



Sedgwick County
Register of Deeds - Tonya Buckingham
Doc.#/Flm-Pg: 29981510
Receipt #: 2183708
Pages Recorded: 43
Recording Fee: \$735.00

Cashier: KVENATOR

Authorized By *Tonya Buckingham*

Date Recorded: 08/21/2020 10:52:46 AM



After Recording Return To:

Ron H. Harnden
Triplett, Woolf & Garretson, LLC
2959 N. Rock Road, Suite 300
Wichita, KS 67226

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS
AND DISCLOSURES FOR CEDAR RANCH ESTATES**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND DISCLOSURES FOR CEDAR RANCH ESTATES ("Declaration") is made effective the 20th day of August, 2020, by Cedar Ranch Properties, LLC, a Kansas limited liability company (hereinafter referred to as the "Developer").

WITNESSETH, THAT:

WHEREAS, Developer desires to adopt and establish covenants, conditions, restrictions, easements and disclosures for the purposes of developing, and enhancing the desirability and attractiveness of the Property (as hereinafter defined); maintaining and operating the Common Area (as hereinafter defined); and specifying the rights and obligations of the Developer and the Owners (as hereinafter defined); and

WHEREAS, the Association (as hereinafter defined) will be incorporated for the purpose of exercising certain powers and functions hereunder.

NOW, THEREFORE, Developer hereby covenants, agrees and declares that the Property shall be owned, acquired, held, sold and conveyed subject to the following covenants, conditions, restrictions, easements and disclosures, rights and obligations which are hereby declared to be for the benefit of all of the Property, Developer and the Owners, and their respective successors and assigns.

#742310 07/27/2020

ARTICLE I
DEFINITIONS

The following terms shall be applicable to this Declaration and are defined as follows:

1.1 “Articles” shall mean the Articles of Incorporation of the Association which shall be filed in the office of the Secretary of State of Kansas, as such Articles may be amended from time-to-time.

1.2 “Association” shall mean and refer to the Cedar Ranch Estates Homeowners’ Association (or such other corporate name as Developer shall hereafter select), a nonprofit corporation, incorporated under the laws of the State of Kansas, its successors and assigns.

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

1.4 “Bylaws” shall mean the Bylaws of the Association as such Bylaws may be amended from time-to-time by two-thirds of the Owners voting at an annual or special meeting of the Owners or such other voting means properly conducted in accordance with the Bylaws.

1.5 “Common Area” shall mean the following portions of the Property, as the same may be modified from time-to-time, by additions or removals as permitted hereunder:

Reserves A, B, C, D, E, F, G and H, all in the First Addition

1.6 “Design Committee” shall mean the Design Committee as referenced in Article VIII below.

1.7 “Developer” shall mean Cedar Ranch Properties, LLC, a Kansas limited liability company, and its successors and assigns; provided, any such successors or assigns shall acquire for the purpose of development or sale all or any portion of the remaining unsold Lots, and in the instrument of conveyance to any such successor or assign, such successor or assign is designated as the “Developer” hereunder by the grantor in such conveyance, which grantor shall be the “Developer” hereunder at the time of such conveyance. Upon such designation of a successor Developer, all rights and obligations of the former Developer in and to such status as “Developer” hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the “Developer” hereunder at any one time.

1.8 “First Addition” shall mean Cedar Ranch Estates, Derby, Sedgwick County, Kansas.

1.9 “Lot” shall mean and refer to each platted lot within the Property upon which there may be constructed a residence; provided, that where land has been attached to or detached with the prior written approval of the Developer or the Design Committee from any Lot, the enlarged or diminished Lot shall be deemed to be a Lot hereunder; provided, if two or more Lots

are combined into a residential site, assessments or charges hereunder shall continue to be assessed or changed for each separately platted Lot. A "Lot" shall not include Common Area (as modified from time-to-time).

1.10 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers and excluding contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

1.11 "Property" shall mean and refer to all of the real property described as follows, together with such other land as may be added and excluding land removed hereunder by the terms of this Declaration:

First Addition

1.12 "Structure" shall mean and include anything or device, the placement of which upon any Lot may affect the drainage or appearance of such Lot, including, by way of illustration and not limitation, any berm, shed, building, garage, porch, poolhouse, covered or uncovered patio, screening materials, swimming pool, light pole, sandbox, fence, flag pole, water fountain, playground, curbing, paving, wall, satellite dish, tree, mailbox and related structure, or any temporary or permanent improvement to such Lot. "Structure" shall also include any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of surface water from, upon or across any Lot, in accordance with the master drainage and grading plan for the Property as referenced below, 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 any change in the grade of any Lot other than in accordance with drainage guidelines, standards and plans established by the Developer, the Design Committee, the municipality having jurisdiction over the Property or a Lot-specific drainage plan, whichever are most stringent.

1.13 "Turnover Date" shall mean the date Developer elects to turn over management and operation of the Association as specified in Section 6.1 B below.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

2.1 Membership. The Association shall have as members only Owners. All Owners shall, upon acquiring a Lot, be deemed automatically to have become members (whether or not any Owner is occupying a residence on his Lot), and there shall be no other qualification for membership. There shall be only one membership per Lot. If a Lot is owned by more than one person, all co-owners shall share the privileges of such a membership, subject to all limitations contained in this Declaration, and in the Bylaws. The membership rights of any Owner which is not a natural person, may be exercised only by a single individual designated by such Owner from time-to-time in a written instrument provided to the Association. Membership shall be appurtenant to, and shall not be separated from, the ownership of any Lot.

2.2 Voting Rights. All members of the Association, so long as they shall qualify under this Article II, shall be entitled to vote on each matter submitted to a vote at a meeting of members of the Association, or in any other manner permitted under the Bylaws. There shall be only one (1) vote for each Lot subject to the following exceptions and conditions:

A. When any such Lot is owned or held by more than one (1) Owner as tenants in common, joint tenants or in any other manner of divided, undivided, joint or common ownership or interest, the Owners, collectively, shall be entitled to only one (1) vote relative to such Lot. Fractional votes shall not be permitted, and in no event shall more than one vote be cast with respect to any Lot.

B. Notwithstanding the foregoing, Developer shall be entitled to ten (10) votes for each single Lot owned by it.

C. In addition to any other penalties provided for in this Declaration, any Owner (other than Developer) who is in violation of this Declaration (including, but not limited to, the failure to timely pay assessments or other sums due hereunder) or any rules adopted pursuant to this Declaration or referenced herein, as determined solely by the Developer for the period until residences have been constructed and first occupied on each Lot, or the Turnover Date, whichever first occurs, and thereafter the Board, shall not be entitled to vote during any period in which such violation continues. The Developer, until residences have been completed on each Lot, and first occupied, or the Turnover Date, whichever first occurs, and, thereafter, 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.

D. The Association shall adopt the Bylaws, consistent with the terms hereof, the Articles and the laws of the State of Kansas, as it deems advisable for any meeting of Owners with regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Owners for voting purposes, and such other matters concerning the conduct of meetings or such other proceedings or processes of the Association permitted by the Bylaws and voting as it shall deem proper; provided, to the extent permitted by applicable laws (i) no Owner may vote by proxy, (ii) following the date the Developer ceases to appoint members to the Board, unless specifically authorized in writing by Developer, no person may serve as a member of the Board or officer of the Association for a duration of more than four (4) years out of any six (6) consecutive year period, and (iii) other than with respect to Board members appointed by Developer, a member of the Board may be removed from the Board by a majority of the other members of the Board or by a majority of the members of the Association in attendance at a special or annual meeting of the Association or in any other manner of voting permitted under the Bylaws. In the event of any conflict between the terms of the Declaration and the Bylaws, the terms hereof shall control.

2.3 Formation; Common Area Conveyance. Developer shall form the Association at any time following recordation hereof, and shall convey legal title to the Common Area to the

Association. Developer shall convey, and the Association shall accept, the Common Area to the Association by special warranty deed, in an "AS IS" condition, subject to all easements, rights-of-way, mortgages granted in connection with financing referenced in Section 11.1 below, encumbrances, liens for non-delinquent ad valorem taxes and special assessments, and other matters of record. Subject to the rights of the Developer, the Board shall diligently carry on the duties of the Association as specified in this Declaration, but may engage a management company. See Section 6.1B below concerning Developer's rights to manage and operate the Association pending the expiration of Developer's duties and powers as soon as five (5) residences are constructed and first occupied on such Lots.

ARTICLE III

LICENSE FOR COMMON AREA; AND OTHER COMMON AREA MATTERS

3.1 Owners' Use of Certain Common Area. Except as otherwise provided in this Article III or elsewhere in this Declaration, every Owner, and any Lot occupant thereof shall have a nonexclusive license to use the Common Area, and such license shall be appurtenant to and shall pass every Lot, subject to the following provisions and to the other provisions of this Declaration:

A. The right of the Developer to establish other rules, regulations and/or requirements regarding the activities on or uses of the Common Area, including, but not limited to, the recreational facilities thereon, and to restrict or eliminate some or all types of activities or uses thereof and limit the persons, and the number of persons, entitled to use the same. All Owners must strictly adhere to such rules, regulations and requirements. Motorized boats may not be used on any lake within the Property. Fishing, paddle boats, kayaking, canoes and other types of boats specified by Developer or the Board may be used on lakes designated by Developer or the Board from time-to-time, subject to rules, regulations and requirements in effect from time-to-time;

B. In addition to the borrowing money and mortgaging the Common Area by the Developer and/or Association as referenced in Section 11.1 below, the right of the Board to borrow money (separately from borrowings provided for in Section 11.1 below) on behalf of the Association for the purpose of improving the Common Area and facilities and to mortgage the Common Area;

C. To the extent permitted by applicable law, the right of the Developer and the Board to suspend the use of the Common Area, and any recreational facilities thereon, by an Owner and other persons authorized to use the same by reason of such Owner for any period during which any assessment against such Owner's Lot remains unpaid and delinquent, or such Owner, Lot occupant or family member otherwise violate the terms of this Declaration or any rules or regulations in effect from time-to-time;

D. The Board may engage a management company on behalf of the Association and delegate to such company (or persons designated by such company) the

right to determine whether violations of this Declaration and rules or regulations have occurred with regarding to the Common Area;

E. The covenants and restrictions contained herein; and

F. Any mortgage securing financing by Developer and/or the Association as referenced in Section 11.1 below. In the event of a default in the performance or payment of any mortgage secured financing documents in the nature of those described in Section 11.1, then among other rights and remedies, the lender may terminate the license for use of the Common Area. Upon such termination, no Owners, Lot occupants, family members or guests may have access to or use the Common Area.

3.2 Extension of Rights to Family; Guests; Limitations With Regard to Entities; Guests. Except as otherwise provided in the rules and regulations or requirements of the Association, an Owner's right of enjoyment in the Common Area shall automatically extend to all members of his or her immediate family residing in a residence on a Lot with such Owner. If a Lot is owned by a corporation, limited liability company, trust or other entity, only one family occupying a residence on such Lot may be designated by such entity and may be permitted to use the Common Area. Subject to applicable rules and regulations, Owners may invite guests to use the Common Area.

3.3 Waiver of Use. No Owner may exempt himself or herself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him or her 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 or her Lot.

3.4 Alteration of the Common Area; Expansion of Ponds/Lakes. Notwithstanding anything to the contrary provided herein, the Developer, at any time, whether before or after the completion of the construction of a residence on each Lot, and whether or not Developer has relinquished its rights under Section 6.1B hereunder, may reconfigure, convey, eliminate, remove and reduce, alter or reconfigure portions of the Common Area from time-to-time by replatting, 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 reconfiguration, conveyance, elimination, reduction, alteration or reconfiguration, any land (a) removed from such Common Area shall cease to be Common Area, and, thereupon, no Owner shall have any license or right of use or access thereto and (b) added to the Common Area shall become a part thereof, and thereupon each Owner shall have a nonexclusive license and right of use or access to any portion of the Common Area as permitted in Section 3.1 above. Developer may from time-to-time expand the size of ponds and lakes within the Common Area. The Association hereby irrevocably grants to Developer a power of attorney, coupled with an interest, to execute deed(s) on behalf of the Association to convey the removed or reduced portions of the Common Area or grant on behalf of the Association easement(s) instruments over, under or across any portion of the Common Area.

3.5 Damage to Common Area, Etc., Prohibited. No Owner, or Lot occupant, or guest or invitee thereof, shall do or allow to be done any act which causes or threatens to cause any damage, encroachment or disrepair to the Common Area, street rights-of-way, the residence or Lot of any other Owner, or any improvements thereon. Specifically, each Owner shall repair any damage sustained to any other Lot, Common Area or street right-of-way in connection with the construction of Structures on such Owner's Lot, including, but not limited to, damage to vegetation areas, concrete or paving, landscaping, sprinkler systems and other improvements as a result of the installation of sanitary sewer or heat pump lines or other construction or excavation activities. Owners are hereby advised that DIG SAFE (a service which may be consulted in advance of excavation to locate existing utility lines) does not identify sprinkler system lines or other underground electrical or plumbing lines which have been installed.

3.6 Common Area, Construction and Financing of Amenities, Improvements and Maintenance. Developer may finance on behalf of the Association (as referenced in Section 11.1 below) the cost of constructing or installing the original improvements and amenities to the Common Area, which may, but shall not be required to, include, but are not limited to, a swimming pool, entry features and playground improvements and the amenities and improvements outside of the Common Area, including certain street right-of-way areas, without any representations or warranties as to the condition thereto; provided, Developer, until residences have been completed on each Lot and are first occupied, and thereafter, the Board, on behalf of the Association, may install additional amenities or improvements as either elects from time-to-time. Developer, the Association, their respective representatives, contractors and any subcontractors, and the employees thereof, shall have a perpetual, nonexclusive easement and right of access upon the Common Area for the inspection, construction, installation, maintenance, repair, replacement, modification, whether within or outside, the Common Area, and certain street right-of-way areas, or such other purposes as any such parties shall desire, concerning improvements and amenities thereto or thereon. Following completion of the construction and installation by Developer of such amenities and improvements to the Common Area and the amenities and improvements outside the Common Area, then, a representative of the Association or its management company, if one has been engaged, shall inspect the same and provide Developer in writing no later than ten (10) days following Developer's request for such inspection, a detailed listing of any defects concerning any such amenities and improvements which were not constructed or installed in a reasonable condition. Other than any defects timely objected to in writing by the Association or its management company, such amenities and improvements shall be deemed to be unconditionally accepted by the Association. Developer shall promptly correct any defects timely objected to on behalf of the Association; provided, due to the timing of the occurrence of the inspection of the amenities or improvements, it may not be appropriate for Developer to make corrections at that time, particularly to lawn or landscaping items, in which case, Developer shall make the corrections and improvements during the next growing season or when such corrections are otherwise appropriate. *Following the completion of such improvements, the Association shall be solely and fully responsible for all costs of maintaining, repairing, replacing and operating the Common Area and the other amenities and improvements, including, but not limited to, all fertilizing, watering and replacement of lawns, shrubs, flowers, plantings and trees following the initial planting thereof, the mowing of lawn*

areas, payment of taxes and assessments, payment of liability and property insurance premiums, and utility costs.

3.7 Water For Irrigation. Developer, or Association, may drill a well or wells for water to irrigate portions of the Common Area. If Developer, or Association, is unsuccessful in obtaining appropriate permits or authorizations for such well(s); is unable to complete a satisfactory well or wells; or if the well or wells cease to produce sufficient water, then water from the City of Derby may be used for such irrigation, at a higher cost.

ARTICLE IV

COVENANTS CONCERNING ASSESSMENTS; LIENS

4.1 General Assessments. For the purpose of providing funds for the operation of the Association, and for the operating, maintaining, caring, insuring, improving and conducting such other activities and taking such other actions pertaining to the Common Area as the Association shall deem appropriate, and to afford the Association the means and resources necessary to carry out its rights, duties and functions hereunder and under its Articles and Bylaws, the Board shall have the right, in each year, but subject to the exemptions provided below, to assess against each Lot and each Owner thereof, a general assessment, which general assessment shall subject each Lot to a lien to secure payment thereof. The general assessment may be paid as specified by the Board from time-to-time; provided, at the time of the first sale of a Lot to a person or entity (other than a person or entity which is exempt from assessments under Section 4.2. below), whether or not a residence has been constructed thereon, at the closing of such sale, the purchaser shall pay in one lump sum to the Association the amount of the assessments due for the remainder of the calendar year in which the sale occurs. Initially, the annual general assessment shall be in the amount of Two Hundred Dollars (\$200.00) per year which shall be payable in one (1) installment on January 1st of each calendar year commencing upon the date a Lot is initially sold to any person who is not in the business of construction residences; assessments for any partial year shall be prorated. Subject to the Developer's exemption specified herein, the obligation of each Owner to pay assessments hereunder shall commence on the date title is conveyed to such Owner and is not dependent upon there being a residence erected thereon.

4.2 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 or Owners, except that in view of its contribution of the land for Common Area and road rights-of-way, the Developer shall be exempt from the imposition of any fine or any assessment hereunder, whether general or special, with respect to any Lot so long as Developer holds legal title thereto. Additionally, if a building contractor authorized by Developer acquires a Lot solely for the purposes of constructing a residence and related improvements and bonafide sale thereof, the building contractor and the Lot owner thereby shall be exempt from general and special assessments hereunder so long as the Lot is owned by such contractor, unless a residence on such lot is occupied.

B. Except as provided below, at any time legal title to a Lot transfers, the transferee/buyer shall pay at the time of the closing of such transfer to the working capital of the Association an amount equal to Two Hundred Dollars (\$200.00); provided the requirement to pay such transfer fee shall not apply to a transfer by Developer to an affiliated entity; a transfer of Developer's interest as "developer" of the Property to a third-party; the transfer of a Lot to a building contractor by an Owner for the sole purpose of constructing a residence for an Owner as soon as reasonably possible (excluding construction of a residence for the contractor or an affiliate thereof); the transfer by an individual Owner to a trust; a transfer by a trust or estate to a beneficiary or a transfer from an Owner to a grandchild, child, parent or sibling; or under such other circumstances that the Developer, or after a residence has been completed on each Lot, and first occupied, or the Turnover Date, whichever first occurs, the Board determine shall excuse the requirement of the payment of such transfer fee. For clarification, a Lot owned by a building contractor on which a residence has been constructed and is occupied shall not be exempt from assessments.

4.3 Increase of General Assessments. The amount of the general assessment during any year may be increased for any subsequent year by the Board without a vote of the membership of the Association. Following the construction or installation of the amenities and improvements within the Common Area and the use and operation thereof for a complete calendar year, the increases to the amount of the general assessments shall be determined by the Board annually based on the actual annual increases in the costs and expenses of caring for the Common Area and the improvements thereon.

4.4 Special Assessments. In addition to general assessments, the Association may, from time-to-time, at a regular meeting or a special meeting called upon notice for such purpose, establish a special assessment to be levied equally against each Lot for the purpose of providing additional funds (when funds through general assessments are insufficient) to carry out its duties and other functions and purposes contemplated hereunder; to perform maintenance, repairs or replacements which are the responsibility of the Association hereunder; to pay principle or interest concerning any amenity financing referenced in Section 11.1 below; to make improvements to the Common Area; and generally for the Association's operations. No such special assessment shall be valid except upon the approval of Owners holding at least sixty percent (60%) of the votes present, in person, at an annual or special meeting duly called for the purpose of approving the same. Further, the Board shall have the authority to establish and fix a special assessment on any Lot to secure the liability of the Owner of such Lot to the Association for any breach by such Owner of any of the provisions of this Declaration, including, but not limited to, any breach by such Owner which results in an expenditure by the Association for repair or remedy of such breach. Any special assessments shall be payable in full (unless a schedule for payment in installments is specified) on the first day of the second calendar month next following the date that the same shall be established by the Association, or the Board, as applicable.

4.5 Collection and Expenditures. The Association through the Board shall have the sole authority to collect and enforce the collection of all general, special assessments provided

for in this Declaration, and may, in addition to such assessments, charge and assess costs and expenses, including reasonable attorneys' fees, and penalties and interest for the late payment or nonpayment thereof. The Board shall have the authority to expend all monies collected from such assessments, costs, penalties and interest for the payment of expenses and costs in carrying out the duties, rights and powers of the Association as provided for in this Declaration and the Articles and Bylaws of the Association. However, the Association shall not be obligated to spend in any year all the sums collected in such year by way of assessments, or otherwise, and shall either carry forward, as surplus, in reserves, any balances remaining or repay any indebtedness of the Association; nor shall the Association be obligated to apply any such surpluses or reserves to the reduction of the amount of the assessments in the succeeding year, but may apply such surpluses or reserves to indebtedness of the Association or carry forward from year to year such reserve or surplus as the Board, in its absolute discretion, may determine to be desirable for the greater financial security of the Association and the effectuation of its purposes.

4.6 Assessments and Liens; Delinquency. Thirty (30) days after any general or special assessment shall be due and payable, and unpaid or otherwise not satisfied, the same shall be and become delinquent and shall automatically constitute a lien on the applicable Lot and shall so continue until the amount of said charge and assessment, together with all costs, late fees, fines, penalties and interest as herein provided, have been fully paid or otherwise satisfied. To the extent permitted by applicable law, the Association may cease to provide all and any of the services provided by or through the Association with respect to any Lot during any period that an Owner is delinquent in the payment of any sum due under this Declaration, or due to any other default hereunder, and no such cessation of services shall result in reduction of any amount due from the Owner before, during or after such cessation. No claim of the Association for assessments or other charges due hereunder shall be subject to setoffs or counterclaims made by any Owner.

4.7 Notice of Delinquency. At any time after any general or special assessment, fine or other sums due hereunder, pertaining to any Lot has become a lien and delinquent, the Association may record in the office of the Register of Deeds, Sedgwick County, Kansas, a Notice of Delinquency as to such Lot, which Notice of Delinquency shall state therein the amount of such delinquency and that it is a lien, and the interest, costs (including attorneys' fees and expenses) fines and late fees, which have accrued thereon, a description of the Lot against which the same has been assessed, and the name of the Owner thereof, and such Notice shall be signed by an officer of the Association. Upon payment or other satisfaction of said assessment, interest, late fees, fines and costs and expenses in connection with which notice has been recorded, the Association shall record a further notice stating the satisfaction and the release of the lien thereof.

4.8 Right of Association to Enforce Payment of Assessment. By the acceptance of title to a Lot, each Owner shall be held to vest in the Association, through the Board, with the right and power to prosecute all suits, legal, equitable, or otherwise, which may be necessary or advisable for the collection of assessments, charges or fines, 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. Each Owner, to the extent permitted by law, hereby waives, with respect to any liens created pursuant to this Declaration or documentation associated herewith (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.

4.9 Foreclosure and Other Rights. 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 like manner as a mortgage on real property as provided by the laws of Kansas. Each current and future Owner consents to the foreclosure procedures specified in this Article. In any action to foreclose any such lien, the Association shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, and expenses, and such late fees, fines and accrued interest for delinquent charges and assessments as shall have been established by the Association. The Developer and/or the Association shall have the right to bid on a Lot at the foreclosure sale. The foreclosure proceedings with respect to liens established pursuant to this Declaration, may be foreclosed at any time within fifteen (15) years following the filing of the Notice of Delinquency; provided, if, at the expiration of such fifteen (15) year period, suit shall have been instituted for collection of the assessment, the lien shall continue until payment in full or termination of the suit and sale of the applicable Lot.

4.10 Subordination of Assessment Lien. Each and every assessment and assessment lien, together with any costs, penalties and interest reserved under this Declaration for each Lot, shall be subordinate to the lien of any valid bona fide first mortgage which is hereafter given in good faith and for value by any bank, savings and loan association or other institution in the business of regularly conducting residential lending on a Lot, which subordination shall be effective as to assessments assessed from and after the date of the recordation of such mortgage, but the subordination shall not apply to assessments or assessments liens which arise prior to the recordation of the mortgage. Any subsequent Owner of any Lot purchased at foreclosure shall be bound by the covenants, restrictions, assessments and liens set out in this Declaration, not including, however, any assessment or lien arising prior to the foreclosure sale. Such unpaid assessments shall be deemed to be common expenses collectible from general assessments made to all Lots. Nothing contained herein shall release a person or entity from his or its personal liability for any assessments assessed when such person or entity owned a Lot which becomes delinquent prior to any such foreclosure.

4.11 Personal Liability. In addition to the covenants and agreements heretofore set forth herein, each Owner of each Lot, by the acceptance of a deed therefor, 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 general, special assessment, late fee, interest, fine or other sum assessed or levied against such Lot during the period of ownership and for all other payment obligations specified in this Declaration.

4.12 Late Fee and Interest on Delinquent Assessments. In the event assessments (general or special) late fee, interest, fine or other sums due under this Declaration shall remain due and unpaid thirty (30) days after the same are due, the Owner shall be charged a lump sum

late fee of fifteen percent (15%) of the unpaid amount and the unpaid amount shall continue to bear interest at the rate of fifteen percent (15%) per annum, or such other rate as may be established from time-to-time by the Board; provided, however, that such interest rate shall never exceed the maximum allowed by law.

4.13 Fines. The Developer, prior to the construction of a residence on each Lot and the first occupancy thereof, and, thereafter, or on such earlier date as Developer shall relinquish its rights to the Board, the Board, shall have the authority to assess a fine for any violation of this Declaration, and rules and regulations from time-to-time, by an Owner, which fine shall be determined in the sole discretion of the Developer or the Board, as applicable; provided, a fine imposed by the Board may not exceed One Hundred Dollars (\$100.00) per day of violation unless approved by a majority of the members of the Board. Prior to assessing such fine, the Board shall mail written notice to the last address known to the Board concerning the noncompliant Owner, specifying the violation. If the noncompliant Owner fails to cure the violation within twenty (20) days following the mailing of such notice by the Board, or if there is a reoccurrence of the violation during such twenty (20) day period, then in addition to any other liability or obligation arising under the Declaration, the Board may assess a fine against the noncompliant Owner and his Lot in an amount determined by the Developer or the Board, as applicable, to be appropriate in its discretion, which shall be paid within ten (10) days following the date notice thereof is sent to such Owner by written notice deposited in the mail to the Owner's address last known to the Developer or the Board, as applicable, or personal delivery thereof to the residence of such Owner. Until paid in full, the amount of such fine shall constitute a lien on the noncompliant Owner's Lot, and shall be subject to enforcement and foreclosure in the same manner as an assessment under this Article IV. Furthermore, to the extent permitted by law, so long as fine is unpaid and outstanding, the Owner who is fined, together with his family members, guests and other authorized users, shall not utilize the Common Area facilities and other Association amenities.

ARTICLE V

USE, OCCUPANCY AND CONDUCT RESTRICTIONS

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

5.2 Rules and Regulations. Each Owner shall obey and comply with all applicable public laws, ordinances, rules and regulations and all rules and regulations now or hereafter promulgated, as provided for in this Declaration. No activity which may be or become a nuisance to the neighborhood shall be carried on upon the Property.

5.3 Residences. Except as provided above, no building shall be erected, altered, placed or permitted to remain on any Lot, other than residences for private use, with a private garage and other Structures expressly approved by the Design Committee incidental to residential use, which are initially approved by the Design Committee, as specified herein.

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

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

5.6 Limited Business Activities. Except as otherwise specified in this Declaration or as authorized herein or in writing by the Developer, on a Lot-by-Lot basis prior to the date on which a residence has been completed, and first occupied, on the applicable Lot and, thereafter, the Board, no business, trade, including any retail, wholesale, manufacturing or repair business of any kind; no bed and breakfast operation; no group home (that is, any licensed residential facility occupied or intended to be occupied by persons with a disability [as defined under Kansas law], or one or more staff residents, none of which need be related by blood providing meals, sleeping and accommodations for a group of people, not constituting a family on a weekly or longer basis); drug or other addiction or similar rehabilitation facility; no correctional placement residence; and no bed and breakfast inn or facility shall be permitted to be conducted on any Lot or in any residence or appurtenant Structure erected thereon, even though such activity does not include the employment of any additional person or persons in the performance of such services. Subject to compliance with any applicable ordinances or laws and any rules adopted by the Board from time-to-time, the following home occupations are hereby authorized so long as insubstantial traffic results therefrom: child daycare limited to a maximum of three (3) children at any one time, unless the Developer or the Board shall authorize a greater number in writing; building contractors; realtors; pet grooming, and beauty salon. "Insubstantial traffic" shall mean that no more than two (2) vehicles are parked at a residence by customers and employees/workers in relation to such business activity at any one time. The hours of an authorized business operation must be approved in writing by the Developer or the Board, and no signage for any such business activity may be permitted. This Section shall not limit or prohibit to any activity conducted by the Developer, and any builder or contractor constructing a residence(s) or other improvements within the Property.

5.7 Temporary Buildings; Trailers. Except as authorized by the Developer, prior to the date residences are constructed on each Lot and first occupied, or the Turnover Date, whichever occurs first, and, thereafter, the Board, no basement of a partially completed residence, tent, trailer, previously erected house shack, garage, barn or outbuilding erected on a Lot shall be used for human habitation, temporarily or permanently; provided, that Developer may install for construction, administrative and sales purposes a trailer or trailers upon a Lot(s).

5.8 Animals. No horses, cows, roosters, snakes, exotic animals, birds, poultry, pigs, bees, animals or insects shall be kept or maintained on any Lot except dogs and cats and other commonly accepted household pets approved from time-to-time by the Developer or the Board. Under no circumstances shall any commercial or agricultural business enterprise involving the use or breeding of animals be conducted on the Property. The Developer or the Board 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, and the Owners shall strictly comply therewith. Dogs, cats and all other approved pets shall be confined at all times to the Lot other than when outside the Lot on a leash. No dogs, cats or other approved pets shall be tethered to a stake or similarly confined on any Lot. All pets must be properly immunized as required by applicable ordinances, codes and laws. Owners must prevent such animals from barking or making other noises at any time which the Developer or Board determines are annoying or a nuisance to neighbors or those using the Common Area. Among other remedies available to the Board, it may fine the Owner(s) of Lots pursuant to Section 4.13 with regard to animals which are determined by the Board to be an annoyance or nuisance or not approved hereunder.

5.9 Signs. Except as (a) authorized by the Developer on a Lot-by-Lot basis, prior to the date a residence is constructed on such Lot and is first occupied, and, thereafter, the Board, (b) except for those installed by Developer, its marketing representatives or builders or contractors as authorized by Developer or the Board, no signs, advertisements, billboards or advertising Structures of any kind may be erected or maintained on any of the Lots or Common Area; provided, however, that permission is hereby granted for the erection of unlighted, temporary, standard sized signs by real estate firms for the sole and exclusive purpose of advertising the sale of the Lot and residence upon which it is erected and improvements thereon, if any, and during the thirty (30) day period prior to any election, political signs may be placed in yards. Such political signs shall be removed no later than three (3) days following the applicable election. All signs permitted hereunder shall be designed and installed on a Lot strictly in accordance with applicable codes, ordinances and laws.

5.10 Antennas. Except as authorized by the Design Committee, there shall not be erected on any Lot any external television, radio antennas or other antenna or similar device; provided, notwithstanding the foregoing, an Owner may install within his or her Lot a television satellite dish having a diameter of not more than twenty-four inches (24"), so long as the location of such dish is satisfactory to the Design Committee. Should any part or all of the restrictions set forth in this Section be unenforceable because the same violate a statute or the First Amendment or any other provision of the United States Constitution, the Design Committee shall have the right to establish rules and regulations regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections

within the Property and any such rules and regulations shall be binding upon all of the Lots and the Owners thereof.

5.11 Vehicles, Trailers and Boats. Except as provided below, no automobile, truck, motorcycle, motorbike, boat, house trailer, boat trailer or trailer, recreational vehicle/motor home or any other vehicle of any type or description as determined by the Developer, until a residence has been constructed on each Lot and first occupied, and thereafter the Board, in its sole discretion, may be stored upon any of the Common Area other than with a designated parking area(s), nor may any boat, boat trailer, house trailer, camper, recreational motor vehicle, camper trailer, truck (other than small commercial trucks so long as they are regularly used on a weekly basis) or similar items be stored or **permanently, continually or regularly parked on any street, driveway or in the open on any Lot**; provided, a camper or recreational vehicle/motor home may be parked within an Owner's driveway for a period not to exceed seven (7) consecutive days, and no more than fifteen (15) days in the aggregate, within a thirty (30) day period. *Notwithstanding the foregoing, the Developer, or the Board, as applicable, may upon written notice to the Owners from time-to-time, designate in writing certain limited areas for the parking of specific types of vehicles, whether or not listed above, for specified periods of time. This Section 5.11 shall be strictly enforced, and shall not be waived, amended or modified by the Board or Association without the prior written consent of the Developer.*

5.12 Requirement to Keep Lot, Structures and other Areas in Good Order and Repair. Each Owner (other than Developer, provided it shall cause each Lot, and owned by it to be mowed periodically) shall keep each Lot owned by it, and all Structures and improvements therein or thereon, in good order, repair and appearance, including, but not limited to, the seeding, watering by an underground water sprinkler system and mowing of all lawn areas, including the area between a Lot boundary line and adjoining streets (except to the extent the Association has responsibility for such areas under this Declaration), except that certain areas within a Lot may be left in a natural condition and appearance subject to such conditions as are specified and approved by Developer or the Board, the pruning and cutting of all trees and shrubbery, and the painting, and repainting (or other appropriate external care), of all Structures and other improvements, including, but not limited to, repainting due to water stain, all in a manner and with such frequency as is consistent with good property management in relation to a quality residential neighborhood such as will exist in the Property.

NEITHER DEVELOPER NOR THE ASSOCIATION SHALL HAVE ANY LIABILITY OR OBLIGATION TO ANY OWNER OF A LOT DUE TO SOIL/SAND EROSION OR DETERIORATION.

If, in the opinion of the Board, any Owner fails to perform the duties imposed by this Section, the Board, after approval by a two-thirds (2/3) decision of the Board, and after fifteen (15) days written notice to Owner to remedy the condition in question, shall have the right, but not the obligation, and in addition to any other remedies available hereunder or at law or equity, through its contractors and representatives, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot or such improvements, and such Owner shall pay the Association for the cost thereof, together with additional amount equal to twenty percent (20%)

of such cost, within ten (10) days following demand therefor, which payment shall be a binding personal obligation of such Owner, and the Board may establish a special assessment and lien on such Lot for such cost and charge, together with interest thereon at the rate specified in Section 4.13 above, and enforce the same as provided in Article IV hereof. The lien established as a result of this Section shall be superior to all other liens or encumbrances which may thereafter arise, excepting liens for taxes and other public charges as are by applicable law made superior.

5.13 Division of Lots Prohibited. Except as authorized by the Design Committee or the Developer, no platted Lot shall be split or divided into more than one Lot or building site, but more than one Lot may be used as a building site for one dwelling.

5.14 Fences.

A. Developer may, and hereby reserves the right to, in its sole discretion, to construct and install a fence, berm, "living fence" (a combination of trees and other fencing or wall materials), wall or entrance treatment of a style and of materials satisfactory to the Developer, in its sole discretion, within any of the fence or wall easement areas, or any reserve areas shown on the plat of the Property, within other easement areas established by other easement instruments, or within Common Area, or any Lot which is converted to Common Area. Such improvements may be financed as referenced in Section 11.1 below. With respect to any Lot on which Developer has constructed an entry monument, fence, berm, "living fence" or wall, the Owner(s) adjoining such areas may not install or construct any fence or wall which is visible from adjacent streets without the approval of the Developer or the Design Committee.

B. Except as provided in subsection A immediately above, all fences shall exclusively utilize fences made of black wrought iron or tubular steel, five feet (5') in height. Fencing may not be installed to the front of a residence constructed on a Lot without the prior approval of the Design Committee.

C. All fences shall be approved by the Design Committee prior to the initial occupancy of a residence on a Lot prior to the construction or installation thereof. Following the initial occupancy of a residence all fences, and the replacement or re-installation thereof must be approved prior to installation by the Design Committee. No fence, wall, berm, series of trees, living fence or other Structure may be installed on a Lot except as permitted under this Section or as otherwise permitted by the Design Committee.

D. All fences installed within drainageways established by the master drainage and grading plan referenced in Section 9.1 shall have a minimum of four inches (4") clearance above the ground level (other than posts installed in the ground) in order to not divert or disrupt water drainage from the Lot.

5.15 Model Homes and Real Estate Offices. Notwithstanding anything to the contrary appearing elsewhere in this Declaration, any Lot owned by Developer, or any person or entity so

authorized by Developer, may be used for a model home or for a real estate or administrative office pertaining to the development of the Property (including temporary, mobile, modular, prefabricated or a permanent Structure) until all the Lots have been sold to consumers for construction of residences thereon, and residences have been constructed on all Lots and first occupied.

5.16 No Rights Beyond Property. Notwithstanding the proximity of ponds, lakes or other amenities to the Common Area and/or Property, but which are not located in such areas, no Owner shall have any right of access, use or enjoyment of any ponds, lakes or other amenities outside the Property.

5.17 Artificial Vegetation. No artificial flowers, trees or other vegetation shall be permitted on the exterior of any residence or in the yard without the consent of the Design Committee.

5.18 View. No Owner is entitled 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 and the Design Committee, because such Structure, planting material or other item obstructs any view from such Owner's Lot.

5.19 Off Street Parking. Each of the Lots shall provide a minimum of four (4) off-street parking spaces for each residence within the garage and driveway areas.

5.20 Odors; Burning. No activity (other than reasonable and customary construction activity) which emits foul or obnoxious odors, fumes, dust, smoke, or pollution outside the Lot or which creates noise, unreasonable risk of fire or explosion, or other conditions which are a nuisance shall not be conducted within a Lot. No outside burning of trash, leaves, debris or other materials shall be permitted on a Lot.

5.21 Loudspeaker; Noise. The use or discharge of any radio, stereo, loudspeaker, musical instrument, horn, whistle, bell, or other sound device so as to be audible to occupants of other Lots, except alarm devices used exclusively for security purposes is hereby prohibited.

5.22 Clippings; Debris. Dumping grass clippings, leaves, dirt or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any storm sewer, drainage ditch, any other component of the storm drainage system serving the Property, or any stream, pond, or lake, or elsewhere within the Property, including the Common Area or other Lots, is prohibited.

5.23 Safety and Security. **Each Owner and occupant of a Lot, and the respective guests and invitees thereof, shall be responsible for their own personal safety and the security of their property in the subdivision within the Property, including the Common Area, swimming pool, entry features and playground, if any, and all other amenities and improvements. The Association may, but shall not be obligated to, maintain or support**

certain activities in the subdivision within the Property designed to enhance the level of safety or security which each person provides for himself and his property, if such services are engaged at any time. Neither the Association nor Developer shall in any way be considered insurers or guarantors of security within the subdivision within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Owner acknowledges, understands and shall be responsible for informing all occupants of such Owner's Lot and residence, as well as such Owner's guests, that the Association, its Board and committees, and Developer are not guarantors of security or safety and that each person or entity residing in or using the subdivision in the Property assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots improvements thereon, resulting from acts of third parties.

5.24 Structures and Plantings Setback Distances. The plat of the Property specifies setback distances for the front, side and rear yards of Lots within which a residence and other Structures may not be constructed.

5.25 Possibility of Abandoned Wells. In the past, oil and gas wells may have been drilled in the area of the Subdivision. It is possible wells were drilled and abandoned within the Property and each Owner shall investigate such possibility to the extent it deems appropriate and Developer shall have no liability or responsibility therefore.

5.26 Trash Removal Services; Recycling. The Board shall select a single trash removal service contractor to provide regular weekly trash removal and recycling services to all residences within the Property. Each Owner or occupant of a completed residence shall utilize such trash and recycling services exclusively for such weekly services. **Owners must recycle their trash.** Except when placed at the curbside for pick-up, not to exceed a 24-hour period, trash and recycling receptacles shall be stored within the garage or at another location which is not visible from any street.

5.27 Sex Offender Laws. Kansas law requires persons who are convicted of certain sexually violent crimes after April 14, 1994, to register with the sheriff of the county in which they reside. If any Owner desires information regarding those registrants, he may find information on the homepage of the Kansas Bureau of Investigation at <http://www.Kansas.gov/kbi> or by contacting the local sheriff's office.

5.28 Storage Pods and Other Facilities. Except as otherwise permitted from time-to-time by the Board for limited periods of time, storage pods, containers or other similar storage facilities shall not be located in the open on a Lot, except on a temporary basis. A "temporary basis" as used in the proceeding sentence shall mean (a) usage by the building contractors during the initial construction of the residence, or during substantial remodeling activity (which shall be performed as soon as reasonably possible), and (b) following the completion of the initial residence, then only by the Owner(s) in connection with their move into the residence or a move out of the residence for a period not to exceed ten (10) consecutive days in connection with each

move in or move out. Whether to allow exceptions to the prohibition contained in this Section is in the discretion of the Board, but Developer recognizes that in times of substantial remodeling of a residence, and possibly other circumstances, it would be appropriate for the Board to allow such items to be stored in the open for a short time.

ARTICLE VI THE ASSOCIATION

6.1 Powers, Duties and Rights.

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

B. Developer shall exclusively carry out all of the rights, duties and powers herein delegated to the Association and the Board until the date a residence has been completed on each Lot and is first occupied, or on such earlier date as Developer shall relinquish all of such rights, duties and powers upon written notice given to the Association (with the earlier to occur of such dates being the "Turnover Date"). Developer's rights and powers hereunder include the right to solely designate the Board members and officers of the Association. The Developer may, at its option prior to the Turnover Date, partially transfer all or any part of such duties and powers to the Association or the Board. In the event of a transfer of a portion of Developer's powers and duties by the Developer to the Association or the Board, the Developer shall retain all other powers and duties which are not so specifically transferred. The Association and Developer shall cooperate fully in the transition of management following the Turnover Date. Following the expiration or relinquishment of Developer's rights hereunder, subject to Developer's remaining rights as an Owner, the Owners shall elect the members of the Board. Neither Developer's transfer or relinquishment of its rights, duties and powers hereunder, nor the occurrence of the Turnover Date, shall constitute a relinquishment of Developer's rights under Section 8.2 below.

C. The Association shall maintain, water, fertilize, mow, and keep clean the portions of the Common Area which are to be maintained by it hereunder and the portions of the green space within the arterial public street rights-of-way adjacent to the perimeter of Property. It further shall maintain, repair and/or replace the decorative entrance treatments, fence(s), walls, the swimming pool and other relative improvements erected and installed by Developer or the Association.

D. The Association shall maintain such insurance on the Common Area and facilities thereon, and liability and other types of insurance as the Board 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 the Owners.

F. The Association shall have the right to create and establish reserves for the repair, restoration or replacement of the portion of the Common Area to be maintained by it hereunder and any improvements therein.

G. The Association, through the Board, shall have the right to adopt, supplement and modify from time-to-time, such rules and regulations as it may deem advisable for the maintenance, use, conservation and beautification of the Property and for the health, comfort, safety, enjoyment and general welfare of the Owners and occupants of Lots and those using the Common Area.

H. The Board shall select a contractor to provide the exclusive trash removal service within the Property and all Owners shall exclusively use such company for such services. The cost of such trash removal services from each Lot shall be paid by the Owner(s) of each Lot. The Board may select from time-to-time a different company to provide trash removal service for all residences on the Lots and shall make the Owners aware of such decision. In the event the Board elects to change trash removal service companies, within ninety (90) days after such company is selected, each Owner shall begin to utilize the company identified by the Board to provide trash removal service at such Owner's Lot and continue to use such company exclusively until such time as the Board designates a different trash service company or notifies the Owners that it is no longer necessary for all Owners to utilize the same trash removal service company.

I. The Board shall have the authority to assess fines for any violation of the provisions contained in this Declaration. Prior to assessing any fine, the Board shall mail written notice to the last address known to the Board concerning the noncompliant Owner. If the noncompliant Owner fails to cure the violation within fifteen (15) days following the mailing of such notice by the Board or if there is a recurrence of the violation during that fifteen (15) day period, then in addition to any other liability or obligation arising under the Declaration, the Board may assess a fine against the noncompliant Owner and his or her Lot in an amount determined by the Board to be appropriate in its discretion and until paid in full, the fine shall accrue interest at the rate of fifteen percent (15%) per annum, shall constitute a lien on the noncompliant Owner's Lot, and shall be subject to enforcement and foreclosure in the same manner as a special assessment as referenced in Article IV of this Declaration.

J. The Board shall have the obligation to promptly and timely enter into financing, mortgaging, renewing or refinancing, and performing the borrower's obligations under the amenity financing referred to in Section 11.1 below.

K. Since the Developer will convey real property to the Association as Common Area, as provided in Section 2.3 above, subject to amenity mortgage financing

in place, the Association shall, upon Developer's written request, reconvey to Developer any portions of such Common Area which are unimproved by material building Structures, to the extent conveyed by Developer in error or needed by Developer in connection with the development of the Property, or nearby land.

L. The Association, through the Board, may enforce violations of this Declaration. The decision to have the Association pursue enforcement action in any particular case shall be left to the Boards' discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction or rule being enforced is, or may be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

M. The Association may engage a management company to manage the operations of the Association.

N. No proxy, power of attorney or other instrument of that nature shall be effective or accepted for any vote by a member of the Association.

O. No member may be re-elected as a member of the Board, or an officer of the Association, until a minimum of two (2) years have elapsed since the date such member last served as a member of the Board or as an officer.

6.2 Committees; Professional Assistance; Certain Limitations. The Association shall establish such committees as may be provided for in its Bylaws, and the Board may engage accountants, legal counsel and other consultants as may be reasonably necessary for the discharge of its duties hereunder.

6.3 Repair and Restoration of Improvements on Common Area. Should any improvements on any portion of the Common Area, or any part or portion thereof, which is to be

maintained by the Association hereunder, be damaged or destroyed by fire or other casualty or by intentional mischief, then, subject to the Association's right against any Owner or other person causing such damage or destruction, the Association shall be responsible for the cost and expense of repair and restoration, and, so long as there are sufficient insurance proceeds collected as a result of such damage or destruction, the same shall be done substantially in accordance with the original plans and specifications for the improvement of same.

ARTICLE VII

CERTAIN EASEMENTS, LICENSES AND ACCESS CONTROL

7.1 Public Utility, Floodway and Drainage Easements Dedicated. Easements for the installation and maintenance of all public utilities and for floodway and drainage on Lots and in the Common Area are dedicated as shown on the recorded plat of the Property.

7.2 Some Easements Not Shown on Plat. Owners should not rely on the plat of the Property to determine the location of utility or other easements or rights-of-way. Such easements or rights-of-ways are often created by separate instruments not shown on the plat and are disclosed on each Owner's title insurance policy.

7.3 Easements in Favor of Developer and Association. Developer specifically reserves unto itself, its members and affiliated entities, designees, successors and assigns, and for the Association, and for the contractors, designees and representatives of all of them, a perpetual, nonexclusive easement and right-of-way over the Lots, Common Area, and street rights-of-way within the Property, for the purpose of inspecting, evaluating, installing, constructing, maintaining, mowing, repairing, replacing and rebuilding water sprinkler systems, including water and other utility lines and related equipment, water wells, sprinkler controls, and electric meters and lines, sewers, utilities, ponds, lakes (including the expansion of ponds and lakes), improvements, underground pipelines, drains and/or mains for the purpose of transporting gas, water, sewerage and electricity over, across and through such Lots and Common Area, together with the right to excavate and level ditches and/or trenches for the location of said wells, lines, pipes, drains and/or mains. Developer may install a sign advertising the residential development within the Common Area prior to, or following, the transfer of the Common Area to the Association and Developer, its successors and assigns, hereby retain an easement for the placement, and replacement, of any such advertising sign until all Lots have been sold by Developer or its successors and assigns.

7.4 Easements of Encroachment. Developer hereby reserves for itself and the Association and grants to affected Owners of applicable Lots reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon by or on behalf of the Developer.

7.5 Inspection Easement. Developer grants to the Board, its members, the Association's management company, and the employees and representatives thereof, and the Developer hereby retains for itself and its members, representatives and contractors, a perpetual easement over the Property as necessary to enable the Association to fulfill its responsibilities under this Declaration, including entry upon any Lot or Common Area for emergency, security, and safety reasons, to perform maintenance, repairs and changes to any Lot or Common Area or the improvements thereon which are not in compliance with this Declaration and to inspect any Lot for the purpose of ensuring compliance with and to enforce the Declaration, Articles, Bylaws and rules and regulations in effect from time-to-time. Except in an emergency situation, entry in a Lot shall only be during reasonable hours and after attempting to notify the Owner.

7.6 Easements for Other Land. Developer hereby reserves for itself and its members, affiliates and designees, and their respective successors, assigns, a perpetual, nonexclusive easement over the Common Area for the purposes of access, evaluation, planning, inspecting, testing and development of other land outside the Property. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for constructing, connecting, extending, and installing any and all utilities, including, but not limited to, sewers, to such other land over areas within the Common Area which do not materially, adversely affect the use of such Common Area by the Association or its members, except temporarily during the construction or installation thereof. Developer or such affiliate, designee, successor or assign shall restore any damage to the Common Area resulting from the use of such easement. The Association hereby irrevocably grants to Developer a power of attorney coupled with an interest to execute the grant of any easement by, and on behalf of, the Association as contemplated by this Section. While not necessary, promptly following the written request of Developer, the Association shall execute and deliver to a designee of Developer a written perpetual, non-exclusive easement for reasonable access over or under the Common Area for purposes referenced above, inform reasonably acceptable to Developer.

7.7 Easement for Water From Ponds and Lakes. The Developer hereby retains for itself and grants to the Association, a perpetual easement to pump water from lakes and ponds located within the Common Area for the purpose of irrigating lawns and vegetation within the Common Area and road right-of-way areas maintained by the Association.

ARTICLE VIII

ARCHITECTURAL CONTROL; DESIGN COMMITTEE

8.1 Committee. The Design Committee shall have the rights and responsibilities for the review, approval or disapproval of plans and specifications relating to the construction of Structures on each Lot. Such committee shall review, approve or disapprove all matters pertaining to the construction, completion and occupancy of the initial residence and related Structures on each Lot, including installation of landscaping, trees, lawns, and irrigation system(s), and shall review, approve or disapprove all specifications, plans and other matters pertaining to fencing; drainage matters as referenced in Section 9.1 below and elsewhere; and (on a Lot by Lot basis) following first occupancy of the initial residence and related Structures on a

Lot, all specifications, plans and other matters for remodeling, re-roofing, additions, and the repainting or changing of the initial residence and related Structures, including adding trees and landscaping, and any additional new Structures to be constructed, placed or installed on such Lot.

8.2 Membership.

A. The original member of the Design Committee shall be Developer. If Developer, upon written notice to the Association, relinquishes its right to be the sole member of the Design Committee, thereafter the Design Committee shall be comprised of up to three (3) persons designated by the Board. The decision of a majority of the Design Committee shall be binding; provided, the Design Committee may delegate its rights and responsibilities hereunder to one or more of its members from time-to-time.

8.3 Construction Requirements. Unless approval is otherwise given in writing by the Design Committee, the following construction guidelines shall be complied with as to each Lot:

A. *Materials; Basement; Roof Materials; and Other Matters.* As to all Lots, but subject to such waivers or modifications as are permitted by the Design Committee from time-to-time, the applicable construction requirements shall be as follows:

i. Exterior walls and facings of all buildings, Structures and appurtenances thereto constructed on any Lot shall be of brick, stone, concrete siding, stucco, wood siding, wood, glass or glass blocks or any combination thereof. Masonite siding is not allowed.

ii. Except as specifically authorized by the Design Committee for tile or other specific types of roofing material, all roofs on all building improvements on any Lot shall be a heavy composition material approved in advance of the initial construction of a residence by the Design Committee, which approval shall include the color, or colors, thereof. Heritage II Weatherwood shingles are permitted.

iii. The minimum number of square feet of floor area within each residence shall be approved by the Design Committee. Unless otherwise approved by the Design Committee the minimum square footage on the main floor level shall be 1650 square feet on small Lots, and 1800 square feet on larger Lots. The Design Committee shall determine which of the Lots are considered small or large Lots.

v. The exterior front of each residence shall contain the minimum of Wainscoting, brick or stone, as required by the Developer or Design Committee.

B. *Windows.* Window frames for buildings on Lots shall be wood or vinyl or other composition materials as approved from time-to-time by the Design Committee.

C. *Initial Landscape.* The initial landscaping installed on a Lot shall include a minimum of two (2) hardwood shade trees (which trees must be planted in the front yard of the Lot) of at least three and one-half inch (3 1/2") caliper. Ornamental trees will not

be included in the number of hardwood shade trees required hereunder. Such landscaping shall be installed on each Lot as soon as reasonably possible following the construction of a residence thereon; provided, if it is not seasonal to plant such landscaping materials at the time of such completion, then promptly thereafter when such planting is seasonal. As soon as practicable, but in any event, no later than the planting season immediately following completion of a residence on a Lot, the Owner thereof shall plant a lawn over the entire Lot excluding the areas on which approved Structures are constructed and comply with the landscaping requirements specified above and contained on any landscaping plan for the Lot that is submitted to and approved by the Design Committee. Front yard areas of Lots, exclusive of improvements, shall be at least eighty percent (80%) grass, unless otherwise approved in writing by the Design Committee.

D. *Retaining Wall Materials.* In the event of the construction of any retaining wall on a Lot the plan and materials utilized must be previously approved in writing by the Design Committee.

E. *Basketball.* All basketball backboards shall be either white or Plexiglas similar material and shall be placed or installed only in the rear yard. All basketball backboards and supports shall be approved by the Design Committee prior to installation. *No temporary or moveable basketball pole/backboard/goals are permitted in the front of any Lot which are visible from the street. No recreation and play equipment, shall be placed or allowed to the front of the residence, whether on the driveway, street, or in the yard.*

F. *Vegetable Gardens.* All vegetable gardens in Lots shall be in the back yards only and may not utilize more than ten percent (10%) of the ground area in the back of the residence.

G. *Exterior Wood Surfaces.* All exterior wood surfaces on homes (excluding decking) must be painted, or stained and sealed.

H. *Coverings.* No temporary covering of a swimming pool, tennis court, patio, or otherwise, of a rigid or "bubble" type shall be permitted on a Lot. No tennis or similar court may be constructed on a Lot.

I. *Sheds.* Detached outbuildings, including garages, sheds, and similar structures, may be permitted if specifically approved by the Design Committee as to design, materials and location on a Lot. Such outbuildings shall be constructed on a concrete pad. Unless otherwise approved by the Design Committee, the exterior of detached outbuildings constructed on a Lot shall consist of the same exterior material as the residence, shall not exceed two thousand four hundred square feet (2,400sf) of floor area or thirty five feet (35') in height above ground level, and approved as provided in this Article. Such outbuildings may not be constructed on Lots 22, 23, 24, 25 or 26, Block A, or Lots 2, 3, 4, and 5, Block B, all in the First Addition, without the specific authorization of the Design Committee.

J. *Firewood Stacks.* All firewood stacks in excess of two cords of wood shall be screened from view from neighboring Lots and not located within the front of the residence or rear yard building set back area, and no stack shall exceed five feet (5') in height.

K. *Yard Art.* All forms of sculpture or "yard art" must first be approved by the Design Committee.

L. *Pad Elevations.* Pad elevations and all exterior drainage shall be verified by Developer's engineering firm at the cost of Owner and any deviation therefrom and any resulting liability, damage, or costs incurred as a result thereof, shall be the responsibility of the Owner.

M. *Mailbox Structures.* Mailboxes will be United States Post Office approved cluster/slot mailbox units, and will be installed by Developer. At the time this Declaration is executed, Developer estimates the cost of such mailbox to each Owner shall be Two Hundred Fifty Dollars (\$250.00), which amount shall be paid to Developer at the time of the purchase of the Lot. If an Owner fails to pay Developer at the Lot closing, the Owner shall pay Developer such amount immediately upon demand. The Association shall maintain, repair and replace the cluster/slot mailbox units serving such Owner's residence so that the same shall be in a good condition and appearance.

N. Flat Roofs and Windows. No flat roof shall be permitted, except with the written permission of the Developer or Design Committee.

O. Culvert Pipes and Ditches. The size of each Lot's culvert shall be determined by the Cedar Ranch drainage plan. The driveway culverts shall have a concrete headwall built on both ends of the pipe, or a similar end-section design as approved by the Design Committee. The concrete headwalls, or end-sections shall be uniform in design throughout the development. Each Owner shall maintain, repair and replace the ditches so that they are in good condition and appearance at all times within his Lot and the Association shall maintain the ditches around the Common Areas and any unsold Lot. **Each Owner is hereby advised that if the Owner shall fail to adequately maintain its culvert, the City of Derby, Kansas has the right, but not the obligation, upon a minimum of ten (10) days advance notice, to correct the deficiency and the cost thereof shall be assessed against the Owner's property as a lien.** The size of culvert installed on each Lot shall be the recommended culvert size specified on Exhibit "A" hereto.

8.4 Approval Required of Plans and Specifications and Other Matters. Except as otherwise specifically provided in this Declaration, prior to construction of the initial residence and other Structures on a Lot, or the remodeling of an unoccupied residence on a Lot, no Structure shall be commenced, erected or permitted to remain on such Lot, unless plans and specifications, grading elevations, square footage, exterior materials, exterior lighting, location, general landscaping plans, exterior color scheme therefor and number of square feet of floor area

shall have been submitted to and approved in writing by the Design Committee. Subsequent to construction and completion of the initial residence and related Structures and the first occupancy thereof, no existing Structure upon any Lot, may be remodeled or altered in any manner which materially changes the exterior appearance thereof (including, but not limited to, the roof or exterior color scheme and lighting) or Lot drainage and grading plan, nor shall any new Structure be placed on such Lot, unless plans therefor shall have been submitted and approved in writing by the Design Committee.

The plans and specifications submitted by an Owner shall be in such form and shall contain such information as may be required by the Design Committee, including, as requested by such committee, (i) a site plan of the Lot or Lots, showing the nature, exterior color scheme, kind, shape, size, height, materials and location with respect to the particular Lot or Lots (including proposed front, rear and side setbacks) of all Structures, the location thereof with reference to Structures on adjoining portions of the Property, and the number and location of all parking spaces and driveways on the Lot or Lots; (ii) a landscaping plan in compliance with Section 8.3C above for the Lot and the portions of the Common Area the Owner(s) of such Lot are required to maintain pursuant to Section 5.12 above; and (iii) the number of square feet of floor area contained in a residence. Plans and specifications shall be deemed to be submitted to the Design Committee at such time as the Owner requesting such approval shall deliver the same to a member of such committee and shall have obtained a written receipt from such member acknowledging receipt of the same. No approval of the Design Committee shall be deemed or implied to have been given hereunder; **actual written approval from such committee is required.** THE FAILURE OF ANY OWNER TO OBTAIN THE APPROVALS REQUIRED HEREBY SHALL BE AT SUCH OWNER'S RISK AND LIABILITY. If an applicant for Design Committee approval is in default under this Declaration, including, but not limited to, the payment of assessments, the Design Committee shall have the right to deny the requested approval.

8.5 Decisions; Appeals. So long as Developer continues to designate members of the Design Committee, all decisions of such committee shall be final and conclusive. As to the Design Committee, after the date, if ever, Developer has relinquished in writing the right to designate the members of the Design Committee, and in the event any Owner believes a decision of the Design Committee to be in error, such Owner may appeal such decision to the Board upon written notice given to the Board within fifteen (15) days following the date the Owner is notified of the decision of the Design Committee, with respect to which such Owner desires to appeal. At the time the Owner files a notice of appeal with the Board, such Owner shall pay to the Association a fee related to such appeal in the amount of Two Hundred Dollars (\$200.00). The Board shall notify the appealing Owner at least one (1) week before the date the Board wishes to consider such appeal, and such Owner shall have the right to provide written materials and appear before the Board on such matter. In the event an Owner is dissatisfied with the decision of the Board with respect to such appeal, such Owner may further contest the decision of the Design Committee and the Board solely and exclusively by arbitration in accordance with the Act referenced in Article XII below, and in accordance with the procedures specified in such Section. The decision on such matter rendered by the arbitrators shall be final and conclusive on the subject thereof. To avoid doubt, in no event may the decision of the Design Committee be

appealed or the subject to arbitration as long as the Developer approves or selects the members of such committee.

8.6 Right Of Inspection. Representatives of the Board or Design Committee 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 Design Committee, 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.

8.7 Violation. If any Structure shall be constructed, remodeled, 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 pursuant to the provisions of this Article VIII, such construction, remodeling alteration, erection, maintenance, placement or use shall be deemed to have been undertaken in violation of this Article VIII and without the approval required herein, and, upon written notice from the Board, any such Structure so constructed, remodeled, altered, erected, placed or maintained upon any Lot in violation hereof shall be promptly removed or re-altered, and any such use shall be terminated, so as to extinguish such violation, all at the cost and expense of the applicable Owner(s) of the Lot and residence. If, fifteen (15) days after the 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 violation, the Association, after approval by a two-thirds (2/3) decision of the Board, shall have the right, but not the obligation through its agents, contractors and representatives to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the violation and such Owner shall pay the Association for the cost thereof, together with an additional amount equal to twenty percent (20%) of such cost, within ten (10) days following demand therefor, which payment shall be a binding personal obligation on such Owner, and the Board may establish a special assessment and lien on Lot for such cost and charge, together with interest thereon at the rate specified in Section 4.12 above, on such Lot for the cost thereof and enforce the same as provided in Article IV hereof. The lien established as a result of this Section shall be superior to all liens and encumbrances which may thereafter arise, excepting liens for taxes and other public charges which are by applicable law made superior. The rights of the Board and Association hereunder are cumulative and in addition to any other rights or remedies available at law or equity.

8.8 No Liability. Neither of the Design Committee, and members thereof, the Developer, the Association, the Board, nor any officer, director, member, representative, designee, agent or employee thereof, shall be personally liable to any Owner or to any person, firm, corporation or other entity for any damages arising from any mistake in judgment, negligence, nonfeasance, performance or nonperformance of any duties, the approval, disapproval or failure to approve any matter submitted for approval, for the adoption, amendment or revocation of any rules, regulations, restrictions pursuant to this Declaration, guidelines or the Associations' Articles or Bylaws, responsibilities or functions under this Declaration, including, but not limited, to this Article and Section 9.1 below, or for any defect in any Structure

constructed from any approved plans and specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Developer, the Association, the Design Committee, the Board, or the officers, directors, members, employees, and agents of any of them to recover any of the aforesaid damages and hereby releases, quitclaims, and covenants not to initiate arbitration for any claims, demands, and causes of action arising out of or in connection with any judgment, negligence, nonfeasance, performance, nonperformance, approval, disapproval or failure to approve 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.

8.9 No Waiver of Future Approvals. Each Owner acknowledges that the persons reviewing applications under this Article will change from time-to-time and that opinions on aesthetic matters, as well as interpretation and application of the architectural guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Structure until the Structure is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Design Committee may refuse to approve similar proposals in the future. Approval of applications or plans for any Structure completed or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

8.10 Variances. The Design Committee may authorize in writing variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. No variance shall (a) be effective unless in writing; or (b) prevent the Design Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

ARTICLE IX

DRAINAGE; VARIOUS WATER RELATED MATTERS

9.1 Drainage Matters. Developer has caused its engineering firm to prepare a master drainage and grading plan for the Lots, which plan may be revised by such firm from time-to-time, and each Owner shall strictly comply with the same. Attached as Exhibit "B" hereto is the Drainage Plan of Cedar Ranch Estates. No Owner shall place or install any Structures, including, but not limited to, trees, shrubbery, landscaping, sand boxes, gardens, retaining walls or playground equipment in any drainage easement or channel.

The Association shall designate a committee of Owners to meet with new Owners for the purpose of informing them regarding grading and drainage matters concerning the Lots. Such educational process is vital in order to avoid water drainage problems within the Property. Either before or promptly following the purchase of a Lot, each person must contact a representative of

the Association and ask to be informed concerning grading and drainage matters relating to the Property.

Prior to the commencement of construction of the initial residential improvements and landscaping on a Lot, at the request of the Developer or the Design Committee, the Owner shall hire the subdivision's engineering firm (Baughman Engineering Co., P.A. 316-262-7271) at its expense to prepare a Lot Grading Plan for the Lot. Each Owner shall comply with the Lot specific drainage plan which is prepared by such firm. Promptly following the completion of construction of the initial residential improvements on such Lot, the Owner shall hire the same engineering firm to determine the grading of the Lot at that time. Developer, and the Association, shall have no liability or responsibility to any Owner due to: the failure of the builder which constructs the residence on the Lot (whether or not such builder is a participant in the Builder's Program for the development); adjoining property Owner(s); or the lawn, landscaping or fencing contractor to comply with the aforementioned grading and drainage requirements; or for any resulting effect on the Lot, or Owner's improvements, whether or not the Design Committee shall have approved any plans for such work.

The Design Committee or persons designated by the Design Committee (including the management company engaged by the Association) 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. A determination by the Design Committee concerning whether or not a Lot is in compliance with such guidelines, shall be final and binding on all Owners. In the event at any time the Design Committee determines that a Lot is not in compliance with the aforesaid guidelines, the Design Committee shall give notice to the Owner thereof and demand that such corrective action be taken as is necessary to achieve compliance. If fifteen (15) days after the notice of such violation, or such additional time as may be specified by the Design Committee, the Owner of such Lot has not taken reasonable steps to correct the same, the Board on behalf of the Association and the Design Committee shall have the right (but not the obligation) in addition to any other rights or remedies available under this Declaration, through its agents and contractors, to enter the Lot and to take such steps that may be necessary to bring the same into compliance. The Owner of the Lot so corrected shall reimburse the Association for the costs of such compliance and pay the Association a fee equal to twenty percent (20%) of such amount. In the event such Owner fails to pay such reimbursement in full within ten (10) days following demand thereof, the Board may thereafter establish a special assessment applicable to such Owner and his Lot for the costs thereof and enforce the same as provided in Article IV hereof. Developer recommends that any time a Lot is surveyed by an Owner, whether in connection with mortgage financing or otherwise, that the surveyor verify that the grading and drainage pins located in the rear of the Lot are at the elevations required by the master and drainage and grading plans referred to above. It is the Board's (but not the Developer's) responsibility or obligation to enforce compliance with the master drainage and grading plans, to the extent the Board deems it appropriate under the applicable circumstances. The Design Committee and the Developer, or the members thereof, shall have no liability or responsibility to any builder, contractor, 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 or any approved lot drainage and grading plan or for the Design Committee or the

Developer not requiring a lot drainage and grading plan or compliance therewith or for the quality or compaction of any soil. The rights of the Design Committee, the Board and the Association hereunder are cumulative and in addition to any rights and remedies otherwise available at law or equity.

9.2 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, or in the case of Lots adjoining a pond or lake, a beach area, within such Lot. 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 and other installations of Structures within the Lot. Some Lots may have previously been located in a designated flood plain, in which situations the Developer, 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 City of Derby, Kansas, Sedgwick County, 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 such City and the other applicable agencies, consider inherent risks and determine whether to obtain and maintain flood insurance. Neither Developer nor the Association, building contractor or brokers involved in the development of the residential area, sale of the Lot, or construction of a residence on a Lot, shall have any liability or responsibility for any such damage resulting from such water encroachment.

9.3 Erosion; Water Pollution Control Permit and Related Matters; Compliance With Laws. 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. Such permit, laws, and regulations, together with laws and ordinances of the city and county in which the Property is located, require that erosion and sediment control measures be implemented in connection with construction activities on such Lot, including, but not limited to, site work such as clearing, excavating, and grading the Lot in order to eliminate or substantially reduce stormwater discharge, the discharge of pollutants and water quality violations. Significant penalties may be imposed in the event activities on any Lot are not conducted in full compliance with the aforementioned permit, laws, regulations and ordinances. Each Owner agrees to conduct activities, including construction activities, on his or her Lot strictly in accordance with this Declaration, all laws, rules, regulations, and ordinances now or hereafter in effect, including, but not limited to, those referenced above, by reason of the aforesaid permit, regulations, rules and ordinances and shall indemnify and defend Developer and the Association from any consequences of such Owner's, or his contractors' or subcontractors', failure to so comply, including but not limited to all damages, liabilities, fines, penalties and costs and expenses, including reasonable legal fees and expenses. IT SHALL BE THE SOLE RESPONSIBILITY

OF THE LOT OWNER (AND NOT THE RESPONSIBILITY OF THE DEVELOPER OR THE ASSOCIATION) TO REPAIR, PREVENT OR REPLACE THE EROSION OF ANY LOT.

9.4 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, ponds and bodies of water may at some point in the future become dry or substantially empty of any water. **Neither Developer, the Association, the Board, any real estate marketing company, broker or agent nor any officer or employee of Developer, any such real estate marketing company, or the Association shall have any liability or responsibility to Owners for any change in the water levels in the ponds, or bodies of water, including if such bodies of water become dry or substantially empty of water.**

9.5 Trench Backfill. The Owners of each Lot are advised that the trench associated with the sanitary sewer main on their property is subject to settlement. The Owners of each Lot are responsible for any additional trench backfill that may be necessary from time-to-time to address trench settlement. If the sanitary sewer main extending to such Owners' residence is served from a utility easement in the front portion of the applicable Lot; prior to the construction of the vehicular driveway serving a residence which crosses a utility easement and the sewer trench line for the public main line of the sewer, the Owners of the applicable Lot shall be responsible for restoring any trench settlement. The applicable Lot Owners shall add soil and re-compact the trench area, if necessary and shall re-enforce the driveway pavement above and extending across the sewer trench. The City of Derby and Developer shall not have and liability or responsibility for any trench settlement within the utility easement area.

ARTICLE X APPROVED BUILDER; MARKETING FEE

Any Owner desiring to construct the initial residence and related improvements on a Lot must obtain Developer's written approval concerning the building contractor constructing such residence and related improvements, which approval shall be made in Developer's sole discretion based on the experience and history of the contractor in connection with construction of residences within subdivisions of comparable quality with the Property and such contractor's financial condition. Each Owner is hereby informed that, among other things, all approved builders are required to pay a marketing fee (the "Marketing Fee") in the amount of five percent (5%) of the value ("Value") of the initial residence and related improvements constructed on the applicable Lot. The Value shall be determined in Developer's sole discretion to be either (i) the value in the Owner's loan appraisal (and each Owner shall provide Developer with an accurate copy thereof promptly on demand) in connection with obtaining such Owner's permanent loan (that is, not a construction loan); or (ii) such other value determined by Developer. If such approved builder fails to pay the same, the Owner of such Lot shall be required to pay the delinquent amount. Each approved builder shall be required to execute, along with the applicable Lot Owner(s), an agreement regarding the Marketing Fee on terms satisfactory to Developer prior to commencement of construction. The Marketing Fee shall be paid at the time of substantial completion of such initial residence, and related improvements or no later than five

(5) days prior to the occupancy thereof, whichever occurs first. The specific party to be paid the Marketing Fee and the calculation of the Marketing Fee is included as part of the initial sales contract concerning a Lot. If the Marketing Fee is not paid when due, it shall accrue interest at the rate of twelve percent (12%) per annum, not to exceed the maximum rate allowed by law until the Marketing Fee, with accrued interest, is paid in full. The obligation to utilize an approved builder and the obligation to pay any portion of the Marketing Fee not paid by the approved builder for the purposes described herein shall be binding on and/or inure to the benefit of the Developer and the Lot Owners and their respective heirs, successors and assigns (including successor owners of the Lot). *Any Owner, or prospective Owner, desiring further information concerning a Lot should contact the marketing representative for the Property.* The marketing representative which is designated by Developer shall be the exclusive listing agent to enter data into the MLS regarding the sale, or offering for sale, of Lots.

ARTICLE XI

NOTICE OF AMENITY FINANCING; SPECIAL ASSESSMENTS

11.1 Amenity Mortgage Financing. Notice is hereby given that Developer (even if the Turnover Date has occurred and Developer no longer has legal title to the Common Area) and/or Association will obtain, and renew and refinance from time-to-time, a mortgage secured loan or loans in order to pay the cost of installing or constructing the clubhouse, swimming pool, entry features, playground, improvements and any other improvements proposed by Developer and related equipment and all other amenities and other improvements within the Common Area for the use and benefit of the Owners. After Developer and/or Association initially obtains such loan(s), the Association, through the Board, shall continue to renew such loan(s), or obtain a different loan(s). All or any portion of the Common Area shall be mortgaged from time-to-time to secure such loan(s), as required by the lender(s). Assessments or funds collected by the Association under Article IV hereof (including transfer fees), shall be utilized for repayment of the interest and principal arising from any such loan(s) in accordance with the terms of such financing. Upon obtaining such loan(s) (and the renewal and refinancing thereof from time-to-time), neither the Developer nor the Association shall be required to give notice thereof to the members of the Association. The Association shall indemnify, defend and hold Developer, and its members, and guarantors of such financing harmless from any proceedings, judgments, claims, liabilities, costs and expenses, including attorney's fees, arising out of any such loan or mortgage, and any guaranties thereof, including, but not limited to, the failure to repay any amounts due thereunder. At its election, Developer may execute mortgages, promissory notes and other documents for financing, or the renewals or refinancing on behalf of the Association from time-to-time, in its discretion, without any authorization from the Association or the Board. The Association hereby irrevocably grants to Developer a power of attorney coupled with an interest to execute the granting of any mortgage and execution of a promissory note and other financing documents on behalf of the Association to facilitate the financings, renewals and refinancing contemplated by this Section.

11.2 City Special Assessments. Notice is hereby given to each purchaser of a Lot that special assessments will be spread by the City of Derby, Kansas, or other government bodies, to

Lots in the future, due to the installation of arterial streets, lakes, ponds, sanitary and storm sewers, sidewalks, waterlines, other utilities, etc. Additionally, from time-to-time, the Lots may become subject to special assessments by reason of work performed by the City of Derby, Kansas, or other government bodies, to major arterial streets in the vicinity of the Property. Special Assessments may extend for a period of fifteen (15) to twenty (20) years. Each Owner must independently obtain such information as such Owner desires or deems sufficient concerning the amount of special assessments which currently, and in the future will, affect such Owner of a Lot.

ARTICLE XII

ADDITIONAL LAND

Developer may, from time-to-time, annex additional real property, including additional Common Area, into the Property covered by this Declaration, and thereby subject the same to all of the terms, provisions, and conditions of this Declaration (as provisions hereof may be supplemented, deleted or modified solely as to the annexed land specifically by the document annexing such additional real property), by the execution and filing for recordation with the Register of Deeds of Sedgwick County, Kansas, of an instrument expressly stating an intention so to annex and describing such additional real property to be so annexed. During the twenty-five (25) year period commencing with the date of the recording of this Declaration, Developer, its successors or assigns, may annex such additional real property in its absolute discretion. From and after the termination of said twenty-five (25) 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 in attendance, in person, at an annual meeting or a special meeting called for such purpose.

ARTICLE XIII

MISCELLANEOUS

13.1 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 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 Developer provided for in this Declaration.

13.2 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. 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 construction, use or occupancy 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 construction, 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.

13.3 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.

13.4 Assignment of Powers. Any and all rights and powers of Developer provided for in this Declaration and any modification or amendment hereof may be delegated, transferred, assigned, conveyed or released by Developer to any third party and/or to the Association. The Developer'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 subsequent to the effective date of the assignment.

13.5 Non-Waiver. The failure by the Association, Developer, any Owner or any other person to enforce any of the restrictions, conditions, covenants, reservations, liens or charges to which the Property or any Lot 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. This non-waiver provision may only be waived in writing by the Board and the Developer; provided, Developer's approval shall not be required after residences have been constructed and completed on all Lots.

13.6 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.

13.7 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.

13.8 Successors-in-Interest. Reference herein to either the Association or Developer 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.

13.9 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, Developer, and the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty-five (35) years from the

date hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by Owners of not less than sixty-six percent (66%) of the Lots, has been recorded, agreeing to abolish or change these covenants, conditions and restrictions, in whole or in part.

13.10 Amendments. Amendments, including restatements, waivers, modifications, deletions, alterations, removals, changes and additions hereto, to this Declaration (collectively called an "amendment") may be made by Developer, or its successors and assigns, in its sole discretion, from time-to-time, until a residence has been constructed on each Lot and initially occupied, or the Turnover Date, whichever occurs first. Following the date Developer, or its successors and assigns, no longer has the right to unilaterally amend this Declaration as provided above, any provision contained in this Declaration may be amended, as follows:

A. Notice. Notice of the subject matter of the proposed amendment shall be included in a notice to the Owners of a meeting of the Association, at which the proposed amendment shall be considered, or in accordance with such other voting method as shall be allowed by the Bylaws.

B. Resolution. A resolution adopting a proposed amendment may be proposed by the Board or Developer. Unless otherwise specified in this Declaration, any proposed amendment must be approved by the Owners casting not less than two-thirds (2/3) of the aggregate number of votes cast by the Owners present at such meeting, or pursuant to such other voting method allowed by the Bylaws. Such votes may be cast (subject to the limitations regarding the use of proxies as provide herein) as provided for herein and in the Bylaws of the Association.

A copy of each amendment provided for in this Section shall be filed of record in the Register of Deeds for the county in which the Property is located. With respect to amendments, following the date the Developer, or its successors and assigns, no longer has the unilateral right to amend this Declaration, the Secretary of the Association shall file a certificate along with such amendment, certifying that in accordance with this Declaration and the Bylaws, and that the proper number of votes approving the amendment was obtained. Such certificate will be filed as part of or with such amendment.

Notwithstanding the foregoing, so long as residences are not completed on every Lot any such amendment (including, but not limited to, those modifying any "Construction Requirements" contained in Section 8.3 above) shall require the prior written consent of Developer, or assignee, in order to be effective.

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

13.12 Exclusion of Applicability. The Developer and its assigns shall have the power at any time to waive any or all of the restrictions or covenants contained herein as to the Lots which are unimproved and under its ownership or the ownership of its assigns or licensed residential construction contractors at the time of such waiver. The Developer specifically reserves the right to carry on its business in the Property, so long as it owns a Lot, including, but not limited to, maintaining sales offices, model homes, business offices and other facilities necessarily convenient for the business of Developer.

13.13 Limitation on Liability.

A. Notwithstanding anything to the contrary contained herein, it is expressly agreed that neither the Developer (including without limitation any assignee of the interest of Developer hereunder) nor any member in Developer (or any assignee) or any officer, employee, or consultant of Developer 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 or Bylaws, the rules of the Association, the design guidelines of the Design Committee, or for any action taken, or not taken, pursuant to authority granted Developer, thereunder or with respect thereto. To the fullest extent permitted by law, neither the Developer, its members, the Association, the officers, employees, consultants or directors thereof or any Design Committee 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 or plans and specifications (whether or not defective), course of action, inaction, omission, negligence or the like made in good faith and which the Developer 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.

B. TO THE EXTENT ALLOWED BY LAW AND EQUITY, NEITHER THE DEVELOPER, THE BOARD NOR THE ASSOCIATION SHALL HAVE ANY LIABILITY HEREUNDER TO ANY OWNER, FORMER OWNER, PROSPECTIVE OWNER, LOT OCCUPANT, OR ANY LICENSEE OR INVITEE THEREOF FOR CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES.

13.14 No Liability for Drafting. Developer 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 the Association or an Owner (or any other person or entity), Developer 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 Developer shall have no such liability.

13.15 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.

13.16 Waiver of Jury. A trial by jury is hereby irrevocably waived for any action, proceeding or counterclaim brought by any person or entity against Developer, the Board or the Association on any matter arising out of or in any way connected with this Declaration and/or the Lot or any condition or circumstance related thereto.

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

DEVELOPER:

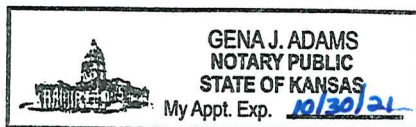
Cedar Ranch Properties, LLC

By: Gary W. Renberger
Name: Gary W. Renberger
Title: Member

STATE OF KANSAS)
)
COUNTY OF SEDGWICK) ss:

BE IT REMEMBERED, that on this 20th day of August, 2020, before me the undersigned, a Notary Public in and for the County and State aforesaid, came Gary W. Renberger, Member of Cedar Ranch Properties, LLC, a Kansas limited liability company, personally known to me to be the same person who executed as such the within instrument on behalf of said limited liability company by authority of its members, 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 affixed my official seal, the day and year first above written.



Genia J. Adams
NOTARY PUBLIC

My Commission Expires: 10/30/21

EXHIBIT "A"

Cedar Ranch Estates Culvert Size Chart

<u>Lot</u>	<u>Block</u>	<u>Recommended Culvert</u>
1	A	24"
2	A	24"
3	A	24"
4	A	15"
5	A	15"
6	A	15"
7	A	15"
8	A	15"
9	A	15"
10	A	15"
11	A	15"
12	A	18"
13	A	15"
14	A	15"
15	A	18"
16	A	15"
17	A	15"
18	A	15"
19	A	15"
20	A	15"
21	A	15"
22	A	15"
23	A	15"
24	A	15"
25	A	15"
26	A	15"
27	A	15"
28	A	15"
29	A	15"
30	A	15"
31	A	15"
32	A	15"
33	A	15"
1	B	15"
2	B	15"
3	B	15"
4	B	15"
5	B	15"
6	B	15"
7	B	15"
8	B	15"
9	B	15"
10	B	15"
11	B	18"
12	B	18"
13	B	15"
14	B	15"

15	B	15"
16	B	15"
17	B	15"
18	B	15"
19	B	15"
20	B	15"
21	B	15"
22	B	15"
23	B	15"
24	B	15"
25	B	18"
26	B	24"
27	B	18"
28	B	15"
29	B	15"
30	B	15"
31	B	15"

1	C	24"
2	C	24"
3	C	24"
4	C	24"
5	C	24"
6	C	18"

1	D	15"
2	D	15"
3	D	15"
4	D	15"
5	D	15"
6	D	18"
7	D	18"
8	D	15"
9	D	15"
10	D	15"
11	D	15"
12	D	15"
13	D	15"
14	D	15"
15	D	15"
16	D	15"
17	D	15"
18	D	15"
19	D	15"
20	D	15"
21	D	18"
22	D	18"
23	D	15"
24	D	2-36*

<u>Lot</u>	<u>Block</u>	<u>Recommended Culvert</u>
1	E	24"
2	E	24"
3	E	24"
4	E	15"
5	E	15"
6	E	15"
7	E	15"
8	E	15"
9	E	15"
10	E	18"
11	E	15"
12	E	15"
13	E	15"
14	E	15"
15	E	15"
16	E	15"
17	E	18"
18	E	24"
1	F	15"
2	F	15"
3	F	15"
4	F	15"
5	F	15"
6	F	15"
7	F	24"
8	F	18"
9	F	18"
10	F	15"
11	F	15"
12	F	15"
13	F	15"
14	F	15"
15	F	15"
16	F	15"
17	F	15"

EXHIBIT “B”

Drainage Plan

[See following page.]

CEAR RANCH ESTATES **DERBY, SEDGWICK COUNTY, KANSAS**

