

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND DISCLOSURES FOR ANGEL FIRE**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND DISCLOSURES FOR ANGEL FIRE ("Declaration") is made effective the 21st day of June, 2001, by Caywood, L.L.C., a Kansas limited liability company, created under the laws of the State of Kansas (hereinafter referred to as the "Developer").

WITNESSETH, THAT:

WHEREAS, Developer deems 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 through the proper development thereof and adequate maintenance and government of the Common Area (as hereinafter defined) and the rights of the Owners (as hereinafter defined); and

WHEREAS, the Association (as hereinafter defined) will be incorporated for the purpose of exercising certain powers and functions hereunder; and

WHEREAS, Developer will convey title to all of the Lots (as hereinafter defined), subject to the covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, Developer hereby covenants, agrees and declares 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 of 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 this Declaration and are defined as follows:

1.1 "Association" shall mean and refer to the Angel Fire Homeowners' Association (or such other corporate name as Developer shall hereafter select), a nonprofit corporation, incorporated under the laws of the State of Kansas, its successors and assigns.

1.2 "Association DRC" shall mean and refer to the Design Committee responsible for all matters pertaining to fences; certain drainage matters; 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.

1.3 "Board" shall mean and refer to the Board of Directors of the Association.

1.4 "Common Area" shall mean those portions of the Property owned by Developer or the Association for the common use and enjoyment of the members of the Association, as follows:

Reserves A, B, C, D, E and F, Angel Fire Addition Wichita, Sedgwick County, Kansas

1.5 "Design Committee" shall mean the Association DRC and/or New Construction DRC, as applicable, according to the context.

1.6 "Developer" shall mean Caywood, L.L.C., a Kansas limited liability company, and its successors and assigns. If Developer assigns less than all of its rights, obligations and

*Triplett, Alcott & Associates
1999 a Rock Rd Suite 200*

interests to one or more entities, the term "Developer" as used herein shall thereafter refer to both the Developer and all successor developers unless the context clearly means otherwise.

1.7 "Lot" shall mean and refer to each platted Lot within the Property upon which there may be constructed a single-family residence.

1.8 "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 Owners who have sold their interest under executory contract. 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.

1.9 "New Construction DRC" shall mean and refer to the Design Committee responsible for all matters pertaining to the construction of the initial residence and related improvements as referenced in Section 8.1 hereof, together with other responsibilities as provided elsewhere herein.

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:

Angel Fire Addition, Wichita, Sedgwick County, Kansas

1.12 "Structure" shall mean and include any thing or device, the placement of which upon any Lot may affect the drainage or appearance of such Lot, including, by way of illustration and not limitation, any building, garage, gazebo, porch, shed, greenhouse or bathhouse, covered or uncovered patio, swimming pool, tennis court, clothesline, sandbox, radio or television antenna, fence, curbing, paving, wall, satellite dish, signboard 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.

1.13 "Water Lots" shall mean Lots 31-52, inclusive, Block B; and Lots 2-17, inclusive, Lots 23-25, inclusive, Lots 29-37, inclusive, Lots 39-41, inclusive, and Lots 42-46, inclusive, all in Block C of the Property.

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 by the Member, subject to the following exceptions and conditions:

A. When any such Lot 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 vote should be cast, no vote shall be allowed with respect to such Lot. Fractional votes shall be permitted, but in no event shall more than one vote be cast with respect to any Lot.

B. Any Member who is in violation of this 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. Notwithstanding the foregoing, Developer shall be entitled to six (6) votes for each single Lot owned by it.

D. The Board shall adopt such Bylaws, consistent with the terms hereof, the Articles of Incorporation of the Association 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.

2.3 Formation. Developer shall form the Association promptly upon execution hereof, and shall convey legal title to the Common Area to the Association. Developer shall convey the Common Area to the Association by special warranty deed, in an "AS IS" condition subject to all easements, rights-of-way, mortgages, encumbrances, and liens for non-delinquent ad valorem taxes and special assessments. At such time as residences are occupied on five Lots, Developer shall appoint residents to serve on the Board along with a representative of Developer. Promptly thereafter, the Board shall elect the officers and adopt the bylaws of the Association. The Board shall diligently carry on the duties of the Association as specified in this Declaration.

ARTICLE III

PROPERTY RIGHTS IN THE COMMON AREA; MAINTENANCE

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

A. The right of the Board to establish rules 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 to limit the number of guests of Members;

C. The right of the Board to establish, on behalf of the Association, uniform rules and regulations pertaining to the use of the Common Area, including, but not limited to, the recreational facilities thereof;

D. 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 mortgagees shall be subordinate to the rights of the Members;

E. 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, and for a period not exceeding sixty (60) days for any single infraction of the rules and regulations of the Association. 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 this Declaration or rules or regulations have occurred with regarding to the Common Area;

F. To charge reasonable admission and other fees for the use of any recreational facilities situated on the Common Area;

G. The right of the Board, on behalf of the Association, 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

H. The covenants and restrictions contained herein.

3.2 Delegation of Use. 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 charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his or her Lot.

3.4 Subsidy of Common Area Operations. As of the date Developer conveys the Common Area to the Association, Developer will own most of the Lots. It is in the Developer's interest, as well as 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. Developer hereby agrees to supplement the Association revenues by paying, upon reasonable notice, an amount equal to the difference between (a) the amount of the revenue required by the Approved Budget then in effect for the maintenance and operation of the Common Area and the street rights-of-way for the applicable period, and (b) the aggregate amount of revenues to be received by the Association due to the timely payment of assessments by all non-exempt Owners during the applicable time period, plus the amount of revenue reasonably expected to be received during such time period as transfer assessments under Section 4.2 B of the Declaration. Promptly following appointment of the Board as referenced in Section 2.3 above, the Developer and 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 to Developer on or before December 1 of each subsequent calendar year a budget for the next ensuing calendar year. The intent of Developer and 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 Developer for construction of improvements within the Common Area. Developer shall respond as soon as reasonably possible to the each budget proposed by the Association, and, thereafter, the Association and Developer shall endeavor in good faith to mutually agree upon the Approved Budget for such year; provided, if such parties are unable to so agree by January 30 following submission of the proposed budget to Developer, the Approved Budget in effect for the immediately preceding calendar year shall be the Approved Budget for the new year. Notwithstanding anything appearing herein, Developer shall have no obligation to pay any portion of the costs incurred by the Association for the construction of improvements within the Common Areas or street rights-of-way or for hiring or engaging third parties to manage or otherwise render services to the Association, other than for lawn/water sprinkler system care. Developer and the Association hereby agree that Developer's obligation to supplement Association revenues as provided in this Section above shall discontinue as of the date within the calendar year during which the amount of revenues required by the Approved Budget will be generated due to the timely payment of assessments by non-exempt Owners during such calendar year, together with the reasonably anticipated transfer assessments referred to above.

3.5 Conveyance of Portions of the Common Area. Notwithstanding anything to the contrary provided herein the Association may convey portions of the Common Area to the Owner's of adjoining Lots, or other adjoining real property owners, from time to time, and thereupon such portions shall cease to be Common Area, and, upon such conveyance, no Member shall have any easement or right of access thereto.

3.6 Common Area and Street Rights-of-Way, Amenities, Improvements and Maintenance. Developer shall either pay for or finance (as referenced in Section 9.2 below) the initial cost of constructing or installing the original improvements and amenities to the Common Area and the street rights-of-way adjacent to the Property. Developer shall construct or install the improvements or amenities listed on Exhibit "A" attached hereto; provided, Developer and/or the Association may install additional amenities or improvements as either elects from time to time. Developer, its contractors and any subcontractors, and the employees thereof, have an easement and right of access upon the Common Area for the construction and installation of Common Area improvements and amenities. Following completion of the construction and installation of such amenities and improvements to the Common Area and/or street rights-of-way, then, subject to Developer's obligations under Section 3.4 above, the Association shall be fully responsible, at its expense, for the maintenance and operation of such improvements and amenities. The Association shall, subject to the Developer's payment obligations under Section 3.4 and its obligation for construction and installation hereunder, be responsible for all costs of owning, maintaining and operating the Common Area and improvements thereon, including, but not limited to, all fertilizing, watering and replacement of lawns, shrubs, flowers, plantings and trees following the initial planting thereof, the mowing of lawn areas, payment of taxes and assessments, payment of liability and property insurance premiums, and lake and swimming pool operations, maintenance and improvements, if applicable.

ARTICLE IV

COVENANTS CONCERNING ASSESSMENTS AND LIENS

4.1 General Assessments. For the purpose of providing funds for the operation of the Association, and for the 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 Association shall have the right, in each year, to assess against each Lot a general assessment, which general assessment shall subject each Lot to a lien to secure payment thereof. The general assessment may be paid annually, monthly or quarterly, as specified by the Board from time to time. The initial annual assessment shall be in the amount of One Hundred Eighty and no/100 Dollars (\$180.00) and shall commence *Jan 1st*, 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 on the date title is conveyed to such Owner and is not dependent upon there being a residence erected thereon.

4.2 Basis of Assessment; Exemption; Transfer Assessment; Proration.

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, except that in view of the substantial expenditures incurred by Developer in connection with the Common Area, Developer, and any properly licensed general contractor owning a Lot for the purpose of constructing 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 Developer or such contractor holds legal title thereto (provided, the assessment exemption for such general contractors shall not extend beyond twelve (12) months from the date an applicable Lot is conveyed to such contractor).

B. At any time legal title to a Lot transfers, the transferee shall pay at the time of the closing of such transfer to the working capital of the Association an amount equal to Two Hundred Dollars (\$200.00); provided the requirement to pay such a fee shall not apply to either:

i. the transfer by Developer to an affiliated entity, or the transfer of Developer's interest as developer of the Property; or

ii the transfer of title to any Lot to a properly licensed general contractor for purposes of constructing a residence thereon for the purpose of offering the same for sale.

C. 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 subparagraphs A and/or B 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 annual general assessment may not be increased for any subsequent year by the Association, to an amount which is more than 20% compounded above the annual assessment for the previous year, without a vote of the membership of the Association.

B. The annual assessment for any year may be increased to an amount greater than that permitted by subparagraph A of this Section only by an affirmative vote of two-thirds of the vote of the Members in attendance, who are voting in person or by proxy, at meeting duly called for such purpose.

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 hereunder. No such special assessment shall be valid unless two-thirds of the Members present, in person or by proxy, at the meeting duly called approve the same. Further, the Association 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 shall result in an expenditure by the Association for repair or remedy. 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 of Incorporation 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 Lot and shall so continue until the amount of said charge and assessment, together with all costs, late fees, 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 (including, without limitation, trash 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 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 has 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 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 Developer and/or the Association shall have the right to bid on a Lot at the foreclosure sale. The foreclosure proceedings with respect to liens established pursuant to this Declaration, may be foreclosed at anytime within fifteen (15) years following the filing of the Notice of Delinquency; provided, if at the expiration of such fifteen (15) year period suit shall have been instituted for collection of the assessment, the lien shall continue until payment in full or termination of the suit and sale of the applicable Lot.

4.9 Subordination to Mortgages. Each and every assessment and lien, together with any costs, penalties and interest reserved under this Declaration, shall be subordinate to the lien of any valid bona fide mortgage which has been, or may hereafter be, given in good faith and for value on any interest of any Owner covered by this Declaration. Any subsequent Owner of any Lot purchased at foreclosure shall be bound by the restrictions, assessments and liens set out in this Declaration, not including, however, any assessment or lien arising prior to 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 a deed therefor, 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 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) or other sums 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 5% of the unpaid amount and the unpaid amount shall bear interest at the rate of fifteen (15%) percent 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.

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 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 New Construction DRC, the following construction guidelines shall be complied with:

A. Roof. As to all Lots, and subject to such waivers or modifications as are permitted by the New Construction DRC, all roofs on all building improvements on any Lot shall be wood, tile or Approved Composition. As used in this Declaration, "Approved Composition" shall mean Heritage II Weatherwood or such other equivalent composition roofing materials as are approved in writing by the New Construction DRC from time to time.

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

C. Initial Policy Guidelines. The following initial policy guidelines have been established, to all Lots and the same may be waived, changed or revoked from time to time by the appropriate DRC pursuant to the provisions of Section 5.01 hereof but without the necessity of filing any formal amendment to this Declaration. Accordingly, inquiry should be made of the appropriate Design Committee to determine current policy guidelines.

i. Front yard areas, exclusive of improvements, shall be at least eighty percent (80%) grass.

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 goals shall be either white or glass. No "home-made" basketball backboards or supports shall be permitted. All basketball goals and supports shall be first approved by the Association DRC.

iv. All recreation and play equipment shall be located in the rear of any Lot except for basketball goals.

v. No storage sheds shall be permitted except as may be specifically approved by the Association DRC as to design and materials; provided, no such sheds shall be constructed on Water Lots.

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 a 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

xii. setback area applicable to the Lot; provided that the same shall not exceed one story in height and are allowed by applicable building codes.

xiii. All firewood stacks in excess of two cords of wood shall be screened from view from neighboring Lots.

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

xv. As soon as practicable after completion of a dwelling on a Lot, the Owner thereof shall plant a lawn and at least twelve (12) perennial shrubs and/or bushes and trees on the Lot, with a minimum of four (4) trees being planted in the yard of the Lots and the trunk of each tree being a minimum of two (2) inches in diameter.

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 for 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 Owners' 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 which have been installed.

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 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 New Construction DRC. Except as otherwise approved by the New Construction DRC, the exterior of detached garages, storage buildings, and other buildings constructed on a Lot shall be constructed with the same material as the residence.

5.6 No Excavations. No excavations, except such as are necessary for the construction of a residence or improvements, shall be permitted on any Lot without written permission of the New Construction 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 No Businesses Allowed. Except as otherwise specified in this Declaration or as authorized herein or by the Board, no retail, wholesale, manufacturing or repair business of any kind, shall be permitted on any Lot or in any residence or appurtenant Structure erected thereon, even though such activity does not include the employment of any additional person or persons in the performance of such services. The following home occupations are hereby approved: residential home building contractors; Amway, Avon and similar sales representatives; child care; hair dressers; and realtors, so long as insubstantial traffic (that is, except in circumstances otherwise determined by the Board to be appropriate due to applicable parking limitations, no more than four vehicles parked at the residence by visitors at any one time) is associated with such activities.

5.9 Temporary Buildings. Except as authorized by the Board, no basement of a 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 a temporary character be used for human habitation.

5.10 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 Developer may install for construction, administrative and sales purposes a trailer or trailers upon a Lot(s).

5.11 Animals. No birds, animals or insects, except dogs, cats or other household pets, shall be kept or maintained on any Lot. Under no circumstances shall any commercial or agricultural business enterprise involving the use 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.

5.12 Signs. Except as authorized by the Board, and except for those installed by Developer, its marketing representatives or builders or contractors as authorized by Developer, 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.

5.13 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 corner. Trees, shrubs and other plants which die shall be promptly removed from the Property.

5.14 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 any of the Common Area; 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 or 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 Owners thereof.

5.15 Vehicles and Trailers. Except as authorized by the Board, no automobile, truck, motorcycle, motorbike, boat, house trailer, boat trailer or trailer or any other vehicle of any type or description may be stored upon any of the Common Area, nor may any boat, boat trailer, house trailer, camper, recreational motor vehicle, camper trailer or similar items be stored in the open on any Lot.

5.16 No Joyriding. Except as otherwise authorized by the Board, motor scooters, minibikes 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.

5.17 Requirement to Keep Lot in Good Order and Repair. Each Owner (other than Developer; provided it shall cause all Lots owned by it to be mowed periodically) 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 buildings 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. If, in the opinion of the Board, any Owner fails to perform the duties imposed by the preceding sentence, 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 agents and employees, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot or such improvements, and the cost thereof shall be a binding personal obligation of such Owner, and the Board may establish a special assessment on such Lot for the cost

thereof, together with interest thereon at the rate specified in Section 4.11 above, and enforce the same as provided in Article IV hereof.

5.18 Division of Lots Prohibited. Except as authorized by the New Construction 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.

5.19 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 Developer or the Board.

5.20 Boating; Lake Use. 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. Any use of any lake, pond or other body of water shall be strictly in compliance with the rules and regulations adopted from time to time by the Board.

5.21 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, if any, permitted by the rules adopted by the Board from time to time concerning such use.

5.22 Fences.

A. Developer 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 Developer, in its sole discretion, within any of the fence or wall easement areas, any entry areas shown on the plat of the Property, within other easement areas established by other easement instruments, or within Common Area. With respect to any Lot on which Developer 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 streets without the approval of the Developer or the Association DRC.

B. Except as provided in paragraph A immediately above and subject to paragraphs C and D immediately below, all Lots, other than Water Lots, may utilize fences made of black wrought iron, a Good Neighbor Fence or both, 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 not be installed to the front of a residence constructed on a Lot. No fences shall be constructed or maintained on Water 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 drainageways established by the master drainage and grading plan referenced in Section 5.24 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.

5.23 Model Homes and Real Estate Offices. Notwithstanding anything to the contrary appearing elsewhere in this Declaration, any Lot owned by Developer, or any person or entity so authorized by Developer, 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.

5.24 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 Lot grading and drainage plans, requirements and standards relating to**

water drainage from such Lot to other Lots and/or the Common Area, as such requirements, standards and plans are established by the City and/or County within which the Property is located, Developer and the Association DRC. Developer has established a master grading and drainage 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. Attached hereto as Exhibit "B" is an Example of Lot Drainage Requirements which illustrates 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 and; provided, so long as Developer owns a Lot, the Developer (due to the unique expertise of its owners, managers, and/or officers) shall have the right to override any decision of the Association DRC under this Section 5.24 upon the specific request of any Owner and, in the event Developer so overrides a specific decision of the Association DRC, any subsequent reference in this Section 5.24 to the Association DRC shall refer to the Developer in lieu of the Association DRC as to the specific decision in question. 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 20 percent 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. Developer 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 plan referred to above. It shall not be Developer's obligation to enforce compliance with the master grading and drainage plans.

5.25 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 within the Lot. Some Lots may have previously been located in a designated flood plain, in which situations the Developer, 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 Wichita, Kansas, the Kansas Department of Water Resources and the Federal Emergency Management Agency. Prior to construction of a 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 agencies, consider inherent risks and determine whether to obtain and maintain flood insurance. Neither Developer, building contractor or brokers involved in the development of the residential area, sale of the Lot, or construction of a residence on a Lot, shall have any liability or responsibility for any such damage resulting from such water encroachment.

5.26 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.

5.27 Airport. Notice is hereby given that the Property may be located in the area of an airport and each purchaser of a Lot assumes that risk (if any) associated therewith.

5.28 Boat Docks. No boat docks, piers, moorings, boathouses, slips or similar Structures may be constructed within any Common Area or Lot.

5.29 Artificial Vegetation. No artificial flowers, trees or other vegetation shall be permitted on the exterior of any residence or in the yard.

5.30 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.

5.31 Erosion. Owner shall prevent erosion and pollutant discharges and runoff from their respective Lot onto the Common Areas and other Lots.

ARTICLE VI

THE ASSOCIATION

6.1 Powers and Duties.

A. The Association shall have the rights and powers as set forth in its Articles of Incorporation 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 own, maintain, water, fertilize, mow and keep clean the Common Area and the portion of the street rights-of-way between the Lots and Common Area and the public streets within or adjacent to the Property. It further shall maintain, repair and/or replace the decorative entrance treatments, fence(s) and walls erected and installed by Developer 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 shall have the right to create and establish reserves for the repair, restoration or replacement of the Common Area and any improvements therein.

F. 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.

G. The Association shall be empowered to determine the manner and extent of operating, maintaining, improving, restoring, mowing, trimming and keeping clean the Common Area.

H. The Board may 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 costs 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.

I. 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 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.

J. 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 may engage a manager, secretaries, engineers, auditors, accountants, legal counsel and other employees or consultants as may be reasonably necessary for the discharge of its duties hereunder. The expenses of committees, the salaries of a manager and other employees and the fees of consultants shall be established and paid for by the Association, subject to Developer's approval as required in Section 3.4 above.

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.

6.4 Repair and Restoration of Improvements on Common Area. Should any improvements on the Common Area, or any part or portion thereof, 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.

6.5 Providing Grading Information to Owners. The Association shall designate a committee of Members to meet with new Lot Owners for the purpose of informing them regarding grading and drainage matters concerning the Lots. Such educational process is vital in order to avoid water drainage problems within the Property. Either before or promptly following the purchase of a Lot, each person must contact a representative of the Association and ask to be informed concerning grading and drainage matters relating to the Property.

6.6 Opposition To Zoning and Other Matters. Neither the Board nor any Member of the Association may express any opinion on behalf of the Board or the Association pertaining to any applications or requests concerning rezoning, community unit plan approval or amendment, variances, or other land use activity relating to any land in the vicinity of the Property. This prohibition is necessary due to the fact that not all Members will have the same opinions concerning the applicable request or application. Nothing herein is intended to restrict any Member or member of the Board from expressing his or her personal opinions without indication that such opinions represent the opinion of the Association or the Board.

ARTICLE VII

EASEMENTS AND ACCESS CONTROL

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

7.2 Some Easements Not Shown on Plat. Owners should not rely on the plat of the Property to determine the location of utility or other easements or rights-of-way. Such easements or rights-of-ways are often created by separate instruments not shown on the plat.

7.3 Easements in Favor of Developer and Association. Developer 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 Common Area, together with street rights-of-way, 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, 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, Developer specifically reserves unto itself, its successors and assigns, and for the Association, 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 and/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. Developer may have installed a sign advertising the residential development on a Lot or within a Common Area prior to the sale of such Lot or transfer of the Common Area to the Association. Developer, its successors and assigns, hereby retain an easement for the placement, and replacement, of any such advertising sign until all Lots have been sold by Developer or its successors and assigns.

ARTICLE VIII

DESIGN COMMITTEES: ARCHITECTURAL CONTROL

8.1 Committees. Two Design Committees shall have responsibility for the review, approval or disapproval of plans relating to the construction of Structures on each Lot. One committee shall be the New Construction DRC, which shall review, approve or disapprove all matters pertaining to the construction and completion of the initial residence and related Structures on each Lot. The second committee, the Association DRC, shall review, approve or disapprove all specifications, plans and other matters pertaining to fencing; drainage matters as referenced in Section 5.24 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.

8.2 Membership.

A. The original members of the New Construction DRC shall be up to three (3) persons, to be appointed by Developer. Upon the death or resignation of any member of the New Construction DRC, or in the event Developer desires to remove any member, Developer shall appoint a successor, unless at such time Developer has relinquished its rights hereunder as hereinafter provided. Following Developer's relinquishment of its right to designate the members of the New Construction DRC, the Association DRC shall have full authority to designate all successor members. The decision of a majority of the New Construction DRC shall be binding; provided, the New Construction DRC may delegate its rights and responsibilities hereunder to one or more of its members from time

to time. Developer may relinquish its rights under this paragraph by executing and recording in the real estate records a written instrument giving notice of its intent to do so, and providing a copy thereof to an officer of the Association; in such event, the Association shall have the authority of Developer under this paragraph. The New Construction DRC may delegate its rights and responsibilities on a limited basis to the Association DRC from time to time without relinquishing its rights and powers hereunder beyond the terms of such limited delegation.

B. The original members of the Association DRC shall be up to three (3) persons, to be appointed by the Board following its establishment pursuant to Section 2.3 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.

8.3 Approval Required of Plans and Specifications. Except as otherwise specifically provided in this 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, exterior materials, exterior lighting, location, general landscaping plans, and exterior color scheme, therefor shall have been submitted to and approved in writing by the New Construction 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 grading plan, nor shall any new Structure be placed on such Lot, unless plans therefor 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 applicable Design Committee, including, as requested by such committee, (i) a site plan of the Lot or Lots, showing the nature, exterior color scheme, kind, shape, size, height, materials and location 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 grading and drainage plan.

8.4 Decision Final. Whatever shall be the decision of either of the Design Committees hereunder, its decision shall be final and conclusive.

8.5 Rules and Statements of Policy. The Design Committee, or either of them, may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements 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 applicable Design 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 Committee to approve or disapprove any feature or matter subject to approval or to waive the exercise of the Design Committees' 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 use on any Lot of any plans or specifications shall not be deemed a waiver of the applicable Design 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 that 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 this 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. In the event that an applicable Design Committee shall fail to approve or disapprove any plans and specifications as herein provided within thirty (30) days after submission thereof, the same shall be deemed to have been approved, as submitted, and no further action shall be required.

8.6 Violation. If any Structure shall be 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 applicable Design Committee pursuant to the provisions of this Article VIII, such 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 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. If, fifteen (15) days after the notice of such a violation, the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, the Association shall have the right, through its agents and contractors, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the Association may establish a special assessment on such Lot for the cost thereof and enforce the same as provided in Article IV hereof.

8.7 No Liability. Neither the Design Committees, the Developer, the Association, the Board, nor any officer, director, member, representative, designee, 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 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 rules, regulations, restrictions pursuant to this Declaration or the Associations' articles of incorporation or bylaws, responsibilities or functions under this Declaration, including, but not limited to, this Article and Section 5.24 hereof.

ARTICLE IX

NOTICE OF POSSIBLE SPECIAL ASSESSMENTS; AMENITY FINANCING

9.1 Assessments. Notice is hereby given to each purchaser of a Lot that special assessments will be spread by the City of Wichita, 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 Wichita to major arterial streets in the vicinity of the Property.

9.2 Amenity Mortgage Financing. Notice is hereby given that Developer may obtain conventional mortgage secured financing in order to pay the cost of installing or constructing amenities within the Common Area for the use and benefit of the Members. Assessments collected by the Association under Article IV hereof shall be utilized for repayment of such financing in accordance with the terms of such financing.

ARTICLE X

ADDITIONAL LAND

Developer may in its discretion, from time to time, during the twenty (20) year period following the date hereof, annex additional real property, including additional Common Areas, into the Property, and thereby subject the same to the terms, provisions and conditions of this Declaration (as provisions hereof may be supplemented, deleted or modified solely as to the annexed land specifically by the document annexing such additional real property), by the execution and filing for recordation with the Register of Deeds of the County in which the Property is located, of an instrument expressly stating an intention to so annex and describing such additional property to be so annexed. During the twenty year period commencing with the date of the recordation of this Declaration, Developer, its successors and assigns, may annex such additional real property in its absolute discretion. From and after the expiration of such twenty year period, such additional land may be annexed; provided that such annexation is approved by a majority of the Members of the Association in attendance at a special or annual meeting of the Members.

ARTICLE XI

MISCELLANEOUS

11.1 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 and Developer provided for in this Declaration.

11.2 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 of the Property. 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 issued pursuant to law relating to the use 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 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.

11.3 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.

11.4 Assignment of Powers. Any and all rights and powers of Developer provided for in this Declaration and any modification or amendment hereof may be delegated, transferred, assigned, conveyed or released by Developer to any third party and/or to the Association. The Developer's assignee shall accept the same upon the recording of a 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 prior to the effective date of the assignment.

11.5 Waiver and Exceptions. The failure by the Association, Developer, 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.

11.6 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.

11.7 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.

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

11.9 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, Developer, 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 percent (75%) of the Lots, has been recorded, agreeing to abolish or change these covenants, conditions and restrictions, in whole or in part.

11.10 Amendments. Amendments to this Declaration may be made by Developer, or its successors and assigns, in its sole discretion, so long as Developer (or its successors and assigns) retains ownership of a minimum of twenty-five percent (25%) of the Lots within the Property. Following the date Developer, its successors and assigns, no longer owns a minimum of twenty-five percent (25%) of the Lots, any provision contained in this Declaration may be amended, repealed, or additional provisions added to this Declaration, as follows:

A. 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.

B. Resolution. A resolution adopting a proposed amendment may be proposed by the Board or Developer. 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, following the date the Developer no longer owns a minimum of twenty-five percent (25%) of the Lots, 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.

Notwithstanding the foregoing, so long as Developer, or any assignee thereof, owns one (1) Lot, any such amendment shall require the written consent of Developer, and, further, no amendment materially impairing the rights of any mortgagee shall be binding on such mortgagee unless consented to in writing by such mortgagee.

11.11 Mortgage Protection Clause. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any mortgage made in good faith and for value, but all of these covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure sale or deed in lieu thereof.

11.12 Enforcement and Arbitration.

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 a Lot).

B. The Developer, 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, (a) this Declaration, including, but not limited to, an action to seek enforcement of and/or to prevent the breach of any of the covenants and restrictions contained herein, (b) pertaining to a Lot or all or any portion of the Common Area, or the condition thereof, and (c) any claim asserted by the Association, an Owner or Owners, former Owner(s), and contract purchasers, against Developer for any reason and/or any real estate broker, agent or sales person participating in the sale of a Lot, shall be resolved solely and

exclusively by arbitration in accordance with the Kansas Uniform Arbitration Act (the "Act"), as modified from time to time, in accordance with the procedure set out below. However, the provisions of this Section 11.12 shall not either prevent a party from obtaining a temporary injunction from a court of general jurisdiction pending designation of the arbitrators, from foreclosure of any liens established pursuant to this Declaration or from enforcement of any order or decision of the arbitrators as provided herein. After the arbitrators have been selected and accepted such appointment, any temporary injunction order by the court of general jurisdiction shall be dissolved, and the arbitrators shall have exclusive power to resolve the subject matter of such injunction. The arbitration procedure is as follows:

i. Any of the aforementioned parties may request arbitration of any matter in dispute. The party requesting arbitration shall do so by giving written notice to the other party/parties, specifying in the notice the name and address of the person designated to act as arbitrator on the first party's behalf. Within ten (10) days after the service of this notice, the other party/parties shall give notice to the first party, specifying the name and address of the person designated to act as arbitrator on the second party's/parties' behalf. If the second party/parties fails to notify the first party of the appointment of such party's arbitrator within the time specified, then the first arbitrator appointed shall appoint the second arbitrator. The two arbitrators so chosen shall meet within ten (10) days after the second arbitrator is appointed and the two arbitrators shall together appoint a third arbitrator. If the two arbitrators are unable to agree upon that appointment within twenty (20) days after the appointment of the second arbitrator, then the parties to such dispute may apply, upon notice to the other party, to the Kansas District Court located in the County in which the Property is located for the appointment of the third arbitrator. In rendering their award, the arbitrators shall have no power to modify any of the covenants, conditions and restrictions contained herein.

ii. The arbitrators so selected must be at least thirty (30) years old; may not be an Owner or occupant of a Lot; and shall have a minimum of five (5) years of experience in the residential real estate business, as either a sales agent, a residential developer or home builder.

iii. The arbitrators may grant any remedy or relief the arbitrators deem just and equitable and within the scope of the agreement of the parties. The arbitrators shall specifically have the power to order equitable relief, including, but not limited to, injunctions or specific performance. The award resulting from any arbitration hereunder shall be final and binding on the parties and judgment may be entered on the award and shall be enforced in accordance with the laws of the State of Kansas. If as part of any award any party is ordered to pay another party money, the amount to be so paid shall accrue interest at the rate of 15% per annum from 15 days following the date of the award until the same is paid in full.

iv. Each party shall pay the fees and expenses of the original arbitrator appointed by that party, and the fees and expenses of the other arbitrator and all other expenses of the arbitration shall be borne equally by the parties. Each party shall bear the expense of his own counsel, experts, and preparation and presentation of proof.

11.13 Exclusion of Applicability. The Developer and its assigns shall have the power at any time to waive any or all of the restrictions or covenants contained herein as to the Lots which are unimproved and under its ownership or the ownership of its assigns or licensed residential construction contractors at the time of such waiver. The Developer specifically reserves the right to carry on its business in the Property, so long as it owns a Lot, including, but not limited to, maintaining sales offices, model homes, business offices and other facilities necessarily convenient for the business of Developer.

11.14 Subdivision Disclosure And Purchaser Acknowledgment. Developer has prepared a Subdivision Disclosure And Purchaser Acknowledgment concerning Angel Fire

Addition ("Disclosure"), which discloses important information concerning the Property. The Disclosure is subject to change from time to time by the Developer or the Association. At the time any Owner transfers legal title to a Lot, such Owner shall, as part of the transaction, cause its transferee to execute the Disclosure and return the same to the Developer or the Association.

11.15 Electrical Retail Wheeling. While not applicable as of the date hereof, it is possible in the future that either the Developer or the Association shall contract with an electrical supplier to supply electricity to all Lots and the Common Area. It is anticipated such a contractual arrangement will require that all residences on the Lots to solely utilize electricity supplied from such supply source for the duration of such contract and each Owner shall comply with such requirements. Additionally, in the event the electrical supplier, as part of its supply contract with either the Developer or the Association, pays Developer or the Association any funds, then the Developer or Association, as applicable, shall reimburse the Developer for any deposits or payments paid by Developer to permit or arrange for electrical services to the Property and any excess funds shall be remitted or retained by the Association.

11.16 Twin Homes; Multifamily; Commercial And/Or Industrial Development. Each Owner is hereby advised that real property in the vicinity of the Property may be developed and operated for twin homes, apartments and other multifamily, commercial and/or industrial purposes. Each Owner is responsible to inform himself or herself concerning the possibility of such developments and no Owner shall rely on any statements made by sales persons concerning future development or uses of any such real property. Developer does not have any responsibility to advise the Owners or the Association concerning any actual or proposed zoning or other land use proceedings relating to any real property outside the Property.

IN WITNESS WHEREOF, Developer has executed this Declaration the day and year first above written.

DEVELOPER:

CAYWOOD, L.L.C.

By: 

Matthias F. Eck

, Manager