

DECLARATION
OF
EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS
OF
TOMAHAWK VALLEY
A SUBDIVISION IN
THE CITY OF BASEHOR
LEAVENWORTH COUNTY, KANSAS

**DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS OF
TOMAHAWK VALLEY**

This declaration of easements, covenants, conditions and restrictions is made on the 14th day of February 2018,
by **Miles Excavating, Inc.**, a Kansas Corporation ("**Developer**").

RECITALS:

- A. Developer is the owner of that certain real property located in Tomahawk Valley, a subdivision in the City of Basehor, Leavenworth County, Kansas, according to the Plat thereof (the "**Initial Plat**") recorded on July 27, 2010, Document #2012P00012, in the office of the Register of Deeds for Leavenworth County, Kansas provided as Exhibit A.
- B. For the purpose of promoting the development of the "Addition" (as defined in Section 1.1) in a first class manner, Developer desires to place certain easements, covenants, conditions, restrictions and obligations upon the land in the Addition.

**ARTICLE I
DEFINITIONS**

The following terms as used in this Declaration shall have the meanings set forth below unless the context clearly requires otherwise.

- Section 1.1 "Addition" means the real property described in Exhibit A and any other property subjected to this Declaration pursuant to Section 13.1 below
- Section 1.2 "Architectural Committee" is defined in Section 7.1
- Section 1.3 "Association" means Tomahawk Valley Homes Association, a Kansas non-for-profit corporation organized or to be organized as herein provided
- Section 1.4 "Board of Directors" means the board of directors for the Association
- Section 1.5 "Builder(s)" means any party, which acquires fee title to a Lot(s) for the purpose of constructing a residence thereon for resale
- Section 1.6 "City" means the City of Basehor, Kansas
- Section 1.7 "Common Facilities" means (a) all areas and facilities within the Addition designated by the Developer for the general use or benefit of all Owners and occupants of the Addition, including any parks, green space, landscaping within the island areas and located within street right-of-way and landscaping features; and other recreational areas; sidewalks and trails; signs, monuments; median strips and islands in streets, ponds, streams, creeks and drainage and retention facilities; streets and street lighting; and any fencing around the perimeter of the addition; (b) any land deeded to the Association by or at the direction of the Developer; (c) any easements, leases, licenses or other rights of use granted to the Association by or at the direction of the Developer, and the land or other property which is the subject thereof; and (d) all buildings, structures and other improvements, fixtures and equipment and other tangible personal property owned by the Association and located on, or used in

connection with or forming a part of any of the foregoing; PROVIDED, HOWEVER, the foregoing does not constitute a representation or warranty that any Common Facility so enumerated will exist within the Addition. Developer, from time to time, shall have the right to designate portions of the Restricted Area Improvements as comprising Common Facilities.

- Section 1.8 "Declaration" means this Declaration of Easements, Covenants, Conditions and Restrictions of Tomahawk Valley, as it may be amended or supplemented from time to time.
- Section 1.9 "Default Rate of Interest" the annual interest shall be 8% annually and maybe amended by vote of the Board of Directors of the Association.
- Section 1.10 "Delinquent Amount" is defined in Section 3.6
- Section 1.11 "Design Standards" is defined in Section 7.5
- Section 1.12 "Developer" means Miles Excavating, Inc., a Kansas Corporation, and each of its officers and directors and any successors thereto or assignees thereof who succeed by assignment from the Developer to some or all of the Developer's rights hereunder, as specified in such instrument of assignment.
- Section 1.13 "Lot(s)" means each separately subdivided parcel within the Addition, as shown on the Plat, which is intended for individual ownership; PROVIDED, HOWEVER, any such separate parcel which is included within the Common Facilities shall on be deemed a Lot.
- Section 1.14 "Owner" means the record owner, whether one or more persons and/or entities (including Builders and the Developer) of fee simple title to a Lot, but specifically excluding those having a interest merely as security for the performance of an obligation.
- Section 1.15 "Plat(s)" means the initial Plat identified in the Recitals above for the Addition, as such initial Plat may be re-platted and amended from time to time, together with the plat(s) for any additional land subsequently added to the Addition pursuant to Section 13.1, which plat(s) shall reflect the City approved (or proposed City approved) platting, location and size of all Lots in the Addition and the location of the streets and easements on adjacent to or affecting such Lots.
- Section 1.16 "Register of Deeds" means the Register of Deeds for Leavenworth County, Kansas
- Section 1.17 "Restricted Area" means that area of any Lot which is located within the Landscape Easement designated on any Plat.
- Section 1.18 "Restricted Area Improvements" is defined in Section 2.8
- Section 1.19 "Turnover Date" is defined in Section 2.11

ARTICLE II

DECLARATION, ASSOCIATION, BOARD OF DIRECTORS

- Section 2.1 Declaration. Developer hereby declares that all of the land in the Addition shall be held, sold and conveyed subject to the easements, covenants, conditions and restrictions contained in this Declaration, which easements, covenants, conditions, and restrictions: (i) are for the purpose of establishing a general scheme for the development and construction of residences on the land in the Addition, (ii) are for the purpose of enhancing and protecting the value, attractiveness, appeal and

desirability of all land within in Addition, (iii) shall run with all land within the Addition and be binding on all parties having or acquiring any right, title or interest in the land or any part thereof, and (iv) shall inure to the benefit of and be a burden upon each Owner.

Section 2.2

The Association

- a) Commencing on the date hereof and continuing until ninety percent (90%) of the Lots have been sold to Owners and residences have been constructed thereon, the Developer shall have the sole right, but not the obligation, to create the Association; thereafter, if not previously formed by the Developer, the Association may be formed by (i) the Developer, or (ii) the Owners, if the Owners representing at least seventy-five percent (75%) of all Lots assent to the creation of the Association.
- b) The Developer shall have no responsibility or liability for (i) the creation, formation, management or operation of the Association, (ii) any actions taken or omitted to be taken by or on behalf of the Association as a result of, in connection with, under or pursuant to this Declaration, or (iii) any liabilities, obligations, debts, actions, causes of action, claims, suits or damages incurred by or on behalf of or arising in connection with the Association or the duties and obligations of the Association pursuant to this Declaration.

Section 2.3

Purpose of the Association. The Association shall protect, maintain, improve, operate and administer the Addition, including taking necessary action to levy and collect the assessments herein provided for, pay expenses and do such other things as are provided or contemplated in this Declaration and the Association's Article of Incorporation and Bylaws. The Association shall not be deemed to be conducting a business of any kind, and shall hold and apply all funds it receives for the benefit of the Addition in accordance with the provisions of this Declaration and the Association's Articles of Incorporation and Bylaws.

Section 2.4

Membership in Association

- a) Developer shall be a member of the Association until the Developer elects in writing to relinquish its membership. Each other Owner shall, upon acquisition of fee simple title to any Lot and occupancy of the residence located thereon, automatically become a member of the Association. Each other Owner shall be entitled to only one Association membership for each Lot owned by the Owner, and, subject to the provisions of Section 2.11, shall have only one vote per Lot in the Association. If an Owner (other than Developer) is comprised of more than one person and/or entity, they shall designate one of their members to hold the Association membership. Each member (other than Developer) must be (1) an individual who is an Owner, or (2) if the Owner is or includes a partnership, an individual who is a partner, or (3) if the Owner is or includes a corporation, an officer of the corporation, or (4) if the Owner is or includes a trust, an individual who is a trustee or beneficiary of the trust, or (5) if the Owner is or includes a limited liability company or an association, an individual who is a member of the limited liability company or association. Each Owner shall give notice to the Association of the name and address of the individual who will hold the Association membership for such Owner, otherwise, the Association may designate the party who is to be the Association member with respect to such Lot.
- b) A membership in the Association shall not be transferred, pledged or alienated in any way except as expressly provided in this Declaration. Subject to the provisions of paragraph (a) of this Section 2.4 membership in the Association shall automatically be

transferred to the new Owner upon the transfer of fee simple title to the Lot to which the membership appertains. PROVIDED, HOWEVER, the Association shall not be responsible for providing notices to the new member under this Declaration until notice of the transfer and of the name and address of the new member has been given to the Association.

Section 2.5 Board of Directors

- a) Subject to the provisions of subparagraph (b) hereof, the members of the Association shall elect the Board of Directors and the Board of Directors shall, by majority rule, conduct all of the business of the Association, except when membership votes are required pursuant to this Declaration or pursuant to the Articles of Incorporation or Bylaws of the Association[DW1].
- b) Notwithstanding anything contained in the preceding subparagraph (a) or elsewhere in the Declaration to the contrary, prior to the Turnover Date, the Developer shall be entitled to appoint all of the members of the Board of Directors.

Section 2.6 Indemnification

- a) To the fullest extent permitted by the law, the Association shall indemnify each officer and director of the Association, each member of the Architectural Committee and Developer (each, an indemnified) against all claims, liabilities, damages, costs and expenses, including reasonable attorneys' fees, incurred by the indemnified party in connection with any action taken pursuant to, or in connection with this Declaration provided the Indemnified Party did not act, fail to act or refuse to act willfully, or in a grossly negligent manner or with fraudulent or criminal intent in the performance of the indemnified party's duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which an indemnified party may be entitled at common law, by statute or otherwise.
- b) To the fullest extent permitted by law, neither the Developer nor any officer or director of the Association nor any member of the Architectural Committee shall be liable to any Owner or to the Association or anyone claiming by through or under any Owner or the Association for any damages suffered or claimed on account of any decision, course of action, inaction, omission, error or negligence taken or made in good faith and which Developer, such officer, director or Architectural Committee member reasonably believed to be within the scope of his or its duties.

Section 2.7 Powers and Duties of Association The Association shall have the powers and duties set forth in its Articles of Incorporation and Bylaws, provided such powers and duties are not inconsistent with the provisions of this Declaration, including, but not limited to the following powers and duties.

- a) The Association shall have the power, in its direction, to do any of the following, which it may exercise or perform whenever, it may deem necessary or desirable.
 - 1) Levy and collect the assessments and charges provided for in this Declaration.
 - 2) Enforce the provisions of this Declaration.
 - 3) Exclusively manage and control all Common Facilities for the benefit of the Owners, including exercise of control over such easements, leases, licenses,

usage rights and other rights and property as the Association may acquire from time to time.

- 4) Acquire by lease or own title to such property as may be reasonably necessary in order to carry out the purposes of the Association.
- 5) Grant upon, across or under property owned or controlled by the Association such permits, licenses, easements, and right-of-way for sewer lines, water lines, underground conduits, storm drains, cable tv and other public or private utilities, roadways or other purposes as may be reasonably necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Addition or any part thereof or the preservation of the health, safety, convenience and welfare of the Owners.
- 6) Erect and maintain signs for the marking of streets and safety signs for the protection of children and other person.
- 7) Obtain property insurance on the Common Facilities and Restricted Area Improvements against loss or damage by fire or other casualty and public liability insurance with respect to the Common Facilities, all in such forms and amounts and with such insurance companies as the Association may deem appropriate, naming as insured the Developer and its agents and employees (as long as the Developer owns and land within the Addition or controls the Association as provided in Section 2.11), each officer and director of the Association, any management company under any management contract with respect to the Common Facilities and its agents and employees, and any other persons or entities designated by the Association in its discretion.
- 8) Borrow money in such amounts, at such rate of interest, upon such terms and security and for such periods of time as the Association may deem necessary or appropriate, in its sole discretion; PROVIDED, HOWEVER, the foregoing shall not be constructed to give the Association any right or authority to mortgage the Common Facilities.
- 9) Adopt and enforce reasonable rules and regulations for use of the Common Facilities and the other land in the Addition to preserve or enhance the quality or appearance of the Addition or the safety or convenience of the users thereof or otherwise to promote the interests of Owners within the Addition and amend or supplement such rules and regulations at any time.
- 10) Exercise any other powers elsewhere provided to the Association in this Declaration.

b) The Association shall have the responsibilities of performing the following acts:

- 1) Clean catch basins, storm sewers and drainage facilities which are part of the Common Facilities.
- 2) Maintain all Restricted Area Improvements, and provide lawn care, including mowing, spraying, replanting grass and replacing sod on all portions of the Common Facilities. The Association shall maintain the landscaping within the Restricted Area.
- 3) Care for spray, trim, protect and replant trees and shrubbery which are part of the Common Facilities.
- 4) If any vacant or unimproved Lot is not maintained by the Owner thereof, mow, care for, maintain and remove rubbish from such Lot and do anything else the Association deems necessary or desirable to keep such Lot neat in-appearance and in good order, all at the Owner's expense.

- 5) Maintain, repair and replace all structures, improvements and facilities that are part of the Common Facilities and maintain all creeks, streams or ponds and all drainage and retention facilities, which are part of the Common Facilities.
- 6) Pay all taxes and assessments levied against the Common Facilities, and any other property owned or leased by the Association.
- 7) Keep true and correct records of accounts in accordance with generally accepted accounting principles and have available for inspection by any Owner, at reasonable times during regular business hours, books which specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise.
- 8) Upon reasonable request and during reasonable business hours, make available for inspection by any Owner the books, records and financial statements of the Association, together with current copies, as amended from time to time, of this Declaration, the Articles of Incorporation and Bylaws of the Association.
- 9) Perform any other duties required of the Association as provided elsewhere in this Declaration.

Section 2.8 Fences, Walls, Sprinkler Systems and Improvements in Restricted Areas The Association shall have the right, but not the obligation, to use the Restricted Area for any purpose set forth in this Declaration, including, without limitation for ingress and regress, and for installing, replacing, repairing, relocating and maintaining cable television systems, security and similar systems; roads, trails, sidewalks, bicycle pathways; entry monuments and fences (collectively, "Restricted Area Improvements"), as well as trees, bushes, irrigation systems, berms, or any other materials or items related to landscaping; lakes, ponds, drainage systems; street lights, and utilities, including, but not limited to water, sewers, meter boxes, mail boxes, telephones, gas, and electricity, and to enter upon, install, construct, relocate, and remove all such items. No fence, landscaping (other than sod), wall or sprinkler system shall be erected or installed in the Restricted Area by the Owner of the affected Lot without the prior written consent of the Architectural Committee [DW2].

Section 2.9 Managing Agent; Contracts & Services Any powers, rights and duties of the Association may be delegated to a managing agent under a management contract; PROVIDED, HOWEVER, that no such delegation shall relieve the Association from its obligation to perform any such delegated duty. Any contract entered into by the Association for professional management or other services which term may be renewed by agreement of the parties for successive one-year periods, and any such contract shall permit termination by either party upon 90 days' notice with or without cause and without payment of any termination fee. Subject to the foregoing limitations, the Association is specifically authorized to enter into a management contract with a management company owned in whole or in part by Developer.

The Association shall also have the right, in its discretion, to enter into such contracts and transactions with others, including Developer and its affiliates, as the Association may deem necessary or desirable for the purposes herein set forth, and shall have the right to engage and dismiss such agents and employees as will enable the Association to adequately and properly carry out the provisions of this Declaration and the Association's Articles of Incorporation and Bylaws. No such contract or transaction shall be invalidated or in any way affected by the fact that one or more members of the Board of Directors may be employed by or otherwise associated with Developer or its affiliates, provided the fact of such interest is disclosed or known to the other members of the Board of Directors acting upon such contract or transaction, and provided further that the contract or transaction is on commercially reasonable terms. Any such interested director may be counted in

determining the existence of a quorum at the meeting of the Board of Directors at which such contract or transaction is authorized, and such interested director may vote thereon with the same force and effect as if he or she were not interested.

Section 2.10 Acceptance of Easements The Association shall accept all easements, leases, licenses and other usage rights and title to all property and improvements, which may be granted, conveyed or assigned to the Association by or at the direction of Developer in Developer's sole discretion.

Section 2.11 Control of Association Developer Notwithstanding anything in this Article 2 or elsewhere in this Declaration to the contrary, Developer shall have and maintain absolute and exclusive control of the Association and the Architectural Committee, including appointment and removal in Developer's sole discretion of all officers of the Association, members of the Board of Directors and all members of the Architectural Committee, until the date (the "**Turnover Date**") which is the earlier of (a) the expiration of 10 years from the date of recording of the most recent plat affecting the Addition, or (b) the effective date designated by Developer in a notice to the members of the Association stating that Developer relinquishes control. Until the Turnover Date, Developer will be entitled to cast all votes with respect to the election and removal of all officers of the Association, the Board of Directors, and members of the Architectural Committee and with respect to any other matter requiring the vote or approval of members of the Association or the Architectural Committee as set forth herein or in the Association's Articles of Incorporation or Bylaws. Notwithstanding the foregoing, or any other provision to the contrary set forth in this Declaration, if at the occurrence of the Turnover Date, Developer continues to own any Lots in the Addition, then so long thereafter as Developer continues to own Lots in the Addition, Developer shall have the sole and exclusive authority to appoint all of the members of the Architectural [Committee][DW3].

ARTICLE III ASSESSMENTS

Section 3.1 Creation of Lien and Personal Obligation Each Owner of a Lot shall pay all assessments, annual and special, provided for in this Declaration. Each such assessment, together with interest thereon as hereinafter provided, filing fees, attorneys' fees, court costs and other costs of collection thereof (such interest and all of such fees and costs being herein sometimes collectively called "**Costs**"), shall be a continuing lien upon the Lot against which such assessment is made, which lien shall be enforceable as provided in Section 3.6. Each assessment, together with all Costs relating thereto, shall also be the personal obligation of the Owner of the Lot at the time the assessment is made. If an Owner consists of more than one person and/or entity, the obligations of the Owner for the payment of such assessments and Costs shall be joint and several.

Section 3.2 Purpose of Assessments The assessments levied by the Association shall be used to provide funds to enable the Association to exercise the powers and perform the duties herein set forth, including (by way of example only and not by way of limitation) (a) the costs of maintenance, management, operation, repair and replacement of the Common Facilities and of the Restricted Area Improvements; (b) the costs of management and administration of the Association, such as compensation paid by the Association to managers, accountants, attorneys, other professionals and employees; (c) the costs of utilities (including water, electricity, gas and sewer provided directly to the Association and not individually metered or billed by the service providers directly to the Lots) and other services provided by the Association which generally benefit and enhance the value and desirability of the Addition; (d)

the costs of any insurance maintained by the Association; (e) reasonable reserves for major items, contingencies, replacements and other purposes as deemed appropriate by the Association; (f) the costs of bonding any persons handling funds of the Association; (g) taxes, assessments and other governmental impositions paid by the Association; and (h) the costs of any other items or services to be provided or performed by the Association as set forth in this Declaration or in the Association's Articles of Incorporation or Bylaws, or in furtherance of the purposes of the Association.

Section 3.3

Annual Assessments

- a) Each Lot shall be subject to an annual assessment which may be levied by the Association from year to year and shall be paid to the Association annually in advance by the Owner of such Lot. If the amount collected from annual assessments for any year exceeds the Association's costs and expenses for such year, such excess shall be taken into consideration in preparing the budget and determining the annual assessments to be levied for the following year. If the amount collected from annual assessments for any year is inadequate to meet the Association's actual or projected costs and expenses for such year, special assessments may be levied at any one or more times during such year as provided in Section 3.4. A portion of the annual assessments for each year shall be allocated to reserves to provide required funds for repair or replacement of major items and for other contingencies and proper purposes. The responsibility of the Association shall be only to provide for such reserves as the Association in good faith deems reasonable, and neither Developer nor the Association shall have any liability to any Owner if such reserves are inadequate.
- b) The first annual assessment with respect to each Lot shall be due as of the first day of the month after the date on which a residence on such Lot is first occupied for residential purposes (i.e., occupancy of a model home for sales purposes shall not trigger the assessment) . Such first annual assessment shall be prorated on a per diem basis in accordance with the number of days remaining in such year from and after the date the assessment is due. The annual assessment with respect to each Lot for each subsequent year shall be due as of January 1 of such year.
- c) Failure of the Association to levy annual assessments for any one year shall in no way affect the right of the Association to do so for any subsequent year.
- d) The Association shall give at least 30 days advance notice to each Owner of a Lot whose address is then listed with the Association of the amount of the annual assessment on such Lot and the date on which such assessment is due.

Section 3.4

Special Assessments

- a) The Association may at any time or times during any year, if necessary in its discretion to enable the Association to carry out the purposes herein set forth, levy against each Lot from and after the date on which such Lot first becomes subject to annual assessments as provided in Section 3.3(b) a special assessment over and above the annual assessment for such year authorized by Section 3.3.
- b) The Association shall give at least 30 days advance notice to each Owner of a Lot whose address is then listed with the Association of the amount of each special assessment and the date on which such assessment is due.

Section 3.5 No Waiver or Offset No Owner shall be exempt from payment of the assessments and Costs imposed under this Declaration by reason of the waiver by such Owner of the use or enjoyment of the Common Facilities or by nonuse thereof or by abandonment of such Owners Lot. All assessments, annual and special, shall be payable in the amounts specified in the notices thereof given by the Association and there shall be no offsets against such amounts for any reason.

Section 3.6 Delinquency; Enforcement of Liens

- a) If any Owner of a Lot fails to pay any assessment, annual or special, on or before the 30th day following the date on which such assessment is due, or fails to pay any other amount owing under this Declaration within 30 days of the due date (collectively, a "**Delinquent Amount**") then such Delinquent Amount shall bear interest from the due date until paid at the Default Rate of Interest.
- b) Each assessment, annual or special shall become delinquent on the 30th day after the date on which such assessment is due, and payment of the assessment and Costs (including interest), and any other Delinquent Amounts owing under this Declaration may then be enforced as a lien on such Lot in proceedings in any court in Leavenworth County, Kansas, having jurisdiction of suits for the enforcement of such liens. The Association may, whenever any assessment is delinquent, file a certificate of nonpayment of assessments (the "**Delinquency Statement**") with the Register of Deeds, and for each Delinquency Statement so filed, the Association shall be entitled to collect from the Owner of the Lot described therein an administrative fee set by the Association, which fee shall be part of the Costs included in the lien.
- c) Such liens securing payment of a Delinquent Amount shall continue for a period of five years from the date of recording of the Delinquency Statement and no longer, unless, within such time, suit shall have been instituted for the collection of the Delinquent Amount, in which case the lien shall continue until the termination of the suit and until the sale of the property under execution of the judgment therein.
- d) Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, the benefit of any redemption, homestead or exemption laws of the State of Kansas now or hereafter in effect.
- e) Any lien which arises against any Lot by reason of any Delinquent Amount shall be subordinate to the lien of a first mortgage ("**First Mortgage**") on such Lot acquired in good faith and for value securing the payment of a loan made by a bank, savings and loan association or other institutional lender ("**First Mortgagee**"), provided such First Mortgage is recorded prior to the recording of the Delinquency Statement. If any lien for Delinquent Amounts and Costs which accrued prior to the date a First Mortgagee acquires title to the Lot has not been extinguished by the process whereby the First Mortgagee acquired title, the First Mortgagee shall not be liable for Delinquent Amounts or Costs arising or accruing prior to such date and in the case where the Delinquent Amount is an assessment or other sum owing to the Association, upon request by the First Mortgagee to the Association, the Association shall release such lien of record; PROVIDED, HOWEVER, that (i) any Delinquent Amount and Costs which are so extinguished shall continue to be the personal obligation of the delinquent Owner, and the party owed such amount may seek to collect them from such Owner even after such Owner is no longer the Owner of the Lot, and (ii) if the Owner against whom the original assessment was made is the purchaser of or redeems the Lot, the lien shall continue in effect and may be enforced for the Delinquent Amount and Costs which were due prior to the final conclusion of any such foreclosure or equivalent proceeding. Any such Delinquent Amount and Costs which are not collected within a reasonable time may be reallocated by the Association among all other Owners of Lots, irrespective of whether

collection proceedings have been commenced or are then pending against the defaulting Owner.

Section 3.7 Certificate of Nonpayment of Assessments Upon request, any party acquiring title to or any interest in a Lot shall be entitled to a certificate from the Association setting forth the amount of due but unpaid assessments and Costs pertaining to such Lot, if any, and the Association shall thereafter be prevented from asserting that the amount of accrued but unpaid assessments and costs is in excess of the amount so indicated in the certificate.

Section 3.8 Pledge of Assessment Rights as Security The Association may pledge the right to exercise its assessment powers as security for any obligation of the Association; PROVIDED, HOWEVER, that after the Turnover Date any such pledge shall require the prior affirmative vote of a majority of all members of the Association.

ARTICLE IV EASEMENTS AND LICENSES

Section 4.1 Reservation by Developer; Grant to Association Developer hereby reserves to itself and its successors and assigns and grants to the Association the right, privilege and easement to enter upon the Common Facilities and the Lots to the extent necessary for the purposes of

- a) constructing, maintaining, relocating, repairing, replacing and removing Restricted Area Improvements on the Restricted Area, and decorative walls underground sprinkler systems, lighting, sidewalks, signs, landscaping features, recreational facilities and other improvements on the Common Facilities, which Developer or the Association reasonably believes will enhance the beauty and function of the Common Facilities or the Addition.
- b) Planting, replanting, maintaining, relocating and replacing grass and landscaping on the Restricted Area and on the Common Facilities.
- c) Doing all other things which Developer or the Association shall be obligated to do as set forth in this Declaration or shall deem desirable for the neat and attractive appearance and beautification of the Common Facilities.

Section 4.2 Grant to Owners. Developer hereby grants to each Owner the non-exclusive, perpetual right, privilege and easement to use the Common Facilities for the respective purposes for which the Common Facilities are constructed, designed and intended, subject, however, to all of the provisions of this Declaration, the provisions of the Association's Articles of Incorporation and Bylaws and any reasonable rules and regulations of general application within the Addition which the Association may adopt from time to time, which right, privilege and easement shall survive the termination of this Declaration.

Section 4.3 License to Enter During the term of this Declaration and thereafter as long as any of the easements created by this Declaration survive, Developer, the Association and their respective partners, officers, employees, agents and contractors shall have a temporary license to enter upon and use such portions of any Lot as may be reasonably necessary to permit Developer or the Association to exercise or perform the rights, powers and obligations reserved to Developer or the Association by the provisions of this Declaration.

ARTICLE V
DAMAGE TO IMPROVEMENTS

Section 5.1 Damage to Improvements If improvements on a Lot are damaged or destroyed by casualty or other cause, such improvements shall either be repaired and restored with due diligence, or the Owner shall, at its sole expense, demolish the damaged improvements, including foundations, clear away all debris and take all other action (including filling to grade, sodding and landscaping) required so that the area formerly occupied by the demolished improvements shall be neat and attractive in appearance and compatible with a high-quality residential development.

ARTICLE VI
ADDITIONAL COVENANTS

Section 6.1 Property and Lot Maintenance All vacant Lots and undeveloped portions of the Addition shall be kept mowed and free of trash and construction debris by the Owner thereof. From and after the completion of construction of a residence on a Lot, the Owner and occupant of each Lot shall cultivate an attractive ground cover or grass on all areas visible from the street shall maintain all areas in a sanitary and attractive manner and shall edge the street curbs that run along the property line and the sidewalks and driveway located on the Lot. Each Lot must be kept mowed at regular intervals so as to maintain the property in a neat and attractive manner. No vegetables shall be grown in any yard that faces a street unless completely screened from public view by screening approved by the Architectural Committee. No Owner shall permit weeds or grass to grow to a height of greater than six (6) inches upon its Lot. Upon failure of the owner of any Lot to maintain such Lot (whether or not developed), Developer may, at its option, have the vegetation cut as often as necessary in its judgment and the Owner of such Lot shall be obligated, when presented with an itemized statement, to reimburse Developer for the cost of such work. In the event Developer shall fail to exercise its right granted under the preceding sentence within ten (10) days following written notice to Developer from the Association stating the Association's intent to exercise such right, the Association shall have the right, in lieu of Developer, to have the vegetation cut as provided above, and upon exercise of such right, the Owner of the Lot in question shall be obligated, when presented with an itemized statement, to reimburse the Association for the cost of such work.

Section 6.2 Maintenance of Improvements Each Owner shall maintain the exterior of all improvements on its Lot in good condition and repair, shall replace worn and rotten parts, shall regularly repaint all painted surfaces and shall not permit the roofs, rain gutters, downspouts, exterior walls, windows, doors, walks, driveways, parking areas or other exterior portions of the improvements to deteriorate. Upon failure of the Owner to maintain the exterior of all buildings, fences, walls and other improvements on his Lot, Developer may, at its option, perform such maintenance as often as necessary in its judgment, and the Owner of such Lot shall be obligated, when presented with an itemized statement, to reimburse Developer for the cost of such maintenance work. In the event Developer shall fail to exercise its right granted under the preceding sentence within ten (10) days following written notice from the Association to Developer of the Association's intent to exercise such right, the Association shall have the right, in lieu of Developer, to perform such maintenance as provided above, and upon exercise of such right, the owner of such Lot in question shall be obligated, when presented with an itemized statement, to reimburse the Association for the cost of such maintenance work.

Section 6.3 Taxes and Other Encumbrances Each Owner shall promptly pay, before delinquency, all taxes, assessments, liens, encumbrances or charges of every kind ("**Liens**") levied against or imposed upon such Owner or such Owner's Lot which may, as a matter of law, be or become a lien on any part of the Restricted Area prior in lien to the easements granted in this Declaration. In the event of a breach of this covenant, the Association shall have, in addition to all other rights or remedies, the right (but not

the obligation) to obtain the discharge of any such Lien by payment or otherwise, and collect from such Owner all costs and expenses incurred by the Association in connection therewith, including attorneys' fees.

- Section 6.4 Lien Rights If a party rectifies an Owner's default under this Article VI, the curing party shall have a lien on the defaulting Owner's Lot, which lien may be enforced in conformance with the provisions of Article III.

ARTICLE VII ARCHITECTURAL AND LANDSCAPE CONTROL

- Section 7.1 Appointment of Architectural Committee The Association shall have an architectural committee ("**Architectural Committee**") consisting of persons appointed (and removed) from time to time, subject to the last sentence in Section 2.11, (a) by Developer until the Turnover Date, and (b) by the Board of Directors after the Turnover Date. After the Turnover Date, the Architectural Committee shall have three members.

- Section 7.2 Term Successors; Compensation; Liability of Architectural Committee

- a) Each member of the Architectural Committee shall serve on the Architectural Committee until such member resigns or is removed by the party who appointed such member to serve on such Architectural Committee. Without limiting the foregoing, the appointing party may remove its appointed member of the Architectural Committee at any time for any reason.
- b) In the event of the death, resignation or removal by the appointing party of any member of the Architectural Committee, such appointing party shall have full authority to designate and appoint a successor within a reasonable period of time. If no such appointment is made on a timely basis, the remaining member(s) of the Architectural Committee shall appoint a successor member.
- c) No member of the Architectural Committee shall be entitled to compensation for, or be liable for claims, causes of action or damages arising out of, services performed pursuant to this Declaration.
- d) Each member of the Architectural Committee who is also an Owner must be current on all Assessments and otherwise in good standing with the Association to be eligible to serve.

- Section 7.3 Authority of Architectural Committee

- a) After the initial platting of the land in the Addition, the Addition shall not be re-platted, no landscaping shall be undertaken and no building, fence, wall or other structure or improvement shall be commenced, erected, placed, relocated, maintained or altered on any Lot, nor shall any exterior painting of, exterior addition to, or alteration of, such items be made by any party (other than Developer) until all plans have been approved in writing by a majority of the members of the Architectural Committee, as to:
 - 1) Conformity and harmony of the proposed re-plat and any landscape plan to the existing development in the Addition, surrounding areas, community standards and other developments with which Developer is associated;
 - 2) Quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design and proper orientation of main elevation with respect to nearby streets;

- 3) Conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping in relation to the various parts of the proposed improvements and in relation to improvements on other Lots in the Addition; and
 - 4) The other standards set forth within this Declaration or matters in which the Architectural Committee has been vested with the authority to render a final interpretation and decision. Without limiting the foregoing, the Architectural Committee is authorized and empowered to consider and review any and all aspects of platting, construction and landscaping which may, in the reasonable opinion of such party, affect adjoining Lots, or the general value of Lots in the Addition.
- b) The Architectural Committee acting pursuant to a majority vote of its members, shall have the right, power and authority to enforce the covenants, conditions, restrictions and all other terms contained in this Declaration relating to the matters within its purview as set forth herein.

Section 7.4

Procedure for Approval

- a) Each of the following documents (and all modifications thereof) must be submitted to the Architectural Committee and such Committee's approval must be obtained, prior to the document's submission to the City or implementation:
 - 1) Architectural, building and construction plans for each residence showing the nature, kind, shape, square footage, height, color, materials and location of all improvements on each Lot, and specifying any requested variance from the setback lines, garage location or other requirements set forth in this Declaration, and, if requested by the Architectural Committee, samples of proposed construction materials.
 - 2) All documents must be submitted in duplicate and must be sent to the Architectural Committee by hand delivery or certified mail; PROVIDED, HOWEVER, Developer shall not be obligated to submit or obtain approval of such documents as long as Developer owns any Lot(s) in the Addition.

Section 7.5

Design Standards The Architectural Committee shall use good faith efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the Addition consistent with the standards set forth in this Declaration, provided that such Committee shall have sole discretion with respect to taste, design and all standards specified herein. One objective of the Architectural Committee is to conform generally to community standards and prevent unusual, radical, curious, odd, bizarre, peculiar or irregular structures from being built or maintained in the Addition. The Architectural Committee may (but is not required to) from time to time publish and promulgate bulletins regarding architectural standards, which shall be fair and reasonable and shall carry forward the spirit and intention of this Declaration ("**Design Standards**"). The Design Standards may, from time to time, be amended, supplemented or repealed by the Architectural Committee, and the Committee, in its sole discretion, may grant variances from the Design Standards.

Section 7.6

Construction Period Requirements The Architectural Committee shall have the right to establish additional measures to be observed during the period of construction on a Lot in order to minimize disturbance to adjacent sites, and all parties involved in such construction shall be required to observe such measures.

Section 7.7

Residence Design Without limiting the requirement that improvements conform to any Design Standards the following shall apply:

- (a) General Design The design of each residence shall comply with the Tomahawk Valley—Builder Requirements—Phase I (or with the current Builder Requirements then in effect) (“Builder Requirements”) and with the following criteria: (1) appropriateness of form, color and materials to design style; (2) relationship of window to wall and wall to total form (well-designed massing); (3) appropriateness of detailing to form, style and massing; and (4) proportions of roofs being consistent with the proposed architectural style. In the event of any conflict between these Declarations and the Builder Requirements, the Builder Requirements shall take priority.
- (b) Exterior Materials and Colors All exterior materials and the color of all exterior materials (including paint) shall be subject to prior written approval of the Architectural Committee. Residences shall be faced on all sides with quality materials (such as brick, wood, stone, stone veneer, batt and board or stucco) or other materials as approved by the Architectural Committee. Prefabricated metal buildings are not permitted.
- (c) Windows, Solar and Awnings. Window or Wall Air Conditioning and Heating Units No unpainted aluminum will be permitted for window framing. Wood frames shall be painted, sealed, stained or have another coating approved by the Architectural Committee. Without limiting the foregoing, the Architectural Committee has the authority to require the use of certain types of divided light windows (such as bronzed, white or black), to prohibit or regulate the use of solar or heating panels and to regulate the construction, location, appearance and maintenance of awnings. No window or wall air conditioning or heating units will be permitted; PROVIDED HOWEVER, Developer may permit such heating and air conditioning units in a marketing office within a model home.
- (d) Roofs The Architectural Committee has the authority to require at a minimum a six (6) to twelve (12) foot roof pitch or slope on the main structure of the residence (subject to the Architectural Committee's ability to permit slight variances for garage and porch roof pitch or slope), and to require that of the roofing materials be earth tones. No metal roofs (other than metal roofing over window bays) are permitted. All roofs shall be covered with architecturally-designed composite or asphalt shingles with a minimum 30-year life expectancy, tile, slate, wood shingle or wood slate, unless another material is specifically approved in writing by the Architectural Committee.
- (e) Construction, Location and Size Limitations
- i. Once commenced, construction of improvements shall be diligently pursued to completion, and improvements may not be left in a partly finished condition for more than 30 days without written approval from the Architectural Committee.
 - ii. Subject to the provisions of Article V residences destroyed by fire or other casualty shall be demolished and removed from the Lot and new construction begun within three months after the date of such destruction, and thereafter such construction shall be performed with due diligence through completion.
 - iii. Total minimum floor space for two-story residences shall be 2,200 square feet, and total minimum floor space for one-and-one-half story residences shall be 2,000 square feet. Split-Level entry residences are prohibited; however California split level homes are permitted, and shall have a total

minimum floor space on the first floor of 1,500 square feet. . Minimum finished ground-floor square footage requirements for residences (as measured to the outside of exterior walls, but exclusive of porches, garages, patios, unfinished attics, basements and detached accessory buildings) shall be:

1. For ranch-style residences, 1,500 square feet;
 2. For reverse 1.5 stories residences, 1,300 square feet on main level, 700 min on lower level finish;
 3. For one-and-one-half-story residences, 2,000 square feet; with 1,300 MIN square feet on main level
 4. For two-story residences 2,200 square feet.
- iv. All residences and other improvements shall be located on each Lot as approved by the Architectural Committee and in full compliance with any setback lines or restrictions shown on the Plat or required by the City, and with minimum setbacks as follows:

--Front yard minimum setback: 30 feet
--Back yard minimum setback: 30 feet
--Side yard minimum setback: 7 feet

v.

1. Fences No fence or wall shall be permitted to extend nearer to the front street than (i) forty-five (45) feet from the front street, or (ii) the front of the house, whichever distance is further. Location of the fence must be approved by the Architectural Committee. All portion of any fence shall be (5) feet in height as measured from the lowest point of the Lot. Only wrought iron, black aluminum or comparable looking metal is allowed. No chain link, other metal or wood fences will be allowed. Dog or animal runs or pens are specifically prohibited. Fences shall not be placed farther toward the front of a residence than a straight line extended from the rear of the building line of the residence.
2. Outbuildings Detached building (such as a storage building, doghouse, greenhouse, gazebo or playhouse) or other detached structures are prohibited.
3. Garages Unless otherwise approved by the Architectural Committee, all garages shall be attached to the residence. All driveways shall be surfaced with four inches (4") of reinforced concrete that is "picture framed" with a control cut joint in the driveway ten feet behind the curb, or with brick pavers constructed in a similar fashion, or other surface approved by the Architectural Committee. Gravel driveways or driveways consisting of crushed rock base with asphalt prime and seal coat will not permitted.
4. Obstructions No fence, landscaping, or other obstruction shall be permitted on any Lot that would obstruct necessary sight lines of vehicular traffic.

Section 7.8 Interpretation; Waiver The Architectural Committee's interest in reviewing site and building designs is to assure that a high quality of compatible development is consistently achieved. In order to meet special situations, which may not be foreseen, it may be desirable from time to time for the Architectural Committee to allow variances of certain requirements. Any variance granted is considered not to be precedent setting because the decision is being made in the context of the specific project in question with the welfare of the overall Addition in mind. All approvals and consents of the Architectural Committee shall be in writing, and oral approvals or consents shall be of no force or effect.

7.9 Architectural Committee Limitation on Liability

- a) The Architectural Committee may delegate its plan review responsibilities to one or more of its members or to architectural consultants retained by the Architectural Committee. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Architectural Committee.
- b) The establishment of the Architectural Committee and Design Standards shall not be construed as impairing the obligation of any Owner to maintain or repair his Lot as may otherwise be specified in this Declaration or in the Association's Bylaws.
- c) By its approval of plans and specifications, the Architectural Committee shall not be deemed to have approved the same for engineering design or for compliance with zoning and building ordinances, and by approving such plans and specifications neither Developer nor any officer or employee thereof, or any other or governmental requirements, the Architectural Committee nor any member thereof, nor the Association nor any member, officer or director thereof, assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither Developer nor any officer or employee thereof, the Architectural Committee nor any member thereof, nor the Association nor any member, officer or director thereof, shall be liable to any Owner or other person or entity for any damage, loss, cost or prejudice suffered or claimed on account of (1) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (2) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, or (3) the development or manner of development of any property within the Addition. Approval of plans and specifications by the Architectural Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with accepted engineering practices, or with applicable governmental ordinances or regulations, including zoning ordinances and building codes.

ARTICLE VIII
USE AND OCCUPANCY RESTRICTIONS

Section 8.1 Residential Use

- a) Each Lot may be used only for residential purposes and for no other use or purpose. No business or commercial building may be erected on any Lot and no business or commercial enterprise or other nonresidential use may be conducted on any Lot. Without limiting the foregoing, no building or structure intended for or adapted to commercial, business or professional purposes, nor any apartment house, duplex, double house, lodging house, rooming house, group home, dormitory, church, school, hospital, sanitarium, guest house, servants quarters or multiple-family dwelling shall be erected, placed, permitted or maintained on any Lot. Nothing in this Paragraph

shall prohibit an Owner's use of its residence for quiet, inoffensive activities, such as tutoring or giving art or music lessons, or for a home office, so long as such activities do not violate the other restrictions set forth in this Declaration, and do not materially increase the number of cars parked on the street, or interfere with adjoining Owners' use of their Lots.

- b) Each residence may be occupied by only one (1) family consisting of persons related by blood, adoption or marriage or no more than two (2) unrelated persons living and cooking together or in the same residence as a single housekeeping unit; PROVIDED, HOWEVER, that nothing contained herein shall prevent occasional temporary occupancy by guests of the family or occupancy by full-time domestic servants or medical assistants employed by the family; and FURTHER PROVIDED, nothing contained herein shall prevent the owner of a residence from renting a residence as long as the residence is occupied by only one (1) family as set out in this paragraph.
- c) Notwithstanding anything contained herein to the contrary, Developer or a Builder, subject to the Developer's approval, may temporarily use a residence, garage or trailer on a Lot as a sales, marketing or construction office for the sole purpose of (i) enabling the Developer to develop, construct, market and/or sell Lots and residences in the Addition or in any other addition or subdivision owned by Developer, or (ii) enabling a Builder to construct, market and/or sell such Builder's residences in the Addition until such Builder's last residence in the Addition is sold.

Section 8.2

Signs Except for a professionally prepared For Sale or For Rent sign, not exceeding 5 square feet, no yard signs, banners, or other signs are permitted without the Association's prior approval. All signs permitted by the Association shall be maintained in good condition and repair, with a neat and orderly appearance, and shall comply with the applicable ordinances of the City. Without limiting the foregoing, no sign shall be permitted which (i) describes the condition of the residence or the Lot, (ii) describes, maligns, or refers to the reputation, character or building practices of Developer, any Builder, or any other Owner, or (iii) discourages or otherwise impacts or attempts to impact a party's decision to acquire a Lot in the Addition. In the event of a violation of the foregoing provisions, Developer or the Association shall be entitled to remove any such offending sign, and in so doing, shall not be subjected to any liability for trespass or otherwise.

Section 8.3

Animals No animals of any kind shall be raised, bred or kept on any land in the Addition except that dogs, cats or other household pets may be kept for the purpose of providing companionship for the residents of any residence constructed on a Lot. Animals are not to be raised, bred or kept for commercial purposes or for fur, clothing or food. Without limiting the foregoing, it is the general purpose of these provisions to restrict the use of the Addition so that no person shall permanently or temporarily quarter in the Addition live cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks, snakes or any other reptiles, mammals or animals (domesticated, household or otherwise) that may interfere with or threaten the quietude, health or safety of the community, as determined by the Association. No more than four (4) domesticated household pets will be permitted on each Lot. Pets must be restrained or confined on the backyard portion of Owner's Lot inside a fenced area (which may be in the form of a so-called "invisible" electric fence) or within the residence. Dog runs are not permitted. All Lots shall be kept clean and free of pet waste and debris. All animals shall be properly tagged for identification and shall be properly vaccinated, bathed and otherwise kept clean to avoid health or safety risks and concerns.

Section 8.4

Nuisances No Owner shall permit or suffer anything to be done or kept about or within such Owner's Lot or on or about any other part of the Addition which obstructs or interferes with the rights of other Owners or occupants or causes them annoyance by unreasonable noises or otherwise, nor will any Owner commit or permit any nuisance or illegal act about or within any part of the Addition. Each Owner shall comply with the rules and regulations adopted by the Association and the requirements of all health authorities and other governmental authorities having jurisdiction over the Addition.

Section 8.5

Boats and Motor Vehicles

- a) No boats, marine craft, hovercraft, aircraft, trailers, buses, trucks, pick-up camper, camper body, motor homes, campers or other recreational vehicles or similar vehicle or equipment shall be parked or stored in or upon any Lot except within an enclosed garage. No automobile shall be stored (except within an enclosed garage), or parked, except for temporary guest parking, and except for parking within an enclosed garage or on a driveway on the Lot (i.e., street parking is prohibited, except for temporary guest parking). A vehicle shall be deemed stored on a driveway in violation of this Declaration if it is not being driven on a public street at least once in 10 consecutive days. No vehicle shall be repaired (except for minor repairs effected within an enclosed garage) or rebuilt on any Lot. The Association may remove or cause to be removed any unauthorized vehicle or other item prohibited hereby at the expense of the owner thereof in any manner permitted by law.
- b) Trucks with tonnage in excess of one (1) ton and any vehicle in excess of one-half (1/2) ton with painted or affixed advertisement shall not be permitted to park overnight within the Addition, except those used by Developer or a Builder during and directly related to the development of the Addition or construction of improvements on a Lot in the Addition.
- c) No vehicle of any size, which transports dangerous, flammable, hazardous, corrosive or explosive cargo, may pass through or be kept in the Addition at any time.
- d) Except to the extent expressly permitted hereby, no vehicles or similar equipment shall be parked or stored in any area visible from any street except passenger automobiles, passenger vans, motorcycles, pick-up trucks (with tonnage not in excess of one (1) ton) and pick-up trucks with attached bed campers (with tonnage not in excess of one (1) ton) that are in operating condition with current license plates and in daily use as motor vehicles on the streets and highways of the State.

Section 8.6

Lights No spotlights, floodlights or other lighting shall be placed or used on any Lot in a manner, which illuminates or otherwise unreasonably interferes with the enjoyment of neighboring Lots. Golden, yellow, blue or reddish colors are not permitted except for holiday decorative lighting during the period from Thanksgiving Day through New Year's Day. No exterior lighting shall be installed or maintained on any Lot if the Architectural Committee objects thereto.

Section 8.7

Antennas No exterior radio, television or other antenna of any kind (including "satellite dishes") or other device for the reception or transmission of radio, microwave or similar signals shall be placed or maintained on any Lot without the prior approval of the Architectural Committee. All such antennas and other devices shall be completely screened from view from outside the Lot (such screening shall be approved by the Architectural Committee) and shall be installed in accordance with and shall comply in all respects with City requirements.

Section 8.8

Trash and Garbage No garbage or trash shall be kept, maintained or contained on any Lot so as to be visible from another Lot. All equipment and containers for the storage or other disposal of such material shall be kept in clean and sanitary condition. No incinerator shall be kept or maintained on any Lot. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot. Trash shall be placed in such designated locations and containers as may be established from time to time in the Design Standards. Materials incident to construction of improvements may be stored on Lots during construction so long as construction progresses on such Lots without delay.

Section 8.9

Mining No manufacturing, industrial, oil or gas drilling, oil or gas development, smelting, refining, quarrying or mining operations of any kind shall be permitted in the Addition, nor shall oil or gas wells, tanks, tunnels, pipelines (other than natural gas lines installed and maintained by a utility company), mineral excavations or shafts be permitted upon or in any part of the Addition. No derrick or other

structure, equipment or machinery designed for use in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted within the Addition.

- Section 8.10 Basketball Goals No basketball goals shall be attached to any building. All basketball goals shall be freestanding. All such goals and devices are otherwise subject to approval by the Architectural Committee.
- Section 8.11 Clothes The drying or hanging of clothes so as to be visible from the street or another Lot is prohibited.
- Section 8.12 Drainage No Owner shall erect, construct, maintain or permit any fence or other improvement or obstruction which would interfere with or alter drainage of the land, or within any area designated by Developer or the Association as a drainage easement, or within any area which has been intentionally contoured to facilitate drainage; PROVIDED that , with the prior consent of the City and the Architectural Committee, nonpermanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.
- Section 8.13 Storage Tanks No exterior storage tank of any kind, whether for fuel, water, sewage or any other substance, shall be placed or maintained on any Lot.
- Section 8.14 Garage Doors Garage doors shall be kept closed except when opened for the removal or the parking or replacing of a vehicle or other item in the garage.
- Section 8.15 Safety Conditions; Repairs Without limiting the other provisions of this Article VIII, each Owner shall maintain and keep such Owner's Lot at all times in good repair and in a clean, safe and sanitary condition, and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their Lots. Subject to the provisions of Article V, all improvements on a Lot shall be repaired and restored by the Owner thereof with due diligence.
- Section 8.16 Waiver or Modification; Additional Restrictions The Association or the Architectural Committee may waive or modify any one or more of the foregoing restrictions. The Association may also further restrict or regulate the use and occupancy of the Addition and the Lots by reasonable rules and regulations of general application within the Addition adopted from time to time by the Association.
- Section 8.17 Compliance with City Requirements Notwithstanding any provision of this Article 8 or any other provision of this Declaration to the contrary, all property within the Addition shall be used only in compliance with City requirements. In every case in which any provision of this Declaration is at variance with City requirements, the more restrictive provision shall govern and control.
- Section 8.18 Enforcement The Association or its authorized agents may enter any Lot on which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses, and such fines as may be imposed by the rules and regulations adopted by the Association, shall be deemed secured by a lien upon such Lot enforceable in accordance with the provisions of Section 3.6. All remedies described in Article 11 hereof and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, occupant or other party of any provision of this Article 8, or any other provision of this Declaration.
- Section 8.19 Exterior Audio Devices No horn, whistle, siren, bell, or other sound device shall be located, installed, or maintained in or upon exterior of any Lot.
- Section 8.20 Waivers or Modification; Additional Restrictions The Association or the Architectural Committee may waive or modify anyone or more of the foregoing restrictions. The Association may also further restrict or regulate the use and occupancy of the Addition and the Lots by reasonable rules and regulations of general application within the Addition adopted from time to time by the Association.

ARTICLE IX MORTGAGES

- Section 9.1 Defaults Notwithstanding anything in this Declaration to the contrary, no breach or default of any term, provision, covenant, condition, restriction or easement contained in this Declaration shall defeat or adversely affect the lien of any mortgage on any property in the Addition; however, except as herein specifically provided otherwise, each and all of said terms, provisions, covenants, conditions, restrictions and easements shall be binding upon and effective against any Owner who acquires its title or interest by foreclosure, deed in lieu of foreclosure or the exercise of any other right or remedy under a mortgage, including the obligation to pay all assessments and Costs arising or accruing thereafter, in the same manner as any other Owner. An Owner who leases his Lot to another party shall be responsible for assuring compliance by the tenant with all of the provisions of this Declaration, the Association's Articles of Incorporation and Bylaws and the rules and regulations adopted by the Association, all as amended and supplemented from time to time, and such Owner shall be jointly and severally responsible with the tenant for any violations by the tenant.
- Section 9.2 Enforcement after Foreclosure Sale Without limiting any other rights or remedies herein provided or otherwise available at law or equity, an action to rectify any default or breach of this Declaration may be brought against a purchaser who has acquired title to a Lot through foreclosure of a mortgage and the subsequent sale of the Lot (or through any equivalent proceeding), and against the successors in interest of such purchaser, even though the default or breach existed prior to the purchaser's acquisition of title to or interest in the Lot.
- Section 9.3 Exercise of Owner's Rights During the pendency of any proceeding to foreclose a mortgage (including any period of redemption), the mortgagee, or a receiver appointed in any such action, may (but need not), if and to the extent permitted by such mortgage or by the other documents evidencing or securing the loan secured by such mortgage, exercise any or all of the rights and privileges of the Owner under this Declaration, including the right to vote as a member of the Association in the place and stead of the Owner.

ARTICLE X RIGHTS OF DEVELOPER

- Section 10.1 Notwithstanding anything in this Declaration to the contrary, Developer may at any time and from time to time prior to the Turnover Date, in its sole discretion, without the consent of any Builder or other Owner, Association member or other party, take any or all of the following actions:
- a) Subdivide any Lot owned by Developer into two or more Lots;
 - b) Combine any two or more Lots owned by Developer into fewer Lots;
 - c) Add to the Addition any such land as may be owned or approved for addition by Developer;
 - d) Dedicate portions of the Addition owned by Developer to any governmental or quasi-governmental body (including the City) if, in Developer's sole discretion, such dedication will benefit the Addition as a whole. Any such change, addition or dedication shall become effective upon the recording with the Register of Deeds of an amendment to this Declaration setting forth the same. No other Owner shall be entitled to further subdivide any Lot, nor combine any Lots without the Association's approval.

ARTICLE XI REMEDIES

- Section 11.1 General In the event of any breach or default by any Owner, occupant or other person or entity ("Defaulting Party") under this Declaration, the Association shall have all of the rights and remedies provided in this Declaration and otherwise available at law or equity, and may prosecute any action or other proceeding against the Defaulting Party for an injunction, whether affirmative or negative, or for enforcement or foreclosure of any lien herein provided, or for the appointment of a receiver for the affected Lot, or for damages or specific performance, or for judgment for the payment of money and collection thereof, or for any combination of remedies, or for any other relief, all without notice and without regard to the value of the affected Lot or the solvency of the Defaulting Party. Any and all such rights and remedies may be exercised by the Association at any time and from time to time, cumulatively or otherwise.
- Section 11.2 Expenses of Enforcement All expenses of the Association or any other person having rights of enforcement under this Declaration, in connection with any action or proceeding described in or permitted by this Article XI, including court costs, attorneys' fees and other fees and expenses, and all damages liquidated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against the Defaulting Party and shall be deemed a special assessment against the Owner of the affected Lot, with respect to which special assessment the Association shall have a lien as provided in Articles III and XIII.
- Section 11.3 Right to Cure The Association and any manager or managing agent retained by the Association shall have the authority (but not the obligation) to correct any breach or default under this Declaration and to do whatever may be necessary for such purpose, and all expenses in connection therewith, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against the Defaulting Party as a special assessment , with respect to which special assessment the Association shall have a lien as provided in Article III.
- Section 11.4 Limitation on Developer's Liability Notwithstanding anything to the contrary in this Declaration, it is expressly agreed that Developer (including any assignee of Developer's interest hereunder) shall not have any personal liability to the Association or to any Owner, tenant, occupant, Association member or other party arising under, in connection with or resulting from (including resulting from any action or failure to act with respect to) this Declaration, the Association, the Architectural Committee, the Association's Articles of Incorporation or Bylaws, the Design Standards or the rules or regulations adopted by the Association, or for any action taken or not taken pursuant to authority granted to Developer herein or therein. Developer's sole liability shall be limited to Developer's equity in Lots owned by Developer and no execution or other action shall be sought or brought against any other assets or be a lien upon any other assets of Developer.

ARTICLE XII AMENDMENT AND TERMINATION

- Section 12.1 Amendment by Association Subject to Section 12.2, the Association shall have the right to amend this Declaration by a written instrument setting forth the entire amendment, which amendment shall become effective when duly adopted and recorded with the Register of ~~Deeds~~~~[DW4]~~. Subject to Section 12.2, any proposed amendment must be first approved by a majority of the Board of Directors and then adopted by the members of the Association. Amendments may be adopted by the members of the Association (a) at a meeting of the members by the affirmative vote of at least two-thirds of all members entitled to vote at such ~~meeting~~~~[DW5]~~, or (b) without a meeting if all members have been duly notified of the proposed amendment and if two-thirds of all members entitled to vote, consent to the amendment in writing.

Section 12.2 Amendment by Developer Notwithstanding any other provision of this Declaration to the contrary, prior to the Turnover Date, Developer shall have the sole and exclusive right to amend this Declaration without the approval of the Board of Directors or members of the Association or the approval of any Builder, other Owner or other party, by a written instrument setting forth the entire amendment, which shall become effective upon its recording with the Register of Deeds. Provided further, this right to amend includes the Developer's right to amend Section 7.7(e)(3) by reducing the minimum square footage requirements by twenty percent (20%). After the Turnover Date, this Declaration may not be amended to delete the last sentence of Section 2.11 without the concurrence of Developer (unless Developer at that time no longer owns any Lots in the Addition).

Section 12.3 Term and Termination This Declaration shall continue in full force and effect until January 1, 2029. Thereafter, unless one year prior to January 2, 2029, an instrument signed by at least two-thirds of all Association members then entitled to vote shall be recorded with the Register of Deeds directing termination of this Declaration, this Declaration shall be automatically continued without any further notice for an additional period of 10 years and thereafter for successive periods of 10 years each; PROVIDED, that within one year prior to the expiration of any such 10-year period, this Declaration may be terminated as above provided in this Section.

ARTICLE XIII GENERAL PROVISIONS

Section 13.1 Annexation Additional land(s) may be included in the land covered hereby and become subject to this Declaration upon the filing of record of a Supplementary Declaration of Covenants, Conditions and Restrictions which shall extend the scheme of the covenants, conditions and restrictions of this Declaration to such real property; PROVIDED, HOWEVER, that such Supplementary Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary or appropriate to reflect the different character, if any, of the added real properties and as are not materially inconsistent with this Declaration and which do not adversely affect the concept of this Declaration. Furthermore, the following provisions shall apply:

- a) Prior to the Turnover Date, additional real property may be added and annexed to the land and scheme of the Declaration by the Developer in its sole discretion.
- b) After the Turnover Date, the Association may add or annex additional real property to the land and scheme of this Declaration by obtaining the consent of the Owners representing at least seventy-five percent (75%) of all votes of the Association membership.
- c) In the event any person or entity other than the Developer desires to add or annex additional residential properties and/or Common Facilities to the scheme of this Declaration, such proposed annexation must have the prior written consent and approval of the Developer (prior to the Turnover Date) and at least seventy-five percent (75%) of the votes of all of the Association membership.
- d) Any real property additions or annexations made pursuant to this Section 13.1, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Developer, Association and the Architectural Committee to the real properties added or annexed.

Section 13.2 Notices All notices, requests, consents, approvals and other communications required or permitted under this Declaration or the Association's Bylaws shall be in writing and shall be addressed to Developer at its address, Attn: Steve Miles; to the Association at the address specified in the Association's Bylaws, and to each Owner and member at the last address shown for such Owner or member on the records of the Association. Any party may designate a different address or addresses

for itself by giving written notice of its change of address to the Association. All such notices, requests, consents, approvals and other communications shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of receipt thereof.

- Section 13.3 Performance by Developer Prior to the incorporation of the Association, Developer shall have the right, at its option, to perform the duties of the Association or the Architectural Committee, levy and collect the assessments and otherwise exercise the rights and powers herein given to the Association or the Architectural Committee in the same manner as if such powers and duties were herein given directly to Developer. Neither the Association nor the Architectural Committee shall assume any of the rights or powers herein provided without the consent of Developer and its relinquishment of such rights and powers; PROVIDED, HOWEVER, that nothing set forth herein shall be deemed to require Developer to perform or satisfy any duty or obligation to Owners or otherwise.
- Section 13.4 Assignment Developer Any and all of the rights, powers and easements of Developer herein contained may be assigned to any party which assumes the obligations of Developer pertaining to the particular rights, powers and easements assigned. Upon the recording with the Register of Deeds of a document of assignment whereby the assignee assumes and agrees to perform such obligations, such assignee shall, to the extent of such assignment, have the same rights, powers and easements and be subject to the same obligations with respect thereto as are herein given to and assumed by Developer, and Developer shall thereupon be released and relieved from all liability with respect to such obligations accruing from and after the date of recording of such assignment.
- Section 13.5 Terminology The words "include," "includes" and "including" shall be deemed followed by the phrase "without limitation." The words "herein," "hereof," "hereunder" and similar terms shall refer to this Declaration unless the context requires otherwise. Whenever the context so requires, the neuter gender includes the masculine and/or feminine gender, and the singular number includes the plural and vice versa.
- Section 13.6 Severability If any provision of this Declaration or the application thereof in any circumstance is held invalid, the validity of the remainder of this Declaration and of the application of such provision in other circumstances shall not be affected thereby.

ARTICLE XIV COVENANTS RUNNING WITH THE LAND

Each Owner, by the acceptance of a deed creating an interest or estate in any land within the Addition, and the heirs, legal representatives, successors and assigns of each of the foregoing, accepts the same subject to the all of the terms, provisions, covenants, conditions, restrictions, reservations, easements and liens and subject to all of the rights, benefits and privileges of every kind which are granted, created, reserved or declared by this Declaration, and all impositions and obligations hereby imposed (including the imposition of personal liability for payment of assessments and other amounts owing hereunder), all of which shall be deemed covenants running with the land and shall bind every Owner having any interest or estate in any land within the Addition, and shall inure to the benefit of any such person or entity, as though the provisions of this Declaration were recited at length in each and every deed, conveyance or other instrument evidencing or creating such interest or estate.

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

Miles Excavating, Inc.

By: Steve Miles, President

STATE OF KANSAS; COUNTY OF LEAVENWORTH:

BE IT REMEMBERED that on this _____ day of _____, 2018, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came **Steve Miles, President of Miles Excavating, Inc., A Kansas Corporation**, who are personally known to me to be the same people who executed the within instrument and each of them duly acknowledged the execution of same.

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

Notary Public

My Commission Expires: _____

Exhibit "A"

FINAL PLAT OF TOMAHAWK VALLEY

LEGAL DESCRIPTION

A TRACT OF LAND IN THE NORTHWEST AND SOUTHWEST FRACTIONAL QUARTERS OF SECTION 2, TOWNSHIP 11 SOUTH, RANGE 22 EAST OF THE SIXTH PRINCIPAL MERIDIAN, IN THE CITY OF BASEHOR, LEAVENWORTH COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS NORTH 89°59'44" EAST, 2006.66 FEET ALONG THE SOUTH LINE, AND NORTH 00°19'46" WEST, 1956.05 FEET FROM THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER SECTION, SAID POINT BEING ON THE WEST RIGHT-OF-WAY LINE OF 155TH STREET AND THE NORTHEAST CORNER OF THAT TRACT DESCRIBED IN BOOK 526, PAGE 842, IN THE OFFICE OF THE LEAVENWORTH COUNTY REGISTER OF DEEDS; THENCE SOUTH 89°30'43" WEST, ALONG THE NORTH LINE OF SAID TRACT, 545.00 FEET THE NORTHWEST CORNER THEREOF; THENCE SOUTH 00°19'46" EAST, ALONG THE WEST LINE OF SAID TRACT, 59.84 FEET; THENCE NORTH 82°31'27" WEST, 183.72 FEET; THENCE NORTH 61°13'31" WEST, 277.00 FEET; THENCE NORTH 61°13'31" WEST, 50.00 FEET; THENCE NORTH 58°36'57" WEST, 290.33 FEET; THENCE NORTH 68°23'30" WEST, 105.96 FEET; THENCE NORTH 62°29'34" WEST, 50.83 FEET; THENCE NORTH 72°51'52" WEST, 110.00 FEET; THENCE NORTH 17°08'08" EAST, 560.00 FEET; THENCE SOUTH 72°51'52" EAST, 110.00 FEET; THENCE NORTH 72°54'33" EAST, 60.47 FEET; THENCE SOUTH 71°09'46" EAST, 96.70 FEET; THENCE SOUTH 61°44'43" EAST, 216.35 FEET; THENCE SOUTH 84°09'51" EAST, 65.55 FEET; THENCE SOUTH 61°44'43" EAST 137.08 FEET; THENCE SOUTH 00°03'37" EAST, 28.39 FEET; THENCE SOUTH 89°21'23" EAST, 167.92 FEET; THENCE ON A 2000.00 FOOT RADIUS CURVE TO THE LEFT, WITH 102.96 FOOT CHORD BEARING SOUTH 01°08'44" WEST, AN ARC DISTANCE OF 102.98 FEET; THENCE SOUTH 00°19'46" EAST, 103.44 FEET; THENCE NORTH 89°40'13" EAST, 145.00 FEET TO THE WEST LINE OF THAT TRACT DESCRIBED IN BOOK 772, PAGE 45, IN THE OFFICE OF THE LEAVENWORTH COUNTY REGISTER OF DEEDS; THENCE SOUTH 00°19'46" EAST, ALONG THE WEST LINE OF SAID TRACT, 81.24 FEET TO THE SOUTHWEST CORNER THEREOF; THENCE NORTH 89°40'14" EAST, ALONG THE SOUTH LINE OF SAID TRACT, 400.00 FEET TO THE SOUTHEAST CORNER THEREOF AND THE WEST RIGHT-OF-WAY LINE OF SAID 155TH STREET; THENCE SOUTH 00°19'46" EAST, ALONG SAID WEST RIGHT-OF-WAY LINE, 363.48 FEET TO THE POINT OF BEGINNING. CONTAINS 18.468 ACRES, MORE OR LESS.