

**CEDAR VALLEY ESTATES  
DECLARATION OF RESTRICTIONS,  
COVENANTS, EASEMENTS AND ASSESSMENTS**

THIS DECLARATION is made as of the \_\_\_\_ day of \_\_\_\_\_, 2026, by GTI GROUP, LLC, a Kansas limited liability company (“**Developer**”).

WITNESSETH:

WHEREAS, Developer has executed and filed with the Register of Deeds of Johnson County, Kansas, a plat of the subdivision known as “Cedar Valley Estates”, which plat includes the following described lots and tracts:

Lots 1 through 19, and Tracts B and C, CEDAR VALLEY  
ESTATES, a subdivision in DeSoto, Johnson County, Kansas.

WHEREAS, Developer, as the present owner and developer of the above-described real property, desires to place certain restrictions, easements, covenants, and assessments on such lots to preserve and enhance the value, desirability and attractiveness of the development and improvements constructed thereon and to keep the use thereof consistent with the intent of the Developer; and all of said restrictions, easements, covenants, and assessments shall be for the use and benefit of Developer and its future grantees, successors and assigns.

NOW, THEREFORE, in consideration of the premises contained herein, Developer, for itself and for its successors and assigns, and for its future grantees, hereby agrees and declares that the above-described lots and tracts shall be, and they hereby are, restricted as to their use, subject to assessments and easements, and otherwise encumbered in the manner hereinafter set forth, all of which shall run with the land.

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

(a) “Approving Party” means (i) prior to the execution of the Certificate of Completion, the Developer (or its designees from time to time) and (ii) subsequent to the

execution of the Certificate of Completion, the Board of the Homes Association.

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

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

(d) “Certificate of Completion” means a certificate executed by the Developer stating that all of the Lots in the Subdivision (as then contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are completed; provided, however, that the Developer may execute a Certificate of Completion or similar instrument in lieu thereof in Developer’s absolute discretion at any earlier time and for any limited purpose hereunder.

(e) “Common Areas” means Tracts B and C of Cedar Valley Estates and all statuary, landscaping and other improvements thereon, and all street islands.

(f) “City” means the City of DeSoto, Kansas.

(g) “Declaration” means this instrument, as the same may be amended, supplemented or modified from time to time.

(h) “Developer” means GTI Group, LLC, a Kansas limited liability company, and its successors and assigns.

(i) “Exempt Lots” means any Lots then owned by the Developer.

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

(k) “Homes Association” means the Kansas not-for-profit corporation to be formed by or for the Developer for the purpose of serving as the homes association for the Subdivision.

(l) “Lot” means any Lot as shown as a separate lot on the initial recorded plat of the Subdivision. If an Owner, other than the Developer, owns adjacent Lots (or parts thereof) upon which only one residence has been, is being, or will be erected, then such combined property under common ownership shall be deemed to constitute only one “Lot” solely for purposes of the building and use restrictions hereunder but for Assessment

purposes shall constitute multiple Lots (i.e., one set of Assessments for each Lot).

(m) "Owner" means the record owner(s) of title to any Lot, including the Developer, and for purposes of all obligations of the Owner hereunder, shall include, where appropriate, all family members and tenants of such Owner and all of their guests and invitees.

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

(o) "Subdivision" means all of the above-described Lots in Cedar Valley Estates, all Common Areas, and all additional property which hereafter may be made subject to this Declaration in the manner provided herein.

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

2. HOMES ASSOCIATION MEMBERSHIP AND BOARD. Until the Turnover Date, the Homes Association shall have two classes of membership, namely Class A and Class B. The Developer shall be the sole Class A member. Each Owner of a Lot, including the Developer as an Owner, shall be a Class B member. Until the Turnover Date, all voting rights shall be held by the Class A member, except that the Class B members shall have the sole right to vote on increases in annual assessments as provided in clause (iii) of Section 4(b) below.

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

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

Whenever this Declaration or the Bylaws require (or permit) that a meeting of the members be held for a vote of the members, such vote may be conducted without an actual meeting being held to the extent permitted by applicable law.

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

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

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

3. POWERS AND DUTIES OF THE HOMES ASSOCIATION

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

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

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

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

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

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

(vi) To engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the

Homes Association, including, without limitation, keeping of books and records, maintaining the Common Area, and planning and coordination of activities.

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

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

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

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

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

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

#### 4. ANNUAL ASSESSMENTS AND INITIATION FEE.

(a) For the purpose of providing funds to enable the Homes Association to exercise the powers, render the services and perform the duties provided for herein, all Lots in the Subdivision (other than Exempt Lots) shall be subject to an annual assessment to be

paid to the Homes Association by the respective Owners thereof as provided in this Section 4. The amount of such annual assessment per assessable Lot shall be fixed periodically by the Board, subject to subsection (b) below, and, until further action of the Board, shall be \$300.00 per year.

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

(i) For each of years 2027 through 2030, by the Board from time to time, without a vote of the members, by up to 20% over the rate of annual assessment in effect for the preceding calendar year;

(ii) After year 2030, by the Board from time to time, without a vote of the members, by up to 10% over the rate of annual assessment in effect for the preceding calendar year; or

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

Notwithstanding the foregoing limits on annual assessments, the Board, without a vote of the members, shall always have the power to set, and shall set, the rate of annual assessment at an amount that will permit the Homes Association to perform its duties as specified in Section 3(b) above.

(c) The annual assessments provided for herein shall be based upon the calendar year (commencing in 2026) and shall be due and payable on January 10<sup>th</sup> of each year; provided, however, that (i) the first annual assessment for each Lot shall be due and payable only upon the first day of the calendar month after the Lot ceases to be an Exempt Lot and shall be prorated based upon such assessment commencement, and (ii) the Board may allow the annual assessment to be paid in two or more installments during the year. If the effective date of any increase in the rate of assessment is other than January 1st, a proper portion (as determined by the Board) of the amount of such increase for the remainder of such year shall be due and payable on such effective date.

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

(e) An initiation fee of \$500.00 shall be payable by the new Owner to the Homes Association, for use as part of the general funds of the Homes Association, upon each of the following events with respect to the applicable Lot:

- (i) Upon the Lot ceasing to be an Exempt Lot (which initiation fee is in addition to the first regular annual assessment, as it may be prorated); and
- (ii) Each subsequent transfer of ownership of the Lot for value.

The Board shall have the right to increase or decrease the amount of the initiation fee from time to time by giving at least thirty (30) days' advance written notice to the Owners.

5. SPECIAL ASSESSMENTS.

(a) In addition to the annual assessments provided for herein, the Board:

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

(ii) shall levy from time to time special assessments against each and every Lot then subject to annual assessments under Section 4 in an equal amount that is sufficient, when aggregated with any surplus and reserves from prior years plus any funds voluntarily loaned or contributed by the Developer or other parties to the Homes Association, to enable the Homes Association (I) to perform its duties, as specified in Section 3(b) above, that require any expenditure during any period in an amount in excess of the general and applicable reserve funds of the Homes Association available therefor, and (II) to pay the costs of any emergency expenditures deemed necessary by the Board.

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

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

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

6. DELINQUENT ASSESSMENTS.

(a) Each Assessment regarding a Lot shall be a charge against the Owner and shall become automatically a lien in favor of the Homes Association on the Lot against which it is levied as soon as the Assessment becomes due. Should any Owner fail to pay any Assessment with respect to the Owner's Lot in full within 30 days after the due date thereof, then such Assessment shall be delinquent, the Owner shall be charged a late fee of the greater of \$50.00 or 5% of the unpaid amount, and the unpaid amount shall bear interest at the rate of 10% per annum, compounded monthly (or, if lower, the maximum rate permitted by law) from the delinquency date until paid, which late fee and interest shall become part of the delinquent Assessment and the lien on the Lot. Should the Homes Association engage the services of an attorney to collect any Assessment hereunder, all costs of collecting such Assessment, including, without limitation, court costs and reasonable attorneys' fees, shall, to the extent permitted by applicable law, be added to the amount of the Assessment being collected and the lien on the Lot. Each Assessment, together with late fees, interest thereon and collection costs, shall also be the personal obligation of the Owner(s) of the Lot, jointly and severally, at the time when the Assessment became due.

(b) Payment of a delinquent Assessment with respect to a Lot may be enforced by judicial proceedings against the Owner personally and/or against the Lot, including, without limitation, through lien foreclosure proceedings similar to a foreclosure under a mortgage lien in any court having jurisdiction of suits for the enforcement of such liens. The Homes Association may file certificates of nonpayment of Assessments in the Recording Office, and/or the office of the Clerk of the District Court of Johnson County, Kansas, whenever any Assessment is delinquent, in order to give public notice of the delinquency. For each certificate of nonpayment so filed, the Homes Association shall be entitled to collect from the Owner of the Lot described therein a fee of \$250.00, which fee shall be added to the amount of the delinquent Assessment and the lien on the Lot and which fee amount may be increased by the Board from time to time to reflect cumulative increases in an appropriate consumer price index (as selected by the Board) after December 31, 2028.

(c) Such liens shall continue for a period of five (5) years from the date of delinquency and no longer, unless within such period a lawsuit shall have been instituted for collection of the Assessment and foreclosure of the lien, in which case the lien shall continue until payment in full or sale of the property under the execution of judgment relating to the lien.

(d) No Owner may waive or otherwise avoid liability for any Assessment by not using any Common Areas or by declining any services provided through the Homes Association.

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

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

7. LIMITATION ON EXPENDITURES Except for matters contemplated in Section 3(b) above, the Homes Association shall at no time expend more money within any one year than the total amount of the Assessments for that particular year, plus any surplus and applicable reserves which it may have on hand from prior years, plus any funds voluntarily contributed or loaned by the Developer or other parties to the Homes Association. The Homes Association shall not have the power to enter into any contract which binds the Homes Association to pay for any obligation out of the Assessments for any future year, except for (i) contracts for utilities, maintenance or similar services or matters to be performed for or received by the Homes Association or its members in subsequent years, and (ii) matters contemplated in Section 3(b) above.

8. USE OF LAND. Except as otherwise expressly provided in this Declaration, none of the Lots may be improved, used or occupied for other than single family, private residential purposes. Time share ownership and functionally equivalent ownership with part time possession is prohibited. The Approving Party shall have the right to determine whenever an extended family or roommate situation or multiple, direct or indirect, owners become a burden on the neighbors or the Subdivision and is no longer within the "single family" use intended by this Declaration; provided, however, nothing herein shall prohibit the parents, grandparents, children or grandchildren of the Owner from also living in the residence or (if approved by the City and the Approving Party) an applicable outbuilding on the Owner's Lot. No residence of a temporary character shall be erected, moved onto or maintained upon any of the Lots or any Common Areas or be used for human habitation; provided, however, that the Developer or others (including, without limitation, builders and real estate brokerage companies) authorized by the Developer shall have the right to use temporary buildings or structures or any residence on any Lot for model, office, sales or storage purposes during the development and build out of the Subdivision.

9. BUILDING MATERIAL REQUIREMENTS.

(a) Exterior walls of all residences and all appurtenances thereto shall be of stucco (but no stucco board or stuccato), brick, natural stone, veneer stone, plate glass, glass blocks, wood trim, smart board panel or trim, wood siding, or any combination thereof, except as and where otherwise expressly approved in writing by the Approving Party. All front elevations must be lap siding, board and batt, stucco, brick or stone, as approved in writing by the Approved Party. No front facing exterior walls shall be covered with materials commonly known as sheet goods that when installed have uncovered seams or seams covered with batts, such as, without limitation, four-feet by eight-feet panels. Concrete blocks shall not be permitted as an exterior finished surface. All windows and

exterior doors shall be constructed of glass, wood, metal or vinyl clad, fiberglass, or any other materials specifically approved by the Approving Party in writing. No windows or exterior doors may be silver or other similar finish. Roofs of residences shall be covered with high quality, non-combustible, composition shingles with a manufacturer's warranty of at least thirty (30) years, concrete tiles, clay tiles or slate, all of the specific types, colors, styles, dimensions and other aesthetic factors specifically approved by the Approving Party in writing. Roofs of residences shall not be covered with wood shake shingles. Notwithstanding the foregoing provisions of this Section 9 requiring or prohibiting specific building materials or products, any building materials or products that may be or come into general or acceptable usage for dwelling construction of comparable quality and style in the rural DeSoto area, as determined by the Approving Party in its absolute discretion, shall be acceptable upon written approval by the Approving Party in its absolute discretion. In the event the City or other government agency with jurisdiction and authority requires specific building materials not authorized above or requires that Owners have additional choices of building materials not authorized above, the Approving Party shall have the right, in its absolute discretion, to establish and regulate in writing the specific types, colors and other aesthetic features of such new or additional building materials.

(b) All applicable exterior components (excluding roofs, brick, stone, decks, and similar components) shall be covered with a workmanlike finish of paint or stain. No residence or Exterior Structure shall stand with its exterior in any unfinished condition for longer than five (5) months after commencement of construction. All exterior basement foundations and walls which are exposed in excess of 12 inches above final grade shall be painted the same color as the body of the residence.

(c) No air conditioning apparatus or unsightly projection shall be attached to or located on the front of any residence. No window air conditioning or heating units shall be permitted.

(d) Chimneys on exterior walls may not be cantilevered and must have a foundation wall underneath and must be constructed of brick, natural stone, stucco or other masonry products approved by the Approving party. No metal or other pipe shall be exposed on the exterior of any fireplace or fireplace flue (other than a minimal amount of exterior metal or piping from a direct vent fireplace). All fireplace flues in chimneys shall be capped with a black or color-conforming metal rain cap.

(e) All driveways shall be asphalt, concrete, patterned concrete, bomanite, interlocking pavers, brick or other hard surface finishes. Rock, gravel, crushed gravel and natural driveways or sidewalks from the driveway to the front door are prohibited. Notwithstanding the foregoing, driveways serving an outbuilding may transition to rock or gravel beginning at the rear of the residence but must include a minimum of five (5) inches of 3"-5" base rock and be capped with a minimum of two (2) inches of 1 ¼" rock or gravel material. No driveway shall be constructed in a manner as to permit access to a street across a rear or side property line.

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

(g) No Lot may be subdivided.

(h) Mobile and modular residences and outbuildings are prohibited. All residences and outbuildings must be constructed on-site, except as expressly approved by the Approving Party.

(i) Each residence must have a minimum of six (6) soffit-mounted exterior lights on the front elevation. All exterior lighting must be permanently installed, compliment the architectural style of the residence and not create excessive glare or a nuisance to adjacent residences.

(j) Each Lot shall have a concrete sidewalk along the street frontage.

(k) The Approving Party, in its discretion, may allow variances from the foregoing requirements of this Section 9.

10. MINIMUM FLOOR AREA. No residence shall be constructed upon any Lot unless it has a total finished floor area of at least the following:

Ranch: 1,800 square feet

One and one-half story: 2,600 square feet

Two story: 2,800 square feet

Finished floor area shall exclude any finished attics, garages, basements and similar habitable areas. The Approving Party, in its absolute discretion, may allow variances from the foregoing minimum square footage requirement.

11. APPROVAL OF PLANS; POST-CONSTRUCTION CHANGES; GRADING; EROSION CONTROL.

(a) Notwithstanding compliance with the provisions of Sections 9 and 10 above, no residence or Exterior Structure may be erected upon or moved onto any Lot unless and until the building plans, specifications, exterior materials, location, elevations, plot plan, lot grading plan, general landscaping plan, and exterior color scheme (all as and when may be required by the Approving Party for each particular stage of construction) have been submitted to and approved in writing by the Approving Party. No change or alteration in such building plans, specifications, exterior materials, location, elevations, lot grading plans, general landscaping plans or exterior color scheme shall be made unless and until such change or alteration has been submitted to and approved in writing by the Approving Party.

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

approved in writing by the Approving Party.

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

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

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

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

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

(h) Neither the Developer nor any real estate broker/salesperson guarantees or warrants the obligations or construction by any builder.

12. VACANT LOTS. Prior to the commencement of on-site construction of a residence

on the Lot, (a) no materials, equipment or other items shall be stored or left on the Lot, and (b) the Owner shall mow the Lot as needed to keep the native grass and other vegetation at a height not to exceed eight (8) inches along the perimeter of the Lot for thirty (30) feet deep and shall mow or hay the remainder of the Lot at least twice per year.

13. COMPLETION OF CONSTRUCTION. Unless expressly extended by the Developer, construction of the residence on the Lot shall be completed within fifteen (15) months after on-site construction commencement (digging of foundation).

14. EXTERIOR STRUCTURES.

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

(b)

(i) All fence and privacy screen plans must be approved by the Approving Party and (where required) the City prior to installation. No fence shall be installed without a permit from the City (where required) and compliance with all applicable laws and codes. Only wood or black prefinished steel (or similar) fences (which may include stone or masonry posts) or privacy screens in the specific styles, materials and colors approved by the Approving Party shall be permitted on the Lots. All fences, retaining walls and privacy screens shall be ornamental and shall not disfigure the property or the neighborhood or interfere with drainage. No PVC, T-post style, chain link, wire or similar fence or kennel shall be permitted. Unless and until otherwise specifically approved in writing by the Approving Party, (A) no fence or privacy screen shall exceed five (5) feet in height (except around a hot tub or where required by the City), and (B) no fence or privacy screen shall be constructed or maintained on any Lot nearer to the front street than the rear corners (as determined by the Approving Party) of the residence.

(ii) All basketball goals shall be permanently installed, free standing and not attached to the residence. All backboards shall be transparent and all poles

shall be black or a neutral color.

(iii) The Board shall have the right to establish reasonable rules regarding the hours of use of basketball goals and sport courts and any such rules shall be binding upon all of the Lots and the Owners.

(iv) All recreational or play structures must be approved in advance by the Approving Party and (if allowed) (A) shall be made of wood or other materials approved in writing by the Approving Party, (B) (other than basketball goals) shall be located behind the rear corners (as determined by the Approving Party) of the residence, and (C) (other than basketball goals) shall be located at least twenty (20) feet from each side boundary and twenty-five (25) feet from the rear boundary of the Lot.

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

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

(vii) Detached garages, pool houses, barns, guest houses, greenhouses and other similar outbuildings shall be permitted, provided they are approved in advance by the City and the Approving Party, have a front of the building at or behind the center line of the residence, have at least a one-foot soffit overhang with the front elevation matching or coordinating with the color and architectural style of the front elevation of the residence and must incorporate stone or architectural features on the front. The sides and rear of the outbuildings may utilize metal materials, provided they incorporate at least two (2) different siding styles or colors. The Approving Party, in its discretion, may allow such structures to exceed such maximum square footage per Lot.

(viii) No shipping containers or similar storage units may be located on any Lot (other than in an enclosed building).

(ix) No Exterior Structure that is prohibited under Section 15 below shall be permitted under this Section 14.

15. BUILDINGS OR USES OTHER THAN FOR RESIDENTIAL PURPOSES; NOXIOUS ACTIVITIES; MISCELLANEOUS.

(a) Except as otherwise provided in Section 8 above, no residence or Exterior Structure, or any portion thereof, shall ever be placed, erected or used for business, professional, trade or commercial purposes on any Lot; provided, however, that (i) this restriction shall not prevent an Owner or occupant from maintaining an office area or

operating a home-business occupation in such Owner's residence in accordance with the applicable ordinances of the County so long as the residential character of the area is maintained and the use does not become a nuisance, and (ii) unless expressly approved by the Board, no day care center, home school, or other business that has customers regularly visiting the residence shall be operated on any Lot.

(b) No illegal, noxious or offensive activity shall be carried on with respect to any Lot; nor shall any trash, ashes or other refuse be thrown, placed or dumped upon any Lot or Common Area; nor shall anything be done which may be or become an annoyance or a nuisance to the Subdivision, or any part thereof, except as may be otherwise expressly permitted by this Declaration.

(c) Each Owner shall properly maintain his Lot in a neat, clean and orderly fashion at all times. The exterior portions of the residence and all Exterior Structures on the Lot shall be kept and maintained by the Owner in good condition and repair at all times. Each residence exterior shall be repainted by the Owner every seven years or less, as needed (as determined by the Board). Any exterior color change must be approved in advance in accordance with Section 11(b) above.

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

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

(f) Trucks or commercial vehicles with gross vehicle weight of 12,000 pounds or over are prohibited in the Subdivision except during such limited time as such truck or vehicle is actually being used in the Subdivision during normal working hours for its specific purpose.

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

(i) When stored in an enclosed garage or in the backyard near the residence;

(ii) When temporarily parked on the driveway for the purpose of loading and unloading (maximum of two (2) overnights every fourteen (14) days);  
or

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

(h) Small satellite dishes may be installed, with the prior written consent and in accordance with the requirements of the Approving Party, so as to render the installation as

inoffensive as possible to other Owners (with the preference being that such satellite dishes not be visible from the street). Except for such small satellite dishes, no television, radio, citizens' band, short wave or other tower or antenna, clothes line or pole, or other projection may be erected or attached to the exterior of any residence or erected in any yard unless approved by the Approving Party. Should any part or all of the restriction set forth in the preceding sentence be unenforceable because it violates a statute or the First Amendment or any other provision of the United States Constitution, or Kansas Constitution, the Approving Party shall have the right to establish rules and regulations regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections on the Subdivision, and all parts thereof, and any such rules and regulations shall be binding upon all of the Lots.

(i) No solar panels, windmills or similar devices may be installed without the prior written consent of the Approving Party. Should any part or all of the restriction set forth in the preceding sentence be unenforceable because it violates a statute or any provision of the United States Constitution or the Kansas Constitution, the Approving Party shall have the right to establish rules and regulations regarding the location, size, and other aesthetic aspects of solar panels, windmills and similar devices so as to reasonably control the impact of such solar panels, windmills and similar devices on the Subdivision, and all parts thereof, and any such rules and regulations shall be binding upon all of the Lots.

(j) No lights or other illumination (other than streetlights) shall be higher than the residence. Exterior holiday lights and holiday decoration shall be permitted only between November 1 and January 31. Except for such holiday lights or as may be expressly approved by the Board, all exterior lighting shall be white (clear) and not colored and shall not be flashing or create any changing lighting patterns. All exterior landscape lighting must be approved in advance by the Approving Party.

(k) No garage sales, sample sales, estate sales or similar activities shall be held within the Subdivision without the prior written consent of the Board and may be limited to a maximum of two (2) times per calendar year for each Lot.

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

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

(n) In the event of vandalism, fire, windstorm or other damage, no residence or Exterior Structure shall be permitted by the Owner to remain in damaged condition for longer than three (3) months (except with the specific written consent of the Approving Party when the repair or replacement cannot be reasonably accomplished within such three (3) month period).

(o) No outside above-ground fuel storage tanks of any kind shall be permitted (except standard propane tanks for outdoor grills).

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

(i) One sign not more than three (3) feet high and three (3) feet wide may be maintained offering the residence for sale. For newly constructed homes offered for sale, only a real estate brokerage company sign (which may include a rider identifying the builder), and not also a separate sign for the builder, may be used if a real estate brokerage company is involved.

(ii) One garage sale sign not more than three (3) feet high and/or three (3) feet wide is permitted on the Lot when a permitted garage sale is being held, provided such signs are erected in accordance with County code and are installed no more than two hours before the start of the sale and are removed within two (2) hours after the close of the sale.

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

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

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

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

(s) No trash, refuse, or garbage can or receptacle (other than construction dumpsters during construction) shall be placed on any Lot outside a residence, except from the evening of the day before scheduled pick-up until twelve (12) hours after actual pick-up

and except for grass bags placed in the back or side yard pending regularly scheduled trash collection.

(t) Each Owner who desires to rent or lease any part of a residence must comply with all licensing and other requirements of the City. In addition, no residence or part thereof shall be rented for a period of less than six (6) consecutive months to the same tenant or tenants or used for transient or hotel purposes. No lease may be of less than an entire residence, except that an Owner may lease to a single tenant for at least six (6) months a guest house or other accessory dwelling unit. AirBNB, VRBO, and similar short-term rentals are prohibited. Each lease shall be in writing, shall require that the tenant and other occupants acknowledge the existence of this Declaration and agree to comply with all provisions of this Declaration, shall provide that the lease shall be subject in all respects to the provisions of this Declaration and to the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the tenant to comply with the terms of this Declaration or such rules and regulations shall be a default under the lease. In the event a tenant fails to comply with the terms of this Declaration or such rules and regulations, the Owner shall, if so directed by the Board and to the extent permitted by law, terminate the lease and evict the tenant. Prior to the commencement of the term of a lease, the Owner shall notify the Board, in writing, of the name or names of the tenant or tenants and their contact information (telephone numbers and emails) and the time during which the lease term shall be in effect. Notwithstanding the existence of a lease, the Owner shall remain liable for all obligations under this Declaration with respect to the Lot and the improvements thereon and the use thereof and the Common Areas, and the Owner shall cause the rented property to be maintained to the same general condition and standards as then prevailing for the Owner-occupied residences in the Subdivision.

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

16. ANIMALS. Pets, chickens and animals are allowed on a Lot to the extent permitted by and in compliance with the applicable City code and regulations, but if they become a nuisance by significant offensive sight, noise or smell, the Homes Association may impose additional restrictions. All pets, chickens and animals shall be confined to the Lot of the Owner with fencing (approved as provided elsewhere in this Declaration) except when on a leash controlled by a responsible person. Owners shall immediately clean up after their pets, chickens and animals on all streets, Common Areas and Lots owned by others. All kennels and areas designated for feeding, watering or housing of chickens and animals must be located at least fifty (50) feet behind the residence (unless expressly approved by the Approving Party).

17. LAWNS, LANDSCAPING AND GARDENS. Within sixty (60) days after the issuance of any permanent or temporary certificate of occupancy for the residence, all lawns, including all areas between the residence and any adjacent street, regardless of the existence and location of any fence, monument, boundary wall, berm, sidewalk or right-of-way line, shall be fully sodded or professionally seeded and shall remain fully sodded or seeded at all times thereafter; provided,

however, that the Owner of a Lot may leave a portion of the Lot as native grass or a natural area with the express written permission of the Approving Party. No lawn on a Lot shall be planted with zoysia or buffalo grass.

Within sixty (60) days after the issuance of any permanent or temporary certificate of occupancy for the residence, the Owner thereof shall landscape the Lot to the same standards as that generally prevailing throughout the Subdivision (as determined by the Developer) (which shall include, but not be limited to, a minimum expenditure on foundation plantings and new trees in the front yard in the amount of at least .75% of the total cost of the Lot and residence thereon). All landscaping shall be installed in accordance with the landscaping plans approved by the Approving Party and shall be maintained by the Owner in good condition at all times.

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

All vegetable gardens shall be located at least 50 feet behind the rear corners of the residence (as determined by the Approving Party) and at least 25 feet away from the side boundaries of the Lot. All vegetable gardens must be maintained in an orderly and aesthetically appropriate manner.

Each Owner of a Lot with a residence shall keep the lawn of the Lot in good condition at all times and uniformly mowed and clipped with a length of grass not to exceed six (6) inches and reasonably free from weeds. Where native grasses are permitted, a buffer of at least ten (10) feet along the property lines must be mowed so as to not exceed six (6) inches in height. The other native grass areas must be mowed at least twice each calendar year.

Each Owner shall install and maintain hardwood trees along the street in front (and sides if a corner lot) of the residence at the rate of one (1) tree per forty (40) feet of street frontage. The type(s) and location(s) of tree(s) and timing of planting shall be selected by the Developer in its absolute discretion. Each Owner shall properly water, maintain and replace all trees and landscaping on the Owner's Lot.

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

The Developer shall have and does hereby reserve for itself and its successors and assigns and the Homes Association and its successors and assigns an easement over and through all

unimproved portions of each Lot for the purpose of performing the powers and duties of the Homes Association and maintaining any Common Area. The Developer shall have the right to execute and record, at any time, an easement with respect to specific areas utilized as provided above.

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

The Developer and the builder of the residence on the Lot shall have reasonable access to each Lot for the purpose of inspecting and maintaining erosion control devices until final stabilization of the full Lot is achieved by sodding or seeding and landscaping. No Owner shall prevent or inhibit the Developer's or the builder's reasonable access for such purpose, and no Owner shall remove or damage any erosion control devices installed by the Developer or the builder. Each Owner shall notify the builder and the Developer of any damage to such erosion control devices.

In the event any easement rights granted in this Section are exercised with respect to any Lot, the party so exercising such easement rights shall exercise the same in a reasonable manner so as to minimize all adverse effects on the Owners and shall promptly repair any damages to such Lot resulting from the exercise of such easement rights and restore the Lot to as near the original condition as possible.

No water from any roof, downspout, sump pump, perimeter basement drain or surface drainage shall be placed in or connected to any sanitary sewer.

19. COMMON AREAS.

(a) The size, location, nature and extent of improvements and landscaping in the Common Areas, and all other aspects of the Common Areas that are provided by the Developer, shall be determined by the Developer in its absolute discretion.

(b) The Developer and its successors, assigns, and grantees, the Owners, and the Homes Association shall have the right and easement of enjoyment in and to all of the Common Areas, but only for the intended and permitted use of such Common Areas. Such right and easement in favor of the Owners shall be appurtenant to, and shall automatically pass with, the title to each Lot. All such rights and easements shall be subject to the rights of any governmental authority or any utility therein or thereto.

(c) Any ownership by the Homes Association of any Common Area and the right and easement of enjoyment of the Owners in the Subdivision as to any Common Area 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 Area, as provided in Section 18 above.

(d) No Owner shall mow, maintain, improve, destroy or otherwise alter any Common Area without the express written consent of the Approving Party and (if

applicable) the City.

(e) Owners of Lots adjacent or nearby the Common Areas shall prevent erosion and pollutant discharges and runoff onto the Common Areas.

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

(g) The Developer and the Homes Association shall have the right from time to time to make, alter, revoke and enforce additional rules, regulations and restrictions pertaining to the use of any Common Area.

(h) The Homes Association shall at all times, from and after the date of its formation and at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, the Common Area as otherwise provided in this Declaration, subject to any control thereover maintained by any governmental authority, utility or similar person or entity. In insuring the Common Areas, the Homes Association shall cause the Developer to be named as an additional insured on the insurance coverage until the recording of the Certificate of Substantial Completion.

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

(j) **No Liability for Creeks.** By acceptance of a deed to a Lot, all Owners acknowledge and accept the inherent risks and hazards (whether foreseeable or not) associated with the existence and use of any creeks that are in or adjacent to the Subdivision. The Developer and the Homes Association and their respective employees, officers, directors, members, managers, representatives and agents shall have no liability or responsibility to any Owner or other party with respect to such inherent risks and hazards. To the maximum extent permitted by law, each Owner, for himself, the members of his family, his guests, his tenants and invitees, shall be deemed to have released and agreed never to make a claim against the Developer, the Homes Association and/or any of their respective employees, officers, directors, members, managers, representatives, or agents for any personal injury or death that may be suffered or incurred by any of such releasing parties in connection with the existence or use of any creeks, and each of them shall be deemed to have waived any

**and all claims and causes of action that any of them may ever have against any of such released parties with respect thereto.**

20. ARCHITECTURAL REVIEWS.

(a) The Board shall meet as necessary to consider applications with respect to any Exterior Structures or other matters that require its approval. The Board may specify a form of application that must be used by applicants. A majority of the members of the Board 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 Board.

(b) The Board shall consider and act upon written and complete applications that have been submitted to it for approval in accordance with this Declaration. In making its decisions, the Board may consider any and all aspects and factors that the individual members of the Board, in their discretion, determine to be appropriate to establish and maintain the quality, character and aesthetics of the Subdivision, including, without limitation, the building plans, specifications, exterior color scheme, exterior materials, location, elevation, lot grading plans, landscaping plans and use of any proposed Exterior Structure. All decisions of the Board shall be in writing and delivered to the applicant, who shall be responsible for keeping the same. The Board may establish in advance and change from time to time certain procedural and substantive guidelines and conditions that it intends to follow in making its decisions. Any written application complete with all required drawings and other information that is not acted upon by the Board within 25 days after the date on which it is received shall be deemed to have been approved.

21. NO LIABILITY FOR APPROVAL OR DISAPPROVAL; INDEMNIFICATION.

(a) Neither the Developer, the Homes Association, nor any of their officers, directors, managers, representatives or agents, nor any member of the 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 other declaration or any such rules, regulations, restrictions or guidelines.

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

(c) To the fullest extent permitted by law, the Homes Association shall indemnify each officer and director of the Homes Association, and the Developer (to the

extent a claim may be brought against the Developer by reason of its appointment, removal of or control over, or failure to control, any such other persons) (each, an “Indemnified Party”) against all expenses and liabilities, including, without limitation, attorneys’ fees, reasonably incurred by or imposed upon the Indemnified Party in connection with any action or proceeding, or any settlement thereof, to which the Indemnified Party may be a party or in which the Indemnified Party may become involved by reason of serving or having served in such capacity (or, in the case of the Developer, by reason of having appointed, removed or controlled or failed to control any officer or director of the Association), provided the Indemnified Party did not act, fail to act or refuse to act with fraudulent or criminal intent in the performance of the Indemnified Party’s duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which any Indemnified Party may be entitled at law or otherwise.

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

23. NEARBY USES AND NUISANCES. **The Subdivision is in a rural area and there may be agricultural uses, feedlots, natural gas plants, industrial uses, and other potential smells, activities and other matters that may disrupt or be a nuisance to ownership or residing in the Subdivision. By acceptance of a deed to the Lot, all Owners acknowledge and accept such risks and matters (whether known or foreseeable or not). To the maximum extent permitted by law, the Developer and the Homes Association and their respective employees, officers, directors, members, managers, representatives and agents shall have no liability or responsibility to any Owner or other party with respect to such risks and matters, and each of them shall be deemed to have waived any and all claims and causes of action that any of them may ever have against any of such released parties with respect thereto.**

24. DRAINAGE SWALES. The maintenance of drainage channels or swales in the Subdivision will not be performed by the City and will be the responsibility of the Owner of the Lot or (as to Common Areas) the Homes Association. No grading or other work may be performed or landscaping installed within the public right-of-way that may change the course of flow within a drainage ditch. The City shall have the right and authority to perform maintenance and construction activities within the public right-of-way without the consent of the adjacent property owner.

25. OTHER CITY REQUIRED PROVISIONS.

(a) Each Owner shall be responsible for installation and maintenance of the driveway(s) and entrance culvert(s) for the Lot.

(b) No Owner or other occupants of a Lot shall oppose any future benefit district that may be proposed or formed for sewer and/or road improvements.

(c) In the event of the failure of the on-site septic system, the Lot shall be

required to connect to the public sewers (if available at the time of failure).

26. COVENANTS RUNNING WITH LAND; ENFORCEMENT; WAIVERS. The agreements, restrictions, reservations, assessments and other provisions herein set forth are, and shall be, covenants running with the land and shall be binding upon all subsequent grantees of all parts of the Subdivision. The Developer, and its successors, assigns and grantees, and all parties claiming by, through or under them, shall conform to and observe such agreements, restrictions, reservations and other provisions; provided, however, that neither the Developer, the Homes Association nor any other person or entity shall be obligated to enforce any such agreements, restrictions, reservations or other provisions. By accepting a deed to any of the Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the agreements, restrictions, reservations and assessments set forth herein as applied to the Lot owned by such Owner.

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

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 Homes Association may file with the Recording Office 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.

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

No waiver of any violation shall be effective unless in writing and signed and delivered by the person or entity entitled to give such waiver, and no such waiver shall extend to or affect any other violation or situation, whether or not similar to the waived violation. No waiver by one person or entity shall affect any rights or remedies that any other person or entity may have; provided, however, that a duly authorized, executed and delivered waiver by the Homes Association, acting upon a decision of the Board, respecting a specific violation or potential

violation of this Declaration with respect to a specific Lot shall constitute and be deemed as a waiver by all other persons and entities (other than the Developer) of such violation or potential violation.

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

28. RELEASE OR MODIFICATION.

(a) The provisions of this Declaration may be amended, modified or terminated, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by both (i) the Owners of at least 2/3rds of the Lots within the Subdivision as then constituted and (ii) if prior to the recording of the Certificate of Substantial Completion, the Developer, or if after the recording of the Certificate of Substantial Completion, the Homes Association under express authority and action of the Board.

(b) Anything set forth in this Section to the contrary notwithstanding, prior to the recording of the Certificate of Substantial Completion, the Developer shall have the absolute, unilateral right, power and authority to modify, revise, amend, change or add to any of the terms and provisions of this Declaration, as from time to time amended or supplemented, by executing, acknowledging and recording in the Recording Office a written instrument for such purpose, if (i) any of the Veteran's Administration, the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or any successor or similar agencies thereto shall require such action as a condition precedent to the approval by such agency of the Subdivision, or any part of the Subdivision or any Lot in the Subdivision, for federally-approved mortgage financing purposes under applicable programs, laws and regulations, (ii) the County requires such action as a condition to approval by the County of some matter relating to the development of the Subdivision or the amendment is necessary to cause this Declaration to comply with any applicable law, (iii) a typographical or factual error or omission needs to be corrected in the opinion of the Developer, (iv) such action is appropriate, in Developer's discretion, in connection with a replat of all or any part of the Subdivision or (v) until December 31, 2033, to make any other amendment the Developer may determine to be appropriate. No such amendment by the Developer shall require the consent of any Owner or the Homes Association.

(c) If the rule against perpetuities or any rule against restraints on alienation or similar restriction is applicable to any right, restriction or other provision of this Declaration, such right, restriction or other provision shall terminate (if not earlier

