

BUTLER COUNTY, KS  
- MARCIA MCCOY -  
REGISTER OF DEEDS

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DECLARATION OF  
COVENANTS, CONDITIONS, EASEMENTS,  
RESTRICTIONS AND DISCLOSURES  
OF  
THE LAKES AT NORTHRIDGE

REC  
COMP  
NUM  
SCAN  
PROF  
SHOW

RTN:  
AFTER RECORDING, RETURN TO:  
Ron H. Harnden  
Triplett, Woolf & Garretson, LLC  
2959 N. Rock Rd., Suite 300  
Wichita, Kansas 67226

214428 08/04/04

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, RESTRICTIONS AND DISCLOSURES OF THE LAKES AT NORTHRIDGE ("Declaration"), made this 14<sup>th</sup> day of October, 2004, by Northridge Developers, L.L.C., a limited liability company created under the laws of the State of Kansas ("Declarant").

RECITALS:

A. Declarant is the owner of certain property in Butler County, Kansas, which is more particularly described as: Northridge, Butler County, Kansas, excluding Lot 1, Block One (the "Addition"); and

B. In order to insure the proper development thereof and adequate maintenance and government of the Common Area (as defined below) and the rights of Owners, it is necessary to establish binding covenants, conditions and restrictions applicable to the Property hereafter described; and

C. It is the purpose and intention of the Declarant that the Property shall be held and/or conveyed subject to the provisions of this Declaration; and

D. There shall be established the Northridge Owners' Association (the "Association"), consisting of the Owners of the Lots included, the principal purpose of which will be to enforce the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the following easements, covenants, and conditions, and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with, said real property and be binding on all parties having any right, title, or interest therein or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE 1

Additional Definitions

Section 1.01. "Board" shall mean the Board of Directors of the Association (as defined in the recitals above).

Section 1.02. "Common Area" shall mean the following reserves:

Reserves A, B, and C, Northridge, Butler County, Kansas

Section 1.03. "DRC" shall mean the design review committee referenced in Section 6.01 hereof.

Section 1.04. "Lot" shall mean each platted residential lot located within the Addition; provided, that where land has been attached or detached from any Lot, the enlarged or diminished Lot shall be deemed to be a "Lot" and two or more Lots which are combined into a single home site shall be deemed one "Lot" hereunder.

Section 1.05. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to a Lot, excluding Owners who have sold their interest under an executory contract; during the term of such a contract, the purchaser shall be considered the Owner hereunder.

Section 1.06. "Property" shall refer to the Lots and the Common Area.

Section 1.07. "Structure" shall mean and include any thing or device (other than trees, shrubbery, hedges and landscaping), the placement of which upon any Lot may affect the appearance or drainage of such Lot, including, by way of illustration and not limitation, any building, garage, gazebo, porch, shed, greenhouse or bathhouse, covered or uncovered patio, screening materials, swimming pool, tennis court, light pole, clothesline, radio or television antenna, fence, curbing, paving, wall more than two feet (2') in height, satellite dish, signboard, mailbox and related structure or any temporary or permanent improvement to such Lot. "Structure" shall also include (i) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface water from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot and (ii) any change in the grade of any Lot other than in accordance with drainage guidelines, standards and plans established by the Declarant, DRC and/or the municipality having jurisdiction over the Property, whichever is most stringent.

## ARTICLE 2

### Association Membership And Voting Rights

Section 2.01. Formation of Association. The Association shall be organized as a nonprofit corporation for a perpetual term under the laws of the State of Kansas.

Section 2.02. Membership. Membership in the Association shall be mandatory for each Owner. All Owners shall, upon becoming such, be deemed automatically to have become members, and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, ownership of a Lot.

Section 2.03. Voting Rights. All Owners, so long as they shall qualify under this Article 2, shall be entitled to vote on each matter submitted to a vote at a meeting of the members. Each member of the Association shall have two votes for each Lot owned by such Owner subject to the following exceptions and conditions:

a. When any Lot is owned or held by more than one Owner, as tenants in common, joint tenancy, or any other manner of joint or common ownership or interest, such Owners shall collectively be entitled to only two votes relative to such Lot, and if such Owners cannot jointly agree as to how that vote should be cast, no vote shall be allowed with respect to such Lot.

b. Any Owner who is in violation of this Declaration, as determined by the Board, shall not be entitled to vote during any period during which such violation continues. Any Owner who fails to pay any assessments established pursuant to the terms hereof shall not be entitled to vote during the period in which such assessments are due and unpaid. The Board shall be the sole judge of the qualifications of each Owner to vote and the right to participate in meetings and proceedings of the Association; and

c. Notwithstanding the foregoing, Declarant shall be entitled to ten votes for each single Lot owned by it.

Section 2.04. Initial Operation. Notwithstanding the provisions of this Declaration, the operation of the Association and the Board shall be within the absolute and exclusive control of the Declarant until such time as Declarant fully and completely transfers the operation thereof to the Association, written notice of which transfer shall be given to the Association by Declarant. During the initial operation of the Association and the Board by Declarant, Declarant may perform and exercise any and all rights and obligations hereunder related to the Association, and the Board, and shall appoint and remove in its discretion the members of the Board. Each Owner, by acceptance of a deed to a Lot, vests Declarant with the authority to fully exercise its rights under this Section 2.04. Further, the appointment of the members of the DRC, pursuant to Section 6.08 hereof, shall be made by Declarant until such time as Declarant specifically assigns such right by written instrument to the Association.

Section 2.05. Board of Directors. All actions of the Association shall be taken on its behalf by the Board, except for (a) when a vote of the members is specifically required by this Declaration, the Articles of Incorporation, or the Bylaws, and (b) the initial operation thereof by Declarant as referenced herein.

### ARTICLE 3

#### Common Area Matters

Section 3.01. Easement in Common Area. Subject to the other provisions hereof, Declarant hereby dedicates and conveys to each Owner a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with every Lot. Declarant hereby covenants for itself, its successors and assigns, that it will convey a fee simple title to the Common Area to Association, free and clear of all encumbrances and liens, except any then current ad valorem taxes and special assessments. The Association shall be responsible for the payment of taxes, special assessments and insurance premiums on, or related to, the

Common Area, and for the proper maintenance of the open spaces, and for compliance with this Declaration. Ownership of the Common Area shall be subject to the rights and easements of enjoyment in and to such Common Area by the Owners. Said rights and easements shall not be personal but shall be appurtenant to the Lots, whether or not specifically set forth in deeds to the Lots.

Section 3.02. Regulations. The Board shall have the authority to make and enforce rules and regulations pertaining to the activities or uses of the Common Area, which rules and regulations shall be binding upon the Owners and all persons authorized to use the Common Area.

Section 3.03. Improvements To Common Area; Usage. Improvements may be placed or constructed on or within the Common Area as determined by the Declarant or the Board, including, but not limited to, private streets, walking paths, street lights, signage, recreational areas, landscape buffers, grass, landscape, water sprinkling systems, furniture, artwork, fences, walls, hedges and infrastructure. The Common Area may be used for such recreation or other uses for the benefit of the Owners which are determined to be appropriate by the Declarant or Board. All Owners in good standing in the Association, their families, and guests accompanying said Owners shall have equal access to the Common Area and all facilities located thereon, subject to rules and regulations as referenced above, including the right to place limitations on the number of guests and the right to suspend Owners, their families, and their guests if such Owners are in default in the payment of assessments and may further suspend any such Owners, together with their respective families and guests in the event of a violation of any other obligation required by this Declaration or due to any infraction of such rules and regulations.

Section 3.04. Reservation of Rights in the Common Area. Notwithstanding any other provision of this Declaration, Declarant reserves for itself and the Association the right to grant easements within the Common Area for the installation, repair, and maintenance of water mains, sewers, drainage courses, public walkways, and other public utilities; provided that such utilities shall be installed in such manner as to minimize damage to the natural features of the Common Area. Declarant shall have the further right during the development of the Property to alter and reconfigure the Common Area to accommodate developmental, operating or maintenance concerns as they may arise from time to time, including, but not limited to, adding or deleting land area to the Common Area or any parcel thereof. Additionally, Declarant specifically reserves for itself, its successors and assigns, and for the Association, a perpetual, non-exclusive easement and right-of-way to enter upon any Lot as reasonably necessary in order to construct, install, erect, maintain, improve, repair and/or replace any entrance treatment, fence, wall, walkway, water sprinkler system (including water wells, sprinkler controls and electric meters and lines associated therewith) or any signage pertaining to or serving the Property or Common Area within any wall, utility and/or drainage easement shown on the current or any future plat of the Property, or located on any Lot due to oversight. The Declarant and the Association shall have the right to mortgage any part, parts, or all of the Common Area in connection with the borrowing of money in the furtherance of any of its purposes authorized herein and shall have the

right to take such steps as are necessary to comply with such mortgage and to prevent foreclosure and any similar proceedings thereunder.

Section 3.05. Wetlands. Notice is hereby given that the lake areas within Reserve "C" of the Property may contain wetlands areas which are regulated by law.

Section 3.06. No Rights Beyond Development. The Owners of the Lots shall be entitled to use and enjoy the amenities within the Common Area but shall not have any right to the use or enjoyment of amenities within other developments and subdivisions.

Section 3.07. Title to the Common Area; Conveyance and Reconfiguration of the Common Area. Declarant may retain the title to the Common Area until such time as it desires to convey title to the Association; provided, however, title shall be conveyed no later than the time that Declarant fully transfers its rights as provided in Section 2.04 above. Declarant shall convey the Common Area to the Association by special warranty deed, subject to all matters of record. The Declarant, or Association may grant rights-of-way and easements across any Common Area from time to time. Notwithstanding anything to the contrary provided herein, the Declarant or the Association, may alter, reconfigure the Common Area from time to time in any manner it shall deem appropriate by replating, lot split, boundary shift or other subdivision procedures or deeding land, for the purpose of adding land to, or removing land from, the Common Area. Automatically, without the necessity of amending this Declaration, upon the completion of any such alteration or reconfiguration, any land (a) removed from such area shall cease to be the Common Area, and, upon such removal, no Owner, occupant and guest shall have any easement, right of use or access thereto by reason of this Declaration and (b) added to the Common Area shall become a part thereof, and upon such addition each Owner, occupant and guest shall have a nonexclusive easement thereto as provided in Section 3.01 above.

Section 3.08. Interference with Others. No Owner, occupant or guest thereof shall conduct themselves within the Common Area in a manner which unreasonably interferes with the use and enjoyment thereof by others.

Section 3.09. Waiver of Use. No Member may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his Lot.

#### ARTICLE 4

##### Assessments

Section 4.01. General Assessments. Except as specifically provided in this Article, all Lots shall be subject to a charge to be assessed under this Declaration, which assessments are to be paid by the respective Owners thereof to the Association, in advance, on the 1st day of January, in each year; provided, the Board may permit the general assessment charge to be paid

annually, semiannually, or quarterly. The obligation of any Owner to pay such assessments shall commence upon purchase of a Lot, or such later date as may be designated by Declarant, and is not dependent upon there being improvements erected thereon. Suspension of the right to use the Common Area or voluntary non-use thereof shall not relieve any Owner of the obligation to pay assessments. Neither shall any Owner have any right to withhold payment of assessments hereunder by virtue of the non-payment thereof by any other Owner or the violation of these covenants, conditions, and restrictions or any rule or regulation promulgated by either the Declarant, Association or any other Owner. The amount of the general assessment shall be Three Hundred Dollars (\$300.00) and shall be in effect upon the recording hereof. In the event a Lot is initially transferred by Declarant other than the 1st day of any calendar year, the general assessment for such year shall be prorated and paid at the time of such transfer.

Section 4.02. Basis of Assessment; Exemption; Transfer Assessment; Proration.

a. All general assessments shall be made against the Owners on an equal basis for each Lot or fraction thereof owned by the Owner(s), except that in view of the substantial expenditures incurred by Declarant in connection with the Common Area, Declarant, and any properly licensed general contractor owning a Lot for the purpose of constructing a residence thereon and offering the same for sale, shall be exempt from imposition of any assessment, whether general or special, with respect to any Lot so long as Declarant or such contractor holds legal title thereto (provided, the assessment exemption for such general contractors shall not extend beyond twelve (12) months from the date an applicable Lot is conveyed to such contractor and shall cease if the Lot and residence thereon is occupied for residential purposes).

b. At any time legal title to a Lot transfers, the transferee shall pay at the time of the closing of such transfer to the working capital of the Association an amount equal to One Hundred Fifty Dollars (\$150.00); provided the requirement to pay such a fee shall not apply to either:

i. the transfer by Declarant to an affiliated entity, or the transfer of Declarant's interest as developer of the Property; or

ii the transfer of title to any Lot to a properly licensed general contractor for purposes of constructing a residence thereon for the purpose of offering the same for sale.

c. In the event any Lot would be subject to a general or special assessment in any calendar year, if it were not for an exemption available under subparagraph A immediately above, at such time as such exemption is no longer in effect during such calendar year, the applicable general or special assessment (but not a transfer fee under subparagraph B immediately above) shall be prorated for such year (based on the remaining portion of such year) and be paid by the then Owner.

Section 4.03. Determination of Assessments. Each year the Board or the Declarant on behalf of the Board shall, prior to January 1, (or as soon thereafter as practicable), determine the total amount to be raised by its respective general assessment charges for the next succeeding year. Subject to any exemptions permitted by this Declaration, each Lot shall be assessed an equal amount. Should the Board at any time determine, in its sole discretion, that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Association, or in the event of emergencies, the Board shall have the authority to levy such additional assessment or assessments as it shall deem necessary.

Section 4.04. Duties/Use of Funds; Fence and Other Improvements Installed by Declarant. The Association shall enforce either in its own name or in the name of any Owner, all of the covenants, conditions and restrictions imposed hereby as the same may be modified from time to time and shall perform all duties and obligations of the Association as are otherwise provided for herein. The Association assessment fund shall be used for such of the following purposes as the Board or the Declarant on behalf of the Board shall determine necessary and advisable: for the use, benefit and enjoyment of the Owners, including improving, maintaining, repairing and replacing the Common Area and improvements thereon which shall, include, but are not limited to, expenses incidental to the proper operation and maintenance of any recreational facilities located within the Common Area, including any recreation structures or improvements; for collecting and disposing of garbage and rubbish; for employing night watchmen; for maintaining, repairing and replacing security gates/guardhouses and equipment; removing grass or weeds; street cleaning; for street lights, street signs, and snow removal; constructing, purchasing, maintaining, or operating any community service including publishing a directory of the membership of said Association; for payment of insurance premiums; for expenses incidental to the enforcement of these restrictions; for the payment of operating expenses of the Association; social activities involving the members of the Association; doing any other thing necessary or advisable for the general welfare, safety, and enjoyment of the Owners; or for any other purpose within the purposes for which the Association is incorporated.

Declarant or the Association may install, but shall not be required to install, a fence or hedge along portions of the Property, or within reserve areas located adjacent to the Property, and may install landscaping and sprinkler systems on either side thereof as Declarant may in its sole discretion determine. In the event of the installation of such wall, fence, security gate/guardhouse and equipment, hedge, landscaping or sprinkler systems, the future maintenance, repair and replacement thereof, including all plant material, and of all monuments and logos incorporated therein, shall be the responsibility of the Association. Notwithstanding the foregoing, in the event that any such wall, fence, hedge or landscaping shall be damaged or destroyed through the negligence of an Owner, including, but not limited to, failing to correct faulty drainage or improper use of weed killer, such Owner shall be responsible for the cost of replacement thereof. The Board shall expend such portion of the assessment fund as shall be necessary in order to maintain the Common Area in a first class condition and shall not have the authority to reduce standards of maintenance below such level without the vote of two-thirds (2/3) of the votes of the Owners of the Association who are in attendance, in person or by proxy, at a meeting duly called therefor.



Section 4.05. Interest on Delinquent Assessments. All assessment charges which shall remain due and unpaid thirty (30) days after they are due shall thereafter be subject to interest at the rate as established from time to time by the Board.

Section 4.06. Lien for Delinquent Assessments. Delinquent general and special assessment charges hereunder shall be a lien and encumbrance on the Lot with respect to which said charge is made. By the acceptance of title to a Lot, the Owner (not including thereby any mortgagee as long as it is not the Owner) from the time of acquiring title thereto shall be held to have covenanted and agreed to pay to the Association all such charges which were then due and unpaid to the time of acquiring the title thereto and all such charges thereafter falling due during such Owner's ownership thereof. A certificate in writing issued by the Association or its agent setting forth the status of said charges shall be given on demand to any Owner or prospective purchaser who may be liable, for said charges, which certificate shall be binding upon said parties.

Section 4.07. Subordination of Assessment Lien. The liens provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot, which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any conveyance in lieu of foreclosure thereof, however, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4.08. Right Of Association To Enforce Payment Of Assessment. By the acceptance of title, each Owner shall be held to vest in the Association the right and power to prosecute all suits, legal, equitable, or otherwise, which may be necessary or advisable for the collection of such charge or charges, and the Association shall have the right to sue for and collect a reasonable sum to reimburse it for its attorneys' fees and any other expenses reasonably incurred in enforcing its rights hereunder. At any time after a general and special assessment against any Lot has become a lien and delinquent, the Association may record in the office of the Register of Deeds, Butler County, Kansas, a Notice of Delinquency as to such Lot, which notice shall state therein the amount of such delinquency and that it is a lien and the interest, costs (including attorney's fees) and penalties which have accrued thereon, a description of the Lot against which the same has been asserted and the name of the Owner thereof, and such notice shall be signed by an officer of the Association. Each lien established pursuant to the provisions of this Declaration and which is specified in a Notice of Delinquency as hereinabove provided, may be foreclosed in a like manner as a mortgage on real property as provided by the laws of Kansas at any time within twenty (20) years following recording the Notice of Delinquency. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration or documentation associated therewith (whether such liens are now in existence or are created at any time in the future) the benefit of any redemption, homestead or exemption laws of the State of Kansas now in effect, or in effect from time to time hereafter.

Section 4.09. Maximum General Assessment.

a. From and after the year in which the initial general assessments commence pursuant to Section 4.01 above, the general assessments assessed pursuant to this Article 4 may be increased for any subsequent year to an amount which is no more than ten percent (10%) above the maximum permitted general assessment for the previous year without a vote of the Owners.

b. The general assessments assessed pursuant to this Article 4 for any year may be increased to any amount greater than that permitted by subsection "a" of this Section only by an affirmative vote of two-thirds (2/3) of the votes of the Owners in attendance, who are voting in person or by proxy, at a meeting duly called for such purpose or at an annual meeting of the Association.

c. The Board may fix the general assessment at an amount not in excess of the maximum amount set forth in this Section.

Section 4.10. Special Assessments for Capital Improvements. In addition to the general assessments authorized above, and subject to the exemptions provided herein, the Association may levy, in any assessment year, a special assessment against the Lots for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Owners in attendance, who are voting in person or by proxy, at a meeting duly called for such purpose or an annual meeting of the Association.

Section 4.11. Personal Liability. In addition to the covenants and agreements heretofore set forth herein, each Owner, by the acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, shall be deemed to have agreed to be personally liable for the payment of each assessment levied hereunder (whether general or special) against such Lot during the period of ownership (subject to the exemptions specified in Section 4.02 above).

ARTICLE 5

Covenants for Maintenance; Enforcement

Each Owner (other than Declarant) shall keep all Lots owned by such Owner and all improvements therein or thereon in good order and repair, including, but not limited to, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, removal of diseased or dead trees within a reasonable time, weeding of plant beds, fertilizing, weed control and the painting (or other appropriate exterior care) of all Structures, buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. Each Owner's obligation hereunder shall commence upon acquisition of such

Owner's Lot and shall include, but not be limited to, the mowing and cutting of all grass and weeds thereon regardless of whether such Lot may be improved.

If in the opinion of the DRC, any Owner fails to perform such duties, or otherwise breaches such Owner's obligations as specified in this Declaration, the Association, upon approval by the Board and after fifteen (15) days written notice to such Owner to remedy such default, shall have the right (in addition to any other rights and remedies available hereunder or at law or equity), through its agents and employees, to enter upon the Lot or Lots involved and to repair, maintain, repaint, remove, and restore such Lot or Lots or such improvements, or otherwise bring such Lot or such improvements into conformity herewith and the cost thereof (hereinafter sometimes called the "Compliance Charge") shall be a binding personal obligation of such Owner which may mature into a lien enforceable in the same manner as a mortgage upon the Lot(s) in question in the following manner: The Association may record an Affidavit of Nonpayment of Compliance Charge in the Office of the Register of Deeds of Butler County, Kansas, stating (a) the legal description of the property upon which the lien is claimed, (b) the name(s) of the Owner(s) of said property as last known to the Association, and (c) the amount of the Compliance Charge which is unpaid. The lien may be foreclosed in the like manner as a mortgage on real property as provided by the laws of Kansas at anytime within twenty (20) years following recordation of the Affidavit of Nonpayment of Compliance Charge. In any action to foreclose any such lien, the Association shall be entitled to recover its costs, including reasonable attorney's fees, and such penalties for delinquent charges and assessments as shall have been established by the Association. The lien referenced herein shall be created at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the Lot, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes and other public charges as are by applicable law made superior. The Compliance Charge shall accrue interest at the rate established from time to time by the Board, but in no event less than eighteen percent (18%) per annum or such lesser rate as permitted by law.

## ARTICLE 6

### Architectural Control

Section 6.01. Approval Required. No building, fence, wall, Structure, projection from a Structure, or improvement shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein or thereto be made, until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing by the design review committee (hereafter the "DRC"), its agents, assignees, or successors, as to (a) harmony of external design and location in relation to and effect upon surrounding Structures, topography and the overall community design of the Property; (b) the character of the exterior materials; (c) the quality of the exterior workmanship; and (d) the location thereof on the Lot. In the event the DRC fails to approve or disapprove such design and location within thirty (30) days after said plans and

specifications have been submitted to and received by it, approval will not be required, and this Article will be deemed to have been fully complied with. The applicant may appeal an adverse decision to the Board, which may reverse or modify such decision by a two-thirds (2/3) vote of those directors present and voting at a meeting at which a quorum is present. The Board shall establish the schedule for disposition of such appeal upon written notice to the Owner taking appeal. The DRC may develop and promulgate policy guidelines for the application of the design review provisions. The policy guidelines may include (x) review procedures, (y) aspects and objectives of review, and (z) principles and criteria used as standards in determining the achievement of the required objectives. The policy guidelines may also include specific design practices that, though optional, are generally acceptable methods for achieving the required objectives in particular design problems frequently encountered. The policy guidelines are intended to assist the DRC and the Owners in the ongoing process of community design. The guidelines may be modified and supplemented from time to time, on due notice to the Owners and subject to the approval of the Board. Additionally, the Declarant or DRC may establish other guidelines outside this Declaration from time to time. The provisions of this Section shall be applicable to Lots owned by Declarant only with respect to Lots which are improved with buildings which are or have been occupied.

Section 6.02. Form of Plans and Specifications. Any Owner seeking approval of the DRC shall submit plans and specifications in such form and shall contain such information as may be required by the DRC, but in any event shall include (a) a site plan of the Lot or Lots showing the nature, exterior color scheme, kind, shape, height, materials, and location with respect to the particular Lot or Lots (including proposed front, rear, and side set-backs) of all Structures, (b) the location thereof with reference to Structures on adjoining portions of the property, (c) and the number and location of all parking spaces and driveways on the Lot or Lots, a landscaping plan, and (d) a Lot specific finished drainage plan prepared by an engineering firm designated by Declarant in accordance with the master grading and drainage plan applicable to the Lot.

Section 6.03. Retention Of Approved Plans And Specifications. Upon approval by the DRC of any plans and specifications submitted hereunder a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Association, and a copy of such plans and specifications bearing such approval in writing, shall be returned to the applicant submitting the same.

Section 6.04. Removal And Alteration Of Structures, Liens.

a. If any Structure shall be altered, erected, placed, or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the DRC pursuant to the provisions of this Article, such alteration, Structure, maintenance, or use shall be deemed to have been undertaken in violation of this Article and without the approval required herein, and, upon written notice from the DRC, any such Structure so altered, erected, placed, or maintained upon

any Lot in violation hereof shall be removed or realtered, and any such use shall be terminated, so as to extinguish such violation.

b. If fifteen (15) days after notice of such a violation the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, and continued the pursuit thereof with diligence, the Association or the DRC shall have the right, through their agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the cost of such removal and alteration shall be a binding, personal obligation of such Owner and, if not paid in full by such Owner on demand by the Board, the cost shall mature into a lien (enforceable in the same manner as a mortgage) upon the Lot(s) in question in the following manner: The Association or the DRC shall record an Affidavit of Nonpayment of Removal or Alteration Charges in the Office of the Register of Deeds of Butler County, Kansas, stating (i) the legal description of the property upon which the lien is claimed, (ii) the name(s) of the Owner(s) of said Lot as last known to the Association, and (iii) the amount of the removal and alteration charges which are unpaid. The lien shall be created at the time of the filing and recording of the affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the Lot whether arising for imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes or other public charges as are by applicable law made superior.

c. In the event a lien is obtained pursuant to this Section and thereafter the Removal or Alteration Charges, plus interest at the rate as established from time to time by the Board but in no event less than eighteen percent (18%) per annum, or the maximum rate allowed by law, shall be fully paid, the Association or the DRC shall, within ten (10) days following payment, file with the Register of Deeds of Butler County, Kansas, an Affidavit of Payment of Removal or Alteration Charges, which affidavit shall (i) refer to and identify the Affidavit of Nonpayment of Removal or Alteration Charges which created the lien which has been satisfied, (ii) state the legal description of the Lot affected, and (iii) state the name(s) of the Owner(s) of the Lot. Any such lien may be foreclosed in the like manner as a mortgage on real property as provided by the laws of Kansas at anytime within twenty (20) years following recordation of the Affidavit of Payment of Removal or Alteration Charges. The recording of the Affidavit of Payment of Removal or Alteration Charges shall fully release the lien referred to in said affidavit, and said affidavit shall be conclusive evidence to any purchaser, encumbrance, title insurer, or title examiner that the pre-existing lien has been fully released.

d. In the event of any transfer, sale, or assignment of any Lot or Lots to a bona fide purchaser, and in the event that no Affidavit of Nonpayment of Removal or Alteration Charges has been recorded as provided in this Section prior to such transfer, sale or assignment, any such Affidavit filed subsequent to such transfer, sale or assignment shall be invalid and unenforceable.

Section 6.05. Certificate of Compliance. Upon completion of the construction or alteration of any Structure in accordance with plans and specifications approved by the DRC, it shall, upon written request of the Owner thereof, issue a Certificate of Compliance in form suitable for recordation, identifying such Structure and the Lot on which such Structure is placed, and stating that the plans and specifications, the location of such Structure, and the use or uses to be conducted thereon have been approved and that such Structure complies therewith. Preparation and recording of such Certificate shall be at the expense of such Owner. Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated, and, as to any purchaser or encumbrance in good faith and for value, or as to any title insurer or title examiner, such Certificate shall be conclusive evidence that all Structures on the Lot, and the use or uses described therein comply with all the requirements of this Declaration as to which the DRC exercises any discretionary or interpretive powers.

Section 6.06. Right Of Inspection. A representative of the Board or DRC or any of its agents thereof may, at any reasonable time or times, enter upon and inspect any Lot or any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of Structures thereon are in compliance with the provisions hereof; and neither the DRC, the Association, nor any such agent, shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

Section 6.07. No Liability. Neither the DRC, Declarant, the Association, nor any officer, director, member, agent, or employee thereof; shall be liable to any Owner or to any person, firm, corporation, or other entity for any damages arising from any performance or nonperformance of any duties or functions under this Article.

Section 6.08. Membership Of DRC. The original member(s) of the DRC shall be one or more persons appointed by Declarant. Upon the death or resignation of any member of the DRC, or the removal of a member by Declarant, Declarant shall appoint a successor, unless at such time, Declarant has relinquished its rights hereunder as hereinafter provided. In such event, the Association shall have full authority to designate a successor. The act of a majority of the committee shall be binding and the majority of the committee may designate a representative to act for it. Declarant shall retain its rights hereunder until the same are relinquished by Declarant to the Association by written instrument. At such time as Declarant desires to do so, Declarant shall relinquish its rights or any portion thereof under this Section to the Association by advising the Association in writing of its intent to do so. In any event, Declarant shall relinquish its rights under this Section on or before such time as the construction of residences on all of the Lots have been completed.

Section 6.09. Initial Policy Guidelines. The following initial policy guidelines have been established and the same may be changed from time to time pursuant to the provisions of Section 6.01 hereof but without the necessity of filing any formal amendment to this Declaration. Accordingly, inquiry should be made of the DRC to determine current policy guidelines.

- a. There shall be no rock yards and all yard areas, exclusive of improvements, shall be at least seventy percent (70%) grass.
- b. All roofs shall be composition shingles, all as may be specifically approved in writing by the DRC from time to time. The DRC hereby approves the following composition roof material: Heritage II Weathered Wood.
- c. There shall be no underground homes.
- d. In the event of the construction of any retaining walls the plan and materials utilized must be previously approved in writing by the DRC.
- e. All basketball goals shall be free standing and shall be either white or glass. No "homemade" basketball backboards or supports shall be permitted. All basketball goals and supports shall be first approved by the DRC.
- f. All recreation and play equipment shall be located in the rear of any lot except for basketball goals.
- g. There shall be no above-ground swimming pools.
- h. No storage sheds or other out-buildings shall be permitted except as may be specifically approved by the DRC as to design and materials. Any approved out-building shall be constructed of the same material as the home. Unless specifically approved by the DRC, garages may not be free standing. Garages must be sheet rocked.
- i. All vegetable gardens shall be in the back yards only.
- j. No buffalo, zoysia or Bermuda grass lawn shall be permitted.
- k. Dog runs must be screened from view from neighboring homes and the street with fencing or other appropriate material.
- l. All exterior wood surfaces (exclusive of redwood, cedar, or other "decking" materials approved by the DRC) on homes must be painted, or stained and sealed.
- m. The minimum roof pitch shall be 7/12.
- n. Residences and attached garages shall have the full masonry fronts excepting bays and cantilever areas. Brick and stone surfaces must be approved by the DRC.

- o. Any temporary covering of a swimming pool, tennis court, patio, or otherwise, of a rigid or "bubble" type shall be deemed a Structure that is subject hereto.
- p. Pad elevations shall be set by Declarant's engineer at the cost of Owner and any deviation therefrom and any resulting damage shall be the responsibility of the Owner.
- q. Lawns shall be mowed on a regular basis at an appropriate height so as to maintain a neat appearance.
- r. No Christmas lights shall be lighted before Thanksgiving and shall be taken down no later than March 15 of the following year.
- s. All tennis courts must have a green or black vinyl fence (unless black wrought iron is utilized) and any wind screen shall be black or green. No fence may exceed ten feet (10') in height. The light source used for tennis courts shall be natural in color. Incandescent or metal halide lights are recommended. No other type of lighting may be utilized without the specific written approval of the DRC. The light housing shall be a shoe box type fixture similar to the Envirolight II by ElSCO, designed to minimize ambient light loss. Lighting poles shall not exceed sixteen feet (16') in height without specific written approval of the DRC. All tennis court plans must specify the light source and intensity, pole height, manufacturer of light, and location of light standards around the court. Tennis courts may be built to the property line, subject to any applicable building codes.
- t. All flagpoles and the type of flag that may be flown must be first approved by the DRC.
- u. No window shall contain any reflective material such as aluminum foil.
- v. Pool buildings or gazebos may be constructed within any rear yard setback area established by the plat of the Property, provided that the same shall not exceed one story in height and are allowed by applicable building codes.
- w. All firewood stacks in excess of two cords of wood shall be screened from view from neighboring lots.
- x. All forms of sculpture or "yard art" must first be approved by the DRC.
- y. Trash and refuse container storage areas shall be located inside the garage or shall be installed at a location approved by the DRC and shall be screened in a manner approved by the DRC.



z. All garages must be side loaded, which includes "L" shaped garages, and may include approximately 135° or greater sideyard/side loaded garages, if previously approved in writing by the DRC; provided, the DRC may (but shall not be required to) approve front loaded garages with acceptable motor courtyard walls and screenings.

Section 6.10. Minimum Size of Residences. Except as specifically approved in writing by the DRC, a one story residence, exclusive of basements, porches and garages, shall contain not less than the number of square feet of finished floor area specified below for the indicated portions of the Property. Except as specifically approved in writing by the DRC, a 1½ or multilevel residence, exclusive of basements, porches and garages, shall contain not less than the number of square feet of finished floor area specified below for the indicated portions of the Property.

<i><b>PORTION OF PROPERTY</b></i>	<i><b>SQUARE FEET</b></i>	<i><b>RESIDENCE TYPE</b></i>
Lots 2-4, inclusive, Block One; Lots 1-8, inclusive, Block Three; and Lots 1-18, inclusive, Block Five	1,400 1,800	One Story 1½ or Multilevel Stories
Lots 1-8, inclusive, Block Two; and Lots 1-25, inclusive Block Four, all in the Property	1,600 1,900	One Story 1½ or Multilevel Stories

Section 6.11. Master Drainage Plan - Violation and Enforcement. As part of the platting process, there has been established for the Property and all other portions of the Addition and adjoining real estate a master drainage plan which plan includes appropriate surface water drainage. Each Owner of a Lot and such Owner's builder shall be responsible for compliance therewith with respect to such Owner's Lot. Construction which impairs the drainage or violates the master drainage plan must be remedied forthwith by such Owner at such Owner's expense. It shall not be Declarant's responsibility to enforce compliance with the master drainage plan. The Owners in the Property as well as the Association shall have the right to enforce the same against any other Owner.

Section 6.12. Disclaimer as to DRC Approval. Plans and specifications are not reviewed for all systems, mechanical, plumbing, electrical, engineering, or structural design, or quality of materials, and by approving such plans and specifications neither the DRC, the members thereof, nor the Association assumes any liability or responsibility therefor, nor for any defect in any Structure constructed from such plans and specifications. Neither Declarant, the Association, the DRC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the DRC, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, quitclaims, and covenants not to sue for any claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance, and hereby

waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

## ARTICLE 7

### General Covenants and Restrictions

Section 7.01. Structures. No previously approved Structure located on any Lot shall be used for any purpose other than that for which it was originally designed.

Section 7.02. Division Of Lots. No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise without prior approval of the Board.

Section 7.03. Antennas. No facilities, including poles and wires, for the transmission of electricity, telephone messages, and the like shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas of any kind including satellite receiving antennas may be so maintained upon any Lot unless completely enclosed within the attic of the residence, except by Declarant during the construction period for any home. Notwithstanding the foregoing, certain satellite receiving antennas of the approximate size of eighteen inches (18") in diameter or less, may be permitted if previously approved in writing by the DRC. Neither the Declarant nor the DRC shall interpret or apply this Section 7.03 in any way, or adopt any rules or regulations pursuant hereto, that unreasonably delays or prevents the installation, maintenance or use, unreasonably increases the cost of installation, maintenance or use, or precludes reception of an acceptable quality signal with respect to any television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services in violation of applicable law or governmental regulations.

Section 7.04. Vehicles and Parking. No boat, boat trailer, camper, camper trailer, recreational vehicle, specially equipped commercial truck, inoperable motor vehicle, or similar item shall be stored or permanently, continually, or regularly parked in and on any street, the Common Area, or in the open on any Lot or driveway; provided, boats, trailers, campers, recreational vehicles and specially equipment, commercial trucks in operating condition and good appearance may be parked on concrete pads in the open on a Lot at a location and with such screening as is required by the DRC.

Section 7.05. Fences. Only approved wrought iron fences constructed pursuant to specifications provided by the DRC will be permitted on Lots unless otherwise approved in writing by the DRC; provided, privacy fences immediately adjacent to patios that are appurtenant to a home constructed on a Lot shall be permitted upon the prior approval of the DRC.

Section 7.06. Right of Governmental Authorities - Off-street Parking Requirement. The Common Area is to be conveyed to the Association, which shall be responsible for the maintenance and upkeep thereof. Until such conveyance, Declarant, shall be responsible for such maintenance and upkeep on behalf of the Association. In the event the Declarant or the

Association, their respective successors or assigns, shall fail at any time to maintain the Common Area or fail in any manner to fulfill its obligations relating to the Common Area, the appropriate governmental authority may serve a written notice of delinquency upon the Declarant or the Association setting forth the manner in which it has failed to fulfill the obligation. If said obligation is not fulfilled within the time specified, the appropriate governmental authority, in order to preserve the taxable value of the properties within the Property and to prevent the Common Area from becoming a nuisance, may enter upon said Common Area and perform the obligations listed in the notice of delinquency. All costs so incurred in carrying out the obligations of the Declarant or the Association, may be assessed equally against all the Lots within the Property in the same manner as provided by law for special assessments, and said assessments may be established as liens upon said Lots. Should either the Declarant or the Association, their successors or assigns, upon receipt of said notice of delinquency believe that the obligations described in said notice are not proper for any reason, it may, within the twenty (20) day period to be provided in said notice, apply for a hearing before the appropriate governmental authority to appeal said obligations, and any further proceedings under said notice shall be suspended pending the outcome of any proceedings with respect to such appeal.

Each of the Lots shall provide four (4) off-street parking spaces per dwelling unit, including garages and driveway.

Section 7.07. Lawns and Trees. No tree having a diameter of four inches (4") or more (measured from a point two feet (2') above ground level) shall be removed from any Lot without the express written authorization of the DRC, except if such tree is substantially diseased or damaged or except as may be reasonably required for the installation, maintenance, repair or replacement of underground utility lines. The DRC may designate certain trees, regardless of size, as not removable without written authorization.

Section 7.08. Animals. No birds, reptiles, animals, or insects shall be kept or maintained on any Lot except for domestic purposes. Under no circumstances shall any commercial or agricultural business enterprise involving the use or breeding of animals be conducted without the express written consent of the Association. The Association may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot. Dogs and other animals shall be confined at all times to the residence site and must be kept on a leash when outside the Lot. No dogs or other animals shall be continually or regularly staked or chained in any front or side yards.

Section 7.09. Signs. No sign or other advertising device of any nature shall be placed upon any Lot except any sign or devise (a) installed by Declarant, (b) approved by the Declarant or the Board, and (c) for the usual and customary real estate broker signs advertising a Lot as "for sale" or "sold." The Board may, in its discretion, adopt and promulgate rules and regulations relating to signs. The Declarant, Board, or Association may remove non-conforming signs upon three (3) days notice to the Owner, such removal to be at the cost of said Owner.

Section 7.10. Temporary Buildings/Modular Homes. No temporary building, trailer, garage, basement, tent, outbuilding, or building in the course of construction shall be used temporarily or permanently as a residence on a Lot. Modular or pre-engineered homes are prohibited except for use by Declarant for administrative or sales office purposes.

Section 7.11. No Storage; Trash. No lumber, metals, bulk materials, refuse, or trash shall be kept, stored, or allowed to accumulate on any Lot or on the Common Area, except building materials may be stored on a Lot during the course of construction of any approved Structure or on the Common Area. All trash containers used for a person or persons occupying a residence shall be stored within a garage or other trash container storage area which prevents such container from being seen by neighbors. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis using containers which are placed near the streetside ends of driveways, such containers may be placed near the streetside ends of driveways only on the trash pickup days and shall be removed to the storage area on the pickup day. The type or style of trash container to be used on a Lot may be specified by the DRC and in such case the Owner's shall only use such specified containers.

Section 7.12. Utilities; Pipes. All utilities and water sprinkler systems within any Lot shall be installed below the surface of the ground. No water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained on any Lot above the surface of the ground, except hoses used for temporary irrigation purposes. No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

Section 7.13. Association Right to Trim, Prune or Mow. The Association shall have the right to enter upon any Lot and trim or prune, at the expense of the Owner, any hedge or other planting which, in the opinion of the Association, by reason of its location upon the Lot or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining property or obscures the view of street traffic or is unattractive in appearance; provided, however, that the Owner shall be given not less than ten (10) days prior written notice of such action. The Association shall have the right to mow any Lot owned by any party other than Declarant on which the grass or weeds exceed five inches (5") in height after the giving of ten (10) days prior written notice to the Owner(s) and shall have the right to charge a reasonable amount for such service.

Section 7.14. Motor Vehicles; Garages. No motor vehicles of any type other than maintenance vehicles shall be operated on the Common Area or the sidewalks and running or bicycle paths, if any, located in the Common Area.

Section 7.15. Sight Lines. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two feet (2') and six feet (6') above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point twenty-five feet (25') from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street lines extended past the corner. The same sight line restrictions shall apply to any Lot within ten

feet (10') from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to avoid obstruction of such sight lines in the opinion of the DRC.

Section 7.16. Noxious Dangerous And Offensive Activities Prohibited. No noxious, dangerous, or offensive activity or thing shall be carried on or permitted on any Lot, nor shall anything be done which may be or may become an annoyance or nuisance to the Property.

Section 7.17. Maintenance of Drainage Channels and Swales. Each Owner shall maintain, mow, and keep in good repair and condition, in accordance with the master drainage plan, any drainage channels and swales located on any Lot owned by such Owner.

Section 7.18. Home Professions and Industries. No profession or home industry shall be conducted in or on any part of a Lot or in any improvements thereon without the specific written approval of the Board. The Board, in its discretion, upon consideration of the circumstances in each case and particularly the effect on surrounding property, may permit a Lot or any improvement thereon to be used in whole or in part for the conduct of a profession or home industry. No such profession or home industry shall be permitted, however, unless it is considered, by the Board, to be compatible with a high-quality residential neighborhood.

Section 7.19. Model Homes and Real Estate Offices. All else herein notwithstanding, any Lot owned by Declarant or persons so authorized by Declarant may be used for a model home or for a real estate office including a temporary mobile or modular Structure until all homes in the development are sold.

Section 7.20. Laundry and Machinery. No clothing or any other household fabric shall be hung in the open on any Lot, except with specific written approval of the Board. No machinery shall be placed or operated upon any Lot, except such machinery as is usual in the maintenance of a private residence.

Section 7.21. Land Use. Subject to the specific provisions contained herein, the Lots may be improved, used, or occupied exclusively as single-family residences.

Section 7.22. Requirement to Plant Lawn and Trees. Within ninety (90) days after occupancy of a residence on a Lot, the Owner thereof shall plant or sod the entire lawn and a minimum of five (5) trees or shrubs unless such date has been extended by the DRC due to seasonal considerations. In the event such lawn is not so installed, Declarant may, after giving written notice to any Lot Owner of such Owner's failure to comply herewith, at any time after fifteen (15) days have expired from the date of such notice, install said lawn, trees and shrubs and collect from such Owner the cost thereof. Declarant is hereby granted the right to enter upon any such Lot for the purpose of performing same.

Section 7.23. Set-Back Requirements. Unless otherwise approved by the DRC and subject to any more restrictive provisions contained in this Declaration and the codes and ordinances applicable to the Property, no Structure or other improvements may be constructed or maintained on any Lot within the set-back areas shown on the plat of the Property; provided, unless prohibited by applicable codes or ordinances, such platted set-back requirements shall not be applicable to any improvement, building, or structure constructed below the surface level of the ground, or to swimming pools constructed in the ground, or to any tennis courts, paddle tennis courts, or similar sports surfaces constructed at ground level, but nothing contained in this provision shall be deemed to permit the installation or operation of any lighting equipment in such areas, except as may be specifically permitted by the DRC.

Section 7.24. Restrictions Not Exclusive. The restrictions contained in this Declaration shall not be taken as permitting any action or thing prohibited by, applicable zoning laws, or the laws, rules, or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases, or this Declaration shall govern and control.

Section 7.25. Drainage. From and after the date of commencement of the construction of a residence or other improvements on a Lot, the Owner of such Lot shall cause the same to be graded to strictly comply with the master drainage and grading plan relating to the Lot. Declarant has established a master drainage and grading plan for the Lots, a copy of which is recorded in the office of the register of deeds, and each Owner shall strictly comply with the same. No Owner shall place or install any Structures, including, but not limited to, trees, shrubbery, landscaping, sand boxes, gardens, retaining walls, in any drainage easement or channel. The DRC or persons designated by the DRC shall have the right to enter upon any Lot upon reasonable advance notice to the Owner thereof for the purpose of determining whether the Lot is in compliance with such drainage guidelines, standards and plans established by the Declarant, DRC, the Association and/or municipality concerning water drainage from such Lot to other Lots and/or the Common Area. A determination by the DRC concerning whether or not a Lot is in compliance with such guidelines, standards and plans, shall be final and binding on all Owners. Neither the Association, DRC or the Declarant shall have any liability or responsibility to any builder, Owner or other party for the failure of a builder or Owner to final grade or maintain any Lot in accordance with the master drainage and grading plan referred to above or any approved lot drainage and grading plan.

Section 7.26. Covenants Concerning Bodies Of Water. No lake, pond, stream or water drainage facility, natural or manmade, located within the Common Area shall be disturbed other than by the Declarant or the Association. Except as permitted from time to time by rules and regulations enacted by the Declarant or the Board no boat, raft, canoe, surfboard or similar craft shall be operated or stored upon any body of water within the Common Area. Fishing within the lake area within Reserve C shall be permitted subject to rules and regulations promulgated by the Declarant or Board from time to time. No Owner may trespass onto another Owner's Lot for Common Area activities.

Section 7.27. Approved Builder. Notice is hereby given to each Owner that the initial construction and completion of the residence, and related improvements on the Lot shall only be performed by a building contractor which, at the time of such construction, is approved for construction by Declarant in its sole discretion.

Section 7.28. View. Subject to any specific provisions in this Declaration to the contrary, no Owner has any right to an unobstructed view beyond the boundaries of the Owner's Lot. No Owner shall be entitled to prevent the construction or location of any Structure, planting material or other item on any other part of the Property, which is permitted by this Declaration, because such Structure, planting material or other item obstructs any view from such Owner's Lot.

Section 7.29. Erosion; Water Pollution Control Permit and Related Matters. Each Owner shall comply strictly with any law or ordinance regarding erosion or runoff, including, if applicable, a Stormwater Pollution Prevention Ordinance, the Kansas Water Pollution Control General Permit And Authorization To Discharge Stormwater Run-Off From Construction Activities Under the National Pollutant Discharge Elimination System or similar ordinance or law adopted by the city or other governing body having jurisdiction over the Property. Each Owner agrees to conduct activities on his Lot strictly in accordance with the requirements now or hereafter in effect by reason of the aforesaid permit, regulations, rules and ordinances.

Section 7.30. Water Levels in Lakes and Ponds. There is no assurance that lakes, ponds and other bodies of water within the Property shall continue in the future to contain water levels consistent with the levels existing on the date hereof and, in fact, such lakes, ponds and bodies of water may at some point in the future become dry or substantially empty of any water. Neither Declarant, the Association, the Board or any representative, officer or employee of Declarant or the Association shall have any liability or responsibility to Owners for any change in the water levels in any such lakes, ponds, or bodies of water, including if such bodies of water become dry or substantially empty of water.

Section 7.31. Water Encroachment; Flood Insurance. Notice is hereby given to anyone acquiring a Lot that due to the grading and drainage of such Lot (which is necessary to enhance the views from residences, particularly those with "walk-out" or "view-out" basements), at times following considerable amounts of rainfall, water may encroach into the yard areas within such Lot. Water may accumulate in areas of the Lot, which has been graded at lower elevations to provide drainage, or if the Lot is adjacent to a lake, stream or other waterway, water from such areas may spill over into the Lot as a result of such rainfall. Depending upon how much water accumulates on the Lot and how long it remains, damage could occur to the residence, yard, trees, vegetation, fences, gazebos, patios, playground equipment or other improvements or installations of Structures within the Lot. Some Lots may have previously been located in a designated flood plain, in which situations the Declarant, or another party, has caused the same to be removed from the flood plain by increasing the elevation thereof with fill as required by the Kansas Department of Water Resources, the Federal Emergency Management Agency and any other agency having jurisdiction thereof. Prior to construction of a residence or other structures

on any such Lot, the Owner thereof is encouraged to verify, through its contractor, compliance with the requirements of the applicable agencies or bodies, consider inherent risks and determine whether to obtain and maintain flood insurance. Neither Declarant nor the Association shall have any liability or responsibility for any such damage resulting from such water encroachment.

Section 7.32. Damage to Common Area, Etc., Prohibited. No Owner or Occupant shall do or allow to be done any act which causes or threatens to cause any damage or disrepair to the Common Area and no Owner or occupant of a Lot shall permit members of his family or guests to cause such damage or disrepair.

Section 7.33. Used Houses; Trailers. No used, secondhand or previously erected house or building of any kind can be moved or placed, either in sections or as a whole, upon the Property, nor shall any trailer be moved, placed or permitted to remain upon a Lot subject to this Declaration; provided that Declarant may install for construction, administrative and sales purposes trailers or modular structures upon a Lot(s).

## ARTICLE 8

### Enforcement

The Association, Declarant and any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration insofar as the same are for the benefit of the Association, Declarant, or other Owner, respectively. The Association, Declarant or Owner shall have the right to include in their claim for relief a reasonable sum to reimburse them for their attorneys' fees and any other expenses reasonably incurred in enforcing their rights hereunder. Failure by the Association, Declarant, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Neither shall failure by the Association or the Declarant to enforce the provisions hereof against any Owner shall be deemed a waiver of any provision hereof as to any other Owner.

## ARTICLE 9

### Additional Land

Declarant may, from time to time, annex additional real property, including additional Common Area, to the Property covered by this Declaration, and thereby subject the same to all of the terms, provisions, and conditions of this Declaration, by the execution and filing for recordation with the Register of Deeds of Butler County, Kansas, of an instrument expressly stating an intention to annex and describing such additional real property to be so annexed. During the fifteen (15) year period commencing with the date of the recording of this Declaration, Declarant, its successors or assigns, may annex such additional real property in its absolute discretion. From and after the termination of said fifteen (15) year period, such



additional real property may be annexed provided that each such annexation is approved in writing by two-thirds (2/3) of the votes of the Owners of the Association in attendance, in person or by proxy, at a meeting called for such purpose.

## ARTICLE 10

### Miscellaneous: Limitation Of Liability, Perpetuities, Certain Easements

Section 10.01. Assignment. No Owner shall have the right to assign, independently of a transfer or conveyance of a Lot, any rights or obligations created by or arising under this Declaration and any such attempt at assignment shall not be merely voidable but shall be absolutely null and void.

Section 10.02. Limitation Of Liability. Notwithstanding anything to the contrary contained herein, it is expressly agreed that neither the Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any member in Declarant (or any such assignee) or any officer, employee, or consultant of Declarant thereof shall have any personal liability to the Association or any Owner or other person or entity, arising under, in connection with, or resulting from (including, without limitation) any action or failure to act with respect to this Declaration, the articles of incorporation or bylaws, or rules of the Association, the design guidelines of the DRC, or for any action taken, or not taken, pursuant to authority granted Declarant thereunder or with respect thereto. To the fullest extent permitted by law, neither the Declarant, the Association, their respective members (or any assignee), the officers, employees, consultants or directors of the Association, any DRC member, nor any other members of committees of the Association shall be liable to the Association or any Owner or other person or entity for damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval of plans and specifications (whether or not defective), course of action, inaction, omission, negligence or the like made in good faith and which the Declarant or the Association, any member, director, officer, consultant or employee thereof, or member of any such committee is reasonably believed within the scope of his duties.

Section 10.03. Perpetuities; Alienation. It is expressly provided that the rule of property known as the rule against perpetuities and the rule of property restricting unreasonable restraints against alienation shall not be applied to defeat any provisions of this Declaration.

## ARTICLE 11

### The Association

Section 11.01. Powers and Duties.

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

not limited to, those enumerated in this Article. The initial Board shall consist of three (3) directors, each of whom shall be a designee of Declarant, and who shall be appointed, removed and replaced from time to time by Declarant, in its sole discretion, until Declarant has transferred such duties and powers as provided in paragraph b below.

b. Declarant may carry out all of the duties and powers herein delegated to the Association and the Board so long as it owns a Lot, after which time the same shall be turned over to the Association or Board, as the case may be, which shall then exercise the powers and duties herein set out; provided, however, that the Declarant may, at its option, at any earlier time, partially or wholly transfer all or any part of such duties and powers to the Association or the Board by written instrument. In the event of a transfer of a portion of such powers and duties by the Declarant to the Association or the Board, the Declarant shall retain all other powers and duties which are not so specifically transferred. The Association and Declarant shall cooperate fully in the transition of the powers and duties hereunder. Nothing herein shall be deemed as relinquishment of Declarant's rights under Section 6.08 hereunder except strictly in accordance with Section 6.08.

c. The Association shall own, maintain, and keep clean the Common Area and the areas within any public road right-of-ways adjacent to the Common Area. It further shall maintain, repair and/or replace the decorative entrance treatments, fence(s) and walls erected and installed by Declarant or the Association within the Common Area.

d. The Association shall maintain such insurance on the Common Area and facilities thereon as it deems necessary and advisable.

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

f. The Association shall have the right to create and establish financial reserves for the repair, restoration or replacement of any improvement it has the duty to repair, restore or replace hereunder.

g. The Association shall have the right to adopt such policies, rules and regulations as it may deem advisable for the maintenance, use, conservation and beautification of the Common Area and for the health, comfort, safety and general welfare of the Owners.

h. The Association shall be empowered to determine the manner and extent of operating, maintaining, improving, restoring, mowing, trimming and keeping clean the Common Area and caring for, watering, spraying, protecting, and replanting trees, shrubbery, grass and sod within the Common Area and within any public road rights-of-way adjacent to the Common Area.

i. The Association shall erect, maintain, repair and replace signage as the Board shall deem appropriate and necessary within the Common Area.

j. The Association shall pay the taxes and assessments applicable to the Common Area.

k. The Association shall have the right to levy and collect the assessments and charges provided for in this Declaration and to enforce the liens thereby created in the manner herein provided.

l. The Association shall have the right to mortgage any part, parts, or all of the Common Area in connection with the borrowing of money in the furtherance of any of its purposes authorized herein and shall have the right to take such steps as are necessary to comply with such mortgage and to prevent foreclosure and any similar proceedings thereunder; provided any such mortgage shall be subject to the rights of the Owners under Article 3 above.

Section 11.02. Operations and Expenses. The Association may establish committees and may engage a manager, secretaries, engineers, auditors, accountants, legal counsel and other employees or consultants as may be reasonably necessary for the discharge of its duties hereunder.

Section 11.03. Repair and Restoration of Improvements on Common Area. Should any improvements on the Common Area, or any part or portion thereof, be damaged or destroyed by fire or other casualty, the Board shall determine in its discretion whether or not the Association shall repair or restore the same.

## ARTICLE 12

### Amendment; Term

Section 12.01. Covenants Running With The Land. The covenants and restrictions of this Declaration shall run with and bind the land which is subject to this Declaration for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless at least one (1) year prior to the expiration of such fifty year period or any applicable successive ten year period, there shall be recorded in the Butler County real estate records an instrument directing termination of this Declaration signed by the Owners of at least seventy-five (75%) of the Lots.

Section 12.02. Amendment by Declarant. Amendments, including waivers, modifications, alterations, removals, changes and additions to this Declaration made prior to the date on which Declarant transfers management of the Common Area to the Association by written agreement shall become effective when approved in writing by Declarant and recorded in

the office of the Register of Deeds of Butler County, Kansas; provided, however, that such amendment shall not materially affect any right of any then existing mortgage holders.

Section 12.03. Amendment; Other. Amendments, including waivers, modifications, alterations, removals, changes and additions to this Declaration other than those provided for in Section 12.02 shall be proposed and adopted in the following manner:

a. *Notice.* Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment shall be considered.

b. *Resolution.* A resolution adopting a proposed amendment may be proposed by either the Board and or by the membership of the Association. Unless otherwise specified in this Declaration, such proposed amendment must be approved by the Owners of not less than two-thirds (2/3) of the votes of Owners who are voting, either voting in person or by proxy, at an annual meeting or special meeting duly called for such purpose.

c. *Recording.* A copy of each amendment provided for in this Section shall be certified by an officer of the Association as having been duly adopted and shall be effective when filed of record in the office of the Register of Deeds of Butler County, Kansas.

d. *Declarant's Consent.* Notwithstanding the foregoing, so long as a residence has not been completed on each Lot, any such amendment shall require the written consent of Declarant in order to be effective.

## ARTICLE 13

### Miscellaneous

Section 13.01. Provisions Binding on Grantees. The Association and each grantee hereafter of any part or portion of the Property covered by this Declaration, and any purchaser under any grant, contract of sale or lease covering any part or portion of such Property, accepts the same subject to all of the restrictions, liens and charges and the jurisdiction rights and powers of the Association and Declarant provided for in this Declaration.

Section 13.02. Interpretations of Restrictions. In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners of the Property. It is not the intent of this Declaration to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of buildings or premises; nor is it the intention of this Declaration to interfere with or abrogate or annul easements, covenants or other agreements between parties; provided, however, that where

this Declaration imposes a greater restriction upon the use or occupancy of any residence site or upon the construction of buildings or Structures, or in connection with any other matters that are imposed or required by such provisions of law or ordinances or by such rules, regulations or permits, or by such covenants, easements and agreements, then, in that case, the provisions of this Declaration shall control.

Section 13.03. Construction and Validity of Restrictions. All of the restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such restrictions, conditions, covenants, reservations, liens or charges, or any part thereof, are invalid or for any reason become unenforceable, no other restriction, condition, covenant, reservation, lien or charge, or any part thereof, shall be affected or impaired.

Section 13.04. Assignment of Powers. Any and all rights and powers of Declarant provided for in this Declaration and any modification or amendment hereof may be delegated, transferred, assigned, conveyed or released by Declarant to any third party and/or to the Association. The Declarant's assignee shall accept the same upon the recording of a notice thereof, and the same shall be effective for the period and to the extent stated therein. Upon the effective date of such assignment, the assigning party shall be released of any and all liabilities of whatever nature arising out of acts or omissions prior to the effective date of the assignment.

Section 13.05. Waiver and Exceptions. The failure by the Association, Declarant, any Owner or any other person to enforce any of the restrictions, conditions, covenants, reservations, liens or charges to which the Property or any part thereof is subject, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other restriction, condition, covenant, reservation, lien or charge.

Section 13.06. Titles. All titles used in this Declaration are intended solely for convenience of reference, and the same shall not affect that which is set forth in the terms and conditions of this Declaration nor the meaning thereof.

Section 13.07. Singular and Plural, Masculine and Feminine. The singular shall include the plural and the plural the singular, unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine and neuter, as the context requires.

Section 13.08. Successors-in-Interest. Reference herein to either the Association or Declarant shall include its respective successor, and each such successor shall succeed to the rights, powers and authority hereunder of its predecessor, whether by appointment or otherwise.

Section 13.09. Mortgage Protection Clause. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any mortgage made in good faith and for value, but all of these

covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure sale or deed in lieu thereof.

Section 13.10. No Liability. Declarant has, using good faith, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot or possession of a Structure, acknowledges that Declarant shall have no such liability.

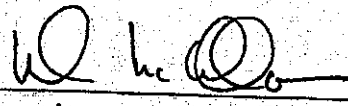
Section 13.11. Twin Homes: Multifamily, Commercial and/or Industrial Development. Each Owner is hereby advised that real property in the vicinity of the Property may be developed and operated for twin homes, apartments and other multifamily, commercial, office or industrial purposes or purposes other than for single family residences. Each Owner is responsible to inform himself or herself concerning the possibility of such developments and no Owner shall rely on any statements made by sales persons concerning future development or uses of any such real property. Declarant does not have any responsibility to advise the Owners or the Association concerning any actual or proposed zoning or other land use proceedings relating to any real property located within or outside of the Property.

Section 13.12. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 13.13. School District. Declarant shall endeavor to cause the Property to be included within the Augusta School District so that school aged children and youth residing within the Property will attend public schools within such district rather than the Towanda School District. The Association and the Owners shall cooperate with Declarant in such endeavor to be included in the Augusta School District, and shall not object in any way, whether in writing or otherwise, and shall not petition or make any application or request for all, or any part of the Property, to be included in any other public school district or that the children or youth residing on any of the Lots be generally assigned to attend any other public schools.

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

Northridge Developers, L.L.C.

By:   
Name: MARK McCullom  
Title: Developer-Manager

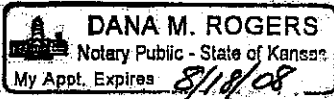
ACKNOWLEDGMENT

STATE OF KANSAS )  
Butler COUNTY )

ss:

BE IT REMEMBERED, that on this 14 day of October, 2004, before me a Notary Public in and for the County and State aforesaid, personally appeared MARK McCollom the Developer/manager of Northridge Developers, L.L.C., a Kansas limited liability company, personally known to me to be such manager and the same person who executed, as such Manager, the above and foregoing instrument in writing on behalf of said limited liability company and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

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



Dana M. Rogers  
NOTARY PUBLIC

My Appointment Expires:

8/18/08