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**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS**

for

BRIARWOOD COMMUNITY

NO. 136680 ✓
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A Residential Community Developed by
TERRAVEST DEVELOPMENT CORPORATION
a Kansas corporation

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THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIARWOOD COMMUNITY (the "Declaration") is made this 3rd day of April, 1998, by Terravest Development Corporation, a Kansas corporation ("Developer").

Notice of Intent

This Declaration provides the legal structure for the creation and operation of Briarwood Community, a community providing a unique mixture of single-family dwellings, secondary dwellings to be used in connection with single-family dwellings, and living units appurtenant to primary dwellings for the use and convenience of the owners and occupants of primary dwellings. In order to achieve a traditional neighborhood ambience for Briarwood Community, this Declaration provides for an extensive degree of control in Developer, including, but not limited to: (i) control of the Community Association and supervision over the type and design of improvements which may be constructed within the Community and upon the Lots located therein (with authority to impose fines for noncompliance); (ii) the right to amend this Declaration; (iii) the right to annex additional real property to the Community; and (iv) substantial flexibility in developing the Community.

Recitals

A. Developer is, or shall become, the record owner of that certain real property situated in Lawrence, Douglas County, Kansas, described on Exhibit "A" attached hereto and, by reference, made a part hereof which shall constitute the Community.

B. Developer desires to submit and subject the Community, together with all buildings, improvements and permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances, and privileges belonging or in any way pertaining thereto, to the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights contained herein, all for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Community.

C. Developer deems it desirable, for the efficient management of the Community, to create the Briarwood Community Association, a not-for-profit corporation, which shall exercise the powers of: (i) administering and enforcing the easements, covenants, conditions, and restrictions set forth herein; (ii) collecting and disbursing funds, pursuant to the assessments, spending procedures and charges hereinafter created; and (iii) performing such other acts as are herein provided for which generally benefit its Members, the Community or the owners of any interests therein.

D. Developer may, but is not obligated, to annex additional real property to the Community, and thereby subject such property to this Declaration, and to bind the owners of any interests therein to the easements, covenants, conditions, and restrictions contained in this Declaration.

NOW, THEREFORE, Developer, for the purposes described above, declares that all property within the Community shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights described in this Declaration, all of which are declared to be in furtherance of a plan to promote and protect the Community and shall run with the land and be binding upon all property within the Community and all parties having or acquiring any right, title, or interest in or to any property within the Community, or any part thereof, and shall inure to the benefit of and be a burden upon each Owner and each Member of the Community Association. Each Owner, by accepting title to a Lot, and each Community Association Member, by accepting such membership, acknowledges, agrees to, and accepts Developer's control of the Community and the limited liability of Developer as provided for in this Declaration.

ARTICLE I
Definitions

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows:

1.1 "Annexation Property" means any additional real property which is annexed to the Community, thereby becoming a part thereof and subject to this Declaration, in accordance with the provisions of Article XIII.

1.2 "City" means the City of Lawrence, Kansas, a municipal corporation of the State of Kansas.

1.3 "Common Expenses" means the actual costs incurred by the Community Association in conducting activities in connection with the Community for which the Community Association is responsible pursuant to the terms hereof. Common Expenses contemplated hereby shall include, but not be strictly limited to, the following:

(a) the cost of maintenance, management, operation, repair, and replacement of all areas and facilities within the Community which are owned, maintained and/or operated by the Community Association;

(b) unpaid Assessments;

(c) the cost of management and administration of the Community Association including, but not limited to, compensation paid by the Community Association to managers; accountants, attorneys, other professionals and employees;

(d) the cost of utilities (including but not limited to water; electricity, gas, sewer, trash pick-up and disposal which are provided directly to the Community Association and not individually metered or assessed by Lot), landscaping maintenance, and other services which generally benefit and enhance the value and desirability of the Community and which are provided by the Community Association;

(e) the cost of any insurance maintained by the Community Association;

(f) reasonable reserves for contingencies, replacements, and other proper purposes as deemed appropriate by the Community Association;

(g) the cost of bonding any person handling the funds of the Community Association;

(h) taxes paid by the Community Association;

(i) costs incurred by committees established by the Community Association Board;

(j) the costs of any other item or items to be provided or performed by the Community Association pursuant to this Declaration or its Articles or Bylaws, or in furtherance of the purposes of the Community Association or in the discharge of any duties or powers of the Community Association;

1.4 "Common Maintenance Areas" means all areas and facilities within the Community which are owned, maintained and/or operated by the Community Association, and/or those areas shown as common area on the Development Plan, which Common Maintenance Areas include, but shall not be limited to, the following:

- (a) the park and open space areas shown on Lot 22 of the Development Plan;
- (b) the private streets and private alleys, as shown on the Development Plan;
- (c) the entryway sign and appurtenances adjacent to Folks Road, as shown on the Development Plan;
- (d) all real estate owned by the Community Association, or with respect to which the Community Association shall have the right of occupancy and use for the benefit of the Community's Owners and Occupants, including, without limitation, park, playground and swimming pool areas;
- (e) any structures, trees, landscaping, lighting equipment, street lights, decorative equipment, or other improvements owned by the Community Association and located on the Community Association's real estate;
- (f) all easements, rights, and appurtenances belonging thereto necessary for utilities or to the existence, operation, maintenance, and safety of the community and the community area and facilities; and
- (g) all personal property owned by the Community Association, or with respect to which the Community Association shall have the right of occupancy and use for the benefit of the Community's Owners and Occupants.

1.5 "Community" means the land described on Exhibit A, together with any Annexation Property, and the residential development thereon.

1.6 "Community Association" means the Briarwood Community Association, a Kansas not-for-profit corporation.

1.7 "Community Association Articles" means the Articles of Incorporation, as amended from time to time, of the Community Association.

1.8 "Community Association Board" means the Board of Directors of the Community Association.

1.9 "Community Association Bylaws" means the bylaws of the Community Association adopted in accordance with the Community Association Articles, as amended from time to time.

1.10 "Community Association Declaration" means this Declaration and any amendments thereto or modifications thereof.

1.11 "Community Association Member" means any Person who holds a membership in the Community Association.

1.12 "Community Association Rules" mean the rules and regulations adopted by the Community Association.

1.13 "Default Rate of Interest" means an annual rate of interest equal to the prime rate published by the Wall Street Journal from time to time as the "Prime Rate" (with interest hereunder adjusted as and when said Prime Rate is adjusted) plus 4% per annum, but never less than 18% per annum (so that if during any periods while interest is accruing said prime rate plus 4% per annum is less than 18% per annum, interest shall accrue during said periods at 18% per annum). Notwithstanding anything herein to the contrary, if, during any period, the highest lawful rate of interest which may be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the interest payable by such Person during said period shall be the highest lawful rate. If the Wall Street Journal should cease publishing a Prime Rate as described above, the Community Association may compute interest hereunder upon the publicly announced prime rate of any other bank doing business in Douglas County, Kansas. If banks should cease announcing prime rates, the Community Association may elect to use 18% as the Default Rate of Interest, or may specify the rate, in lieu of said prime rate, for purposes of the computation hereunder which the Community Association would reasonably have to pay to borrow money at the time.

1.14 "Design Review Committee" means the committee provided for in Article X of this Declaration, entitled "Architectural and Landscape Control."

1.15 "Design Standards" means the rules, regulations, restrictions, architectural standards, and construction guidelines herein designated as such and as otherwise from time to time adopted by the Design Review Committee.

1.16 "Developer" means Terravest Development Corporation, a Kansas corporation, its successors and assigns, or any person to whom Developer's rights hereunder are hereafter assigned by a Recorded instrument.

1.17 "Development Plan" means the Development Plan for the Community, filed May 14, 1997, in Plat Book 15, Pages 871-875, which Development Plan may be amended or modified by Developer in accordance with this Declaration, from time to time or at any time, and which Development Plan may be supplemented following the addition of Annexation Property, if any.

1.18 "First Mortgage" means a Mortgage which is the first and most senior of all Mortgages upon the same property. First Mortgage means the holder of a First Mortgage.

1.19 "Lot" means a subdivided lot within the Community as shown on the applicable Plat.

1.20 "Majority", where not specifically designated otherwise, means at least 50.1% of the total votes entitled to be cast with respect to a given matter.

1.21 "Mortgage" means any recorded, filed, or otherwise perfected instrument given in good faith and for valuable consideration (which is not a fraudulent conveyance under Kansas law) as security for the performance of an obligation, including, without limitation, a Mortgage, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.22 "Mortgagee" means the holder of a note secured by a Mortgage, including the Mortgagee and lender under any Mortgage. "Mortgagor" means the party granting the Mortgage.

1.23 "Occupant" means any Person, other than an Owner, in rightful possession of a Lot, or a portion thereof, whether as a guest, tenant, or otherwise.

1.24 "Owner" means the record owner, whether one or more Persons, of fee simple title, whether or not subject to any Mortgage, to any Lot which is a part of the Community, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.25 "Owner's Proportionate Share" means a fraction, the numerator of which is the number of Lots then owned by such Owner within the Community and the denominator of which is the total number of Lots then within the Community. This Section shall be subject to the provisions of Section 11.13.

1.26 "Person" means an individual, trustee, corporation, partnership, limited liability company, or other entity capable of holding title to real property, and their respective heirs, legal representatives, successors, and assigns.

1.27 "Plat" means collectively each plat of subdivision of the Community as first Recorded in the official records of Douglas County, Kansas, and from time to time amended or supplemented.

1.28 "Record", "Recorded" or "Recording" means an instrument of record in, or the act of recording an instrument with, the Clerk of the District Court or office of the Register of Deeds for Douglas County, Kansas.

1.29 "Screen" or "Screening" means to partition in a manner such that one cannot see through the partition, and shall consist generally of trees, shrubs and/or evergreen landscaping with an initial height of four (4) feet, which landscaping shall be subject to the prior written approval of the Design Review Committee in each instance.

1.30 "Supplemental Declaration" means a declaration of easements, covenants, conditions, and restrictions, or similar instrument, annexing additional real property ("Annexation Property") to the Community and subjecting such real property to this Declaration.

ARTICLE II
The Declaration

Developer hereby establishes the Community and this Community Declaration to govern the use and occupancy of Lots within the Community. In the event of any conflict between this Community Association Declaration and any provision of the Community Association Articles, Community Association Rules or Design Standards, the Declaration shall in all cases control.

ARTICLE III
Community Association

3.1 **Purpose of the Community Association.** The Community Association has been, or will be, incorporated as a not-for-profit corporation organized under the laws of Kansas. Subject to the provisions of Section 3.15, the Community Association shall be responsible for the protection, improvement, alteration, maintenance, repair, replacement, administration, and operation of the Community, including taking such action as is necessary for the assessment of expenses, payment of losses, disposition of casualty insurance proceeds (if any), and other matters as provided in or contemplated by this Declaration, the Community Association Articles, the Community Association Bylaws, the Community Association Rules or Design Standards. The Community

Association shall not be deemed to be conducting a business of any kind, and all funds received by the Community Association shall be held and applied by it for the benefit of the Community in accordance with the provisions of the Community Declaration, Community Association Articles and Community Association Bylaws.

3.2 Membership in Community Association.

(a) Subject to the provisions of Section 3.15 hereof, the Owner of each Lot shall be entitled to Community Association membership and one vote in the Community Association, so long as he or she is the Owner of such Lot (notwithstanding the number of Lots owned), and such Owner shall specify in writing to the Community Association the name of the individual who will hold the Community Association Membership. In the absence of such written specification, Assessments shall nevertheless be charged against the Lot and Owner thereof, but there shall be no right to vote the membership. The Community Association Member must be an individual who, is either an Owner, or if the Owner is or includes a Person other than an individual, the Community Association Member may be an individual who is a partner if the Owner is or includes a partnership, an officer of a corporation if the Owner is or includes a corporation, a member if the Owner is or includes a limited liability company, or a trustee of a trust if the Owner is or includes a trust, or an owner of the entity if the Owner is or includes a Person other than an individual, partnership, corporation, limited liability company, or trust.

(b) Subject to the provisions of Section 3.2(a), once a Community Association Member has been specified by an Owner of a Lot, a new Community Association Member may only be specified for that Lot upon at least 15 days prior written notice to the President of the Community Association; provided, however, the foregoing shall not impair the provisions of Section 3.2(c).

(c) A membership in the Community Association shall not be transferred, pledged, or alienated in any way, except as herein expressly provided. Subject to the provisions of Section 3.2(a), Community Association Membership shall automatically be transferred to the new Owner upon the transfer of the Lot to which it appertains (and then only to such transferee), whether by sale, intestate succession, testamentary disposition, foreclosure of a Mortgage or other legal process transferring fee simple title to such Lot.

3.3 Pledge of Voting Rights. Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to his or her Community Association Membership with respect to his or her Lot to a Mortgagee as additional security, the vote of such Mortgagee will be recognized only if a copy of such proxy, or other instrument pledging such vote, has been filed with the Community Association. In the event that more than one such instrument has been filed, the Community Association shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves.

3.4 Assignment of Developer's Voting Rights. If any lender to whom Developer has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration, succeeds to the interests of Developer by virtue of said assignment, the absolute voting rights of Developer as provided in Section 3.15 shall not be terminated thereby, and such lender shall hold Developer's memberships and voting rights on the same terms as they were held by Developer pursuant hereto.

3.5 Board of Directors of the Community Association.

(a) The affairs of the Community Association shall be conducted by the Community Association Board as herein provided and in accordance with the Community Association Articles and

Community Association Bylaws. Except for directors elected by Developer as provided for in Section 3.15, each director shall be a Community Association Member or the spouse of a Community Association Member. If a director shall cease to meet such qualifications during his or her term, he or she will thereupon cease to be a director and his or her place on the Community Association Board shall be deemed vacant.

(b) Except for directors elected by Developer as provided for in Section 3.15, the members of the Community Association shall have the power and right to appoint and remove the members of the Community Association Board as provided in the Community Association Articles and Community Association Bylaws.

(c) Any member of the Community Association Board may be removed from office, by action of the Community Association Members, in accordance with the following procedures: Upon the presentation to the Community Association President of a petition duly executed by twenty-five percent (25%) or more of all of the Community Association Members in favor of the removal from office of the member or members of the Community Association Board therein named, a referendum of the Community Association Members shall be promptly held to determine whether such member or members of the Community Association Board should be removed from office. Upon the affirmative vote of two-thirds of all of the Community Association Members then entitled to vote to remove such member or members of the Community Association Board from office, such member or members shall be deemed removed from office. Any vacancy on the Community Association Board created by the removal of a member of the Community Association Board as herein provided shall be filled by an election of all of the Community Association Members in the manner provided in the Community Association Articles or Community Association Bylaws for the election of directors.

3.6 Approval of Members. Unless elsewhere otherwise specifically provided in this Declaration or the Articles or Bylaws of the Community Association, any provision of the foregoing which requires the vote or written assent of the members of the Community Association shall be deemed satisfied by the following:

(a) The vote in person, or by proxy, of the specified percentage of Community Association Members entitled to vote at a meeting duly called and noticed pursuant to the provisions of the Community Association Articles or Bylaws, dealing with annual or special meetings of the Members of the Community Association.

(b) Written consents signed by the specified percentage of members then entitled to vote as provided in the Bylaws of the Community Association.

3.7 Additional Provisions in Articles and Bylaws. The Articles and Bylaws of the Community Association may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents, and Members not inconsistent with law or this Declaration.

3.8 Community Association Rules. In order to be able to address specific matters relating to the administration, operation and development of, or other matters relating to, the Community, the Community Association Board shall be empowered to adopt, amend, or repeal such rules and regulations as it deems reasonable and appropriate (the "Community Association Rules"). The Community Association Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments or otherwise. The Community Association Rules shall not be inconsistent with the terms of this Declaration. The Community Association Rules may not unreasonably or unlawfully discriminate among Owners and Community Association Members. A copy of the Community Association Rules as they may from time to time be adopted, amended,

The first part of the document is a general introduction to the project. It describes the objectives and the scope of the work. The second part is a detailed description of the methodology used in the study. This includes a discussion of the data collection methods and the statistical techniques employed. The third part presents the results of the study, and the fourth part discusses the implications of these results for future research and practice.

The methodology section is divided into two main parts: data collection and data analysis. The data collection part describes the use of both primary and secondary data sources. The data analysis part discusses the use of both qualitative and quantitative methods. The results section is organized into three main areas: descriptive statistics, inferential statistics, and qualitative analysis.

The descriptive statistics section provides a summary of the data, including measures of central tendency and dispersion. The inferential statistics section discusses the use of hypothesis testing and confidence intervals. The qualitative analysis section describes the use of content analysis and grounded theory. The implications section discusses the implications of the results for future research and practice. It also discusses the limitations of the study and the need for further research.

The conclusions section summarizes the main findings of the study and discusses their implications. It also discusses the limitations of the study and the need for further research. The references section lists the sources used in the study.

The appendix section contains supplementary material, including raw data, detailed statistical results, and additional analyses. The index section provides a guide to the document's content.

The bibliography section lists the sources used in the study.

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The index section provides a guide to the document's content.

or repealed, or a notice setting forth the adoption, amendment, or repeal of specific portions of the Community Association Rules shall be delivered to each Community Association Member in the same manner established in this Declaration for the delivery of notices. Upon completion of the notice requirements, the Community Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and Community Association Members, and all other Persons having any interest in, or making any use of, the Community Association, whether or not actually received thereby. The Community Association Rules, as adopted, amended, or repealed, shall be available at the principal office of the Community Association to each Owner, Community Association Member, or other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Community Association Rules and any provisions of this Declaration or the Community Association Articles or Bylaws, the provisions of the Community Association Rules shall be deemed to be superseded by the provisions of this Declaration or such Articles or Bylaws to the extent of any such conflict.

3.9 Indemnification. To the fullest extent permitted by law, every director and every officer of the Community Association, and the members of the Design Review Committee, and Developer (including every shareholder, officer, director, and employee of Developer) (to the extent a claim may be brought against Developer by reason of its appointment, removal, or control over members of the Community Association Board or the Design Review Committee) shall be indemnified by the Community Association, and every other person serving as an employee, or direct agent of the Community Association, or on behalf of the Community Association as a member of a committee or otherwise, may, in the discretion of the Board of the Community Association, be indemnified by the Community Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him or her in connection with any proceeding or any settlement thereof to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having served in such capacity on behalf of the Community Association (or in the case of Developer by reason of having appointed, removed, or controlled, or failed to control members of the Community Association Board or the Design Review Committee) whether or not he or she is a director, an officer, or a member of the Design Review Committee, or serving in such other specified capacity at the time such expenses are incurred; provided, however, that prior to agreeing to any such indemnification, the Community Association Board shall determine, in good faith, that such officer, director, member of the Design Review Committee, or other Person, or Developer, did not act, fail to act, or refuse to act willfully, or with gross negligence, or fraudulent or criminal intent in the performance of his or her duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Persons may be entitled at law or otherwise. Appropriate insurance may be obtained pursuant to Article VI to cover any liability exposure created by virtue of the foregoing indemnification.

3.10 Non-Liability of Officials. To the fullest extent permitted by law, neither Developer, the Community Association President, any directors or officers of the Community Association, any Design Review Committee member, nor any other members of committees of the Community Association shall be liable to any Community Association Member or any Owner, Occupant, or other Person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, inaction, omission, error, negligence, or the like made in good faith and which developer, the President, any director, any officer or any member such committees reasonably believed to be within the scope of his or her duties.

3.11 Easements. The Community Association is authorized and empowered to, and shall upon appropriate request, without further consideration, grant upon, across, or under real property owned or controlled by the Community Association such permits, licenses, easements, and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable, and other similar public or private utility purposes, roadways, sidewalks, landscaping, lighting or other purposes as may be reasonably necessary and

appropriate for the orderly maintenance, preservation, and enjoyment of all or any part of the (i) Community, (ii) Annexation Property or other property located near or adjacent to the Community which is owned or controlled by Developer, or (iii) otherwise for the preservation of the health, safety, convenience, and welfare of the Owners. There is hereby created an affirmative, non-exclusive easement in favor of Developer, for ingress and egress over all Common Maintenance Areas and for the right to go over, under, and across, and to enter and remain upon all Common Maintenance Areas for all purposes consistent with the development and maintenance of the Community.

3.12 Accounting. The Community Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of all Owners at reasonable times during regular business hours, books which shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise.

3.13 Records. The Community Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner and Community Association Member the books, records, and financial statements of the Community Association together with current copies, as amended from time to time, of this Declaration and the Community Association Articles, Bylaws, Rules, and Design Standards. Developer shall be under no obligation to make its own books and records available for inspection by the Community Association, or any Owner, Community Association Member or other Person.

3.14 Managing Agent. Any powers, duties, and rights of the Community Association created pursuant hereto, or of the Community Association President, or Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Community Association of its obligation to perform any such delegated duty. Any agreement for professional management, or any other contract providing for services, shall not exceed a term of three years, which term may be renewed by agreement of the parties, and shall further provide for termination by either party with or without cause and without payment of a termination fee upon 90 days' prior written notice.

3.15 Developer's Control of the Community Association. Notwithstanding anything in this Article III or elsewhere in this Declaration to the contrary, Developer shall maintain absolute and exclusive control over the Community Association and the Design Review Committee, including appointment and removal of the President and all other officers of the Community Association, all directors of the Community Association Board and all members of the Design Review Committee, until (i) 95% of the Lots in the Community (as it exists from time to time) have been sold by Developer and occupied by third parties, and (ii) Developer shall own less than two acres of land within the Community. Until such time, only Developer will be entitled to cast any votes with respect to the election and removal of Community Association officers or directors and members of the Design Review Committee, or any other matter requiring the vote or approval of Community Association Members. Developer may (but shall not be required to), at any time, voluntarily relinquish all or any part of Developer's control and rights under this Section.

ARTICLE IV
Common Areas and Facilities -
Construction, Maintenance, and Use

4.1 Private Streets; Street Signs, Yard Lights and Street Lights. It is contemplated that any streets and alleys which are not dedicated to the general public will be private streets and private alleys and shall be a part of the Common Maintenance Areas. Each Lot shall be subject to easements for the location, installation, operation, maintenance, repair and removal of street signs, yard lights and/or street lights, together with easements for electrical utility services to be metered from the residence located or to be constructed on each

Lot for the service of such yard lights and/or street lights. All such easements for street signs, yard lights and/or street lights shall be located as shown in the Development Plan, which easements shall be covenants running with the land and be binding upon all Lots within the Community and all parties having or acquiring any right, title, or interest in or to any property within the Community, or any part thereof, and shall inure to the benefit of and be a burden upon each Owner and each Member of the Community Association. Upon the completion of construction, the cost of maintenance, electrical utilities, capital improvements, operation, taxes and other expenses incident to the private streets, private alleys, street signs, yard lights and street lights, regardless of whether dedicated to the public or as Common Maintenance Areas, shall be paid from assessments as herein provided. In the event of any repair or replacement of street signs, yard lights and/or street lights, the same shall be repaired or replaced with components of similar style, design and quality.

42 Recreational Facilities. It is contemplated that Developer may construct as Common Maintenance Areas certain initial recreational facilities consisting of a swimming pool and one activities center. Developer shall have the right, but not the obligation, to construct such other recreational facilities as Common Maintenance Areas in later phases of development as it shall, in its sole discretion, decide. The cost of maintenance, initial cost of construction, capital improvements, operation, administration, leasing, taxes, repair, replacement, and other expenses incident to these Common Maintenance Areas shall be the obligation of the Community Association and shall be paid from Assessments as herein provided and also from any fees for the use of the Common Maintenance Areas. Developer shall be the sole judge as to if and the time when such recreational facilities shall be constructed and if Developer shall decide that it is not economically feasible to construct all or a portion of such facilities due to the cost of construction, failure to sell sufficient Lots, or any other reason, Developer shall not be obligated to construct same.

43 Enjoyment. Subject to Section 4.5 of this Article Four, each Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Areas and Facilities, and such easements shall be appurtenant to and shall pass with the title to each Lot; provided, however, that no Owner shall have any rights with respect to any property or portion of the Common Areas and Facilities reserved for exclusive use by Developer. The membership of each Owner in the Community Association shall be deemed to be conveyed or encumbered with the deed or Mortgage applicable to each Lot, even though such interest is not expressly mentioned or described in the conveyance, Mortgage or other instrument. Each Owner may use the Common Areas and Facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of other Owners.

44 Delegation of Rights. Any Owner may delegate his right of enjoyment of Common Area and Facilities to the members of his family, his tenants, or contract purchasers who reside in his Residential Unit.

45 Regulations and Suspension of Rights. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Community Association Board to prescribe rules and regulations and fees governing the use, operation and maintenance of all Common Areas and Facilities.
- (b) The right of the Community Association to dedicate or transfer part of the Common Area to any public agency, authority or any public utility to provide necessary utility services to the Owners.
- (c) The right of the Community Association Board to fix penalties for the violation of rules and regulations.

(d) The right of the Community Association to borrow money for the benefit of the Community Association and the Owners; provided, however, that the repayment of such loans shall not be or become the personal obligation of the Owners, except to the extent the repayment of such loans shall be made by the Community Association from assessments levied in accordance with this Declaration.

(e) The right of the Community Association to charge Community Association Members and their guests reasonable admission and other fees for the use, service and enjoyment of any recreational facility or other improvements situated upon the Common Maintenance Areas. Such user fees need not be uniform among the various classes of Members and their guests but may be established by the Community Association Board in its absolute discretion and may be changed without notice; and

(f) The right of the Community Association to open any of the Common Maintenance Areas including, but not limited to, the swimming pool and other recreational facilities, to other than Community Association Members and their guests or the public at large and charge admission fees or any other fees for the use, service and enjoyment of any of the recreational facilities; and

(g) Notwithstanding the foregoing, however, if any Owner shall guarantee repayment of any or all of a portion of any obligation of the Community Association which is incurred for the purpose capital improvements of Common Maintenance Areas, and such Owner shall, to the extent of such payment, be required to pay all or any portion of such obligation, such owner shall be entitled to the rights of a third-party beneficiary under this Declaration for the purpose of requiring the Community Association to exercise its rights and authority with respect to levying assessments and imposing liens for Common Area expenses and special fees and charges for capital improvements.

4.6 No Restrictions on Access to Lots. The Community Association Board may not, in any event, revoke, limit, restrict, or suspend in any way, the right of any Owner to use and enjoy any private street or alley, located upon the real estate owned by the Community Association. As a right running with the real property, ownership of each Lot shall include the right to use and enjoy any entrances and exits owned by the Community Association. There shall always be access by other pedestrians and vehicles to and from each Lot to a public street or to a private street or alley, leading to, joining, or intersecting a public street.

4.7 Penalty Suspension. The Community Association Board shall further have the right in its sole discretion to impose, as a penalty for any violations of this Declaration or the Community Association Rules, the suspension of such Owner's easement of enjoyment of Common Maintenance Areas for a period not to exceed thirty (30) days for any one violation or occurrence. An Owner must be given notice and opportunity as is reasonable under the circumstances to refute or explain in person or in writing the charges against him/her by the Community Association before any decision of the Community Association to impose any such penalty suspension is enforceable.

4.8 Title to Common Areas and Facilities. It is contemplated that Developer shall, within a reasonable time after the completion of construction of any improvements which Developer intends to be a part of the Common Maintenance Areas, cause such land to be conveyed to the Community Association, free from any encumbrances or liens. Developer shall be the sole judge as to the time when the aforesaid improvements, if any, shall be constructed or provided and as to when, if ever, such lands will be so conveyed. Developer shall have the right, but not the obligation, to provide additional lands and improvements to the Community Association as Common Maintenance Areas and to cause same to be conveyed or transferred to the Community Association as and when it shall, in its sole discretion, decide. The Community Association may acquire additional lands and improvements as Common Maintenance Areas as its own instance, from Developer or

otherwise. If Developer shall construct any such Common Maintenance Areas, Developer may elect to either (i) convey ownership of the same to the Community Association in exchange for payment by the Community Association of the cost of construction and capital improvements, or (ii) retain ownership of the same in which event the Community Association shall be obligated to enter into a triple-net lease of the same with Developer, which lease shall include, among other terms, a minimum term of ten years, indemnification of Developer from liability resulting from use of such Common Maintenance Areas, and monthly payments of rent to Developer in an amount sufficient to fully amortize the cost of construction and capital improvements over the lease term together with a ten percent per annum capitalization rate of return to Developer.

ARTICLE V

Creation of Lien and Personal Obligation

Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to covenant and agree to pay Regular Assessments, Special Assessments, Improvement Assessments, and Reconstruction Assessments (as defined in Article VII) to the Community Association in accordance with the terms hereof. Such Assessments shall be collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees, and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon such Owner's Lot against which the Assessments are made. Each Assessment, together with such interest and other costs, shall also be the personal obligation of the Owner to whom such Assessment relates. The personal obligation for delinquent payments shall not pass to an Owner's successor unless expressly assumed by him. If an Owner shall consist of more than one Person, the obligations of the Owner for the payment of Assessments on such Owner's Lot shall be joint and several.

5.1 Purpose of Assessments. Except as otherwise herein set forth, the Assessments levied by the Community Association shall be used to: (a) promote the health, safety, and welfare of Owners, (b) enhance the value of the Community, (c) pay the costs of administration of the Community Association, (d) pay all other Common Expenses, or (e) otherwise further the interests of the Community. Where a Lot has separate gas, electrical, sewer, or other similar utilities service, the cost of the same shall be the personal obligation of each Owner. Maintenance of sewer lines serving a Lot shall be the responsibility of its Owner.

5.2 Regular Assessments.

(a) Except as otherwise specifically provided herein, each Owner of a lot shall pay as its "Regular Assessment" its Proportionate Share of the Common Expenses. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as the Community Association Articles or Bylaws provide, or as determined by the Community Association.

(b) Not later than 60 days prior to the beginning of each fiscal year of the Community Association, the Community Association shall make available for review by each Owner at the Community Association's office, during reasonable times, a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred by such Association for such fiscal year. The Community Association shall at that time determine the amount of the Regular Assessment to be paid by each Owner and notify the Owner thereof.

(c) If the Community Association subsequently determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the

Community Association's budget for that year, the Community Association President shall then immediately determine the approximate amount of such inadequacy and, with the consent of the Community Association Board, issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Owner for the balance of the year, and the date or dates when due. Each Owner shall be notified of the additional amount required to be paid and the due date of such payment, and each Owner shall pay the additional amount when due. If the estimated total Regular Assessments for a current year prove to be excessive in light of the actual Common Expenses, the Community Association may, at the discretion of the Community Association Board, retain such excess as additional working capital or reserves, or reduce the amount of the Regular Assessments for the next fiscal year. No reduction or abatement of Regular Assessments because of any such anticipated surplus may diminish the quantity, or quality, of services upon which the Common Expenses for the year in question are based, and if supplemental assessments are required, they shall be made as set forth above.

5.3 Special Assessments. "Special Assessments" shall be levied by the Community Association against an Owner to reimburse the Community Association for:

(a) Costs incurred in bringing an Owner or his or her Lot into compliance with the provisions of this Declaration, the Community Association Articles or Bylaws, or the Community Association Rules.

(b) Fines levied or fixed by the Community Association Board as provided herein.

(c) Attorneys' fees, interest, and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this Declaration, the Community Association Articles or Bylaws, or the Community Association Rules.

(d) Any other charge designated as a Special Assessment in this Declaration, the Community Association Articles or Bylaws, or the Community Association Rules, including, without limitation, any charge resulting from damage to Community areas and facilities, including street lights, caused by the negligence or failure to comply with this Declaration or the Community Association rules by an Owner, occupant, or their guests, tenants, or invitees.

In the event the Community Association undertakes to provide materials or services which benefit individual Owners or Lots and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be a Special Assessment.

5.4 Improvement Assessment. The Community Association may levy, in any fiscal year thereof, an "Improvement Assessment" applicable only for that year, for the purpose of defraying, in whole or in part, the costs of any action or undertaking on behalf of the Community Association in connection with any construction or replacement of a capital improvement thereto; provided, however, such expenses shall only apply to the extent the same is not covered by the provisions affecting Reconstruction Assessments in Article VII entitled "Damage and Destruction of Common Maintenance Areas". Without the vote of a Majority of its members, the Community Association shall not impose an Improvement Assessment in an amount which in any one year exceeds five percent (5%) of the estimated current annual Regular Assessment. Any reserves collected and held by the Community Association for the future shall not be included in determining the foregoing limitation on any annual Improvement Assessment.

5.5 Uniform Assessment. All Regular Assessments imposed upon an Owner shall be based upon such Owner's Proportionate Share.

5.6 Exempt Property. All properties dedicated to and accepted by, or otherwise owned or hereafter acquired by, a public authority shall be exempt from the Assessments created herein. All Lots and other properties owned or hereafter acquired by Developer and which are used by or leased to the Community Association for the benefit of the Owners, or for maintenance of the Common Maintenance Areas, shall be exempt from the Assessments created herein. All other Lots and properties owned or hereafter acquired by Developer shall be exempt from the Assessments created herein during a period of time beginning on the date of Recording of this Declaration and ending on that date which is five (5) years after the Recording of this Declaration.

5.7 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to each Owner on the date of its creation. The Regular Assessment shall be equitably adjusted as required for short periods.

5.8 Time and Manner of Payment, Late Charges and Interest. Regular Assessments shall be paid quarter-annually, in advance, on the first day of each January, April, July and October during the Community Association's fiscal year. All other Assessments shall be due and payable by Owners in such manner and at such times as the Community Association shall designate in accordance with the terms hereof. If not paid within ten (10) days after its due date, each such Assessment shall have added to it a late charge equal to 10% of the amount of Assessment and thereafter bear interest at the Default Rate of Interest until paid. The Community Association may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A delinquent Owner shall, to the extent allowed by then applicable law, be liable for attorneys' fees and other related costs incurred by the Community Association as a result of such delinquency, and if any suit, action, or proceeding is brought to collect any such Assessment or charge, then there shall be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon.

5.9 No Offsets. All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (i) the Community Association, its Board, its President, or Developer is not properly exercising its duties and powers as provided in this Declaration or documentation associated therewith, or (ii) Assessments for any period exceed Common Expenses.

5.10 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of 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.

5.11 Reserves. Reserves included in any budget for Common Expenses which are collected as part of Regular Assessments shall be deposited by the Community Association in a separate bank account to be held in trust for the purposes for which they are budgeted and are to be segregated from and not commingled with any other funds of the Community Association, except to the extent that the Community Association's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws (tax or otherwise) of the State of Kansas or the United States relating to corporations not organized for profit, or homeowners associations. Such reserves shall be deemed a contribution to the capital account of the Community Association. The responsibility of the Community Association Board (whether while controlled by Developer or the members of the Community Association) shall be only to provide for such

reserves as such Board in good faith deems reasonable, and neither Developer, such Board or any member thereof shall have any liability to the Community Association or any Owner, Community Association Member, if such reserves prove to be inadequate.

5.12 Subordination of Lien. Any lien which arises against a Lot by reason of the failure or refusal of an Owner to make timely payment of any assessment shall be subordinate to the lien of a prior recorded First Mortgage (together with any interest, cost, reasonable attorneys' fees and any late charges related thereto) on the Lot, acquired in good faith and for value, except for the amount of the unpaid Assessment which accrues from and after the date on which a First Mortgagee comes into possession of, or acquires title to the Lot, whichever occurs first. If any lien for unpaid Assessments which accrued prior to the date the First Mortgagee comes into possession of or acquires title to the Lot has not been extinguished by the process by which such First Mortgagee came into possession of or acquired title to the Lot, such First Mortgagee shall not be liable for unpaid Assessments arising prior to the aforesaid date and, upon written request by such First Mortgagee to the Community Association, such lien shall be released in writing by the Community Association. Any unpaid Assessments which are extinguished pursuant to the foregoing sentence shall continue to be the personal obligation of the delinquent Owner and may also be re-allocated by the Community Association among all Owners as part of the Common Expenses.

5.13 Certificate of Non-Payment. Upon reasonable written request, any Person acquiring an interest in any Lot shall be entitled to a certificate from the Community Association setting forth the amount of due but unpaid Assessments relating to such Lot, if any, and such Person shall not be liable for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Assessments which occur, or become due, after the date thereof and any interest, costs, attorneys' fees, and any late charges related to such unpaid Assessments.

5.14 Enforcement of Lien. Any lien provided for in this Article V may be enforced by Recording a lien statement, and may be foreclosed by the Community Association in any manner provided, or permitted, for the foreclosure of realty mortgages in the State of Kansas. All of the provisions of this Article V relating to the enforcement of any lien provided for herein (including without limitation the subordination provisions in Section 5.12 or the provisions of this Section 5.14) shall apply with equal force in each other instance provided for in this Declaration or the Community Association Rules or the Community Association Articles or Bylaws wherein it is stated that payment of a particular Assessment, charge, or other sum shall be secured by a lien. Nothing herein shall be construed as requiring that the Community Association take any action allowed hereunder in any particular instance, and the failure of the Community Association to take such action at any time shall not constitute a waiver of the right to take such action at a later time, or in a different instance.

5.15 Pledge of Assessment Rights as Security. The Community Association shall have the power to pledge the right to exercise its assessment powers and rights as security for any obligation of the Community Association; provided, however, any such action shall require the prior affirmative vote, or written assent, of Developer, if it controls the Community Association, or otherwise, a Majority of all of the Members of the Community Association. The Community Association's power to pledge its assessment powers shall include, but not be limited to, the ability to make an assignment of Assessments which are then payable to, or which will become payable to, the Community Association, which assignment may then be presently effective but shall allow said Assessments to continue to be paid to the Community Association and used by the Community Association as required, unless and until the Community Association shall default on its obligations secured by said assignment.

5.16 Limitation on Assessments. Notwithstanding anything in this Declaration to the contrary, in no event shall the aggregate amount of the Regular and Improvement Assessments (as defined herein) imposed

pursuant to this Declaration upon any Owner with respect to any single Lot owned by him or her exceed an average of \$100.00 per month, per Lot, over the period beginning January 1, 1998, and ending December 31, 1999. Notwithstanding the foregoing, the Community Association Board may not increase the Regular and Improvement Assessments for any year more than 20% over the Regular and Improvement Assessments for the preceding year, unless members holding a majority of the total votes of the Community Association then entitled to be cast, at a special meeting held for such purpose, approve of such increase. Such special meeting shall be held not less than ten (10) days and not more than fifty (50) days after notice in writing to each Community Association Member, stating the time, purpose, and place of such meeting.

ARTICLE VI

Insurance

6.1 Authority to Purchase. The Community Association shall purchase and maintain such insurance, and in such amounts with reasonable deductibles, as its Board shall determine from time to time. Such policies, and endorsements thereon, or copies thereof, shall be deposited with the Community Association. The Community Association shall make same available to the Community Association Members in order to permit such Members to determine which particular items are included within the coverage. If they so desire, any Owners or Community Association Members may insure themselves, as they see fit, if any risks which they wish to have covered are not insured by the insurance purchased by the Community Association.

6.2 Member's Responsibility. It shall be each Owner's responsibility to purchase, at his or her own cost, such insurance as he or she deems appropriate for the following: his or her Lot, improvements thereon, furnishings and personal property therein, personal property stored elsewhere within the Community, personal liability and such other insurance which the Owner desires; provided, however, no Owner or Community Association Member shall maintain any insurance, whether on his or her Lot or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Community Association in the event of damage to the improvements or fixtures on the Common Maintenance Areas.

6.3 Coverage. To the extent appropriate for the improvements on the Common Maintenance Areas or otherwise, the Community Association shall, unless otherwise determined unreasonable or unnecessary by the Community Association Board, maintain and pay for policies of insurance as follows:

(a) A multi-peril type policy covering all of the improvements on or which constitute Common Maintenance Areas providing, as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location, and use, including, without limitation, perils normally covered by an "all-risk" policy, in an amount determined by the Community Association.

(b) A policy of comprehensive public liability insurance covering all of the Common Maintenance Areas in an amount determined by the Community Association, but not less than \$1,000,000.00 per occurrence, for personal injury or death and/or property damage. The scope of such coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location, and use, including, without limitation, liability for non-owned and hired automobiles, liability for property of others, liability arising in connection with the operation, maintenance, or use of the Common Maintenance Areas, liability assumed by contract or contractual liability, and liability arising out of any employment contracts of the Community Association.

(c) The Community Association may, at its discretion, obtain fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees, or volunteers

responsible for handling funds belonging to or administered by the Community Association. If funds of the Community Association are handled by a management agent, then fidelity bond coverage shall also be obtained for the officers, employers, or agents thereof handling, or responsible for, Community Association funds. The fidelity bond, or insurance, must name the Community Association as the named insured and shall be written to provide protection in an amount not less than the lesser of: (i) one-half times the Community Association's estimated annual operating expenses and reserves; (ii) a sum equal to three months' of the Community Association's aggregate Regular Assessments plus reserves; or (iii) the estimated maximum amount of funds, including reserves, in the custody of the Community Association (and its management agent) at any one time. In connection with such coverage, an appropriate endorsement shall be added to the policy to cover any person who serves without compensation if the policy would not otherwise cover volunteers.

(d) A worker's compensation policy covering the Community Association to meet the requirements of law.

(e) The Community Association may, at its election, but is not obligated to, obtain a policy of "directors and officers" liability insurance covering the Community Association.

(f) Such other insurance, and in such amounts, as the Community Association may determine from time to time to be desirable.

6.4 Required Provisions. The insurance policies purchased by the Community Association shall, to the extent available at a reasonable cost, contain the following provisions:

(a) The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by any Owner or First Mortgagee.

(b) The conduct of any one or more Owners or Community Association Members shall not constitute grounds for avoiding liability on any such policies.

(c) There shall be no subrogation with respect to the Community Association, their agents or employees, Owners, members, or members of their households or families and employees, or any Mortgagee of all or any part of the Community or of any Lot. The policies should name said persons as additional insureds and each policy must contain a waiver of any defenses based on co-insurance, or on invalidity arising from the acts of any insured.

(d) A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner or Community Association Member because of the conduct or negligent acts of the Community Association, Community Association Members or Owners.

(e) Any "no other insurance" claims shall exclude insurance purchased by Owners, Community Association Members or First Mortgagees.

(f) Coverage must not be prejudiced by (i) any act or neglect of Owners or Community Association Members when such act or neglect is not within the control of the Community Association, or (ii) any failure of the Community Association to comply with any warranty of condition regarding any portion of the Community over which the Community Association has no control.

(g) Coverage may not be canceled or substantially modified without at least 30 days' (or such longer period as the Community Association may reasonably deem appropriate) prior written notice to the Community Association.

(h) Any policy of property insurance which gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that such election is not exercisable without the prior written approval of the Community Association, or when in conflict with the insurance trust provisions contained herein, or any requirement of law.

(i) A recognition of any insurance trust agreement entered into by the Community Association.

(j) Each hazard insurance policy shall be written or satisfactorily reinsured by a hazard insurance carrier which has a financial rating as designated in Best's Key Rating Guide of Class "A+" or better, or if such rating service be discontinued, an equivalent rating by a successor thereto or a similar such rating service. Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Kansas.

(k) Policies shall not be utilized where, under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Owners, Community Association Members or the Community Association, or where loss payments are contingent upon action by the carrier's board of directors, policyholders, or members.

(l) The coverage afforded by such policies may contain deductibles in such amounts as the Community Association may determine from time to time to be desirable. In the event of a claim, the deductible amount, if any, shall be borne by the association, member or Person sustaining the loss from which the claim arose.

6.5 Non-Liability of Community Association, its Board, and its Officers. Notwithstanding anything in this Declaration to the contrary, neither the Community Association nor any member of its Board nor any officer of the Community Association nor Developer shall be liable to any Owner or Community Association Member, Mortgagee, or other Person, if any risks or hazards are not covered by insurance, the amount of insurance is not adequate, or for the amount of any deductible, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Community Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner may desire.

6.6 Premiums. Premiums upon insurance policies purchased by the Community Association shall be paid by the Community Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot, or its appurtenances, by an Owner other than Developer, shall be assessed against that particular Owner in a Special Assessment.

6.7 Insurance Claims. The Community Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Community Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Community Association has full and complete power with respect to such claims, and may, at its discretion, appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Community Association.

6.8 Benefit. Except as otherwise provided herein, all insurance policies purchased by the Community Association shall be for the benefit of, and any proceeds of insurance received by the Community Association, or any insurance trustee, shall be held or disposed of in trust for the Community Association and the Owners, as their interests may appear.

ARTICLE VII

Damage and Destruction of Common Maintenance Areas

7.1 Duty of Community Association. In the event of partial or total destruction of the Common Maintenance Areas constituting improvements, it shall be the duty of the Community Association to restore and repair the same as promptly as practical, pursuant to this Article VII. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for such purpose, subject to the prior rights of Mortgagees whose interest may be protected by said policies.

7.2 Automatic Reconstruction. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any noncommitted or unreserved capital of the Community Association, shall be at least 75% of the estimated cost of restoration and repair, a "Reconstruction Assessment" shall be levied by the Community Association to provide the necessary funds for such reconstruction in excess of the amount of the funds available for such purpose. The Community Association shall thereupon cause the damaged or destroyed improvements constituting Common Maintenance Areas to be restored to substantially the condition the Common Maintenance Areas were in prior to the destruction or damage.

7.3 Vote of Members. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Community Association, shall be less than 75% of the estimated cost of restoration and repair, the Common Maintenance Areas shall be replaced or restored unless members holding two-thirds of the total votes of the Community Association then entitled to be cast, at a special meeting held for such purpose, disapprove of such replacement or restoration. If such Members do not disapprove the proposed replacement or restoration, the Community Association shall levy a Reconstruction Assessment and cause the damaged or destroyed Common Maintenance Areas to be restored as closely as practical to their former condition prior to the destruction or damage. If the Members disapprove of the repair or restoration of the damaged or destroyed improvements on the Common Maintenance Areas as provided above, the Common Maintenance Areas so damaged or destroyed shall be cleared of debris and put in a neat and sightly condition and the costs thereof shall be paid with the insurance proceeds.

7.4 Excess Insurance Proceeds. In the event any excess insurance proceeds remain after any reconstruction by the Community Association pursuant to this Article VII, the Community Association, in its sole discretion, may retain such sums in the general funds of the Community Association or may distribute all, or a portion of, such excess to the Owners in their respective Proportionate Shares subject to the prior rights of Mortgagees whose interest may be protected by the insurance policies carried by the Community Association. The rights of a Mortgagee of a Lot as to such distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

7.5 Use of Reconstruction Assessments. All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Article VII and shall be deposited by the Community Association in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other funds of the Community Association and shall be deemed a contribution to the capital account of the Community Association. Any Reconstruction Assessment shall be secured by the lien provided for in Article V.

7.6 Contract for Reconstruction. In the event the Community Association undertakes the repair and restoration of the Common Maintenance Areas, the Community Association shall contract with a licensed contractor or contractors who may be required to post a suitable performance or completion bond. The contract with such contractor or contractors shall provide for the payment of a specified sum for completion of the work described therein and shall provide for periodic disbursements of funds, which shall be subject to the prior presentation of an architect's, or similar, certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the Community Association.

7.7 Insurance Proceeds Trust. Upon receipt by the Community Association of any insurance proceeds, the Community Association may, at its option, cause the insurance proceeds to be paid directly to a bank, savings and loan association, trust company, or other bonded escrow or financial institution located in Douglas County, Kansas, and designated as trustee (the "Insurance Trustee") by the Community Association. Such funds shall be received, held and administered by the Insurance Trustee subject to a trust agreement consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Community Association. Disbursements to contractors performing any repair or reconstruction upon the Common Maintenance Areas shall be made periodically, as the work progresses, in a manner consistent with procedures then followed by prudent lending institutions in Douglas County, Kansas.

ARTICLE VIII **Eminent Domain**

8.1 Definition of Taking. The term "taking" as used in this Article VIII shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Maintenance Areas.

8.2 Representation in Condemnation Proceedings. In the event of a threatened taking of all or any portion of the Common Maintenance Areas, the Owners hereby appoint the Community Association through such persons as the Community Association Board may delegate to represent all of the Owners and members in connection therewith. The Community Association shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale in lieu of engaging in a condemnation action.

8.3 Award for Common Maintenance Areas. Any awards received by the Community Association on account of the taking of Common Maintenance Areas shall be paid to the Community Association. The Community Association may, in its sole discretion, retain any award in the general funds of the Community Association or distribute all, or any portion thereof, to the Owners in their respective Proportionate Shares, provided, however, that no such distribution may be made in violation of the Community Association's not-for-profit status. The rights of an Owner and the Mortgagee of his or her Lot as to any distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

ARTICLE IX **Maintenance, Repairs and Replacements**

9.1 Owner's Responsibility. Except as may otherwise be provided for herein, each Owner, at his or her own expense, shall furnish and be responsible for all of the maintenance, repairs and replacements within his or her own Lot, and shall further refrain from damaging any of the Community areas or facilities or from interfering with the Community Association's maintenance, repair, or replacement of such areas and facilities.

9.2 Maintenance of Common Maintenance Areas. Except as otherwise provided herein to the contrary, maintenance, repairs and replacements of the Common Maintenance Areas shall be furnished by the Community Association as part of the Common Expenses and shall be subject to the Community Association Bylaws and Community Association Rules. If, due to the act or neglect of an Owner, or the invitee, guest, or other authorized visitor of an Owner, or an Occupant of such Owner's Lot, damage shall be caused to the Common Maintenance Areas or maintenance, repairs, or replacement shall be required which would otherwise be a Common Expense, then to the extent not covered by the Community Association's insurance, such Owner shall pay for the damage and for such maintenance, repairs and replacements as may be determined necessary or appropriate by the Community Association. Such obligation shall be collected by way of a Special Assessment, the payment of which shall be secured by the lien provided for in Article V.

9.3 Right of Access. An authorized representative of the Community Association, Developer, and all contractors, repairmen or other agents employed or engaged by the Community Association, shall be entitled to reasonable access to each of the Lots as may be required in connection with maintenance, repairs or replacements of or to the Common Maintenance Areas or any equipment, facilities or fixtures affecting or serving the Common Maintenance Areas, or to perform any of the Community Association's or Developer's responsibilities hereunder.

ARTICLE X

Architectural and Landscape Control

10.1 Design Review Committee. The Community Association shall have a Design Review Committee consisting of not less than three nor more than five persons, as specified from time to time by Developer during periods in which Developer has the right to appoint the members of the Design Review Committee, and thereafter, by resolution of the Board of the Community Association. Developer shall retain the right to appoint itself and appoint, augment or replace all other members of the Design Review Committee for the Community until (i) 95% of all Lots within the Community have been sold by Developer and occupied by third parties, and (ii) Developer shall own less than two acres of land in the Community. Thereafter, members of the Design Review Committee shall be appointed by the Board of the Community Association. Persons appointed to the Design Review Committee, other than those Persons appointed by Developer, must be Community Association Members. Developer voluntarily may (but shall not be required to) permit Community Association Members to appoint or replace one or more members of the Design Review Committee at any time.

10.2 Establishment of Design Standards and Review Process. In order to achieve uniformity and coordination within the Community of the design and review process, "Design Standards" for the Community are established and set forth in Exhibit B, which is attached to and, by reference, made a part of this Declaration. The Design Standards may, from time to time, be amended, modified, repealed or augmented by way of an amendment to this Declaration which shall refer to this Declaration, and shall be placed of Record in Douglas County, Kansas; provided, however, each of the foregoing shall be subject to the approval of Developer until (i) 95% of all Lots within the Community have been sold by Developer and occupied by third parties, and (ii) Developer shall own less than two acres of land in the Community.

10.3 Interpretation and Waiver. The Design Review committee's interest in reviewing site and building designs is to assure that a high quality of compatible development is consistently achieved. When questions of judgment or interpretation arise, an Owner may appeal a decision of the Design Review committee to Developer, provided Developer is responsible for the appointment of the members of the Design Review Committee, but in such instance the decision of Developer shall be final. In order to meet special situations which may not be foreseen, it may be desirable from time to time for the Design Review Committee to allow variances of certain requirements. Any variance granted is considered not to be precedent setting because the

decision is being made in the context of the specific project in question with the welfare of the overall Community in mind. All approvals and consents of the Design Review Committee shall be in writing, and oral approvals or consents shall be of no force or effect.

10.4 Design Review Committee Authority and Limits of Liability.

(a) The Design Review Committee may delegate its plan review responsibilities, except final review and approval as may be required by such Design Standards, to one or more of its members or architectural consultants retained by the Design Review Committee. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants, shall be equivalent to approval or disapproval by the entire Design Review Committee.

(b) The address of the Design Review Committee shall be the address established from time to time by resolution of the Community Association. Such address shall be the place for the submittal of plans and specifications.

(c) The establishment of the Design Review Committees and Design Standards shall not be construed as impairing the obligation of any Owner to maintain or repair his or her Lot as may otherwise be specified in this Declaration, the Community Association Rules or Community Association Articles or Bylaws.

(d) No residence, fence, wall, playground equipment, basketball goals, outbuildings, or other structure or improvement of whatever type shall be commenced, erected or maintained within the Community, nor shall there be any addition to or change to the exterior of any residence, or other structure or improvement upon a Lot, or the landscaping, grading, or drainage thereof, including, without limitation, the painting (other than painting with the same color and quality of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee. The Design Review Committee may reject plans and specifications, without citing specifics, for the following reasons, among others: (i) insufficient information to adequately evaluate the design or its intent; (ii) poor overall design quality; (iii) incompatible design elements; (iv) inappropriate design concept or design treatment; and (v) a design found to have an adverse effect on the character of the Community or its residents. In recognition of the fact that the overall impact of improvements on any Lot involves issues of taste and judgment which cannot be completely reduced to Design Standards, the appropriate Design Review Committee shall also have the right to reject plans and specifications conforming to the Design Standards if the Committee believes that the overall aesthetic impact of any proposed improvement, addition, alteration or change is detrimental to the Community, as determined in the sole and absolute discretion of the Design Review Committee.

(e) By its approval of plans and specifications, the Design Review Committee shall not be deemed to have approved the same for engineering design, or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the Design Review Committee, the members thereof, the Community Association, any of its members, its officers, its Board nor Developer assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the Design Review Committee, any member thereof, the Community Association, its officers, its Board nor Developer shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, (iii)

the development, or manner of development, of any property within the Community, or (iv) the execution and filing of any estoppel statement pursuant to Section 10.4(f) or otherwise, whether or not the facts therein are correct; provided, however, that such action, on the basis of the actual knowledge possessed by the Person in question, was taken in good faith. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty that such plans or specifications comply with applicable governmental ordinances and regulations including, but not limited to, zoning ordinances and building codes.

(f) Any member or authorized consultant of the Design Review Committee, Developer or its representatives, or any authorized officer, director, employee or agent of the Community Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot, after reasonable notice to the Owner, in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been, or are being, built in compliance with the plans and specifications approved by the Design Review Committee, the Design Standards and this Declaration. The Design Review Committee shall cause such an inspection to be undertaken within a reasonable time (not to exceed 60 days) of a request therefor from any Owner as to his or her Lot which request shall contain an affirmative statement by such Owner of such Owner's good faith belief that such Owner is in compliance with the approved plans and specifications, the Design Standards and the other provisions hereof. If such inspection reveals that the improvements located on such Lot have been completed in compliance with the plans and specifications as approved by the Design Review Committee, the Design Standards and the other provisions hereof, the Design Review Committee shall provide to such Owner a notice of such approval in recordable form which, when Recorded, shall be conclusive evidence of compliance with the provisions of the approved plans and specifications and the Design Standards as to the improvements described in such Recorded notice, but as to such improvements only.

(g) The reconstruction by the Community Association after destruction by casualty, or otherwise, of any Common Maintenance Areas which is accomplished in substantial compliance with "as built" plans for such Common Maintenance Areas shall not require compliance with the provisions of this Article X or the applicable Design Standards.

(h) The Community Association may promulgate such rules and regulations as it deems to be appropriate and as are not in conflict with this Declaration in order to enforce compliance with the Design Standards set forth herein. **WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE COMMUNITY ASSOCIATION BOARD MAY FIX A FINE OF UP TO \$10,000 FOR FAILURE TO OBTAIN ANY REQUIRED APPROVAL FROM THE DESIGN REVIEW COMMITTEE OR TO COMPLY WITH ANY SUCH APPROVAL.**

10.5 Public Approvals. All pertinent requirements of public agencies shall be followed in the development of the Lot, and all plans must be approved by the appropriate departments of the City. Each Owner must verify code requirements at the time of purchase and development. Although based in part on local zoning and subdivision regulations, the Design Standards may be more restrictive in land use, site development standards, landscape requirements, or in other matters. In every case in which the Design Standards or approvals given by the Design Review Committee are at variance with public agency requirements, the more restrictive regulations shall govern. Final legal approvals permitting development and occupancy of the property will be made by the City.

ARTICLE XI
Use and Occupancy Restrictions

Attached this Declaration as Exhibit C and, by reference, made a part hereof as though contained herein word for word, are the "Use and Occupancy Restrictions" relative to the Community. Every provision of this Declaration shall apply as fully as to the Use and Occupancy Restrictions as if the same were set forth herein word for word.

ARTICLE XII
Rights of First Mortgagees

12.1 General Provisions. Notwithstanding and prevailing over any other provisions of this Declaration, the Design Standards or Community Association Articles, Bylaws or Rules, the provisions of this Article shall apply to and benefit each holder of a First Mortgage upon a Lot.

12.2 Liability for Assessments. A First Mortgagee who obtains possession or becomes record Owner of a mortgaged Lot by virtue of foreclosure of its Mortgage, or through any equivalent proceedings, such as, but not limited to, the taking of a deed or assignment in lieu of foreclosure or any third-party purchaser at a foreclosure sale, will not be liable for such Lot's unpaid dues, charges or assessments under this Declaration which may accrue prior to the time such First Mortgagee or third-party purchaser comes into possession of such Lot, or becomes record Owner of the Lot, whichever occurs first, and shall acquire title free and clear of any lien authorized by or arising out of the provisions of this Declaration which secures the payment of any such dues, charges or assessments accrued prior to the earlier of the time such First Mortgagee or third-party purchaser came into possession of such Lot or became record Owner of the Lot. Any such unpaid dues, charges or assessments against the Lot foreclosed shall be deemed to be a Common Expense. Nevertheless, in the event the Owner against whom the original assessment was made is the purchaser of or redeems the Lot, the lien shall continue in effect and may be enforced for the respective Lot's Assessment that was due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment shall continue to exist as the personal obligation of the defaulting Owner of the respective Lot to the Community Association, and the Community Association Board may use reasonable efforts to collect the same from said Owner even after he or she is no longer a member of the Community Association or the Owner of the Lot.

12.3 Enforcement After Foreclosure Sale. An action to abate the breach of any of these covenants, conditions, restrictions, and reservations may be brought against the purchasers who have acquired title through foreclosure of a Mortgage and the subsequent foreclosure sale (or through any equivalent proceedings), and the successors in interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an interest in such Lot.

12.4 Exercise of Owner's Rights. During the pendency of any proceedings to foreclose on a First Mortgage (including any period of redemption), the First Mortgagee, may but need not exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as a Member of the Community Association in the place and stead of the defaulting Owner.

12.5 Subject to Declaration. At such time as the First Mortgage shall come into possession of or become record Owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration, including, but not limited to, the obligation to pay all assessments and charges accruing thereafter, in the same manner as any other Owner.

ARTICLE XIII
Annexation of Additional Property

13.1 **Development of the Project.** Additional real property may be annexed to and become subject to this Declaration as hereinafter set forth in this Article XIII at such time as Developer or the Community Association may elect. The Annexation Property shall be limited to the main office, shop/maintenance building, open green space, clubhouse and recreation facility, including the swimming pool and appurtenances, as shown on the Development Plan, as well as any other lands contiguous to the Community now owned or hereafter acquired by Developer. Under no circumstances shall this Declaration or any Supplemental Declaration bind Developer, its successors and assigns, to make any proposed additions or in anywise preclude the conveyance of such proposed additions free and clear of this Declaration and any Supplemental Declaration.

13.2 **Supplemental Declarations.** A Supplemental Declaration shall be a writing in recordable form which annexes Annexation Property to this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements and other provisions of this Declaration and shall contain such other provisions as are necessary to designate such property. Supplemental Declarations may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexation Property and as are not inconsistent with this Declaration. In no event, however, shall any such Supplemental Declaration revoke, modify or add to the covenants established by this Declaration with respect to the portion of the Community already subject to this Declaration, except that it may reduce the Proportionate Share of any Owner.

13.3 **Annexation Without Approval of Community Association.** If added at the election of Developer, the Annexation Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Community Association without the approval, assent or vote of the Community Association, provided that a Supplemental Declaration covering the Annexation Property shall be Recorded by Developer. The Recording of said Supplemental Declaration shall constitute and effectuate the annexation of the Annexation Property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdictions of the Community Association, and thereafter said Annexation Property shall be part of the Community for all intents and purposes of this Declaration, and all of the Owners of Lots in the Annexation Property shall automatically be Owners in accordance with the terms hereof.

ARTICLE XIV
Exemption of Developer from Restrictions

Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Developer, its employees, agents and subcontractors, or parties designated by it in connection with the construction, completion, sale or leasing of the Lots, or any part of the Community. Notwithstanding any provisions of this Declaration to the contrary, Developer shall further have the right to use any Lot owned by it for model home purposes in the furtherance of its sales program. The foregoing rights shall include, without limitation, the right to display and erect signs, billboards and placards and to store, keep and exhibit same and to exhibit and distribute audio and visual promotional materials upon the Common Maintenance Areas or in model homes.

ARTICLE XV
Remedies

15.1 **General Remedies.** In the event of any default by any Owner, Occupant or other Person under the provisions of this Declaration, the Community Association, or the successors, assigns, or agents thereof, or

Developer, shall have each and all of the rights and remedies which may be provided for in this Declaration, or which may be available at law or equity, and may prosecute any action or other proceedings against such defaulting Owner, Occupant, or other Persons for an injunction, whether affirmative or negative, or for enforcement or foreclosure of any lien herein provided and the appointment of a receiver for the Lot, or for damages, or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief, all without notice and without regard to the value of the Lot or the solvency of such Owner.

15.2 Expenses of Enforcement. All expenses of the Community Association or Developer or other Person granted rights of enforcement hereunder, in connection with any action or proceeding described or permitted by this Article XV, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against such defaulting Owner, or other Person and shall be a Special Assessment against such Owner or other Person, and the Community Association or Developer shall have a lien as provided in Article V therefor. In the event of any default by any Owner or other Person, the Community Association and Developer, and any permitted manager or managing agent, if so authorized, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against such defaulting Owner or other Person as a Special Assessment, which shall constitute a lien against the defaulting Owner's Lot as provided in Article V. Any and all such rights and remedies may be exercised from time to time, cumulatively or otherwise, by the Community Association or Developer.

15.3 Legal Action. In addition to any other remedies available under this Article XV, if any Owner (either by his or her conduct or by the conduct of any Occupant of his or her Lot or family member, guest, invitee or agent) shall violate any of the provisions of this Declaration and any other document contemplated hereby, as then in effect, then the Community Association, Developer, and any other affected or aggrieved Owner, shall have the power to file an action against the defaulting Owner for a judgment, or injunction against the Owner or such other Person requiring the defaulting Owner or other Person to comply with the provisions of this Declaration, or any other document contemplated hereby, and granting other appropriate relief, including money damages.

15.4 Effect on Mortgage. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any other document contemplated hereby, shall not defeat or adversely affect the lien of any Mortgage upon any Lot but, except as herein or therein specifically provided, each and all of said covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

15.5 Limitation on Developer's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed that neither Developer (including without limitation any assignee of the interest of Developer hereunder) nor any shareholder, officer, director, or employee of Developer corporation (or in any such assignee) shall have any personal liability to the Community Association or any Owner or Occupant, Community Association Member or other Person, arising under, in connection with, or resulting from (including, without limitation, resulting from action or failure to act with respect to) this Declaration, the Articles, Bylaws or Rules of the Community Association, the Design Standards or the Design Review Committee or for any action taken or not taken pursuant to authority granted Developer therein or with respect thereto, except, in the case of Developer (or its assignee) to the extent of its interest in the Community, and, in the case of a shareholder, officer, director, or employee of Developer (or in any such assignee), his or her interest in Developer (or such assignee), and, in the event of a judgment against Developer (or any shareholder, officer, director, employee,

or assignee thereof), no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

ARTICLE XVI
Amendment

16.1 Amendments to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Community Association Board Members prior to its adoption by the Community Association Members. Amendments may be adopted at a meeting of the Community Association Members upon the approval thereof of two-thirds of all of the Community Association Members entitled to vote at such meeting, or without any meeting if all Community Association Members have been duly notified and if two-thirds of all of the Community Association Members entitled to vote at such a meeting, if held, consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of the President of the Community Association and shall be attested by the secretary, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Community Association. Amendments once properly adopted shall be effective upon recording of the Amendment to Declaration in the appropriate governmental offices.

16.2 Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all of the easements, covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration, unless otherwise specifically provided in the Section being amended or the amendment itself.

16.3 Required Approvals. Notwithstanding any provision of this Article XVI to the contrary:

(a) If this Declaration or any applicable provision of law requires the consent or agreement of additional parties, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all such parties, as required by this Declaration or by said law; and

(b) Until (i) 95% of all the Lots in the Community, as it exists from time to time, have been sold by Developer and occupied by third parties, and (ii) Developer owns less than two acres of land in the Community, this Declaration may not be amended by the Community Association Members pursuant to this Article XVI without the written consent of Developer, which may be withheld for any reason,

16.4 Developer's Right to Amend. Notwithstanding any other provision of this Article XVI, until (i) 95% of all the Lots in the Community, as it exists from time to time, have been sold by Developer and occupied by third parties, and (ii) Developer owns less than two acres of land in the Community, Developer reserves the right to amend or modify this Declaration, including, without limitation, the Development Plan, Design Standards, and Use and Occupancy Restrictions, from time to time or at any time, and all of which may also be supplemented following the addition of Annexation Property, if any, without the approval of the Community Association Board, the Community Association Members or any Owner or other Person; provided, however, that no such amendment, modification or supplement shall have the effect of changing the Plat of an Owner's Lot without the consent of such Owner.

ARTICLE XVII
General Provisions

17.1 **Notice.** Notices provided for in this Declaration, or the Community Association Bylaws, or Community Association Rules, shall be in writing and shall be addressed to the Community Association at the address specified in the Community Association Bylaws. The Community Association may designate a different address or addresses for notice by giving written notice of such change of address to all Community Association Members at such time. All notices to Community Association Members shall be to the last address shown on the records of the Community Association. Any Community Association Member may designate a different address or addresses for notices to it by giving written notice of its change of address to the Community Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.

17.2 **Captions and Exhibits. Construction.** Captions given to various Sections herein, and the Table of Contents for this Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein are incorporated as though fully set forth where such reference is made. The provisions of this Declaration shall be construed to effectuate its purpose of creating a uniform plan for the development and operation of the Community as hereinabove set forth.

17.3 **Severability.** If any provision of this Declaration, the Community Association Articles or Bylaws, or Community Association Rules or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, the Community Association Articles or Bylaws, or Community Association Rules, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration, the Community Association Articles or Bylaws, or Community Association Rules shall be construed as if such invalid part were never included therein.

17.4 **Term.** This Declaration shall continue in full force and effect (subject, however, to the right to amend as herein provided) until January 1, 2050. Thereafter, unless one (1) year prior to January 2, 2050, there shall be Recorded an instrument directing the termination of this Declaration signed by at least two-thirds (2/3) of all Community Association Members then entitled to vote, this Declaration shall be automatically continued without any further notice for an additional period of ten (10) years, and thereafter for continuous and successive periods of ten (10) years each; provided, that within one (1) year prior to the expiration of any such ten (10) year period, this Declaration may be terminated as set forth in this Section.

17.5 **Rule Against Perpetuities.** If any of the options, easements, privileges, covenants, or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until 21 years after the death of the survivor of the now living descendants of John T. Stewart IV.

17.6 **Mortgage of Lots.** Each Owner shall have the right, subject to the provisions hereof, to separately mortgage his or her Lot. No Owner shall have the right or authority to make, or create, or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Community or any part thereof, except only to the extent of his or her Lot.

17.7 **Power of Attorney.** Whenever the Community Association is granted rights, privileges or duties in this Declaration, the President shall have the authority to act for the Community Association, unless such right and power is hereby expressly reserved to the Community Association Board. Further, unless otherwise

specifically restricted by the provisions of this Declaration, wherever the Community Association is empowered to take any action or do any act, which may at any time be deemed to require the act of an Owner or Community Association Member, the Owners and Community Association Members and each of them hereby constitute and appoint the Community Association as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming a Member of a Community Association, or by the acceptance of a deed for a Lot, or by signing a contract for purchase of a Lot, or by succeeding in any other manner to the ownership of a Lot, or any interest therein, each Owner and Community Association Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.

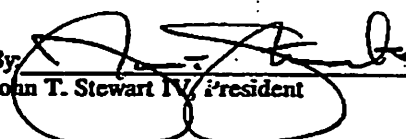
ARTICLE XVIII
Rights and Obligations

Each grantee of Developer or of any Owner, by the acceptance of a deed of conveyance, and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale, and each Mortgagee acquiring fee title under any Mortgage, and each Person acquiring a membership in the Community Association, and the heirs, successors and assigns of the foregoing Persons, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any Person having at any time any interest or estate in said land, and shall inure to the benefit of any such Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or instrument evidencing or creating such interest.

IN WITNESS WHEREOF, Developer has caused this Declaration to be duly executed.


TERRAVEST DEVELOPMENT CORPORATION
a Kansas corporation



By: 
John T. Stewart IV, President

STATE OF KANSAS)
) ss
COUNTY OF DOUGLAS)

This instrument was acknowledged before me on the 3rd day of April, 1998, by John T. Stewart IV, President of Terravest Development Corporation, a Kansas corporation, on behalf of said corporation.


Notary Public

My appointment expires 10-13-2001
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EXHIBIT A

**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS
for
BRIARWOOD COMMUNITY**

Legal Description

Lots 1 through 6, and Lots 8 through 31, all in Block One, Briarwood Addition, a Subdivision in the City of Lawrence, Douglas County, Kansas; and

Lots 1 through 10, all in Block Two, Briarwood Addition, a Subdivision in the City of Lawrence, Douglas County, Kansas; and

Lots 1 through 11, all in Block Three, Briarwood Addition, a Subdivision in the City of Lawrence, Douglas County, Kansas.

EXHIBIT B

**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS**

for

BRIARWOOD COMMUNITY

Design Standards

These Design Standards provide general guidelines for the creation and development of Briarwood Community, a community providing a unique mixture of single-family dwellings, secondary dwellings to be used in connection with single-family dwellings, and living units appurtenant to primary dwellings for the use and convenience of the owners and occupants of primary dwellings. In order to achieve a traditional neighborhood ambience for Briarwood Community with a focus on front porches, porch swings and front yards containing picket fences and flowers, certain Design Standards have been adopted, including, but not limited to:

1. Residence Design.

(a) Colors, materials, finishes and building forms shall be in conformity with the requirements hereof and integrated with the particular landscape and topographical character of each site.

(b) The site dimensions must be adequate to accommodate the proposed improvements, including the house, parking, drives, and screening.

(c) Finished grades and elevations must be compatible with neighboring sites, particularly with regard to drainage and views.

(d) The design of each residence shall be subject to the approval of the Design Review Committee and, without limiting the foregoing, shall comply with the following criteria: (i) appropriateness of form, color and materials to design style; (ii) relationship of window to wall and wall to total form (well designed massing); (iii) appropriateness of detailing to form, style and massing, (iv) the proportions of roofs shall be consistent with the proposed architectural style, and (v) front porches or porch areas shall be integrated into the design and architectural features of each residence, to the extent reasonably and economically possible.

(e) No turbines or solar panels shall be permitted which can be seen from any street.

2. Construction, Location, and Size Limitations.

(a) No exterior alterations of any existing building may be permitted without the prior approval of the Design Review Committee. No second-story additions are permitted. No additional windows, platforms, etc. which may invade the privacy of adjacent dwellings are permitted.

(b) No excavation will be made except in conjunction with construction of an improvement. When such improvement is completed, all exposed openings will be back filled and graded.

(c) Once commenced, construction will be diligently pursued to completion and it may not be left in a partly finished condition for more than 30 days without written approval from the Design Review Committee.

(d) Residences destroyed by fire or other casualty shall be demolished and removed from the Lot and new construction begun within 120 days after the date of such destruction, and thereafter such construction shall be performed with due diligence through completion.

(e) Minimum square footage requirements for residences shall be established by Developer for each Lot within the Community. With respect to the Lots within Phase I of the Community, the requirements are as follows:

- Lot "A" residences - 1,800 square feet, minimum finished living space.
- Lot "B" residences - 1,800 square feet, minimum finished living space.
- Lot "C" residences - 1,800 square feet, minimum finished living space.

Porches and garage areas shall be disregarded to compute such square footage. The Design Review Committee may approve the construction of residences with less than the minimum finished living space in special situations. Minimum square footage requirements may also vary for subsequent Phases of the Community and the Annexation Property.

(f) All residences and other improvements shall be located on each Lot as approved by the Design Review Committee and in full compliance with any set back lines or restrictions shown on the applicable Plat.

3. Exterior Materials and Colors.

(a) Residences shall be faced on all sides with quality materials (such as brick, wood, stone, dryvit or stucco) as approved by the Design Review Committee. Exposed standard concrete block, prefabricated metal buildings, simulated brick, stone, or batt and board will not be allowed. Prefabricated metal buildings are not allowed. All exterior materials and the color of all exterior materials must be approved, in advance, by the Design Review Committee.

(b) Window frames other than wood shall be either anodized or electrostatically painted. No unpainted aluminum will be permitted for window framing. Wood frames shall be painted, sealed, stained or have another coating approved by the Design Review Committee.

(c) Exposed foundations shall be painted and those exceeding twelve inches (12") shall be covered with the same quality face material as the residence.

(d) Roofs shall be cedar shake, dimensional cedar wood shingles, slate, tile, concrete, or asphalt, but the style, design, and color thereof shall be subject to the approval of the Design Review Committee.

4. Garages. Each residence must have a private, fully enclosed side-entry garage for not less than two or more than four vehicles, unless the Design Review Committee shall consent to a greater number; provided, however, if the size or configuration of the Lot shall not reasonably permit a side-entry garage, the Design Review Committee may (but shall not be obligated to) approve a rear- or front-entry garage. The interior walls of all garages must be finished with quality materials. Garages shall have the same

architectural treatment and be constructed of the same materials as the house proper. No garage may be left open to the public street for an extended period of time. No garage will be permitted to be enclosed for living or used for purposes other than storage of automobiles and related normal uses.

5. **Driveways.** All driveways shall be constructed of high quality finish such as asphalt, brick, concrete or other permanent material approved by the Design Review Committee. Circular driveways are to be discouraged, and shall not be allowed without the prior written approval of the Design Review Committee.

6. **Paved Surfaces.** All paved surfaces shall be of high quality finish such as asphalt, brick, concrete or other permanent material approved by the Design Review Committee. A maximum of 50% hard surface materials will be allowed within the front yard areas on any Lot.

7. **Patios.** No Screening of a patio or other recreation area will be installed without the written approval of the Design Review Committee.

8. **Basketball Goals and Playground Equipment.** All basketball goals, playground areas and the equipment associated therewith and Screening therefor must be approved by the design Review Committee. No lighting of a recreation area shall be installed without the prior written approval of the Design Review Committee, and if allowed shall be designed for recreational character so as to buffer the surrounding residences from all lighting.

9. **Fences and Walls.** Each Lot Owner shall be required to construct a white picket fence in the front Lot yard in a manner that is substantially uniform throughout the Community utilizing plastic composite fencing materials. All fencing and walls (including, without limitation, the composition and location thereof) shall be subject to the approval of the Design Review Committee. No chain link, wire, wood panel or stockade fencing shall be permitted. Retaining walls shall be made of natural materials or faced with quality materials approved by the Design Review Committee.

10. **Landscape.** The general approach to landscape design within the Community is based on: (i) landscape conservation and (ii) uniformity in design appearance. In furtherance thereof:

(a) Written permission is required from the Design Review Committee before removing any trees 4" or over in caliper. Appropriate construction procedures shall be followed to protect and preserve trees, shrubs and other landscaping which may exist on the construction site or on adjacent or nearby sites. Good examples of mature vegetation should, whenever practical, be saved to give the Community an established feeling. Stockpiling of any building materials, cutting, filling or any ground disturbances shall not be allowed within the drip line of existing trees which are to remain. Runoff and erosion shall be controlled on site during construction while the site is disturbed. All disturbed ground areas of a building site shall be sodded, covered with plants or mulched with approved landscape materials. Landscape improvements as approved by the Design Review Committee shall be installed within sixty (60) days after completion of the residence; provided, however, said 60 day period shall be subject to reasonable extension on account of inclement weather.

(b) Property lines shall not be obviously delineated at the street. No structure, wall, fence, or any other separating device along a property line will be permitted beyond the building lines therefor established from time to time by the Design Review Committee.

(c) Plantings for Lots shall reinforce the natural meadow and woodland character of the Community. Cleared areas should be landscaped with trees, shrubs and lawns designed to compliment the architectural character of proposed buildings in form, location and scale. Plants shall be of advanced maturity and of the highest quality.

(d) An irrigation system of design approved by the Design Review Committee shall be installed to maintain all planted areas including grass areas.

11. HVAC. No window or wall air conditioning or heating units will be permitted.
12. Utilities. All utilities shall be placed underground, to the fullest extent possible.
13. Conformity to Plans. Conformity of completed improvements to plans and specifications approved by the applicable Design Review Committee shall be required; provided, however, as to purchasers and encumbrances in good faith and for value, unless notice of non-completion or non-conformance identifying the violating Lot and specifying the reason for the notice, executed by the Design Review Committee shall be Recorded and given to the owner of such Lot within one year following completion of the improvement, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one-year period, the completed improvements shall be deemed to be in compliance with plans and specifications approved by the applicable Design Review Committee and in compliance with the architectural standards of the Community Association and this Declaration, but only with respect to purchasers and encumbrances in good faith and for value.
14. Street Obstructions. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways will be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 15 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street lines extended. The same sight line limitations will apply on any Lot within 10 feet of the intersection of a street property line with the edge of a driveway or alley pavement. No tree will be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to prevent obstruction of such sight lines.
15. Construction Period Requirements. During the period that construction is being undertaken on a Lot, the following minimum measures will be required to minimize disturbance to adjacent sites:
 - (a) Temporary lighting shall follow standards for permanent lighting as described in this Declaration.
 - (b) No dumping of construction materials, waste or trash shall occur in the Community or any other part of the Residential District.
 - (c) Each Lot shall be maintained in a clean and orderly manner during construction. Erosion shall be controlled on each Lot in a manner approved by the Design Review Committee.
16. Other Limitations. Such other limitations and restrictions shall be established as the Board of the Community Association and Design Review Committee, in their reasonable discretion, shall adopt, including, without limitation, the regulation of all landscaping (including without limitation absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior

addition, change or alteration to, or maintenance of, any building, structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color, surface texture; and location of any such improvement.

17. Review Process.

(a) Signed plan approval by the Design Review Committee is required prior to the undertaking of any site improvements, construction or installation, including clearing, grading, paving, signs, structures, landscaping, building additions or alterations, and subdivisions. Review should be coordinated with the required governmental approvals. Submission to the City for building permits or site plan approval should not be made until final plans have been approved by the Design Review Committee. All submissions to the Design Review Committee are to be made within the time periods established by the Design Review Committee and shall be in triplicate on forms or in a format approved by the Design Review Committee. One copy shall be retained for the design Review Committee for its files and two copies returned to the Owner for Owner's use in obtaining City approval (i.e., building permits). The review of each submission by the Design Review Committee will be carried out within twenty (20) working days from the date of each submission, and notification of recommendations or approval will be provided in writing to the Owner at that time. Prior to Stage I (as set forth below in Section 10.3(b)), it is required that each Owner or Owner's architect and builder (if the Owner is not the builder) attend a pre-design conference with a member of the Design Review Committee to review the intent of the Owner's proposed design.

(b) The review process shall be accomplished in the following three stages:

Stage I. Schematic/Preliminary Design.

Stage II. Construction Documents.

Stage III. Certificate of Compliance.

(c) The Stage I Schematic/Preliminary Design review will focus on architectural treatment and roof lines and compliance with other Design Standards. Schematic/Preliminary Building Design documentation will include: Site plans, floor plans, square footage, elevations, perspective rendering (optional), building materials (optional but recommended at this stage) and window type. The Schematic/Preliminary documents will include at least the following: Site location plan; grades, existing and proposed, including finished floor elevation; site survey, including existing trees 4" caliper and above, building location, overall dimensions and height; and setbacks.

(d) The Stage II construction documents review will focus on final working drawings and specifications, site and building materials (including type and color preferences), cornice/facia details, buffers, Screens, landscape areas (existing and proposed, noting trees to be removed), site lighting concepts, and site drainage. Revisions to design elements occurring after construction documents are approved will be subject to review and approval by the Design Review Committee. Review of each design change submission will be carried out as soon as reasonably possible. All construction documents shall be of professional quality and prepared in accordance with criteria established by the Design Review Committee.

(e) In the Stage III Certificate of Compliance segment, a Certificate of Compliance shall be issued to an Owner by the Design Review committee upon completion of construction in accordance

with the terms hereof. The Certificate of Compliance shall state to the Owner that the requirements of the Design Standards have been met.

(f) At the time an Owner desires to apply for a Certificate of Compliance, he or she will complete a checklist of compliance items and forward it to the Design Review Committee. This should be at the same point that application is made for a use and occupancy permit from the City. The completed checklist, signed by the Owner, will state compliance with the major items listed below, pursuant to the plans approved by the Design Review Committee.

(g) The following items will be covered by the Certificate of Compliance: (i) the building(s) is located according to approved site plan; (ii) site improvements including paving, walls, walks, tree preservation and planting have been provided in accordance with the approved plans; (iii) building(s) is of approved architectural design and approved materials and color; and (iv) approved lighting has been installed.

EXHIBIT C

**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS**

for

BRIARWOOD COMMUNITY

Use and Occupancy Restrictions

The Use and Occupancy Restrictions ("restrictions") hereinafter set forth are hereby established in the Community, and shall apply to the Community the same as if set forth in the Declaration word for word. In the event of any conflict between these restrictions and the Declaration, the Declaration shall prevail.

1. **Residential Use.** Each Lot within the Community may be used only for single-family residential purposes, and for no other purpose; provided, however, that (i) secondary dwellings (either attached or detached) shall be permitted on any Lot, subject to approval by the Design Review Committee and as shown on the Development Plan; (ii) a single-family residence may contain facilities for domestic and child-care service providers on those Lots shown as "B" Lots on the Development Plan; (iii) the Community Association office and Developer's office shall be permitted as shown on the Development Plan, and Developer's office and other Lots and properties owned by Developer may be used for such purposes as Developer shall determine, in Developer's sole discretion; and (iv) the shop/maintenance building, swimming pool, clubhouse and recreation facility, upon annexation, shall be permitted in the locations generally shown on the Development Plan or in such other locations within the Community determined by Developer, from time to time, in Developer's sole discretion. Except as expressly provided herein, no business or commercial building may be erected on any Lot and no business or commercial enterprise, or other non-residential use, may be conducted on any part thereof, without the prior written consent of Developer. No temporary buildings, structures, or trailers may be erected, placed or maintained on any Lot, except as expressly permitted by, and in compliance with, the Design Standards. Nothing herein contained shall be deemed to limit Developer's rights as set forth in Article XIV.

2. **Signs.** No permanent or temporary sign of any kind shall be displayed to the public view, or from any Lot, without the approval of the Community Association or the Design Review Committee, except for the following temporary signs ("Permitted Signs"): (a) signs as may be used by Developer in connection with the development and sale of Lots in the Community; (b) signs as may be required by legal proceedings, or the prohibition of which is precluded by law; (c) signs advertising the Lot as being for sale; or (d) signs promoting political candidates but only 30 days before and five days after the day of election. Permitted Signs shall not exceed five square feet in total area or be more than three feet in height.

3. **Animals.** No animals, including horses or other domestic farm animals, livestock, fowl or poisonous reptiles (referred to collectively as "animals") of any kind may be kept, bred, or maintained, on any Lot, except a reasonable number of commonly accepted household pets in accordance with the Community Association Rules. No animals shall be kept, bred or raised within the Community for commercial purposes. In no event shall any animal of any nature exceed a density of 3 animals of any one species on any Lot. In no event shall any domestic pet be allowed to run free away from its owner's Lot or so as to create a nuisance.

4. **Nuisances.** No Owner shall permit or suffer anything to be done or kept about or within his or her Lot, or on, or about, any portion of the Community, which will obstruct or interfere with the rights of any Owners, Occupants, or Persons, or annoy them by unreasonable noises, or otherwise, nor will he or she commit,

4. Nuisances. No Owner shall permit or suffer anything to be done or kept about or within his or her Lot, or on, or about, any portion of the Community, which will obstruct or interfere with the rights of any Owners, Occupants, or Persons, or annoy them by unreasonable noises, or otherwise, nor will he or she commit, or permit any nuisance, or commit, or suffer any illegal act to be committed therein. Each Owner shall comply with the Community Association Rules and the requirements of all health authorities and other governmental authorities having jurisdiction over the Property.

5. Location and Parking of Motor Vehicles and Boats. No motor vehicles, including trailers, motorcycles, buses, motorhomes, campers, recreational vehicles, trucks, and automobiles shall be parked on any street or alley within the Community other than for the temporary convenience of the Owners or Occupants, or for the non-overnight visitation of guests and invitees of Owners and Occupants. No trucks or commercial vehicles shall be stored or parked on any Lot, except while parked in a closed garage. No vehicles shall be repaired (except minor repairs) or rebuilt on any Lot. The Community Association shall have the authority to make rules and regulations pertaining to parking on public or private streets and alleys, and to cause to be removed from any public or private street or alley, any unauthorized vehicle or other item parked or stored on a street or an alley in violation of this Declaration or the rules and regulations. Such removal shall be at the expense of the Owner and may be charged to such Owner as a special assessment pursuant to the provisions of this Declaration. Notwithstanding anything in this Declaration or the Development Plan to the contrary, Developer reserves the right to restrict and limit parking within the Community to one side of the streets.

6. Lights and Christmas Lights. No spotlights, flood lights, or other lighting, shall be placed or utilized upon any Lot in a manner which unreasonably interferes with the enjoyment of adjoining Lots. All exterior lighting shall have a concealed energy source and a white color within the range of 2700° to 4500° K. Golden, yellow, blue or reddish colors are not permitted. Except for seasonal decorative lights, which may be displayed between November 1 and January 31 only, and which do not unreasonably interfere with the enjoyment of adjoining Lots nor constitute a nuisance, no exterior lighting shall be installed or maintained on any Lot if the Design Review Committee shall object thereto. All improved Lots must have two properly installed and maintained lights located on either side of the garage entry doors which meet the following specifications: photocell activated with white color. The Design Review Committee may modify these yard-light specifications or approve variances to these yard-light specifications only if the Hadco lantern and post specified are no longer commercially available or in the event of other special or unusual circumstances.

7. Antennas. No external radio, television or other antennas of any kind or nature (including, but not limited to "satellite dishes") larger than two feet in diameter or other device for the reception or transmission of radio, microwave or other similar signals, shall be placed or maintained upon any Lot without the prior approval of the Design Review Committee. All such antennas or other devices shall be completely Screened from view outside the Lot.

8. Garbage. No garbage or trash shall be kept, maintained or contained in any Lot so as to be visible from another Lot. No incinerator shall be kept or maintained on any Lot. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot. Trash shall be placed in such designated locations and containers as may be established from time to time in the Design Standards.

9. Mining. No portion of the Community shall be used in any manner to explore for or remove any water, oil or other hydrocarbons, or minerals of any kind, or earth substance of any kind.

10. Safe Condition. Without limiting any other provision in this Article XI, each Owner shall maintain and keep his or her Lot at all times in a safe, sound and sanitary condition and repair, and shall correct

any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots. All improvements on a Lot which are damaged by or destroyed by fire or other casualty shall be repaired and restored by the Owner thereof with due diligence.

11. **Basketball Goals and Playground Equipment.** No basketball goals shall be attached to any part of a building that shall face any street, nor shall any basketball goal be placed in the front yard of any lot. All basketball goals shall be in the rear yard area of a Lot, and shall be glass construction (clear), free standing (i.e., attached on separate poles). Generally, at least partial evergreen screening shall be required behind any such basketball goal and for all playground equipment. All such goals, outdoor playground equipment, swingsets, slipper-slides, monkey-bars, and similar devices are subject to the approval of the responsible Design Review Committee. All such playground equipment must be placed to the rear of the lot to the extent practical, if approved by the Design Review Committee.

12. **Clotheslines.** No portion of any Lot shall be used as a permanent drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the buildings to be constructed on each Lot, provided, however, that temporary, retractable clotheslines approved by the Design Review Committee are permitted.

13. **No Further Subdivision.** No Lot shall be divided or subdivided except by Developer.

14. **No Obstructions to Drainage.** No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any area designated on the Plat, or other binding document, as a "drainage easement," or which has been intentionally contoured to facilitate drainage, except that, with the prior consent of the City and the Design Review Committee, nonpermanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

15. **Outbuildings.** No building or other detached structure may be erected on any Lot without the consent of the Design Review Committee or as otherwise provided on the Development Plan.

16. **Above-Ground Pools.** No above-ground swimming pools shall be allowed on any Lot.

17. **Storage Tanks.** No exterior storage tank for fuel or anything else shall be allowed on any Lot.

18. **Garage Doors.** Garage doors shall be kept closed except when opened for the removal or the parking or replacing of a vehicle or other item from the garage.

19. **Rental of Lots.** An Owner who leases his or her Lot to any Person shall be responsible for assuring compliance by his or her lessee with all of the provisions of this Declaration, the Design Standards, and the Community Association Articles and Bylaws, all as amended and supplemented from time to time, and shall be jointly and severally responsible for any violations by his or her lessee thereof.

20. **Solar Panels.** Solar panels shall not be erected without the prior written consent of the Design Review Committee, and in no event shall the same face any street.

21. **Lawn Ornamentation.** No lawn ornaments of any kind are permitted in yards visible from any street without written prior approval from the Design Review Committee. Pergolas and trellises shall be permitted, subject to the written prior approval of the Design Review Committee.

22. Landscape and Lawn Care. All Lots shall be landscaped in accordance with a plan, submitted by the Owner, to be approved in writing by the Design Review Committee. Such landscape plan shall include information regarding type of sodding, seeding, trees, hedges and shrubs, and information regarding other customary landscape treatment for the entire Lot, including fences, walls, screening, surface water drainage, and sprinkler irrigation systems. Any other information required by the Design Review Committee pertaining to landscaping shall also be submitted and require approval of the Design Review Committee. All landscaping shall be undertaken and completed in accordance with such approved plan, and such plan may not be altered, amended or revised without written approval of the Design Review Committee. The approved landscape plan shall be completed within six (6) months after the completion of the dwelling to be constructed on the Lot. Each Owner, at his or her own expense, shall maintain the landscaping and lawn area within his or her own Lot. Lawns shall be maintained at a height of no more than four (4) inches, and shall be fertilized and treated for pests and weeds as necessary, but not less than annually. An easement is hereby created in favor of the Community Association, and its agents, to enter on, over and under each Lot for the purpose of maintaining and correcting landscaping, lawns, and surface water drainage to comply with the landscape plan and any applicable ordinances of the City of Lawrence, Kansas. Such easement shall include the right, after reasonable notice to the Lot Owner, to plant, trim, cut and remove any grass, trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary for such purposes. The reservation of an easement and right under this paragraph shall in no way be construed or interpreted to imply or impose an obligation on the Community Association to maintain and correct the landscaping, lawn, and drainage of surface water on or within any Lot.

23. Unfinished or Damaged Building. No building shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after commencement of construction. In the event of fire, windstorm, or other damage, no building shall be permitted to remain in a damaged condition longer than six (6) months after the date of damage.

24. Overhead Wires Prohibited. No power, telephone service, or cable television connection lines may be erected or maintained above the surface of the ground on any of the Lots, except such power, telephone service, or cable television connection lines, or their replacements, that may exist on the date of this Declaration.

25. Violation of Law or Insurance. No Owner shall permit anything to be done or kept on his or her Lot, or in, or upon any Common Maintenance Areas, which will result in the cancellation of any insurance thereon or, which would be in violation of any law. In the event that any law is more restrictive than the provisions hereof, such law shall govern.

26. Building Setbacks. Developer reserves the right to impose minimum building setbacks upon any of the Lots, from time to time, more stringent than standards established by the City of Lawrence. These additional minimum setbacks will be established as a means to control the overall visual impact from the street. Minimum building setbacks established by Developer, especially for unique lots, may vary from typical standards.

27. Secondary Residences. Secondary residences (either attached or detached) are permitted on each Lot, provided, however, that the size and configuration of each such Lot shall reasonably accommodate the proposed secondary residence(s). Guest residences shall have the same architectural treatment and be constructed of the same materials as the residence proper, and are subject to approval by the Design Review Committee. Secondary residences shall be permitted only on those lots as shown on the Development Plan, shall have the same architectural treatment, and be constructed of the same materials as the Primary Residence on a lot, and shall be subject to approval by the Design Review Committee.

28. Modification. The Community Association may further restrict, modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Community and the Lots by reasonable rules and regulations of general application within the Community adopted by the Community Association Board from time to time which shall be incorporated into the Community Association Rules.


29. Leasing. No Lot or residence thereon shall be rented for transient purposes, or, without the prior written approval of the Community Association Board or Developer, to more than two (2) persons who are not related by blood or marriage. No Owner shall be entitled to rent his Lot or residence thereon if he is delinquent in the payment of any Assessment required by this Declaration. Any lease or rental agreement pertaining to a Lot or residence thereon shall be approved by the Community Association Board or Developer prior to any lessee or tenant taking occupancy thereunder. All leases or rental agreements shall contain a provision to the effect that the rights of the tenant to use and occupy the Lot or residence thereon Lot or residence thereon shall be subject and subordinate in all respects to the provisions of this Declaration, the Community Association Bylaws, and to the Community Association Rules. The provisions of this paragraph shall not apply to any institutional mortgagee who obtains possession of a Lot or residence thereon as a result of any remedies provided by law or in the mortgage, as a result of a foreclosure sale or other judicial sale, or as a result of any proceedings, arrangement, or deed in lieu of foreclosure.

30. Enforcement. The Community Association, Developer, or their authorized agents may enter any Lot on which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses and such fines as may be imposed pursuant to the Declaration or the Community Association Rules shall be a Special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of Article V of the Declaration. All remedies described in Article XV of the Declaration and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Occupant or other Person of any provision of these restrictions.

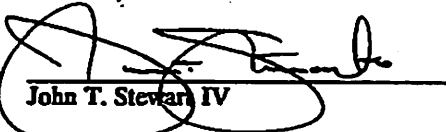
**RATIFICATION OF DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**
for
BRIARWOOD COMMUNITY

THIS RATIFICATION is made this 3rd day of April, 1998 (the "Effective Date"), by Dan Cole and Suzanne Kerich a/k/a M. Suzanne Kerich, husband and wife (referred to collectively as "Cole"), John T. Stewart IV ("Stewart") and Terravest Development Corporation, a Kansas corporation ("Terravest"). Cole, Stewart and Terravest are the legal and/or equitable owners of a portion of the real property located in Douglas County, Kansas, and described in and affected by the Declaration to which this Ratification is attached.


NOW, THEREFORE, to submit and subject all of such property to the said Declaration, we the undersigned, by our signatures, hereby confirm, ratify, and adopt the Declaration to which this Ratification is attached, as recorded in the Office of the Register of Deeds of Douglas County, Kansas.


Daniel Cole


Suzanne Kerich a/k/a M. Suzanne Kerich


John T. Stewart IV

TERRAVEST DEVELOPMENT CORPORATION

By: 
John T. Stewart IV, President

CONSENT OF MORTGAGEES
for
BRIARWOOD COMMUNITY

THIS CONSENT OF MORTGAGEES is made by each of the undersigned Mortgagees, as to that portion of Briarwood Addition, a Subdivision in the City of Lawrence, Douglas County, Kansas, to which all of its mortgages pertain (including, without limitation, the mortgages itemized below), and does hereby, by the signature of its authorized representative below, consent to the foregoing Declaration to which this Ratification is attached, as recorded in the Office of the Register of Deeds of Douglas County, Kansas, and agrees to be bound by the terms and conditions of such Declaration.

EMPRISE BANK N.A.

By: 
Philip B. Haskell, Senior Vice President

Mortgage dated February 18, 1998, recorded in Book 600, beginning at Page 1218, in the Office of the Register of Deeds of Douglas County, Kansas.

MERCANTILE BANK

By: 
Michael J. Corless, Senior Vice President

Mortgage dated July 12, 1994, recorded in Book 519, beginning at Page 144, in the Office of the Register of Deeds of Douglas County, Kansas; and

Mortgage dated August 2, 1995, recorded in Book 538, beginning at Page 834, in the Office of the Register of Deeds of Douglas County, Kansas; and

Mortgage dated December 22, 1995, recorded in Book 545, beginning at Page 1468, in the Office of the Register of Deeds of Douglas County, Kansas; and

Mortgage dated August 8, 1996, recorded in Book 561, beginning at Page 702, in the Office of the Register of Deeds of Douglas County, Kansas; and

Mortgage dated August 26, 1996, recorded in Book 562, beginning at Page 1231, in the Office of the Register of Deeds of Douglas County, Kansas; and

Mortgage dated December 17, 1996, recorded in Book 569, beginning at Page 451, in the Office of the Register of Deeds of Douglas County, Kansas; and

Mortgage dated June 13, 1997, recorded in Book 581, beginning at Page 15, in the Office of the Register of Deeds of Douglas County, Kansas; and

Mortgage dated June 13, 1997, recorded in Book 581, beginning at Page 20, in the Office of the Register of Deeds of Douglas County, Kansas; and

Mortgage dated June 13, 1997, recorded in Book 581, beginning at Page 25, in the Office of the Register of Deeds of Douglas County, Kansas; and

Mortgage dated June 13, 1997, recorded in Book 581, beginning at Page 30, in the Office of the Register of Deeds of Douglas County, Kansas; and

Mortgage dated June 13, 1997, recorded in Book 581, beginning at Page 35, in the Office of the Register of Deeds of Douglas County, Kansas; and

Mortgage dated June 13, 1997, recorded in Book 581, beginning at Page 40, in the Office of the Register of Deeds of Douglas County, Kansas; and

Mortgage dated December 15, 1997, recorded in Book 598, beginning at Page 1172, in the Office of the Register of Deeds of Douglas County, Kansas; and

Mortgage dated February 5, 1998, recorded in Book 599, beginning at Page 980, in the Office of the Register of Deeds of Douglas County, Kansas; and

Mortgage dated February 10, 1998, recorded in Book 599, beginning at Page 1513, in the Office of the Register of Deeds of Douglas County, Kansas.

STATE OF KANSAS, COUNTY OF DOUGLAS) ss:

The foregoing instrument was acknowledged before me this 18th day of ^{MAY} April, 1998, by Philip B. Haskell, Senior Vice President of Emprise Bank N.A., on behalf of Emprise Bank N.A.

Philip B. Haskell
Notary Public

My Appointment Expires: 12-14-2000

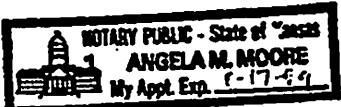


STATE OF KANSAS, COUNTY OF DOUGLAS) ss:

The foregoing instrument was acknowledged before me this 13 day of ^{MAY} April, 1998, by Michael J. Corless, Senior Vice President of Mercantile Bank, on behalf of Mercantile Bank.

Angela M. Moore
Notary Public

My Appointment Expires: April 17, 1999

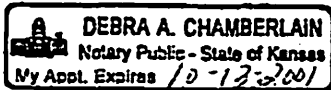


STATE OF KANSAS, COUNTY OF DOUGLAS) ss:

The foregoing instrument was acknowledged before me this 3rd day of April, 1998, by Dan Cole and Suzanne Kerich a/k/a M. Suzanne Kerich, husband and wife.

Debra A Chamberlain
Notary Public

My Appointment Expires: 10-13-2001

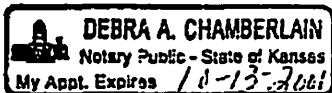


STATE OF KANSAS, COUNTY OF DOUGLAS) ss:

The foregoing instrument was acknowledged before me this 3rd day of April, 1998, by John T. Stewart IV, an unmarried person.

Debra A Chamberlain
Notary Public

My Appointment Expires: 10-13-2001

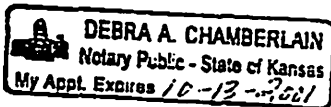


STATE OF KANSAS, COUNTY OF DOUGLAS) ss:

The foregoing instrument was acknowledged before me this 3rd day of April, 1998, by John T. Stewart IV, President, on behalf of Terravest Development Corporation, a Kansas corporation.

Debra A Chamberlain
Notary Public

My Appointment Expires: 10-13-2001



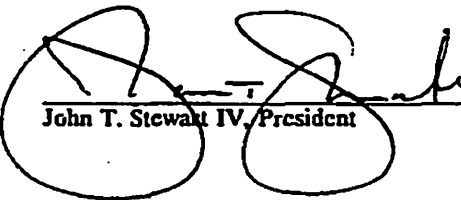
**RATIFICATION OF DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**
for
BRIARWOOD COMMUNITY

THIS RATIFICATION is made this 3rd day of April, 1998 (the "Effective Date"), by Terravest Construction Company, a Kansas corporation ("Terravest"). Terravest are the legal and/or equitable owners of a portion of the real property located in Douglas County, Kansas, and described in and affected by the Declaration to which this Ratification is attached.

NOW, THEREFORE, to submit and subject all of such property to the said Declaration, the undersigned, by its signature, hereby confirms, ratifies, and adopts the Declaration to which this Ratification is attached, as recorded in the Office of the Register of Deeds of Douglas County, Kansas.

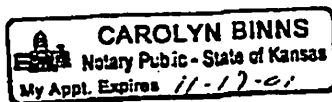
TERRAVEST CONSTRUCTION COMPANY

By:


John T. Stewart IV, President

STATE OF KANSAS, COUNTY OF DOUGLAS) ss:

The foregoing instrument was acknowledged before me this 3rd day of April, 1998, by John T. Stewart IV, President, on behalf of Terravest Construction Company, a Kansas corporation.




Notary Public

My Appointment Expires: 11-17-2001