

The State of Kansas  
County of Johnson

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTION

## FOR CREEKSIDE ESTATES

REPLAT OF A PART OF TRACT "A" CREEKSIDE, FIFTH PLAT  
AND AMENDING COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR ALL OF CREEKSIDE PHASE I, II, III, IV, AND V.

## OVERLAND PARK, KANSAS

This DECLARATION is made this 16 day of March, 1992 by Thompson & Sailors Homes, a joint venture consisting of Edward B. Thomson Enterprises, Inc. A Missouri Corporation and Sailors Home Building Company, a Kansas General Partnership (hereinafter referred to as "DECLARANT"), which joint venture is successor Declarant and assignee of Craig Zyskind Midwest Development Corp., f.k.a. W. Criag Midwest Development Corp., a Kansas Corporation.

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain real property referred to in Article II and described within Exhibit A of this Declaration, which represents the first, second, third, fourth and fifth phase of a master community unit development which will be known as "CREEKSIDE" and the first phase of a master community unit development which will be known as "CREEKSIDE ESTATES", all of which is herein collectively referred to as "CREEKSIDE". The Declarant also owns adjacent and contiguous real property on which subsequent residential development phases will take place. Declarant desires to take advantage of the presently-existing unique geographical features of the subject property and proposes to establish and implement highly sophisticated plans for residential living, recreation and aesthetic considerations. In view of the various unusual and uncommon features of Declarant's long-range plans, Declarant desires to impose these restrictions on the subject property and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to control and maintain the first-class quality and distinction of the Creekside community project. The restrictive covenants herein below will also comply with the requirements of local governmental officials and the Comprehensive Zoning Ordinance of the City of Overland Park, Kansas and utility companies to better ensure the care and maintenance of the common areas and future amenities within Creekside and establish an agency for preserving the best interests of the residents of Creekside after completion of all Development and Construction therein;

NOW, THEREFORE, the real property referred to in Article II and described within Exhibit "A", and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes collectively referred to herein as "the Covenants and Restrictions") hereinafter set forth:

**ARTICLE I**  
**CONCEPTS AND DEFINITIONS**

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall otherwise clearly indicate or prohibit) shall have the following concepts and meanings:

- (a) "Association" shall mean and refer to the entity which will have the power, duty and responsibility of maintaining and administering the Properties and the Common Properties and collecting and disbursing the assessments and charges hereinafter

prescribed. The Association shall, commencing on the date of recordation of this Declaration, be incorporated under the laws of the State of Kansas and hold its first shareholder meeting within 60 days of filing.

- (b) "Properties" shall mean and refer to all Existing Property, and any additions thereto, as are subject to this Declaration or any Supplemental Declaration prepared and filed of record pursuant to the provisions of Article II hereof. Declarant presently envisions that additional properties will be Added to the scheme of this Declaration.
- (c) "Common Properties" shall mean and refer to any and all areas of land within the Properties which are known, described or designated as a common green, common areas, recreational easements, greenbelts or open spaces on any recorded subdivision plat of the Properties or intended for or devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or may hereafter be constructed thereon. The Declarant proposes to hold record title to the Common Properties, consistent with the objectives envisioned herein and subject to the easement rights herein of the Members to use and enjoy the Common Properties, for and indefinite period of time and at a point in time (deemed appropriate and reasonable by the Declarant but prior to the tenth (10<sup>th</sup>) anniversary of the recordation of this Declaration) after the Association has been incorporated, record title to the Common Properties will be transferred from the Declarant to the Association. Declarant reserves the right to execute any open space declarations applicable to the Common Properties which may be permitted by law in order to reduce property taxes.
- (d) "Lot" shall mean and refer to any plot or tract of land shown upon any recorded subdivision map(s) or plat(s) of the properties, as amended from time to time, which is designated as a lot therein and which is or will be improved with a residential dwelling in conformity with the building restrictions herein.
- (e) "Owner" shall mean and refer to each and every person or business entity who is a record owner of a fee or undivided fee interest in any Lot subject to these Covenants and Restrictions; however, the word "Owner" shall not include person(s) or entity(ies) who hold a bona fide lien or interest in a Lot as security merely for the performance of an obligation.
- (f) "Member" shall mean and refer to each Owner of a Lot.
- (g) "Declarant" shall mean and refer to and the successor(s) and assign(s) (if any) with respect to the voluntary disposition of all (or substantially all) of the assets and/or stock of and/or the voluntary disposition of all (or substantially all) of the right, title and interest in and to the Properties prior to the completion of development thereon. No person or entity merely purchasing one or more Lots in the ordinary course of business shall be considered as "Declarant".
- (h) "Existing Property" shall mean and refer to the real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration pursuant to Section 1 of Article II.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration (hereinafter defined as the "Existing Property") is located in Overland Park, Johnson County, State of Kansas and is more

particularly described within exhibit "A" attached hereto and incorporated herein by reference for all purposes.

Section 2. Additions to Existing Property. Additional land(s) may become subject to this Declaration in any of the following manners:

- (a) The Declarant may add or annex additional real property [from time to time and at any time(s)] to the scheme of this Declaration by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions which shall extend the scheme of the Covenants and Restrictions of this Declaration to such property, PROVIDED, HOWEVER, that such Supplementary Declaration may contain such complementary additions and modifications of the Covenants and Restrictions, contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the concept and purpose of this Declaration.
- (b) In the event any person or entity other than the Declarant desires to add or annex additional residential and/or Common areas to the scheme of this Declaration, such annexation proposal must have the proper written consent and approval of the majority of the outstanding votes within each voting class of the Association.
- (c) Any additions made pursuant to Paragraphs (a) and (b) of this Section 2, when made, shall automatically extend the Jurisdiction, functions, duties and membership of the Association to the properties added and correspondingly subject the properties added to the covenants of the Declaration or Supplementary Declaration (as the case may be).
- (d) Upon a merger or consolidation of the Association (as an incorporated entity) with another association, its properties, rights and obligations may, by operation, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration for the Existing Property together with the covenants and restrictions established upon any other properties as one scheme.

### ARTICLE III.

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall automatically be and must remain a Member of the Association in good standing.

Section 2. Voting Rights. The Association shall have two Classes of voting membership:

Class A: Class A Members shall be all Members and Lot Owners other than Class B Members. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: Class B Members shall consist of the Declarant and bona fide Lot Owners who are engaged in the process of constructing a residential dwelling on their respective Lots for sale to consumers. A Class B Member (excluding the Declarant) shall be entitled to one vote for each lot owned. The Declarant alone, however, shall be entitled to three (3) votes for each Lot it owns or in which it has a lien interest. The Class B membership shall cease, and each Class B Member shall become a Class A Member:

- (i) when the development is 75% owned by Class A members,
- (ii) on the fifth (5<sup>th</sup>) anniversary date of the incorporation date of the Association as an Incorporated entity, whichever occurs first in time.

Notwithstanding the aforementioned voting rights within the Association and consistent with the provisions of Article XII, Section 1 hereinafter, until:

- (a) The Declarant no longer owns:
  - (i) record title to any Lot; and
  - (ii) a lien interest in any Lot; and
  - (iii) title to any adjoining acreage intended to be developed as an additional section or phase of Scenic woods; or
- (b) the tenth (10<sup>th</sup>) anniversary of the recording date for this Declaration.

Whichever occurs first in time, neither the Association nor the members shall take any action or inaction with respect to any matter whatsoever without the consent and approval of the Declarant, which shall not be unreasonably withheld or delayed.

Section 3. Quorum, Notice and Voting Requirements.

- (a) Subject to the provisions of Section 2 above and Paragraph (c) of this Section, any action authorized by Sections 3 and 4 of Article V shall require the assent of the majority, of the Association vote in person or by proxy at a meeting duly called for such purpose(s), written notice of which shall be given to all Members not less than thirty (30) days nor more than sixty (60) days in advance and shall set forth the purpose(s) of such meeting.
- (b) the quorum required for any action referred to in Paragraph (a) of this Section shall be as follows:

At the first meeting called the presence at the meeting of Members, or of legitimate proxies, entitled to cast sixty percent (60 %) of all the votes of each voting class of the Association shall constitute a quorum. If, however, such a quorum is not present at the first meeting, and additional meeting may be called, subject to the notice requirement hereinabove set forth, and the required quorum at such second meeting shall be one-half (1/2) of the required quorum for the preceding meeting; provided, however, that no such second meeting shall be held more Than sixty (60) days following the first meeting.

- (c) As an alternative to the procedure set forth above, but subject to the provisions of Section 2 above, any action referred to in Paragraph (a) of this Section may be taken with the assent

control more than sixty percent (60 %) of the outstanding votes of the Association.

- (d) Except as specifically set forth in Paragraph (a) above or elsewhere in this Declaration:
  - (i) during the period of time that the Association is unincorporated, the Declarant shall have the right and option to prescribe reasonable procedures for meetings (if any) of the Members; and
  - (ii) subsequent to incorporation, notice, voting and quorum requirements for the Association shall be consistent with its Articles of Incorporation and Bylaws, as same may be amended from time to time.

#### ARTICLE IV.

##### PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every Member and any tenant of a Member and each individual who resides with either of them, respectively, on a Lot shall have a right and easement of use, recreation and enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of each respective Lot, PROVIDED, HOWEVER, such easement shall not give such person (excluding the Declarant) the right to make alternations, additions or improvements to the Common Properties.

Section 2. Title to the Common Properties. The Declarant will hold record title to the Common Properties for an indefinite period of time, subject to the easements set forth in Section 1 above. The Declarant shall have the right and option (without the joinder and consent of any person or entity, save and except any consent, joinder or approval required by the City of Overland Park) to encumber, mortgage, alter, improve, landscape and maintain the Common properties, provided that Declarant fully and timely complies with any and all requirements of the city of Overland Park. The Association (as an unincorporated entity) will not hold title to any of the Common Properties and no Member or Owner will have a direct or undivided ownership interest in the Common Properties. At some point in time (deemed reasonable and appropriate by the Declarant but prior to the tenth (10<sup>th</sup>) anniversary of the recordation of this Declaration) after the Association has been incorporated, the Declarant will convey title to the Common Properties to the Association for the purpose herein envisioned. Declarant reserves the right to execute any open space declarations applicable to the Common Properties which may be permitted by law in order to reduce property taxes.

Section 3. Extent of Members' Easements. The rights and easements of use, recreation and enjoyment created hereby shall be subject to the following:

- (a) The right of Declarant (during the time the Association is unincorporated) or Association (as an incorporated entity) to prescribe reasonable regulations governing the use, operation and maintenance of the Common Properties.
- (b) Liens or mortgages placed against all or any portion of the Common Properties with respect to monies borrowed by the Declarant to develop and improve the Properties or common Properties or by the Association (as an incorporated entity) to improve or maintain the Common Properties;
- (c) The duty and obligation of the association to properly maintain the common areas and correcting any material erosion or other damages caused by the flow of water through the creek area.

The right of the Association to enter into and execute contracts with any party (including without limitation the Declarant) for the purpose of providing maintenance or such other materials or services consistent with the purposes of the Association and or this Declaration;

- (d) The right of the Declarant or the Association (as an incorporated entity) to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;
- (e) the right of the Declarant or the Association to suspend the voting rights of any Member and to suspend the right of any member to use or enjoy any of the Common Properties for any period during which any assessment against a Lot resided upon by such Member remains unpaid, and for any period no to exceed sixty (60) days for an infraction of the then-existing rules and regulations;
- (f) Subject to approval by written consent by the Members having a majority of the outstanding votes of the Association, to dedicate or transfer all or any part of the Common Properties to dedicate or transfer all or any part of the Common Properties to any municipal corporation, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by such Members.

## ARTICLE V.

### CONVENANTS FOR ASSESSMENTS

#### Section 1. Creation of the Lien and Personal Obligation of Assessments.

Declarant, for each Lot owned by it within the Properties, hereby covenants and agrees, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot), to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies): regular assessments or charges for maintenance, taxes and insurance on portions of the properties and the Common Properties (including without limitation those matters described within Article VI, Section 1); (2) special group assessments for capital improvements or unusual or emergency matters, such assessments to be fixed, established and collected from time to time as hereinafter provided; and (3) individual special assessments levied against individual Lot Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual Owner and not caused by ordinary wear and tear, such assessments to be fixed, established and collected from time to time as hereinafter provided. The regular, special group, and special individual assessments, together with such interest thereon and costs of collection shall be a continuing lien upon each Lot against which each such assessment is made and shall also be the continuing personal obligation of the then existing Owner of such Lot at the time when the assessment fell due.

#### Section 2. Purpose of Assessments.

The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, recreation, safety and welfare of the residents of the Properties, and in particular for the improvement and maintenance of private roadways, access easements, walkways, common green, jogging and bicycle trails, lakes, recreational areas, or other properties and services and facilities devoted to purposes and directly related to the use and enjoyment of the Common Properties, including, but not limited to, the payment of taxes on the Common Properties and insurance (if any) in connection with the Common Properties and the repair, replacement and additions thereto; and for trash and garbage

collection, security arrangements, and exterior maintenance of all or portions of the Lots, as may be determined necessary and appropriate by the Association from time to time and for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; for carrying out the duties of the Board of Directors of the Association as set forth in Article VI hereafter; and for carrying out the various matters set forth or envisioned herein or in any Supplementary Declaration related hereto; and for any matter or thing designated by the City of Overland Park in connection with any zoning, subdivision, platting building or development requirements.

Section 3. Basis and Amount of Regular Maintenance Assessments.

- (a) From and after the original date of commencement of regular maintenance assessments (when established by the Board of Directors) and continuing thereafter until January 1 of the year immediately following the conveyance of the first Lot from a Class B Member to a Class A Member, the maximum regular assessment shall be One Hundred Twenty Five Dollars (\$125.00) per Lot per year. It is anticipated that when the swimming pool and related facilities are completed that the regular assessment will be \$225.00 (two hundred twenty five dollars).
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot from a Class B Member to a Class A Member, the Association's Board of Directors may establish the maximum regular assessment for each Lot, provided that the maximum assessment may not be increased more than five percent (5 %) above the maximum assessment for the previous year unless approved by the Association's Members as provided in Section 3 of Article III.
- (c) The Association's board of Directors may fix the actual regular assessment at an amount equal to or less than the maximum regular assessment.

Section 4. Special Group Assessments. In addition to the regular assessments authorized by Section 3 hereof, the Association may levy in any fiscal year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including any necessary fixtures and personal property related thereto or for unusual or emergency purpose.

Section 5. Rate of Assessment. Both regular and special group assessments must be fixed at a uniform rate for all Lots owned by Class A Members, unless otherwise approved by the Association's Board of Directors' as an example (and not as a limitation) in the event only one (1) residential dwelling is situated on or effectively occupies two (2) platted Lots, the total applicable assessment for the two (2) Lots and the Lot Owner thereof should not exceed one and one-half (1-1/2) times the amount of the assessment otherwise established for a single Lot with a single dwelling thereon. Each Lot owned by a Class A Member shall be charged with one hundred percent (100 %) of the established per Lot assessment while each Lot owned by a Class B Member (other than the Declarant) shall be charged with fifty percent (50 %) of the established per Lot assessment, while each Lot owned by Declarant shall not be charged with any portion of any assessment, however, Class B and the Declarant shall be responsible for their prorated share of any expenses directly related to lots owned by these members.

Section 6. Date of Commencement of Assessments; Due Dates. The regular maintenance assessments provided for herein shall commence on the date fixed by the Board of Directors of the Association to be the initial date of commencement. The Board of Directors may prescribe from time to time that the regular assessments are to be collected on an annual, semi-annual, quarterly or monthly basis, and accordingly,

the Board of Directors shall prescribe the appropriate due dates. All regular assessments shall be collected in advance. The due date or dates (if it is to be paid in installments) of any other assessment or special assessment under Sections 3 and 4 hereof, shall be fixed in the respective resolution authorizing such assessment.

Section 7. Duties of the Board of Directors with Respect to Assessments.

- (a) In the event of a revision to the amount or rate of the regular assessment, or establishment of a special group or special individual assessment, the Board of Directors of the Association shall fix the amount of the assessment against each Lot, and the applicable due date(s), for each assessment at least sixty (60) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association.
- (b) Written notice of the assessment shall thereupon be delivered or mailed to every Owner subject thereto.
- (c) The Board of Directors shall upon reasonable demand furnish to any Owner originally liable for said assessment, a certificate in writing signed by an Officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the board for the issuance of such certificate.

Section 8. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association.

- (a) If any assessment or any part thereof is not paid on the date(s) when due then the unpaid amount of such assessment shall be considered delinquent and shall, together with interest thereon at the highest permitted lawful rate per annum and costs of collection thereof, thereupon become a continuing debt secured by a self-executing lien on the Lot of the non-paying Owner which shall bind such Lot in the hands of the Owner, his heirs, executors, devisees, personal representatives and assigns. The Association shall have the right to reject partial payments of an assessment and demand the full payment thereof. The personal obligation of the then-existing Owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. However, the lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for the assessment provided herein by non-use of the Common Properties or abandonment of his Lot.
- (b) The Association may also give written notification to the holder(s) of the mortgage on the Lot of the non-paying Owner of such Owner's default in paying any assessment when such default has not been cured within thirty (30) days of the original date due, provided that the Association has theretofore been furnished in writing with the correct name and address of the holder(s) of such mortgage and a request to receive such notification.
- (c) If any assessment or part thereof is not paid when due, the unpaid amount of such assessment shall bear interest from and after the date when due at the highest permitted lawful rate per annum, and the Association may, at its election, retain the services of an attorney for collection and there shall also be added to the amount of such unpaid assessment any and all collection costs incurred hereunder by the Association, including reasonable attorneys' fees.

Section 9. Release of City of Overland Park. In the event the Association, its successors or assigns, shall fail or refuse to adequately maintain the appearance and condition of the Common Properties which it is obligated to maintain hereunder, the City of Overland Park, Kansas shall, although the City is under absolutely no obligation to do so, have the right and may assume the duty of performing all such maintenance obligations of the Association at any time, upon giving written notice to the Owners or at any time after the expiration of ten (10) days after receipt by the Association, its successor or assign of written notice specifying in detail the nature and extent of failure to maintain without such failure being remedied, whichever notice shall be appropriate. Upon assuming such maintenance obligations, the City of Overland Park may levy an assessment upon each Lot on a pro rata basis the cost of such maintenance, notwithstanding any other provisions contained in this Declaration, which assessment shall constitute a lien upon the Lot against which each assessment is made. During the period the City of Overland Park has a right and assumes the obligation to maintain and care for the Common Properties, the Association shall have no obligation or authority with respect to such maintenance. The right and authority of the City of Overland Park to maintain the Common Properties shall cease and terminate when the Association, its successors or assigns shall present to the City of Overland Park reasonable evidence of its willingness and ability to resume maintenance of the Common Properties. In the event the City of Overland Park assumes the duty of performing the maintenance obligations of the Association as provided herein, then the City of Overland Park, its agents, representatives and employees shall have the right of access to and over the Common Properties for the purpose of maintaining, improving and preserving the same. This provision may not be altered or changed without the consent of the City Council of the City of Overland Park evidenced by Resolution.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate and inferior to the lien of any first mortgage or deed of trust or deed in lieu of foreclosure now or hereafter placed upon the Lots subject to assessment; provided, however, such subordination shall apply only to the assessments which have become due and payable prior to the sale (whether public or private) of such property pursuant to the terms and conditions of any such deed of trust. Such sale shall not relieve such Lots from liability for the amount of any assessment thereafter becoming due nor from the lien of any such subsequent assessment.

Section 11. Exempt Property. The following property otherwise subject to this Declaration shall be exempted from any assessments, charge and lien created herein:

- (a) All properties dedicated to and accepted by a local public authority and devoted to public use.
- (b) All Common Properties as defined in Article I hereof.

ARTICLE VI.  
GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS  
OF THE ASSOCIATION

Section 1. Powers and Duties. The affairs of the Association shall be conducted by its Board of Directors – (sometimes hereinafter “the Board”). Prior to the incorporation of the Association, the Declarant shall select and appoint the Board of Directors, each of whom shall be a Class A or Class B Member, or an officer, employee, partner, representative, agent or affiliate of a Class A or Class B Member. From and after the effective date of the Association’s incorporation, the Board of Directors shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association. The Board, for the benefit of the Association, the Properties and the Owners, shall provide and shall pay for out of maintenance fund(s) provided for in Article V above, the following:

- (a) Care, preservation and maintenance of the Common Properties and the furnishing and upkeep of any desired personal property for the use in or on the Common Properties, including the establishment of a reserve account for future maintenance.
- (b) Maintenance of the exterior grounds of Lots (as may be determined by the Board of Directors from time to time) including without limitation trees, shrubs, grass, landscaping and operation of the sprinkler systems;
- (c) Private trash and garbage collection service and security arrangements;
- (d) Taxes, insurance and utilities (including without limitation electricity, gas, water and sewer charge) which pertain to the Common Properties only;
- (e) The services of a person or firm (including affiliates of the Declarant) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager;
- (f) Legal and accounting services;
- (g) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments which the board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

The Board shall have the following additional rights, powers and duties:

- (h) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by it as an incorporated entity;
- (i) To enter into agreements or contracts with insurance companies, taxing authorities, the holders of first mortgage liens on the individual Lots and utility companies with respect to: (i) any taxes on the Common Properties; (ii) insurance coverage (if any) on Common Properties, as either or both relate to the assessment, collection and disbursement process envisioned by Article V hereinabove; and (iii) utility installation, consumption and service matters;
- (j) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit;
- (k) To enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association;

- (a) Care preservation and maintenance of the Common Properties and the furnishing and upkeep of any desired personal property for use in or on Common Properties, including the establishment of a reserve account for future maintenance.
- (b) Maintenance of the exterior grounds of Lots (as may be determined by the Board of Directors from time to time) including without limitation trees, shrubs, grass, landscaping and operation of sprinkler system;
- (c) Private trash and garbage collection service and security arrangements;
- (d) Taxes, insurance and utilities (including without limitation electricity, gas, water and sewer charge) which pertain to the Common Properties only;
- (e) The services of a person or firm (including affiliates of the Declarant) to manage the Association or any separate portion thereof, to the extent deemed advisable by the board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager;
- (f) Legal and accounting services;
- (g) An other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments which the board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

The board shall have the following additional rights, powers and duties:

- (h) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by it as an incorporated entity.
- (i) To enter into agreements or contracts with insurance companies, taxing authorities, the holders of first mortgage liens on the individual Lots and utility companies with respect to: (i) any taxes on the Common Properties; (ii) insurance coverage (if any) on Common Properties, as either or both relate to the assessment, collection and disbursement process envisioned by Article V hereinabove; and (iii) utility installation, consumption and service matters;
- (j) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit;
- (k) To enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association.

- (l) To protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court of law in behalf of the Association and to provide adequate reserves for repairs and replacements;
- (m) To make reasonable rules and regulations for the operation of the Common Properties and to amend them from time to time.
- (n) Subsequent to incorporation, to make available to each Owner within ninety (90) days after the end of each year an annual report;
- (o) Pursuant to Article VII herein, to adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency;
- (p) To enforce the provisions of the Declaration and any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

Section 2. Board Powers. The Board shall have the right to contract for all goods, services, and insurance, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein. In the event or if for any reason the Board is not deemed authorized to act for and on behalf of the Association and the Members, then the Declarant may exercise its power and authority under Article XII, Section 1 to act for and on behalf of the Association and the Members, and the Association shall reimburse the Declarant for any and all reasonable expenses incurred in so acting.

Section 3. Maintenance Contracts. The Board, on behalf of the Association, shall have full power and authority to contract with any Owner (including without limitation the Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and to the best interest of the Association.

Section 4. Liability Limitations. Neither any Member nor the Board nor the Directors (or any of them) nor the officers (if any) of the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether such other Member was acting on behalf of the Association or otherwise. Neither the Declarant, the Association, its Directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portion thereof or for failure to repair or maintain the same. The Declarant, the Association or any other person, firm or corporation liable to make such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portion thereof.

Section 5. Reserve Funds. The Board may establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and not net income to the Association.

## ARTICLE VII

### INSURANCE; REPAIR AND RESTORATION

Section 1. Right to Purchase Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Properties or Common Properties, any improvements thereon or appurtenant thereto, for the interest of the Association, its Board of Directors, agents and employees, and all Members of the Association, in such amounts and with such endorsements and coverage as shall be considered good, sound insurance coverage for properties similar in construction, location and use to the subject property. Such insurance may include, but need not be limited to:

- (a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the insurance carrier.
- (b) Comprehensive public liability and property damage insurance on broad form basis, including coverage of personal liability (if any) of the Owners and Members with respect to the Common Properties.
- (c) Fidelity bond for all officers and employees of the Association having control over the receipt or disbursement of funds.

Section 2. Insurance Proceeds. The Association and the Members shall use the net insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of insurance paid to the Association, as required in this Article, remaining after satisfactory completion of repair and replacement, shall be retained by the Association as part of a general reserve fund for repair and replacement of the Common Properties.

Section 3. Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special group assessment as provided for in Article V of this Declaration to cover the deficiency.

## ARTICLE VIII.

### USE OF COMMON PROPERTIES

The Common Properties may be used and enjoyed as follows:

Section 1. Restricted Actions by Members. No Member shall permit anything to be done on or in the Common Properties which would violate any applicable public law or zoning ordinance or which will result in the cancellation of or increase of any insurance carried by the Association, or which would be in violation of any law or any rule or regulation promulgated by the Board.

Section 2. Damage to the Common Properties. Each Member shall be liable to the Association for any damage to any portion of the Common Properties caused by the negligence or willful misconduct of the Member or his family and guests.

Section 3. Rules of the Board. All Members shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies.

Section 4. Use of Common Properties. Use of the Common Properties shall be limited to Members, their families and guests. No alcoholic beverages may be sold on the Common Properties nor will any

private locker or bottle club be permitted thereon, and the only consumption of alcoholic beverages which will be permissible will be those beverages carried into the Common Properties by members of the Association, their families and guests.

## ARTICLE IX.

### USE OF LOTS AND PROPERTIES – PROTECTIVE COVENANTS

The properties (and each Lot situated herein) shall be constructed, developed, occupied and used as follows:

Section 1. Residential Lots. All Lots within the Properties shall be used, known and described as residential Lots. No building or structure shall be erected, altered, placed or permitted to remain on any residential Lot other than a single-family dwelling and, if any, its customary and usual accessory structures (unless prohibited herein). No living trees larger than 8" in diameter may be removed without the written consent of Declarant or the Association. No building or structure intended for or adapted to business purposes shall be erected, placed, permitted or maintained on such premises, or any part thereof, save and except those related to development, construction and sales purposes of a Class B Member or of the Association. This covenant shall be construed as prohibiting the engaging in or practice of any commerce, industry, business, trade or profession within the Properties. The restrictions on use herein contained shall be cumulative of, and in addition to, such restrictions on usage as may from time to time be applicable under the statutes, rules, regulations and ordinances of the City of Overland Park, Kansas or any other governmental authority having jurisdiction over the Properties. No building structure on any Lot shall exceed two (2) stories in height.

Section 2. Minimum Floor Space. Each one (1) story dwelling constructed on any Lot shall contain a minimum of one thousand five hundred (1,500) square feet of heated/cooled floor area, exclusive of all porches, basements, garages or breezeways attached to the main dwelling. Each one and one-half (1-1/2) story or two (2) story dwelling constructed on any Lot shall contain a minimum of two thousand (2,000) square feet of heated/cooled floor area (exclusive of all porches, basements, garages or breezeways attached to the main dwelling).

Section 3. Garages. Each single-family residential dwelling erected on any Lot shall provide garage space for a minimum of two (2) conventional automobiles. All garage doors shall be closed at all times when not in use. Carports are not encouraged but may be permitted if, in the reasonable option of the Architectural Control Committee, the exterior surface and appearance will substantially compare with a garage and if no storage of items, which would otherwise be visible, will occur thereunder; any and all proposed garage or carport plans and specifications must be submitted to the Architectural Control Committee for review.

Section 4. Setback Requirements. The Architectural Control Committee shall establish setback lines (for fences, walls and for buildings) from the front property line of each Lot. The mixture of various front setbacks shall satisfy requirements of the city of Overland Park and reflect a high degree of architectural style and design. In order to allow flexibility for consolidation of two or more Lots to accommodate the construction of a lesser number of dwellings thereon, the Architectural Control Committee shall also have the authority to develop and refine rear and side yard setback requirements. Within the setback areas for each Lot, an easement and right-of way is reserved for the Association in order to properly facilitate and carry out and reasonable exterior maintenance or landscaping programs or concepts adopted by the Association.

Section 5. Fences; Signs. No fence, wall or hedge shall be erected, placed or altered on any Lot nearer to the street than the minimum building setback line as established by the Architectural Control

Committee pursuant to Section 4 above. All service and sanitation facilities must be enclosed within fences, walls or landscaping so as not to be visible from the immediate residential street. No fence, wall or hedge shall be erected, placed or altered on any residential Lot without the approval of the Architectural Control Committee. No sign or signs shall be displayed to the public view on any residential Lot, except: (1) any builder, during the applicable initial construction and sales period, may utilize one professional sign (not more than twelve (square feet in size) per Lot for advertising and sales purposes; (2) thereafter, a dignified "for sale" sign (of not more than six (6) square feet in size) may be utilized by the Owner of the respective residential Lot for the applicable sale situation; and (3) development-related signs owned or erected by the Declarant shall be permitted.

Section 6. Easement; Utilities. Easements and access easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded subdivision plat. Except as to special street lighting or other aerial facilities which may be required by the City of Overland Park or which may be required by the franchise of any utility company or which may be installed by the Declarant pursuant to its development plan, no aerial utility facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed on the Properties whether upon individual Lots, easements, streets, or rights-of-way of any type, either by the utility company or any other person or entity, including but not limited to any person owning or acquiring any part of the Properties, and all utility service facilities (including but not limited to water, sewer, gas, electricity and telephone) shall be buried underground unless otherwise required by a public utility. All utility meters, equipment, air conditioning compressors and similar items must be visually screened.

Section 7. Temporary Structures and Vehicles. No temporary structure of any kind shall be erected or placed upon any Lot. Temporary structures shall include, but not limited to, any garage, servant's house or other improvement erected more than one hundred twenty (120) days prior to the completion of the main portion of the single-family dwelling. However Declarant or any other Class B member may maintain temporary sales or construction offices, provided such sales or construction offices are removed within sixty (60) days after such completion of sales or construction, as the case may be.

Any truck, bus, boat, boat trailer, trailer, mobile home, campmobile, camper, or any vehicle other than a conventional automobile shall, if brought within the Properties, be stored, placed or parked within the garage of the appropriate Lot Owner unless otherwise directed by the Architectural Control Committee.

Section 8. Garbage and Trash Collection. No residential Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. All garbage shall be kept in sanitary containers in appropriate locations which may be specified by the Architectural Control Committee. Unless otherwise expressly permitted by the Architectural Control Committee, garbage containers shall be situated and enclosed or screened so as not to be visible from any residential street. The Association shall make or cause to be made appropriate contractual arrangements for collection and removal of garbage and trash on a regular basis with the point of pickup (so long as it is possible) being in, at, or near the garage rather than curbside. Each Lot Owner shall observe and comply with any and all regulations or requirements promulgated by the Association in connection with the storage and removal of trash and garbage.

If after ten (10) days prior written notice an Owner shall fail to: (i) control weeds, grass and/or other unsightly growth; (ii) remove trash, rubble, building and construction debris; or (iii) exercise reasonable care or conduct to prevent or remedy an unclean, untidy or unsightly condition, then Declarant shall have the authority and right to go onto said Lot for the purpose of mowing and cleaning said Lot and shall have the authority and right to assess and collect

from the Owner of said Lot a sum not to exceed fifty dollars (\$50.00) for mowing or cleaning said Lot on each respective occasion of such mowing or cleaning. The assessments, together with such interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment, together with such interest thereof and costs of collection thereof, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when the assessment occurred. The lien securing any such assessment shall be subordinate and inferior to the lien of any mortgage and any renewals or extensions thereof existing prior to the assessment date.

Section 9. Offensive Activities. No noxious or offensive activity shall be conducted on any portion of the Properties that will adversely affect the peace, quiet, comfort or serenity of fifty percent (50 %) or more of the Owners of Lots within two hundred feet (200 ') of such activity. No animals, livestock or poultry of any kind shall be raised, bred or kept on any residential lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for the commercial purposes.

Section 10. Exterior Surfaces. All roofs shall be constructed of wood shingle, wood shake, slate, tile, metal or other materials approved by the Architectural Control Committee taking into account harmony, conformity, color, appearance, quality and similar considerations. The exterior surface of all residential dwellings shall be constructed glass, wood, brick or other materials approved by the Architectural Control Committee. The Architectural Control Committee is specifically authorized to require a continuous, uniform surface with respect to all improvements which directly face the perimeter common green areas. All outside driveways, sidewalks, walkways and patio areas which are visible from the street or by the public shall have an exposed aggregate stone texture and appearance or comparable effect. Installation of all types of exterior items and surfaces such as address numbers or external ornamentation, lights, mail chutes, exterior paint or stain, shall be subject to the prior approval of the Architectural Control Committee. All antennas (including without limitation radio or television transmitting or receiving antennas) shall be installed within the residence so that antennas extend no more than 8 feet above the roof top. All roof and surface water must be drained toward the street or the rear Lot lines.

Section 11. Architectural Control Committee. The Architectural Control Committee, hereinafter called "the committee", shall be composed of three (3) individuals or business entities selected and appointed by Declarant, each generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards within the Properties. The Committee shall function as the representative of the Owners of the Lots for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a first-class community development. The committee shall use its best efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the Properties.

In the event of the death or resignation of any member of the Committee, the remaining members shall have full authority to designate and appoint a successor. No member of the Committee shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed pursuant to this covenant.

No building, structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered on any Lot until all plans and specifications and a plot plan have been submitted to and approved in writing by the Committee, or a majority of its members, as to:

- (j) quality of workmanship and materials; adequacy of site dimensions, adequacy of structural design; proper facing of main elevation with respect to nearby streets;
- (ii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;
- (iii) location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and improvements situated thereon; drainage arrangement;
- (iv) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the Committee, or matters in which the Committee has been vested with the authority to render a final interpretation and decision.

The Committee is authorized and empowered to consider and review any and all aspects of dwelling construction which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Lot Owners or the general value of the Properties.

Final plans and specifications shall be submitted in duplicate to the Committee for approval or disapproval. The Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Committee, one complete set of the plans and specifications will be retained by the Committee and the other complete set of plans will be marked "Approved" and returned to the Lot Owner or his designated representative. If found not to be in compliance with these Covenants and Restrictions, one set of such plans and specifications shall be returned marked "Disapproved", accompanied by a reasonable statement of items found not to comply with these Covenants and Restrictions. Any modification or change to the approved set of plans and specifications must again be submitted to the Committee for its inspection and approval. The Committee's approval or disapproval, as required herein, shall be in writing. If the Committee fails to approve or disapprove such plans and specifications within fifteen (15) days after the date of submission, then approval shall be presumed.

The Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of these Covenants and Restrictions. Although the Committee shall not have unbridled discretion with respect to taste, design and any standards specified herein, the Committee shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand). Such bulletins shall supplement these Covenants and Restrictions and are incorporated herein by reference.

## ARTICLE X.

### EASEMENTS

Section 1. Utility Easements. Easements for installation, maintenance, repair and removal of utilities and drainage facilities over, under and across the Properties are reserved by Declarant for itself, its successors and assigns and all utility companies serving the Properties. Full rights of ingress and egress shall be had by Declarant and its successors and assigns at all times over the Properties for the installation, operation, maintenance, repair or removal of any utility together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation of installation of such utility.

Section 2. Ingress, Egress and Maintenance by the Association. Full rights of ingress and egress shall be had by the Association at all times over and upon the setback areas applicable for each Lot for the maintenance and repair of each Lot in accordance with the provisions hereof, and for the carrying out by the Association of its functions, duties and obligations hereunder; provided, that any such entry by the Association upon any Lot shall be made with as little inconvenience to the Owner as practical, and any damage caused thereby shall be repaired by the Association at the expense of the maintenance fund.

## ARTICLE XI.

### GENERAL PROVISIONS

Section 1. Power of Attorney. Each and every Owner hereby makes, constitutes and appoints Declarant as their true and lawful attorney in fact for them and in their name, place and stead and for their use and benefit.

- (a) to exercise, do, or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Properties;
- (b) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract, or abandon the terms within this Declaration, or any part hereof, with such clause(s), recital(s) covenant(s), agreement(s) and restriction(s) as Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing;
- (c) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the subdivision plat of the Properties, or any part thereof, with any easements and rights-of-way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

The rights, powers and authority of said attorney in fact to exercise any and all of the rights and powers therein granted shall commence and be in full force upon recordation of this Declaration in the Johnson County Clerk's Office and shall remain in full force and effect thereafter until the tenth (10<sup>th</sup>) anniversary of the recordation of this Declaration.

Section 2. Duration. The Covenants and Restrictions of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date that this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Members entitled to cast seventy percent (70 %) of the votes of the Association and recorded in the Deed Records of Johnson County, Kansas, which contains and sets forth an agreement to abolish the Covenants and Restrictions; provided, however, no such agreement (where approved by less than ninety-five percent (95 %) of the votes of the Association) to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment. The written consent of the City of Overland Park is necessary to terminate or modify any provisions herein regarding the Private Park.

Section 3. Amendments. Notwithstanding Section 2 of this Article, these Covenants and Restrictions may be amended and/or changed in part as follows:

- (a) During the ten (10) year period immediately following the date of recordation of the Covenants and Restrictions may be amended or changed upon the express written consent of at least fifty-one percent (51 %) of the outstanding votes of the Association.
- (b) From and after the tenth (10<sup>th</sup>) anniversary of the recordation of this Declaration, these Covenants and Restrictions may be amended or changed upon the express written consent of at least seventy percent (70 %) of the outstanding votes of the Association.
- (c) The written consent of the City of Overland Park is necessary before any termination of the declaration in its entirety or before any provisions herein can be modified or amended with respect to the Private Park.

Any and all amendments shall be recorded in the office of the County Clerk of Johnson County, Kansas.

Section 4. Enforcement. Enforcement of these Covenants and Restrictions may be by any proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by these Covenants and Restrictions; but failure by the Association or any Owner to reinforce any Covenant or Restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The developer and the City of Overland Park, Kansas, are specifically authorized (but not obligated) to enforce these Covenants and Restrictions. With respect to any litigation hereunder, the prevailing party shall be entitled to consider reasonable attorneys fees from the non-prevailing party.

Section 5. Validity. Violation of or failure to comply with these Covenants and Restrictions shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may be then existing on any Lot. Invalidation of any one or more of these Covenants and Restrictions, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of these Covenants and Restrictions conflicts with mandatory provisions of any ordinance or regulation promulgated by the city of Overland park, then such municipal requirement shall control.

Section 6. Proposals of Declarant. The proposals of the Declarant, as set forth in various provisions hereinabove, to develop additional parcels or property for residential purposes and/or in expand the Common Properties) not only geographically but also in terms of the types of amenities available for use) and items of a related nature are mere proposals and expressions of the existing good faith intentions and plans of the Declarant and shall not be deemed of construed as promises, solicitations, inducements, contractual commitments or material representations by the Declarant upon which any person or entity can or should rely.

Section 7. Headings. The headings contained in this Declaration are for reference purpose only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender. And words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise.

Section 8.    Notices to Member/Owner.    Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mails, postage prepaid, addressed to the last know address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 9.    Notice to Mortgagees.    The holder(s) of a mortgage may be furnished with written notification from the Association of any default by the respective mortgagor/member/owner in the performance of such mortgagor's/member's/owner's obligation(s) as established by this Declaration, provided that the Association has been theretofore furnished, in writing, with the correct name and address of such mortgage holder(s) and a request to receive such notification.

Section 10.    Disputes.    Matters of dispute or disagreement between Owners with respect to interpretation or application of the provisions of this Declaration or the Association Bylaws, shall be determined by the Board of Directors, whose determination (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all Owners.

IN WITNESS WHEREOF, THOMSON & SAILORS HOMES, BEING THE  
DECLARANT herein has caused this instrument to be executed this  
  16 day of March, 1992.

THOMSON & SAILORS HOME

By: Bobby F. Sailor :  
(signed by)

STATE OF KANSAS        )  
                                      ) SS  
COUNTY OF JOHNSON )

BE IT REMEMBERED, that on this 16<sup>th</sup> day of March, 1992, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Bobby F. Sailors, General partner of Sailors Home building Company, a Kansas General partnership, who is personally known to me to be such general partner and who is personally known to me to be the same person who executed, as such general partner, the within instrument on behalf of said partnership, as a joint venturer in Thomson & Sailors Homes, and such person duly acknowledged the execution of same to be the act and deed of said partnership and said joint venture.

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

Barbara J Oshman :  
(Signed by)  
Notary Public

My Commission Expires:

August 29, 1992

(Note: Barbara J. Oshman's Notary Public Seal is stamped on this Page.)

LEGAL DESCRIPTION

BLCOK 6: Lots 11, 12, 14, 15, 17, 18, 19, and 20.

BLOCK 7: Lots 2, 3, 4, 7, 8, 9, 10, 11, 13, 16, 17, 22, 23  
24 and 25

**EXHIBIT A**

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**EXHIBIT A**

Page 2

This page contains the Plat of "CREEKSIDE" from NALL Avenue to  
WOODSON St.

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