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**AMENDED AND RESTATED
SWEETWATER CREEK DECLARATION**

THIS AMENDED AND RESTATED SWEETWATER CREEK DECLARATION (this “Declaration”) is made as of the 15th day of August, 2022, by and among the persons who have executed this document in their capacities as owners of record of certain of the lots described below (collectively, the “Owners”) and STEVE FOLEY CONSTRUCTION CO., INC., a Kansas corporation, as the developer of the real property described below (the “Developer”), for the purpose of amending, restating and replacing both (i) that certain Sweetwater Creek Homes Association Declaration recorded on August 10, 2004 with the Register of Deeds of Miami County, Kansas in Book 832, at Page 404, and (ii) that certain Declaration of Restrictions to Sweetwater Creek Subdivision recorded August 10, 2004 with the Register of Deeds of Miami County, Kansas in Book 832, at Page 412, as amended by that certain Amended Declaration of Restrictions to Sweetwater Creek Subdivision recorded August 30, 2011 with the Register of Deeds of Miami County, Kansas as Instrument No. 2011-03378 (together, the “Original Declarations”), so that the Original Declarations are combined into one document and now read as set forth below.

This Declaration has been approved in writing by the Developer and by the Owners of at least two-thirds (2/3rd) of all of the Lots now existing in the subdivision. This Declaration will become effective against all of the Lots in the subdivision once it is recorded with the Register of Deeds of Miami County, Kansas.

To the extent any now existing improvement on any Lot complies with the Original Declarations but violates any restriction or requirement set forth in this Declaration, such violating improvement shall be grandfathered from such provisions of this Declaration so long as the violating improvement continues to exist and is maintained in good condition and repair.

WITNESSETH:

WHEREAS, Developer has executed and filed with the Register of Deeds of Miami County, Kansas, various plats of the subdivision known as “Sweetwater Creek”, which plats include the following described lots and tracts:

Lots 1 through 37, SWEETWATER CREEK, a subdivision in Spring Hill, Miami County, Kansas;

Lots 38 through 70, SWEETWATER CREEK II, a subdivision in Spring Hill, Miami County, Kansas;

Lots 71 through 90, and Tracts B and C, SWEETWATER CREEK III, a subdivision in Spring Hill, Miami County, Kansas; and

WHEREAS, the parties desire to create, maintain and continue a residential neighborhood and a homes association for the purpose of enhancing and protecting the value desirability, attractiveness and maintenance of the property within the subdivision;

NOW, THEREFORE, in consideration of the premises contained herein, the parties, for themselves, all owners within the subdivision, and for their successors and assigns, and for their future grantees, hereby subject all of the above-described lots and tracts to the covenants restrictions, changes, assessments and easements set forth below:

ARTICLE I DEFINITIONS

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

(a) **“Approving Party”** means (i) prior to the recording of the Certificate of Substantial Completion, the Developer (or its designees from time to time) and (ii) subsequent to the recording of the Certificate of Substantial Completion, the Board (or with respect to Exterior Structures and other matters assigned to it, the Architectural Committee).

(b) **“Architectural Committee”** means: (i) prior to the Turnover Date, the Developer (or its designees from time to time); and (ii) on and after the Turnover Date, a committee comprised of at least three members of the Homes Association, all of whom shall be appointed by and serve at the pleasure of the Board (subject to the provisions of Section 9.12 below).

(c) **“Assessment”** means each annual assessment, special assessment, initiation assessment, monetary fine, late fee, interest, lien fee and other amount levied by the Homes Association against a Lot or otherwise payable by an Owner of a Lot to the Homes Association in accordance with this Declaration or the Bylaws of the Homes Association.

(d) **“Board”** means the Board of Directors of the Homes Association.

(e) **“Certificate of Substantial Completion”** means a certificate executed, acknowledged and recorded by the Developer with the Recording Office stating that all of the Lots in the Subdivision (as then contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are substantially completed; provided, however, that the Developer may execute and record a Certificate of

Substantial Completion or similar instrument in lieu thereof in Developer's absolute discretion at any earlier time and for any limited purpose hereunder. The execution or recording of a Certificate of Substantial Completion shall not, by itself, constitute an assignment of any of the Developer's rights to the Homes Association or any other person or entity.

(f) **"Common Area"** means (i) Tracts B and C of Sweetwater Creek III and all landscaping and improvements thereon, (ii) any entrances, monuments, berms, street islands, and other similar ornamental areas and related utilities, lights, irrigation systems and landscaping constructed or installed by or for the Developer or the Homes Association at or near the entrance of any street, and any easements related thereto, in the Subdivision, (iii) all landscape easements that may be granted to the Developer and/or the Homes Association, for the use, benefit and enjoyment of all Owners within the Subdivision, and (iv) all other similar areas and places, together with all improvements thereon and thereto, the use, benefit or enjoyment of which is intended for all of the Owners within the Subdivision..

(g) **"City"** means the City of Spring Hill, Kansas.

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

(i) **"Developer"** means Steve Foley Construction Co., Inc., a Kansas corporation.

(j) **"Exempt Lot"** means any Lot then owned by the Developer.

(k) **"Exterior Structure"** means any structure erected or maintained or proposed to be erected or maintained on a Lot other than the main residential structure or any structural component thereof, and shall include, without limitation, any deck, gazebo, greenhouse, animal house, outbuilding, fence, privacy screen, patio wall, rock wall, landscape wall, boundary wall, bridge, patio enclosure, sport court, tennis court, paddle tennis court, swimming pool, hot tub, pond, basketball goal, flag pole, antennae, swingset, jungle gym, trampoline, sand box, playhouse, treehouse, batting cage, or other recreational or play structure, and all exterior sculptures, statuary, fountains, and similar yard decor.

(l) **"Homes Association"** means Sweetwater Creek Homes Association, a Kansas not-for-profit corporation.

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

hereunder, such adjacent property under common ownership shall be deemed to constitute only one "Lot."

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

(o) "**Phase Three or Later Lots**" means Lots 73 through 90 of Sweetwater Creek III and all Lots located in subsequent phases of the Subdivision.

(p) "**Recording Office**" means the Office of the Register of Deeds of Miami County, Kansas or such other governmental office in which deeds, deeds of trust and other instruments relating to real property in Miami County, Kansas are to be recorded to give public notice thereof.

(q) "**Subdivision**" means collectively all of the above Lots and the Common Areas in Sweetwater Creek.

(r) "**Turnover Date**" means the earlier of: (i) the date as of which 95% of the Lots in the Subdivision (as then contemplated by the Developer) have been sold by the Developer and the residences have been constructed thereon, or (ii) the date the Developer, in its absolute discretion, selects as the Turnover Date for all or any specific portion of this Declaration.

ARTICLE II HOMES ASSOCIATION MEMBERSHIP AND BOARD

Until the Turnover Date, the Homes Association shall have two classes of membership, namely Class A and Class B. The Developer shall be the sole Class A member. Each Owner of a Lot, including the Developer as an Owner, shall be a Class B member. Until the Turnover Date, all voting rights shall be held by the Class A member, except that the Class B members shall have the sole right to vote on increases in annual assessments as provided in clause (b) of Section 4.3 of Article IV below.

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

Where voting rights exist based on Lot ownership, each member shall have one vote for each Lot for which he is the Owner; provided, however, that when more than one person is an Owner of any particular Lot, all such persons shall be members, and the one vote for such Lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one vote be cast with respect to such Lot.

To the extent permitted by law, during any period in which a member is in default in the payment of any Assessment levied by the Homes Association under this Declaration, the voting rights of such member shall be suspended until such Assessment has been paid in full.

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

The Board initially shall be the one or more persons currently serving as directors, or such other person or persons as may from time to time be substituted by the Developer. As soon as possible after the Turnover Date, the Developer shall appoint replacement directors from among the Owners or, at the discretion of the Developer, the Homes Association shall hold a meeting of its members and the Owners shall elect directors to replace all of those directors earlier designated by the Developer. Notwithstanding the foregoing, the Developer shall have the right at any time to waive its right to designate one or more directors or to vote in an election of directors.

ARTICLE III POWERS AND DUTIES OF THE HOMES ASSOCIATION

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

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

(b) To own, lease and otherwise deal with real property and personal property.

(c) To exercise control over, and to improve and maintain the Common Area, subject to the rights of any governmental authority, utility or any other similar person or entity therein or thereto.

(d) To maintain public liability, worker's compensation, fidelity, property coverage, director and officer liability, indemnification and other insurance with respect to the activities of the Homes Association and the Common Area.

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

(f) To engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the Homes Association, including, without limitation, keeping of books and records, maintaining the Common Area, and planning and coordination of activities.

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

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

(i) In accordance with applicable law, to adopt reasonable rules, regulations, restrictions, policies, guidelines, and procedures, including, without limitation, the establishment and imposition of monetary fines, regarding (i) the use of the Common Area and the personal conduct of the members and their guests thereon, (ii) the implementation of provisions set forth in this Declaration or in any other applicable recorded declaration or document applicable to the Subdivision (or any part thereof), (iii) the establishment and enforcement of construction and design criteria and aesthetic standards, or (iv) the regulation of behavior which violates this Declaration or any other applicable recorded declaration or document applicable to the Subdivision (or any part thereof) or which adversely affects the use and enjoyment of other properties or the Common Area.

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

3.2 In addition to the duties required by other portions of this Declaration and by law, the Homes Association shall at all times, and at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, the Common Area, subject to any control thereover maintained by any governmental authority, utility or other similar person or entity.

3.3 The Board, in its discretion, may cause the Homes Association to provide other services for the Lots that are not part of the required services described above. The Board shall have the right to determine the scope and timing of the required and discretionary services to be provided by the Homes Association, and shall have the right (but not the obligation) to establish, maintain and expend reserve funds for the maintenance of the Common Area. Neither the Developer, the Homes Association, nor any of their officers, directors, managers, representatives or agents shall be liable to any Owner or other party for any failure to establish or maintain any such reserves or if any such reserves are inadequate.

3.4 Prior to the Turnover Date, Developer shall have the right to charge the Homes Association a reasonable management fee for administration and operation of the Homes Association or, in the alternative, to cause the Homes Association to engage a property management firm to administer and operate the Homes Association. In addition, prior to the Turnover Date, the Developer shall have the right to loan funds to the Homes Association to cover operating shortfalls, to be later repaid by the Homes Association with interest.

**ARTICLE IV
ANNUAL ASSESSMENTS AND INITIATION FEE**

4.1 For the purpose of providing funds to enable the Homes Association to exercise the powers, render the services and perform the duties provided for herein, all Lots in the Subdivision (other than Exempt Lots) shall be subject to an annual assessment to be paid to the Homes Association by the respective Owners thereof as provided in this Article IV. The amount of such annual assessment per assessable Lot shall be fixed periodically by the Board, subject to Section 4.3 below, and, until further action of the Board, shall be \$132.00 per year.

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

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

(b) At any time by any amount by a vote of the members (being for this limited purpose solely the Class B members both prior to and after the Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when a majority of the members present at such meeting (in person or by proxy or (if applicable) by absentee ballot) and entitled to vote thereon authorize such increase by a majority vote of such voting members.

Notwithstanding the foregoing limits on annual assessments, the Board, without a vote of the members, shall always have the power to set, and shall set, the rate of annual assessment at an amount that will permit the Homes Association to perform its duties as specified in Section 3.3 of Article III above.

4.3 The annual assessments provided for herein shall be based upon the calendar year and shall be due and payable on January 31st of each year; provided, however, the first annual assessment for each Lot shall be due and payable only upon the Lot ceasing to be an Exempt Lot and shall be prorated based upon the date of such Lot ceasing to be an Exempt Lot. If the effective date of any increase in the rate of assessment is other than January 1st, a proper portion (as determined by the Board) of the amount of such increase for the remainder of such year shall be due and payable on such effective date. Notwithstanding any other provision of this Declaration to the contrary, no Lot or its Owner shall be entitled to receive any services to be provided by and through the Homes Association until such time as the first annual assessment has been paid with respect to such Lot.

4.4 A portion of the annual assessments may be allocated to reserves to provide funds for repair or maintenance of the Common Area and for other contingencies. Neither the Developer nor the Homes Association nor any member of the Board shall have any liability to any Owner or member of the Homes Association if no reserves are established or maintained or if any reserves are inadequate.

4.5 Beginning with transactions that close after the recording of this Declaration, an initiation fee of \$125.00 shall be payable by the new Owner of each Lot to the Homes Association upon each of the following events with respect to the Lot:

(a) Upon the closing of the sale of the Lot after the residence is constructed (or if the buyer acquires title prior to construction completion, upon acquisition of title by the buyer) (which initiation fee is in addition to the first regular annual assessment, as it may be prorated); and

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

ARTICLE V SPECIAL ASSESSMENTS

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

(a) shall have the authority to levy from time to time a special assessment against any Lot and its Owner to the extent (I) a monetary fine has been assessed by the Homes Association against the Owner or (II) the Homes Association expends any money (for services, materials, and legal fees and expenses) to correct or eliminate (by enforcement, self-help or otherwise) any breach by such Owner of any agreement, obligation, reservation or restriction contained in any deed, declaration or plat covering such Lot; and

(b) shall levy from time to time special assessments against each and every Lot then subject to annual assessments under Article IV in an equal amount that is sufficient, when aggregated with any surplus and reserves from prior years plus any funds voluntarily loaned or contributed by the Developer or any other lender to the Homes Association, to enable the Homes Association (I) to perform its duties under the Declaration that require any expenditure during any period in an amount in excess of the general and applicable reserve funds of the Homes Association available therefor, and (II) to pay the costs of any emergency expenditures deemed necessary by the Board.

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

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

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

ARTICLE VI DELINQUENT ASSESSMENTS

6.1 Each Assessment regarding a Lot shall be a charge against the Owner and shall become automatically a lien in favor of the Homes Association on the Lot against which it is levied as soon as the Assessment becomes due. Should any Owner fail to pay any Assessment with respect to the Owner's Lot in full within 30 days after the due date thereof, then such Assessment shall be delinquent, the Owner shall be charged a late fee of 10% of the unpaid amount, and the unpaid amount shall bear interest at the rate of 10% per annum, compounded monthly (or, if lower, the maximum rate permitted by law) from the delinquency date until paid, which late fee and interest shall become part of the delinquent Assessment and the lien on the Lot. Should the Homes Association engage the services of an attorney to collect any Assessment hereunder, all costs of collecting such Assessment, including, without limitation, court costs and reasonable attorneys' fees, shall, to the extent permitted by applicable law, be added to the amount of the Assessment being collected and the lien on the Lot. Each Assessment, together with late fees, interest thereon and collection costs, shall also be the personal obligation of the Owner(s) of the Lot, jointly and severally, at the time when the Assessment became due.

6.2 Payment of a delinquent Assessment with respect to a Lot may be enforced by judicial proceedings against the Owner personally and/or against the Lot, including, without limitation, through lien foreclosure proceedings similar to a foreclosure under a mortgage lien in any court having jurisdiction of suits for the enforcement of such liens. The Homes Association may file certificates of nonpayment of Assessments in the Recording Office, and/or the office of the Clerk of the District Court of Miami County, Kansas, whenever any Assessment is delinquent, in order to give public notice of the delinquency. For each certificate so filed, the Homes Association shall be entitled to collect from the Owner of the Lot described therein a fee of \$250.00, which fee shall be added to the amount of the delinquent Assessment and the lien on the Lot and which fee amount may be increased by the Board from time to time to reflect cumulative increases in an appropriate consumer price index (as selected by the Board) after December 31, 2024.

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

6.4 To the extent permitted by law, the Homes Association may cease to allow the use of Common Areas by the Owners of the Lot and cease to provide any or all of the services to be provided by or through the Homes Association with respect to any Lot during any period that the Lot is delinquent on the payment of an Assessment due under this Declaration, and no such cessation of use privileges or services shall result in a reduction of any amount due from or in any credit or restitution due to the Owner before, during or after such cessation. No Owner may

waive or otherwise avoid liability for any Assessment by not using any Common Areas or by declining any services provided through the Homes Association.

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

6.6 Assessments shall run with the land, are necessary to continue the care, repair and maintenance of Lots, the Common Area, and the Subdivision, and are necessary for the continued provision of services. Accordingly, Assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.

ARTICLE VII LIMITATION ON EXPENDITURES

Except for matters contemplated in Section 3.3 of Article III above, the Homes Association shall at no time expend more money within any one year than the total amount of the Assessments for that particular year, plus any surplus and applicable reserves which it may have on hand from prior years, plus any funds voluntarily contributed or loaned by the Developer or another lender to the Homes Association. The Homes Association shall not have the power to enter into any contract which binds the Homes Association to pay for any obligation out of the Assessments for any future year, except for (i) contracts for utilities, maintenance or similar services or matters to be performed for or received by the Homes Association or its members in subsequent years, and (ii) matters contemplated in Section 3.3 of Article III above.

ARTICLE VIII COMMON AREAS

8.1 The nature and extent of improvements and landscaping in the Common Area, and all other aspects of the Common Area that are provided by the Developer, shall be determined by the Developer in its absolute discretion.

8.2 The Homes Association shall at all times be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, the Common Area as otherwise provided in this Declaration, subject to any control thereover maintained by any governmental authority, utility or similar person or entity. The Developer and/or Homes Association may establish rules and regulations regarding use of the Common Areas. In insuring the Common Areas, the Homes Association shall cause the Developer to be named as an additional insured on the insurance coverage until the recording of the Certificate of Substantial Completion.

8.3 Each of the Developer and the Homes Association shall have reasonable access through Lots adjacent to the Common Areas for the purposes of maintenance and improvement of the Common Areas, but any party exercising such right shall be responsible for repairing any damage caused by it to adjacent Lots in connection with the use of such access right.

8.4 Each of the Developer and the Homes Association, in its discretion, shall have the right to reconfigure and/or replat all or any part of the Subdivision then owned by it, including, without limitation, to make part of a Common Area tract a part of a Lot, and vice versa and, in connection therewith, to convey to the Developer, the Homes Association, or any other party (as applicable) title to or any easements over any part of the Common Areas and/or Lots (as applicable). In addition, each of the Developer and the Homes Association shall have the right to convey to the City (but only with the City's consent) title to or easements over all or any part of the Common Areas so that they become public areas maintained by the City.

8.5 Each Owner who is in good financial standing with the Association, and such Owner's tenants and guests, shall have the right to use and enjoy the Common Areas for their intended purposes, subject to any rules and regulations adopted by the Homes Association.

8.6 **No Liability for Play Equipment or Creek. By acceptance of a deed to a Lot, all Owners acknowledge and accept the inherent risks and hazards (whether foreseeable or not) associated with any creeks and use of any playground equipment or other equipment that may be installed as part of the Common Areas. The Developer and the Homes Association and the officers, directors, managers, representatives and agents of the Developer and the Homes Association shall have no liability or responsibility to any Owner or other party with respect to such inherent risks and hazards. To the maximum extent permitted by law, each Owner, for himself, the members of his family, his guests, his tenants and invitees, shall be deemed to have released and agreed never to make a claim against the Developer, the Homes Association and/or any officer, director, manager, representative or agent of the Developer or the Homes Association for any personal injury or death that may be suffered or incurred by any of such released parties in connection with use of any creek or the playground area, and each of them shall be deemed to have waived any and all claims and causes of action that any of them may ever have against any such released parties with respect thereto.**

8.7 Subject to Section 8.4 above, Developer covenants and agrees to convey, by special warranty deed or other appropriate assignment, all of its rights, title and interest in the Common Areas (except any part thereof that is within any Lot) to the Homes Association, without any cost to the Homes Association, at such time(s) as the Developer, in its absolute discretion, may determine, but in all events not later than one month after the Developer has recorded the Certificate of Substantial Completion. Such conveyance shall be free and clear of all mortgages, security interests and mechanic's liens caused by the Developer. Developer shall not be required to provide the Homes Association with any title insurance policy for any of the Common Areas. Any conveyance of title by the Developer shall not require the consent of the Homes Association and shall not constitute an assignment by the Developer of any of its rights, as the developer of the Subdivision, pursuant to this Declaration or any other instrument, contract or declaration.

ARTICLE IX BUILDING AND USE RESTRICTIONS

9.1 **Use of Land.** Except as otherwise expressly provided in this Declaration, none of the Lots may be improved, used or occupied for other than single family, private residential

purposes. The Approving Party shall have the right to determine whenever an extended family or roommate situation becomes a burden on the neighbors or the Subdivision and is no longer within the “single family” use intended by this Declaration. No trailer, outbuilding or Exterior Structure shall at any time be used for human habitation, temporarily or permanently; nor shall any residence of a temporary character be erected, moved onto or maintained upon any of the Lots or any Common Areas or be used for human habitation; provided, however, that the Developer or others (including, without limitation, builders and real estate brokerage companies) authorized by the Developer shall have the right to use any residence on any Lot for model, office, sales or storage purposes during the development and build out of the Subdivision.

9.2 Building Material Requirements.

(a) Exterior walls of all residences and all appurtenances thereto shall be of stucco, brick, stone (natural or artificial), wood shingles, wood paneling, Masonite or wood lap siding, plate glass, glass blocks, wood trim, or any other materials specifically approved by the Approving Part in writing. Concrete blocks shall not be permitted as an exterior finished surface. All windows and exterior doors shall be constructed of glass, wood, metal or vinyl clad, fiberglass, or any other materials specifically approved by the Developer in writing. Roofs of residences shall be covered with high quality architectural composition shingles (with a minimum 30 year warranty) in weathered wood or equivalent color, all of the specific types, colors, styles, dimensions and other aesthetic factors specifically approved by the Approving Party in writing, and have flashing that is complementary in color to the roof color. Metal gutters and downspouts shall be painted a color that is complementary to the color of the trim and the color of any stucco or siding. Notwithstanding the foregoing provisions of this Section 9.3 requiring or prohibiting specific building materials or products, any building materials or products that may be or come into general or acceptable usage for dwelling construction of comparable quality and style in the area, as determined by the Approving Party in its absolute discretion, shall be acceptable upon written approval by the Approving Party in its absolute discretion. In the event the City or other government agency with jurisdiction and authority requires specific building materials not authorized above or requires that Owners have additional choices of building materials not authorized above, the Approving Party shall have the right, in its absolute discretion, to establish and regulate in writing the specific types, colors and other aesthetic features of such new or additional building materials.

(b) All applicable exterior components (excluding roofs, brick, stone and similar components) shall be covered with a workmanlike finish of paint or stain. No residence or Exterior Structure shall stand with its exterior in any unfinished condition for longer than five months after commencement of construction. All exterior basement foundations and walls which are exposed in excess of six (6) inches above final grade shall be painted the same color as the body of the residence.

(c) Air conditioning units, gas generators and similar apparatus shall not be attached to or located on the front of any residence. No window air conditioning or heating units shall be permitted.

(d) No metal or other pipe shall be exposed on the exterior of any fireplace or fireplace flue (other than a minimal amount of exterior metal or piping from a direct vent fireplace). All fireplace flues in chimneys shall be capped with a black or color-conforming spark arrestor cap.

(e) All driveways and sidewalks shall be concrete, patterned concrete, brick or other permanent stone finishes. Crushed gravel, asphalt and natural driveways and sidewalks along the street or from the driveway to the front door are prohibited. No driveway shall be constructed in a manner as to permit access to a street across a rear property line.

(f) All residences shall have at least a two-car garage. No car ports are permitted.

(g) The Developer, in its discretion, may allow variances from the foregoing requirements of this Section 9.2.

9.3 Minimum Floor Area. No residence shall be constructed upon any Lot unless it has a total finished floor area (excluding any finished attics, garages, basements (other than reverse 1½ story) and similar habitable areas) as follows:

<u>Type of Residence</u>	<u>Minimum Square Feet of Floor Area</u>
Ranch and Reverse 1½ story	1,600 on first floor
1½ Story	1,400 on first floor and 2,000 total
2 Story	900 on first floor and 2,000 total
Split Level	Not allowed

9.4 Approval of Plans; Post-Construction Changes; Grading; Erosion Control.

(a) Notwithstanding compliance with the provisions of Sections 9.1, 9.3 and 9.3 above, no residence or Exterior Structure may be erected upon or moved onto any Lot unless and until the building plans, specifications, exterior materials, location, elevations, plot plan, lot grading plan, general landscaping plan, and exterior color scheme (all as and when may be required by the Developer for each particular stage of construction) have been submitted to and approved in writing by the Developer, or, in the case of Exterior Structures, the Approving Party, in each case as to architectural consistency and other aesthetic factors. No change or alteration in such approved building plans, specifications, exterior materials, location, elevations, lot grading plans, general landscaping plans or exterior color scheme shall be made unless and until such change or alteration has been submitted to and approved in writing by the Approving Party.

(b) Following the completion of construction of any residence or Exterior Structure, no significant landscaping change, significant exterior color change or exterior addition or alteration shall be made thereto unless and until the change, addition or alteration has been submitted to and approved in writing by the Approving Party. All replacements of all or any portion of a completed structure because of age, casualty loss or other reason, including, without limitation, roofs and siding, shall be of the same

materials, colors, location and elevation as the original structure unless and until the changes thereto have been submitted to and approved in writing by the Approving Party.

(c) All final grading of each Lot shall be completed by the Owner in connection with construction of the residence and shall be in accordance with any master grading plan approved by the City and any specific site grading plan for the Lot approved by or for the Developer. No landscaping, berms, fences or other structures shall be installed or maintained that impede the flow of surface water. No changes in the final grading or drainage of any Lot shall be made by or for the Owner without the prior written approval of the Approving Party and (if required) the City. The Developer shall have no liability or responsibility to any builder, Owner or other party for the failure of a builder or Owner to final grade or maintain any Lot in accordance with the master grading plan or any approved lot grading plan, or for the Developer not requiring a lot grading plan or compliance therewith or for the quality or composition of any soil or subsurface material. The Developer does not represent or guarantee to any Owner or other person that any grading plan for the Lots which the Developer or any engineer or other party may approve or supply shall be sufficient or adequate or that the Lots will drain properly or to any Owner's or other person's satisfaction.

(d) During the construction of the residence and improvements on such Lot and until the Lot is completely established with grass, the Owner, at its expense, shall install and properly maintain hay bales, silt fencing and such other erosion and silt control devices as are necessary or required by law to prevent stormwater runoff from the Lot depositing silt or other debris onto adjacent Lots, Common Areas and streets. In connection therewith, the Owner shall comply with all Federal, state and local governmental laws, regulations and requirements, with all applicable permits, and with all requirements imposed by the Developer, including, without limitation, preparation of inspection reports, and the Owner shall be responsible for any and all governmental fines and assessments that may be levied or assessed as a result of a failure of the Owner to so comply.

(e) All site preparation, including, but not limited to, tree removal, excavation, grading, rock excavation/removal, hauling, and piling, etc., shall be at the sole expense of the Owner or builder. All removed trees and excavated rock, etc., shall be removed from the Subdivision and shall not be spoiled within the Subdivision, except as expressly approved by the Developer.

(f) All building plans and plot plans shall be designed to minimize the removal of existing trees.

(g) Approval of plans or specifications by the Developer or any other Approving Party is not, and shall not be deemed to be, a representation or warranty that such plans or specifications comply with good engineering/architectural practices or any governmental requirements.

(h) Neither the sale of a Lot by the Developer to a particular builder nor the inclusion of a particular builder on a list of builders building in the area or on a list of

approved builders constitutes a representation, endorsement or guaranty by the Developer, or any real estate broker/salesperson of the financial stability, qualifications, work or any other matter relating to such builder. Neither the Developer, nor any real estate broker/salesperson guarantees or warrants the obligations or construction by any builder.

9.5 Commencement and Completion of Construction. Unless the following time periods are expressly extended by the Developer in writing, construction of the residence on a Lot shall be commenced (meaning digging of the foundation) within three (3) months following the date of delivery of a deed from the Developer to the first purchaser of such Lot and shall be completed within twelve (12) months after such construction commencement. In the event such construction is not commenced within such three (3) month period (or extension thereof, if any), the Developer shall have, prior to commencement of construction, the right (but not the obligation) to repurchase such Lot from the Owner, free and clear of all mortgages, mechanic's liens and similar liens, for an amount equal to 90% of the sale price of the Lot from the Developer to the first purchaser thereof. If such repurchase right is exercised by the Developer, the Owner of the Lot in violation of this construction commencement provision shall not be entitled to reimbursement for taxes, insurance, interest or other expenses paid or incurred by or for such Owner and all taxes and installments of special assessments shall be prorated between Developer and the Owner as of the closing of the repurchase by Developer.

9.6 Exterior Structures.

(a) No Exterior Structure shall be erected upon, moved onto or maintained upon any Lot except (i) strictly in accordance with and pursuant to the prior written approval of the Approving Party as to the applicable building plans, specifications, exterior materials, location, elevations, lot grading plans, landscaping plans and exterior color scheme and (ii) in compliance with the additional specific restrictions set forth in subsection (b) below or elsewhere in this Declaration. Notwithstanding the foregoing sentence, the approval of the Approving Party shall not be required for (I) any Exterior Structure erected by or at the request of the Developer or (II) any Exterior Structure that (A) has been specifically approved by the Developer prior to the issuance of a temporary or permanent certificate of occupancy as part of the residential construction plans approved by the Developer and (B) has been built in accordance with such approved plans. Compliance with the specific requirements or restrictions set forth in subsection (b) below or elsewhere in this Declaration shall not automatically entitle an Owner to install or maintain any specific Exterior Structures, and the Approving Party, in its discretion, shall always have the right to additionally regulate, prohibit, condition or otherwise restrict any Exterior Structure notwithstanding such otherwise compliance.

(b)

(i) No fence and privacy screen may be installed unless and until an application containing such information as may be required by the Approving Party has been submitted to and approved in writing by the Approving Party. No fence shall be installed without a permit from the City (where required) and compliance with all applicable laws and codes. Only wood or black prefinished steel (or similar metal) fences (which may include stone, masonry or wood posts)

or privacy screens in the specific styles, materials and colors approved by the Developer shall be permitted on the Lots (except that no wood fences be allowed on any Phase Three or Later Lot other than wood fences around patios and hot tubs on Phase Three or Later Lots may be constructed of wood in the specific style(s) (if any) approved by the Approving Party)). All fences, retaining walls and privacy screens shall be ornamental and shall not disfigure the property or the neighborhood or interfere with drainage. All fences and privacy screens shall be constructed with a finished side facing outward. No chain link, wire or similar fence shall be permitted. No fence may be installed in any landscape easement or Common Area unless installed by or for the Developer or the Homes Association or otherwise expressly approved by the Developer in its discretion. Unless and until otherwise specifically approved in writing by the Approving Party, (A) no fence or privacy screen shall exceed four (4) feet in height (except for fences around a swimming pool which shall not exceed the minimum height required by the City), (B) no fence or privacy screen shall be constructed or maintained on any Lot nearer to the front street than the rear corners (as determined by the Approving Party) of the residence, (C) no fence shall be constructed or maintained on any Lot more than one foot from the property line of the Lot, except to the extent necessary for such fence to abut the residence and except for fences around swimming pools, hot tubs and patio areas, and (D) all fences (except for fences around swimming pools, hot tubs and patio areas) must be joined to or abutting any previously existing perimeter fences on adjacent Lots and no fence may be installed back to back along a previously existing perimeter fence on an adjacent Lot.

(ii) All basketball goals shall be permanently installed in a concrete base, freestanding and not attached to the residence, and in a location approved by the Approving Party. All backboards shall be transparent and all poles shall be black or green. There shall be only one basketball goal per Lot. There shall be no special lighting of the basketball area. No “homemade” backboards or poles shall be permitted. The Board shall have the right to establish reasonable rules regarding the hours of use of basketball goals and any such rules shall be binding upon all of the Lots and the Owners.

(iii) All recreational or play structures must be approved in advance by the Approving Party and (if allowed) (A) shall be made of materials and colors approved in writing by the Approving Party, (B) (other than basketball goals) shall be located behind the rear corners (as determined by the Approving Party) of the residence and (C) (other than basketball goals) shall be located at least five (5) feet from each side boundary and at least five (5) feet from the rear boundary of the Lot. Trampolines may be located only in a fenced back yard.

(iv) No aboveground type swimming pools shall be permitted. All swimming pools shall be fenced and all hot tubs shall be fenced or otherwise adequately screened, all in accordance with City requirements and the other provisions of the Declaration. All swimming pools and hot tubs shall be kept clean and maintained in operable condition at all times.

(v) All outside dog houses shall be located in the back yard near the residence, shall be painted or stained (where appropriate) the same color of the residence, and shall have roofs that are the same as the residence.

(vi) The following Exterior Structures shall be prohibited on the Lots: animal runs, animal houses (other than dog houses as provided above), tennis courts, sport courts, tree houses, batting cages, storage sheds, detached greenhouses, detached garages and other detached outbuildings other than any pool outbuilding approved by the Approving Party.

(vii) No Exterior Structure that is prohibited under Section 9.7 below shall be permitted under this Section 9.6.

(c) No fence, wall or other Exterior Structure installed by or for the Developer or Homes Association anywhere in the Subdivision may be removed or altered by any Owner or other person without the prior written consent of the Approving Party.

9.7 Buildings or Uses Other Than for Residential Purposes; Noxious Activities; Miscellaneous Use Restrictions.

(a) Except as otherwise provided in Section 9.1 above, no residence or Exterior Structure, or any portion thereof, shall ever be placed, erected or used for business, professional, trade or commercial purposes on any Lot; provided, however, that this restriction shall not prevent an Owner or occupant from maintaining an office area or operating a home-business occupation in his residence in accordance with the applicable ordinances of the City so long as the residential character of the area is maintained and no signs or other materials related to such home business are visible from outside the residence. Notwithstanding the foregoing, no day care center, home school, or other business that has customers or non-residents (other than family members) of the residence regularly visiting the residence shall be operated in any residence.

(b) No illegal, noxious or offensive activity shall be carried on with respect to any Lot; nor shall any trash, ashes, grass clippings, leaves, or other refuse be thrown, placed or dumped upon any Lot or Common Area; nor shall anything be done which may be or become an annoyance or a nuisance to the Subdivision, or any part thereof, except as may be otherwise expressly permitted by this Declaration. The foregoing shall not be construed to limit or restrict the rights or powers of the Developer or the Homes Association under this Declaration.

(c) Each Owner shall properly maintain his Lot in a neat, clean and orderly fashion. The exterior portions of the residence and all Exterior Structures on the Lot (including, without limitation, any fence that may have been installed by or for the Developer) shall be kept and maintained by the Owner in good condition and repair at all times. Each residence exterior shall be repainted by the Owner, as needed. Any exterior color change must be approved in advance in accordance with Section 9.4(b) above.

(d) Unlicensed, unregistered or inoperative motor vehicles are prohibited, except in an enclosed garage.

(e) Overnight parking of motor vehicles, boats, trailers, buses, campers, or similar apparatus of any type or character in any public street is prohibited and any parking in Common Areas or vacant lots is prohibited at all times. Motor vehicles shall be parked overnight in garages or on paved driveways only. Except as provided in subsection (g) below, no vehicle (other than an operable passenger automobile, passenger van or small truck), bus, boat, jet-ski, trailer, camper, mobile home, or similar apparatus shall be left or stored overnight on any Lot, except in an enclosed garage.

(f) Commercial vehicles with gross vehicle weight of 10,500 pounds or over are prohibited in the Subdivision except (i) during such limited time as such truck or vehicle is actually being used in the Subdivision during normal working hours for its specific purpose or (ii) when in an enclosed garage.

(g) Recreational motor vehicles of any type or character are prohibited except:

(i) When stored in an enclosed garage;

(ii) When temporarily parked on the driveway for the purpose of loading and unloading (maximum of 24 hours every 14 days); or

(iii) With prior written approval of the Approving Party.

(h) Small satellite dishes (39 inches or less in diameter) may be installed, with the prior written consent and in accordance with the requirements of the Approving Party, so as to render the installation as inoffensive as possible to other Owners (with the preference being that such satellite dishes not be visible from the street fronting the residence). No other television, radio, citizens' band, short wave or other antenna shall be attached to the exterior of any residence or erected in any yard. Should any part or all of the restriction set forth in the preceding sentence be unenforceable because it violates a statute or the First Amendment or any other provision of the United States Constitution or the Kansas Constitution, the Approving Party 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 on the Subdivision, and all parts thereof, and any such rules and regulations shall be binding upon all of the Lots.

(i) No solar panels, windmills or similar devices may be installed or maintained on any Lot or residence exterior, except that small solar panels for landscape lights, security systems and solar shades are permitted. Should any part or all of the restriction set forth in the preceding sentence be unenforceable because it violates a statute or any provision of the United States Constitution or the Kansas Constitution, the Approving Party shall have the right to establish rules and regulations regarding the location, size, and other aesthetic aspects of solar panels, windmills and similar devices so as to reasonably control the impact of such solar panels, windmills and similar devices on the Subdivision, and all parts thereof, and any such rules and regulations shall be binding upon all of the Lots.

(j) No clothesline or pole may be erected in the yard or attached to the exterior of the residence.

(k) No artificial flowers, trees or other vegetation shall be permitted on the exterior of any residence or in the yard. Sculptures, bird baths, bird feeders, fountains, yard art, and similar decorative objects are allowed on the exterior of the residence or in the yard only with the specific written approval of the Approving Party.

(l) Exterior holiday lights shall be permitted only between November 15 and January 31 and may not remain on the residence or any trees or bushes on the Lot during any other period. Except for such holiday lights, all exterior lighting shall be white (clear) and not colored. All exterior landscaping lighting must be approved in advance by the Approving Party.

(m) No speaker, horn, whistle, siren, bell or other sound device shall be located, installed or maintained upon the exterior of any residence or in any yard, except intercoms, devices used exclusively for security purposes, and television or stereo speakers used in accordance with any rules specified by the Board.

(n) All residential service utilities shall be underground, except with the approval of the Developer.

(o) In the event of vandalism, fire, windstorm or other damage, no residence or Exterior Structure shall be permitted by the Owner to remain in damaged condition for longer than three (3) months after the date of the damage (except with the specific written consent of the Approving Party) and the Owner shall cause the residence to be rebuilt, in accordance with Section 9.4(b), in all events within six (6) months after the date of the damage (except with the specific written consent of the Approving Party when the repair or replacement cannot be reasonably completed within such period).

(p) No shed, barn, detached garage or other similar storage facility shall be erected upon, moved onto or maintained upon any Lot. Storage shall be permitted under a deck provided such area is screened with materials and in the manner approved by the Approving Party as otherwise authorized herein. No temporary storage pod or container may remain on any Lot (other than in an enclosed garage) for more than twenty (20) days in any sixty (60) day period.

(q) No outside or underground fuel storage tanks of any kind shall be permitted on any Lot (except standard propane tanks for outdoor grills).

(r) Except for signs erected by or for the Developer or its approved real estate brokerage company for the Subdivision, no sign, advertisement or billboard may be erected or maintained on any Lot, except that:

(i) One sign not more than three feet high and/or three feet wide may be maintained offering the residence for sale.

(ii) One garage sale sign not more than three feet high and/or three feet wide is permitted on the Lot when a permitted garage sale is being held, provided such signs are erected in accordance with City code and are installed no more than two hours before the start of the sale and are removed within two hours after the close of the sale.

(iii) Political signs not more than six square feet are permitted on the Lot for up to 45 days before the election but must be removed within two days after the election.

(iv) Small school-related activities signs may be maintained near the residence while the student is residing in the residence. Event celebration signs (“new baby”, “graduation”, etc.) may be maintained for up to seven (7) days.

No signs offering a residence for lease or rent shall be allowed in the Subdivision at any time. Prior to the filing of the Certificate of Substantial Completion, no sign offering a new residence or vacant Lot for sale shall be allowed in the Subdivision (other than signs of the Developer-approved new home real estate brokerage company for the Subdivision). Without limiting the foregoing, no sign shall be permitted which (A) describes the condition of the residence or the Lot, (B) describes, maligns, or refers to the reputation, character or building practices of the Developer, any builder, any realtor, or any other Owner, or (C) discourages or otherwise impacts or attempts to impact a party’s decision to acquire a Lot or residence in the Subdivision. In the event of a violation of the foregoing provisions, the Developer and/or the Homes Association shall be entitled to remove any such offending sign, and in so doing, shall not be subjected to any liability for trespass, violation of constitutional or other rights, or otherwise. If these limitations on the use of signs, or any part thereof, are determined to be unlawful, the Board shall have the right to regulate the use of signs in a manner not in violation of law.

(s) No sign (other than community marketing signs approved by the Developer) shall be placed or maintained in any Common Area without the approval of the Approving Party.

(t) Garage doors shall remain closed at all times except when necessary for ingress and egress or when a resident is in the yard or driveway.

(u) Each Owner who desires to rent any part of a residence must comply with all licensing and other requirements of the City. In addition, no residence or part thereof shall be rented for a period of less than six (6) months or used for transient or hotel purposes, which is defined as rental or lease under which occupants are provided any customary hotel services such as room service for food and beverages, maid service, cleaning service, or similar services; or rental to roomers or boarders, (i.e., rental to one or more persons of a portion of a residence only). No lease may be of less than an entire residence. AirBNB, VRBO, and similar short-term rentals are prohibited. Each lease shall be in writing, shall require that the tenant and other occupants acknowledge the existence of this Declaration and agree to comply with all provisions of this Declaration,

shall provide that the lease shall be subject in all respects to the provisions of this Declaration and to the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the tenant to comply with the terms of this Declaration or such rules and regulations shall be a default under the lease. In the event a tenant fails to comply with the terms of this Declaration or such rules and regulations, the Owner shall, if so directed by the Board and to the extent permitted by law, terminate the lease and evict the tenant. Prior to the commencement of the term of a lease, the Owner shall notify the Board, in writing, of the name or names of the tenant or tenants and the time during which the lease term shall be in effect. Notwithstanding the existence of a lease, the Owner shall remain liable for all obligations under this Declaration with respect to the Lot and the improvements thereon and the use thereof and the Common Areas, and the Owner shall cause the rented property to be maintained to the same general condition and standards as then prevailing for the Owner-occupied residences in the Subdivision.

(v) Each of the Developer and the Homes Association may enforce the foregoing restrictions and other provisions of this Declaration by establishing, levying and collecting monetary fines and other enforcement charges, having vehicles, trailers or other apparatus towed away at the Owner's expense, or taking such other lawful actions as the Developer or the Homes Association, in its sole discretion, deems appropriate.

9.8 Lawns, Landscaping and Gardens. Within 60 days after the issuance of any permanent or temporary certificate of occupancy for the residence, all lawns, including all areas between the residence and any adjacent street, regardless of the existence and location of any fence, monument, boundary wall, berm, sidewalk or right-of-way line, shall be fully sodded and shall remain fully sodded at all times thereafter. No lawn on a Lot shall be planted with zoysia or buffalo grass.

Within sixty (60) days after the issuance of any permanent or temporary certificate of occupancy for the residence on a Lot, the Owner thereof shall landscape the Lot to the same standards as that generally prevailing throughout the Subdivision. All landscaping shall be installed in accordance with the landscaping plans approved by the Developer and shall be maintained by the Owner in good condition at all times.

To the extent any of the foregoing items are not completed prior to occupancy, the Owner shall escrow funds, in an amount (if any) and manner determined by the Developer, to assure such installation when weather permits.

All vegetable gardens shall be located behind the rear corners of the residence (as determined by the Approving Party) and at least five (5) feet away from the boundary of the Lot. No vegetable garden(s) shall exceed one hundred (100) square feet in size on any Lot, except with the prior written consent of the Approving Party.

Each Owner shall keep the lawn of the Lot in good condition at all times and uniformly mowed and clipped with a length of grass not to exceed six (6) inches. Each Owner shall keep the lawn and landscaping on the Lot reasonably free from weeds by using chemical applications and other means.

The Developer shall have the right (but not the obligation) to install one (1) or more trees on each Lot. The type(s) and location(s) of tree(s) and timing of planting shall be selected by the Developer in its absolute discretion. Each Owner shall properly water and maintain all trees and landscaping on the Owner's Lot (including any trees planted by or for the Developer, but excluding those in a Common Area maintained by the Homes Association). All dead trees and landscaping shall be promptly removed by the Owner.

9.9 Easements for Public Utilities; Drainage; Maintenance. The Developer shall have, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of, drains, pipelines, sanitary and storm sewers, gas and water lines, electric and telephone lines, television cables and other utilities, and to give or grant rights-of-way or easements therefor, over, under, upon and through all easements and rights-of-way of record or shown on any recorded plat of the Subdivision or any Common Area. All utility easements and rights-of-way shall inure to the benefit of all utility companies, governmental authorities, the Developer and the Homes Association, for purposes of installing, maintaining or moving any utility lines or services and shall inure to the benefit of the Developer, all Owners and the Homes Association as a cross easement for utility line service and maintenance.

The Developer shall have and does hereby reserve for itself and its successors and assigns and the Homes Association and its successors and assigns an easement over and through (i) all Common Areas for the purpose of developing, improving, and maintaining the Common Areas, and (ii) all unimproved portions of each Lot for the purpose of performing the powers and duties of the Homes Association, including, without limitation, maintaining the Common Areas. The Developer shall have the right to execute and record, at any time, an easement with respect to specific areas utilized as provided above.

The Developer and the Homes Association, through its authorized representative(s), may, at any reasonable time after giving at least forty-eight (48) hours advance notice to the Owner, enter any Lot, without being deemed guilty of trespass, for the purpose of inspecting the Lot and any improvements thereon to ascertain any compliance or noncompliance with the requirements and terms of this Declaration and/or any plans approved hereunder.

9.10 Animals. No animals of any kind shall be raised, bred, kept or maintained on any Lot except that dogs, cats and other common household pets may be raised, bred, kept or maintained so long as (a) they are not raised, bred, kept or maintained for commercial purposes, (b) they do not constitute a nuisance and (c) the City ordinances and other applicable laws are satisfied. Bees, cows, horses, swine, goats, sheep, poultry, other domesticated farm animals, undomesticated (wild) animals, exotic animals, and animals requiring special permits from any government authority are prohibited. All pets shall be confined to the Lot of the Owner except when on a leash controlled by a responsible person. Owners shall immediately clean up after their pets on all streets, Common Areas and Lots owned by others.

9.11 Property Insurance. The Owner of each Lot shall insure (or cause to be insured) all improvements located on its Lot against damage or destruction by fire and the perils commonly covered under a special form policy in the aggregate amount equal to the full

insurable replacement cost of thereof (without deduction for physical depreciation), with no coinsurance clause.

9.12 Architectural Committee.

(a) No more than two members of the Board shall serve on the Architectural Committee at any time. When more than one person is an Owner of any particular Lot, no more than one person from such Lot may serve on the Architectural Committee at any given time. The positions on the Architectural Committee may be divided by the Board into two classes with staggered two-year terms. The foregoing provisions of this subsection (a) shall not apply until the Turnover Date. Until the Turnover Date, the Developer or its designees shall be the Architectural Committee.

(b) The Architectural Committee shall meet as necessary to consider applications with respect to any Exterior Structures that require the approval of the Architectural Committee as provided in Section 9.6 above and to consider any other matters within the authority of the Architectural Committee as provided in this Declaration. The Architectural Committee shall designate one or more of its members to whom applications may be delivered. The Architectural Committee may specify a form of application that must be used by applicants. A majority of the members of the Architectural Committee shall constitute a quorum for the transaction of business at a meeting and every act or decision made by a majority of the members present at a meeting at which a quorum is present shall be regarded as the act or decision of the Architectural Committee. Subject to applicable law, the Architectural Committee may discuss and make decisions through e-mail communications.

(c) At each meeting, the Architectural Committee shall consider and act upon written and complete applications that have been submitted to it for approval in accordance with this Declaration. In making its decisions, the Architectural Committee may consider any and all aspects and factors that the individual members of the Architectural Committee, in their discretion, determine to be appropriate to establish and maintain the quality, character and aesthetics of the Subdivision, including, without limitation, the building plans, specifications, exterior color scheme, exterior materials, location, elevation, lot grading plans, landscaping plans and use of any proposed Exterior Structure. All decisions of the Architectural Committee shall be in writing and delivered to the applicant, who shall be responsible for keeping the same. The Architectural Committee may establish in advance and change from time to time certain procedural and substantive guidelines and conditions that it intends to follow in making its decisions. The Architectural Committee shall act upon each written application complete with all required drawings and other information within twenty-five (25) days after the date on which such completed application is received.

(d) After the Turnover Date, no member of the Architectural Committee may participate in approving any application to the Architectural Committee which concerns such member's Lot. If such an application for approval is submitted to the Architectural Committee, the Board shall appoint a temporary member to the Architectural Committee for the limited purpose of considering and acting upon such application.

(e) After the Turnover Date, any applicant or other person who is dissatisfied with a decision of the Architectural Committee shall have the right to appeal such decision to the Board provided such appeal is filed in writing with a member of the Board within seven (7) days after the date the Architectural Committee renders its written decision. In making its decisions, the Board may consider any and all aspects and factors that the individual members of the Board, in their discretion, determine to be appropriate to establish and maintain the quality, character and aesthetics of the Subdivision, including, without limitation, the building plans, specifications, exterior color scheme, exterior materials, location, elevation, lot grading plans, landscaping plans and use of any proposed Exterior Structure. Any decision rendered by the Board on appeal of a decision of the Architectural Committee shall be final and conclusively binding on all parties (other than the Developer) and shall be deemed to be the decision of the Architectural Committee for all purposes under this Declaration. The Board from time to time may adopt, amend and revoke rules and regulations respecting appeals of decisions of the Architectural Committee, including, without limitation, requiring payment to the Homes Association of a reasonable fee by the appealing party.

9.13 No Liability for Approval or Disapproval; Indemnification.

(a) Neither the Developer, the Homes Association, nor any of their officers, directors, managers, representatives or agents, nor any member of the Architectural Committee or the Board (or any committee thereof) shall be personally liable to any person for any approval, disapproval or failure to approve any matter submitted for approval, for the adoption, amendment or revocation of any rules, regulations, restrictions or guidelines or for the enforcement of or failure to enforce any of the restrictions contained in this Declaration or any other declaration or any such rules, regulations, restrictions or guidelines.

(b) If any Owner (other than the Developer) commences a lawsuit or files a counterclaim or crossclaim against the Homes Association, the Board, the Architectural Committee, any other committee, or any individual, director, officer or committee member, and such Owner fails to prevail in such lawsuit, counterclaim or crossclaim, the Homes Association, the Board, committee or individual director, officer or committee member sued by such Owner shall be entitled to recover from such Owner all litigation expenses incurred in defending such lawsuit, counterclaim or crossclaim, including, without limitation, reasonable attorneys' fees. Such recovery right shall constitute a lien against the Owner's Lot and shall be enforceable against such Lot.

(c) To the fullest extent permitted by law, the Homes Association shall indemnify each officer, director and committee member of the Homes Association and the Developer (to the extent a claim may be brought against the Developer by reason of its appointment, removal of or control over, or failure to control, any such other persons) (each, an "**Indemnified Party**") against all expenses and liabilities, including, without limitation, attorneys' fees, reasonably incurred by or imposed upon the Indemnified Party in connection with any action or proceeding, or any settlement thereof, to which the Indemnified Party may be a party or in which the Indemnified Party may become involved by reason of serving or having served in such capacity (or, in the case of the

Developer, by reason of having appointed, removed or controlled or failed to control any officer or director of the Association), provided the Indemnified Party did not act, fail to act or refuse to act with fraudulent or criminal intent in the performance of the Indemnified Party's duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which any Indemnified Party may be entitled at law or otherwise.

9.14 Potential View Obstruction. No Owner has any right to an unobstructed view beyond the boundaries of the Owner's Lot. No Owner shall be entitled to prevent the construction or location of any structure, trees, landscaping or other item on any other part of the Subdivision, where otherwise permitted by this Declaration, because such structure, trees, landscaping or other item obstructs any view from the affected Lot.

9.15 Relationship to City Ordinances. The provisions of this Declaration shall be valid and enforceable even if such provisions are more restrictive than the City's ordinances or other applicable laws. To the extent permitted by applicable laws, the parties entitled to enforce this Declaration shall also have the right to enforce, in a private civil action under this Declaration, all City ordinances and other laws that are applicable to the Subdivision, even if the City or other applicable governmental authority chooses not to enforce the same. All such City ordinances and other applicable laws that are in effect from time to time shall be automatically incorporated into this Declaration by this reference.

ARTICLE X NOTICES

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

10.2 All notices required or permitted under this Declaration shall be deemed given if (i) deposited in the United States Mail, postage prepaid, and addressed to the Owner at the address of the Lot or (ii) sent by electronic mail to the Owner at the electronic mail address last provided by the Owner to the Homes Association. Notice to one co-Owner shall constitute notice to all co-Owners.

ARTICLE XI AMENDMENT AND TERMINATION

11.1 The provisions of this Declaration may be amended, modified or terminated, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by both (i) the Owners of at least 60% of the Lots within the Subdivision as then constituted and (ii) if prior to the recording of the Certificate of Substantial Completion, the Developer, or if after the recording of the Certificate of Substantial Completion, the Homes Association under express authority and action of the Board. After the recording of the Certificate of Substantial Completion or with the Developer's written consent, this Declaration also may be amended, modified or terminated, in whole or in part, at any time by a duly acknowledged and recorded written instrument executed by the Homes Association after the

proposed amendment, modification or termination has been first approved by the affirmative vote of 75% or more of the full number of directors on the Board of the Homes Association and then approved at a duly held meeting of the members of the Homes Association (called in whole or in part for that purpose) by the affirmative vote of Owners owning at least 60% of the Lots. Notwithstanding the foregoing, no amendment adopted under this Section 11.1 may remove, revoke or modify any right or privilege of Developer under this Declaration at any time without the prior written consent of Developer.

11.2 Anything set forth in Section 11.1 of this Article XI to the contrary notwithstanding, the Developer shall have the absolute, unilateral right, power and authority to modify, revise, amend or change any of the terms and provisions of this Declaration, as from time to time amended or supplemented, by executing, acknowledging and recording in the Recording Office a written instrument for such purpose, if (i) any of the Veteran's Administration, the Federal Housing Administration, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, or any successor or similar agencies thereto shall require such action as a condition precedent to the approval by such agency of the Subdivision or any part of the Subdivision or any Lot in the Subdivision, for federally-approved mortgage financing purposes under applicable programs, laws and regulations, (ii) the City requires such action as a condition to approval by the City of some matter relating to the development of the Subdivision, (iii) the amendment is necessary to cause this Declaration to comply with any applicable law, (iv) in the opinion of the Developer, a typographical or factual error or omission needs to be corrected, (v) such action is appropriate, in Developer's discretion, in connection with a replat of all or any part of the Subdivision or (vi) until December 31, 2026, to make any other amendment the Developer may determine to be appropriate. No such amendment by the Developer shall require the consent of any Owner or the Homes Association.

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

ARTICLE XII EXTENSION OF SUBDIVISION

The developer shall have, and expressly reserves, the right, at any time, to add to the existing subdivision and to the operation of the provisions of this declaration other adjacent or nearby lands (without reference to any tract, street, park or right-of-way) by executing, acknowledging and recording in the recording office a written instrument subjecting such land to all of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof; provided, however, that such declaration or agreement may contain such deletions, additions and modifications of the provisions of this declaration applicable solely to such additional property as may be necessary or desirable as solely determined by the developer in its discretion.

**ARTICLE XIII
ASSIGNMENT**

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

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

**ARTICLE XIV
COVENANTS RUNNING WITH THE LAND**

14.1 All provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon and inure to the benefit of all subsequent grantees of all parts of the Subdivision. By accepting a deed to any of the Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the provisions of this Declaration as applied to the Lot owned by such Owner. The provisions of this Declaration shall not benefit nor be enforceable by any creditor of the Homes Association (other than the Developer) in such capacity as a creditor.

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

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

14.4 Each of the Developer and the Homes Association and each Owner shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of, or to enforce the observance of, the agreements, restrictions, reservations and other provisions set forth in this Declaration, in addition to pursuing an action at law for damages. To the maximum extent permitted by law, if the Developer or the Homes Association files such court action and is successful in obtaining a judgment or consent decree in such court action or otherwise obtaining compliance by the breaching party, the Developer and/or Homes Association shall be entitled to receive from the breaching party, as part of the judgment or

decree or any dismissal or settlement, the actual legal fees, costs and expenses incurred by the Developer and/or Homes Association with respect to such action.

14.5 To the extent permitted by law, the Board may also enforce all of the foregoing agreements, restrictions, reservations and other provisions of this Declaration by establishing, levying and collecting reasonable monetary fines for violation thereof.

14.6 Whenever the Developer or the Board determines that a violation of this Declaration has occurred and is continuing with respect to a Lot, the Developer and the Homes Association may (but is not obligated to) enter the Lot to correct the violation, and, in addition or in lieu thereof, may file with the Recording Office a certificate setting forth public notice of the nature of the breach and the Lot involved.

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

14.8 In addition to the specific provisions of this Declaration that allow the Developer to make certain decisions or give permission for certain matters, the Developer or the Homes Association (acting through the Board) may, under special situations or circumstances as determined by it, allow variances or waivers of the requirements or terms set forth in this Declaration. Any such variation or waiver so granted by the Developer or the Homes Association shall not constitute a waiver of such requirement or term in any other situation or under any other circumstances.

14.9 No waiver of any violation shall be effective unless in writing and signed and delivered by the person or entity entitled to give such waiver, and no such waiver shall extend to or affect any other violation or situation, whether or not similar to the waived violation. No waiver by one person or entity shall affect any rights or remedies that any other person or entity may have; provided, however, that a duly authorized, executed and delivered waiver by the Homes Association, acting upon a decision of the Board, respecting a specific violation or potential violation of this Declaration with respect to a specific Lot shall constitute and be deemed as a waiver by all other persons and entities (other than the Developer) of such violation or potential violation.

ARTICLE XV GOVERNING LAW AND SEVERABILITY

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

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

IN WITNESS WHEREOF, the Developer and Owners have caused this Agreement to be duly executed the day and year first above written.

THE DEVELOPER:

STEVE FOLEY CONSTRUCTION CO., INC.

By: Steve Foley
Name: STEVE FOLEY
Title: President

STATE OF KANSAS)
COUNTY OF Miami) ss.

This instrument was acknowledged before me, a notary public, on August 15, 2022, by Steve Foley, as President of STEVE FOLEY CONSTRUCTION CO., INC., a Kansas corporation.

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

My Commission Expires: 5.25.26

Diana L. Dusselier
Signature of Notary Public in and for said
County and State

Print Name: Diana L. Dusselier

