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REBECCA L. DAVIS
REGISTER OF DEEDS

GLENEAGLES

DECLARATIONS OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE ESTATES OF GLENEAGLES SINGLE FAMILY RESIDENCE COMMUNITY

DECLARATION OF EASEMENTS, COVENANTS, CONDIDITONS AND RESTRICTIONS FOR THE ESTATES OF GLENEAGLES SINGLE FAMILY RESIDENCE COMMUNITY

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DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE ESTATES OF GLENEAGLES SINGLE FAMILY RESIDENCE COMMUNITY

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS is made and entered into as of this 19th day of Sept., 2001, by Tomahawk Ridge Company, L.L.C. (herein called the "Developer").

Notice of Intent

This Declaration provides for an extensive degree of control in the Developers including but not limited to (i) control of the Community Association and supervision over the type and design of improvements which may be constructed within the Community and upon the Lots located therein (with substantial fines for non-compliance); (ii) the right to amend this Declaration; and (iii) substantial flexibility in developing the Community. The provisions hereof also contain limitations on the liability of the Developer. Each Owner, by accepting title to a Lot, and each Community Association member, by accepting such membership, acknowledges, agrees to, and accepts the Developer's control of the Community and the limited liability of the Developer as provided for in this Declaration. Such control is an integral part of this Declaration and the general scheme of development and operation of the Community. Capitalized terms used in this and the following introductory paragraphs are defined in Article 1 of this Declaration.

WITNESSETH

WHEREAS, Developer is the record owner of that certain real property situated in Overland Park, Johnson County, Kansas, described on Exhibit "A" attached hereto aid by reference made a part hereof which shall constitute the Community and

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

WHEREAS, Developer deems it desirable to establish easements, covenants, conditions, obligations and restrictions upon the Community and each and every portion thereof with respect to the proper use, occupancy, and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Community; and

WHEREAS, Developer deems it desirable, for the efficient management of the Community, to create the Community Association which shall exercise the powers of (i) administering and enforcing the easements, covenants, conditions, and restrictions set forth herein (ii) collecting and disbursing funds, pursuant to the assessments, spending procedures and charges hereinafter created; and (iii) performing such other acts as are herein provided for which generally benefit its Members, the Community or the owners of any interests therein; and

WHEREAS, the Estates of Gleneagles Single Family Residence Community Association, a corporation not organized for profit, has been, or will be, incorporated under the laws of the State of Kansas for the purpose of exercising such powers and functions; and

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WHEREAS, the Developer may, but is not obligated, to annex additional real property to the Community, and thereby subject such property to this Declaration, and to bind the owners of any interests therein to the easements, covenants, conditions, and restrictions contained in this Declaration; and

WHEREAS, Developer desires and intends that the Owners, mortgagees, mortgagors, Occupants, and all other Persons hereafter acquiring any interest in the Community shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Community.

NOW THEREFORE, Developer, for the purposes above set forth, declares that all property within the Community shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which shall run with the land and be binding upon all property within the Community and all parties having or acquiring any right, title, or interest in or to any property within the Community, or any part thereof, and shall inure to the benefit of and be a burden upon each owner and each Member of the Community Association.

ARTICLE I

Definitions

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows. Defined terms appear throughout this Declaration with the initial letter of each word of such term capitalized.

1.1 **"Annexation Property"** means any additional real property, which is annexed, to the Community, thereby becoming a part thereof and subject to this Declaration, in accordance with the provisions of Article X.

1.2 **"Assessments"** shall include the following:

(a) **"Regular Assessment"** means the amount which is to be paid by each Owner as such Owner's Proportionate Share of the Common Expenses incurred by the Community Association pursuant to the terms hereof.

(b) **"Special Assessment"** means (i) a charge against a particular Owner directly attributable to such Owner to reimburse the Community Association for costs incurred by the Owner into compliance with the provisions of this Declaration, the Design Standards, the Community Association Rules or the Articles or Bylaws of the Community Association, (ii) any other charge designated as a Special Assessment in this Declaration, the Community Association Articles or Bylaws, the Community Association Rules or Design Standards, and (iii) attorneys' fees and other charges payable by such Owner as a Special Assessment pursuant to the provisions of this Declaration.

1.3 **"City"** means the City of Overland Park, Kansas, a municipal corporation of the State of Kansas.

1.4 **"Common Expenses"** means the actual costs incurred by the Community Association in conducting activities in connection with the Community for which the Community Association is responsible pursuant to the terms hereof. Common Expenses contemplated hereby shall include, but not be strictly limited to, the following:

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(a) the cost of maintenance, management, operation, repair, and replacement of all areas and facilities within the Community which are maintained or operated by the Community Association;

(b) Unpaid Assessments;

(c) cost of management and administration of the Community Association including, but not limited to, compensation paid by the Community Association to managers, accountants, attorneys, other professionals and employees:

(d) the cost of utilities (including but not limited to water, electricity, gas, sewer, trash pick-up and disposal which are provided directly to the Community Association and not individually metered or assessed by Lot), landscaping maintenance, and other services which generally benefit and enhance the value and desirability of the Community and which are provided by the Community Associations

(e) the cost of any insurance maintained by the Community Association;

(f) reasonable reserves for contingencies, replacements, and other proper purposes as deemed appropriate by the Community Association;

(g) the cost of bonding any person handling the funds of the Community Association;

(h) taxes paid by the Community Association;

(i) costs incurred by committees established by the Community Association Board or Presidents;

(j) the costs of any other item or items to be provided or performed by the Community Association pursuant to this Declaration or its Articles or Bylaws, or in furtherance of the purposes of the Community Association or in the discharge of any duties or powers of the Community Association.

1.5 **"Community"** means the land described on Exhibit A, together with any Annexation Property, and the residential development thereon.

1.6 **"Community Association"** means the Estates of Gleneagles Single Family Residence Community Association, a Kansas corporation not organized for profit.

1.7 **"Community Association Articles"** means the Articles of Incorporation, as such may be amended from time to time, of the Community Association.

1.8 **"Community Association Board"** means the Board of Directors of the Community Association.

1.9 **"Community Association Bylaws"** means the bylaws of the Community Association adopted in accordance with the Community Association Articles, as such bylaws may be amended from time to time.

1.10 **"Community Association Declaration"** means this Declaration and any amendments thereto or modifications thereof.

1.11 **"Community Association Member"** means any Person who holds a membership in the Community Association.

1.12 **"Community Association President"** means the duly elected or appointed president of the Community Association.

1.13 **"Community Association Rules"** mean the rules and regulations adopted by the Community Association.

1.14 **"Default Rate of Interest"** means an annual rate of interest equal to the base rate as publicly announced by United Missouri Bank (as the rate publicly announced as available to its largest and most creditworthy customers) from time to time while interest is accruing (with interest hereunder adjusted as and

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when said prime rate is adjusted) plus 4: per annum, but never less than 18% (so that if during any periods while interest is accruing said prime rate plus 4% per annum is less tan 18%, interest shall accrue during said periods at 181 per annum). Notwithstanding anything herein to the contrary, if, during any period, the highest lawful rate of interest, which may be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the interest payable by such Person during said period shall be the highest lawful rate. If the United Missouri Bank should cease doing business or no longer announces its base rate as described above, the Community Association may compute interest hereunder upon the publicly announced base rate of any other bank doing business in Kansas or Missouri. If banks should cease announcing base rates, the Community Association may elect to use 18% as the Default Rate of Interest, or may specify the rate, in lieu of said base rate, for purposes of the computation hereunder which the Community Association would reasonably have to pay to borrow money at the time.

1.15 **"Design Standards"** means the rules, regulations, restrictions, architectural standards, and construction guidelines herein designated as such and as otherwise from time to time adopted by the Design Review Committee.

1.16 **"Design Review Committee"** means the committee provided for in Article VII, entitled "Architectural and Landscape Control:"

1.17 **"Developer"** means Tomahawk Ridge Company, L.L.C., a Kansas limited liability company, its successors and assigns, or any person to whom the Developer's rights hereunder are hereafter assigned by, Recorded instrument.

1.18 **"First Mortgage"** means a Mortgage, which is the first and most senior of all Mortgages upon the same property. **"First Mortgagee"** means the holder of a First Mortgage.

1.19 **"Lot"** means a subdivided lot within the Community as shown on the applicable Plat.

1.20 **"Majority"**, where not specifically designated otherwise, means at least 50.1% of the total votes entitled to be cast with respect to a given matter.

1.21 **"Mortgage"** means any recorded, filed, or otherwise perfected instrument given in good faith and for valuable consideration (which is not a fraudulent conveyance under Kansas law) as security for the performance of an obligation, including, without limitation, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.22 **"Mortgagee"** means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed of trust. **"Mortgagor"** means the party granting the Mortgage.

1.23 **"Occupant"** means any Person, other than an Owner, in rightful possession of a Lot, whether as a guest, tenant, or otherwise.

1.24 **"Owner"** means the record owner, whether one or more Persons, of fee simple title, whether or not subject to any Mortgage, to any Lot which is a part of the Community, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.25 **"Owner's Proportionate Share"** means a fraction, the numerator of which is the number of Lots then owned by such Owner within the Community and the denominator of which is the total number of Lots then within the Community. This Section shall be subject to the provisions of Section 8.13.

1.26 **"Person"** means an individual, corporation, partnership, trustee, or other entity capable of holding title to real property, and their respective heirs, successors, and assigns.

1.27 **"Plat"** means collectively each plat of subdivision of the Community as first Recorded in the official records of Johnson County, Kansas, and as thereafter from time to time amended or supplemented.

1.28 **"Record" or "Recording"** means an instrument of record in, or the act of recording an instrument with, the office of the Register of Deeds for Johnson County, Kansas.

1.29 **"Screen"** means to partition in a manner such that one cannot see through the partition.

1.30 **"Supplemental Declaration"** means a declaration of easements, covenants, conditions, and restrictions, or similar instrument, annexing additional real property to the Community and subjecting such real property to this Declaration.

ARTICLE II

The Declaration

Developer hereby establishes the Community and this Community Declaration to govern the use and occupancy of Lots within the Community.

ARTICLE III

Community Association

3.1 **Purpose of the Community Associations**. The Community Association has been, or will be, incorporated as a corporation not organized for profit under the laws of Kansas. The Community Association shall be responsible for the protection, improvement, alteration, maintenance, repair, replacement, administration, and operation of the Community, including taking such action as is necessary for the assessment of expenses, payment of losses, disposition of casualty insurance proceeds (if any), and other matters as provided in or contemplated by this Declaration, the Community Association Articles, the Community Association Bylaws, the Community Association Rules or Design Standards. The Community Association shall not be deemed to be conducting a business of any kind, and all funds received by the Community Association shall be held and applied by it for the benefit of the Community in accordance with the provisions of the Community Declaration, Community Association Articles and Community Association Bylaws.

3.2 **Membership in Community Association.**

(a) Subject to the provisions of Section 3.17 hereof, each Owner (notwithstanding the number of Lots owned) shall be entitled to only one Community Association Membership and one vote in the Community Association so long as he is the Owner of such Lot(s), and such Owner shall specify in writing to the Community Association the name of the individual who will hold the Community Association Membership. In the absence of such written specification, Assessments shall nevertheless be charged against the Lot and Owner thereof, but there shall be no right to vote the membership. The Community Association Member must be an individual who, is either an Owner, or if the Owner is or includes a Person other than an individual, the Community Association Member may be an individual who is a partner if the Owner is or includes a partnership, or an officer of a corporation if the Owner is or includes a corporation, or a beneficiary of the trust if the Owner is or includes a trust, or an owner of the entity if the Owner is or includes a Person other than an individual, a partnership, a corporation, or a trust.

(b) Subject to the provisions of Section 3.2(a), once a Community Association Member has been specified by an Owner of a Lot, a new Community Association Member may only be specified for that Lot upon at least 15 days prior notice to the President of the Community Associations provided, however, the foregoing shall not impair the provisions of Section 3.2(c).

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(c) A membership in the Community Association shall not be transferred, pledged, or alienated in any way, except as herein expressly provided. Subject to the provisions of Section 3.2(a), Community Association Membership shall automatically be transferred, to the new Owner upon the transfer of the Lot to which it appertains (and then only to such transferee), whether by sale, in testate succession, testamentary disposition, foreclosure of a Mortgage or other legal process transferring fee simple title to such Lot.

3.3 **Pledge of Voting Rights**. Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to his Community Association Membership with respect to his Lot to a Mortgagee as additional security, the vote of such Mortgagee will be recognized only if a copy of such proxy, or other instrument pledging such vote, has been filed with the Community Association. In the event that more than one such instrument has been filed, the Community Association shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves.

3.4 **Assignment of Developer's Voting Rights**. If any lender to whom the Developer has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration, succeeds to the interests of the Developer by virtue of said assignment, the absolute voting rights of the Developer as provided in Section 3.17 shall not be terminated thereby, and such lender shall hold the Developer's memberships and voting rights on the same terms as they were held by the Developer pursuant hereto.

3.5 **Board of Directors of the Community Association**.

(a) The affairs of the Community Association shall be conducted by the Community Association Board as herein provided and in accordance with the Community Association Articles and Community Association Bylaws. Except for directors elected by the Developer as provided for in Section 3.17, each director shall be a Community Association Member or the spouse of a Community Association Member. If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director and his place on the Community Association Board shall be deemed vacant.

(b) Except for directors elected by the Developer as provided for in Section 3.17, the members of the Community Association shall have the power and right to appoint and remove the members of the Community Association Board as provided in the Community Association Articles and Community Association Bylaws.

(c) Any member of the Community Association Board may be removed from office, by action of the Community Association Members, in accordance with the following procedures: Upon the presentation to the Community Association President of a petition duly executed by 34% or more of all of the Community Association Members in favor of the removal from office of the member or members of the Community Association Board therein named, a referendum of the Community Association Members shall be promptly held to determine whether such member or members of the Community Association Board should be removed from office. Upon the affirmative vote of two-thirds of all of the Community Association Members then entitled to vote to remove such member or members of the Community Association Board from office, such member or members shall be deemed removed from office. Any vacancy on the Community Association Board created by the removal of a member of the Community Association Board as herein provided shall be filled by an election of all of the Community Association Members in

the manner provided in the Community Association Articles or Community Association Bylaws for the election of directors.

3.6 **Duties and Powers of the President of the Community Association.**

(a) To the extent not prohibited by law, or as otherwise herein expressly limited, including without limitation Section 3.6(b), the President of the Community Association shall be empowered to exercise control over the affairs of the Community Association and to act on behalf of, and bind, the Association in every instance wherein the Association is required or permitted to take any action. The action of the President shall at all times be subject to the review of the Board of the Community Association.

(b) Notwithstanding anything in Section 3.6(a) to the contrary the President shall not have the power to borrow any funds on behalf of the Community Association, make any expenditures on behalf of the Community Association which are, in the aggregate, more than 5% in excess of the total amount of the Community Association's budget, or increase the amount of or levy any Assessment (except a Special Assessment), without the prior approval of the Board of the Community Association.

(c) The Community Association President may appoint such assistants as he deems necessary and appropriate. No compensation shall be paid to any assistant except as provided in the budget of the Community Association or as otherwise approved by the Board of the Community Association.

(d) Any right or power herein given or delegated to the Community Association President which cannot be exercised by such President, whether by reason of law, or otherwise, shall be deemed to be a right or power to be exercised by the Board of the Community Association.

3.7 **President's Determination Binding.** In the event of any dispute or disagreement between any Owners, Community Association Members, or any other Persons subject to this Declaration, relating to the Community, or any question of interpretation, or application of the provisions, of this Declaration, the Community Association Articles or Bylaws, any Community Association Rules or other rules of the Community Association, or any Design Standards, the determination thereof by the Community Association President shall be final and binding on each and all of such Owners, Community Association Members, or Persons. The Community Association President may, at his election, delegate the resolution of such dispute or disagreement to: the Community Association Board or a committee appointed by the Community Association President.

3.8 **Approval of Members.** Unless elsewhere otherwise specifically provided in this Declaration or the Articles or Bylaws of the Community Association, any provision of the foregoing which requires the vote or written assent of the members of the Community Association shall be deemed satisfied by the following:

(a) The vote in person, or by proxy, of the specified percentage of Community Association Members entitled to vote at a meeting duly called and noticed pursuant to the provisions of the Community Association Articles or Bylaws, dealing with annual or special meetings of the Members of the Community Association.

(b) Written consents signed by the specified percentage of members then entitled to vote as provided in the Bylaws of the Community Association.

3.9 **Additional Provisions in Articles and Bylaws.** The Articles and Bylaws of the Community Association may contain any provision relating to the conduct of the affairs of the Association and the rights

and powers of its directors, officers, employees, agents, and members not inconsistent with law or this Declaration.

3.10 **Community Association Rules**. In order to be able to address specific matters relating to the administration, operation and development of, or other matters relating to, the Community, the Community Association Board shall be empowered to adopt, amend, or repeal such rules and regulations as it deems reasonable and appropriate (the "Community Association Rules"). The Community Association Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments or otherwise. The Community Association Rules may not unreasonably or unlawfully discriminate among Owners and Community Association Members. A copy of the Community Association Rules as they may from time to time be adopted, amended, or repealed, or a notice setting forth the adoption, amendment, or repeal of specific portions of the Community Association Rules shall be delivered to each Community Association Member in the same manner established in this Declaration for the delivery of notices. Upon completion of the notice requirements, the Community Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and Community Association Members, and all other Persons having any interest in, or making any use of, the Community Association, whether or not actually received thereby. The Community Association Rules, as adopted, amended, or repealed, shall be available at the principal office of the Community Association to each Owner, Community Association Member, or other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Community Association Rules and any provisions of this Declaration or the Community Association Articles or Bylaws, the provisions of the Community Association Rules shall be deemed to be superseded by the provisions of this Declaration or such Articles or Bylaws to the extent of any such conflict.

3.11 **Indemnification**. To the fullest extent permitted by law, every director and every officer of the Community Association, and the members of the Design Review Committee, and the Developer (to the extent a claim may be brought against the Developer by reason of its appointment, removal, or control over members of the Community Association Board or the Design Review Committee) shall be indemnified by the Community Association, and every other person serving as an employee, or direct agent of the Community Association, or on behalf of the Community Association as a member of a committee or otherwise, may, in the discretion of the Board of the Community Association, be indemnified by the Community Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding or any settlement thereof to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Community Association (or in the case of the Developer by reason of having appointed, removed, or controlled, or failed to control members of the Community Association Board or the Design Review Committee) whether or not he is a director, an officer, or a member of the Design Review Committee, or serving in such other specified capacity at the time such expenses are incurred; provided, however, that prior to agreeing to any such indemnification, the Community Association Board shall determine, in good faith, that such officer, director, member of the Design Review Committee, or other Person, or the Developer, did not act, fail to act, or refuse to act willfully, or with gross negligence, or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Persons may be entitled at law or otherwise. Appropriate insurance may be obtained pursuant to Article V to cover any liability exposure created by virtue of the foregoing indemnification.

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3.12 **Non-Liability of Officials**. To the fullest extent permitted by law, neither the Developer, the Community Association President, any directors or officers of the Community Association, any Design Review Committee member, nor any other members of committees of the Community Association shall be liable to any Community Association Member or any Owner, Occupant, or other Person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, inaction, omission, error, negligence, or the like made in good faith and which the Developer, the President, any director, any officer or any member such committees reasonably believed to be within the scope of his duties.

3.13 **Easements**. The Community Association is authorized and empowered to grant upon, across, or under real property owned or controlled by the Community Association such permits, licenses, easements, and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable, and other similar public or private utility purposes, roadways, or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation, and enjoyment of all or any part of the Community or the preservation of the health, safety, convenience, and welfare of, the Owners.

3.14 **Accounting**. The Community Association, at all times, shall keep, or cause to be kept, true and correct records of account on a cash basis, and shall have available for the inspection of all Owners at reasonable times during regular business hours, books which shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise.

3.15 **Records**. The Community Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner and Community Association Member the books, records, and financial statements of the Community Association together with current copies, as amended from time to time, of this Declaration and the Community Association Articles, Bylaws and Rules, and Design Standards. The Developer shall be under no obligation to make its own books and records available for inspection by the Community Association, or any Owner, Community Association Member or other Person.

3.16 **Managing Agent**. Any powers, duties, and rights of the Community Association created pursuant hereto, or of the Community Association President, or Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Community Association of its obligation to perform any such delegated duty. Any agreement for professional management, or any other contract providing for services, shall not exceed a term of three years, which term may be renewed by agreement of the parties for successive one-year periods, and shall further provide for termination by either party with or without cause and without payment of a termination fee upon 90 days' prior written notice.

3.17 **Developer's Control of the Community Association**. Notwithstanding anything in this Article III or elsewhere in this Declaration to the contrary, the Developer shall maintain absolute and exclusive control over the Community Association and the Design Review Committee, including appointment and removal of the President and all other officers of the Community Association, all directors of the Community Association Board and all members of the Design Review Committee, until (i) 95% of the Lots in the Community as it exists from time to time have been sold to third parties and (ii) Developer shall own less than two acres of land within the Community as is exists from time to time. Until such time, only the Developer will be entitled to cast any votes with respect to the election and removal of Community Association officers or directors and members of the Design Review Committee, or any other matter requiring the vote or approval of Community

Association Members. The Developer voluntarily may (but shall not be required to) at any time relinquish all or any part of the Developer's control and rights under this Section.

ARTICLE IV

Creation of Lien and Personal Obligation

Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to covenant and agree to pay all of the following to the Community Association in accordance with the terms hereof: Regular Assessments and Special Assessments. Such Assessments shall be collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees, and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon such Owner's Lot against which the Assessments are made. Each Assessment, together with such interest and other costs, shall also be the personal obligation of the Owner to whom such Assessment relates. The personal obligation for delinquent payments shall not pass to an Owner's successor unless expressly assumed by him. If an Owner shall consist of more than one Person, the obligations of the Owner for the payment of Assessments on such Owner's Lot shall be joint and several.

4.1 **Purpose of Assessments**. Except as otherwise herein set forth, the Assessments levied by the Community Association shall be used: (a) to promote the health, safety, and welfare of Owners, (b) to enhance the value of the Community, (c) to pay the costs of administration of the Community Association, (d) to pay all other Common Expenses, or (e) to otherwise further the interests of the Community. Where a Lot has separate gas, electrical, sewer, or other similar utilities service, the cost of the same shall be the personal obligation of each Owner. Maintenance of sewer lines serving a Lot shall be the responsibility of its owner.

4.2 **Regular Assessments**.

(a) Except as otherwise specifically provided herein; each Owner of a Lot shall, pay as it's Regular Assessment its Proportionate share of the Common Expenses. Except as otherwise, specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as may be provided in the Community Association Articles or Bylaws, or as determined by the Community Association.

(b) Not later than 60 days prior to the beginning of each fiscal year of the Community Association, the Community Association shall make available for review by each Owner at the Community Association's office, during reasonable times, a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred by such Association for such fiscal year. The Community Association shall at that time determine the amount of the Regular Assessment to be paid by each Owner and notify the Owner thereof. Each Owner shall thereafter pay to the Community Association its entire Regular Assessment as so determined on or before the beginning of the Community Association's fiscal year, which date shall be set forth in the written notice sent to Owners. For the purposes of Section 4.2, the Community Association's fiscal year shall end on December 31 of each calendar year.

(c) If the Community Association subsequently determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Community Association's budget for that year, the Community Association

President shall then immediately determine the approximate amount of such inadequacy and, with the consent of the Community Association Board, issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Owner for the balance of the year, and the date or dates when due. Each Owner shall be notified of the additional amount required to be paid and the due date of such payment, and each Owner shall pay the additional amount when due. If the estimated total Regular Assessments for a current year prove to be excessive in light of the actual Common Expenses, the Community Association may, at the discretion of the Community Association Board, retain such excess as additional working capital or reserves, or reduce the amount of the Regular Assessments for the next fiscal year. No reduction or abatement of Regular Assessments because of any such anticipated surplus may diminish the, quantity, or quality, of services upon which the Common Expenses for the year in question are based, and if supplemental assessments are required, they shall be made as set forth above.

4.3 **Special Assessments**. Special Assessments shall be levied by the Community Association against an Owner to reimburse the Community Association for:

(a) Costs incurred in bringing an Owner or his Lot into compliance with the provisions of this Declaration, the Community Association Articles or Bylaws, or the Community Association Rules.

(b) Fines levied or fixed by the Community Association Board as provided herein.

(c) Attorneys' fees, interest, and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this Declaration, the Community Association Articles or Bylaws, or the Community Association Rules.

(d) Any other charge designated as a Special Assessment in this Declaration, the Community Association Articles or Bylaws, or the Community Association Rules. In the event the Community Association undertakes to provide materials or services which benefit individual Owners or Lots and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof, shall be a Special Assessment.

4.4 **Uniform Assessment**. All Regular Assessments imposed upon an Owner shall be based upon such Owner's proportionate Share, provided however, Lots 1 through 5 and Lots 36 through 78 shall have a larger assessment than Lots 6 through 35, due generally to the difference in the average frontage and/or size of the lots.

4.5 **Exempt Property**. All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein.

4.6 **Date of Commencement of Regular Assessments**. The Regular Assessments shall commence as to each Owner on the date of its creation. The Regular Assessment shall be equitably adjusted as required for short periods.

4.7 **Time and Manner of Payment; Late Charges and Interest**. Assessments shall be due and payable by Owners in such manner and at such times as the Community Association shall designate in accordance with the terms hereof. If not paid within ten (10) days after its due date, each such Assessment shall have added to it a late charge equal to 10% of the amount of Assessment and thereafter bear interest at the Default Rate of Interest until paid. The Community Association may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any

particular instance. A delinquent Owner shall, to the extent allowed by then applicable law, be liable for attorneys' fees and other related costs incurred by the Community Association as a result of such delinquency, and if any suit, action, or proceeding is brought to collect any such Assessment or charge, then there shall be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon.

4.8 **No Offsets**. All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (a) the Community Association, its Board, its President, or the Developer is not properly exercising its duties and powers as provided in this Declaration or documentation associated therewith; or (b) Assessments for any period exceed Common Expenses.

4.9 **Homestead Waiver**. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration or documentation associated herewith (whether such liens are now in existence or are created at any time in the future), the benefit of any redemption, homestead or exemption laws of the State of Kansas now in effect, or in effect from time to time hereafter.

4.10 **Reserves**. Reserves included in any budget for Common Expenses which are collected as part of Regular Assessments shall be deposited by the Community Association in a separate bank account to be held in trust for the purposes for which they are budgeted and are to be segregated from and not commingled with any other funds of the Community Association, except to the extent that the Community Association's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws (tax or otherwise) of the State of Kansas or the United States relating to corporations not organized for profit, or homeowners associations. Such reserves shall be deemed a contribution to the capital account of the Community Association. The responsibility of the Community Association Board (whether while controlled by the Developer or the members of the Community Association) shall be only to provide for such reserves as such Board in good faith deems reasonable, and neither the Developer, such Board or any member thereof shall have any liability to the Community Association or any Owner, Community Association Member, if such reserves prove to be inadequate.

4.11 **Subordination of Lien**. Any lien which arises against a Lot by reason of the failure or refusal of an Owner to make timely payment of any assessment shall be subordinate to the lien of a prior recorded First Mortgage (together with any interest, cost, reasonable, attorneys' fees and any late charges related thereto) on the Lot, acquired in good faith and for value, except for the amount of the unpaid Assessment which accrues from and after the date on which a First Mortgagee comes into possession of, or acquires title to the Lot, whichever occurs first. If any lien for unpaid Assessments which accrued prior to the date the First Mortgagee comes into possession of or acquires title to the Lot has not been extinguished by the process by which such First mortgagee came into possession of or acquired title to the Lot, such First Mortgagee shall not be liable for unpaid Assessments arising prior to the aforesaid date and, upon written request by such First Mortgagee to the Community Association, such lien shall be released in writing by the Community Association. Any unpaid Assessments which are extinguished pursuant to the foregoing sentence shall continue to be the personal obligation of the delinquent Owner and may also be re-allocated by the Community Association among all Owners as part of the Common Expenses.

4.12 **Certificate of Non-Payment**. Upon request, any Person acquiring an interest in any Lot shall be entitled to a certificate from the Community Association setting forth the amount of due but unpaid Assessments relating to such Lot, if any, and such Person shall not be liable for, nor shall any lien attach to the

Lot in excess of, the amount set forth in the certificate, except for Assessments which occur, or become due, after the date thereof and any interest, costs, attorneys' fees, and any late charges related to such unpaid Assessments.

4.13 **Enforcement of Lien**. Any lien provided for in this Article IV may be foreclosed by the Community Association in any manner provided, or permitted, for the foreclosure of realty mortgages in the State of Kansas. All of the provisions of this Article IV relating to the enforcement of any lien provided for herein (including without limitation the subordination provisions in Article 4.11, or the provisions of this Section 4.13) shall apply with equal force in each other instance provided for in this Declaration or the Community Association Rules or the Community Association Articles or Bylaws wherein it is stated that payment of a particular Assessment, charge, or other sum shall be secured by a lien. Nothing herein shall be construed as requiring that the Community Association take any action allowed hereunder in any particular instance, and the failure of the Community Association to take such action at any time shall not constitute a waiver of the right to take such action at a later time, or in a different instance.

4.14 **Pledge of Assessment Rights as Security**. The Community Association shall have the power to pledge the right to exercise its assessment powers and rights as security for any obligation of the Community Association; provided, however, any such action shall require the prior affirmative vote, or written assent, of the Developer, if it controls the Community Association, or otherwise, a Majority of all of the members of the Community Association. The Community Association's power to pledge its assessment powers shall include, but not be limited to, the ability to make an assignment of Assessments which are then payable to, or which will become payable to, the Community Association, which assignment may then be presently effective but shall allow said Assessments to continue to be paid to the Community Association and used by the Community Association as required, unless and until the Community Association shall default on its obligations secured by said assignment.

ARTICLE V

Insurance

5.1 **Authority to Purchase**. The Community Association shall purchase and maintain such insurance, and in such amounts, as its Board shall determine from time to time. Such policies, and endorsements thereon, or copies thereof, shall be deposited with the Community Association. The Community Association shall make same available to the Community Association Members in order to permit such Members to determine which particular items are included within the coverage. If they so desire, any owners or Community Association Members may insure themselves, as they see fit, if any risks which they wish to have covered are not insured by the insurance purchased by the Community Association.

5.2 **Member's Responsibility**. It shall be each Owner's responsibility to purchase, at his own cost, such insurance as he deems appropriate for his own: Lot, improvements thereon, furnishings and personal property therein, personal property stored elsewhere within the Community, personal liability and such other insurance which the Owner desires.

5.3 **Non-Liability of Community Association/Board/ President**. Notwithstanding anything in this Declaration to the contrary, neither the Community Association nor any member of its Board nor any officer of the Community Association nor the Developer shall be liable to any owner or Community Association Member, Mortgagee, or other Person, if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded

by the Community Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner may desire.

5.4 **Premiums**. Premiums upon insurance policies purchased by the Community Association shall be paid by the Community Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use misuse, occupancy or abandonment of a Lot, or its appurtenances, by an owner shall be assessed against that particular Owner in a Special Assessment.

5.5 **Insurance Claims**. The Community Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Community Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The President of the Community Association has full and complete power to act for the Community Association in this regard and may, at his discretion, appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Community Association.

5.6 **Benefit**. Except as otherwise provided herein, all insurance policies purchased by the Community Association shall be for the benefit of, and any proceeds of insurance received by the Community Association, or any insurance trustee, shall be held or disposed of in trust for the Community Association and the Owners, as their interests may appear.

ARTICLE VI

Maintenance, Repairs and Replacements

6.1 **Owner's Responsibility**. Except as may otherwise be provided for herein, each owner, at his own expense, shall furnish and be responsible for all of the maintenance, repairs and replacements within his own Lot.

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

ARTICLE VII

Architectural and Landscape Control

7.1 **Design Review Committee**. The Community Association shall have a Design Review Committee consisting of not less than two nor more than five persons, as specified from time to time by the Developer during periods in which the Developer has the right to appoint the members of the Design Review Committee, and thereafter, by resolution of the Board of the Community Association. The Developer shall retain the right to appoint, augment or replace all members of the Design Review Committee for the Community until (i) 95% of all Lots in the Community as it exists from time to time have been sold to third parties and (ii) Developer shall own less than two acres of land in the Community as it may exist from time to time. Thereafter, members of the Design Review Committee shall be appointed by the Board of the Community Association. Persons appointed to the Design Review Committee, other than those Persons appointed by the Developer, must be Community Association Members. The Developer voluntarily may (but shall not be required to) permit Community Association Members to appoint or replace one or more members of the Design Review Committee at any time.

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7.2 **Establishment of Design Standards**. In order to achieve uniformity and coordination within the Community, Design Standards therefore are hereby established as set forth in Section 7.3. The Design Standards may, from time to time be amended, repealed or augmented by way of an amendment to this Declaration, which shall refer thereto and shall be placed of Record in Johnson County, Kansas.

7.3 **The Design Standards**.

(a) **Street Obstructions**. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways will be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street lines extended. The same sight line limitations will apply on any Lot within 10 feet of the intersection of a street property line with the edge of a driveway or alley pavement. No tree will be permitted to remain within such distances. of such intersections unless the foliage line is maintained at a sufficient height to prevent obstruction of such sight lines.

(b) **Landscape**. The general approach to landscape design in the Community is based on:

(i) landscape conservation and

(ii) uniformity in design appearance.

In furtherance thereof:

(1) Appropriate construction procedures shall be followed to protect and preserve trees, shrubs and other landscaping which may exist on the construction site or on adjacent or nearby sites. Good examples of mature vegetation should, whenever practical, be saved to give the Community an established feeling. Stockpiling of any building materials, cutting, filling or any ground disturbances shall not be allowed within the drip line of existing trees which are to remain. Runoff and erosion shall be controlled on site during construction while the site is disturbed. All disturbed ground areas of a building site shall be sodded, covered with plants or mulched with approved landscape materials. Landscape improvements as approved by the Design Review Committee shall be installed within sixty (60) days after completion of the residences provided, however, said 60 day period shall be subject to reasonable extension on account of inclement weather.

(2) Property lines shall not be obviously delineated at the street or on the boundary of any Lot. No structure, wall, fence, or any other separating device along a property line will be permitted beyond the building lines therefore established from time to time by the Design Review Committee.

(3) Plantings for Lots shall reinforce the natural meadow and woodland character of the Community. Cleared areas should be landscaped with trees, shrubs and lawns designed to compliment the architectural character of proposed buildings in form, location and scale. Plants shall be of advanced maturity and of the highest quality.

(4) An irrigation system of design approved by the Design Review Committee shall be installed to maintain all planted areas including grass areas.

(c) **Hard Surfaces**. All paved surfaces shall be of high quality finish such as asphalt, brick, concrete or other permanent material approved by the Design Review Committee. A maximum of 50% hard surface materials will be allowed within the front yard areas on any Lot.

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(d) **Construction Period Requirements**. During the period that construction is being undertaken on a Lot, the following minimum measures will be required to minimize disturbance to adjacent sites:

(1) Temporary lighting shall follow standards for permanent lighting as described in this Declaration.

(2) No dumping of construction materials, waste or trash shall occur in the Community.

(3) Each Lot shall be maintained in a clean and orderly manner during construction. Erosion shall be controlled on each Lot in a manner approved by the Design Review Committee while it is in a disturbed condition

(e) **Residence Design**.

(1) Colors, materials, finishes and building forms shall be in conformity with the requirements hereof and integrated with the particular landscape and topographical character of each site.

(2) The site dimensions must be adequate to accommodate the proposed improvements, including the house, parking, drives, and screening.

(3) Finished grades and elevations must be compatible with neighboring sites, particularly with regard to drainage and views.

(4) The design of each residence shall be subject to the approval of the Design Review Committee and, without limiting the foregoing, shall comply with the following criteria: (i) appropriateness of form, color and materials to design style; (ii) relationship of window to wall and wall to total form (well designed massing); (iii) appropriateness of detailing to form, style and massing; and (iv) the proportions of roofs shall be consistent with the proposed architectural style.

(5) No turbines or solar panels shall be permitted which can be seen from any street.

(f) **Exterior Materials and Colors**. Residences shall be faced on all sides with quality materials (such as brick, wood stone or stucco) as approved by the Design Review Committee. Exposed standard concrete block, prefabricated metal buildings, simulated brick, stone, or batt and board will not be allowed. Prefabricated metal buildings are not allowed. All exterior materials and the color of all exterior materials shall be approved by the Design Review Committee.

Window frames other than wood shall be either anodized or electrostatically painted. No unpainted aluminum will be permitted for window framing. Wood frames shall be painted, sealed, stained or have another coating approved by the Design Review Committee.

Exposed foundations and all vertical surfaces of decks and handrails shall be painted and those foundations exceeding twelve inches (12") shall be covered with the same quality face material as the residence.

(g) **Garages**. Each residence must have a private, attached fully enclosed side-entry garage for not less than two or more than four vehicles, unless the Design Review Committee shall consent to a greater numbers provided, however, if the size or configuration of the Lot shall not reasonably permit a side-entry garage, the Design Review Committee may (but shall not be obligated to) approve a rear or front-entry garage. The interior walls of all garages must be finished with quality materials. Garages shall have the same architectural treatment and be constructed of the same materials as the house proper. No garage may be left open to the public street for an extended period of time. No garage will be

permitted to be enclosed for living or used for purposes other than storage of automobiles and related normal uses. Lot numbers_____ may front load garages.

(h) **Construction, Location, and Size Limitations**.

(1) No exterior alterations of any existing building may be permitted without the prior approval of the Design Review Committee. No second-story additions are permitted. No additional windows, platforms, etc. which may invade the privacy of adjacent dwellings are permitted.

(2) No excavation will be made except in conjunction with construction of an improvement. When such improvement is completed, all exposed openings will be back filled and graded.

(3) Once commenced, construction will be diligently pursued to completion and it may not be left in a partly finished condition for more than 30 days without written approval from the Design Review Committee.

(4) 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.

(5) Minimum square footage requirements for residences shall be established by the Developer for each Lot within each Plat of the Community. With respect to the Lots within the Plat entitled Estates of Gleneagles, First Plat, recorded 10/5/00, as Doc. No. 3167614 in Plat Book 118, Page 33, the requirements are as follows:

Lots numbered 6-35

(i) 2 story residence - 3,000 square feet with at least 1,500 square feet on the first floor;

(ii) 1-1/2 story - 2,800 square feet with at least 2,000 square feet on the first floor; and

(iii) 1 story - 2,600 square feet. The lower level (basement area including any so-called "walk-out basement") and garage shall be disregarded to compute such square footage.

Lots numbered 1-5 and 36-78

(i) 2 story residence – 3,500 square feet with at least 1,800 square feet on the first floor;

(ii) 1 ½ story -3,000 square feet with at least 2,500 square feet on the first floor; and

(iii) 1 story - 3,000 square feet. The lower level (basement area, including any so-called "walk-out basement") and garage shall be disregarded to compute such square footage.

(6) All residences and other improvements shall be located on each Lot as approved by the Design Review Committee and in full compliance with any set back lines or restrictions shown on the applicable Plat.

(i) **HVAC**. No window or wall air conditioning or heating units will be permitted.

(j) **Patios**. No Screening of a patio or other recreation area will be installed without the written approval of the Design Review Committee.

(k) **Swimming Pools and Tennis Courts**. All pool areas, tennis courts, equipment associated therewith and Screening therefore must be approved by the Design Review Committee. No tennis courts shall be lighted. No lighting of a pool or other recreation area (other than tennis courts) shall be installed without the prior written approval of the Design Review Committee, and if allowed shall be designed for recreational character so as to buffer the surrounding residences from all lighting.

(l) **Fences and Walls**. Wrought iron fences no greater than five feet in height may be permitted. All fencing and walls (including, without limitation, the composition and location thereof) shall be subject to the approval of the Design Review Committee. Only wrought iron fences, with iron, stone or brick pillars, are permitted. Privacy screens of other material my be permitted by the Design Review Committee around patios so long as the Design Review Committee determines that the materials and design are in harmony with the house but in no instance shall such screens penetrate the building set back lines. No chain link, wire, wood panel or stockade fencing shall be permitted. Retaining walls shall be made of natural materials approved by the Design Review Committee.

7.4 **Review Process**.

(a) Signed plan approval by the Design Review Committee is required prior to the undertaking of any site improvements, construction or installation, including clearing, grading, paving, signs, structures, landscaping, building additions or alterations, and subdivisions. Review should be coordinated with the required governmental approvals. Submission to the City for building permits or site plan approval should not be made until final plans have been approved by the Design Review Committee. All submissions to the Design Review Committee are to be made within the time periods established by the Design Review Committee and shall be in triplicate on forms or in a format approved by the Design Review Committee. One copy shall be retained for the Design Review Committee for its files and two copies returned to the Owner for Owner's use in obtaining City approval (i.e., building permits). The review of each submission by the Design Review Committee will be carried out within twenty (20) working days from the date of each submission; and notification of recommendations or approval will be provided in writing to the Owner at that time. Prior to Stage 1 (as set forth below in Section 7.4(b)), it is required that each Owner or owner's architect and builder (if the Owner is not the builder) attend a pre-design conference with a member of the Design Review Committee to review the intent of the Owner's proposed design.

(1) The review process shall be accomplished in the following three stages:

Stage 1. Schematic/Preliminary Design.

Stage II. Construction Documents.

Stage III. Certificate of Compliance.

(2) The Stage 1 Schematic/Preliminary Design review will focus on architectural treatment and rooflines and compliance with the other Design Standards. Schematic/Preliminary Building Design documentation will include: Site plans, floor plans, square footage, elevations, perspective rendering (optional), building materials (optional but recommended at this stage) and

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window type. The Schematic/Preliminary documents will include at least the following: Site location plan; grades, existing and proposed, including finished floor elevation; site survey, including existing trees 4" caliper and above; building location, overall dimensions and height; and setbacks.

(3) The Stage II construction documents review will focus on final working drawings and specifications, site and building materials (including type and color), cornice/facia details, buffers, Screens, landscape areas (existing and proposed, noting trees to be removed), site lighting concepts, and site drainage. Revisions to design elements occurring after construction documents are approved will be subject to review and approval by the Design Review Committee. Review of each design change submission will be carried out as soon as reasonably possible. All construction documents shall be of professional quality and prepared in accordance with criteria established by the Design Review Committee.

(4) In the Stage III Certificate of Compliance segment, a Certificate of Compliance shall be issued to an Owner by the Design Review Committee upon completion of construction in accordance with the terms hereof. The Certificate of Compliance shall state to the Owner that the requirements of the Design Standards have been met.

At the time an Owner desires to apply for a Certificate of Compliance, he will complete a checklist of compliance items and forward it to the Design Review Committee. This should be at the same point that application is made for a use and occupancy permit from the City. The completed checklist, signed by the Owner, will state compliance with the major items listed below, pursuant to the plans approved by the Design Review Committee.

The following items will be covered by the Certificate of Compliance: (i) the buildings is located according to approved site plan; (ii) site improvements including paving, walls, walks, tree preservation and planting have been provided in accordance with the approved plans; (iii) buildings is of approved architectural design and approved materials and color; and (iv) approved lighting has been installed.

7.5 **Interpretation and Waiver**. The Design Review Committee's interest in reviewing site and building designs is to assure that a high quality of compatible development is consistently achieved. When questions of judgment or interpretation arise, an Owner may appeal a decision of the Design Review Committee to the Developer if Developer is responsible for the appointment of the members of the Design Review Committee, but in such instance the decision shall be final. In order to meet special situations which may not be foreseen, it may be desirable from time to time for the Design Review 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 Community in mind. All approvals and consents of the Design Review Committee shall be in writing, and oral approvals or consents shall be of no force or effect.

7.6 **Design Review Committee Authority and Limits of Liability**.

(a) The Design Review Committee may delegate its plan review responsibilities, except final review and approval as may be required by such Design Standards, to one or more of its members or architectural consultants retained by the Design Review 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 Design Review Committee.

(b) The address of the Design Review Committee shall be the address established from time to time by resolution of the Community Association. Such address shall be the place for the submittal of plans and specifications.

(c) The establishment of the Design Review Committees 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, the Community Rules or Community Association Articles or Bylaws.

(d) No Residence, fence, wall or other structure, or improvement of whatever type shall be commenced, erected or maintained within the Community, nor shall there be any addition to or change to the exterior of any residence, or other structure or improvement upon a Lot, or the landscaping, grading, or drainage thereof, including, without limitation, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefore which have been submitted to and approved by the Design Review Committee. The Design Review Committee may reject plans and specifications, without citing specifics, for the following reasons, among others: (i) insufficient information to adequately evaluate the design or its intent; (ii) poor overall design quality; (iii) incompatible design elements: (iv) inappropriate design concept or design treatment and (v) a design found to have an adverse effect on the character of the Community or its residents. In recognition of the fact that the overall impact of improvements on any Lot involves issues of taste and judgment which cannot be completely reduced to Design Standards, the appropriate Design Review Committee shall also have the right to reject plans and specifications conforming to the Design Standards if the Committee believes that the overall aesthetic impact of any proposed improvement, addition, alteration or change is detrimental to the Community.

(e) By its approval of plans and specifications, the Design Review 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 the Design Review Committee, the members thereof, the Community Association, any of its members, its officers, its Board nor the Developer assumes any liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications. Neither the Design Review Committee, any member thereof, the Community Association, its officers, its Board nor the Developer shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of (i) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, (iii) the development, or manner of development, of any property, within the Community, or (iv) the execution and filing of any estoppels certificate pursuant to Section 7.6(f) or otherwise, whether or not the facts therein are correct; provided, however, that such action, on the basis of the actual knowledge possessed by the Person in question, was taken in good faith. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a

representation or warranty that said plans or specifications comply with applicable governmental ordinances and regulations including, but not limited to, zoning ordinances, and building codes.

(f) Any member or authorized consultant of the Design Review Committee, the Developer or its representatives, or any authorized officer, director, employee or agent of the Community Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot, after reasonable notice to the Owner, in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been, or are being, built in compliance with the plans and specifications approved by the Design Review Committee, the Design Standards and this Declaration. The Design Review Committee shall cause such an inspection to be undertaken within a reasonable time (not to exceed 60 days) of a request therefore from any Owner as to his Lot which request shall contain an affirmative statement by such Owner of such Owner's good faith belief that such Owner is in compliance with the approved plans and specifications, the Design Standards and the other provisions hereof. If such inspection reveals that the improvements located on such Lot have been completed in compliance with the plans and specifications as approved by the Design Review Committee, the Design Standards and the other provisions hereof, the Design Review Committee shall provide to such Owner a notice of such approval in recordable form which, when Recorded, shall be conclusive evidence of compliance with the provisions of the approved plans and specifications and the Design Standards as to the improvements described in such Recorded notice, but as to such improvements only.

(g) The Community Association may promulgate such rules and regulations as it deems to be appropriate in order to enforce compliance with the Design Standards set forth herein. WITHOUT LIMITING THE GENERALITY OF THE PROCEEDING SENTENCE, THE COMMUNITY ASSOCIATION BOARD MAY FIX A FINE OF UP TO $10,000 FOR FAILURE TO OBTAIN ANY REQUIRED APPROVAL FROM THE DESIGN REVIEW COMMITTEE OR TO COMPLY WITH ANY SUCH APPROVAL.

7.7 **Public Approvals**. All pertinent requirements of public agencies shall be followed in the development of the Lot, and all plans must be approved by the appropriate departments of the City. Each Owner must verify code requirements at the time of purchase and development. Although based in part on local zoning and subdivision regulations, the Design Standards may be more restrictive in land use, site development standards, landscape requirements, or in other matters. In every case in which the Design Standards or approvals given by the Design Review Committee are at variance with public agency requirements, the more restrictive regulations shall govern. Final legal approvals permitting development and occupancy of the property will be made by the City.

ARTICLE VIII

Use and Occupancy Restrictions

The use and occupancy restrictions hereinafter set forth in this Article VIII are hereby established in the Community.

8.1 **Residential Use**. Each Lot within the Community may be used only for residential purposes and no other. No business or commercial building may be erected on any Lot and no business or commercial enterprise, or other non-residential use, may be conducted on any part thereof. No temporary buildings,

structures, or trailers may be erected, placed or maintained on any Lot, except as expressly permitted by, and in compliance with, the Design Standards. Nothing herein contained shall be deemed to limit the Developer's rights as set forth in Article XI.

8.2 **Signs**. No permanent or temporary sign of any kind shall be displayed to the public view, or from any Lot, without the approval of the Community Association or the Design Review Committee, except for the following temporary signs (Permitted Signs): (a) such signs as may be used by Developer in connection with the development and sale of Lots in the Community; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; (c) such signs advertising the Lot as being for sale; or (d) signs promoting political candidates but only 30 days before and five days after the day of election. Permitted Signs shall not exceed five square feet in total area or be more than three feet in height.

8.3 **Animals**. No animals, including horses or other domestic farm animals, fowl or poisonous reptiles of any kind may be kept, bred, or maintained, on any Lot, except a reasonable number of commonly accepted household pets in accordance with the Community Association Rules. No animals shall be kept, bred or raised within the Community for commercial purposes. In no event shall any domestic pet be allowed to run free away from its owner's Lot or so as to create a nuisance. All such domestic pets must be registered with the Community Association and shall have proof of proper immunization presented with said registration.

8.4 **Nuisances**. No Owner shall permit or suffer anything to be done or kept about or within his Lot, or on, or about, any portion of the Community, which will obstruct or interfere with the rights of other Owners, Occupants, or Persons, or annoy them by unreasonable noises, or otherwise, nor will he commit, or permit any nuisance, or commit, or suffer any illegal act to be committed therein. Each Owner shall comply with the Community Association Rules and the requirements of all health authorities and other governmental authorities having jurisdiction over the Property.

8.5 **Boats and Motor Vehicles**. No boats, trailers, buses, motorhomes, campers, or other recreational vehicles shall be parked or stored in, or upon the Lot except within an enclosed garage. No vehicle shall be repaired (excepting minor repairs) or rebuilt on any Lot. The Community 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 consistent with law.

8.6 **Lights**. No spotlights, floodlights, or other lighting, shall be placed or utilized upon any Lot in a manner which unreasonably interferes with the enjoyment of adjoining Lots. All exterior lighting shall have a concealed energy source and a white color within the range of 2700° to 4500° K. Golden, yellow, blue or reddish colors are not permitted. No exterior lighting shall be installed or maintained on any Lot if the Design Review Committee shall object thereto.

8.7 **Antennas**. No "satellite dish" larger than 2 feet in diameter shall be placed or maintained outside of (or otherwise be visible from the exterior of) the residence on any Lot and no other external radio, television or other antennas of any kind or nature or other device for the reception or transmission of radio, microwave or other similar signals, shall be placed or maintained upon any Lot without the prior approval of the Design Review Committee. All such antennas or other devices shall be completely screened from view outside the Lot.

8.8 **Garbage**. No garbage or trash shall be kept, maintained or contained in any Lot so as to be visible from another Lot. 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.

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8.9 **Mining**. No portion of the Community shall be used in any manner to explore for or remove any water, oil or other hydrocarbons, or minerals of any kind, or earth substance of any kind.

8.10 **Safe Condition**. Without limiting any other provision in this Article VIII, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair, and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots. All improvements on a Lot which are damaged by or destroyed by fire or other casualty shall be repaired and restored by the Owner thereof with due diligence.

8.11 **Basketball Goals**. No basketball goals shall be attached to any building. All basketball goals shall be free standing and located behind the front building set back line shown on the applicable Plat provided however on lots with front entry garages, with prior approval of the Design Review Committee, basketball goals may be allowed in front of the building set back line. All backboards should be made of a clear material. All such goals and devices are otherwise subject to the approval of the Design Review Committee.

8.12 **Clothes Drying Area**. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the buildings to be constructed on each Lot.

8.13 **No Further Subdivision; Compounds**. No Lot shall be divided or subdivided except by the Developer. If an Owner owns contiguous Lots, they may be combined into a single homesite but only upon obtaining the prior written approval of the City and the Design Review Committee (each such approved combination of Lots being called a "Combined Lot") provided, however, (i) for all purposes of determining Owner's Proportionate Share, a Combined Lot shall be deemed only one Lot: (ii) all Assessments in respect of a Combined Lot shall constitute a lien, as provided in Article IV, upon the entire Combined Lot held by the Owner; and (iii) the Owner of each Combined Lot shall be entitled to the rights of only one Community Association Membership in respect of all such Lots so combined. In addition, once two or more Lots have been so combined to form a Combined Lot they shall remain as such, and the Owner(s) thereof shall not be permitted at any time to rents, sell or otherwise transfer or convey less than all of such Combined Lot.

8.14 **No Obstructions to Drainage**. No owner shall erect, construct, maintain, permit or allow any fence or other improvement or other, obstruction which would interrupt the normal drainage of the land or within any area designated on the Plat, or other binding document, as a "drainage easement," or which has been intentionally contoured to facilitate drainage, except that, with the prior consent of the City and the Design Review Committee, nonpermanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

8.15 **Outbuildings Prohibited**. No building or other detached structure may be erected on any Lot without the consent of the Design Review Committee.

8.16 **Above-Ground Swimming Pools**. No above-ground swimming pools shall be allowed on any Lot.

8.17 **Hot Tubs**. All hot tub design and placement are subject to Design Committee review and approval.

8.18 **Swimming Pool Equipment**. All swimming pool equipment and related items must be properly screened using appropriate shrubbery and/or walls. Screening must be approved by the Design Review Committee.

8.19 **Storage Tanks**. No exterior storage tank for fuel or anything else shall be allowed on any Lot.

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8.20 **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 from the garage.

8.21 **Rental of Lots**. An Owner who leases his Lot to any Person shall be responsible for assuring compliance by his lessee with all of the provisions of this Declaration, the Design Standards, and the Community Association Articles and Bylaws, all as amended and supplemented from time to time, and shall be jointly and severally responsible for any violations by his lessee thereof.

8.22 **Solar Panels**. Solar panels shall not be erected without the prior written consent of the Design Review Committee.

8.23 **Lawn Ornamentation**. No lawn ornaments of any kind are permitted in yards visible from any street.

8.24 **Enforcement**. The Community 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 pursuant to this Declaration or the Community Association Rules shall be a Special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of Article IV hereof. All remedies described in Article XII 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 Person of any provision of this Article VIII.

8.25 **Modification**. The Community Association may modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Community and the Lots by reasonable rules and regulations of general application within the Community adopted by the Community Association Board from time to time which shall be incorporated into the Community Association Rules.

ARTICLE IX

Rights of First Mortgagees

9.1 **General Provisions**. Notwithstanding and prevailing over any other provisions of this Declaration, the Design Standards or Community Association Articles, Bylaws or Rules, the provisions of this Article shall apply to and benefit each holder of a First Mortgage upon a Lot.

9.2 **Liability for Assessments**. A First Mortgagee who comes into possession or becomes record Owner of a mortgaged Lot by virtue of foreclosure of its Mortgage, or through any equivalent proceedings, such as, but not limited to, the taking of a deed or assignment in lieu of foreclosure or any third party purchaser at a foreclosure sale or trustee's sale, will not be liable for such Lot's unpaid dues, charges or assessments under this Declaration which may accrue prior to the time such First Mortgagee or third party purchaser comes into possession of such Lot, or becomes record Owner of the Lot, whichever occurs first, and shall acquire title free and clear of any lien authorized by or arising out of the provisions of this Declaration which secures the payment of any such dues, charges or assessments accrued prior to the earlier of the time such First Mortgagee or third-party purchaser came into possession of such Lot or became record Owner of the Lot. Any such unpaid dues, charges or assessments against the Lot foreclosed shall be deemed to be a Common Expense. Nevertheless, in the event 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 respective Lot's Assessment that was due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment shall continue to exist as the personal obligation of the defaulting owner of the respective Lot to the Community Association, and the Community Association Board may use reasonable efforts to collect

the same from said owner even after he is no longer a member of the Community Association or the Owner of the Lot.

9.3 **Enforcement After Foreclosure Sale**. An action to abate the breach of any of these covenants, conditions, restrictions, and reservations may be brought against the purchasers who have acquired title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an interest in such Lot.

9.4 **Exercise of Owner's Rights**. During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption), or from the time a trustee under a first deed of trust has given notice of sale pursuant to power of sale conferred under a deed of trust and pursuant to law, the First Mortgagee, or a receiver appointed in any such action, may but need not exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as a Member of the Community Association in the place and stead of the defaulting Owner.

9.5 **Subject to Declaration**. At such time as the First Mortgagee shall come into possession of or become record Owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration, including, but not limited to, the obligation to pay all assessments and charges accruing thereafter, in the same manner as any other Owner.

ARTICLE X

Annexation of Additional Property

10.1 **Development of the Project**. Additional real property may be annexed to and become subject to this Declaration as hereinafter set forth in this Article X at such time as the Developer may elect.

10.2 **Supplemental Declarations**. A Supplemental Declaration shall be a writing in recordable form which annexes Annexation Property to this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements and other provisions of this Declaration and shall contain such other provisions as are necessary to designate such property. Supplemental Declarations may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexation Property and as are not inconsistent with this Declaration. In no event, however, shall any such Supplemental Declaration revoke, modify or add to the covenants established by this Declaration with respect to the portion of the Community already subject to this Declaration, except that it may reduce the Proportionate Share of any Owner.

10.3 **Annexation Without Approval of Community Association**. If added at the election of the Developer, the Annexation Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Community Association without the approval, assent or vote of the Community Association provided that a Supplemental Declaration covering the Annexation Property shall be recorded by the Developer. The recordation of said Supplemental Declaration shall constitute and effectuate the annexation of the Annexation Property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdictions of the Community Association, and thereafter said Annexation Property shall be part of the Community for all intents and purposes of this Declaration and all of the Owners of Lots in the Annexation Property shall automatically be Owners in accordance with the terms hereof.

10.4 **Right to Use Community Facilities** - The Developer shall have the right, without the approval, assent or vote of the Community Association to provide that the owners of lots and residents of Villas at

Gleneagles shall have the right to use the swimming pool and related improvements which are a part of the Common Facilities and if those individuals use such facilities they shall pay a fee for such use based on the total operating costs of such facility divided by the number of Owners of the Estates of Gleneagles and the number of lot owners that use such facilities in the Villas at Gleneagles. The lot owners of the Villas at Gleneagles who utilize the swimming pool and related facilities shall be subject to all the same rules and regulations for the operation of such facilities as the owners in the Estates of Gleneagles.

ARTICLE XI

Exemption of the Developer from Restrictions

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

ARTICLE XII

Remedies

12.1 **General Remedies**. In the event of any default by any Owner, Occupant or other Person under the provisions of this Declaration, the Community Association, or the successors, assigns, or, agents thereof, or the Developer, shall have each and all of the lights and remedies which may be provided for in this Declaration, or which may be available at law or equity, and may prosecute any action or other proceedings against such defaulting Owner, Occupant, or other Persons for an injunction, whether affirmative or negative, or for enforcement or foreclosure of any lien herein provided and the appointment of a receiver for the Lot, or for damages, or specific performance, or for judgment for 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 Lot or the solvency of such Owner.

12.2 **Expenses of Enforcement**. All expenses of the Community Association or the Developer or other Person granted rights of enforcement hereunder, in connection with any action or proceeding described or permitted by this Article XII, including court costs and reasonable 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 such defaulting Owner, or other Person and shall be a Special Assessment against such Owner or other Person, and the Community Association or Developer shall have a lien as provided in Article IV therefore. In the event of any default by any Owner or other Person, the Community Association and the Developer, and any permitted manager or managing agent, if so authorized, shall have the authority to correct such default 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 such defaulting Owner or other Person as a Special Assessment, which shall constitute a lien against the defaulting Owner's Lot as provided in Article IV. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Community Association or the Developer.

12.3 **Legal Action**. In addition to any other remedies available under this Article XII, if any Owner (either by his conduct or, by the conduct of any Occupant of his Lot or family member, guest, invitee or agent) shall violate any of the provisions of this Declaration or any other document contemplated hereby, as then in

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effect, then the Community Association, the Developer, or any affected or aggrieved Owner, shall have the power to file an action against the defaulting owner for a judgment, or injunction against the Owner or such other Person requiring the, defaulting Owner or other Person to comply with the provisions of this Declaration, or any other document contemplated hereby, and granting other appropriate relief, including money damages.

12.4 **Effect on Mortgage**. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any other document contemplated hereby, shall not defeat or adversely affect the lien of any Mortgage upon any Lot but, except as herein or therein specifically provided, each and all of said covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

12.5 **Limitation on the Developer's Liability**. Notwithstanding anything to the contrary herein, it is expressly agreed that neither the Developer (including without limitation any assignee of the interest of the Developer hereunder) nor any partner in the Developer partnership (or in any such assignee) shall have any personal liability to the Community Association or any Owner or Occupant, Community Association Member or other Person, arising under, in connection with, or resulting from (including, without limitation, resulting from action or failure to act with respect to) this Declaration, the Articles, Bylaws or Rules of the Community Association, the Design Standards or the Design Review Committee or for any action taken or not taken pursuant to authority granted Developer therein or with respect thereto, except, in the case of the Developer (or its assignee) to the extent of its interest in the Community, and, in the case of a partner in the Developer (or in any such assignee), his interest in the Developer (or such assignee), and, in the event of a judgment against the Developer (or any partner or assignee thereof), no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the Judgment debtor.

ARTICLE XIII

Amendment

13.1 **Amendments to Declaration**. Amendments to this Declaration shall be made by and instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a Majority of the Community Association Board Members prior to its adoption by the Community Association Members. Amendments may be adopted at a meeting of the Community Association Members upon the approval thereof of two-thirds of all of the Community Association Members entitled to vote thereat, or without any meeting if all Community Association Members have been duly notified and if two-thirds of all of the Community Association Members entitled to vote at such a meeting, if held, consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of the President of the Community Association and shall be attested by the secretary, who shall state whether the amendment was properly adopted, and shall, be acknowledged by them as officers of the Community Association. Amendments once properly adopted shall be effective upon recording of the Amendment to Declaration in the appropriate governmental offices.

13.2 **Effect of Amendment**. It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all of the easements, covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration, unless otherwise specifically provided in the Section being amended or the amendment itself.

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13.3 **Required Approvals**. Notwithstanding the provisions of the foregoing sections of this Article XIII:

(a) If this Declaration or any applicable provision of law requires the consent or agreement of additional parties, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all such parties, as required by this Declaration or by said law.

(b) Until (i) 95% of all the Lots in the Community as it exists from time to time have been sold to third parties, and (ii) Developer owns less than two acres of land in the Community as it exists from time to time, this Declaration may not be amended by the Community Association Members pursuant to this Article XIII without the written consent of the Developer, which may be withheld for any reason.

13.4 **Developer's Right to Amend**. Notwithstanding any other provision of this Article XIII, until (i) 95% of all the Lots in the Community as it exists from time to time have been sold to third parties, and (ii) Developer owns less than two acres of land in the Community as it exits from time to time, the Developer reserves the right to amend this Declaration without the approval of the Community Association Board, the Community Association Members or any Owner or other Person; provided, however, that no such amendment shall have the effect of changing the Plat of an Owner's Lot without the consent of the Owner.

ARTICLE XIV
General Provisions

14.1 **Notice**. Notices provided for in this Declaration, or the Community Association Bylaws, or Community Association Rules, shall be in writing and shall be addressed to the Community Association at the address specified in the Community Association Bylaws. The Community Association may designate a different address or addresses for notice by giving written notice of such change of address to all Community Association Members at such time. All notices to Community Association Members shall be to the last address shown on the records of the Community Association. Any Community Association Member may designate a different address or addresses for notices to it by giving written notice of its change of address to the Community Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.

14.2 **Captions and Exhibits**. Captions given to various Sections herein, and the Table of Contents for this Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein are incorporated as though fully set forth where such reference is made. The provisions of this Declaration shall be construed to effectuate its purpose of creating a uniform plan for the development and operation of the Community as hereinabove set forth.

14.3 **Severability**. If any provision of this Declaration, the Community Association Articles or Bylaws, or Community Association Rules, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, the Community Association Articles or Bylaws, or Community Association Rules, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration, the Community Association Articles or Bylaws, or Community Association Rules shall be construed as if such invalid part were never included therein.

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14.4 **Term**. This Declaration shall continue in full force and effect (subject, however, to the right to amend as herein provided) until January 1, 2026. Thereafter, unless one (1) year prior to January 1, 2026, there shall be recorded an instrument directing the termination of this Declaration signed by at least two-thirds (2/3) of all Community Association Members then entitled to vote, this Declaration shall be automatically continued without any further notice for an additional period of ten (10) years and thereafter for successive periods of ten (10) years each; provided, that within one (1) year prior to the expiration of any such ten (10) year period, this Declaration may be terminated as set forth in this Section.

14.5 **Rule Against Perpetuities**. If any of the options, easements, privileges, covenants, or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until 21 years after the death of the survivor of the now living descendants of Joseph P. Kennedy, Sr.

14.6 **Mortgage of Lots**. Each Owner shall have the right, subject to the provisions hereof, to separately mortgage his Lot. No Owner shall have the right or authority to make, or create, or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Community or any part thereof, except only to the extent of his Lot.

14.7 **Power of Attorney**. Whenever the Community Association is granted rights, privileges or duties in this Declaration, the President shall have the authority to act for the Community Association, unless such right and power is hereby expressly reserved to the Community Association Board. Further, unless otherwise specifically restricted by the provisions of this Declaration, wherever the Community Association is empowered to take any action or do any act, which may at any time be deemed to require the act of an Owner or Community Association Member, the Owners and Community Association Members and each of them hereby constitute and appoint the Community Association as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming a Member of a Community Association, or by the acceptance of a deed for a Lot, or by signing a contract for purchase of a Lot, or by succeeding in any other manner to the ownership of a Lot, or any interest therein, each owner and Community Association Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.

ARTICLE XV

Rights and Obligations

Each grantee of the Developer or of any Owner, by the acceptance of a deed of conveyance, and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale, and each Person acquiring a membership in the Community Association, and the heirs, successors and assigns of the foregoing Persons, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any Person having at any time. Any interest or estate, in said land, and shall inure to the benefit of any such Person in like manner as though the provisions of this Declaration pare recited and

stipulated at length in each and every deed of conveyance, purchase contract or instrument evidencing or creating such interest.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed.

TOMAHAWK RIDGE COMPANY, L.L.C.,
a Kansas limited liability company

By: _____
Name: Matthew M. Adam
Title: _____
Date: _____

STATE OF KANSAS, COUNTY OF JOHNSON, SS:

BE IT REMEMBERED, that on this 19th day of September 2001, before me the undersigned, a Notary Public in and for the county and state aforesaid, came Matthew M. Adam, _____ of Tomahawk Ridge Company, L.L.C., a Kansas limited liability company, who is personally known to me to be the same person who executed, as such _____, the within instrument on behalf of said company, and such person duly acknowledged the execution of the same to be the act and deed of said company.

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

_____
Notary Public

JOAN G. SLEVIN
My Appt. Exp. 1/29/05
NOTARY PUBLIC
STATE OF KANSAS

EXHIBIT "A"

DESCRIPTION

A tract of land in the Southeast Quarter of Section 35, Township 13, Range 24, in the City of Overland Park, Johnson County, Kansas, being more particularly described as follows:

Beginning at the Southwest corner of the Southeast Quarter of said Section 35; thence N 2°08'08" W, along the West line of the Southeast Quarter of said Section 35, said line also being the East line of KENSINGTON AT ST. ANDREWS, FIRST PLAT, and NOTTINGHAM ESTATES AT ST. ANDREWS, SECOND PLAT, platted subdivisions in the City of Overland Park, Johnson County, Kansas, a distance of 1787.82 feet to the Northeast corner of Lot 99, Block 1, NOTTINGHAM ESTATES AT ST. ANDREWS, SECOND PLAT; thence N 87°44'44" E, along the South line of the North 200.00 feet of the South one-half of the Northwest Quarter of the Southeast Quarter of said Section 35, a distance of 1342.13 feet; thence S 12°45'00" E, a distance of 250.56 feet; thence S 1°02'24" E, a distance of 50.00 feet; thence Westerly on a curve to the left having a radius of 175.00 feet, a central angle of 12°08'29", an initial tangent bearing of S 88°57'36" W and a length of 37.08 feet; thence S 11°45'00" E, a distance of 174.80 feet; thence S 20°39'00" E, a distance of 220.59 feet; thence Southwesterly on a curve to the left having a radius of 870.00 feet, a central angle of 5°16'00", an initial tangent bearing of S 69°21'00" W and a length of 79.97 feet; thence S 30°06'00" E, a distance of 154.80 feet; thence S 54°18'00" W, a distance of 245.56 feet; thence S 24°00'00" W, a distance of 70.98 feet; thence S 26°00'00" E, a distance of 326.31 feet; thence S 7°00'00" E, a distance of 58.00 feet; thence S 34°27'00" E, a distance of 132.23 feet; thence Northeasterly on a curve to the left having a radius of 275.00 feet; a central angle of 3°49'24", an initial tangent bearing of N 48°43'24" E and a length of 18.35 feet; thence S 45°06'00" E, a distance of 237.37 feet; thence S 23°09'00" W, a distance of 57.05 feet; thence S 2°15'30" E, a distance of 60.00 feet to a point on the South line of the Southeast Quarter of said Section 35; thence S 87°44'30" W, along said South line, a distance of 1570.87 feet to the Point of Beginning and containing 56.750 acres, more or less.

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