

**AMENDED DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS AND DISCLOSURES  
FOR TIMBER CREEK ESTATES HOMEOWNERS' ASSOCIATION**

THIS AMENDED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND DISCLOSURES FOR TIMBER CREEK ESTATES HOMEOWNERS' ASSOCIATION ("Declaration") is made effective the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

WITNESSETH, THAT:

WHEREAS, Owners deem it desirable to adopt and establish covenants, conditions and restrictions for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined); and

WHEREAS, it is desirable to establish binding covenants, conditions and restrictions applicable to the Property for the proper development thereof, adequate maintenance and government of the Common Area (hereinafter defined), and to specify the rights and obligations of the Owners (as hereinafter defined); and

NOW, THEREFORE, Owners hereby covenant, agree, and declare that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements, which are hereby declared to be for the benefit of all the Property described herein and the Owners thereof, their successors and assigns.

**ARTICLE I**

**DEFINITIONS**

The following terms used in these covenants, conditions and restrictions shall be applicable to the Declaration and are defined as follows:

1.1 "Articles" shall mean the Articles of Incorporation of the Association which have been filed in the office of the Secretary of state of Kansas, as such Articles may be amended from time to time.

1.2 "Association" shall mean and refer to the Timber Creek Estates Homeowners' Association (or such other corporate name as Owners shall hereafter select), a nonprofit corporation, incorporated under the laws of the State of Kansas, its successors and assigns.

1.3 "Association DRC" shall mean and refer to the Design Review Committee responsible for all matters pertaining to fences; certain drainage matters; reviewing plans of initial residential structures; and for construction and modifications of Structures following completion of the initial residence and related improvements on Lots, all as referenced in Section 8.1 hereof, together with other responsibilities as provided elsewhere herein.

1.4 "Board of Directors" or "Board" of the Association, shall mean the body which has the power to act on behalf of the Association.

1.5 "Bylaws" shall mean the Bylaws of the Association as such Bylaws may be amended from time to time.

1.6 "Common Area" shall mean those portions of those lots and reserves as set forth upon that plat of Timber Creek Estates, Haysville, Sedgwick County, Kansas, as filed with the Sedgwick County Register of Deeds upon February 27, 2006, DOC#/FLM-PG: 28759313, which is not owned individually by Owners, but in which an individual interest is held by all Owners, generally including the identified reserves and recreational areas:

Reserves A, Reserve B, Entry Monument Easements

1.7 "Design Review Committee" shall mean the Association DRC as applicable, according to the

context.

1.8 "Lot" shall mean and refer to each platted Lot within the Property upon which there may be constructed a residence; provided, that where land has been attached to or detached from any Lot, the enlarged or diminished Lot shall be deemed to be a Lot hereunder: provided, if two or more Lots are combined into a single residential site assessments or charges hereunder shall continue to be assessed or changed for each.

1.9 "Member" shall mean and refer to every person or entity who or which is an Owner of a fee or undivided fee interest in any Lot, but not including any Owner who has sold his interest in a Lot under an executory contract and no longer has possession of his Lot. During the time any such executory contract is in force, the contract vendee shall be considered to be the Member rather than the contract seller. When more than one person holds an interest in a Lot, all such persons shall be Members. .

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

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

Timber Creek Estates, Haysville, Sedgwick County, Kansas as shown on that certain plat recorded with the Sedgwick County Register of Deeds on February 27, 2006, DOC#/FLM-PG: 28759313.

1.12 "Structure" shall mean and include anything or device, the placement of which upon any Lot may affect the drainage or appearance of such Lot, including, by the way of illustration and not limitation, any building, garage, gazebo, porch, shed, greenhouse or bathhouse, covered or uncovered patio, screening materials, swimming pool, tennis court, light pole, clothesline, sandbox, radio or television antenna, fence, curbing, paving, wall, satellite dish, signboard, mailbox and related structure, or any temporary or permanent improvement to such Lot. "Structure" shall also include any excavation, fill ditch, diversion dam or other thing or device which affects or alters the flow of surface water from, upon or across any Lot, in accordance with the master drainage and grading plan for the Property as referenced below, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from upon or across any Lot, and any change in the grade of any Lot other than in accordance with drainage guidelines, standards and plans established by the Association, the appropriate Design Review Committee, the municipality having jurisdiction over the Property or the Lot-specific drainage plan referenced in Section 5.23, whichever are most stringent.

1.13 "Wrought Iron or similar Fence Lots" shall mean those Lots that have the pond as a boundary and consisting specifically of lots 9-35 of Block B of the recorded Plat.

## **ARTICLE II**

### **MEMBERSHIP AND VOTING RIGHTS**

2.1 Membership. The Association shall have as Members only Owners. All Owners shall, upon becoming such, be deemed automatically to have become Members, and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of any Lot.

2.2 Voting Rights. All Members, so long as they shall qualify under this Article II, shall be entitled to vote on each matter submitted to a vote at a meeting of Members. Each Member of the Association shall have one (1) vote for each Lot owned, without regard to whether such contains an occupied home, subject to the following exceptions and conditions:

A. When any such Lots is owned or held by more than one (1) Member as tenants in common, joint tenancy or any other manner of joint or common ownership or interest, such Members shall collectively be entitled to only one (1) vote relative to such Lot, and if such Members cannot jointly agree as to how that voted should be cast, no vote shall be allowed with respect to such Lot.

B. Any Member who is violation of the Declaration (including, but not limited to, the failure to timely pay assessments or other sums due hereunder), as determined by the Board, shall not be entitled to vote during any period in which such violation continues. The Board shall be the sole judge of the qualifications of each Member to vote and the right to participate in meetings and proceedings of the association.

C. The Board shall adopt such Bylaws, consistent with the terms hereof, the Articles and the laws of the State of Kansas, as it deems advisable for any meeting of Members with regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, voting by proxy and such other matters concerning the conduct of meetings and voting as it shall deem proper.

### **ARTICLE III**

#### **PROPERTY RIGHTS IN THE COMMON AREA: MAINTENANCE**

3.1 Members' Easements of Enjoyment. Every Member shall have a nonexclusive right and easement in and to the Common Area, and such easement shall be appurtenant to and shall pass with every Lot, subject to the following provisions and to the other provisions of this Declaration:

A. The right of the Board to establish rules and regulations regarding the activities on or uses of the Common Area and to restrict or eliminate some or all types of activities or uses thereof,;

B. The right of the Board, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and to mortgage the Common Area; provided that the rights of such mortgages shall be subordinate to the rights of the Members;

C. The right of the Board to suspend the use of the Common Area and any recreational facilities thereon by a Member and his family for any period during which any assessment against his or her Lot remains unpaid and delinquent. The Board shall have the right to employ third parties on behalf of the Association and to delegate to such parties the right to determine whether violations of the Declaration or rules or regulations have occurred with regard to the Common Area; Third parties may be an attorney or management agency – whom can collect dues that are behind to prevent conflict between HOA board members and homeowners/neighbors;

D. The right of the Board to charge reasonable admission and other fees for the use of any current or future recreational facilities and amenities situated on the Common Area;

E. The Association upon a two-thirds vote of the Members, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be determined by the Board; and

F. The covenants and restrictions contained herein.

3.2 Extension or Rights. A Member's right of enjoyment in the Common Area shall automatically extend to all Members of his or her immediate family residing on a Lot with such Member. No guests shall be entitled to exercise such right of enjoyment or to any use of the Common Area except as provided in, and subject to, such regulations as may be promulgated by the Board.

3.3 Waiver of Use. No Member may exempt himself or herself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him or her from the liens and facilities thereon or by abandonment of his or her Lot.

3.4 Subsidy to Common Area Operations. It is in the Association's interest, that sufficient revenues be generated from assessments under Article IV of the Declaration, so that the Common Area owned by the Association, including improvements thereon, and street rights-of-way, may be maintained and operated in a reasonable fashion for the use and benefit of the Members of the Association. The Board shall establish a budget of the Association for maintenance and care of the Common Area and street rights-of-way for the portion of the calendar year following establishment of such budget, which budget is herein referred to as the

"Approved Budget." For each subsequent calendar year, the Association shall propose on or before December 1 of each subsequent calendar year a budget for the next ensuing calendar year. The intent of the Association is that the Approved Budget shall be adequate, in all respects, for the reasonable maintenance and operation of the Common Area, as well as the ability to provide debt service for payment of mortgage financing established by the Association for construction of improvements within the Common Area. The Association shall endeavor in good faith to mutually agree upon the Approved Budget for such year; provided, if the Association is unable to so agree by January 30 following submission of the proposed budget to the Board, the Approved Budget in effect for the immediately preceding calendar year shall be the Approved Budget for the New Year.

3.5 Alteration of the Common Area. Notwithstanding anything to the contrary provided herein, the association may alter or reconfigure the Common Area from time to time by re-platting, lot split, boundary shift or other subdivision procedures or deeding land, for the purpose of adding land to, or removing land from, the Common Area. Automatically, without the necessity of amending this Declaration, upon the completion of any such alteration or reconfiguration, any land (a) removed from such area shall cease to be common Area, and thereupon, no Member shall have any easement or right of use or access thereto and (b) added to the common Area shall become a part thereof, and thereupon each Member shall have a nonexclusive easement and right of use or access thereto as provided in Section 3.1 above.

3.6 Common Area , Amenities, Improvements and Maintenance. The Association shall either pay for or finance the cost of construction and/or installation of any improvements and amenities in the Common Area. The Association may install additional amenities or improvements as it elects from time to time. The Association shall be solely and fully responsible for all costs of owning, maintaining and operating the Common Area.

#### **ARTICLE IV**

##### **COVENANTS CONCERNING ASSESSMENTS AND LIENS**

4.1 General Assessments. For the purposes of providing funds for the operation of the Association, and for operating, maintaining, caring, insuring, improving and conducting such other activities and taking such other actions pertaining to the Common Area as the Association shall deem appropriate, and to afford the Association the means and resources necessary to carry out its rights, duties and functions, the board shall have the rights, in each year, but subject to the exemptions provided below, to assess against each Owner of a Lot or Lots, a general assessment, which general assessment shall subject each Legal Lot or Lots, if two or more contiguous Lots are owned by one Owner (two original platted lots, with an owner occupied, single home equals one legal lot) to a lien to secure payment thereof. The general assessment may be paid annually, semi-annually, or quarterly as specified by the Board from time to time. Initially, the general assessment shall be in the amount of three hundred and no/00 Dollars (\$300.00) annually to be paid on the first day of each calendar year commencing January 1; assessments for any partial year shall be prorated. Subject to the exemptions specified herein, the obligation of each Owner to pay assessments hereunder shall commence when the owner's lot has a residence erected thereon.

##### **4.2 Basis of Assessment; Exemption; Transfer Assessment; Pro-ration.**

A. All general assessments shall be made against the Owners on an equal basis for each Lot or fraction thereof owned by the Owner or Owners with a residence thereon upon issuance of a certificate of occupancy for such residence, except that in view of the substantial expenditures incurred by any properly licensed general contractor owning a Lot for the purpose of construction a residence thereon and offering the same for sale, shall be exempt from imposition of any assessment, whether general or special, with respect to any Lot so long as such contractor holds legal title thereto (provided, the assessment exemption for such general contractors shall not extend beyond twelve (12) months from the date a Certificate of Occupancy is issued to such contractor and shall cease if the contractor occupies the same as a residence.)

B. In the event any Lot would be subject to a general or special assessment in any calendar year, if it were not for an exemption available under subparagraph A immediately above, at such time as such exemption is no longer in effect during such calendar year, the applicable assessment shall be prorated for such year (based on the remaining portion of such year) and be paid by the then Owner.

#### 4.3 Limitations on General Assessments.

A. The maximum general assessment of any year may not be increased for any subsequent year by the Association, to an amount which is more than twenty percent (20%) compounded above the annual assessment for the previous year, without a vote of the membership of the Association.

B. The general assessment for any year may be increased to an amount greater than that permitted by subparagraph A of this Section only upon the affirmative vote of the Members holding more than two-thirds of the total authorized votes represented at a duly called meeting who are voting in person or by proxy.

C. The Board may not fix the annual assessment at an amount in excess of the amounts permitted hereunder.

4.4. Special Assessments. In addition to general assessments, the Association may, from time to time, at a regular meeting or a special meeting called upon notice for such purpose, establish a special assessment to be levied equally against each Lot for the purpose of providing additional funds (not available through general assessments) to carry out its duties and other functions and purposes contemplated here under. No such special assessment shall be valid except upon the approval of Members holding at least two-thirds of the Members present in person or by proxy, at the meeting duly called for the purpose of approving the same. Further, the Board shall have the authority to establish and fix a special assessment on any Lot to secure the liability of the Owner of such Lot to the Association for any breach by such Owner of any of the provisions of this Declaration, which breach results in an expenditure by the Association for repair or remedy of such breach. Any special assessments shall be payable in full (unless a schedule for payment in installments is specified) on the first day of the second calendar month next following the date that the same shall be established by the Association.

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

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

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

4.8 Right of Association to Enforce Payment of Assessment. By the acceptance of title to a Lot, each Owner shall be held to vest in the Association the right and power to prosecute all suits, legal, equitable, or otherwise, which may be necessary or advisable for the collection of assessments, charges or fines, and the Association shall have the right to sue for and collect a reasonable sum to reimburse it for its attorneys' fees and any other expenses reasonably incurred in enforcing its rights hereunder.

4.9 Enforcement of Liens. Each lien established pursuant to the provisions of this Declaration and which is specified in a Notice of Delinquency as hereinabove provided, may be foreclosed in like manner as a mortgage on real property as provided by the laws of Kansas. Each current and future Owner hereby consents to the foreclosure procedures specified in this Article. In any action to foreclose any such lien, the Association shall be entitled to its costs and expenses, including reasonable attorneys' fees, and expenses, and such late fees, fines and accrued interest for delinquent charges and assessments as shall have been established by the Association. The Association shall have the right to bid on a Lot at the foreclosure sale.

4.10 Personal Liability. In addition to the covenants and agreements heretofore set forth herein, each Owner of each Lot, by the acceptance of deed therefore, whether or not it shall be so expressed in such deed, shall be deemed to have agreed to be personally liable for the payment of each general and special assessment, late fee, interest and fine levied against such Lot during the period of ownership and for all other payment obligations specified in this Declaration.

4.11 Late Fee and Interest on Delinquent Assessments. In the event assessment charges (general or special), fine or other amounts due under this Declaration shall remain due and unpaid thirty (30) days after the same are due the Owner shall be charged a late fee of five percent (5%) of the unpaid amount and the unpaid amount shall bear interest at the rate of fifteen percent (15%) per annum, or such other rate as may be established from time to time by the Board; provided, however, that such interest rate shall never exceed the maximum allowed by law.

4.12 Fines. The Board shall have the authority to assess fines for any violation of this Declaration by an Owner, which fines shall be determined in the sole discretion of the Board; provided, a fine may not exceed fifty dollars (\$50.00) per day of violation unless unanimously approved by all members of the Board. Prior to assessing such fine, the Board shall mail written notice to the last address known to the Board concerning the noncompliant Owner, specifying the violation. If the noncompliant Owner fails to cure the violation within thirty (30) days following the mailing of such notice by the Board, or if there is a reoccurrence of the violation during such thirty (30) day period, then in addition to any other liability or obligation arising under the Declaration, the Board may assess a fine against the noncompliant Owner and his or her Lot in an amount determined by the Board to be appropriate in its discretion, which shall be paid within ten (10) days following the date notice thereof is given to such Owner by written notice deposited in the mail to the Owner' s address last known to the Board, or personal delivery thereof to the residence of such Owner. Until paid in full, the amount of such fine shall constitute a lien on the noncompliant Owner's Lot, and shall be subject to enforcement and foreclosure in the same manner as an assessment under this Article IV.

## **ARTICLE V**

### **USE, OCCUPANCY AND CONDUCT RESTRICTIONS**

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

5.2 Construction Requirements. Unless approval is otherwise approved by the Association DRC, the following construction guidelines shall be complied with:

A. Materials: Size: Basement, Garage and Roof as to all Lots, but subject to such waivers

or modifications as are permitted by the Association DRC, the applicable construction requirements shall be as follows;

Exterior walls and facing of all buildings, Structures and appurtenances thereto constructed on any Lot shall be of brick, stone, stucco, wood siding, wood paneling, glass, glass blocks, or any combination thereof, with at least 75% of the front exposure of brick or stone. Any residences constructed on a Lot shall, except as otherwise approved by the Association DRC, not contain less than 1700 square feet of finished floor area on the main level if on a basement, and 2000 square feet of finished floor area on the main level if on a slab, exclusive of the basement, porch and garage shown to be applicable for such Lot on the copy of the plat of the Property. Each residence shall, unless otherwise approved by the Association DRC, include a poured concrete basement which shall contain a floor area comprising at least eighty percent (80%) of the ground level floor area contained in such residence, exclusive of porches and garages. All garages shall be constructed with a minimum of three bays and 3 car garage. Garage door may be a single door that spans a minimum of three bays. All roofs on all building improvements on any Lot shall be architectural style shingle or Approved Composition. As used in this Declaration, "Approved Composition" shall mean Composition in the weathered wood (gray) color or such other equivalent composition roofing materials as are approved in writing by the Association DRC from time to time.

B. Flat Roofs and Window. No flat roof shall be permitted, except with the written permission of the Association DRC. Window frames shall be wood, metal or vinyl or other composition materials as approved from time to time by the Association DRC.

C. Initial Policy Guidelines. The following initial policy guidelines have been established for the Lots, and the same may be waived, changed or revoked from time to time by the appropriate Design Review Committee but without the necessity of filing any formal amendment to this Declaration. Accordingly, inquiry should be made of the appropriate Design Review Committee to determine current policy guidelines.

- i. All yard areas, exclusive of improvements, shall be at least eighty percent (80%) cool weather grass (i.e. fescue), including a sprinkler system within 1 year of occupancy.
- ii. In the event of the construction of any retaining walls the plan and materials utilized must be previously approved in writing by the appropriate Design Committee.
- iii. All basketball backboards shall be glass and shall be installed permanently (no temporary or removable), unless otherwise approved by the Association DRC. All basketball backboards and supports shall be approved by the Association DRC prior to installation.
- iv. All recreation and play equipment shall be located in the backyards only except for specific equipment listed in paragraph 5.2(C)(iii) above.
- v. Detached outbuildings, including garages and storage sheds, may be permitted if specifically approved by the appropriate Design Review Committee as to design, materials and location on a Lot; provided, no such sheds shall be constructed on Wrought Iron or similar Fence Lots, as defined in Section 1.13. The exterior of detached outbuildings constructed on a Lot shall be constructed with the same material as the residence. No shed may be attached to a house.
- vi. All vegetable gardens shall be in the back yards only.
- vii. Dog runs must be screened from view from neighboring homes with fencing or other appropriate material.
- viii. All exterior wood surfaces on homes (excluding decking) must be painted, or stained and sealed.
- ix. Any temporary covering of swimming pool, tennis court, patio, or otherwise, of a

rigid or "bubble" type shall be deemed a Structure that is subject hereto.

x. No window shall contain any reflective material such as aluminum foil.

xi. Pool buildings or gazebos may be constructed within any rear yard, not in setback area, applicable to the Lot if so approved by the appropriate Design Review Committee; provided that the same shall not exceed one story in height and are allowed by applicable building codes.

xii. All firewood stacks in excess of two cords of wood shall be screened from view from neighboring Lots, and no stack shall exceed six feet (6') in height.

xiii. All forms of sculpture or "yard art" must first be approved by the Association DRC.

xiv. As soon as practicable, but in any event, no later than the planting season immediately following completion of a dwelling on a Lot, the Owner thereof shall plant a lawn and at least six (6) perennial shrubs and/or bushes and trees on the Lot with a minimum of one (1) tree (s) being planted in the front yard of the Lots and the trunk of each tree being a minimum of two (2) inches in diameter.

xv. Pad elevations and all exterior drainage shall be verified by a licensed engineer at the cost of Owner and any deviation therefrom and any resulting liability, damage, or costs incurred as a result thereof, shall be the responsibility of the Owner.

xvi. Mail box Structures, other than cluster mail boxes installed by the postal service, shall be of stone or brick and approved by the Design Committee prior to construction.

xvii. Outdoor trash and refuse container storage areas shall be installed at a location approved by the appropriate Design Review Committee.

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

5.4 Damage to Common Area. Etc. Prohibited. No Owner shall do or allow to be done any act which causes or threatens to cause any damage, encroachment or disrepair to the Common Area, street rights-of-way, the residence or Lot of any other Owner. Specifically, each Owner shall repair any damage sustained to any other Lot, Common Area or street right-of-way in connection with the construction of Structures on such Owner's Lot. Including, but not limited to, damage to lawn areas, landscaping and sprinkler systems as a result of the installation of sanitary sewer or heat pump lines or other construction or excavation activities. Owners are hereby advised that DIG SAFE (a service which may be consulted in advance of excavation to locate existing utility lines) does not identify sprinkler system lines or other underground electrical or plumbing lines which have been installed. No modifications may be made to the Common Area without Board approval.

5.5 Residences. No building shall be erected, altered, placed or permitted to remain on any Lot, other than one new single-family residence for private use, with a private garage and other Structures incidental to residential use, which are approved by the appropriate Design Review Committee as specified herein. No prefabricated or modular buildings will be permitted to be constructed or installed on any Lot without the prior written approval of the Association DRC.

5.6 No Excavations. No excavations, except such as are necessary for the construction of residence or improvements, shall be permitted on any Lot without written permission of the Association DRC.

5.7 No Storage; Trash. No trash, ashes, dirt rock or other refuse may be thrown or dumped on any Lot or building site. No building materials of any kind or character shall be placed or stored upon any building site more than thirty (30) days before the commencement of construction of a residence or improvements, and



then such materials shall be placed within the property lines of the building site upon which they are to be erected and shall not be placed in the street or between the curb and property line.

5.8 Temporary Buildings. Except as authorized by the Board, no basement of partially completed residence, tent, shack, garage, barn or outbuilding erected on a Lot covered by this Declaration shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of temporary character be used for human habitation.

5.9 Used Houses; Trailers. No used, secondhand or previously erected house or building of any kind can be moved or placed, either in sections or as a whole, upon the Property, nor shall any trailer be moved, placed or permitted to remain upon a Lot subject to this Declaration; provided that trailer(s) may be installed for construction, administrative and sales purposes upon a Lot(s).

5.10 Animals. No birds, animals or insects, except dogs, cats or other household pets, shall be kept, bred or maintained on any Lot except a reasonable number of commonly accepted household pets approved from time to time by the Board. Under no circumstances shall any commercial or agricultural business enterprise involving the use of breeding of animals be conducted on the Property without the express written consent of the Board. The Board may from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot, and the Owners shall strictly comply therewith. Dogs, cats and all other pets or animals shall be confined at all times to the Lot and must be kept on a leash when outside the Lot. No dogs or other animals shall be continually or regularly staked or chained on any Lot. All domestic pets must be properly immunized as required by applicable ordinances, codes and laws. Owners must prevent such animals from barking or making other noises at any time which the Board determines are annoying or a nuisance to neighbors or those using the Common Area.

5.11 Signs. Except as authorized by the Board, and except for those installed by marketing representatives or builders or contractors as authorized by Board, no signs, advertisements, billboards or advertising Structures of any kind may be erected or maintained on any of the Lots; provided, however, that permission is hereby granted for the erection of unlighted, temporary, standard sized signs by real estate firms for the sole and exclusive purpose of advertising for sale or lease the Lot and residence upon which it is erected and improvements thereon, if any.

5.12 Sight Lines. No fence, masonry wall, hedge or mass planting shall be permitted to extend beyond the minimum front building setback lines established on the plat of the Property. No hedge, shrub, mass planting or tree shall be allowed by the Owner to obstruct sight lines at any Lot corner. Trees, shrubs and other plants which die shall be promptly removed from the Property.

5.13 Antennas. Except as authorized by the Association DRC, there shall not be erected any external television or radio antennas or permanent clothesline structures, and no Owner shall erect any Structures, either permanently or temporarily, upon the Lots; provided, notwithstanding the foregoing, an Owner may install within his or her Lot a television satellite dish having a diameter of not more than 24 inches, so long as the location of such dish is satisfactory to the Association DRC. Should any part of all of the restrictions set forth in this Section be unenforceable because the same violate a statute or the First Amendment or any other provision of the United States Constitution, the Association DRC shall have the right to establish rules and regulations regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections within the Property and any such rules and regulations shall be binding upon all of the Lots and the Owners thereof.

5.14 Vehicles and Trailers. Except as authorized by the Board, no automobile, truck, motorcycle, motorbike, boat, house trailer, boat trailer, tow trailer or any other vehicle of any type or description may be stored upon any of the Common Area. No boat, boat trailer, house trailer, camper, recreational motor vehicle, camper trailer or similar items shall be stored permanently, continually or regularly parked on any street, driveway or in the open on any Lot. No personal vehicles shall be parked continually or regularly on any street or yard, except in a garage or driveway.

5.15 No motor scooters. Except as otherwise authorized by the Board, motor scooters, mini bikes or similar vehicles shall be operated for transportation only, and no joyriding on the streets, any Lot or the Common Area shall be allowed except on a designated bike or cycle trail.

5.16 Requirement to Keep Lot in Good Order and Repair. Each Owner shall keep all Lots owned by it, and all improvements therein or thereon, in good order and repair, including but not limited to, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all building and other improvements, all in a manner and with such frequency as is consistent with good property management in relation to a quality residential neighborhood such as will exist in the Property. Furthermore, except as may be otherwise approved by the Association DRC, each Owner of a Lot which is contiguous to a street right-of-way (other than an arterial street right of way on the perimeter of a portion of the Property) shall seed, water, mow and otherwise maintain in good, slightly condition, a lawn area between the boundary of such Lot and the street within such right-of-way. If, in the opinion of the Board, any Owner fails to perform the duties imposed by this Section, the board, after approval by a two-thirds decision of the Board, and after fifteen (15) days written notice to Owner to remedy the condition in question, shall have the right, through its contractors and representatives, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot or such improvements, and such Owner shall pay the Association for the cost of thereof, together with additional amount equal to twenty percent (20%) of such cost, within ten (10) days following demand therefore, which payment shall be a binding personal obligation of such Owner, and the Board may establish a special assessment and lien on such Lot for such cost and charge, together with interest thereon at the rate specified in Section 4.11 above, and enforce the same as provided in Article IV hereof. The lien established as a result of this Section shall be superior to all other liens or encumbrances which may thereafter arise, excepting liens for taxes and other public charges as are by applicable law made superior.

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

5.18 No Disturbances of Streams. No lake, pond, stream or water drainage facilities, natural or erected within the common Area shall be disturbed other than by the Board.

5.19 Lake Use: Boating, Swimming, Skating. Except as permitted by the rules adopted by the Board from time to time, no boat (motorized or not), raft, canoe or surfboard shall be operated or stored upon any body of water within the Common Area. No persons are allowed in the body of water or on the water if it is frozen. Any use of any lake, pond or other body of water shall be strictly in compliance with the rules and regulation adopted from time to time by the Board.

5.20 Fishing. Fishing in any body of water, if any, within the Common Area will only be permitted at such times and at such places only to the extent, of any, permitted by the rules adopted by the Board from time to time concerning such use.

5.21 Fences.

A. The Board may, and hereby reserves the right to, in its sole discretion, construct and install a fence, "living fence" (a combination of trees and other fencing or wall materials), wall or entrance treatment of a style and of materials satisfactory to the Board, in its sole discretion, within any of the fence or wall easement areas, any entry areas shown on the plat of Property, within other easement areas established by other easement instruments, or within Common Area. With respect to any Lot on which Board has constructed an entry monument, fence "living fence" or wall, the Owner (s) may not install or construct any fence or wall which is visible from adjacent street without the approval of the Board or the Association DRC.

B. Except as provided in paragraph A immediately above and subject to paragraphs immediately below, all Lots, other than Wrought Iron or similar Fence Lots, may utilize fences made of black wrought iron, a cedar fence (installed with the finished side showing from the exterior of the fence), a Good Neighbor Fence or a combination thereof, provided the same shall not exceed six feet in height. A "Good Neighbor Fence." is the type of wood privacy fence which appears substantially the same from both sides of the fence and is approved by the Association DRC. Fencing may only be installed from the back of the lot to no further than the front of the structure constructed on a Lot. No fences shall be constructed or maintained on all lake lots except for privacy fences immediately adjacent to patios which are appurtenant to a residence and except for black wrought iron fences which do not exceed six feet in height and which are approved by the Association DRC.

C. All fences shall be approved by the Association DRC prior to construction or installation on any Lot.

D. All fences installed within drainage ways established by the master drainage and grading plan referenced in Section 5.23 shall have a minimum of four inches (4") clearance above the ground level (other than posts installed in the ground) in order to not divert or disrupt water drainage from the Lot.

5.22 Model Homes and Real Estate Offices. Notwithstanding anything to the contrary appearing elsewhere in this Declaration, any Lot owned by or any person or entity so authorized by Board, may be used for a model home or for a real estate or administrative office pertaining to the development of the Property (including temporary, mobile, modular, prefabricated or a permanent Structure) until all the Lots have been sold to consumers for construction of residences thereon.

5.23 Drainage. From and after the date of commencement of construction of improvements on a Lot, the Owner of such Lot shall cause such Lot to be graded so as to strictly comply with the master drainage and grading plan relating to the Lot. The Association has established a master drainage and grading plan for the Lots, a copy of which is recorded in the office of the register of deeds, and each Owner shall strictly comply with the same. Lot Drainage Requirements which illustrate drainage requirements applicable to typical residential lots (including those on which view out and walk out basements are constructed) and the location of grading and drainage pins at the rear lot lines to establish that the minimum required grading levels for the rear yard are in place. No Owner shall place or install any Structures, including, but not limited to, trees, shrubbery, landscaping, sand boxes, gardens, retaining walls, in any drainage easement or channel. The Association DRC or persons designated by the Association DRC shall have the right to enter upon any Lot upon reasonable advance notice to the Owner thereof for the purpose of determining whether the Lot is in compliance with such drainage guidelines, standards and plans. A determination by the Association DRC concerning whether or not a Lot is in compliance with such guidelines, standards and plans shall be final and binding on all owners. In the event at any time the Association DRC determines that a Lot is not in compliance with the Aforesaid guidelines, standards and plans, the Association DRC shall give notice to the Owner thereof and demand that such corrective action be taken as is necessary to achieve compliance. If fifteen (15) days after the notice of such violation, or such additional time as may be specified by the Association DRC, the Owner of such Lot shall have not have taken reasonable steps to correct the same, the Association DRC shall have the right, through its agents and contractors, to enter the Lot and to take such steps that may be necessary to bring the same into compliance. The Owner of the Lot so corrected shall reimburse the Association for the costs of such compliance and pay the Association a fee equal to twenty percent (20%) of such amount. In the event such Owner fails to pay such reimbursement in full within ten (10) days following demand thereof, the Association may thereafter establish a special assessment applicable to such Lot for the costs thereof and enforce the same as provided in Article IV hereof Board recommends that any time a Lot is surveyed by an Owner, whether in connection with mortgage financing or otherwise, that the surveyor verify that the grading and drainage pins located in the rear of the Lot are at the elevations required by the master drainage and grading plan referred to above. It shall not be the Association's responsibility or Board's obligation to enforce compliance with the master drainage and grading plans. Neither the Board nor the Design Review Committee shall have any liability or responsibility to any Builder, Owner or other party for the failure of Builder or Owner to final grade or maintain any Lot in accordance with the master drainage and grading plan or any approved lot drainage and grading plan or for the appropriate Design Review Committee not requiring a lot drainage and grading plan or compliance therewith or for the quality or compactions of any soil.

5.24 Water Encroachment; Flood Insurance. Notice is hereby given to anyone acquiring a Lot that due to the grading and drainage of such Lot (which is necessary to enhance the views from residences, particularly those with "walk-out" or "view-out" basements), at times following considerable amounts of rainfall, water may encroach into the yard areas within such Lot. Water may accumulate in areas of the Lot, which has been graded at lower elevations to provide drainage, or if the Lot is adjacent to a lake, stream or other waterway, water from such areas may spill over into the Lot as a result of such rainfall. Depending upon how much water accumulates on the Lot and how long it remains, damage could occur to the residence, yard, trees, vegetation, fences, gazebos, patios, playground equipment or other improvements or installations of Structures with the Lot. Some Lots may have previously been located in a designated flood plain, in which situations the Board, or another party, has caused the same to be removed from the flood plain by increasing the elevation thereof with fill as required by the City of Haysville, Kansas, the Kansas Department of Water Resources, the Federal Emergency Management Agency and any other agency having jurisdiction thereof. Prior to construction of residence or other structures on any such Lot, the Owner thereof is encouraged to verify, through its contractor,

compliance with the requirements of such City and the other applicable agencies, consider inherent risks and determine whether to obtain and maintain flood insurance. Neither the Board nor the Association, building contractor or brokers involved in the development of the residential area, sale of the Lot, or construction of residence on a Lot, shall have any liability or responsibility of any such damage resulting from such water encroachment.

5.25 No Rights Beyond Property. Notwithstanding the proximity of lakes or other amenities to the Common Area and/or Property, no Owner shall have any right of access, use or enjoyment of any lakes or other amenities outside the Property.

5.26 Airport. The Property may be located in the vicinity of an airport. Each purchaser of Lot assumes that risk (if any) associated therewith.

5.27 Boat Docks. No boat docks, piers, moorings, boathouses, slips or similar Structures may be constructed within any Common Area or Lot, except upon the prior written approval of the appropriated Design Review Committee.

5.28 View. 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, planting material or other item on any other part of the Property, which is permitted by this Declaration, because such Structure, planting material or other item obstructs any view from such Owner's Lot.

5.29 Erosion; Water Pollution Control Permit and Related Matter; Compliance With Laws. Each Owner shall comply strictly with any law or ordinance regarding erosion or runoff, including, Storm water Pollution Prevention Ordinance(s), the Kansas Water Pollution Control General Permit and Authorization to Discharge Storm Water Run-Off from Construction Activities Under the National Pollutant Discharge Elimination System or similar ordinance or law adopted by the city or other governing body having jurisdiction over the Property. Such permit, laws, and regulations, together with laws and ordinances of the city and county in which the Property is located, require that erosion and sediment control measures be implemented in connection with construction activities on such Lot, including, but not limited to, site work such as clearing, excavating, and grading the Lot, in order to eliminate or substantially reduce storm water discharge, the discharge of pollutants and water quality violations. Significant penalties may be imposed in the event activities on any Lots are not conducted in full compliance with the aforementioned permit, laws, regulations and ordinances. Each Owner agrees to conduct activities, including construction activities, on his or her Lot strictly in accordance with this Declaration, all laws, rules, regulations, and ordinances now or hereafter in effect, including, but not limited to, those referenced above, by reason of the aforesaid permit, regulations, rules and ordinances and shall indemnify and defend Board and the Association from any consequences of such Owner's, or his contractors' or subcontractors', failure to so comply, including but not limited to all damages, liabilities, fines, penalties and costs and expenses, including reasonable legal fees and expenses.

5.30 Water Levels in Lakes and Ponds. There is no assurance that lakes, ponds, and other bodies of water within the Property, if any, shall continue in the future to contain water levels consistent with the levels existing on the date hereof and, in fact, such lakes, ponds and bodies of water may at some point in the future become dry or substantially empty of any water. Neither the Association, the Board, nor any officer or employee of the Association; shall have any liability or responsibility to Owners for any change in the water levels in such lakes, ponds, or bodies of water, including if such bodies of water become dry or substantially empty of water.

5.31 Lighting. Each Lake Lot shall refrain from lights adjacent to the lake. No light shall be directed at another lot or the street.

5.32 Off-street Parking. Each of the Lots shall provide six (6) off-street parking spaces for each residence within the garage and driveway areas.

5.33 Laundry. No clothing or any other household fabric shall be hung in the open on any Lot, except with specific written approval of the Association.

5.34 Rental. No leasing, subleasing, or renting is allowed except as permitted herein. A Member shall be allowed a short term rental of no longer than 24 consecutive months and not more than 24 nonconsecutive

months within any 72 month period of time. Short term rentals exclude overnight, weekly or month to month rentals. Rentals such as Airbnb or the like are excluded.

## ARTICLE VI

### THE ASSOCIATION

#### 6.1 Powers, Duties and Rights.

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

B. The Association shall maintain; water, fertilize, mow and keep clean the portions of the common Area which are to be maintained by it hereunder and the portions of the arterial public street rights-of-way adjacent to the perimeter of Property. It further shall maintain, repair and/or replace the decorative entrance treatments, fence(s) and walls erected and installed by Board or the Association.

C. The Association shall maintain such insurance on the Common Area, and facilities thereon, and liability and other types of insurance as the Board deems necessary and advisable.

D. The Association may improve the Common Area in any manner that it shall find to be necessary, desirable or beneficial to the interest of the common Area and the Members.

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

F. The Association, through the Board, shall be empowered to determine the manner and extent of operating, maintaining, improving, restoring, mowing, trimming and keeping clean the Common Area to be maintained by it hereunder.

G. The Board may solicit bids and select from time to time a single company to provide trash removal service for all residences on the Lots and shall post conspicuous notice of such decision within the Property. Within ninety (90) days after such company is selected, each Owner shall begin to utilize the company identified by the Board to provide trash removal service at such Owner's Lot and continue to use such company exclusively until such time as the Board designates a different trash service company or notifies the Owners that it is no longer necessary for all Owners to utilize the same trash removal service company. Each Owner shall be responsible for paying all cost and fees associated with trash removal services related to such Owner's Lot. In the event at any time and from time to time the Board determines to change the company providing such trash removal service for the Lots, the Board shall post conspicuous notice of such change at least ninety (90) days in advance of such change and on or before the expiration of such ninety (90) day period, each Owner shall switch its service exclusively to the other company specified by the Board.

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

I. The board shall have the right to employ on behalf of the Association third parties as security and/or enforcement personnel (which personnel shall have the right to determine whether violations of rules or regulations have occurred.)

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

6.3 Taxes and Assessments. Each Owner shall be obligated to pay the taxes or assessments assessed against such Owner's Lot and personal property located thereon prior to delinquency.

6.4 Repair and Restoration of Improvements on Common Area. Should any improvements on any portion of the Common Area, or any part or portion thereof, which is to be maintained by the Association hereunder, be damaged or destroyed by fire or other casualty or by intentional mischief, the Association shall be responsible for the cost and expense of repair and restoration, and, so long as there are sufficient insurance proceeds collected as a result of such damage or destruction, the same shall be done substantially in accordance with the original plans and specifications for the improvement of same. The repair and restoration work referred to in this Section shall be commenced promptly after the happening of the destruction or damage occasioning the same, and once commenced; the same shall be pursued diligently to completion. Notwithstanding the foregoing, in the event that any such improvements on the Common Area shall be damaged or destroyed through the intentional misconduct or negligence of an owner, or such owner's family members or invitees, including, but not limited to, failing to correct faulty drainage or improper use of weed killer, such Owner shall pay on demand the full cost of replacement or repair thereof.

## **ARTICLE VII**

### **EASEMENTS AND ACCESS CONTROL**

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

7.2 Easements in Favor of Developer and Association. The Association specifically reserves unto itself, its successors and assigns, and for the Association, in connection with the use, operation, construction of improvements and amenities, and maintenance of the portions of the Common Area to be maintained by it hereunder, together with arterial street rights-of-way, as provided herein and improvements thereon or therein, a perpetual, nonexclusive easement and right-of-way over the Lots. Common Area, and such street rights-of-way, for the purpose of constructing, maintaining, moving, repairing, replacing and rebuilding water sprinkler systems, including water lines, water wells, sprinkler controls, and electric meters and lines, underground pipelines, drains and/or mains for the purpose of transporting gas, water, sewerage and electricity over, across and through such Lots and common Area, together with the right to excavate and level ditches and/or trenches for the location of said wells, lines, pipes, drains and/or mains. Additionally, the Association specifically reserves unto itself, its successors and assigns, a perpetual, non-exclusive easement and right-of-way to enter upon any Lot as reasonably necessary in order to construct, install, erect, maintain, improve, repair and/or replace any entrance treatment, fence, wall, walkway, water sprinkler system (including water wells, sprinkler controls, and electric meters and lines associated therewith), or any signage pertaining to or serving the Common Area or the residential development within any wall, utility anti or drainage easement shown on the current or any future plat of the Property, or located on a Lot but, due to oversight, not actually located in the appropriate easement area. The Association, its successors and assigns, hereby retain an easement for the placement, and replacement, of any such advertising sign until all Lots have been sold.

## **ARTICLE VIII**

### **DESIGN REVIEW COMMITTEE; ARCHITECTURAL CONTROL**

8.1 Committees. The Design Review Committee shall have responsibility for the review, approval or disapproval of plans relating to the construction of Structures on each Lot. The committee shall review, approve or disapprove all matters pertaining to the construction and completion of the initial residence and related Structures on each Lot. The committee shall review, approve or disapprove all specifications, plans and other

matters pertaining to fencing; drainage matters as referenced in Section 5.23 above and elsewhere; and (on a Lot by Lot basis) following completion of the initial residence and related Structures on a Lot, all specifications, plans and other matters for remodeling the initial residence and related Structures, including landscaping, and any additional new Structures to be constructed on such Lot. All existing homes and structures as built, upon ratification of this covenant are considered grandfathered into the architectural requirements going forward and shall not be subject to review and approval by the Association DRC.

#### 8.2 Membership.

A. The original members of the Association DRC shall be three (3) persons, to be appointed by the Board following its establishment pursuant to Article II above. On the death or resignation of any member of the Association DRC, or in the event the Board desires to remove any member, the Board shall appoint a successor. The decision of the majority of the Association DRC shall be binding; provided the Association DRC may delegate its rights or responsibilities hereunder to one or more of its members from time to time. At least two-thirds members of Association DRC must approve all building plans. A single member of the Association DRC cannot approve plans. In the event any member of the Association DRC is unavailable or unwilling to serve, the Board may elect/appoint replacement members to review plans.

8.3 Approval Required of Plans and Specifications. Except as otherwise specifically provided in the Declaration, prior to construction of the initial residence and related Structures on a Lot, no Structure shall be commenced, erected, placed, moved on or permitted to remain on such Lot, unless plans and specifications, grading elevations, square footage, exterior materials, exterior lighting, location, general landscaping plans, and exterior color scheme, therefore shall have been submitted to and approved in writing by the Association DRC. Subsequent to construction and completion of the initial residence and related Structures on a Lot, no existing Structure upon any Lot may be remodeled or altered in any manner as materially changes the exterior appearance thereof (including exterior color scheme) or Lot drainage and grading plan, nor shall any new Structure be placed on such Lot, unless plans therefore shall have been submitted and approved in writing by the Association DRC. The plans and specifications shall be in such form and shall contain such information as may be required by the appropriate Design Review Committee, including, as requested by such committee, (1) a site plan of the Lot or Lots, showing the nature, exterior color scheme, kind, shape, size, height, materials and locations with respect to the particular Lot or Lots (including proposed front rear and side setbacks) of all Structures, the location thereof with reference to Structures on adjoining portions of the Property, and the number and location of all parking spaces and driveways on the Lot or Lots; and (ii) a finished grade plan for the particular Lot or Lots as prepared in accordance with the master drainage and grading plan. Plans and specifications shall be deemed to be submitted to the Association DRC at such time as the Owner requesting such approval shall deliver the same to a member of such committee and shall have obtained a written receipt from such member acknowledging receipt of the same. The Association DRC shall be deemed to have approved plans and specifications for which an Owner shall have requested approval if it has not notified such Owners of disapproval or the need for additional time for consideration within thirty (30) days following Owner's submittal to such committee. No approval of the Association DRC shall be deemed or implied to have been given hereunder; actual written approval from such committee is required.

8.4 Decision Final. Whatever shall be the decision of the Design Review Committee hereunder; its decision shall be final and conclusive, subject to a right of appeal to the Association Board for a final decision.

8.5 Rules and Statements of Policy. The Design Review Committee, may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvement on Lots, including, without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the Design Review Committee at any time, and no inclusion in, omission from, or amendment of any such rules or statements shall be deemed to bind the Design Review Committee to approve or disapprove any feature or matter subject to approval or to waive the exercise of the Design Review Committee's discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for uses on any Lot of any plans or specifications shall not be deemed a waiver of the Design Review Committee's right, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Lot or Lots. Approval of any such plans and specifications relating to any Lot, however, shall be final as to the Lot, and such

approval may not be revoked or rescinded thereafter; provided, that (i) the Structures or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in the Declaration, and (ii) the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all Structures on and uses of the Lot in question.

8.6 Right of Inspection. Representatives of the Board or the Design Review Committee or any of its agents thereof may provide written notification to any owner or member requesting inspection, at any reasonable time or times, of any lot or any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of Structures thereon are in compliance with the provisions hereof.

8.7 Violation. If any Structure shall be constructed, remodeled, altered, erected, placed or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the appropriate Design Review Committee pursuant to the provisions of the Article VIII, such construction, remodeling alteration, erection, maintenance, placement or use shall be deemed to have been undertaken in violation of this Article VIII and without the approval required herein, and upon written notice from the Association, any such Structure so constructed, remodeled, altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or re-altered, and any such use shall be terminated, so as to extinguish such violation.

8.8 No Liability. Neither the Design Review Committee, the association, the Board, nor any officer, director, member, representative, designer, agent or employee thereof, shall be personally liable to any Owner or to any person, firm, corporation or other entity for any damages arising from any mistake in judgment, negligence, nonfeasance, performance or nonperformance of any duties, the approval, disapproval or failure to approve any matter submitted for approval, for the adoption, amendment or revocation of any rule, regulations, restrictions, pursuant to this Declaration, guidelines or the Associations' Articles or bylaws, responsibilities or functions under this Declaration, including, but not limited, to this Article and section 5.23 hereof, or for any defect in any Structure constructed from an approved plans and specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against the Association, the Design Review Committee, the Board, or the officers, directors, members, employees, and agents of any of them to recover any of the aforesaid damages and hereby releases, quitclaims, and covenants not to sue for any claims, demands, and causes of action arising out of or in connection with any judgment, negligence, nonfeasance, performance, nonperformance, approval, disapproval or failure to approve and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

## **ARTICLE IX**

### **NOTICE OF POSSIBLE SPECIAL ASSESSMENTS**

9.1 Assessments. Notice is hereby given to each purchaser of a Lot that special assessments will be spread by the City of Haysville, Kansas, to Lots in the future, due to the installation of arterial streets, residential streets, lakes, ponds, sanitary and storm sewers, sidewalks, etc. Additionally, from time to time, the Lots may become subject to special assessments by reason of work performed by the city of Haysville to major arterial streets in the vicinity of the Property.

## **ARTICLE X**

### **MISCELLANEOUS**

10.1 Provisions Binding on Grantees. The Association and each grantee hereafter of any part or portion of the Property covered by this Declaration, and any purchaser under any grant, contract of sale or lease covering any part or portion of such property, accepts the same subject to all of the restrictions, liens and charges and the jurisdiction rights and powers of the Association provided for in this Declaration.

10.2 Interpretations of Restrictions. In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners. It is not the intent of this Declaration to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issues pursuant



to law relating to the construction, use or occupancy of buildings or premises; nor is it the intention of this Declaration to interfere with or abrogate or annul easements, covenants or other agreements between parties; provided, however, that where this Declaration imposes a greater restriction upon the construction, use or occupancy of any residence site or upon the construction of buildings or Structures, or in connection with any other matters that are imposed or required by such provisions of law or ordinances or by such rules, regulations or permits, or by such covenants, easements and agreements, then, in that case, the provisions of this Declaration shall control.

10.3 Construction and Validity of Restrictions. All of the restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such restrictions, conditions, covenants, reservations, liens or charges or any part thereof, are invalid or for any reason become unenforceable, no other restriction, condition, covenant, reservation, lien or charge, or any part thereof, shall be affected or impaired.

10.4 Assignment of Powers. Any and all rights and powers of Association provided for in this Declaration and any modification or amendment hereof may be delegated, transferred, assigned, conveyed or released by Association to any third party. The Association's assignee shall accept the same upon the recording of notice thereof, and the same shall be effective for the period and to the extent stated therein. Upon the effective date of such assignment, the assigning party shall be released of any and all liabilities of whatever nature arising out of acts or omissions subsequent to the effective date of the assignment.

10.5 Waiver and Exceptions. The failure by the Association, Board, Association DRC, any Owner, or any other person to enforce any of the restrictions, conditions, covenants, reservations, liens or charges to which the Property or any part thereof is subject, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other restriction, condition, covenant, reservation, lien or charge.

10.6 Titles. All titles used in this Declaration are intended solely for convenience of reference, and the same shall not affect that which is set forth in the terms and conditions of this Declaration nor the meaning thereof.

10.7 Singular and Plural, Masculine and Feminine. The singular shall include the plural and the plural the singular, unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine and neuter, as the context requires.

10.8 Successors-in-Interest. Reference herein to the Association shall include its respective successor, and each successor shall succeed to the rights, powers and authority hereunder of its predecessor, whether by appointment or otherwise.

10.9 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, Board, and the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs successors and assigns, for a term of thirty-five (35) years from the date hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by owners of not less than seventy-five (75%) of the Lots, has been recorded, agreeing to abolish or change this covenants, conditions and restrictions, in whole or in part.

10.10 Amendments. Amendments, including waivers, modifications, alterations, removals, changes and additions, to this Declaration may be proposed to the Board. Any proposal to revise, shall be subject to the procedures of this paragraph, as follows:

Notice. Notice of the subject matter of the proposed amendment shall be included in a notice to the Owners of a meeting of the Association, at which the proposed amendment shall be considered.

A. Resolution. A resolution adopting a proposed amendment may be proposed by the Board. Unless otherwise specified in this Declaration, any proposed amendment must be approved by the Owners casting not less than two-thirds (2/3) of the aggregate number of votes cast by the Owners present at such meeting. Such votes may be cast in person or by proxy as provided for herein and in the Bylaws of the Association.

A copy of each amendment provided for in this Section shall be filed of record in the Register of deeds for the County in which the Property is located. With respect to amendments, the Secretary of the Association shall file a certificate along with such amendment, certifying that the meeting at which the vote was taken was either the annual meeting of the Association or a special meeting of the Association, duly called in accordance with the Bylaws of the Association, and that the proper number of votes approving the amendment was obtained. Such certificate will be filed as part of or with such amendment.

No amendment by the Owners materially impairing the rights of any mortgagee shall be binding on such mortgagee unless with express written consent by such mortgagee.

#### 10.11 Enforcement.

A. The covenants set forth herein shall run with the land and bind each Owner, its successors and assigns, and all parties claiming by, through or under each Owner, and shall be taken to hold, agree and covenant by the Owner of each Lot, its successors and assigns, to conform and observe this Declaration and each and every term and condition hereof (but no restrictions herein set forth shall be personally binding upon any corporation, person or persons, except in respect to breaches committed during the term of its, his or their ownership of Lot.)

B. The Owner or Owners of any of the Property and the Association shall have the right to seek enforcement of and/or to prevent the breach of the terms and conditions set forth herein and any rules or regulations established as permitted herein. Any action relating to any rights and obligations arising under, or in connection with, this Declaration, including, but not limited to, an action to seek enforcement of and/or to prevent the break of any of the covenants and restrictions contained herein, shall be brought exclusively in the Sedgwick County District Court to the exclusion of all other courts and tribunals.

10.12 Limitation on Liability; Indemnification. Notwithstanding anything to the contrary contained herein, it is expressly agreed that the Association (including without limitation any assignee of the interest of the Association hereunder), nor any Association board member, officer, employee, or consultant of the Association shall have any personal liability to the Association or any Owner or other person or entity, arising under, in connection with, or resulting from (including, without limitation) any action or failure to act with respect to this Declaration, the Articles or Bylaws, the rules of the Association, the design guidelines of the appropriate Design Review Committee, or for any action taken, or not taken, pursuant to authority granted the Association, thereunder or with respect thereto. To the fullest extent permitted by law, neither the Association, its Board members, officers, employees, consultants or directors thereof or any Design Review Committee member, nor any other members of committees of the Association, shall be liable to the Association or any Owner or other person or entity for damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval or plans and specifications (whether or not defective), course of actions, inaction, omission, negligence or the like made in good faith and which the Association, any member, director, officer, consultant or employee thereof, or member of any such committee is reasonably believed within the scope of his or her duties. Each officer and director of the Association shall be indemnified by the Association and Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved by reason of his being or having been an officer or director of the Association, or any settlement, whether or not he is an officer or director of the Association at the time such expenses and liabilities are incurred, except in such cases where the officer or director is adjudged guilty of willful misfeasance or fraud, as it relates to the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Association.

A. TO THE EXTENT ALLOWED BY LAW AND EQUITY, THE ASSOCIATION AND BOARD SHALL HAVE NO LIABILITY HEREUNDER TO ANY OWNER, FORMER OWNER OR PROSPECTIVE OWNER FOR CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES IN ANY EVENT.

10.13 No Fiduciary Relationship. To the extent permitted by law, nothing contained in this Declaration, or the By-Laws of the Association, and no action taken by the Association, its Board members, officers, employees, consultants, or directors thereof or any Design Review Committee member, nor any

other members of committees of the Association, pursuant to this Declaration shall create or be construed to create a trust of any kind or any fiduciary relationship between the Association, its successors or assigns, or any of the Board members and any Member, Owner, or any other persons.

10.14 Perpetuities: Alienation. It is expressly provided that the rule of property known as the rule against perpetuities and the rule of property restricting unreasonable restraints against alienation shall not be applied to defeat any provisions of this Declaration.

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IN WITNESS WHEREOF, the President of the Board of Directors of Timber Creek Estates Homeowners' Association has executed this Declaration the day and year first above written.

Timber Creek Estates Homeowners' Association

By \_\_\_\_\_  
President

STATE OF KANSAS        )  
                                  ) SS:  
COUNTY OF SEDGWICK    )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 2019, before me a Notary Public in and for the County and State aforesaid, personally appeared President, Timber Creek Estates Homeowners' Association, a Kansas corporation, known to me to be the same person who executed the above and foregoing instrument in writing on behalf of said limited liability company and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

Timber Creek Estates

By \_\_\_\_\_  
President

By \_\_\_\_\_  
Vice President

By \_\_\_\_\_  
Treasurer

By \_\_\_\_\_  
Secretary

STATE OF KANSAS        )  
                                  ) SS:  
COUNTY OF SEDGWICK    )