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20140221-0004092
Electronic Recording 02/21/2014
Pages: 43 F: $176.00 08:24:53 AM
Register of Deeds T20140008203
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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON CREEK HIGHLANDS

(FORMERLY PATRICIAN VILLAGE)

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON CREEK HIGHLANDS (FORMERLY PATRICIAN VILLAGE) is made as of the 12 day of February, 2014, by HIGHLAND DEVELOPMENT, LLC, a Kansas limited liability company (the "**Developer**"), whose address is 14819 West 95th Street, Lenexa, Kansas 66215-5220.

RECITALS:

A. PATRICIAN VILLAGE, LLC was the original Developer ("Original Developer") under the following instruments filed in the Office of the Register of Deeds of Johnson County, Kansas:

1. Declaration of Covenants, Conditions and Restrictions for Patrician Village, Johnson County, Kansas, dated the 12th day of June, 2005, filed on August 17, 2005, in Book 200508, Page 008492 (the "Original Declaration");

2. Amendment to Declaration of Covenants, Conditions and Restrictions for Patrician Village, Johnson County, Kansas, dated the 20th day of October, 2005, filed on October 21, 2005, in Book 200510, Page 008575;

3. Declaration of Annexation and Covenants, Conditions and Restrictions for Patrician Village, affecting the Second Plat, dated the 1st day of August, 2007, filed August 24, 2007, in Book 200708, Page 007964;

4. Notice Statement Pursuant to the Terms of the Declaration of Covenants, Conditions and Restrictions for Patrician Village, dated the 1st day of January, 2009, filed on January 21, 2009, in Book 200901, Page 004639; and

5. Amendment to Declaration of Covenants, Conditions and Restrictions for Patrician Village, dated the 1st day of January, 2009, filed on January 21, 2009, in Book 200901, Page 004640.

B. The foregoing are collectively referred to as the "Original Declarations" which affected the following described real property:

Lots 1 through 50, inclusive, and Tracts A through B, inclusive, PATRICIAN VILLAGE FIRST PLAT, a subdivision of land in the City of Lenexa, Johnson County, Kansas, according to the recorded plat thereof.

C. The following was described in the Original Declarations as "Common Property" and "Private Open Space":

Tracts A through B, inclusive, PATRICIAN VILLAGE FIRST PLAT, a subdivision of land in the City of Lenexa, Johnson County, Kansas, according to the recorded plat thereof.

D. The Declaration of Annexation and Covenants, Conditions and Restrictions for Patrician Village subjected the following described property to the Original Declaration:

Lots 51 through 102, inclusive and Tracts C through G, inclusive, PATRICIAN VILLAGE, SECOND PLAT, a subdivision of land in the City of Lenexa, Johnson County, Kansas, according to the recorded plat thereof.

E. The Original Declaration provided in Section 15.11 (d) that the Developer may, at its option, assign, any or all of its rights under such Declaration.

F. The Original Developer assigned over all of its rights, benefits, powers, reservations, privileges, duties and responsibilities reserved or granted to the Developer or Declarant under the Declarations to the LENEXA WEST INVESTORS, LLC, pursuant to an Assignment of Developer's Rights dated the 27th day of May, 2010, filed June 3, 2010, in Book 201006, Page 001676, in the Office of the Register of Deeds for Johnson County, Kansas.

G. LENEXA WEST INVESTORS, LLC assigned over all of its rights, benefits, powers, reservations, privileges, duties and responsibilities reserved or granted to the Developer or Declarant under the Declarations to HIGHLAND DEVELOPMENT, LLC, a Kansas limited liability company, the Developer named herein, pursuant to an Assignment of Developer's Rights dated the 19th day of April, 2013, filed April 23, 2013, in Book 201304, Page 008726, in the Office of the Register of Deeds for Johnson County, Kansas.

H. The Original Declaration provided in Section 3.09 for exclusive control of the Association and in Section 13.02 that during the Development Period the Declaration could be abolished, modified, or changed in whole or part only by the Developer for any reason, in Developer's sole discretion.

I. The Development Period is still in effect and Developer desires to amend and restate the Declarations as set forth herein.

J. Lots 51 through 75, inclusive, 77, 78 and 80 through 102, inclusive, and Tracts C through G, inclusive of PATRICIAN VILLAGE, SECOND PLAT, were re-platted by the Developer with the intention that such property be subject to and part of the "Property" (as such term is defined below) subject to this Amended and Restated Declaration:

> Lots 51 through 75, inclusive, 77, 78 and 80 through 100 inclusive, and 102, and Tract C through G inclusive, CANYON CREEK HIGHLANDS FIRST PLAT, A REPLAT OF PATRICIAN VILLAGE, SECOND PLAT, a subdivision in the City of Lenexa, Johnson County, Kansas, according to the recorded plat thereof, filed for record on July 2, 2013, in the office of the Register of Deeds for Johnson County, Kansas and recorded in Book 201307 at Page 001144.

K. CANYON CREEK HIGHLANDS, FIRST PLAT, A REPLAT OF PATRICIAN VILLAGE, SECOND PLAT, included the following which was intended to be and shall be part of the Property and part of the Common Facilities as defined below:

> Tracts C though F, inclusive, Canyon Creek Highlands, First Plat, a Replat of Patrician Village Second Plat, a subdivision in the City of Lenexa, Johnson County, Kansas, according to the recorded plat thereof.

L. Lot 101 PATRICIAN VILLAGE, SECOND PLAT, was re-platted as Tract H of CANYON CREEK HIGHLANDS FIRST PLAT, A REPLAT OF PATRICIAN VILLAGE, SECOND PLAT, and is reserved for the Developer and is to be dedicated in the future for right-of-way, and is not intended to be part of the Property affected by this Amended and Restated Declaration.

M. Tract G of Canyon Creek Highlands, First Plat, a Replat of Patrician Village Second Plat was dedicated for Wetland Improvements in Memorandum of Notice as recorded in Book 200605, Page 006128 and is not intended to be part of the Property affected by this Amended and Restated Declaration.

N. The Developer desires that the "Private Open Space" Tract A, as described in PATRICIAN VILLAGE FIRST PLAT, a subdivision of land in the City of Lenexa, Johnson County, Kansas, be included as part of the Common Facilities.

O. Developer desires that the real property previously described as Tract B of PATRICIAN VILLAGE FIRST PLAT be excluded from Common Property, Private Open Space and Common Facilities but still be a part of the Neighborhood.

P. The Property intended to be included in this Amended and Restated Declaration is set forth in detail in Exhibit A attached hereto and incorporated by reference.

NOW, THEREFORE, Developer hereby declares that the Original Declarations are restated and amended in the entirety, and that all Property is and at all times shall hereafter be held, transferred, sold, conveyed, mortgaged, leased, occupied and used subject to the covenants, conditions, restrictions, assessments, liens, easements, privileges, rights and other provisions hereinafter set forth, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to any property within the Property, and shall inure to the benefit of and be a burden upon each owner of land within the Property.

ARTICLE 1
DEFINITIONS

The following terms as used in this Declaration shall have the meanings set forth below unless the context clearly requires otherwise:

1.1 "**Assessable Lot**" means each Lot owned by a person or persons or entity or entities other than Developer or any Builder; provided, however, that a Lot conveyed by Developer to a Builder which is still owned by any Builder on the date which is twelve (12) months after the recording of the deed from Developer to such Builder shall be an Assessable Lot.

1.2 "**Assessment**" means any annual assessment, special assessment, Trash Collection Assessment (as defined below), maintenance assessment or installment thereof which is levied on Lots by the Association in accordance herewith.

1.3 "**Association**" means the Canyon Creek Highlands Homes Association, Inc., formerly known as Patrician Village Homes Association, a Kansas not-for-profit corporation.

1.4 "**Board**" means the Board of Directors of the Canyon Creek Highlands Homes Association, Inc.

1.5 "**Builder**" means Developer or any other person or entity that acquires fee title to one or more Lots from Developer for the purpose of constructing residences thereon for resale.

1.6 "**City**" means the City of Lenexa, Kansas.

1.7 "**Common Facilities**" means all land designated by Developer for the general use, benefit or enjoyment of all owners, tenants and occupants of the Neighborhood as defined hereafter which is (a) designated as a tract on any plat of any portion of the Neighborhood, including but not limited to the Common Property, Private Open Spaces and Common Facilities described in the recitals above (b) deeded to the Association by or at the direction of the Developer, or (c) the subject of easements, leases, licenses or other rights of use granted to the Association by or at the direction of the Developer, together with all improvements, fixtures, equipment and other tangible personal property located on, used in connection with or forming a part of any of the foregoing land, including: buildings and structures; plantings, irrigation

systems and other landscape features; playgrounds, picnic areas, parking areas, swimming pools and other recreational facilities and equipment; sidewalks, trails and walkways; lighting, signs, monuments, walls, fences, fountains and sculptures; common mailboxes and appurtenant facilities; and lakes, ponds, streams and drainage facilities, provided however, the foregoing does not constitute a representation or warranty that any Common Facility so enumerated will exist or continue to exist within the Neighborhood. Common Facilities shall specifically exclude Tract B of PATRICIAN VILLAGE, FIRST PLAT, but such real property shall remain a part of the Neighborhood.

1.8 "**Declaration**" means this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Canyon Creek Highlands, as it may be amended or supplemented from time to time.

1.9 "**Developer**" means HIGHLAND DEVELOPMENT, LLC, a Kansas limited liability company, its successors and assigns.

1.10 "**Laws**" means all applicable governmental laws, ordinances, codes and regulations including but not limited to zoning ordinances and building codes.

1.11 "**Lot**" means each separate parcel within the Neighborhood, as shown on any recorded plat of all or part of the Neighborhood, which is intended for individual ownership, except any such separate parcel included within the Common Facilities, provided however, that if an Owner other than the Developer owns all or parts of one or more adjacent lots upon which only one residence has been, is being, or will be constructed, then such adjacent property under common ownership shall be deemed to constitute only one "Lot."

1.12 "**Neighborhood**" means all of the Property, together will all other property that is made a part of the Neighborhood from time to time pursuant to the terms of this Declaration.

1.13 "**Owner**" means each person or persons and/or entity or entities who may from time to time own fee simple title to any Lot, including the Developer, but excluding those having such interest merely as security for the performance of an obligation.

1.14 "**Property**" means all of the real property subject to this Declaration.

1.15 "**Plat**" means, collectively, all subdivision plats of land within the Neighborhood, as approved by the City and recorded with the Register of Deeds, as the same may be amended from time to time.

1.16 "**Pool Area**" means the specific portion of the Common Facilities designated by Developer as a swimming pool facility, together with all improvements, fixtures, equipment and other tangible personal property located on, used in connection with or forming a part of said facility, including: swimming or wading pools, surrounding decks and fencing, buildings containing restrooms, storage facilities and mechanical equipment, and related shelters, walkways, playgrounds, parking areas, landscaping, irrigation systems, lighting, plumbing and utilities.

1.17 **"Register of Deeds"** means the Register of Deeds of Johnson County, Kansas.

1.18 **"Residence"** means a building (together with related improvements) which is designated and used exclusively for single-family residential purpose located on any Lot in the Neighborhood.

1.19 **"Turnover Date"** means the date which is the earlier of (a) the first day of the next fiscal year of the Association following that date on which Developer no longer owns any Lot in the Neighborhood or (b) the effective date designated by Developer in a notice to the members of the Association stating that Developer relinquishes control.

1.20 **"Tract"** means any parcel of land designated as a tract on any Plat.

1.21 **"Trash Collection Assessment"** means the Assessment for trash collection described in Section 2.4.1(d) and Section 3.5 below.

ARTICLE 2
ASSOCIATION

2.1 **PURPOSE OF ASSOCIATION.** The Association shall protect, maintain, improve, operate and administer the Neighborhood (including the Common Facilities), including taking necessary action to levy and collect the assessments herein provided for, paying expenses and losses and doing such other things as are provided or contemplated in this Declaration and the Association's Articles of Incorporation and Bylaws. The Association shall not be deemed to be conducting a business of any kind, and shall hold and apply all funds it receives for the benefit of the Neighborhood in accordance with the provisions of this Declaration and the Association's Articles of Incorporation and Bylaws.

2.2 **MEMBERSHIP IN ASSOCIATION.**

2.2.1 Developer shall be a member of the Association by virtue of Developer's ownership of Lots within the Neighborhood as of the date of recording of this Declaration and any Lots acquired by Developer thereafter. Developer shall have thirty (30) votes in the Association for each Lot for which Developer holds fee simple title. Each other Owner shall, upon acquisition of fee simple title to any Lot, automatically become a member of the Association. Each Owner shall be entitled to one (1) Association membership and shall have one (1) vote in the Association for each Lot in which the Owner holds the interest required for membership and upon which the member shall not be delinquent in the payment of Assessments. Each Owner shall give notice to the Association of the name and address of the individual who will hold the Association membership for such Owner. If an Owner (other than Developer) is comprised of more than one person and/or entity, they shall designate one of their number to hold the Association membership, and each member (other than Developer) must be (1) an individual who is an Owner, or (2) if the Owner is or includes a partnership, an individual who is a partner, or (3) if the Owner is or includes a corporation, an officer of the corporation, or (4) if the Owner is or includes a trust, an individual who is a trustee or beneficiary of the trust, or (5) if the Owner is or includes a limited liability company or

an association, an individual who is a member or manager of the limited liability company or association.

2.2.2 A membership in the Association shall not be transferred, pledged or alienated in any way by any Owner other than Developer except as expressly provided in this Declaration. Subject to the provisions of this Article 2.2, membership in the Association shall automatically be transferred to the new Owner upon the transfer of fee simple title to the Lot to which the membership appertains, whether by sale, intestate succession, testamentary disposition, foreclosure of a mortgage or other legal process transferring fee simple title to such Lot; however, the Association shall not be responsible for providing notices to the new member under this Declaration until notice of the transfer and of the name and address of the new member has been given to the Association.

2.2.3 Notwithstanding the foregoing provisions of Article 2.2, if an Owner has granted an irrevocable proxy or otherwise pledged the voting rights appurtenant to such Owner's membership in the Association to a mortgagee as additional security, the votes of such mortgagee shall be recognized if a copy of the proxy or other instrument pledging such voting right has been provided, and the Association shall recognize the rights of the mortgagee under the instrument first provided.

2.2.4 If any lender to which Developer assigns as security all or substantially all of Developer's rights under this Declaration shall succeed to Developer's interest by virtue of such assignment, the voting rights of Developer as set forth herein shall not be terminated by such assignment, and such lender shall hold Developer's membership and voting rights on the same terms as they were held by Developer.

2.3 INDEMNIFICATION.

2.3.1 To the fullest extent permitted by law, the Association shall indemnify each officer and director of the Association, each member of the Design Review Committee (hereinafter defined) and Developer (to the extent a claim may be brought against Developer by reason of its appointment or removal of or control over any such other persons) (each, an "**Indemnified Party**") against all expenses and liabilities (including attorneys' fees) reasonably incurred by or imposed upon the Indemnified Party in connection with any action or proceeding, or any settlement thereof, to which the Indemnified Party may be a party or in which the Indemnified Party may become involved by reason of serving or having served in such capacity (or, in the case of Developer, by reason of having appointed, removed or controlled or failed to control any officer or director of the Association or member of the Design Review Committee), provided the Indemnified Party did not act, fail to act or refuse to act willfully, in a grossly negligent manner or with fraudulent or criminal intent in the performance of the Indemnified Party's duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which any Indemnified Party may be entitled at law or otherwise.

2.3.2 To the fullest extent permitted by law, neither Developer nor any officer or director of the Association nor any member of the Design Review Committee shall be liable to any Owner or any Association member or anyone claiming by, through or under any Owner or Association member for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, inaction, omission, error or negligence taken or made in good faith and which Developer, such officer, director or Design Review Committee member reasonably believed to be within the scope of his, her or its duties.

2.4 **POWERS AND DUTIES OF THE ASSOCIATION**. The Association shall have the powers and duties set forth in its Articles of Incorporation and Bylaws, provided such powers and duties are not inconsistent with the provisions of this Declaration. In addition to and not in limitation of the powers and duties of the Association provided in its Articles of Incorporation and Bylaws, the Association shall have the following powers and duties:

2.4.1 **DISCRETIONARY POWERS**. The Association shall have and does hereby reserve the right, power and authority, in its discretion, to do any of the following, which it may exercise or perform whenever, in its discretion, it may deem necessary or desirable:

(a) Acquire and own title to or acquire by lease such real property as may be reasonably necessary in order to carry out the purposes of the Association.

(b) Provide for the design, construction, installation, maintenance, replacement, protection and operation of any improvements the Association may deem advisable on any Common Facilities which are intended for the use, benefit or enjoyment of Owners in the Neighborhood.

(c) Install, maintain and use, or authorize the installation, maintenance and use of sanitary and storm sewers, storm drains, gas and water pipelines, underground electric, cable television and telephone conduits and related appurtenances, and grant permits, licenses, easements or rights-of-way for such public and private utilities, roadways or other purposes over, under, upon and through all easements and rights-of-way whether by recorded instrument or shown on any recorded plat of the Neighborhood or any Common Facilities as may be reasonably necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Neighborhood or any part thereof or the preservation of the health, safety, convenience and welfare of the Owners. All utility easements and rights-of-way shall inure to the benefit of all utility companies, including the Johnson County Wastewater District, for purposes of installing, maintaining or moving any utility lines or services, and shall inure to the benefit of the Developer, all Owners and the Association as a cross easement for utility line or service maintenance.

(d) Provide for the collection and disposal of trash and garbage, and implement a means for dividing the expense of the same among the Owners separate from any Assessment.

(e) Clean streets, gutters, catch basins, sidewalks, storm sewers, irrigation and drainage facilities, including any such facilities or improvements located within public rights-of-way which serve the Neighborhood.

(f) Erect and maintain signs for purposes of identification, traffic control and public safety.

(g) Employ duly qualified security officers to provide protection for the Neighborhood or any part thereof.

(h) Obtain and maintain property insurance on the Common Facilities against loss or damage by fire, hazard or other casualty; comprehensive liability insurance with respect to the Common Facilities covering all claims for personal injury and/or property damage; and/or adequate fidelity coverage to protect against dishonest acts by officers, directors and employees of the Association and all others who handle or are responsible for handling funds of the Association, all in such forms and amounts and with such insurance companies as the Association may deem appropriate, naming as insured's the Association, the Developer and its agents and employees (so long as Developer owns any land within the Neighborhood or controls the Association), each director of the Association, any management company under any management contract with respect to the Common Facilities and its agents and employees, and any other persons or entities designated by the Association in its discretion.

(i) Borrow money in such amounts, at such rates of interest, upon such terms and security and for such periods of time as the Association may deem necessary or appropriate, in its sole discretion.

(j) Establish reserve accounts for repair and maintenance of Association property, periodically review the adequacy thereof, and maintain such reserve funds in interest-bearing accounts until expended for the benefit of the Association.

(k) Adopt and enforce reasonable rules, regulations and restrictions which shall govern the use of the Common Facilities and Lots; preserve or enhance the quality or appearance of the Neighborhood, or the safety, convenience, benefit and enjoyment of the users thereof; or otherwise to promote the interests of Owners, tenants and occupants of land within the Neighborhood; and revoke, amend or supplement such rules, regulations and restrictions at any time and from time to time.

(l) Obtain an injunction to prevent the breach of, or to enforce the observance of, and/or sue for damages as a result of the violation of, either in its own name or in the name of any Owner, any and all terms, provisions, covenants, conditions, restrictions, licenses and easements imposed upon the land in the Neighborhood by this Declaration, provided that failure to do so at the time of violation shall in no event be deemed to be a waiver of the right to do so

thereafter. To the extent permitted by law, the party against whom such enforcement or damages are sought shall pay all costs and expenses (including reasonable attorneys' fees) of the Association with respect to any such action or proceeding, and the Lot owned by such Owner may be subject to a lien for payment. Any such costs and expenses not paid by such party shall be paid out of the general fund of the Association herein provided for. Nothing herein shall be deemed to prevent any Owner having the right to do so from enforcing, in such Owner's own name, any of the terms, provisions, covenants, conditions, restrictions and easements established by this Declaration, nor shall any Owner have any liability for the failure to do so.

(m) If any vacant or unimproved Lot is not maintained by the Owner thereof, mow, care for, maintain and remove loose material, trash and rubbish from such Lot and do anything else the Association deems necessary or desirable to keep such Lot neat in appearance and in good order.

(n) Exercise any other powers elsewhere provided to the Association in this Declaration.

2.4.2 **DUTIES**. The Association shall have the duty to do or cause to be done the following:

(a) Levy and collect the assessments and charges provided for in this Declaration.

(b) Care for, trim, protect, remove and replant trees, shrubbery, flowers, groundcovers and grass which are part of the Common Facilities, and install and maintain sprinkler systems on portions of the Common Facilities where irrigation is deemed necessary by the Association.

(c) Exclusively manage, control, maintain, repair and replace all Common Facilities for the benefit of the Owners, including exercise of control over such easements, leases, licenses, usage rights and other rights and property as the Association may acquire from time to time.

(d) Pay all taxes and assessments levied or assessed against the Common Facilities and any other property owned or leased by the Association (as may be required under the lease terms).

(e) Keep true and correct records of account in accordance with generally accepted accounting principles.

(f) Upon reasonable request and during reasonable business hours, make available for inspection by any Owner or Association member any books, records and financial statements of the Association which specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise, together with current copies of this Declaration, the Articles of

Incorporation and Bylaws of the Association and the Design Standards (hereinafter defined).

(g) Perform any other duties required of the Association as provided elsewhere in this Declaration.

2.5 **MANAGING AGENT; CONTRACTS AND SERVICES.** Any powers, rights and duties of the Association may be delegated to a managing agent under a management contract; provided that no such delegation shall relieve the Association from its obligations to perform any such delegated duty. Any contract entered into by the Association for professional management or other services shall not exceed a term of three years, which term may be renewed by agreement of the parties for successive one-year periods, and any such contract shall permit termination by either party upon thirty (30) days' notice with or without cause and without payment of any termination fee. Subject to the foregoing limitations, the Association is specifically authorized to enter into a management contract with a management company owned in whole or in part by Developer or any affiliate of Developer. The Association shall also have the right, in its discretion, to enter into such contracts and transactions with others, including Developer and its affiliates, as the Association may deem necessary or desirable for the purposes herein set forth, and shall have the right to engage and dismiss such agents and employees as will enable the Association to adequately and properly carry out the provisions of this Declaration and the Association's Articles of Incorporation and Bylaws. No such contract or transaction shall be invalidated or in any way affected by the fact that one or more directors of the Association may be employed by or otherwise associated with Developer or its affiliates, provided the fact of such interest is disclosed or known to the other directors acting upon such contract or transaction, and provided further that the contract or transaction is on commercially reasonable terms. Any such interested director may be counted in determining the existence of a quorum at the meeting of the Association's Board of Directors at which such contract or transaction is authorized, and such interested director may vote thereon with the same force and effect as if he/she were not interested.

2.6 **ACCEPTANCE OF EASEMENTS, ETC.** The Association shall accept all easements, leases, licenses and other usage rights and title to all property and improvements that may be granted, conveyed or assigned to the Association by or at the direction of Developer in Developer's sole discretion.

2.7 **CONTROL OF ASSOCIATION BY DEVELOPER.** Notwithstanding anything in this Declaration to the contrary, Developer shall have and maintain absolute and exclusive control of the Association and the Design Review Committee until the Turnover Date. Until the Turnover Date, (a) Developer will be entitled to make appointments, remove or cast controlling votes with respect to the election and removal of all officers and directors of the Association and members of the Design Review Committee and with respect to any other matter requiring the vote or approval of members of the Association or the Design Review Committee as set forth herein or in the Association's Articles of Incorporation or Bylaws, (b) Developer shall perform the duties, assume the obligations, levy and collect Assessments, and otherwise exercise the powers herein given to the Association, in the same way and manner as though all of such powers and duties were hereby given directly to the Developer, and (c) the Developer may, by appropriate agreement made expressly for that purpose, assign or convey to the Association

any or all of the rights, reservations and privileges herein provided, and upon such assignment or conveyance being made, the Association shall exercise and assume such rights. The Association shall not assume any of the rights herein provided for without the consent of Developer and its written relinquishment of such rights. Until the Turnover Date, Developer may, at its discretion, make cash advances to the Association to meet its net operating cash requirements. The Developer may also, at its discretion, require that such advances be considered borrowings of the Association and further require the Association to evidence such borrowings by executing promissory notes, bearing interest at a rate satisfactory to Developer.

ARTICLE 3
ASSESSMENTS

3.1 **CREATION OF LIEN AND PERSONAL OBLIGATION.** Each Owner of an Assessable Lot, by acceptance of the deed or other conveyance thereof or interest therein, is deemed to covenant and agree to pay all Assessments provided for in this Declaration. Each Assessment, together with interest thereon as hereinafter provided, filing fees, attorneys' fees, court costs and other costs of collection thereof (such interest and all of such fees and costs being herein sometimes collectively called **"Costs"**) shall be a continuing lien upon the Assessable Lot against which such Assessment is made, which lien shall be enforceable as provided in Article 3.9. Each Assessment, together with Costs relating thereto, shall also be the personal obligation of the Owner of the Assessable Lot against which the Assessment is made. Such personal obligation shall not pass to an Owner's successor unless expressly assumed by the successor, provided that all liens for enforcement shall remain in effect against a Lot. If an Owner consists of more than one person and/or entity, the obligations of the Owner for the payment of such Assessments and Costs shall be joint and several.

3.2 **PURPOSE OF ASSESSMENTS.** The Assessments levied by the Association shall be used to provide funds to enable the Association to exercise the powers and perform the duties herein set forth, including (a) the costs of construction, installation, maintenance, management, operation, repair and replacement of the Common Facilities; (b) the costs of management and administration of the Association, such as compensation paid by the Association to managers, accountants, attorneys, other professionals and employees; (c) the costs of utilities (including water, electricity, gas and sewer provided directly to the Association and not individually metered or billed by the service providers directly to the Lots) and other services provided by the Association which generally benefit and enhance the value and desirability of the Neighborhood; (d) the costs of any insurance maintained by the Association; (e) reasonable reserves for major items, contingencies, replacements and other proper purposes as deemed appropriate by the Association; (f) the costs of bonding any persons handling funds of the Association; (g) taxes, assessments and other governmental impositions paid by the Association; and (h) the costs of any other items or services to be provided or performed by the Association as set forth in this Declaration or in the Association's Articles of Incorporation or Bylaws, or in furtherance of the purposes of the Association.

3.3 **METHOD OF ALLOCATION.** The total amount of each annual Assessment and each special Assessment levied by the Association shall be divided equally among all of the Assessable Lots included within the Neighborhood at the time such Assessment is levied. Each Assessable Lot shall be subject to assessment in accordance with the method provided above,

regardless of whether any two or more Assessable Lots have been combined into a single Lot as permitted by Article 1.11 hereof (except that the Assessments for such single Lot shall include only one charge for trash removal if appropriate).

3.4 **ANNUAL ASSESSMENTS.**

3.4.1 Each Assessable Lot shall be subject to an annual Assessment which may be levied by the Association from year to year and shall be paid to the Association annually in advance by the Owner of such Assessable Lot. If the amount collected from annual Assessments for any year exceeds the Association's costs and expenses for such year, such excess shall be taken into consideration in preparing the budget and determining the annual Assessment to be levied for the following year. If the amount collected from annual Assessments for any year is inadequate to meet the Association's actual or projected costs and expenses for such year, special Assessments may be levied at any one or more times during such year as provided in Article 3.6. A portion of the annual Assessments for each year may be allocated to reserves to provide required funds for repair or replacement of major items and for other contingencies and proper purposes. The responsibility of the Association shall be only to provide for such reserves as the Association in good faith deems reasonable, and neither the Developer nor the Association shall have any liability to any Owner or member of the Association if such reserves are inadequate.

3.4.2 Until further action by the Board, the annual Assessment for each Assessable Lot for the year 2014 shall be Four Hundred Fifty Dollars ($450.00). Notwithstanding anything herein to the contrary, the annual Assessment upon each Lot shall not be increased by action of the Developer or the Board by an amount exceeding twenty percent (20%) of the preceding year's annual Assessment, unless such increase is authorized by fifty percent (50%) of the votes of Owners in the Neighborhood, exclusive of the Developer.

3.4.3 The first annual Assessment with respect to each Assessable Lot shall be due as of the earlier of (a) the date fee simple title to such Assessable Lot is transferred from a Builder to a subsequent purchaser, (b) the date a Residence on such Assessable Lot is first occupied, or (c) the date which is twelve (12) months after the recording of the deed whereby Developer conveys title to the Assessable Lot to a Builder or to another Owner (provided that if on said date the Builder or other Owner still holds title to such Assessable Lot and the Assessments against such Assessable Lot shall not include any charge for trash removal service unless such service is requested or utilized). The annual Assessment with respect to each Assessable Lot for each subsequent year shall be due as of January first of such year. If the effective date of any increase in the rate of assessment is other than January first, a proper portion (as determined by the directors of the Association) of the amount of such increase for the remainder of such year shall be due and payable on such effective date. No Assessable Lot shall be entitled to receive any services to be provided by and through the Association until such time as a completed Residence on the Lot is occupied and the prorated share of the total annual Assessment has been paid with respect thereto.

3.4.4 Failure of the Association to levy an annual Assessment prior to January first of any year shall not invalidate any such Assessment subsequently levied for that particular year, nor shall failure of the Association to levy an annual Assessment for any one year in any way affect the right of the Association to do so for any subsequent year.

3.5 **TRASH COLLECTION ASSESSMENT.**

3.5.1 Pursuant to the discretionary powers of the Association to provide for the collection and disposal of trash and garbage as set forth in Section 2.4.1(d) of this Declaration, the Association may at any time or times during any year, if deemed necessary or desirable by the Board to enable the Association to negotiate favorable terms for the benefit of the Owners for the collection and disposal of trash, levy against any, or each and every Lot with an occupied Residence, a Trash Collection Assessment over and above and without any limitation applicable to the Annual Assessment. The amount and terms of payment of such Assessment shall be determined by the Board.

3.5.2 Until further action by the Board, the annual Trash Collection Assessment for each Lot with an occupied Residence shall be $250.00.

3.6 **INITIATION FEE.** An initiation fee of $375.00 shall be payable by a new owner to the Association, for use as part of the general funds of the Association upon each of the following events with respect to each Lot:

3.6.1 The initial occupancy of the Residence on the Lot; and

3.6.2 Each subsequent transfer of the Lot for valuable consideration.

3.7 **SPECIAL ASSESSMENTS.** The Association may at any time or times during any year, if necessary in its discretion to enable the Association to carry out the purposes herein set forth, levy against any, or each and every Assessable Lot a special Assessment over and above the annual Assessment for such year authorized by Article 3.4. Special Assessments may be levied by the Association only if fifty percent (50%) of the votes cast by Owners shall be in favor of such special Assessments.

3.8 **NOTICE.** The Association shall give at least thirty (30) days' advance notice to each Owner of an Assessable Lot whose address is then listed with the Association of the amount of any Assessment for such Assessable Lot and the date on which such Assessment is due.

3.9 **NO WAIVER OF OFFSET.** No Owner of an Assessable Lot shall be exempt from payment of the Assessments and costs imposed under this Declaration by waiver of the use or enjoyment of the Common Facilities or by nonuse thereof or by abandonment of such Owner's Assessable Lot. All Assessments shall be payable in the amounts specified in the notices thereof given by the Association, and there shall be no offsets against such amounts for any reason.

3.10 **DELINQUENCY; ENFORCEMENT OF LIENS.**

3.10.1 If any Owner of an Assessable Lot fails to pay any Assessment on or before the 30th day following the date on which such Assessment is due, then such Assessment shall bear interest from the due date until paid at the lower of eighteen percent (18%) or the highest rate allowable under Kansas law.

3.10.2 Each Assessment shall become delinquent on the 30th day after the date on which such Assessment is due, and payment of the Assessment and Costs may then be enforced as a lien on such Assessable Lot in proceedings in any court in Johnson County, Kansas having jurisdiction of suits for the enforcement of such liens. The Association may, whenever any Assessment is delinquent, file a certificate of nonpayment of Assessments with the Register of Deeds, and for each certificate so filed, the Association shall be entitled to collect from the Owner of the Lot described therein a fee of $250.00 plus the costs of recording such certificate, which fee shall be part of the Costs included in the lien.

3.10.3 Such liens shall continue for the maximum amount allowed by law, and no longer, unless, within such time, suit shall have been instituted for the collection of the Assessment, in which case the lien shall continue until the termination of the suit or until the sale of the Lot under execution of the judgment therein.

3.10.4 Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, the benefit of any redemption, homestead or exemption laws of the State of Kansas now or hereafter in effect.

3.10.5 Any lien which arises against any Assessable 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 on such Assessable Lot acquired in good faith and for value securing the payment of a loan made by a bank, savings and loan association or other institutional lender ("**First Mortgage**"), except for any unpaid Assessments and Costs which accrue from and after the date on which the holder of such First Mortgage ("**First Mortgagee**") (a) comes into possession of the Assessable Lot, or (b) acquires title to the Assessable Lot, whichever occurs first. If any lien for any unpaid Assessments and Costs which accrued prior to the date a First Mortgagee comes into possession of or acquires title to the Assessable Lot has not been extinguished by the process whereby the First Mortgagee came into possession or acquired title, the First Mortgagee shall not be liable for such unpaid Assessments or Costs arising or accruing prior to such date and, upon request by the First Mortgagee to the Association, the Association shall release such lien of record; provided, however, that (a) any unpaid Assessments and Costs which are so extinguished shall continue to be the personal obligation of the delinquent Owner, and the Association may seek to collect them from such Owner even after such Owner is no longer the Owner of the Lot or a member of the Association; and (b) if the Owner against whom the original Assessment was made is the purchaser of or redeems the Assessable Lot, the lien shall continue in effect and may be enforced for the Assessments and Costs which were due prior to the final conclusion of any such foreclosure or equivalent proceeding. Any such unpaid Assessments and Costs

which are not collected within a reasonable time may be reallocated by the Association among all other Owners of Assessable Lots, irrespective of whether collection proceedings have been commenced or are then pending against the defaulting Owner.

3.11 **CERTIFICATE OF NONPAYMENT.** Upon request, any party acquiring title to or any interest in an Assessable Lot shall be entitled to a certificate from the Association setting forth the amount due for unpaid Assessments and Costs pertaining to such Assessable Lot, if any, and such party shall not be liable for, nor shall any lien attach to the Assessable Lot in excess of the amount set forth in the certificate, except for Assessments and Costs which arise or accrue after the date of the certificate.

3.12 **PLEDGE OF ASSESSMENT RIGHTS AS SECURITY.** The Association may pledge the right to exercise its assessment powers as security for any obligation of the Association; provided, however, that after the Turnover Date any such pledge shall require the prior affirmative vote of a majority of all members of the Association.

ARTICLE 4
EASEMENTS AND LICENSES

4.1 RESERVATION BY DEVELOPER; GRANT TO ASSOCIATION.

4.1.1 Developer hereby reserves to itself and its successors and assigns, and grants to the Association, the right, privilege and easement to enter upon the Common Facilities and Lots to the extent necessary for the purposes of (a) constructing, maintaining, relocating, repairing and replacing improvements on the Common Facilities which the Developer or the Association reasonably believes will enhance the beauty and function of the Common Facilities or the Neighborhood; (b) planting, replanting, maintaining and replacing grass and landscaping on the Common Facilities; and (c) doing all other things which the Developer or the Association shall be obligated to do as set forth in this Declaration or shall deem desirable for the neat and attractive appearance and beautification of the Common Facilities.

4.1.2 The foregoing rights, privileges and easements of Developer shall automatically terminate as of the Turnover Date; provided, however, that Developer may at any time and from time to time relinquish any or all of the foregoing rights, privileges or easements by recording an instrument to such effect with the Register of Deeds. The foregoing rights, privileges and easements of the Association shall be perpetual and shall survive termination of this Declaration. The rights granted to the Association herein shall not be affected or impaired by the Association's failure to be formed as of the date of the filing of this Declaration, but said rights shall pass upon the date of such formation.

4.2 USE OF COMMON FACILITIES; GRANT TO OWNERS.

4.2.1 Developer hereby grants to each Owner the non-exclusive, perpetual right, privilege and easement to use and enjoy the Common Facilities for the respective purposes for which the Common Facilities are constructed, designed and intended, subject to all of the provisions of this Declaration, the provisions of the Association's

Articles of Incorporation and Bylaws, any reasonable rules and regulations of general application within the Neighborhood which the Association may adopt from time to time, and the rights of any governmental authority or utility therein or thereto, which right, privilege and easement shall be appurtenant to and shall automatically pass with the title to each Lot and shall survive the termination of this Declaration.

4.2.2 Developer covenants and agrees to convey by special warranty deed all of its rights, title and interest in the Common Facilities (except any part thereof that is within any Lot or outside of the Neighborhood) to the Association, without any cost to the Association and free and clear of any mortgages or similar liens at such time(s) as Developer, in its absolute discretion, may determine, but in all events not later than thirty days after the Turnover Date.

4.2.3 Any ownership by the Association of any Common Facility and the right and easement of enjoyment of the Owners as to any Common Facility shall be subject to the right of the Developer to convey sewage, water, drainage, pipeline, maintenance, electric, telephone, television and other utility easements over, under, upon and through such Common Facility, as provided in Article 2.4.1, Section (c) above.

4.3 **LICENSE TO ENTER.** During the term of this Declaration and thereafter as long as any of the easements created by this Declaration survive, the Developer, the Association and their respective members, partners, officers, employees, agents and contractors shall have a temporary license to enter upon and use such portions of any Lot as may be reasonably necessary to permit the Developer or the Association to exercise or perform all or any of the rights, powers and obligations reserved, given to or imposed upon the Developer or the Association by the provisions of this Declaration; provided, however, that the Developer's rights under this Article 4.3 shall automatically terminate as of the Turnover Date.

4.4 **PERFORMANCE OF WORK; INDEMNIFICATION.** The Developer and the Association, in entering upon any Lot in the exercise of the rights, privileges and easements granted to them by this Article 4, shall (a) perform all work with due diligence; (b) take all safety measures reasonably required to protect persons and property; (c) perform the work so as to avoid, to the extent practical, interference with the use or quiet enjoyment of the Lot; (d) after the work is completed, restore the Lot to the condition existing prior to the work (to the extent consistent with the performance of such work); and (e) indemnify and hold harmless the Owner of the Lot from and against all claims for bodily injury or property damage which may be asserted against such Owner by reason of the exercise of rights by the Developer or the Association under this Article 4.

ARTICLE 5
OWNERS' INSURANCE; DAMAGE TO IMPROVEMENTS

5.1 **OWNERS' INSURANCE.** Each Owner shall obtain and maintain property insurance insuring all improvements on such Owner's Lot against loss by fire and such other perils as are covered by a standard fire insurance policy with a so-called "extended coverage" endorsement, and such personal liability and other insurance as such Owner desires, the premiums for which shall be paid by such Owner.

5.2 **DAMAGE TO IMPROVEMENTS.** If improvements on a Lot are damaged or destroyed by casualty or other cause, such improvements shall be repaired and restored with due diligence and any insurance proceeds shall be applied to restoration or repair; provided, however, that the Owner may elect not to restore or repair if (a) the improvements are subject to a First Mortgage and the First Mortgage requires, because restoration or repair is not economically feasible or because the security of the First Mortgage is threatened, that insurance proceeds be applied to sums secured by the First Mortgage; or (b) the Association consents to Owner's election not to restore or repair. Should an Owner elect not to restore or repair as permitted by the preceding sentence, the Owner shall at its sole expense demolish the damaged improvements (including foundations), clear away all debris and take all other action required (including filling to grade and seeding or sodding) so that the area formerly occupied by the demolished improvements shall be neat and attractive in appearance and compatible with a high quality residential development.

ARTICLE 6
ADDITIONAL COVERAGE

6.1 **MAINTENANCE BY OWNERS.** Except as otherwise expressly provided in this Declaration, each Owner, at such Owner's expense, shall provide and be responsible for all maintenance, repairs, replacements and approved construction on such Owner's Lot.

6.2 **TAXES AND OTHER ENCUMBRANCES.** Each Owner shall promptly pay, before delinquency, all taxes, assessments, liens, encumbrances or charges of every kind levied against or imposed upon such Owner or such Owner's Lot which may, as a matter of law, be or become a lien on any part of the Common Facilities which lien is prior to the easements granted and reserved in this Declaration. In the event of a breach of this covenant, the Association shall have, in addition to all other rights or remedies, the right (but not the obligation) to obtain the discharge of any such lien by payment or otherwise, and collect from such Owner all costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

ARTICLE 7
DESIGN CONTROL

7.1 **DESIGN REVIEW COMMITTEE.** The Association shall have a Design Review Committee consisting of three persons appointed (and removed) from time to time (a) by Developer in its sole discretion (with no requirement of Lot ownership or other criteria) until the Turnover Date (as defined in Section 1.19), and (b) by the Board after the Turnover Date.

7.2 **MEETINGS.** The Design Review Committee shall meet as necessary to consider applications with respect to any matters that require the approval of the Design Review Committee and any other matters within the authority of the Design Review Committee as provided in this Declaration. A majority of the members of the Design Review Committee shall constitute a quorum for the transaction of business at a meeting and every act or decision made by a majority of the members present at a meeting at which a quorum is present shall be regarded as the act or decision of the Design Review Committee.

7.3 **APPROVAL OF IMPROVEMENTS, ALTERATIONS AND REPLACEMENTS.**

7.3.1 No building or other structure; fence or wall; driveway, walkway, patio or deck; exterior lighting, sign, apparatus or fixture; swimming pool or other recreational facility or equipment; landscaping or alteration of grade or drainage; or changes, alterations or additions to the exterior portions of any of the foregoing (including color changes), either temporary or permanent (collectively referred to as "**Improvements**"), shall be constructed, erected, installed, placed, undertaken or maintained in or upon any part of the Neighborhood except in compliance with plans and specifications thereof which have been submitted to and prior approved in writing by the Design Review Committee.

7.3.2 Replacements of any exterior portions of any Improvements because of age, deterioration, casualty loss or other reason shall be of the same design, material and color as the original Improvement unless plans and specifications thereof have been submitted to and prior approved in writing by the Design Review Committee.

7.3.3 Until the Turnover Date, any and all Improvements or replacements erected, installed, placed, undertaken or maintained by the Developer shall be deemed approved by the Design Review Committee.

7.4 **DESIGN STANDARDS**. In order to achieve uniformity and coordination within the Neighborhood and carry out the purposes of the Design Review Committee, building standards and requirements ("**Design Standards**") shall be established by the Design Review Committee. The Design Standards may, from time to time, be amended, supplemented or repealed by the Design Review Committee upon unanimous vote. Initially, all Improvements within the Neighborhood shall conform to the Design Standards set forth in **Exhibit B** attached hereto and incorporated herein by reference.

7.5 **DESIGN CONSIDERATIONS**. In connection with the approval or disapproval of plans and specifications, the Design Review Committee shall consider appearance; quality of design and workmanship; harmony of design, materials and colors in relation to surrounding structures and landscape and the Neighborhood as a whole; and location and finished grade elevations with respect to surrounding topography. The Design Review Committee may reject plans and specifications, without citing specifics, for the following reasons, among others: (a) insufficient information to adequately evaluate the design or its intent; (b) poor overall design quality; (c) incompatible design elements; (d) inappropriate design concept or design treatment; or (e) a design or intended use found to have an adverse effect on the character of the Neighborhood or its residents. In recognition of the fact that the overall impact of Improvements involves issues of taste and judgment which cannot be completely reduced to Design Standards, the Design Review Committee shall also have the right, in its sole discretion, to reject plans and specifications conforming to the Design Standards if the Design Review Committee believes that the overall aesthetic impact of any proposed Improvement, addition, alteration or change is detrimental to the Neighborhood. Views or aesthetically appealing vistas for or from certain Lots due to the location or absence of any completed development or construction may be obstructed or altered as a result of further development or construction within the Neighborhood or on

adjacent lands controlled by the Developer. Owners shall have no property rights with respect to such views and such views are subject to alteration with further development or construction.

7.6 **REVIEW PROCESS**. All submissions to the Design Review Committee are to be made within the time periods to be established from time to time by the Design Review Committee. The initial review of each such submission by the Design Review Committee will be carried out within thirty (30) working days from the date of each submission, and notification of recommendations, approval or disapproval will be provided in writing to the Owner within that time. 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.

7.7 **APPEAL TO THE BOARD**. After the Turnover Date, any applicant or other person who is dissatisfied with a decision of the Design Review Committee shall have the right to appeal such decision to the Board provided such appeal is filed in writing with a member of the Board within seven days after the date the Design Review Committee renders its written decision. In making its decisions, the Board may consider any and all aspects and factors that the individual members of the Board, in their absolute discretion, determine to be appropriate to establish and maintain the quality, character and aesthetics of the Neighborhood, including the building plans, specifications, exterior color scheme, exterior materials, location, elevation, lot grading plans, landscaping plans and use of any proposed exterior structure. Any decision rendered by the Board on appeal of a decision of the Design Review Committee shall be final and conclusively binding on all parties and shall be deemed to be the decision of the Design Review Committee for all purposes under this Declaration. The Board from time to time may adopt, amend and revoke rules and regulations respecting appeals of decisions of the Design Review Committee, including requiring payment of a reasonable fee by the appealing party.

7.8 **PLANS AND SPECIFICATIONS**. Building plans and specifications shall include the following:

7.8.1 A site plan which shows the location of the Residence on the Lot; the location of driveways, walkways, patios, decks, walls, fences and other structures; the top of foundation elevations; the existing grades and the proposed final grading of the Lot; and the size and location of all large trees with trunks which are six inches or larger in diameter (measured six inches above ground level) located within 25 feet of the Residence or on other parts of the Lot which will be disturbed by construction. The survey shall clearly indicate which large trees will be saved and which shall be removed.

7.8.2 A complete set of final construction plans which include floor plans; exterior elevations for all sides showing finish grades; roof plans; and material selections. Floor plans and front elevations shall be drawn at a scale of ¼" = 1'. Side and rear elevations and roof plans shall be drawn at ¼" = 1' or 1/8" = 1'.

7.8.3 A final color plan with color chips for all exterior surfaces including roofs, walls, shutters, trim, masonry and flatwork (if other than untinted concrete).

7.8.4 A final landscape plan.

Paper or digital copies of all plans and specifications shall be submitted to the Design Review Committee for review. Once approved, the Design Review Committee shall provide written acknowledgement of approval or disapproval to Owner and shall maintain records of the same.

7.9 **INTERPRETATION; 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. In order to meet special situations that 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 appropriate area and overall Neighborhood 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.

7.10 **DESIGN REVIEW COMMITTEE AUTHORITY AND LIMITS OF LIABILITY.**

7.10.1 The Design Review Committee may delegate the plan review responsibilities to one or more of its members or to architectural consultants it retains. Upon such delegation, the approval or disapproval of plans and specifications by such members or consultants shall be equivalent to approval or disapproval by the entire Design Review Committee.

7.10.2 The Design Review Committee shall have the right, at its discretion, to collect fees from applicants to reimburse the Association for direct expenses incurred in reviewing such plans and specifications. Such expenses may include the cost of services rendered by professional architects, landscape architects or engineers, and associated costs of postage, photocopies, etc.

7.10.3 By its approval of plans and specifications, the Design Review Committee shall not be deemed to have approved the same for engineering design, architectural integrity or for compliance with Laws, and by approving such plans and specifications neither the Developer nor any member thereof, the Design Review Committee nor any member thereof, nor the Association nor any member, officer or director thereof, assumes any liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications. None of said persons or entities shall be liable to any Owner or other person or entity for any damage, loss, cost or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, or (c) the development or manner of development of any property within the Neighborhood. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be a representation or warranty that said plans or specifications comply with Laws or engineering or architectural standards.

7.10.4 Any member or authorized consultant of the Design Review Committee, Developer or its representatives, or any authorized officer, director, employee or agent of

the Association may at any reasonable time, after reasonable notice to the Owner, enter upon any Lot without being deemed guilty of trespass 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) after a request therefore from any Owner as to his Lot, which request shall contain an affirmative statement by such Owner of his good faith belief that he is in compliance with the approved plans and specifications, the Design Standards and the provisions hereof. If such inspection reveals that the Improvements located on such Lot have been completed in compliance with the requirements of the Design Review Committee, the Design Standards and the provisions hereof, the Design Review Committee shall provide to such Owner a notice of such approval in recordable form which, when recorded with the Register of Deeds, shall be conclusive evidence of compliance with the requirements of the Design Review Committee, the Design Standards and the provisions hereof as to the Improvements described in such recorded notice.

7.10.5 The 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. Without limiting the generality of the preceding sentence, the Association may assess damages for failure to obtain any required approval from the Design Review Committee or to comply with any such approval. If not paid, the assessment of damages shall be a lien and the Association may record a lien statement and pursue collection in a court of law.

7.11 **PUBLIC APPROVALS.** All pertinent requirements of public agencies shall be complied with in the development of each Lot, and all plans must be approved by the appropriate departments of the City. Each Owner must verify Laws at the time of purchase and development. Although based in part on Laws, the Design Standards may be more restrictive as to land use restrictions, site development standards, landscape requirements or other matters. In every case in which the Design Standards or approvals given by the Design Review Committee are at variance with Laws, the more restrictive standards, approvals, or Laws shall govern. Final legal approvals permitting development and occupancy of each Lot and Residence will be made by the City or other applicable governmental authority.

ARTICLE 8
USE AND OCCUPANCY RESTRICTIONS

8.1 **RESTRICTIONS.** Lots and Owners shall be subject to the following use and occupancy restrictions:

8.1.1 **Residential Use.** Each Lot may be improved, used or occupied only for one single-family private Residence and for no other use or purpose. No trailer, garage, outbuilding or any structure of a temporary character shall at any time be used for human habitation, temporarily or permanently. Except as otherwise provided herein, no building or structure of any sort shall be placed, erected or used for business, professional, trade or

commercial purposes on any Lot; provided, however, that this restriction shall not prevent an Owner from maintaining an office area in his Residence in accordance with applicable Laws. Maintaining such a home office shall not result in the violation of these restrictions or permit advertising said office location (on or off site) or visitation by customers or clients at the Residence. Use of any Lot for commercial day care (child or adult) purposes is specifically prohibited. Nothing herein shall restrict the Developer or others authorized by the Developer from erecting and using temporary buildings or any Residence for office, model, sales or storage purposes during the period of construction of Improvements and sale of Lots within the Neighborhood.

8.1.2 **Leasing**. No Residence or Lot or any portion thereof may be leased for a period of less than six months. All leases shall be in writing and shall provide that the lease be subject to the terms of these Restrictions and the rules and regulations of the Association, and shall also provide that any failure by the lessee to comply with such terms shall be default under the lease. An Owner who leases his Lot to another party shall be responsible for assuring compliance by the tenant with all of the provisions of this Declaration, the Association's Articles of Incorporation and Bylaws and the rules and regulations adopted by the Association, all as amended and supplemented from time to time, and such Owner shall be jointly and severally responsible with the tenant for any violation by the tenant.

8.1.3 **Maintenance**. Each Owner shall properly maintain his Lot and the Residence thereon in good condition and repair and in a neat, clean, orderly and attractive condition at all times. Trees, shrubs and lawns shall be maintained in good condition and attractive appearance at all times. Lawn grass shall be uniformly mowed and shall not be permitted to reach a height of more than four inches. Each Owner shall properly water, maintain and replace all trees and landscaping on the Owner's Lot and adjacent public rights-of-way.

8.1.4 **Utility and Drainage Easements**. Within the easements reserved in the Neighborhood for the installation and maintenance of utilities and drainage facilities, no grading, planting, structure or other material shall be placed or maintained which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels. Easement areas on Lots, and all Improvements thereon, shall be maintained continuously by the Lot Owners, except for those improvements for which a public authority or utility company is responsible.

8.1.5 **Alteration of Common Facilities.** No Owner shall improve, destroy or otherwise alter any Common Facilities without prior written consent of the Association.

8.1.6 **Flagpoles, Doghouses, Yard Ornaments, Lawn Furniture**. No freestanding flagpole, doghouse, sculpture, fountain or other yard ornament, or permanent lawn furniture may be installed, placed or maintained on the exterior of any building or on any Lot without the prior written approval of the Design Review Committee. (Outdoor furniture placed on decks or patios is exempt from approval requirements.) Except where specifically authorized in writing by the Design Review

Committee, all outside doghouses shall be located behind the back building line of the house. Outside doghouses shall have materials and colors that are compatible with the Residence.

8.1.7 **Mailboxes**. No permanent freestanding mailboxes shall be permitted for individual Residences. Owners and all occupants of any Residence shall use mailboxes provided by the Developer in locations in the Neighborhood determined by the Developer or the Association, and approved by the City and the United States Postal Service. Mailbox structures shall be maintained by the Association. Each Owner shall pay to Developer a fee of $125.00, or such other fee as set by Developer, for a mailbox and the installation of such mailbox by Developer.

8.1.8 **Tennis Courts, Swimming Pools and Hot Tubs**. No tennis court or above-ground swimming pool shall be installed or maintained on any Lot, provided, however, that above-ground hot tubs may be installed and maintained with prior written approval by the Design Review Committee. No in-ground swimming pool or related improvements, facilities or equipment shall be installed or maintained upon any Lot unless the location, design, materials and colors are approved in writing by the Design Review Committee. All pools shall be fenced and all hot tubs shall be fenced or otherwise adequately screened, all in accordance with the provisions of this Declaration. All pools and hot tubs shall be kept clean and maintained in operable condition at all times.

8.1.9 **Signs**. No permanent or temporary sign of any kind shall be displayed to public view in any manner in the Neighborhood without the prior approval of the Association, except: (a) one sign for each Lot, not exceeding 100 square inches in area, upon which is exhibited the street number for the Lot or the name of the Lot Owner, or both; (b) one sign for each Lot, not exceeding 1,000 square inches in area, advertising the Lot for sale or lease; (c) street markers, traffic signs and other signs displayed by government agencies or utilities on designated easements and rights-of-way; (d) such signs as may be required by legal proceedings, or the prohibition of which is precluded by Laws; (e) signs not exceeding 1,000 square inches in area promoting candidates or issues but limited to only 21 days before and two days after the day of election and only one sign per candidate or issue; and (f) one garage sale sign not exceeding 1,000 square inches in area is permitted on the Lot when the sale is being held, provided such signs are removed within 24 hours after the close of the sale. Except as otherwise permitted by the Design Review Committee in writing, all Residences shall have a house number plaque or house numbers in the style(s) approved by the Design Review Committee. For newly constructed homes offered for sale, only one realty sign (which may include a rider identifying the builder), and not also a separate sign for the builder, may be used if a realty company is involved. Nothing in this section shall be construed to prohibit the erection of Neighborhood entrance structures, identity signs, directional signs, advertising signs and informational signs by Developer, its grantees, assignees, or licensees in such size and design and at such places as it or they may determine which are in compliance with Laws. No sign shall be placed or maintained on any Common Facility without the approval of the Board. If any sign other than those described above shall be displayed in

the Neighborhood, the representatives or agents of the Developer or the Association shall have the right to remove such sign. For purposes hereof, a "sign" includes any mark, symbol, word or drawing intended to communicate to a viewer.

8.1.10 **Basketball Goals**. No exterior basketball goals shall be erected or maintained on any Lot without the prior written consent of the Design Review Committee. Basketball goals shall be permanently installed and shall have transparent backboards and black freestanding posts. Basketball hoops and goals attached to a building are specifically prohibited. There shall be only one basketball goal per Lot. The Board shall have the right to establish reasonable rules regarding the hours of use of basketball goals and any such rules shall be binding upon all of the Lots and the Owners.

8.1.11 **Animals**. No animal of any kind, including livestock, poultry and poisonous reptiles, shall be kept on any Lot, except that dogs, cats and other commonly accepted household pets of a number and type permitted by Laws, as the same may be amended from time to time, may be kept, provided they are not kept or bred for any commercial purpose and do not constitute a nuisance to residents of the Neighborhood, excluding, however, any dog included within the definition of "vicious dogs" pursuant to Laws. In no event, however, shall more than three dogs or cats, or combination thereof, be kept on any Lot. All permitted pets shall be kept within a Residence or fenced area, or on a leash attended by a responsible person at all times. In the event an otherwise permitted animal, in the discretion of the Association, constitutes a nuisance or endangers the safety or welfare of any resident of the Neighborhood, such animal shall be removed from the Neighborhood by the owner thereof. In the event the owner fails or refuses to remove the animal, the Association may cause the animal to be removed. Owners shall immediately clean up after their pets on all public rights-of-way, streets, Common Facilities and Lots owned by others.

8.1.12 **Offensive Activities, Nuisances, Dumping**. No noxious or offensive activity shall be carried on with respect to any Lot, nor shall any trash, ashes, brush, debris or other refuse be thrown, placed or dumped upon any Lot or Common Facilities, nor shall anything be done which may be or become an annoyance or a nuisance to residents of the Neighborhood or any part thereof.

8.1.13 **Trash Storage**. No trash, refuse, or garbage can or receptacle shall be placed on any Lot outside a Residence, except after sundown of the day before or upon the day of regularly scheduled trash collection and except for grass or leaf bags placed in the back or side yard pending regularly scheduled trash collection.

8.1.14 **Solar Collectors**. No solar collector of any kind or type shall be erected or maintained upon any Lot without the prior written consent of the Design Review Committee.

8.1.15 **Antennas, Satellite Dishes**. No exterior radio, television, short wave, citizens' band or other antenna of any kind, including satellite dishes or other devices for the reception or transmission of radio, microwave or similar signals, shall be placed or maintained on any Lot without the prior written approval of the Design Review

Committee. Approval of such devices shall be based on criteria such as location, size, signal strength, aesthetic appearance, landscaping, screening and other legally permissible considerations so as to reasonably control the impact of such devices on the Neighborhood and all parts thereof. All such devices shall be installed in accordance with and shall comply in all respects with Laws. Notwithstanding any provision in this Declaration to the contrary, small satellite dishes (maximum 24 inches in diameter) may be installed, with the prior written consent of the Design Review Committee, so as not to be readily visible from the street.

8.1.16 **Garage Sales**. No garage sales, sample sales or similar activities shall be held within the Neighborhood without the prior written consent of the Association.

8.1.17 **Sound Devices**. No exterior speaker, horn, whistle, siren, bell or other sound device, except intercoms, devices used exclusively for security purposes and stereo speakers used so as not to offend other Owners or residents of the Neighborhood and in accordance with any rules specified by the Association shall be located, installed or maintained upon any Lot.

8.1.18 **Exterior Lights**. No exterior lights attached to a Residence shall be located more than thirty feet above ground level and no free-standing exterior lights shall be located more than ten feet above ground level. Except for holiday lights, all exterior lighting shall be white and not colored. All landscape lighting must be approved in writing by the Design Review Committee. Exterior lights shall be located and oriented so as to avoid glare and excessive light spillage onto adjacent Lots, Common Facilities or public streets, provided however, that high-intensity light fixtures may be attached to any Residence if used exclusively for security purposes and not illuminated for prolonged periods.

8.1.19 **Utility Lines**. All residential utility transmission lines shall be underground.

8.1.20 **Connections to Sanitary and Storm Sewers**. No water from any roof or downspout, basement or garage drain or any surface drainage shall be placed in or connected to any sanitary sewer line; nor shall any connection of any kind be made to a storm sewer line.

8.1.21 **Fuel Storage Tanks**. No outside or underground tank for the storage of fuel or other flammable liquids shall be installed, placed or maintained on any Lot.

8.1.22 **Vehicles and Equipment**. No automobile, truck, motorcycle, motorbike, van, bus, motor home, recreational vehicle, camper, boat, trailer or other vehicle, and no lawn mower or other motorized or wheeled outdoor equipment or apparatus shall be left, maintained, repaired, serviced or stored on any Lot, except in an enclosed building. Overnight parking of motor vehicles or trailers of any type or character on Common Facilities or vacant Lots is prohibited. Trucks or commercial vehicles with gross vehicle weight of 12,000 pounds or over are prohibited except during such time as such truck is actually being used for the specific purpose for which it is designed. Nothing in this

section, however, shall be so construed as to prohibit the regular parking of not more than two licensed and operative automobiles of any type (including pick-up trucks) in a reasonable state of repair and preservation or the temporary parking of recreational vehicles for the purpose of loading or unloading (maximum of two nights every 14 days) on any paved driveway on any Lot.

8.1.23 **Garage Doors.** All garage doors shall remain closed at all times except when necessary for entry or exit.

8.1.24 **Clotheslines and Clothes Drying.** No exterior clothesline or clothesline pole shall be erected or maintained on any Lot, nor shall clothes be hung to dry outside on any Lot in any location which is visible from neighboring Lots, Common Facilities or public street rights-of-way.

8.1.25 **Banners and Holiday Decorations.** No exterior banners and/or holiday decorations (including decorative lights) shall be installed, placed or maintained on any Lot except during a sixty (60) day period beginning November 15th of each calendar year.

8.1.26 **Artificial Plants.** No artificial flowers or plants shall be permitted on the exterior of any Residence or in any yard.

8.1.27 **Awnings, Equipment, Fixtures.** No awning or canopy, or any unsightly equipment or fixture shall be installed, placed or maintained on the exterior of any structure or on any Lot, nor shall any air conditioning equipment or unsightly projection be attached to or placed in front of any Residence without the prior written consent of the Design Review Committee.

8.2 **TIME LIMITS FOR CONSTRUCTION OR RECONSTRUCTION; PENALTY FOR VIOLATION.** Unless the following time periods are expressly extended by the Design Review Committee, construction of any Residence on any Lot shall be commenced within 90 days following the date of delivery of a warranty deed from the Developer to the purchaser of such Lot, shall be diligently pursued, and shall be completed within 180 days after commencement. No Residence or exterior structure shall stand with its exterior in any unfinished condition for more than six months after commencement of construction. For the purposes of this section, commencement of construction is deemed to be the date a building permit is issued by the City. In the event such construction is not commenced within such 90-day period (or extension thereof), the Developer shall have, prior to commencement of construction, the right, but not the obligation, to repurchase such Lot at its original sale price. No Owner of a Lot in violation of this construction commencement provision shall be entitled to reimbursement for taxes, interest, or other expenses paid or incurred by or for such Owner.

Subject to the provisions of Article 5 of the Declaration, in the event of fire, windstorm, vandalism or other casualty, no Improvements shall be permitted to remain in damaged condition for longer than three months before said damaged Improvements are demolished and removed from the Lot or before repairs commence. Such repairs shall be completed within six months after commencement.

If commencement or completion of such construction or reconstruction is delayed due to weather conditions, strikes, unavoidable shortages of materials, acts of God or other conditions over which the Owner has no control, the time allowed for completion shall be extended for that period of time caused by any such delay in construction.

Any Owner of a structure in violation of this section shall pay the Association a fine of no more than One Hundred Dollars ($100.00) per day, as determined by the Association for each day the violation continues. The fine provided for herein, if not paid when due by said Owner, shall become a lien upon the real estate upon which the structure in violation of this section is located; provided, however, that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed upon said real estate. All fines shall be due thirty (30) days from the date of the written notice of the violation provided by the Association to the Owner of any Lot upon which the violation occurs, and if the fine is not paid within said thirty-day period, the fine shall bear interest at the lower of the rate of eighteen percent (18%) per annum until paid or the highest allowable rate under Kansas law. Any such interest accruing shall also be a lien upon the real estate and all such liens may be enforced by the Developer or the Association in any court in Johnson County, Kansas having jurisdiction of suit for the enforcement of such liens.

8.3 **CONSTRUCTION PERIOD REQUIREMENTS.** During construction periods on any Lot, the Owner and all parties involved in such construction shall be responsible for maintaining the Lot in a clean and orderly manner; for controlling erosion and runoff while the site is in a disturbed condition; and for insuring that mud and debris tracked onto pubic streets is promptly removed. Adequate erosion and silt control procedures shall be followed, including the use of barricades, temporary construction fence, straw bales or silt fence, to protect adjacent Lots, Common Facilities and adjacent property.

8.4 **COMPLIANCE WITH LAWS.** Notwithstanding any provision of this Declaration to the contrary, all property within the Neighborhood shall be used only in compliance with Laws. In every case in which any provision of this Declaration is at variance with such Laws, the more restrictive provision shall govern and control.

8.5 **ENFORCEMENT.** The Association or its 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 by the rules and regulations adopted by the Association, shall be deemed a special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of Article 3.9. All remedies described in Article 12 hereof and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, tenant, occupant or other party of any provision of this Article 8.

ARTICLE 9
MORTGAGES

9.1 **DEFAULTS.** Notwithstanding anything in this Declaration to the contrary, no breach or default of any term, provision, covenant, condition, restriction or easement contained in this Declaration shall defeat or adversely affect the lien of any mortgage on any property in

the Neighborhood; however, except as herein specifically provided otherwise, each and all of said terms, provisions, covenants, conditions, restrictions and easements shall be binding upon and effective against any Owner who acquires its title or interest by foreclosure, deed in lieu of foreclosure or the exercise of any other right or remedy under a mortgage, including the obligation to pay all Assessments and Costs arising or accruing thereafter, in the same manner as any other Owner.

9.2 **ENFORCEMENT AFTER FORECLOSURE SALE.** Without limiting any other rights or remedies herein provided or otherwise available at law or equity, an action to abate any default or breach of any of the terms, provisions, covenants, conditions, restrictions or easements contained in this Declaration may be brought against a purchaser who has acquired title to or any interest in a Lot through foreclosure of a mortgage and the subsequent sale of the Lot (or through any equivalent proceeding), and against the successors in interest of such purchaser, even though the default or breach existed prior to the purchaser's acquisition of title to or interest in the Lot.

9.3 **EXERCISE OF OWNER'S RIGHTS.** During the pendency of any proceeding to foreclose a mortgage (including any period of redemption), the mortgagee, or a receiver appointed in any such action, may (but need not), if and to the extent permitted by such mortgage or by the other documents evidencing or securing the loan secured by such mortgage, exercise any or all of the rights and privileges of the Owner under this Declaration, including the right to vote as a member of the Association in the place and stead of the Owner.

ARTICLE 10
CHANGES IN THE NEIGHBORHOOD

Notwithstanding anything in this Declaration to the contrary, Developer shall have and expressly reserves the right at any time and from time to time prior to the Turnover Date, in its sole discretion, without the consent of any Builder or other Owner, Association member or other party to (a) replat or subdivide any Lot owned by Developer into two or more Lots, (b) replat or combine any two or more Lots owned by Developer into a single Lot, (c) add to the Neighborhood such other nearby lands or adjacent lands (without reference to streets and rights-of-way) as may be owned or hereafter acquired or approved for addition by Developer, or (d) dedicate portions of the Neighborhood owned by Developer to any governmental or quasi-governmental body (including the City) if, in Developer's sole discretion, such dedication will benefit the Neighborhood as a whole. Any such change, addition or dedication shall become effective upon the recording with the Register of Deeds of an amendment to this Declaration, duly executed and acknowledged, setting forth the same. Such amendment to add land to the Neighborhood may contain such deletions, additions and modifications of the provisions of this Declaration which are applicable solely to such additional land as may be necessary or desirable, as solely determined by Developer in its discretion.

ARTICLE 11
RIGHTS OF THE DEVELOPER

Notwithstanding anything in this Declaration to the contrary, prior to the Turnover Date none of the restrictions contained in this Declaration shall prohibit or limit any act by Developer,

its employees, agents or contractors or any other parties designated by Developer in connection with the construction, completion, sale or leasing of the Lots or any other part of the Neighborhood, except that Developer shall be bound by the Design Standards and Laws.

ARTICLE 12
REMEDIES

12.1 **ENFORCEMENT.** In the event of any breach or default by any Owner, occupant or other person or entity ("**Defaulting Party**") under this Declaration, the Association shall have all of the rights and remedies provided in this Declaration and otherwise available at law or equity, and shall have the right (but not the obligation) to prosecute any action or other proceeding against the Defaulting Party for an injunction, whether affirmative or negative, or for enforcement or foreclosure of any lien herein provided, or for the appointment of a receiver for the affected Lot, or for damages or specific performance, or for judgment for the 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 affected Lot or the solvency or the Defaulting Party. Any and all such rights and remedies may be exercised by the Association at any time and from time to time.

No agreement, restriction, reservation or other provision herein set forth shall be personally binding upon any Owner except with respect to breaches thereof committed during such Owner's ownership; provided, however, that (a) the immediate grantee from the Builder shall be personally responsible for breaches committed during Builder's ownership of such Lot and (b) an Owner shall be personally responsible for any breach committed by any prior Owner of the Lot to the extent notice of such breach was filed of record, as provided below, prior to the transfer of ownership. Whenever the Developer or the Board determines that a violation of this Declaration has occurred and is continuing with respect to a Lot, the Developer or the Association may file with the office of the Register of Deeds a certificate setting forth public notice of the nature of the breach and the Lot involved. No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of this Declaration shall impair any of such rights or remedies; nor shall any such delay or failure be construed as a waiver of that or any other violation.

12.2 **EXPENSES OF ENFORCEMENT.** All expenses of the Association, or any other person having rights of enforcement under this Declaration, in connection with any action or proceeding described in or permitted by this Article 12, including court costs, attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the lower of eighteen percent (18%) per annum or the highest rate allowable under Kansas law, shall be charged to and assessed against the Defaulting Party and shall be deemed a special Assessment against the Owner of the affected Lot, with respect to which special Assessment the Association shall have a lien as provided in Article 3.

12.3 **RIGHT TO CURE.** The Association and any manager or managing agent retained by the Association shall have the authority (but not the obligation) to correct any breach or default under this Declaration and to do whatever may be necessary for such purpose, and all expenses in connection therewith, together with interest thereon until paid at the lower of eighteen percent (18%) per annum or the highest rate allowable under Kansas law, shall be

charged to and assessed against the Defaulting Party as a special Assessment, with respect to which special Assessment the Association shall have a lien as provided in Article 3.

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

12.5 **LIMITATION ON DEVELOPER'S LIABILITY**. Notwithstanding anything to the contrary in this Declaration, it is expressly agreed that neither Developer (including any assignee of Developer's interest hereunder) nor any member of Developer (or any member of any assignee of Developer) shall have any personal liability to the Association or to any Owner, tenant, occupant, Association member or other party arising under, in connection with or resulting from (including resulting from any action or failure to act with respect to) this Declaration, the Association, the Design Review Committee, the Association's Articles of Incorporation or Bylaws, the Design Standards or the rules or regulations adopted by the Association, or for any action taken or not taken pursuant to authority granted to Developer herein or therein, except (a) in the case of Developer (or its assignee), to the extent of Developer's interest in the Neighborhood, and (b) in the case of a member of Developer (or a member of such assignee), to the extent of such member's interest in Developer (or in such assignee); and in the event of a judgment against Developer (or any member of Developer, or assignee of Developer, or member of any such assignee), no execution or other action shall be sought or brought thereon against any other assets or be a lien upon any other assets of the judgment debtor.

12.6 **SUSPENSION OF PRIVILEGES**. The Developer or the Board may suspend the privileges of any Owner, occupant or other person who is a Defaulting Party, including the right to use or enjoy Common Facilities or voting privileges.

ARTICLE 13
AMENDMENT AND TERMINATION

13.1 **AMENDMENT BY ASSOCIATION**. The Association shall have the right, power and authority (subject to the provisions of Article 13.2 and to the restrictions on amendment set forth in Article 13.3) to amend, modify, revise or add to any of the terms of this Declaration (as from time to time amended, modified, revised or supplemented) by a written instrument setting forth the entire amendment, which amendment shall become effective when duly adopted, executed, acknowledged and recorded with the Register of Deeds. Any proposed amendment must be first approved by a majority of the Board and then adopted by the members of the Association. Amendments may be adopted by the members (a) at a meeting of the members by the affirmative vote of at least two-thirds of all members entitled to vote at such meeting, or (b) without a meeting if all members have been duly notified of the proposed amendment and if two-thirds of all members entitled to vote at such a meeting, if held, consent to the amendment.

13.2 **AMENDMENT BY DEVELOPER**. Notwithstanding any other provision of this Declaration to the contrary, prior to the Turnover Date, Developer shall have the sole and exclusive right, power and authority to amend, modify, revise or add to any of the terms of this Declaration (as from time to time amended, modified, revised or supplemented) without the approval of the Board or members of the Association or the approval of any Builder, other Owner or other party, by a written instrument setting forth the entire amendment, which shall become effective upon its recording with the Register of Deeds.

Anything set forth in this Article 13 to the contrary notwithstanding, the Developer shall have the absolute, unilateral right, power and authority to amend, modify, revise or add to any of the terms and provisions of this Declaration (as from time to time amended, modified or supplemented) by executing, acknowledging and recording an appropriate instrument in writing for such purpose, if (a) either the Veteran's Administration or the Federal Housing Administration or any successor agencies thereto shall require such action as a condition precedent to the approval by such agency of the Neighborhood or any part of the Neighborhood or any Lot in the Neighborhood, for federally-approved mortgage financing purposes under applicable Veteran's Administration or Federal Housing Administration or similar programs, laws and regulations, or (b) the City requires such action as a condition to approval by the City of some matter relating to the development of the Neighborhood.

13.3 **TERM AND TERMINATION**. The provisions of this Declaration shall continue in full force and effect (subject, however, to the right to amend as herein provided) until October 31, 2035. Thereafter, unless within one year prior to October 31, 2035, an instrument executed in one or more counterparts by at least a majority of all Association members then entitled to vote shall be recorded with the Register of Deeds directing the termination of this Declaration, this Declaration shall be automatically continued without any further notice for an additional period of 10 years and thereafter for successive periods of 10 years each; provided, that within one year prior to the expiration of any such 10-year period, this Declaration may be terminated as above provided in this section.

ARTICLE 14
GENERAL PROVISIONS

14.1 **NOTICES**. All notices, requests, consents, approvals and other communications required or permitted under this Declaration or the Association's Bylaws shall be in writing and shall be addressed to Developer at 14819 W. 95th Street, Lenexa, Kansas 66215, to the Association at the address specified in the Association's Bylaws, and to each Owner and member at the last known mailing address or electronic e-mail address shown for such Owner or member on the records of the Association. Any party may designate a different address or addresses for itself by giving written notice of its request. Notices, requests, consents, approvals and other communications shall be deemed delivered when mailed by United States mail, postage prepaid, when delivered in person or by courier, or delivered via facsimile transmission (fax) or if applicable, e-mail address.

14.2 **ASSOCIATION ADDRESS**. The Association shall notify each member whose address is listed with the Association of the time and place of regular and special meetings of the

members of the Association, and the place where payments shall be made and any other business in connection with the Association may be transacted.

14.3 **PERFORMANCE BY DEVELOPER.** Prior to the incorporation of the Association, Developer shall have the right, at its option, to perform the duties of the Association, levy and collect the assessments and otherwise exercise the rights and powers herein given to the Association in the same manner as if such powers and duties were herein given directly to Developer. The Association shall not assume any of the rights or powers herein provided for without the consent of Developer and its relinquishment of such rights and powers; provided, however, that nothing set forth herein shall be deemed to require Developer to perform or satisfy any duty or obligation to Owners or otherwise.

14.4 **ASSIGNMENT BY DEVELOPER.** The Developer shall have the right and authority to assign, convey, transfer and set over any and all of the benefits, privileges, rights, powers, reservations and easements of Developer herein granted or reserved to any party which assumes the obligations, duties and responsibilities of Developer pertaining to the particular benefits, privileges, rights, powers, reservations and easements assigned. Upon the recording with the Register of Deeds of a document of assignment whereby the assignee assumes and agrees to perform such obligations, duties and responsibilities, such assignee shall, to the extent of such assignment, have the same benefits, privileges, rights, powers, reservations and easements and be subject to the same obligations, duties and responsibilities with respect thereto as are herein given to and assumed by Developer, and Developer shall thereupon be released and relieved from all liability with respect to such obligations accruing from and after the date of recording of such assignment. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the benefits, privileges, rights, powers, reservations and easements to any other party which assumes the obligations, duties and responsibilities with respect thereto in the same manner as herein set forth.

14.5 **TERMINOLOGY**. The words "include," "includes" and "including" shall be deemed followed by the phrase "without limitation." The words "herein," "hereof," "hereunder" and similar terms shall refer to this Declaration unless the context requires otherwise. Whenever the context so requires, the neuter gender or the masculine gender includes the masculine and/or feminine gender, and the singular number includes the plural and vice versa.

14.6 **SEVERABILITY.** If any provisions of this Declaration or the application thereof in any circumstance are held invalid, the validity of the remainder of this Declaration and of the application of such provision in other circumstances shall not be affected thereby.

14.7 **RULE AGAINST PERPETUITIES; OBSERVANCE OF LAWS.** The Association shall at all times observe all Laws. If at any time any of the easements, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule of law known as the "Rule Against Perpetuities," then such provision shall become null and void, but no other parts of this Declaration not in conflict herewith shall be affected thereby.

14.8 **APPROVALS.** Wherever the approval or consent of the Developer, the Association, the Board or the Design Review Committee or any other person or entity is

required, such approval or consent shall require the prior written approval of such approving or consenting party, to be given in its sole discretion. Neither the Developer, nor the Association, nor any member of the Design Review Committee or the Board shall be personally liable to any person for any approval, disapproval or failure to approve any matter submitted for approval, for the adoption, amendment or revocation of any rules, regulations, restrictions or guidelines or for the enforcement of or failure to enforce any of the restrictions contained in this Declaration or any such rules, regulations, restrictions or guidelines.

ARTICLE 15
COVENANTS RUNNING WITH THE LAND

Each grantee of Developer and of any Builder or other Owner, by the acceptance of a deed, conveyance or other instrument evidencing or creating an interest or estate in any land within the Neighborhood, and each person acquiring a membership in the Association, and the heirs, legal representatives, successors and assigns of each of the foregoing, accepts the same subject to all of the terms, provisions, covenants, conditions, restrictions, reservations, easements and liens and subject to all of the rights, benefits and privileges of every kind which are granted, created, reserved or declared by this Declaration, and all impositions and obligations hereby imposed, all of which shall be deemed covenants running with the land and equitable servitude, and shall bind every person and entity at any time having any interest or estate in any land within the Neighborhood, and shall inure to the benefit of any such person or entity, as though the provisions of this Declaration were reflected at length in each and every deed, conveyance or other instrument evidencing or creating such interest or estate.

ARTICLE 16
GRANDFATHER CLAUSE

In the event that the effect of this Amended and Restated Declaration is to prohibit any conduct or restrict the use of any Lot which was previously in full compliance with the Original Declarations, including but not limited to the Design Standards, Developer, and after the Turnover Date, the Association, may, in its sole discretion, waive the enforcement of this Declaration in order to prevent an unfair or unjust result.

IN WITNESS WHEREOF, Developer has executed this Declaration as of the date first above written.

HIGHLAND DEVELOPMENT, LLC
a Kansas limited liability company

BY ITS MANAGER

CLAY BLAIR SERVICES CORPORATION

By: _____
Name: Clay C. Blair III
Title: President

ACKNOWLEDGEMENT

STATE OF Kansas)
) ss.
COUNTY OF Johnson)

This instrument was acknowledged before me on February 12 2014, by Clay C. Blair III, as President of Clay Blair Services Corporation, as Manager of Highland Development, LLC, a Kansas limited liability company.

(SEAL)

NOTARY PUBLIC STATE OF KANSAS
CHRISANNE M. GOLDING
NOTARY PUBLIC
STATE OF KANSAS
My App. Exp. August 27, 2014

Chrisanne M. Golding
Printed Name: Chrisanne M Golding
Notary Public in and for said State
Commissioned in Johnson County

My Commission Expires:

August 27, 2014

EXHIBIT A

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
CANYON CREEK HIGHLANDS

(FORMERLY PATRICIAN VILLAGE)

"PROPERTY"

Lots 1 through 50, inclusive, and Tract A, inclusive, PATRICIAN VILLAGE FIRST PLAT, a subdivision of land in the City of Lenexa, Johnson County, Kansas, according to the recorded plat thereof.

Lots 76 and 79 PATRICIAN VILLAGE, SECOND PLAT, a subdivision of land in the City of Lenexa, Johnson County, Kansas, according to the recorded plat thereof.

Lots 51 through 75 inclusive, 77, 78, 80 through 100 inclusive, and 102, and Tracts C through F inclusive, CANYON CREEK HIGHLANDS, FIRST PLAT, A REPLAT OF PATRICIAN VILLAGE, SECOND PLAT, a subdivision in the City of Lenexa, Johnson County, Kansas, according to the recorded plat thereof, filed for record on July 2, 2013, in the office of the Register of Deeds for Johnson County, Kansas and recorded in Book 201307 at Page 001144.

EXHIBIT B

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
CANYON CREEK HIGHLANDS

(FORMERLY PATRICIAN VILLAGE)

BUILDING STANDARDS AND REQUIREMENTS
("DESIGN STANDARDS")

1. **Permitted Height of Residences.**

No portion of a Residence erected on any Lot shall exceed three (3) stories in height above ground level at any point without the prior written consent of the Design Review Committee.

2. **Setback of Residences.**

(a) **Setback Lines.** All Residences and other Improvements shall be located on each Lot as approved by the Design Review Committee and in full compliance with setback lines shown on the Plat, as set forth herein or established by the Design Review Committee. The Design Review Committee may establish new building setback lines on any Lot with the express written consent of the Lot Owner, provided such new setback lines comply with Laws.

(b) **Specific Setbacks**. Setbacks shall be as set forth in the appropriate plat.

(c) **Projections.** Notwithstanding the setback lines shown on the Plat or those established by the Design Review Committee, cantilevered upper stories, balconies, bay, bow or oriel windows, cornices, eaves, chimneys, downspouts and decorative elements may project no more than three feet over the building setback lines for each Lot, and unenclosed, covered porches and vestibules not more than one story in height may project up to six feet beyond front building lines. No provisions herein shall be construed to permit any portion of any structure to project beyond the boundary of the Lot upon which it is erected.

(d) **Sight Lines.** No fence, wall, structure or plant materials which obstruct sight lines at elevations between two and six feet above the streets shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting them at points twenty-five feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the extension of street right-of-way lines. The same sight-line limitations shall apply to any Lot within ten feet from the intersection of the right-of-way property line with the edge of a driveway. Trees shall be permitted to remain within such areas if the foliage line is maintained at a height sufficient to prevent obstruction of sight lines.

3. **Required Size and Type of Residence.**

(a) No Residence shall be constructed upon any Lot in the Neighborhood unless it has a total finished floor area of at least: 2,000 square feet on the main floor for a ranch style residence (excluding a so-called reverse one and one-half story); 2,300 square feet for a one and one-half story residence or a reverse one and one-half story residence with at least 1,600 square feet on the main floor; and 2,400 square feet for a two story residence with at least 1,150 square feet on the main floor.

(b) A "reverse one and one-half story residence" is a ranch style residence with a basement finished comparable in quality to the main floor with at least one bedroom and bathroom in the basement. Finished floor area shall exclude any finished attics, garages, basements (other than in a reverse one and one-half story residence) and similar habitable areas. The Developer, in its absolute discretion, may allow variances from the minimum square footage requirement.

(c) The Design Review Committee reserves the absolute and incontestable right to determine whether any Residence violates the foregoing prohibition and whether the finished floor area of any Residence meets the minimum requirements provided for in this Section and hereby also reserves the right to approve deviations from the aforementioned building sizes and to modify any of the finished floor area requirements set forth in this Section. The Design Review Committee shall have the discretion to vary the minimum floor area requirements for an amount of up to ten percent (10%). When lesser square footage requirements are permitted by the Design Review Committee, the Design Review Committee will permit such variances from the minimum floor area requirements herein in a consistent manner, and not on an individual basis, taking into consideration the use of adjoining Lots. The Design Review Committee's determination(s) in this regard shall be final.

4. **Fences, Walls, Decks, Outbuildings.**

No fence, wall or deck shall be constructed, maintained or altered upon any Lot unless the location, design, configuration, height, color and materials are prior approved in writing by the Design Review Committee. No animal pens or runs shall be permitted. No fence, wall or privacy screen shall be constructed or maintained on any Lot nearer to a front street than the rear corners of the Residence (as defined by the Design Review Committee) or nearer to a side street than fifteen feet (15') from the side property line. Any fence installed next to an existing fence on an adjacent Lot must be joined to such existing fence.

Fences shall be black wrought iron or black powder-coated steel or cedar in one of three styles shown on the attached Exhibit A-1. Perimeter fences shall be of metal only and shall not exceed 54 inches in height unless specifically approved for a greater height by the Design Review Committee. Cedar privacy fences not taller than 72 inches, may be permitted if located within the building setback lines and no farther than 20 feet from the Residence and if specifically approved in writing by the Design Review Committee. Any such privacy fence shall be an approved style as shown on Exhibit A-1 or an alternate style deemed by the Design Review Committee to be compatible with the style of the Residence.

All wood on any decks (excluding joists and flooring material) shall be painted or stained the same color as the body or primary trim color of the residence or a complementary color. All deck rails shall be wrought iron or wood with wrought iron spindles, or other materials specifically approved by the DRC in its discretion. Vertical deck rail posts shall be wood or wrought iron.

No detached outbuilding, including gazebos, playhouses, sheds, barns, garages, and storage facilities, shall be erected upon, moved onto or maintained upon any Lot. Storage shall be permitted under a deck provided such area is screened as otherwise authorized herein.

5. **Surface Drainage.**

Final grading of each Lot shall adequately handle all run-off water in a reasonable manner which is in accordance and fully compatible with the grading of adjacent Lots and Tracts, the master grading plan approved by the City, any related site grading plan furnished by the Developer and any specific site grading plan for the Lot approved by the Developer. No landscaping, berms, fences or other structures shall be installed or maintained that impede the flow of surface water. Water from sump pumps and gutters shall be drained away from adjacent Residences (actual and future). No concentrated flow of water from drain pipes or swales on Lots shall be discharged onto Common Facilities without prior written approval of the Design Review Committee. No changes in the final grading of any Lot shall be made without the prior written approval of the Design Review Committee and, if necessary, the City. The Developer shall have no liability or responsibility to any Builder, Owner or other party for the failure of a Builder or Owner to final grade or maintain any Lot in accordance with the master grading plan or an approved lot grading plan or for the Developer not requiring a lot grading plan and compliance therewith. The Developer does not represent or guarantee to any Owner or other person that any grading plan for the Lots that the Developer may approve or supply shall be sufficient or adequate or that the Lots will drain properly or to any Owner's or other person's satisfaction.

6. **Roofs.**

Roof materials, colors and brands shall be specifically approved in writing by the Design Review Committee. Roofs shall be covered with wood shingles or shakes; clay or concrete tile; slate; or asphalt composition shingles in one of the following brands: Celotex brand, Presidential line, 30 year (or higher), color: Weathered Wood; Tamko brand, 30 year (or higher), color: Weathered Wood; GAF Timberline brand, 30year (or higher), color: Weathered Wood Blend. Any other roofing material requires specific written approval. Flat roofs and tar and gravel roofs are specifically prohibited without written consent of the Design Review Committee. Bronze colored flashing shall be used in valleys. Roofs shall have a minimum pitch of 6/12 unless otherwise approved in writing by the Design Review Committee.

7. **Exterior Wall Materials.**

Exterior walls of all Residences and all appurtenances thereto shall be of stucco, brick, natural stone, manufactured stone, wood or composite shingles, wood or composite lap siding, wood or composite paneling (such as "Woodsman" brand siding), plate glass, glass block, wood

trim, composite trim (such as "Hardieboard"), any other materials specifically approved by the Design Review Committee, or a combination thereof, provided, however that panelized siding materials are restricted for use on side and rear elevations of a Residence only.

8. **Exterior Colors.**

Neutral, earth-tone colors in medium to dark shades are encouraged so that structures blend with the natural setting of the Neighborhood. Bright primary colors and pastels shall not be permitted. Exterior colors and color combinations that, in the opinion of the Design Review Committee, are inharmonious shall not be permitted. All trim shall be consistently painted the same color on all sides of a Residence. Each Owner must submit a color plan showing the color of exterior walls, shutters, doors, trim, etc., to the Design Review Committee prior to initial construction on any Lot. The Design Review Committee shall have final approval of all exterior color plans.

9. **Windows and Doors.**

All windows and exterior doors shall be constructed of glass, wood, fiberglass, colored metal, vinyl, or any combination thereof or any other materials specifically approved by the Design Review Committee. Mirror finishes on window glass are specifically prohibited. Unpainted metal or bright finished window frames, screens or accessories shall not be permitted.

10. **Gutters and Downspouts.**

Exposed metal gutters and downspouts shall be painted to match the trim or body color of the Residence.

11. **Chimneys.**

Any full chimney that is revealed on an exterior facade shall be supported by a full foundation. No metal or other pipe shall be exposed on the exterior of any fireplace or fireplace flue (other than a minimum amount of exterior metal or piping from a direct vent fireplace). All fireplace flues on chimneys shall be capped with a black or color-conforming low profile metal rain cap.

12. **Paint, Stain.**

Exterior materials, except roofs, brick, stone, and similar components, shall be covered with a workmanlike finish of two coats of high quality paint or stain, however certain natural siding materials which are intended to weather (such as cedar shingles) may be exempted from this requirement.

13. **Exposed Concrete Foundations and Walls.**

The exterior surface of all concrete foundations and walls which are exposed more than 12 inches above final grade shall be painted the same color as the Residence or covered with siding materials compatible with the structure.

14. **Landscaping.**

A detailed landscape plan must be submitted to and approved by the Design Review Committee prior to installation. A minimum expenditure of $2,500 for front yard landscaping (excluding sod and irrigation systems) is required. Front yard landscaping shall include at least one ornamental tree, a minimum of 1.5" caliper in size. Each yard shall also contain a minimum of two (2) shade trees with a minimum of 2.0" caliper in size, not including trees planted within street right-of-ways or adjacent landscape easements.

All yards and the unpaved portions of street right-of-ways and easements contiguous thereto shall be fully sodded with fine-leafed, turf type fescues, ryes and/or bluegrass, or planted with ground covers or covered with mulch, provided, however, that no duty to clear any tract of trees, shrubs or natural growth which are kept reasonably attractive shall be implied. Removal of any living tree with a trunk larger than 6" in diameter (measured 6" above ground level) must be approved in writing by the Design Review Committee.

Required sod and landscape installation shall be completed prior to first occupancy of the Residence, or, before occupancy of the Residence shall occur, the Owner shall escrow funds for landscape improvements in an amount and manner determined by the Design Review Committee to assure such installation when weather permits.

All vegetable gardens shall be located behind the rear corners of the Residence and at least ten feet away from the boundary of the Lot. No vegetable garden(s) shall exceed 100 square feet in size on any Lot except with the prior written consent of the Design Review Committee.

The Developer, the Association and/or the City shall have the right (but not the obligation) to install one or more trees within the public right-of-way adjacent to each lot or within any Public Utility Easement ("PUB/E") adjacent thereto as dedicated on any Plat. The type and location of said trees shall be selected by the Developer or the Association or the City in its sole discretion. Maintenance of said trees shall be the sole responsibility of the Lot Owner.

15. **Driveways and Sidewalks.**

All driveways and sidewalks shall be concrete, patterned concrete, interlocking pavers, brick or other permanent hard-surface finishes. Large expanses of driveway surfaces are discouraged. No driveway shall be constructed in a manner as to permit access to a street across a rear lot line. Asphalt, gravel or natural driveways or sidewalks are specifically prohibited. Specific approval for circle driveways and materials, colors or finishes other than unfinished concrete shall be obtained in writing from the Design Review Committee prior to construction. Driveway approaches within public street right-of-ways shall be made of concrete and shall be no more than twenty-four (24) feet in width (excluding radii).

16. **Garages.**

All Residences shall have private garages for not less than two cars. Carports are specifically prohibited.

17. **Recreational and Play Structures.**

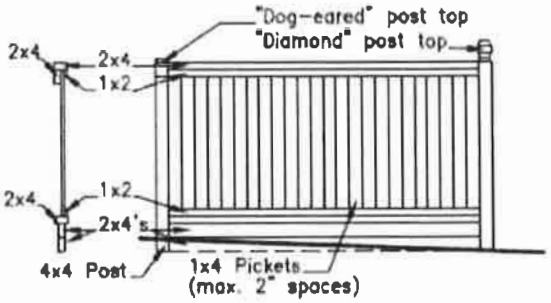
Unwalled play structures and swing sets shall be constructed of wood, dark colored metal, or plastic components. Wood structures may be untreated or stained in a medium-dark shade of brown or grey. Bright colored awnings and plastic components are prohibited. Above-ground trampolines are prohibited. No recreational or play structures, either temporary or permanent, may be constructed, erected, installed, placed or maintained on any Lot or Tract without the prior written consent of the Developer or the Design Review Committee. Recreational and play structures shall be located no closer than ten (10) feet to any side or rear property line of any Lot, and are not permitted in the front or side yard of any Residence.

18. **Change in Materials.**

Notwithstanding any provision requiring or prohibiting specific building materials or products, any building materials or products that may be or come into general or acceptable usage for dwelling construction of comparable quality or style in the area as determined by the Design Review Committee in its absolute discretion, shall be acceptable upon written approval by the Design Review Committee in its absolute discretion. In the event the City or other government agency with jurisdiction and authority requires specific building materials not authorized above or requires that Owners have additional choices of building materials not authorized above, the Design Review Committee shall have the right, in its absolute discretion, to establish and regulate in writing the specific types, colors or other aesthetic features of such new or additional building materials.

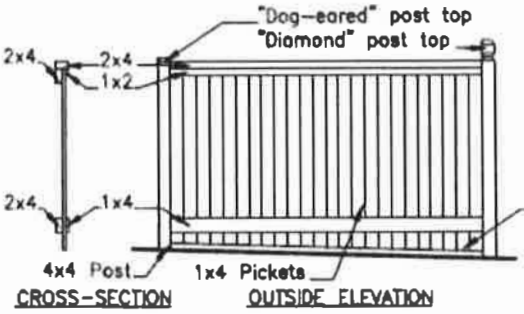
EXHIBIT A-1
DECLARATION OF CANYON CREEK HIGHLANDS
APPROVED FENCE STYLES

(See Exhibit A to Declaration of Canyon Creek Highlands for additional information.)



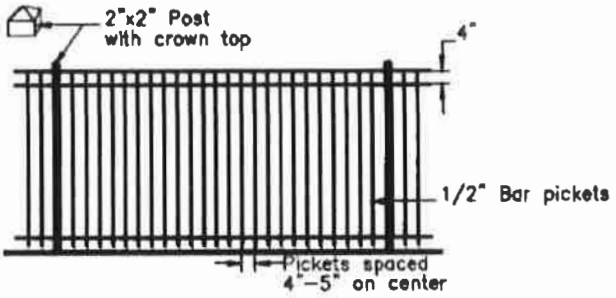
CROSS-SECTION OUTSIDE ELEVATION

Standard Picture Frame



CROSS-SECTION OUTSIDE ELEVATION

Modified Picture Frame



Black Metal
(Wrought Iron or Powder-Coated Steel)