

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
PERTAINING TO WHISPERING MEADOWS, A RESIDENTIAL DEVELOPMENT IN
POTTAWATOMIE COUNTY, KANSAS

THIS DECLARATION is made on the date provided below by Whispering Meadows Development, LLC, a Kansas Limited Liability Company (hereinafter "Declarant").

KNOW ALL MEN BY THESE PRESENT:

WHEREAS, Declarant is the owner/developer of Lots 1 through 24, Whispering Meadows, Unit One, a Residential Development in Pottawatomie County, Kansas (the "Subdivision"); and

WHEREAS, Declarant desires to submit and subject the Subdivision, together with all buildings, improvements and fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances, and privileges belonging in any way pertaining thereto, to the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions contained herein; and

WHEREAS, the objectives of the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions contained herein are to ensure the best use and the most appropriate development and improvement of each building site thereof; to protect the Owners of building sites against such improper use of surrounding building sites; to preserve, so far as practical, the natural conditions and qualities of such property; to prevent the construction of substandard or unsuitable improvements; and, in general, to create and maintain the Subdivision in a visually attractive manner and appearance for the mutual benefit and protection of all of the Owners of Lots in the Subdivision; and

WHEREAS, for the efficient management of the Subdivision and to enforce the provisions of this Declaration, Declarant wishes to create the Whispering Meadows Homeowners Association, Inc. (hereinafter the "Association") which shall consist of the Owners of the Lots included within the Subdivision and which shall exercise such powers and function as are set forth herein; and

WHEREAS, the Association, a Kansas not for profit corporation, has been, or will be, incorporated for the purpose of exercising the foregoing powers and functions; and

WHEREAS, Declarant intends that all persons or entities hereafter acquiring any interest in the Subdivision shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions hereinafter set forth, all of which are hereby declared to be in furtherance of the plan to promote and protect the Subdivision.

NOW, THEREFORE, in consideration of the premises and for the purposes above set forth,

Declarant of the Subdivision does hereby declare, agree, restrict, and covenant that the use, enjoyment, and ownership of the Subdivision shall be and is hereby restricted, limited, conditioned, and protected subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions hereinafter set forth, all of which shall run with said Subdivision and be binding upon all parties having right, title, or interest therein or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of and be the responsibility of each Owner and each Member of the Association.

Article I

Definitions

Unless the context clearly requires otherwise, the following definitions, as used and defined in greater detail in Kansas Statute section 58-4202 where applicable, shall apply to this Declaration:

- 1.01 “Additional Property” shall mean any additional real property that is annexed to the Subdivision, in accordance with the provisions of Article XIV.
- 1.02 “Architectural Control Committee” or “ACC” shall mean the committee of the Association provided for in Article VIII.
- 1.03 “Assessments” shall include the following:
 - A. “Regular Assessment” shall mean the amount which is to be paid by each Owner as such Owner’s share of the Common Expenses of the Association.
 - B. “Special Assessment” shall mean (i) a charge against a particular Owner directly attributable to such Owner to reimburse the Association for costs incurred in bringing the Owner or Owner’s Lot into compliance with the provisions of this Declaration, the Design Standards, or the Association Rules; (ii) any other charge designated as a Special Assessment in this Declaration, the Association Rules, or Design Standards; and (iii) attorneys’ fees and other charges payable by such Owner as a Special Assessment pursuant to the provisions of this Declaration.
- 1.04 “Association” shall mean the Whispering Meadows Homeowners Association, Inc. a Kansas not for profit corporation established for the primary purpose of enforcing the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions contained herein.
- 1.05 “Association Articles” shall mean the articles of incorporation establishing the Association as a not for profit corporation under Kansas law.
- 1.06 “Association Board” or “Board” shall mean the Board of Directors of the Association.

- 1.07 “Association Bylaws” shall mean the bylaws governing the Association.
- 1.08 “Association Rules” or “Rules” shall mean the rules and regulations adopted by the Association.
- 1.09 “Commercial Vehicle” shall mean any vehicle 1.5 tons or less engaged in commercial activities with or without business advertising markings and any vehicle 1.5 tons or larger.
- 1.10 “Common Expenses” shall mean the costs incurred by the Association in conducting activities for which the Association is responsible pursuant to the terms hereof. Common Expenses shall include, but not be limited to, the following:
- A. the cost of maintenance, management, operating, repair, and replacement of all areas and facilities within the Subdivision that are owned, maintained or operated by the Association, including utilities provided directly to the Association;
 - B. the cost of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, superintendents, attorneys, and employees;
 - C. taxes of any nature owing by the Association and the cost of any insurance maintained by the Association;
 - D. reasonable reserves for contingencies, replacements, and other proper purposes as deemed appropriate by the Association; and
 - E. the costs of any other item or items to be provided or performed by the Association pursuant to this Declaration or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.
- 1.11 “County” shall mean Pottawatomie County, Kansas.
- 1.12 “Declarant” shall mean Whispering Meadows Development, LLC, a Kansas Limited Liability Company, its successors and assigns, or any person or entity to whom Declarant’s rights hereunder are assigned in writing.
- 1.13 “Declaration” shall mean this Declaration and any amendments thereto.
- 1.14 “Design Standards” shall mean the rules, regulations, restrictions, architectural standards, and construction guidelines herein designated as such and as otherwise which may from time to time be adopted by Declarant or the Architectural Control Committee, as the case may be.

- 1.15 “Lot” shall mean a subdivided lot within the Subdivision as shown on the applicable recorded Plat.
- 1.16 “Manufactured Home” shall mean a structure which is transportable in one or more sections and is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air conditioning, and electrical systems contained therein; and is subject to the federal manufactured home construction and safety standards established pursuant to 42 U.S.C. section 5403.
- 1.17 “Member” of the Association shall mean any Person who or which is a record Owner of a fee or undivided fee interest in any Lot. If such Owner is or includes a Person other than an individual, an individual designated in writing must be designated by the Owner to be the Member representative. A Member of the Association shall not include any Owners who have sold their interest under executory contract. During such time as the contract is enforced, the contract vendee shall be considered to be the Member. When more than one Person holds an interest in a Lot, all such Persons shall be Members of the Association.
- 1.18 “Mobile Home” shall mean a structure which is transportable in one or more sections and is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air conditioning, and electrical systems contained therein; and is not subject to the federal manufactured home construction and safety standards established pursuant to 42 U.S.C. section 5403. Such structures are commonly referred to as a trailer house or mobile home.
- 1.19 “Modular Home” shall mean a structure which is: (i) transportable in one or more sections; (ii) not constructed on a permanent chassis; (iii) designed to be used as a dwelling on a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein; and (iv) certified by its manufacturer as being constructed in accordance with a Nationally Recognized Building Code.
- 1.20 “Nationally Recognized Building Code” shall mean any codes used by general contractors in the construction of homes, which include but are not limited to electrical, plumbing, heating, safety, and structural codes generally used for on-site construction. For example, Uniform Builder’s Code (UBC) or International Residential Code (IRC). These are usually preceded by the year in which the code was adopted. For example, 1997 UBC or 2002 IRC.
- 1.21 “Owner” shall mean a Person possessing record ownership of a fee or an undivided fee interest in a Lot in the Subdivision.
- 1.22 “Person” shall mean an individual, corporation, partnership, trustee, or other entity capable of

holding title to real property, and his, her, or its respective heirs, representatives, successors, and assigns.

- 1.23 “Plat” shall mean collectively each plat of the Subdivision as recorded in the Office of the Register of Deeds of Pottawatomie County, Kansas.
- 1.24 “Record” or “Recording” shall mean an instrument of records in, or the act of recording an instrument with, the Office of the Register of Deeds of Pottawatomie County, Kansas.
- 1.25 “Recreational Vehicle” shall mean any large, self-motorized or towed land or water vehicle designed or used primarily for camping or other recreational activities. A Recreational Vehicle shall include, but is not limited to: (i) RVs, commonly referred to as campers; and (ii) motorboats and houseboats. A Recreational Vehicle shall not include: (i) three- or four-wheeled all-terrain vehicles; (ii) motorcycles or similar two-wheeled vehicles; or (iii) personal watercraft designed for no more than three (3) people such as Jet Ski®, Waverunner®, or Sea Doo® brand personal watercraft.
- 1.26 “Screen” shall mean to partition in a manner such that one reasonably cannot see through the partition.
- 1.27 “Subdivision” shall mean Lots 1 through 24, Whispering Meadows, Unit One, a Residential Development in Pottawatomie County, Kansas, together with any Additional Property.
- 1.28 “Supplemental Declaration” shall mean a declaration of easements, covenants, conditions, and restrictions, or similar instrument, annexing Additional Property to the Subdivision and subjecting such property to this Declaration, pursuant to Article XIV.

Article II

Declaration

Declarant hereby establishes the Subdivision and this Declaration to govern the design, maintenance, use, and occupancy of Lots and improvements within the Subdivision.

Article III

Scope

The covenants, conditions, restrictions, liens, assessments, easements, privileges, rights and other provisions contained herein shall encompass Unit One of the Subdivision and, pursuant to Article XIV, shall extend to any additional units of the Subdivision as set forth in the Plat recorded

with Pottawatomie County.

Article IV

Association

- 4.01 Formation of Association. The Association has been, or will be, organized as a non-profit corporation for perpetual term under the laws of the State of Kansas. Bylaws and an annual budget of the corporation shall be adopted.
- 4.02 Purpose of the Association. The Association shall be responsible for the protection, improvement, alteration, maintenance, repair, replacement, administration, and operation of the Subdivision, including taking such action as is necessary for the assessment of expenses, payment of losses, disposition of casualty insurance proceeds (if any), and other matters as provided in or contemplated by this Declaration, the Association Articles, the Association Bylaws, the Association Rules, or Design Standards.
- 4.03 Association Membership and Voting Rights.
- A. Each Owner shall be a Member of the Association, pursuant to Section 1.17. A membership in the Association shall be inseparable from the Lot to which it applies and may not be transferred separately from such Lot.
 - B. Subject to the provisions of Section 4.11 hereof, each Lot shall be entitled to only one vote in the Association, the number of Owners notwithstanding. Provided, however, that where a Lot is “split” or subdivided in conformity with the zoning regulations of Pottawatomie County, Kansas, then the Owner of each Lot resulting therefrom shall be entitled to one vote. The percentage of votes necessary for decisions and actions of the Association shall be set forth in the Association Bylaws. When more than one Person owns a Lot, the vote for such Lot shall be exercised as they among themselves determine and they shall designate and register with the secretary of the Association the name of that Person entitled to cast such vote, but in no event shall more than one vote be cast with respect to any one Lot.
- 4.04 Board of Directors of the Association. The affairs of the Association shall be conducted by the Board as herein provided and in accordance with the Association Articles and Association Bylaws. Except for directors elected by Declarant as provided for in Section 4.11, each director shall be an Association Member.
- 4.05 Duties and Powers of the President of the Association.
- A. To the extent not prohibited by law, or as otherwise herein expressly limited, the

president of the Association shall be empowered to exercise control over the affairs of the Association and to act on behalf of, and bind, the Association in every instance wherein the Association is required or permitted to take any action.

- B. Notwithstanding anything in this Section 4.05 to the contrary, the president shall not have the power to borrow any funds on behalf of the Association, make any expenditures on behalf of the Association which are, in the aggregate, more than 5% of the total amount of the Association's budget, or increase the amount of or levy any Assessment, without the prior approval of the Board.

- 4.06 President's Determination Binding. In the event of any dispute or disagreement between any Owners, Association Members, or any other Person subject to this Declaration, relating to the Subdivision, or any question of interpretation or application of the provisions of this Declaration, the Association Articles, or Bylaws, any Association Rules or other rules of the Association, or any Design Standards, the determination thereof by the president shall be final and binding on each and all of such Owners, Association Members, or Persons. The president may, at his or her election, delegate the resolution of such dispute or disagreement to the Board or a committee appointed by the president.
- 4.07 Association Management. The Association shall have the authority to employ a manager or management company to assist the Association with its duties. Any manager or management company employed by the Association shall have such authority as the Board may so delegate.
- 4.08 Association Rules. In order to be able to address specific matters relating to the administration, operation and development of, or other matters relating to, the Subdivision, the Board shall be empowered to adopt, amend, or repeal such rules and regulations as it deems reasonable and appropriate (the "Rules"). The Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments or otherwise. The Rules shall not be inconsistent with the terms of this Declaration. The Rules may not unreasonably or unlawfully discriminate among Association Members. The Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and Association Members, and all other Persons having any interest in, or making any use of, the Association, whether or not actually received thereby. The Rules, as adopted, amended, or repealed, shall be available at the principal office of the Association to each Owner, Association Member, or other Person entitled thereto, upon request. To the extent of any conflict between any provision of the Rules and any provisions of this Declaration, the provisions of the Rules shall be superseded.
- 4.09 Indemnification. To the fullest extent permitted by law, every director and every officer of the Association, and the members of the ACC, and Declarant (to the extent a claim may be brought against Declarant by reason of its appointment, removal, or control over Board directors, officers, or ACC members) shall be indemnified by the Association, and every

other person serving as an employee, or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such person in connection with any proceeding or any settlement thereof to which such person may be a party, or in which such person may become involved, by reason of such person's being or having served in such capacity on behalf of the Association whether or not such person is a director, an officer, or a member of the ACC, or serving in such other specified capacity at the time such expenses are incurred; provided, however, that prior to agreeing to any such indemnification, the Board shall determine, in good faith, that such officer, director, member of the ACC or other Person, or Declarant, did not act, fail to act, or refuse to act willfully, fraudulently, criminally or with gross negligence, in the performance of his or her duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such person may be entitled at law or otherwise.

- 4.10 Non-Liability of Officials. To the fullest extent permitted by law, neither Declarant, the Association president, any directors or officers of the Association, any ACC member, nor any other Members or committees of the Association shall be liable to any Association Member or any Owner or other Person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, inaction, omission, error, or negligence, made in good faith and believed to be within the scope of his or her duties.
- 4.11 Declarant's Control of the Association. Notwithstanding anything in this Article IV or elsewhere in this Declaration to the contrary, Declarant shall maintain absolute and exclusive control over the Association and the ACC, including appointment and removal of the president and all other officers of the Association, all directors of the Board, and all members of the ACC, until the earlier of the following: (i) at such time as Declarant chooses to turn over the operation of the Association to the Association; or (ii) at such time as the last Lot is sold. Until such a time, only Declarant will be entitled to cast any votes with respect to the election and removal of Association officers or directors and members of the ACC, or any other matter requiring the vote or approval of Association or ACC members. Declarant voluntarily may (but shall not be required to) at any time relinquish all or any part of Declarant's control and rights under this Section 4.11 by written instrument without affecting any rights of control not relinquished.

Article V

Assessments, Creation of Lien, and Personal Obligation

- 5.01 Assessments in General. Each Owner (not including any mortgagee as long as it is not the Owner), by and at the time of acceptance of a deed or other conveyance of an interest in a

Lot, is deemed to personally covenant and agree to pay the Association all Assessments then due and unpaid to the time of acquiring title and all such charges thereafter falling due under such Owner's ownership.

5.02 Purpose of Assessments. Except as otherwise herein set forth, the Assessments levied by the Association shall be used: (i) to promote the health, safety, and welfare of Owners; (ii) to enhance the value of the Subdivision; (iii) to pay the costs of administration of the Association; (iv) to pay all other Common Expenses; and/or (v) to otherwise further the interests of the Subdivision.

5.03 Regular Assessments.

A. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as may be determined by the Association.

B. Not later than sixty (60) days prior to the beginning of each fiscal year of the Association, the Association shall make available for review by each Owner at the Association's office, during reasonable times, a pro forma operating statement or budget for the upcoming fiscal year, approved by the Board, estimating the total Common Expenses to be incurred by such Association for such fiscal year. The operating statement or budget shall also set forth the amount of the Regular Assessment to be paid by each Owner and the Association shall notify each Owner thereof. Initial Regular Assessments shall be \$15.00 per month per Lot, subject to increases as provided in this Section 5.03.

C. If the Association subsequently determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, the Association president shall then immediately determine the approximate amount of such inadequacy and, with the approval of the Board, issue a supplemental estimate of the Common Expenses and determine the revised amount of the Regular Assessment to be paid by each Owner for the balance of the year, and the date or dates due. Each Owner shall be notified of the additional amount required to be paid and the due date of such payment, and each Owner shall pay the additional amount when due. If the total Regular Assessments for a current year exceed the actual Common Expenses, the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, or reduce the amount of the Regular Assessments for the next fiscal year.

5.04 Special Assessments. Special Assessments shall be levied by the Association against an Owner for:

A. costs incurred in bringing an Owner or an Owner's Lot into compliance with the provisions of this Declaration, the Association Articles or Bylaws, or the Rules;

- B. fines levied or fixed by the Board as provided herein;
 - C. attorneys' fees, interest, and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this Declaration or the Rules; and/or
 - D. any other charge designated as a Special Assessment in this Declaration or the Rules.
- 5.05 Exempt Property. All properties owned by Declarant and all properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments provided herein.
- 5.06 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to an Owner upon the Owner's closing on a Lot, and shall be due on a semi-annual or annual basis, as determined by the Association.
- 5.07 Time and Manner of Payment; Late Charges and Interest. If an Assessment is not paid within thirty (30) days after its due date, each such Assessment shall have added to it a late charge equal to 10% of the amount of Assessment and thereafter bear interest, until payment of such Assessment, at the rate of 18% per annum or at such other rate as may be established from time to time by the Association. The Board may, in its discretion, waive any late charge and/or interest in any instance without prejudice to other instances. A delinquent Owner shall, to the extent allowed by then applicable law, be liable for attorneys' fees and other related costs incurred by the Association as a result of such delinquency.
- 5.08 No Offsets. All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment and no offsets against such amount shall be permitted for any reason.
- 5.09 Reserves. The responsibility of the Board shall be only to provide for such reserves as such Board in good faith deems reasonable, and neither Declarant, the Board, nor any director thereof shall have any liability to the Association, any Owner, or Association Member, with regard to the adequacy of such reserves.
- 5.10 Lien for Delinquent Assessments. The Assessments, together with interest thereon, late charges, attorneys' fees, and court costs, and other costs of collection thereof, as provided herein, shall be a continuing lien and encumbrance upon the Owner's Lot against which the Assessments are made as well as a personal obligation of the Lot's Owner. The personal obligation for delinquent payments shall not pass to an Owner's successor unless expressly assumed by him. If an Owner shall consist of more than one Person, the obligations of the Owner for the payment of Assessments on such Owner's Lot shall be joint and several.
- 5.11 Subordination of Assessment Lien. The lien provided herein shall be subordinate to the lien

of any first mortgage. Sale of any Lot shall not affect the Assessment lien. No sale or transfer shall relieve such Lot from the liability from the Assessments thereafter becoming due or from the lien thereof.

- 5.12 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 and equitable or otherwise that may be necessary or advisable for the collection of such Assessment(s). The Association shall have the right to sue for and collect a reasonable sum to reimburse it for its attorneys' fees and other expenses reasonably incurred in enforcing the rights hereunder.
- 5.13 Enforcement of Lien. Any lien provided for in this Declaration may be foreclosed by the Association in any manner provided, or permitted, for the foreclosure of real property mortgages or homes association liens in the State of Kansas. In the event the Association seeks to enforce any lien provided for in this Declaration, the Association shall record an Affidavit of Nonpayment of Regular or Special Assessment in the Office of the Register of Deeds of Pottawatomie County, Kansas, stating: (i) the legal description of the property upon which the lien is claimed; (ii) the name(s) of the Owner(s) of said property last known to the Association; and (iii) the amount of the Regular or Special Assessment which is unpaid. The Association shall commence foreclosure proceedings within five (5) years of the date of recording of the Affidavit.
- 5.14 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration or documentation associated herewith, the benefit of any redemption, homestead, or exemption laws of the State of Kansas now in effect, or in effect from time to time hereafter.

Article VI

Insurance

- 6.01 Authority to Purchase. The Association shall purchase and maintain such insurance, and in such types and amounts, as its board shall determine from time to time. Such policies, and endorsements thereon, or copies thereof, shall be deposited with the Association and shall be available to the Association members for inspection upon reasonable request.
- 6.02 Non-Liability of Association/Board/President. Anything in this Declaration to the contrary notwithstanding, neither the Association nor Board director nor any officer of the Association nor Declarant shall be liable to any Owner or Association Member or other Person, if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional

insurance coverage and protection as the Owner may desire.

Article VII

Right of Access for Maintenance, Repairs and Replacements

An authorized representative of the Association and all contractors, repairmen or other agents employed or engaged by the Association, shall be entitled to reasonable access to each of the Lots as may be required to perform any of the Association's responsibilities hereunder.

Article VIII

Architectural and Landscape Control

8.01 Architectural Control Committee. The Association shall have a standing Architectural Control Committee ("ACC") consisting of not less than three nor more than five Board directors as specified from time to time by Declarant during periods in which Declarant has the right to appoint the members of the ACC pursuant to Section 4.11, and thereafter, by resolution of the Board, which shall also appoint members of the ACC. During the period of Declarant control as provided in Section 4.11, the ACC shall act in an advisory capacity to Declarant. The ACC shall be empowered to utilize professional consultants as may be approved by Declarant or the Board, as the case may be.

8.02 Review Process.

A. Construction, placement, or improvement of a dwelling house or any other structure, including but not limited to site preparation, excavation, grading, walls, fences, tree removal, etc. shall not commence until the proposed improvement plans for the dwelling house or other structure have been submitted and approved in a signed writing by Declarant or the ACC, as the case may be. Review shall be coordinated with the required governmental approvals. Submission to the County for building permits or site plan approval shall not be made until final plans have been approved by Declarant or the ACC, as the case may be. All submissions to Declarant or the ACC shall be made within the time periods established by, and in a format approved by, either Declarant or the ACC, as the case may be. Generally, improvement plans will include, but are not limited to: (i) site plan including property lines, easements, and location of proposed dwelling house and sidewalks; (ii) floor plan(s) indicating wall lines and overall structure dimensions; (iii) window and door placement; (iv) roof and ground lines; (v) exterior building material; and (vi) anticipated sales price. Because a goal of this Subdivision is affordable housing, the anticipated sales price upon completion is a consideration in approval of all improvement plans.

- B. Declarant or the ACC, as the case may be, shall act on the complete, proposed improvement plans submitted within thirty (30) working days after receipt, but not before five (5) working days after receipt. If Declarant or the ACC, as the case may be, does not take any action within the specified time period, the plan(s) shall be deemed approved. Approval of the plans by Declarant or the ACC, as the case may be, in no way abates or depletes compliance with or procurement of any approvals, permits, licenses, codes, or ordinances which may be required by the County or the State of Kansas, now or in the future.
- C. Anyone having submitted plans for the ACC's approval may appeal the ACC's decision before the full Board, which, having granted such an appeal, shall approve, overturn, or modify the ACC's decision. Procedures for such an appeal shall be set forth in the Association Rules.
- D. Notwithstanding anything in this Section 8.02 to the contrary, Declarant shall have sole discretion regarding deciding any architectural proposal submitted under this Article VIII during the period that Declarant has voting control of the Association and the ACC.

8.03 Interpretation and Waiver. The interests of Declarant and the ACC, as the case may be, in reviewing site and building designs are to assure that a high quality of compatible development is consistently achieved. In order to meet special situations that may not be foreseen, it may be desirable from time to time for Declarant or the ACC, as the case may be, to allow variances of certain requirements; such variances shall not be considered precedent setting. All approvals and consents of Declarant or the ACC, as the case may be, shall be in writing, and oral approvals or consents shall be of no force or effect.

8.04 Declarant/ACC Authority.

- A. No dwelling house, fence, wall, or any other structure, or improvement of whatever type shall be commenced, erected or maintained within the Subdivision, nor shall there be any addition or change to the exterior of any residence or other structure or improvement upon a Lot, or the landscaping, grading, or drainage thereof, including, without limitation, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by Declarant or the ACC, as the case may be. Declarant or the ACC, as the case may be, shall use discretion and reasonable judgment in evaluating and approving all proposed plans. Declarant or the ACC, as the case may be, may reject plans and specifications, without citing specifics, for the following reasons, among others: (i) insufficient information to adequately evaluate the design or its intent; (ii) low design quality; (iii) incompatible design elements; (iv) inappropriate design concepts or

design treatment; and (v) a design found to have an adverse effect on the character of the Subdivision or its residents. In recognition of the fact that the overall impact of improvements on any Lot involves issues of taste and judgment that cannot be completely described in Design Standards, Declarant or the ACC, as the case may be, shall also have the right to reject plans and specifications otherwise conforming to the Design Standards if Declarant or the ACC finds that the overall aesthetic or other impact of any proposed improvement, addition, alteration, or change is detrimental to the Subdivision.

B. The Declarant or its representatives, any member or authorized consultant of the ACC, or any authorized officer, director, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot, after reasonable notice to the Owner, in order to inspect improvements constructed or being constructed on such Lot to ensure that such improvements have been, or are being, built in compliance with the plans and specifications approved by the ACC, the Design Standards, and this Declaration.

C. The Association may promulgate such Rules as it deems to be appropriate and as are not in conflict with this Declaration in order to enforce compliance with the Design Standards set forth herein. **WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE BOARD MAY FIX FINES FOR FAILURE TO OBTAIN APPROVAL FROM THE ACC OR TO COMPLY WITH ANY SUCH APPROVAL.**

8.05 Declarant/ACC Limits of Liability. By its approval of plans and specifications, Declarant or the ACC, as the case may be, shall not be deemed to have warranted or approved the same for engineering design safety, or for compliance with zoning, health and building ordinances; by approving such plans and specifications neither the ACC, the members thereof, the Association, any of its Members, its officers, its Board nor the Declarant or its designated representatives assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the ACC, any member thereof, the Association, any of its Members, its officers, its Board nor the Declarant or its designated representatives shall be liable to any Owner or other Person for any damage, loss, or prejudice suffered or claimed on account of (i) the approval or disapproval of any plans, drawings, or specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (iii) the development, or manner of development, of any property within the Subdivision. Anyone submitting plans to Declarant or the ACC, as the case may be, for approval and any other Owner agrees that he or she will not bring any action or suit to recover any damages against Declarant or its designated representatives, the ACC or any member thereof, or the Association, any of its Members, its officers, or its Board.

8.06 Authorized Builders. Declarant, while in control of the Subdivision pursuant to Section 4.11,

and the Board thereafter reserves the right to approve a builder intending to construct a dwelling house or other structure used primarily as a residence. Only builders who are members of the Home Builders Association of Manhattan, its successor, or a similar organization approved by the Declarant or Board, as the case may be, and who makes his or her living primarily through the building of single-family residences shall be eligible for consideration.

8.07 Inspection and Warranty. Any authorized builder shall provide an independent, third-party inspection of any dwelling house or other structure used primarily as a residence that is constructed on a Lot. A copy of the inspection shall be provided to Declarant. At a minimum, the inspection shall verify the integrity of foundation and setbacks, the framing, HVAC, and plumbing prior to sheetrock, and, upon completion, that such house or structure is fit for occupancy. Further, any authorized builder shall provide the Owner(s) with a standard one-year builder's warranty.

8.08 The Design Standards. The following design standards hereinafter set forth in this Section 8.08 are hereby established for the Subdivision.

A. Dwelling Houses.

1. Dwelling houses or other structures used primarily as residences shall have a minimum total finished living area of not less than 1,300 square feet, with at least 1,000 square feet of finished living area comprising the ground floor if there are two (2) stories. For purposes of the preceding sentence, the finished living area shall not include the basement, open porches, carports, garages, or any area not attached to the main structure.
2. Each dwelling house must have a full basement.
3. Dwelling houses or other structures used primarily as residences shall be not less than 40% brick, stone, or cultured stone on the front exterior elevation. Vertical siding shall not be used on the front elevation.
4. Dwelling houses must be of "on site" or "stick built" construction.
5. Each dwelling house must meet a Nationally Recognized Building Code. At the time of this document, preference goes to the International Residential Code adopted by the appropriate governing body.

B. Garages. Each dwelling house must have a minimum of one 2-car garage attached directly to the dwelling house and with at least 440 square feet. Carports are not allowed.

- C. Driveways. Driveways from dwelling houses or other structures used primarily as residences, from garages, or from outbuildings, shall be constructed of concrete or as otherwise allowed by Declarant or the ACC, as the case may be.
- D. Outbuildings. Any outbuildings to be placed upon the subject Lots must be approved by Declarant or the ACC, as the case may be. No outbuildings shall be located in any drainage easement.
- E. Exterior Materials and Paint. Boxing is required beneath all exterior materials used on any dwelling houses or other structures used primarily as residences, or on any garage or outbuilding. Neither Masonite nor vinyl siding is permitted on the exterior of any such structure on a Lot. All exterior paint on any such structure shall be in the earth-tone category, as determined and approved by Declarant or the ACC, as the case may be.
- F. Roofing Materials. All roofing materials shall be, at a minimum, 30-year Heritage Weatherwood architectural-style shingles or equivalent.
- G. Construction, Location, and Size Limitations.
 - 1. Structures shall not exceed two (2) stories above the ground level.
 - 2. All dwelling houses or outbuildings shall have a minimum roof pitch of at least 5–12 degrees.
 - 3. No exterior alterations of any existing building or structure shall be permitted without the prior approval of Declarant or the ACC, as the case may be.
 - 4. No excavation will be made except in conjunction with construction of an improvement. When such improvement is completed, all exposed openings will be back-filled and graded.
 - 5. A residence destroyed by fire or other casualty shall be removed from the Lot and new construction begun within three (3) months after the date of such destruction, and thereafter such construction shall be performed with due diligence through completion.
- H. Landscaping.
 - 1. An Owner must install sod in the front yard upon completion of the construction on the Lot of a dwelling house or other structure used primarily as a residence. If not installed with sod, the side yards and back yard must be final-graded and planted at the appropriate time with seed upon completion of

said house or structure.

2. Upon completion of the structure on the Lot, an Owner must plant and maintain the Lot with at least 2 shade trees of the hardwood variety with a caliper of at least 2 inches; at least one tree shall be planted and maintained in the front yard and at least one tree shall be planted and maintained in the back yard.
 3. There shall be no rock yards and all yard areas exclusive of improvements shall be at least 80 percent grass.
- I. Sidewalks. Any and all sidewalks shall be 5 feet wide unless otherwise approved by Declarant or the ACC, as the case may be. There must be a sidewalk the entire length of the front yard of all Lots, and a sidewalk the entire length of the Lot for any Lot sides that are directly adjacent to a street.
- J. Fences or Walls. Any and all fencing and walls (including, without limitation, the composition and location thereof) shall be subject to the approval of Declarant or the ACC, as the case may be. Fences shall be constructed of cedar with 4x4 posts, 3/4-inch cedar pickets, a minimum of two runners, and with the finished side of the wood facing the exterior of the fenced-in area. Fence supports shall be exposed to the interior of the fenced-in area. Fence height shall be between a minimum of 4 feet and a maximum of 6 feet, unless otherwise required by the County. Fencing shall not extend beyond the back corners of the dwelling house or other structure used primarily as a residence. No treated or 1/2-inch cedar pickets shall be allowed, and no chain-link fencing shall be allowed. No fence shall be placed in any drainage easement. Retaining or screening walls shall be made of natural materials or faced with quality materials approved by Declarant or the ACC, as the case may be.
- K. HVAC. No window air conditioning or heating units will be permitted.

Article IX

Covenants, Conditions and Restrictions for Maintenance

The maintenance requirements hereinafter set forth in this Article IX are hereby established for the Subdivision.

- 9.01 Lot and Dwelling Site Maintenance. Except with respect to common-area care and maintenance to be performed by the Association pursuant to the following Section 9.02, each Owner (other than Declarant) shall keep the Lot owned by such Owner and all improvements thereon in good order, condition, and repair, including, but not limited to, the maintenance,

repair, and replacement (including the painting or other appropriate exterior care) of all structures, buildings, and other improvements; roofs, gutters, down spouts, exterior building surfaces, and other exterior improvements; any enclosed courtyards, decks, and the interior of the residence, including all appliances, heating and air conditioning equipment, and plumbing; exterior doors, windows, glass walks, chimney flues and structural items, patios, porches, steps, fences, lawns, water sprinkler systems, driveways and sidewalks appurtenant to such Lot, all in a manner and with such frequency as is consistent with good property management. Each Owner's obligation hereunder shall commence upon the acquisition of such Owner's Lot.

- 9.02 Association Services. The Association shall assume control, care, and maintenance of the common areas of the Subdivision.
- 9.03 Cost of Association Services. The cost of maintenance to be provided by the Association shall be added to and become part of the annual Regular Assessment to which the Lots will be subject under Article V hereof, and as part of such Regular Assessment, it shall be a lien and a personal obligation of the respective Owners and shall be due and payable in all respects as provided therein. The per residence cost of snow removal concerning common areas may be billed to Owners as incurred and will not necessarily be part of the Regular Assessments hereunder, due to the difficulty of predicting such costs in the assessment-setting process.
- 9.04 Vegetation Maintenance. The Association shall have no responsibility for the maintenance or care of lawns, flowerbeds, trees, shrubs, bushes, and similar plantings located on any Lot. Owners of a Lot shall provide appropriate care for all such plantings on their respective Lots and shall promptly replace all damaged, diseased, or dead plantings subject to the other provisions contained in this Declaration. Owners shall take such measures as may be necessary to control the growth of weeds and vegetation or lack of vegetation on the Lots and any applicable County regulations concerning the same shall be observed.
- 9.05 Enforcement. If in the opinion of Declarant or the Association, as the case may be, any Owner fails to perform such duties or otherwise breaches such Owner's obligations as specified in this Article IX, Declarant or the Association, after fifteen (15) days' written notice to such Owner to remedy such default, shall have the right (in addition to any other rights and remedies available at law or at equity) but not a duty, through its agents and employees to enter upon the Lot(s) involved and to repair, maintain, repaint, remove, and restore such Lot(s) or such improvements or otherwise bring such Lot(s) or such improvement into conformity herewith and the cost thereof shall be a personal obligation of such Owner and a Special Assessment, which may mature into a lien enforceable in the same manner as a mortgage upon the Lot(s) in question in accordance with Article V, shall be levied against such Lot(s).

Article X

Covenants, Conditions and Restrictions for Use and Occupancy

The use and occupancy restrictions hereinafter set forth in this Article X are hereby established for the Subdivision.

- 10.01 In General. Use of a Lot shall not be permitted which violates any laws or regulations of the County or the State of Kansas.
- 10.02 Lot Improvements. Initial Lot improvements must begin within nine (9) months of closing on a Lot purchase, and such improvements must be completed within one (1) year after the beginning of construction. Subsequent Lot improvements must be completed within one (1) year after commencement. Exceptions may be granted at Declarant's or the ACC's discretion, as the case may be, upon the receipt by such entity of a written request 180 days before the end of the applicable 2- or 1-year limit.

During any period of Lot improvement, the following minimum measures are required to minimize disturbance to adjacent sites:

- A. Once commenced, construction will be diligently pursued to completion and it may not be left in a partly finished condition for more than thirty (30) days without written approval from Declarant or the ACC, as the case may be.
 - B. No dumping of construction materials, waste or trash shall occur in the Subdivision.
 - C. Each Lot shall be maintained in a clean and orderly manner during construction. Erosion shall be controlled on each Lot in a manner approved by Declarant or the ACC, as the case may be, while the Lot is in a disturbed condition.
 - D. Any builder's shack constructed to facilitate the building or improvement of a structure shall be removed within seven (7) days after the structure is completed.
- 10.03 Resale of Lots. Lots without improvements cannot be resold prior to the sale of 90% of all Lots within the Subdivision as described in the preliminary Plat or within seven (7) years of purchase, whichever comes first.
- 10.04 Residential Use. Each Lot within the Subdivision shall be used only for single-family residential purposes and no other. No more than four (4) unrelated Persons shall reside in any one dwelling house or other structure used primarily as a residence. No business or commercial building may be erected on any Lot and no business or commercial enterprise, or other non-residential use, may be conducted on any part thereof; provided, however, nothing herein shall prohibit a business being conducted from the actual residence of the business

owner, so long as such business does not require or involve more parking area than appropriate for a personal residence or exterior signage or any visible evidence of such business on the exterior of the residence or Lot, and does not interfere with the quiet enjoyment of other Owners. Structures of a temporary character, i.e., trailer, tent, shack, garage, barn, or other building shall not be used as a residence, either temporarily or permanently. Nothing herein contained shall be deemed to limit the Declarant's rights as set forth in Article XV.

10.05 Manufactured/Mobile/Modular Homes. Manufactured, Mobile, and Modular Homes shall not be allowed within the Subdivision.

10.06 Signs. No permanent or temporary sign of any kind shall be displayed to the public view, or from any Lot, without the approval of Declarant or the ACC, as the case may be, except for the following temporary signs ("Permitted Signs"): (i) such signs as may be used by Declarant or any realtor retained by Declarant in connection with the development and sale of Lots (whether improved or unimproved) in the Subdivision; (ii) such signs as may be required by legal proceedings; (iii) such signs advertising the Lot as being for sale; or (iv) signs promoting political candidates but only thirty (30) days before and five (5) days after the day of election. Permitted Signs shall not exceed five (5) square feet in total area or be more than three (3) feet in height, measured from grade.

10.07 Animals. Livestock, poultry, or any non-domesticated animals shall not be raised, bred, or kept on any Lot. A reasonable number of dogs, cats, or other household pets may be kept provided they are not kept, bred, or maintained for commercial purposes. In no event shall any domestic pet be allowed to leave its owner's Lot unattended by the Owner or to create a nuisance. No animal runs or cages will be allowed. Pets maintained outside must be screened from view of adjacent Lots. Applicable County zoning restrictions and other County, state, or federal statutes or restrictions concerning household pets must be observed.

10.08 Vehicles and Machinery.

A. Recreational Vehicles shall not be allowed within the Subdivision.

B. No automobile or any vehicle of any condition or license status shall be (a) placed upon the yard(s) of any Lot or (b) parked on a public street adjacent to any Lot overnight. Subject to the foregoing, no inoperative automobiles or any vehicles without a valid license shall be placed upon any Lot for more than 24 hours unless stored or parked in a closed garage, and no operative automobiles or any vehicles with a valid license shall be placed upon any Lot for more than fifteen (15) consecutive days of disuse unless stored or parked in a closed garage.

C. Commercial Vehicles shall not be stored, parked, or placed on any Lot or adjacent public street except in a closed garage or as engaged in transportation to or from a

residence.

- D. Wrecked vehicles, machinery, and scrap or salvage materials shall not be allowed on any Lot except for materials or machinery being used for construction of a building or landscaping. Such materials or machinery shall be removed within 48 hours after completion of construction or landscaping.
- 10.09 Swimming Pools. No above-ground or in-ground swimming pool shall be placed upon or installed in any Lot, unless approved by Declarant or the ACC, as the case may be.
- 10.10 Christmas Lights. No Christmas lights shall be lighted before Thanksgiving and such lights shall be taken down no later than January 15 of the following year.
- 10.11 Yard Art. All forms of yard sculpture or “yard art” must be approved by Declarant or the ACC, as the case may be.
- 10.12 Mailboxes/Newspaper Holders. Mailboxes and any upright newspaper holders must be approved by Declarant or the ACC, as the case may be.
- 10.13 Flagpoles. No freestanding flagpoles are allowed and no attached flagpoles over 4 feet long are allowed.
- 10.14 Clotheslines. No clotheslines are allowed.
- 10.15 Outside Antennae and Satellite Dishes. Television or radio antennae shall not be allowed. The size and placement of satellite dishes must be approved by Declarant or the ACC, as the case may be. The foregoing covenant shall not apply to a “community antenna” necessary for the implementation for a cable TV system to serve the Subdivision and the surrounding areas.
- 10.16 Wind Turbines and Solar Collectors. No wind turbines or solar collectors shall be erected or maintained outside on any of the Lots.
- 10.17 Trash. Lots shall not be used as a dumping ground for trash, leftover construction materials, or other household waste; such items shall be kept in metal or plastic leak-proof and airtight sanitary containers and periodically removed from the Lots. The containers shall be screened from street view and stored within the garage of, or an enclosed, screened area immediately attached to, the dwelling house and available for removal on designated pickup day(s). Burning of trash, grass, weeds, et cetera, is prohibited. All Lots shall receive trash services from the same service provider, as determined by the Association. Burning of trash, weeds, or any similar item is prohibited.
- 10.18 Nuisances. Obnoxious or offense activities shall not be carried out upon any Lot of the

Subdivision. Nothing shall be done with the Subdivision or Lots therein which may be or become an annoyance or nuisance to the Subdivision.

- 10.19 Easements. Owners shall be responsible for the maintenance of all easement areas shown on the recorded Plat. No structure or planting may be placed that will interfere with the use of any easement area.
- 10.20 Underground Utilities. All electrical, telephone, and cable lines and other utilities shall be placed underground.
- 10.21 Resubdividing. Further subdividing or resubdividing of any Lots within the Subdivision shall not be allowed without specific written permission of Declarant or the Association, as the case may be. Special requests can be made to Declarant or the Association, as the case may be, for consideration.

Article XI

Remedies

- 11.01 General Remedies. If any Person(s) within the Subdivision shall violate or attempt to violate any of the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, or other provisions contained herein, it shall be lawful for Declarant, any Owner, the Association, or any other Person owning any of the aforesaid Lots, to prosecute, together or separately, any proceeding at law or in equity against the Person(s) violating or attempting to violate such covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, or other provisions for the purpose to either prevent such Person(s) from doing so or to recover damages for such violation(s). Any Person authorized under this Section may prosecute such violations or attempted violations for injunctive relief, for enforcement or foreclosure of any lien herein provided, for damages, for specific performance, for judgment for payment of money and collection thereof, or for any combination of remedies.
- 11.02 Association Remedies. In addition to the remedies available in Section 11.01, if any Person(s) within the Subdivision shall violate or attempt to violate any of the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, or other provisions contained herein, it shall be lawful for Declarant or the Association, as the case may be, within reason, to suspend Association services and privileges with respect to such Person(s) and/or to impose fines against such Person(s). Any fines so imposed shall be a personal obligation of and shall be charged to and assessed against such Person(s) violating or attempting to violate the provisions of this Declaration as a Special Assessment and shall be subject to Article V.
- 11.03 Expenses of Enforcement. Any Person authorized under this Article XI to prosecute

violations or attempted violations shall have the right to include in such Person's claim for relief a reasonable sum to reimburse such Person for the court costs, attorneys' fees, and other expenses reasonably incurred in enforcing the rights hereunder. All expenses of Declarant or the Association incurred by exercising the enforcement rights of this Article, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest therein until paid at the judgment rate of interest, shall be charged to and assessed against such Owner or other Person in violation of or attempting to violate the provisions of this Declaration, and shall be a Special Assessment against such Owner or other Person, and the Association shall have a lien as provided in this Declaration. Failure by any Person authorized under this Section to enforce any covenant, condition, restriction, lien, assessment, privilege, right, or other provision herein shall in no event be deemed a waiver of the right to do so thereafter.

Article XII

Severability

The invalidation, by judgment of court order, of any of the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions contained herein, shall in no way affect any other provisions, which shall remain in full force and effect.

Article XIII

Term and Amendment

- 13.01 Covenants Running with the Land. The covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions of this Declaration shall run with the land and shall be binding upon all parties hereto and on all Persons claiming under them for the period of twenty (20) years from the date this Declaration is recorded in the Office of the Register of Deeds of Pottawatomie County, Kansas, after which time the said covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by three-fourths (3/4) of the then Owners of the Lots has been recorded agreeing to change said covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions of this Declaration in the whole or in part, it being understood that an Owner, with the exception of Declarant, shall be entitled to cast as many votes as he or she may own Lots in said Subdivision.
- 13.02 Amendment by Declarant. Amendments to this Declaration made prior to the date that Declarant turns over operation to the Association shall become effective when approved in writing by Declarant and recorded in the Office of the Register of Deeds of Pottawatomie

County, Kansas; provided, however, that such amendment shall not materially affect the right of any then existing mortgage holder or Owner. Declarant reserves the right to correct errors that would prevent the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions contained herein from running with the land, and any such amendments shall not be construed as materially affecting the right of any then existing mortgage holder or Owner.

13.03 Amendments, Other. Amendments to this Declaration other than those provided in Section 13.02 shall be proposed in the following manner:

- A. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment shall be considered.
- B. A resolution adopting a proposed amendment may be proposed by any Owner and may be adopted by a three-fourths (3/4) vote of the Members of the Association.
- C. A copy of each amendment shall be filed with the Office of the Register of Deeds of Pottawatomie County, Kansas.

Article XIV

Annexation of Additional Property

14.01 Development of the Project. Additional Property may be annexed to and become subject to this Declaration as hereinafter set forth in this Article XIV at such time as Declarant may elect, without the consent or assent of the Association.

14.02 Requirements. Additional Property annexed under this Article must be contiguous to the existing Subdivision and must be encumbered with this Declaration simultaneously with the acquisition of the land. Such Additional Property shall be so encumbered by way and to the extent of a Supplemental Declaration.

14.03 Supplemental Declarations. A Supplemental Declaration shall be a writing in recordable form which annexes Additional Property to this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights and other provisions of this Declaration. Notwithstanding the foregoing sentence, Supplemental Declarations may contain such additions and modifications of said covenants, conditions, restrictions, liens, assessments, easements, privileges, rights and other provisions, with respect to the Additional Property, as may be determined by Declarant in its sole discretion.

Article XV

Exemption of Declarant from Restrictions

Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, its employees, agents and subcontractors, or parties designated by it in connection with the construction, completion, sale, or leasing of the Lots, or any part of the property owned by Declarant.

IN WITNESS WHEREOF, Declarant has executed this Declaration this ____ day of _____, 2012.

WHISPERING MEADOWS DEVELOPMENT, LLC

Douglas W. Phelps, Member

ACKNOWLEDGMENT

State of KANSAS, County of RILEY, ss:

BE IT REMEMBERED on this ____ day of _____, 2012, before me the undersigned, a notary public in and for the county and state aforesaid, came Douglas W. Phelps, member of Whispering Meadows Development, LLC, said person being known to me to be the same person who executed the above instrument and acknowledged the same to be his voluntary act and deed for and on behalf of said LLC.

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

Notary Public

My appointment expires: