situated shall be treated the same.

(b) Any Neighborhood Association having responsibility for maintenance within a particular Neighborhood pursuant to additional covenants

applicable to such Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If it fails to do so, the Association may perform such responsibilities and assess the costs as a Specific Assessment against all Units within such Neighborhood as provided in Section 8.7.

5.4 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association, and/or an Owner and/or a Neighborhood Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.5 Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners of the Units contiguous to the party structure.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner of a Unit contiguous to the structure may restore it, in which case other Owners who thereafter use the structure, shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other Owners of contiguous Units under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

**ARTICLE VI.
INSURANCE AND CASUALTY LOSSES**

6.1 Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of

insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment; this requirement may be satisfied if a management company provides such coverage and names the Association an additional insured. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation; flood insurance, boiler and machinery insurance, and building ordinance coverage.

(vii) In the event that any portion of the Common Area is or shall become located in an area identified by the Federal Emergency Management Agency ("FEMA") as an area having special flood hazards, a "blanket" policy of flood insurance on the Common Area must be maintained in the amount of

100% of current "replacement cost" of all affected improvements and other insurance property or the maximum limit of coverage available, whichever is less.

(viii) In addition, the Association may obtain and maintain property insurance on the insurable improvements within any Neighborhood in such amounts and with such coverages as the Owners in such Neighborhood may agree upon pursuant to Section 3.3(a). Any such policies shall provide for a certificate of insurance to be furnished to the Neighborhood Association or Neighborhood Committee, as applicable, and to the Owner of each Unit insured.

Premiums for all insurance on the Common Areas shall be Common Expenses and shall be included in the General Assessment, except that premiums for property insurance obtained on behalf of a Neighborhood shall be charged to the Owners of Units within the benefited Neighborhood as a Neighborhood Assessment.

(b) Policy Requirements.

(i) The Board of Directors shall conduct an annual review of the sufficiency of insurance coverage.

(ii) All Association policies shall provide for a certificate of insurance to be furnished upon request to any Member insured and to the Association.

(iii) The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 8.7.

(iv) All insurance coverage obtained by the Board shall:

(A) be written with a company authorized to do business in the State of Kansas which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(B) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall

be for the benefit of the Owners of Units within the Neighborhood and their Mortgagees, as their interests may appear;

(C) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(D) contain an inflation guard endorsement; and

(E) include an agreed amount endorsement, if the policy contains a co-insurance clause.

(v) In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners, as a class, as additional insureds and provide:

(A) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(B) a waiver of the insurer's rights to repair and reconstruct instead of paying;

(C) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(D) an endorsement excluding owners' individual policies from consideration under any "other insurance" clause;

(E) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(F) a cross liability provision; and

(G) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction.

(i) Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction.

Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(ii) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Voting Delegates representing at least 67% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct.

(iii) If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended for a reasonable time until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

(iv) If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

(v) Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association or the Neighborhood, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

(vi) If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Voting Delegates, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2 Owners' Insurance.

(a) By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either the Neighborhood Association (if any) for the Neighborhood in which the Unit is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall

be levied as a Specific Assessment against the benefited Unit and the Owner thereof pursuant to Section 8.7.

(b) Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

ARTICLE VII. ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1 Annexation Without Approval of Membership.

(a) Until 25 years after the recording of this Declaration in the Public Records, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of any real property now or hereafter owned by Declarant. The Declarant may transfer or assign this right to annex property provided that such transfer is memorialized in a written, recorded instrument executed by Declarant.

(b) Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of Voting Delegates, but shall require the consent of the owner of such annexed property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Nothing in this Declaration shall be construed so that real property owned by the Declarant and not described in Exhibit A is encumbered by this Declaration unless and until the filing of such in Supplemental Declaration amending Exhibit A to include any of such real property.

(c) Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any additional real property owned by the Declarant in any manner whatsoever.

7.2 Annexation With Approval of Membership.

(a) The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Voting Delegates representing a Majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the written consent of the Declarant so long as Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant.

(b) Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any

such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to Section 7.1, for the purpose of removing any portion of the Properties from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal. Such withdrawal shall be accomplished by filing a Supplemental Declaration describing the property to be withdrawn in the Public Records.

7.4 Additional Covenants and Easements. The Declarant may unilaterally subject all or any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the (owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments). Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property

7.5 Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant.

ARTICLE VIII. ASSESSMENTS

8.1 Creation of Assessments.

(a) There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be four types of assessments: (i) General Assessments to fund Common Expenses for the general benefit of all Units including, but not limited to, general expenses of property maintenance and services contracted for by the Association through the Board such as security, insurance, management, lawn care and facility maintenance; (ii) Neighborhood Assessments for Neighborhood Expenses benefiting only Units within a particular Neighborhood or Neighborhoods; (iii) Special Assessments as described in Section 8.6; and (iv) Specific Assessments as described in Section 8.7. Each Owner, by accepting a deed or entering into a contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

(b) All assessments and fees, together with interest, late charges, costs of collection, filing or recording fees and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until

paid, as more particularly provided in Section 8.8. Each such assessment, together with interest, late charges, costs, fees and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

(c) The Association shall, upon written request, furnish to any Owner liable for any type of assessment a written statement signed by an Association officer setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

(d) Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the General Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the 15th day following the due date unless otherwise specified by Board resolution.

(e) No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

(f) The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

8.2 Declarant's Obligation for Assessments. So long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, Properties or Units owned by Declarant shall be exempt from any assessments of the Association.

8.3 Computation of General Assessment.

(a) At least 30 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year,

including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.5.

(b) General Assessments shall be levied equally against all Units subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

(c) So long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials (in addition to any amounts paid by Declarant under Section 8.2), which may be treated as either a contribution or an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be conspicuously disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years and the treatment of such payment shall be made known to the membership, unless otherwise provided in a written agreement between the Association and the Declarant.

(d) The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Owner at least 30 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Voting Delegates representing at least 67% of the total Class "A" votes in the Association and by the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Voting Delegates as provided for special meetings in Article 7, Section 2 of the By-Laws, which petition must be presented to the Board within 90 days after delivery of the notice of assessments. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

(e) If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Board shall send a copy of the revised budget to each Owner at least 30 days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

8.4 Computation of Neighborhood Assessments.

(a) At least 30 days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration, or the By-Laws specifically authorize the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association and, upon approval of Owners in accordance with Section 3.3(a), any additional costs shall be added to such budget. Such budget shall include a capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood. Neighborhood Expenses shall be allocated equally among all Units within the Neighborhood(s) benefited thereby and levied as a Neighborhood Assessment; provided however, if so specified in the Supplemental Declaration applicable to such Neighborhood or if so directed by petition signed by a Majority of the Owners within the Neighborhood, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefited Units in proportion to the benefit received.

(b) The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to each Owner of a Unit in the Neighborhood at least thirty (30) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by Owners of a Majority of the Units in the Neighborhood to which the Neighborhood Assessment applies and by the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least 10% of the Units in such Neighborhood. This right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

(c) If the Owners within any Neighborhood disapprove any line item of a Neighborhood budget, the Association shall not be obligated to provide the services anticipated to be funded by such line item of the budget. If the Board fails for any reason to determine a Neighborhood budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

8.5 Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets within the Area of Common Responsibility, the

expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual General Assessments or Neighborhood Assessments, as appropriate, over the budget period.

8.6 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Special Assessments shall be allocated equally among all Units subject to such Special Assessment. Any Special Assessment shall become effective unless disapproved at a meeting by Voting Delegates representing at least 67% of the total Class "A" votes allocated to Units which will be subject to such Special Assessment and by the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Voting Delegates as provided for special meetings in Article X, Section 2 of the By-Laws, which petition must be presented to the Board within 20 days after delivery of the notice of such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.7 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit or Units as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, janitorial service, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Unit(s) into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b).

The Association may also levy a Specific Assessment against the Units within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws and rules; provided however, the Board shall give prior written notice to the Owners of Units in, or the Voting Delegate representing, the Neighborhood and an opportunity for such Owners or Voting Delegate to be heard before levying any such assessment.

8.8 Remedies for Non-Payment of Assessments.

(a) Any assessments or other charges which are not paid when due shall be delinquent. Delinquent assessments shall bear interest from the due date at the rate established by the Board of Directors of the Association, or if not set by the Board, at the highest rate allowed by law, together with such-late fees as may be set by the Board. The Association may file a lien or certificate of no-payment of record against any Unit where there remains an assessment unpaid for a period of thirty (30) calendar days or longer. Said lien or certificate shall be filed in the Public Records in a manner provided therefore by Kansas law. Such lien shall be superior to all other liens, except the liens of all taxes, bonds, assessments, and other levies which by law would be superior and shall remain effective for five (5) years after the date of recording. Additionally, the Association may, at its option, sue and obtain a personal judgment against an Owner who has not paid any assessments made hereunder for the sums due and owing the Association in a court of competent jurisdiction. Election by the Association of any one of the above remedies shall not preclude or in any way limit the Association's rights to utilize any other remedy available to the Association hereunder or in equity or at law. Costs and reasonable attorneys' fees for the prosecution of any such action shall be added to the amount due. In the event of such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of the Association, then, and in that event, the Association shall collect on such judgment in such manner and to the extent provided and permitted by the laws of the State of Kansas. This Declaration shall constitute notice to all parties, including, but not limited to, any holder of a Mortgage which encumbers a Unit, that any Association's lien shall have priority over any Mortgage creating a lien against a Unit after the date of this Declaration. Any foreclosure of a Mortgage shall be subject to any existing or thereafter filed liens filed by the Association. Additionally, in the event that a determination is made by a court of competent jurisdiction that any Association lien is made subordinate to the lien of any Mortgage, and that such Association lien is extinguished by the fact of a foreclosure of such Mortgage, the Association shall have the right to re-assess and re-levy a Special Assessment in the amount of original extinguished Association lien after such foreclosure of such Mortgage

(b) The Association's lien may be foreclosed in like manner as a mortgage on real estate pursuant to Kansas law. All fees, charges, late charges, fines, and interest are enforceable as assessments.

(c) The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.9, including such acquirer, its successors and assigns.

8.9 Date of Commencement of Assessments. The obligation to pay assessments shall accrue as to each Unit on the date that such Unit is conveyed to a Person

other than a Builder or Declarant. With respect to any Unit owned by a Builder, assessments shall commence upon the earlier of (a) actual occupancy of such Unit, excluding any period that such Unit is being used exclusively as a model home; or (b) one year from the date that such Builder or any entity or Person related to such Builder acquired title to such Unit. The first annual General Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit.

8.10 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments and Neighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.11 Exempt Property. The following property shall be exempt from payment of General Assessments, Neighborhood Assessments, and Special Assessments:

- (a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1;
- (b) Any property dedicated to and accepted by any governmental authority or public utility; and
- (c) Property owned by any Neighborhood Association for the common use and enjoyment of its members.

8.12 Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to \$200.00; the Board shall have the power to amend such amount as it deems necessary, however the amount as so amended shall be uniformly applied. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. This amount shall be collected and disbursed to the Association at closing of the purchase and sale of the Unit for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws.

ARTICLE IX. ARCHITECTURAL STANDARDS

9.1 General.

(a) No structure shall be placed, erected, or installed upon any Unit or adjacent to any Unit where the purpose of the structure is to service such Unit, and no improvements (including, but not limited to, staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, installation of mailboxes, antennas, pools, walls or fences, including invisible fences, and planting or removal of

landscaping materials) shall take place except in compliance with this Article, and approval of the appropriate committee under Section 9.2, unless exempted from the application and approval requirements pursuant to Section 9.3.

(b) Any Owner may remodel, paint or redecorate the interior of structures on his Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval.

(c) All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer and shall be constructed by a builder approved by Declarant.

(d) This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association or to improvements to any Private Amenity.

(e) This Article may not be amended without the Declarant's written consent, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant.

9.2 Architectural Review. Responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this Article shall be handled by the ARC, the members of which need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the ARC. The ARC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the committees in having any application reviewed by architects, engineers or other professionals.

(a) Architectural Review Committee. The ARC shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all construction on any portion of the Properties. Until 100% of the Properties have been developed and conveyed to Owners other than Builders, the Declarant retains the right to appoint all members of the ARC who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board shall appoint the members of the ARC, who shall thereafter serve and may be removed in the Board's discretion.

9.3 Guidelines and Procedures.

(a) Design Guidelines.

(i) The Declarant shall prepare the initial Design Guidelines for the Properties. The Design Guidelines may contain general provisions

applicable to all of the Properties, as well as specific provisions which vary according to land use and from one portion of the Properties to another depending upon the location, unique characteristics, and intended use.

(ii) The ARC shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the ARC is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines more or less restrictive.

(iii) The ARC shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties. In the Declarant's discretion, such Design Guidelines may be recorded in the Public Records, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures.

(i) Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the appropriate committee for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines. In reviewing each submission, the committees may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations. Decisions of the committees may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as committee members change over time.

(ii) No delay in the approval or rejection of plans and specifications submitted to the ARC shall make the ARC liable in any way for any costs, expenses or damages associated with the improvements of any Unit. In no event shall the application be deemed approved as a result of the ARC's inaction.

(iii) Notwithstanding the above, the ARC by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

9.4 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.5 Variance. The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) stop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9.6 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the ARC nor the MC shall bear any responsibility for ensuring the structural integrity or soundness of approved-construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Section 4.6.

9.7 Enforcement.

(a) Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the ARC, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, any authorized agent of the ARC or the Board shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment. In addition, the ARC or the Board shall have the right to exercise any means of enforcement set forth in Section 4.4 of this Declaration.

(b) Unless otherwise specified in writing by the committee granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and

remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

(c) Neither the ARC or any member of the ARC nor the Association, the Declarant, or their officers or directors shall be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the ARC from the Properties, subject to the notice and hearing procedures contained in the By-Laws.

(d) In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARC and MC.

ARTICLE X. USE RESTRICTIONS

10.1 General. This Article sets out certain use restrictions which must be complied with by all Owners and occupants of any Unit. The Properties shall be used only for residential and related purposes (which may include, without limitation, model homes, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of property described on Exhibit A, or as it may be hereafter amended, offices for any property manager retained by the Association, or business offices for the Declarant or the Association) consistent with this Declaration and any Supplemental Declaration.

10.2 Rules and Regulations. In addition to the use restrictions set forth in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations, applicable to the Properties. Such rules shall be distributed to all Owners and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the Members, and the written consent of the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant.

10.3 Permitted Use.

(a) All Units so designated by Declarant on the recorded plat regarding such Units shall be used exclusively for residential purposes of a single family. No business, trade, garage sale, moving sale, rummage sale, or similar activity shall be conducted upon a Unit without the prior written consent of the Board. An Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Properties; (iii) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (iv) the business activity is consistent with the residential character of the Properties and does not constitute a

nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board. Any recorded plat which is subject to this Declaration and does not designate a permitted use shall be deemed to only permit single family residential use as described in this sub-section. The term "single family," as used in this provision, shall be construed to mean a family of natural persons who maintain the Unit as their primary residence.

(b) The terms "business" and "trade," as used in this Section, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

(c) The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program.

10.4 Signs.

(a) No sign of any kind shall be erected by an Owner or occupant without the prior written consent of the ARC, except:

- (i) such signs as may be required by legal proceedings; and
- (ii) not more than one professional security sign of such size deemed reasonable by the ARC in its sole discretion.

(b) Unless in compliance with this Section, no signs shall be posted or erected by any Owner or occupant within any portion of the Properties, including the Common Area, any Unit, any structure or dwelling located on the Common Area or any Unit (if such sign would be visible from the exterior of such structure or dwelling as determined in the ARC's sole discretion.

(c) The ARC reserves the right to prohibit, in good faith and not unreasonably, "for sale" or "for rent" signs and to restrict the color, lettering and placement of all signs. This provision shall not apply to entry, directional, or other signs installed by the Declarant.

10.5 Vehicles.

(a) Automobiles and non-commercial trucks and vans shall be parked only in the garages or in the driveways, if any, serving the Units unless otherwise approved by the ARC; provided however, the Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to

reasonable rules. No automobile or non-commercial truck or van may be left upon any portion of the Properties, except in a garage, if it is unlicensed or is inoperable. Such vehicle shall be considered a nuisance and may be removed from the Properties at the expense of the Owner. No motorized vehicles shall be permitted on pathways or unpaved Common Area except for public safety vehicles authorized by the Board.

(b) Recreational vehicles shall be parked only in the garages serving the Units or, with approval of the ARC, other hard-surfaced areas which are not visible from the street or Private Amenities; provided however, guests of an Owner or occupant may park a recreational vehicle on the driveway serving such Owner's or occupant's Unit for a period not to exceed seven days each calendar year. "Visibility" shall be determined by the ARC in its sole discretion. The term "recreational vehicles," as used herein, shall include, without limitation, motor homes, mobile homes, boats, trailers, other towed vehicles, motorcycles, minibikes, jet skis, scooters, go-carts, golf carts, campers, buses, commercial trucks and vans. Any recreational vehicle parked or stored in violation of this provision in excess of two days shall be considered a nuisance and may be removed from the Properties at the expense of the Owner. The Declarant and/or the Association may designate certain parking areas within the Properties for recreational vehicles subject to reasonable rules and fees, if any. Trucks with mounted campers which are an Owner's or occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view

(c) All vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt.

10.6 Leasing. Units may be leased for residential purposes only and only upon written approval by the Association of the lease agreement which must be submitted to the association at least thirty (30) days prior to the commencement of such lease term. All leases shall require, without limitation, a term of at least six (6) months and that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing. The Board may require notice of any lease together with such additional information deemed necessary by the Board. No lease term may exceed one year.

10.7 Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or Design Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned. Fines may be levied against Owners or occupants. If a fine is first levied against an occupant and is not paid timely, the fine may then be levied against the Owner.

10.8 Animals and Pets. No animals, livestock, reptiles (excluding indoor turtles), monkeys or poultry of any kind may be raised, bred, kept, or permitted on any Unit, with the exception of domestic dogs, domestic cats, or other usual and common household pets in reasonable number not to exceed four (4) or as otherwise determined by the Board. All pets shall be reasonably controlled by the owner whenever outside a Unit and shall be kept in such a

manner as to not become a nuisance by excessive barking or other acts. The owners of the pet shall be responsible for all of the pet's actions. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, it shall be removed from the Properties. No Owner shall feed or otherwise support the existence of non-domesticated animals to the extent that such activity results in a nuisance to the Community or another Owner, as determined by the Board in its sole discretion. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 4.4.

10.9 Nuisance.

(a) It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

(b) Each Owner shall maintain its Unit in a neat and orderly condition throughout initial construction of a residential dwelling and not allow trash and debris from its activities to be carried by the wind or otherwise scattered within the Properties. Storage of construction materials on the Unit shall be subject to such conditions, rules, and regulations as may be set forth in the Design Guidelines. Each Owner shall keep roadways, easements, swales, and other portions of the Properties clear of silt, construction materials and trash from its activities at all times. Trash and debris during initial construction of a residential dwelling shall be contained in standard size dumpsters or other appropriate trash receptacles and removed regularly from Units and shall not be buried or covered on the Unit. Owners shall remove trash and debris from the Unit upon reasonable notice by Declarant in preparation for special events.

(c) No noxious or offensive activity shall be carried on within the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes or as approved by the ARC, shall be located, installed or maintained upon the exterior of any Unit unless required by law.

10.10 Exterior Structures. No exterior structure of any kind nor any artificial vegetation or sculpture shall be constructed, erected or placed on the outside portion of the Unit, whether such portion is improved or unimproved, except as pre-approved by the ARC, in strict compliance with Article 9. This shall include without limitation, sport courts, tennis courts,

basketball hoops (except for moveable basketball hoops, which may not be viewable from the street for more than three days of each week); swing sets and similar sports and play equipment; clotheslines; garbage cans; wood piles; swimming pools, wells; window air-conditioning units; hot tubs; antennae; satellite dishes (except as provided below), or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; and hedges, walls, dog runs, animal pens, or fences of any kind. The Declarant reserves the right to prohibit certain exterior structures in certain neighborhoods by Supplemental Declaration, and such prohibition shall deprive the ARC of the right to approve same. Notwithstanding the above, this section shall not be deemed to prohibit satellite dishes of less than 36 inches in diameter in size, the placement of which shall be subject to the approval of the ARC.

10.11 Streams. No streams which run across any Unit may be dammed, or the water therefrom impounded, diverted, or used for any purpose without the prior written consent of the Board, except that the Declarant shall have such rights as provided in Article 11.

10.12 Prohibited Conditions. The following conditions, structures, or activities are prohibited within the Properties unless prior approval in writing is obtained from the ARC by the Owner or occupant:

(a) Tree Removal. No trees that are more than 6 inches in diameter at a point 2 feet above the ground shall be removed without the prior written consent of the ARC; provided however, any trees, regardless of their diameter, that are located within 10 feet of a drainage area, a septic field, a residence, or a driveway, or any diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons may be removed. The ARC may adopt or impose requirements for, or condition approval of tree removal upon, the replacement of any tree removed.

(b) Lighting. Exterior lighting visible from the street shall not be permitted except for: (i) approved lighting as originally installed on a Unit; (ii) one approved decorative post light, (iii) street lights in conformity with an established street lighting program for the Properties; (iv) seasonal decorative lights from each November 15 to January 15 of the subsequent calendar year; (v) front house illumination of model homes; or (vi) such other lighting as may be approved by the ARC.

(c) Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Properties, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

10.13 Drainage and Grading. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. No Person shall alter the grading of any Unit without prior approval pursuant to Article 9 of this Declaration. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. However, the exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent.

10.14 Mailboxes. It is currently envisioned by Developer that common or community mail boxes will be required in the community. If that requirement is modified or eliminated, the ARC reserves the right to approve the style, design, color and location prior to any original installation or replacement of any mailbox. Application shall be made to the ARC prior to installation or replacement. By accepting a deed to a Unit, each Owner gives the ARC the right to remove any nonapproved mailbox in a reasonable manner; all costs for same shall be paid by Owner of such Unit, and all claims for damages caused by the ARC are waived.

10.15 Storage of Materials, Garbage, Dumping, Etc. All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. There shall be no dumping of grass clippings, leaves or other debris; rubbish, trash or garbage; petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff. Declarant and Builders authorized in advance by Declarant may dump and bury rocks and trees removed from a building site on such building site. No lumber, metals, bulk materials, refuse, trash or other similar materials shall be kept, stored, or allowed to accumulate outside the buildings on any Unit, except during the initial construction period of the improvements to the Unit. In addition, during construction the building materials on any Unit shall be placed and kept in an orderly fashion. Any Unit on which construction is in progress shall be policed at least prior to each weekend, and during the weekend all materials shall be neatly stacked or placed and any trash or waste materials shall be removed.

10.16 Subdivision of Unit. No Unit shall be subdivided or its boundary lines changed after a subdivision plat including such Unit has been approved and filed in the Public Records. Declarant, however, hereby expressly reserves the right to replat any Unit or Units which it or any Builder owns, with the written prior consent of the owner of the Unit or Units affected. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.

10.17 Guns. The discharge of firearms and any other weapons on the Properties is prohibited. The terms "firearms" and "weapons" includes without limitation "B-B" guns, fireworks, slingshots, archery equipment, pellet guns, and firearms of all types. The Board shall have no obligation to take action to prevent or stop such discharge

10.18 Combustible Liquid. There shall be no storage of gasoline, heating or other fuels, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Unit for emergency purposes and/or operation of cooking grills, lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

10.19 Completion of Construction: Occupancy of Unfinished Units. No dwelling erected upon any Unit shall be occupied in any manner before commencement of construction or while in the course of construction, nor at any time prior to the dwelling being fully completed. After commencement of construction, each Owner shall diligently continue construction to complete such construction in a timely manner. With respect to construction of

a residential dwelling, such construction shall be completed within one year from commencement. For the purposes of this Section, commencement of construction shall mean that (i) all plans for such construction have been approved by the ARC; (ii) a building permit has been issued for the Unit by the appropriate jurisdiction; and (iii) construction of a residential dwelling on the Unit has physically commenced beyond site preparation. Completion of a dwelling shall mean that a certificate of occupancy has been issued by the appropriate jurisdiction for the Unit, or such other period as the ARC may authorize in writing.

10.20 Temporary Structures. Except as may be permitted by the Declarant during initial construction, or the ARC thereafter, no temporary house, dwelling, garage, barn or out building shall be placed or erected on any Unit. No mobile home, trailer home, travel trailer, camper or recreational vehicle shall be stored, parked or otherwise allowed to be placed on a Unit as a temporary or permanent dwelling.

10.21 Miscellaneous Restrictions. There shall be: No breaking the law or doing anything to cause a loss of insurance coverage; no nuisances; no mining or excavation; no clothes line or outdoors drying of laundry; no above ground or above grade swimming pools; no storage tanks; and garage doors must remain closed except when vehicles are entering and exiting.

10.22 Entry Way Lots. Lots 7 - 10, 20 - 23, 26 and 27 are at the entry of the development ("Entry Way Lots") and to preserve the community image, certain restrictions on use are applied thereto. Accordingly, and anything in this Declaration to the contrary notwithstanding, the following shall apply to the Entry Way Lots:

- (a) No swimming pools or outdoor saunas shall be permitted;
- (b) No exterior structure, including but not limited to those described in Section 10.10 above, shall be permitted on the Entry Way Lots without the prior approval of the ARC. The fact that certain exterior structures are permitted elsewhere in the community shall not serve as a precedent to allow such structures on the Entry Way Lots.
- (c) Developer shall initially install the rear lot line fence, however repair and replacement of same shall be the responsibility of the Owner. The Owner may only tie into such fence with side lot line fences of the same materials. Such fence shall be of uniform materials for all Entry Way Lots, and shall be replaced with materials substantially similar to those originally installed, unless otherwise approved by the ARC.

ARTICLE XI. EASEMENTS

11.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Units, and between each Unit and any adjacent Common Area due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line

perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2 Easements for Utilities, Etc.

(a) There are hereby reserved to the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; lakes, ponds, wetlands, irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewers, telephone, gas, and electricity, and utility meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

(b) Subject to the erections of residential structures on the Properties; Declarant specifically grants to the local water supplier, electric company, telephone company, and natural gas supplier non-exclusive easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(c) There is hereby reserved to the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibit A, as it may hereafter be amended from time to time, which shall not be an encumbrance on such property until notice of such grant of specific easements has been placed at the Public record.

(d) Any damage to a Unit resulting from the exercise of the easements described in subsections (a), (b) and (c) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

(e) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the

burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.3 Easement for Slope Control Drainage and Waterway Maintenance. The Declarant, for itself and the Association, and their respective representatives, successors and assigns, contractors and agents, hereby establishes and reserves a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon each Unit for the purposes of:

(a) controlling soil erosion, including grading and planting with vegetation any areas of any Unit which are or may be subject to soil erosion;

(b) drainage of natural or man-made water flow and water areas from any portion of the Properties;

(c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Unit;

(d) dredging, enlarging, reducing or maintaining any water areas or waterways within the Properties; and

(e) installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Properties, which shall not be an encumbrance on such property until notice of such grant of specific easements has been placed on the Public record.

11.4 Easement for Entry. The Association shall have the right, but not the obligation, and a perpetual non-exclusive easement is hereby granted to the Association, to enter all portions of the Properties, including each Unit, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents, employees and managers of the Association, any member of its Board or committees, and its officers, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after notice to and permission from the Owner. This easement includes the right to enter any Unit to cure any condition which may increase the risk of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Any entry by the Association or its authorized agents, employees or managers of the Association, any member of its Board or committees, or its officers onto a Unit for the purposes specified herein, shall not constitute a trespass.

11.5 Easements for Maintenance and Enforcement. Authorized agents of the Association shall have the right, and a perpetual non-exclusive easement is hereby granted to the Association, to enter all portions of the Properties, including each Unit to (a) perform its maintenance responsibilities under Article 5, and (b) make inspections to ensure compliance with this Declaration, any Supplemental Declaration, By-Laws, Design Guidelines and rules. Except in emergencies, entry onto a Unit shall be only during reasonable hours. This easement

shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense. The Association also may enter a Unit to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Declaration, any Supplemental Declaration, the By-Laws, the Design Guidelines, or the rules. All costs incurred, including reasonable attorneys' fees, may be assessed against the violator as a Specific Assessment.

11.6 Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, its successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

ARTICLE XII. DECLARANT'S RIGHTS

12.1 Transfer of Rights. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

12.2 Use of Facilities. The Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Properties such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, including, but not limited to, business offices, signs, model units, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities.

12.3 Easement Over Common Area. The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

12.4 Approval of Covenants. No Person shall record any plat, declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

12.5 Approval of Design Guidelines. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules or Design Guidelines made after termination of the Class "B" Period shall be effective without prior notice to and the written consent of the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant.

12.6 Amendment. This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 25 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

12.7 Authority of Declarant. Notwithstanding anything to the contrary in this Declaration, Declarant reserves unto itself the right to approve or disapprove any matter regarding the development of Coffee Creek Meadows or any Neighborhood within Coffee Creek Meadows. This right shall include, but not be limited to, any decision regarding amendment of these Declarations, actions taken, rules imposed, restrictions created or decisions made by the Association, the ARC, any Neighborhood Association, any Neighborhood Committee or any other entity formed in connection with Coffee Creek Meadows. Declarant shall have the authority to make all determinations regarding the reasonableness and the necessity of any decision, action, rule, restrictions, and Declarant's exercise of such authority shall be deemed to automatically be in the best interests in the development of Coffee Creek Meadows as a planned community.

12.8 Development Plan; Disclaimer of Representations Regarding Completion and Development. Coffee Creek Meadows is a master planned community and multiple residential uses are contemplated. The Declarant makes no representations or warranties whatsoever that: (a) the project will be completed in accordance with the plans for the project as they exist on the date this Declaration is recorded in the Public Records; (b) any property subject to this Declaration will be committed to or developed for a particular use or for any use; (c) any property not now subject to this Declaration will be subjected to the provisions hereof; or (d) the use of any property subject to this Declaration will not be changed in the future. The Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to the development plan with respect to any property owned by the Declarant in any way which the Declarant desires including, but not limited to, changing the density of all or any portion of the property owned by the Declarant or changing the nature or extent of the uses to which such property may be devoted. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen representing the Declarant or any Builder or other developer shall be deemed to create any covenants or restrictions, implied or express, with respect to the use of any property subject to this Declaration.

ARTICLE XIII. GENERAL PROVISIONS

13.1 Duration.

(a) Unless terminated as provided in Section 13.1(b), this Declaration shall run with the land and shall be binding on all parties and Persons claiming under them for a period of 20 years from the date this Declaration is recorded. This Declaration shall automatically be extended at the expiration of such period for successive periods of 10 years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the

rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Kansas law, in which case such law shall control, this Declaration may not be terminated within 20 years of the date of recording without the consent of all Owners. Thereafter, it may be terminated only by an instrument signed by Owners of at least 75% of the total Units within the Properties and by the Declarant, if the Declarant owns any portion of the Properties, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

13.2 Amendment.

(a) By Declarant. Until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not materially adversely affect the title to any Unit unless the Owner shall consent in writing. In addition, so long as the Declarant owns property which is subject to this Declaration or which may be unilaterally subjected to the Declaration by the Declarant, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Delegates representing 67% of the total Class "A" votes in the Association, including 67% of the Class "A" votes held by Members other than the Declarant, and the written consent of the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have

been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege. If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

13.3 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

13.4 Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 67% of the Voting Delegates. A Voting Delegate representing Units owned by Persons other than himself or herself shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners holdings 67% of the total votes attributable to Units in the Neighborhood represented by the Voting Delegate. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association against any contractor, vendor, or supplier of goods and services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. ANY OWNER WHICH COMMENCES A JUDICIAL PROCEEDING AGAINST THE DECLARANT OR THE ASSOCIATION HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT SUCH OWNER MAY HAVE TO TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS DECLARATION OR ANY ACTION OF THE DECLARANT OR THE ASSOCIATION OR ITS BOARDS THEREUNDER; OR ANY ACTS OR OMISSION OF THE DECLARANT OR THE ASSOCIATION, THEIR OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION WITH ANY OF THE FOREGOING.

13.5 Non-Merger. Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual lot owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

13.6 Grants. The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple

estate of the Properties. The grants of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration, and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted in this Declaration.

13.7 Cumulative Effect, Conflict. The provisions of this Declaration shall be cumulative with any additional covenants, restrictions, and declarations applicable to any Neighborhood, and the Association may, but shall not be required to, enforce the covenants, conditions, and provisions applicable to any Neighborhood; provided however, in the event of a conflict between or among this Declaration and such covenants or restrictions, and/or the provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, this Declaration, the By-Laws, Articles, and use restrictions and rules of the Association shall prevail over those of any Neighborhood. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Association. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 22nd day of June, 2007.

ARB PROPERTIES, INC.

By: *Colin D. Aufie*
Name: COLIN D. AUFIE
Title: SECRETARY

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

On this 22 day of June, 2007, before me, a Notary Public in and for said state, personally appeared *Colin D. Aufie*, who stated that he/she is the *Secretary* of ARB PROPERTIES, INC., a Kansas corporation, known to me to be the person who executed the within instrument on behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.

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

Mary F. Martin
Notary Public

My Commission Expires:

MARY F. MARTIN
NOTARY PUBLIC
STATE OF KANSAS
My Appt Expires 8/20/2009

EXHIBIT "A"

Lots 1-49, inclusive and Tracts A and R, COFFEE CREEK MEADOWS, 1ST PLAT, a subdivision in the City of Olathe, Johnson County, Kansas.

and

Lots 50-90, inclusive and Tracts B-N, inclusive, COFFEE CREEK MEADOWS, 2ND PLAT, a subdivision in the City of Olathe, Johnson County, Kansas.