

**MILLS FARM AREA
HOMES ASSOCIATION DECLARATION**

THIS DECLARATION is made as of the 12 day of September, 2006, by Mills Farm Development, L.L.C., a Kansas limited liability company ("Developer").

WITNESSETH:

WHEREAS, Developer has executed and filed with the Register of Deeds of Johnson County, Kansas, a plat of the subdivision known as "Mills Farm" which plat includes the following described lots and tracts:

Lots 1 through 35, and Tracts A, B and C, MILLS FARM, FIRST PLAT, a subdivision in the City of Overland Park, Johnson County, Kansas.

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

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

ARTICLE I. DEFINITIONS

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

- (a) "Board" means the Board of Directors of the Homes Association.
- (b) "Certificate of Substantial Completion" means a certificate executed, acknowledged and recorded by the Developer with the Recording Office stating that all of the Lots in the District (as then contemplated by the Developer) have been sold by the

Developer and the residences to be constructed thereon are substantially completed; provided, however, that the Developer may execute and record a Certificate of Substantial Completion or similar instrument in lieu thereof in Developer's absolute discretion at any earlier time and for any limited purpose hereunder. The execution or recording of a Certificate of Substantial Completion shall not, by itself, constitute an assignment of any of the Developer's rights to the Homes Association or any other person or entity.

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

(d) "Common Areas" means (i) the Recreation Facilities Area, (ii) the Right-of-Way Amenities, (iii) the Stream Corridors, (iv) any Private Lakes, (v) any entrances, monuments, berms, street islands, and other similar ornamental areas and related utilities, lights, sprinkler systems, trees and landscaping constructed or installed by or for the Developer or the Homes Association at or near the entrance of any street or along any street, and any easements related thereto, in the District, (vi) all platted landscape easements and all other landscape easements that may be granted to the Developer and/or the Homes Association, for the use, benefit and enjoyment of all Owners within the District, and (vii) all other similar areas and places, together with all improvements thereon and thereto, the use, benefit or enjoyment of which is intended for all of the Owners within the District.

(e) "Declaration" means this instrument, as the same may be amended, supplemented or modified from time to time.

(f) "Developer" means Mills Farm Development, L.L.C., a Kansas limited liability company, and its successors and assigns.

(g) "District" means collectively all of the above lots in Mills Farm, First Plat, all Common Areas, and all additional property which hereafter may be made subject to this Declaration in the manner provided herein.

(h) "Homes Association" means the Kansas non-profit corporation to be formed by or for the Developer for the purpose of serving as the homes association for the District.

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

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

(k) "Private Lakes" means any private lakes that may be constructed by the Developer on any part of the Common Areas.

(l) "Recreational Facilities Area" has the meaning set forth in Article XIV below.

(m) "Recording Office" means the Office of the Register of Deeds of Johnson County, Kansas.

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

(o) "Stream Corridor" means any stream and adjacent land that constitutes part of a Common Area and set aside as a "stream corridor", in accordance with the City ordinances, as specified by Developer in an amendment or supplement to this Declaration.

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

ARTICLE II. HOMES ASSOCIATION MEMBERSHIP

Until the Turnover Date, the Homes Association shall have two classes of membership, namely Class A and Class B. The Developer shall be the sole Class A member. Each Owner of a Lot, including the Developer as an Owner, shall be a Class B member. Until the Turnover Date, all voting rights shall be held by the Class A member, except that the Class B members shall have the sole right to vote on increases in annual assessments as provided in clause (c) of Section 2 of Article IV below and to vote any special assessments as provided in clause (III) of Section 1(b) of Article V below.

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

Where voting rights exist based on Lot ownership, each member shall have one vote for each Lot for which he is the Owner; provided, however, that when more than one person is an Owner of any particular Lot, all such persons shall be members and the one vote for such Lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one vote be cast with respect to such Lot. During any period in which a member is in default in the payment of any assessment levied by the Homes Association under this Declaration, the voting rights of such member shall be suspended until such assessment has been paid in full.

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

After the Turnover Date, the Board of the Homes Association shall be divided by the Developer into a number of classes equal to the number of types of residential areas in the District, with each separate area in the District being entitled to elect from the members of the Homes Association residing in such area the member(s) of the Board of the class of directors assigned to such area. The size of the Board shall be at least seven (7) in number with the relative number of positions in each class for each area being as proportional as possible to the relative number of Lots in each area.

ARTICLE III. POWERS AND DUTIES OF THE HOMES ASSOCIATION

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

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

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

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

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

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

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

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

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

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

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

(k) To make, amend and revoke reasonable rules, regulations, restrictions and guidelines (including, without limitation, regarding the use of Common Areas) and to provide means to enforce such rules, regulations, restrictions and guidelines, and the recorded declarations, by levying fines and other enforcement charges and taking such other lawful actions as the Homes Association, in its discretion, deems appropriate.

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

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

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

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

(c) The Homes Association shall satisfy its obligations with respect to the Recreational Facilities Area, as set forth in Article XIV below, the Stream Corridors, as set forth in Article XVI below, and any Private Lakes, as set forth in Article XVII below.

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

(e) In the event individual mailboxes are required by the U.S. Post Office, the Homes Association shall purchase, install and maintain and replace (as necessary) all such mailboxes and mailbox posts. The Homes Association shall have the right to charge a fee to the Lot Owner for the costs of the initial installation of the individual mailbox and post.

The Board shall have the right to further determine the scope and timing of the foregoing services and shall have the right (but not the obligation) to establish, maintain and expend reserve funds for the improvements on the Common Areas and the services to be provided by the Homes Association under this Section 2. Neither the Developer, any director nor the Homes Association shall be liable to any Owner or other party for any failure to establish or maintain any such reserves or if any such reserves are inadequate.

ARTICLE IV. ANNUAL ASSESSMENTS AND INITIATION FEE

1. For the purpose of providing funds to enable the Homes Association to exercise the powers, render the services and perform the duties provided for herein, all Lots in the District (other than Lots then owned by the Developer and Lots then owned by a builder prior to the initial occupancy of the residence thereon as a residence) shall be subject to an annual assessment to be paid to the Homes Association by the respective Owners thereof as provided in this Article IV. The amount of such annual assessment per Lot shall be fixed periodically by the Board, subject to Section 2 below, and, until further action of the Board, shall be \$800.00 per year.

2. The rate of annual assessment upon each assessable Lot in the District may be increased as to and for each calendar year:

(a) For each of years 2008 through 2010, by the Board from time to time, without a vote of the members, by up to 20% over the rate of annual assessment in effect for the preceding calendar year;

(b) After year 2010, by the Board from time to time, without a vote of the members, by up to 10% over the rate of annual assessment in effect for the preceding calendar year; or

(c) At any time by any amount by a vote of the members (being for this limited purpose solely the Class B members prior to the Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when a majority of the members present at such meeting and entitled to vote thereon authorize such increase by an affirmative vote for the proposed increase.

Notwithstanding the foregoing limits on annual assessments, the Board, without a vote of the members, shall always have the power to set, and shall set, the rate of annual assessment at an amount that will permit the Homes Association to perform its duties as specified in Section 2 of Article III above.

3. The annual assessments provided for herein shall be based upon the calendar year (commencing in 2006) and shall be due and payable on January 1st of each year; provided, however, that (i) the first assessment for each Lot shall be due and payable only upon the commencement of occupancy of the residence on the Lot (or, if earlier, closing of the home purchase by the home buyer) and shall be prorated as of the date thereof and (ii) the Board may allow the annual assessment to be paid in two or more installments during the year. If the effective date of any increase in the rate of assessment is other than January 1st, a proper portion (as determined by the Board) of the amount of such increase for the remainder of such year shall be due and payable on such effective date. No Lot shall be entitled to receive any services or to use any Common Areas to be provided by and through the Homes Association until such time as the first annual assessment has been paid with respect thereto.

4. Notwithstanding Sections 1, 2 and 3 above, from the transfer of title to a Lot from Developer to a third party (including a home builder) until the earlier of the initial occupancy of the residence on the Lot or the closing of the home purchase by the home buyer, no annual assessment shall be payable for the first 12 months of such period and thereafter the assessment for such Lot payable to the Association shall be payable monthly at a rate equal to $\frac{1}{24}$ th of the regular annual assessment rate. No trash services shall be provided by the Homes Association to such Lot during any such period and such Lot shall not be entitled to use any Common Areas.

5. A portion of the annual assessments may be allocated to reserves to provide funds for repair or maintenance of major items and for other contingencies. Neither Developer nor the Homes Association nor any member of the Board shall have any liability to any Owner or member

of the Homes Association if no reserves are established or maintained or if any reserves are inadequate.

6. An initiation fee of \$250.00 shall be payable by the new Owner to the Homes Association, for use as part of the general funds of the Homes Association, upon each of the following events with respect to each Lot:

(i) The initial occupancy of the residence on the Lot after the residence is constructed (which initiation fee is in addition to the first regular annual assessment, as it may be prorated); and

(ii) Each subsequent transfer of ownership of the Lot for value.

ARTICLE V. SPECIAL ASSESSMENTS

1. In addition to the annual assessments provided for herein, the Board:

(a) shall have the authority to levy from time to time a special assessment against any Lot and its Owner to the extent (I) a fine has been assessed by the Homes Association against the Owner or (II) the Homes Association expends any money (for services, materials, and legal fees and expenses) to correct or eliminate (by enforcement, self-help or otherwise) any breach by such Owner of any agreement, obligation, reservation or restriction contained in any deed, declaration or plat covering such Lot (including, without limitation, to maintain or repair any Lot or improvement thereon); and

(b) shall levy from time to time special assessments against each and every Lot (other than any Lot then owned by the Developer or by a builder prior to the initial occupancy of the residence thereon as a residence) in an equal amount that is sufficient, when aggregated, to enable the Homes Association (I) to perform its duties as specified in Section 2 of Article III above that require any expenditure during any period in an amount in excess of the general and reserve funds of the Homes Association available therefor, (II) to pay the costs of any emergency expenditures deemed necessary by the Board and (III) to pay the costs of any capital improvements approved by a vote of the members (being for this limited purpose solely the Class B members prior to the Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when a majority of the members present at such meeting (in person or by proxy) and entitled to vote thereon authorize such special assessment for the proposed capital expenditure by an affirmative vote.

2. In the event an Owner fails to properly maintain, repair, repaint, or replace any improvements on the Owner's Lot, the Homes Association, acting through the Board and after giving adequate notice to the Owner of the need for the maintenance, repair, repainting, or replacement, may enter onto the Lot and perform such maintenance, repair, repainting, or replacement. The Homes Association's costs thereof, plus a reasonable overhead and supervisory

fee, shall be payable by the Owner of the Lot and shall be a special assessment against the Owner and the Owner's Lot.

3. If any Owner commences a lawsuit or files a counterclaim or crossclaim against the Homes Association, the Board of Directors, or any committee, or any individual director, officer or committee member of the Homes Association, and such Owner fails to prevail in such lawsuit, counterclaim or crossclaim, the Homes Association, Board of Directors, or individual director, officer or committee member sued by such Owner shall be entitled to recover from such Owner all litigation expenses incurred in defending such lawsuit, counterclaim or crossclaim, including reasonable attorneys' fees and court costs. Such recovery right shall constitute a special assessment against the Owner and the Owner's Lot.

4. Each special assessment shall be due and payable by the Owner of the Lot upon the Homes Association giving notice of the assessment to the Owner of the Lot, shall be a lien on the Lot until paid in full, and shall be enforceable as provided in this Declaration.

ARTICLE VI. DELINQUENT ASSESSMENTS

1. Each assessment regarding a Lot shall be a charge against the Owner and shall become automatically a lien in favor of the Homes Association on the Lot against which it is levied as soon as the assessment becomes due. Should any Owner fail to pay any assessment with respect to the Owner's Lot in full within 30 days after the due date thereof, then such assessment shall be delinquent, the Owner shall be charged a late fee of 5% of the unpaid amount and the unpaid amount shall bear interest at the rate of 10% per annum (or, if lower, the maximum rate permitted by law) from the delinquency date until paid, which late fee and interest shall become part of the delinquent assessment and the lien on the Lot. Should the Homes Association engage the services of an attorney to collect any assessment hereunder, all costs of collecting such assessment, including court costs and reasonable attorneys' fees, shall, to the extent permitted by applicable law, be added to the amount of the assessment being collected and the lien on the Lot. Each assessment, together with late fees, interest thereon and collection costs, shall also be the personal obligation of the Owner(s) of the Lot, jointly and severally, at the time when the assessment became due.

2. All liens on any Lot for assessments provided for herein shall be inferior and subordinate to the lien of any valid purchase money first mortgage now existing or which may hereafter be placed upon such Lot, as provided below. A foreclosure sale or deed in lieu of foreclosure thereunder shall automatically extinguish the lien hereunder for such assessments to the extent applicable to periods prior to the earlier of (i) the entry of the order allowing such foreclosure, or (ii) the execution of a deed in lieu thereof, but shall not release such Lot from liability for any assessment applicable to periods thereafter. If the Owner subsequently redeems the Lot from the foreclosure sale, the lien hereunder shall automatically be reinstated retroactively in full.

3. Payment of a delinquent assessment with respect to a Lot may be enforced by judicial proceedings against the Owner personally and/or against the Lot, including through lien foreclosure proceedings in any court having jurisdiction of suits for the enforcement of such liens.

The Homes Association may file certificates of nonpayment of assessments in the Recording Office, and/or the office of the Clerk of the District Court for Johnson County, Kansas, whenever any assessment is delinquent, in order to give public notice of the delinquency. For each certificate so filed, the Homes Association shall be entitled to collect from the Owner of the Lot described therein a fee of \$200.00, which fee shall be added to the amount of the delinquent assessment and the lien on the Lot and which fee amount may be increased by the Board from time to time to reflect cumulative increases in an appropriate consumer price index (as selected by the Board) after January 1, 2007).

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

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

6. No claim of the Homes Association for assessments and charges shall be subject to setoffs or counterclaims made by any Owner. To the extent permitted by law, each Owner hereby waives the benefit of any redemption, homestead and exemption laws now or hereafter in effect, with respect to the liens created pursuant to this Declaration.

7. Assessments shall run with the land, are necessary to continue the care, repair and maintenance of Lots and the District, and to continue to provide service, and, accordingly, assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.

ARTICLE VII. LIMITATION ON EXPENDITURES

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

Association or its members in subsequent years, and (ii) matters contemplated in Section 2 of Article III above.

ARTICLE VIII. NOTICES

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

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

ARTICLE IX. EXTENSION OF SUBDIVISION

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

ARTICLE X. AMENDMENT AND TERMINATION

1. This Declaration may be terminated, amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by (a) the Owners of at least 60% of the Lots within the District as then constituted and (b) if prior to the recording of the Certificate of Substantial Completion, the Developer; provided, however, the written consent of the City shall be required for the termination of this Declaration in its entirety or to any amendment, modification or termination of any provision of this Declaration regarding the Right-of-Way Amenities, the Stream Corridors or the Private Lakes. If such consent of the City is requested, it shall be made in writing to the City clerk. The City shall have 60 days, after receipt of the request, to rule on the request. Subject to the foregoing proviso, after recording of the Certificate of Substantial Completion or with the Developer's written consent, this Declaration also may be terminated, amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written instrument executed by the Homes Association after the proposed amendment, modification or termination has been first approved by the affirmative vote of 75% or more of the full number of directors on the Board of the Homes

Association and then approved by the members of the Homes Association at a duly held meeting of the members of the Homes Association (called in whole or in part of that purpose) by the affirmative vote of Owners owning at least 60% of the Lots.

2. Anything set forth in Section 1 of this Article to the contrary notwithstanding, except the provision relating to the City's consent, the Developer shall have the absolute, unilateral right, power and authority to modify, revise, amend or change any of the terms and provisions of this Declaration, as from time to time amended or supplemented, by executing, acknowledging and recording in the Recording Office a written instrument for such purpose, if (i) either the Veteran's Administration, the Federal Housing Administration, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, or any successor or similar agencies thereto shall require such action as a condition precedent to the approval by such agency of the District or any part of the District or any Lot in the District, for federally-approved mortgage financing purposes under applicable programs, laws and regulations, (ii) the City requires such action as a condition to approval by the City of some matter relating to the development of the District, (iii) a typographical or factual error or omission needs to be corrected in the opinion of the Developer, or (iv) such action is appropriate, in Developer's discretion, in connection with a replat of all or any part of the District. No such amendment by the Developer shall require the consent of any Owner.

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

ARTICLE XI. ASSIGNMENT

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

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

ARTICLE XII. COVENANTS RUNNING WITH THE LAND

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

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

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

ARTICLE XIII. GOVERNING LAW AND SEVERABILITY

1. This Declaration shall be governed by and construed in accordance with the laws of Kansas.

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

ARTICLE XIV. COMMON AREAS

1. The Developer shall have the right (but is not obligated) to construct and erect a swimming pool, parking lot, and/or other recreational facilities ("Recreational Facilities Area") in a place within the District or on property near the District and to make such facilities available for use by residents of the District. The size, location, nature and extent of the improvements and landscaping of the Recreational Facilities Area, and all other aspects of the Common Areas that are provided by the Developer, shall be determined by the Developer in its absolute discretion.

2. Once the Recreational Facilities Area is so constructed and made available for use by residents of the District, the following shall apply:

(a) Following substantial completion and opening for use (as determined by the Developer), the Developer shall convey, without charge and free and clear of all mortgages, security interests, and mechanic's liens, title to the Recreational Facilities Area

(or the completed portion thereof) to the Homes Association. Such title transfer shall be by special warranty deed. Thereafter, the Homes Association shall cause adequate property and liability insurance to be continuously maintained on the Recreational Facilities Area and, so long as Developer owns any Lots in the District, cause the Developer to be named as an additional insured on such insurance coverage.

(b) The Homes Association shall pay (i) all operating expenses (as defined below) and (ii) all post construction capital expenditures (as defined below) relating to the Recreational Facilities Area. The Homes Association shall pay the amounts due from it under this subsection out of the assessments collected from the Owners of the Lots subject to this Declaration.

(c) For purposes hereof, the "operating expenses" of the Recreational Facilities Area generally has the meaning attributed thereto under generally accepted accounting principles, consistently applied, but shall not include (i) any costs of the Developer of acquiring, developing, improving, constructing or erecting the Recreational Facilities Area or the site on which such facilities are located, (ii) any depreciation or amortization of the costs described in clause (i) above, or (iii) any financing or debt service expenses related to the costs described in clause (i) above.

(d) For purposes hereof, "post construction capital expenditures" means any expenditures to be made or incurred after the initial completion (as specified by the Developer) of the Recreational Facilities Area for equipment, furniture, or other capital assets, including the expansion, addition or replacement of any equipment or facilities, and any other expenditures that would be capitalized under generally accepted accounting principles, consistently applied. All post construction capital expenditures shall be made at the discretion of the Homes Association.

(e) By acceptance of a deed to a Lot, all Owners acknowledge and accept the inherent risks and hazards (whether foreseeable or not) associated with use of a swimming pool and any diving board and/or slide and any playground equipment that may be installed as part of the Recreational Facilities Area. The Developer and the Homes Association and the officers and directors of the Homes Association shall have no liability or responsibility to any Owner or other party with respect to such inherent risks and hazards. Each Owner, for himself, the members of his family, his guests and invitees, shall be deemed to have released and agreed never to make a claim against the Developer or the Homes Association or any officer or director of the Homes Association for any personal injury or death that may be suffered or incurred by any of such releasing parties in connection with use of the Recreational Facilities Area and such inherent risks and hazards, and each of them shall be deemed to have waived any and all claims and causes of action that any of them may ever have against any of such released parties with respect thereto.

3. Subject to Section 2 above and Section 4 below, the Developer covenants and agrees to convey, by special warranty deed, all of its rights, title and interest in the Common

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

4. The Developer, in its discretion, shall have the right to reconfigure and/or replat all or any part of the District then owned by it, including, without limitation, to make part of a Common Area tract a part of a Lot, and vice versa. In addition, each of the Developer and the Homes Association shall have the right to transfer to the City title to or easements over all or any part of the Common Areas so that they become public areas maintained by the City.

5. Prior to the filing of the Certificate of Substantial Completion, Developer and the project marketing company shall have the right to use any clubhouse for office, sales and storage purposes without payment of rent or utility reimbursement by the Developer or the project marketing company to the Homes Association.

ARTICLE XV. RIGHT-OF-WAY AMENITIES

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

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

3. The City is hereby released from any and all past, present or future liability for any damage that may be caused at any time to any person or to any real or personal property resulting from or related to, directly or indirectly, the City allowing the Right-of-Way Amenities to be

located in its right-of-way, or otherwise acting or failing to act with respect to the maintenance of the Right-of-Way Amenities. The City further is hereby released from any and all past, present or future obligations to expend any public funds or to take any other action to maintain or improve the Right-of-Way Amenities.

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

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

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

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

8. The Developer and the City shall be third-party beneficiaries of all provisions of this Declaration relating to the Right-of-Way Amenities, and the Developer and the City shall have the right to enforce all restrictions, obligations and other provisions regarding the Right-of-Way Amenities.

ARTICLE XVI. STREAM CORRIDOR

1. Pursuant to the terms and conditions of a Stream Corridor Maintenance Agreement(s) that will be entered into between the Developer and the City, which will be recorded in the Recording Office, natural stream preservation corridors ("Stream Corridors") will

be established and set aside within certain Common Areas. Such Stream Corridor Maintenance Agreement(s) will be automatically incorporated into this Declaration by this reference.

2. From and after the date of its formation, the Homes Association shall be the "Property Owner" under the Stream Corridor Maintenance Agreement(s) and shall be responsible for complying with all of the duties, obligations and responsibilities of the "Property Owner" under the Stream Corridor Maintenance Agreement(s).

3. The City is under no past, present or future obligations to expend any public funds or to take any other action to maintain or improve the storm drainage system in the Stream Corridors.

4. Each of the Developer and the City shall be third-party beneficiaries of all provisions of this Declaration relating to the Stream Corridors, and each of the Developer and the City shall have the continuing right (but not obligation) to enforce all restrictions, obligations and other provisions regarding the Stream Corridors.

ARTICLE XVII. PRIVATE LAKES

1. From and after the date of its formation, the Homes Association shall operate and maintain any Private Lakes in accordance with the requirements of the City at all times. The Homes Association shall at all times comply with the Developer's obligations under any Detention Maintenance Agreement(s) or other agreement(s) between the City and the Developer relating to the Private Lakes, which will be recorded in the Recording Office. Such agreements will be automatically incorporated into this Declaration by this reference.

2. The City is hereby released from any and all past, present or future obligations to expend any public funds or to take any other action to maintain or improve the Private Lakes, including any inlet or outlet structures or any portion approved by the City as private facilities.

3. Each of the Developer and the City shall be third party beneficiaries of all provisions of this Declaration relating to the Private Lakes, and each of the Developer and the City shall have a continuing right (but not the obligation) to enforce all restrictions, obligations and other provisions regarding the Private Lakes.

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

THE DEVELOPER:

MILLS FARM DEVELOPMENT, LLC

By: W.S. DEVELOPMENT, L.L.C., Manager

By: *Matthew M. Adam*
Matthew M. Adam, Managing
Member

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

This instrument was acknowledged before me on September 12, 2006 by Matthew M. Adam, as Managing Member of W.S. Development, L.L.C., as Manager of Mills Farm Development, L.L.C., a Kansas limited liability company.

Mary Jane Beeman
Notary Public in and for said County and
State

My Commission Expires:

Print Name: *Mary Jane Beeman*

