

**DECLARATION OF COVENANTS, RESTRICTIONS, ASSESSMENTS, AND
EASEMENTS FOR VALLEY VIEW SUBDIVISION**

PART A - PREAMBLE

THIS DECLARATION is made on the date hereinafter set forth for the real estate described below located in the Pottawatomie County, Kansas, by the entity described below as "**Declarant**".

WITNESSETH:

WHEREAS, Declarant is the owner of the following described real property:

Lots 1 through 20, and Lots 21A, 21B, 22A, and 22B, in Valley View Subdivision, as shown by the recorded plat thereof;.

all in the City of St Marys ETZ (extraterritorial zone), Pottawatomie County, Kansas.

WHEREAS, Declarant desires to develop and maintain said real property as a residential community for the benefit of the residents of that community.

NOW, THEREFORE, Declarant hereby declares that all of the real property described above shall be held, sold, and conveyed to others subject to the following covenants, restrictions, assessments and easements which are established for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

PART B - DEFINITIONS

- B-1** "**Annexation Property**" shall mean any additional property which is annexed to the Property, thereby becoming a part thereof and subject to this Declaration.
- B-2** "**Association**" shall mean and refer to the Valley View Homeowners' Association, Inc., a not-for-profit corporation, formed or to be formed pursuant to the laws of the State of Kansas, and its successors and assigns.
- B-3** "**Board of Directors**" shall mean and refer to the Board of Directors of the Association.

B-4 "Common Areas" shall mean and refer to:

- (a) Tract A and Tract B in the Plat, which includes the Lake Area in Tract A and the grass area in Tract B;
- (b) any structures, trees, landscaping, lighting equipment, decorative equipment, area marker or markers, community mailboxes, or other improvements owned by the Association pursuant to this Declaration and located upon the property;
- (c) all easements, rights, and appurtenances thereto and necessary for the existence, maintenance, and safety of the Lots; and
- (d) all personal property owned by the Association intended for use by the Association in the exercise of its powers as set forth in this Declaration.

B-5 "Common Expenses" shall mean and include the following:

- (a) Expenses of administration; insurance expenses; and expenses incurred in the maintenance, operation, repair, and replacement of the Common Areas to be maintained by the Association; and
- (b) Expenses declared Common Expenses by the Association and assessed against the Owners.

B-6 "Construction Changes" shall mean any change which could be deemed as significant to the Architectural Control Committee, and such alteration shall require written approval by the Architectural Control Committee before any changes are made or commencement of construction is begun. An addition to a building, or a change in exterior paint color, or erection of a yard fence, or a change in roofing material, as examples, would be considered significant construction change.

B-7 "Declarant" shall mean and refer to VVE3, LLC, a Kansas corporation, or its permitted assigns.

B-8 "Easements Area" shall mean and refer to those easements that are specifically described as easements areas on the Plat.

B-9 "Lot" shall mean and refer to any plot of land shown on the Plat.

B-10 "Lake Area" shall mean Tract A of the Plat.

B-11 "Marketing Phase" shall mean Declarant shall have the exclusive right to amend

this Declaration without the approval of any Owner of the Property, or any part thereof, or other person, including, without limitation, the right to extend the Marketing Phase's expiration date, until ninety percent (90%) of the Lots (as they exist from time to time) have been sold by Declarant to third parties.

- B-12 "Members"** shall mean and refer to each Owner as provided in this Declaration.
- B-13 "Mortgagee"** shall mean and refer to any person, persons, or entities holding a first mortgage secured by a Lot and improvements thereon.
- B-14 "Owner"** shall mean and refer to the record owner or owners, whether one-or-more persons or entities, of the fee simple title to a Lot, including a contract purchaser of a Lot who has complied with the provisions of this Declaration. The term "Owner" shall not mean any Mortgagee unless and until such Mortgagee has acquired fee simple title to a Lot pursuant to foreclosure or any proceeding in lieu of foreclosure.
- B-15 "Person(s)"** shall mean a natural individual(s), corporation, partnership, limited liability company, trustee, or other legal entity capable of holding title to real property.
- B-16 "Plat"** shall collectively mean and refer to the final plats of the Property, filed in Book _G,F_ at Page _1,199_, and in the office of the Register of Deeds of Pottawatomie County, Kansas, as amended or supplemented from time to time.
- B-17 "Property"** shall mean and refer to all real property that becomes subject to the Declaration.
- B-18** Other terms may be defined in specific provisions contained in this Declaration and shall have the meaning assigned in such definition.

PART C - LAND USE

C-1 Architectural Control

No building, fence or wall shall be erected, placed or altered on any Lot until a complete set of construction plans and specifications, including, but not limited to, specifications on exterior materials and colors, landscaping, fencing, exterior lighting, finished elevations, and the location of the improvements upon the Lot, has been approved in writing by the Architectural Control Committee. The Architectural Control

Committee shall have complete discretion as to the extent of detail required in plans submitted. The Architectural Control Committee may issue a Construction Checklist, which may be periodically modified, and with which any person seeking approval must comply. Outside builders may be allowed pending application and approval by the Architectural Review Committee, and verification of current insurance (including but not limited to both workers compensation and liability insurance), and an active contractors license.

C-2 Residential Use

Unless otherwise approved by the Architectural Control Committee, the Property shall be used only for residential purposes.

C-3 Permitted Height of Residence

The Architectural Control Committee provided for herein shall set for each Lot a maximum height allowance for any building or detached structure to be set on such Lot. For the purpose of this paragraph, the height of the building shall be measured on any side of said building which has street frontage and shall be measured from the ground elevation to the peak of the roof line. Acceptable designs shall be limited to one- and two-story structures with a maximum height not exceeding forty five (45) feet unless otherwise approved by the Architectural Control Committee. All plans which are submitted for approval shall have the total height noted on each elevation drawing.

C-4 Dwelling Size

The total square footage of the ground floor of any single-family, detached dwelling containing one story shall not be less than one thousand five hundred (1,500) square feet, exclusive of open or screened-in porches, garages, patios or any other area which is not a fully enclosed year-round living area. The total square footage of the ground floor of any single-family, detached dwelling containing more than one story shall not be less than one thousand three hundred (1,300) square feet, exclusive of open or screened-in porches, garages, patios or any other area which is not a fully enclosed year-round living area.

All single-family, detached dwellings shall include an enclosed garage with a capacity for at least two (2) full-sized vehicles. Garages may be detached from the main residence. One out building, matching in style with original dwelling, and receiving

approval by the Architectural Review Committee may be built not to exceed 2,000 sf.

C-5 Building, Fence, and Wall Location

No building shall be located on any Lot nearer to the front lot line or the back lot line or nearer to the side street line than the minimum setbacks of Pottawatomie County.

C-6 Construction Requirements and Changes

No dwelling shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after the date of issuance of a building permit. While under construction, the building site shall be kept clean. In the event of fire, storm or other damage, no building shall be permitted to remain in a damaged condition longer than six (6) months after the date of damage. For any violation of any of the above, an assessment of five hundred dollars (\$500.00) for each month or portion thereof shall be due and payable to the Association by the Owner of the Lot where said violation exists. Such assessment shall be a lien on the Lot until paid, and the Association may file a lien statement with the Register of Deeds of Pottawatomie County, Kansas, to make such a lien a matter of public record. See Section H-8.

All homes in Track A are required to have a minimum 30' concrete driveway, the remaining driveway may be gravel. Each home in Track A must have a 30' concrete apron.

There are to be no lagoons on any property.

Propane tanks are permitted on Lots 21 a and b through 22 a and b, but must be buried. All other Lots have access to natural gas, and propane tanks are not permitted.

Any Construction Changes to the design of the original landscaping plan or dwelling exterior or fence shall require written approval by the Architectural Control Committee.

C-7 Lawn Care

All developed Lots must keep improved grass mowed. All County Ordinances concerning weeds, brush and general maintenance apply. Unimproved Lots are required to mow the front 30 feet setback or keep the grass native.

C-8 Drainage

No interference with the established drainage pattern over a Lot shall be permitted without the prior written approval of the Architectural Control Committee. All drainage issues shall be governed according to the codes and policies set forth by the City of St Marys, and Pottawatomie County. Owners must comply with the Stormwater Pollution Prevention Plan for the Property as set forth by Pottawatomie County.

C-9 Easements

Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat and/or by amendment to this Declaration. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Lot's Owner, except for those improvements for which a public authority or utility company is responsible.

C-10 Fencing

No chain link fence shall be permitted unless said fence is enclosed, covered or decorated in a manner to be submitted in writing to the Architectural Control Committee for its prior approval. All fencing must be shown on the construction plans which are submitted to the Architectural Control Committee for approval. Both the type and height of all fencing must be designated and must conform to local building codes. All fencing must be approved by the Architectural Control Committee.

C-11 Nuisances

No obnoxious or offensive activity shall be permitted on any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

C-12 Temporary Structures

No structure of a temporary character, trailer, tent, shack, garage, barn or other

outbuilding shall be placed or used on any Lot or at the Property at any time as a residence either temporarily or permanently. No outbuildings or other detached structure appurtenant to the residence shall be erected on any of said Lots without the written approval of the Architectural Control Committee. No dog pens or dog runs shall be allowed without the written approval of the Architectural Control Committee. Requests for approval shall require, but not be limited to, the submission of architectural drawings, site location, landscape plan and other noise buffer applications.

C-13 Parking and Recreational Vehicle Storage

No vehicle, including but not limited to, recreational vehicles (RVs), mobile homes, motor homes, boats, trailers, machinery, or other similar equipment shall be parked or stored on any Lot in a manner that creates a nuisance, safety hazard, or unsightly appearance when viewed from the street or neighboring properties.

Parking of RVs, boats, trailers, and similar vehicles for loading, unloading, or short-term use is permitted for up to seven (7) consecutive days within any thirty (30) day period.

However, if the RV, boat, or trailer belongs to an invited *guest* of the Lot Owner, parking may be permitted for up to thirty (30) consecutive days, provided:

- The vehicle is in good working condition.
- The vehicle is not used as a permanent residence.
- The Owner notifies the Architectural Control Committee in advance of any guest parking expected to exceed 7 days.

Long-term storage of RVs, boats, trailers, or similar vehicles owned by the Lot Owner must occur behind the front line of the residence and be screened from public view using fencing, landscaping, or placement approved by the Architectural Control Committee.

Daily-use vehicles (passenger cars, trucks, SUVs) must be parked on paved driveways or within garages. On-street parking is allowed only in compliance with local ordinances.

No major repair, rebuilding or maintenance of any vehicle shall be permitted, except within a fully enclosed garage. No major repair, rebuilding or maintenance of any vehicle shall be permitted in open parking areas. This restriction shall include, but is not limited to, automobiles, trucks, campers, trailers and boats.

C-14 Storage

No storage of any type shall be allowed except within the private enclosed

residential dwelling or appurtenant garage, and any such storage shall not be permanently exposed to public view, including trash and recycling receptacles.

C-15 Signs

No sign over 6 square feet is allowed. No more than one sign at a time on a Lot is allowed.

C-16 Oil and Mining Operations and Oil Tanks

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. No tank for storage of fuel may be maintained above the surface of the ground of any Lots without the consent of the Architectural Control Committee.

C-17 Livestock, Poultry, and Household Pets

Domestic animals such as dogs, cats, and other common household pets are allowed, provided they are kept in reasonable numbers and do not create a nuisance or health hazard. Chickens may be kept for personal use, including hens, but roosters are discouraged due to potential noise concerns.

Owners may also keep small livestock or other animals (such as goats or rabbits), subject to the following:

- Animals must be maintained in clean and secure enclosures that are screened from public view.
- All enclosures must be well-maintained and not emit offensive odors or excessive noise.
- Animals may not be kept for commercial breeding or sales without written approval from the Architectural Control Committee.

All animal housing or fencing must be submitted to and approved by the Architectural Control Committee prior to installation. The Committee may place reasonable restrictions on location, size, and appearance of structures to ensure compatibility with the surrounding area.

C-18 Garbage and Refuse Disposal

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall only be kept in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. All sanitary containers that remain outside the residence shall be enclosed, and all enclosures shall be architecturally designed to match the architecture and the materials of the residence. Variances from this requirement shall be made only with the written approval of the Architectural Control Committee.

C-19 Reserved

C-20 Mailboxes

Pending postal service approval, each Lot shall have a mailbox placed that is composed of stone, and is approved by the Architectural Committee. Should the US Postal Service dictate that cluster mailboxes are necessary, the placement of such cluster mailboxes shall be made by the U.S. Postal Service. Any questions regarding the maintenance and service of the mailboxes shall be directed to the U.S. Postal Service and shall be the sole responsibility of the individual Owner(s). In the event the U.S. Postal Service discontinues the maintenance and service of mailboxes, individual Owners shall assume that responsibility.

C-21 Overhead Wires Prohibited

No power, telephone and/or cable television service connection line(s) shall be erected on any part of a Lot without the prior written consent of the Architectural Control Committee.

C-22 Swimming Pools

In ground and above ground swimming pools are allowed. All pools will require review and approval of the Architectural Review Committee.

C-23 Quiet Enjoyment

All occupants shall be entitled to the reasonable quiet enjoyment of their respective Lot and common areas. The Association shall use its best effort to establish

and maintain a quality environment at the Property. However, the Association shall not be obligated to perform any duties or incur any costs beyond those set forth in this Declaration.

C-24 Lake Area

The purpose of the Lake Area is to provide common recreational opportunities for community residents and their invited guest, ONLY. Access to Lake Area will be by walking trail, or direct access if the Lot is adjacent to the Lake Area. No large watercrafts exceeding 16' in length, no motorized watercrafts will be permitted access. Docks may be constructed, but all plans must be approved by the Architectural Review Committee and built within stated building guidelines above. Recreational, catch and release only, Fishing will be permitted in accordance with regulations by the Kansas Department of Wildlife. Dogs must be leashed when in common space. All residents and guests will comply with association quiet enjoyment policies, all local, and state laws while using common space.

PART D - ARCHITECTURAL CONTROL COMMITTEE

D-1 Committee Members

The Architectural Control Committee shall be initially composed of:

Michael Drippe

The Architectural Control Committee's mailing address is 919 East Jesuit Lane, Saint Mary's, Kansas 66536.

In the event of the death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor, subject to Declarant's approval. The members of the Committee shall not be entitled to any compensation for services performed pursuant to this covenant. However, if in their opinion it is necessary for the Committee to retain professional services to assist them in discharging their duties they shall have the power to do so and to assess the reasonable expense thereof to the applicant or person for whom those services are retained. The assessment shall be a lien on the subject Lot until paid, and the Committee may file a Lien Statement with the Register of Deeds of Pottawatomie County, Kansas, to make such lien a matter of public notice.

After expiration of Declarant's Marketing Phase, the then record Owners of a majority of the Lots shall have the power through a duly recorded instrument to change the membership of the Committee, in which event the current members of the Committee shall resign and new members elected. In the event that the Owners shall fail to so act, the Committee shall continue in full force and effect until an instrument changing such membership is recorded. For purposes of voting by the Owners, if more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as such persons among themselves determine; provided however, that in no event shall more than one vote be cast with respect to any individual Lot.

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction, decisions of the Architectural Control Committee established in this Article. Enforcement shall be by proceedings at law or in equity, against any person or persons violating or attempting to violate any covenant or decision of the Architectural Control Committee either to restrain violation or recover damages, or both.

D-2 Procedure

No building, or construction of any kind, shall be erected, placed, or performed on any Lot until construction plans and specifications, including, but not limited to, specifications on exterior materials and colors, and a plan showing the location of the structure, have been approved by the Architectural Control Committee as to type of materials, exterior colors, harmony of external design with existing structures, location of the dwelling on the Lot, finished grade elevation, front and side yard planting and landscaping plan. The term "construction," as used in this Article, shall include within its definition staking, clearing, excavating, and other similar site work. The Architectural Control Committee shall have complete discretion as to the extent of detail required in plans and specifications to be submitted to it, and may waive any submission requirement called for by this Article. The Architectural Control Committee may approve several standard or prototype plans for such residence and limit building plans to such standard or prototype plans.

No Owner may change the grade or topography of his Lot without the prior written consent of the Architectural Control Committee. No permission or approval shall be required to (i) repaint in accordance with an originally approved color scheme, (ii) to rebuild in accordance with originally approved plans and specifications or (iii) to

decorate any residence or other improvement or Lot with temporary seasonal decorations that do not constitute a nuisance or annoyance to the neighborhood or which detract from the attractiveness of the Property. Nothing herein shall be construed to limit the right of an Owner to remodel the interior of his residence or to paint the interior of his residence any color he or she desires. The Committee's approval or disapproval as required in these covenants shall be in writing and upon majority vote. If the Committee or its designated representative fails to approve or disapprove the plans within thirty (30) days after all required material and specifications have been submitted, approval shall not be required, and related covenants shall be deemed to have been fully complied with. The Committee shall have the sole authority to grant variances to the covenants, conditions and restrictions. Variances shall be granted only upon a majority vote.

D-3 Noncompliance

The Committee or the Association may assess a fine of fifty dollars (\$50.00) per day assessment against the Owner of any Lot on which a violation of these covenants occurs for which there is not a specific assessment otherwise provided. This assessment shall continue until the violation has ceased. All fines shall be paid to the Association within 30 days of notice and if not paid shall be subject to interest at the maximum rate allowed in the State of Kansas. This initial fine rate of fifty dollars (\$50.00) per day may be changed by the Association from time to time.

PART E - ASSOCIATION

E-1 Duties

The Association shall have the following duties:

- (a) To maintain the Common Area, and pay Common Expenses.
- (b) To obtain and provide public liability, casualty, and other such insurance deemed necessary by the Association.
- (c) To do and perform such other things described in this Declaration or as may from time to time be necessary to maintain the quality and appearance of the Property.
- (d) Establish and fund an account for future maintenance of the dam for the

Lake Area.

E-2 Powers

The Association shall have the following powers:

- (a) To fix, levy, and collect fees and charges, whether regular or special, for the purpose of performing its duties under this Declaration.
- (b) To enforce this Declaration and reasonable rules and regulations governing the use of the Property, and the maintenance of the Lots, which rules and regulations shall be consistent with the rights and duties established by this Declaration (the "**Rules and Regulations**"). Sanctions may include reasonable monetary fines and suspension of the right to vote. The Board of Directors shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. In addition, the Association, through the Board of Directors, may, by contract or other agreement, enforce city ordinances or permit the City of St Marys to enforce ordinances on the Property for the benefit of the Association and the Owners.

To perform, carry out, and exercise any and all other powers, functions, measures, and tasks deemed necessary by the Association for the convenience, benefit, and enjoyment of the Owners, and to fix, levy, and collect any fees and charges necessary to pay the costs of any of the foregoing.

E-3 Implementation of Powers and Duties

The Association shall carry out its duties and exercise its powers pursuant to the following provisions:

- (a) **Limitation Upon Liability of Association.** Notwithstanding the duty of the Association to maintain and repair parts of the Property, the Association shall not be liable to any Owner, his family, invitees, guests, or tenants, for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association.
- (b) **Restraint Upon Assignment of Shares in Assets.** The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to

his Lot.

- (c) **Approval or Disapproval of Matters.** Whenever the decision of an Owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the *vote* of such Owner if in an Association meeting, unless the joinder of record Owners is specifically required by this Declaration.
- (d) **Voting Rights.** Members of the Association shall be entitled to voting rights as set forth in this Declaration.
- (e) **Books of Receipts and Expenditures.** The Board of Directors shall keep detailed accurate records, in chronological order, of receipts and expenditures affecting the Property and the operations under this Declaration, and such record shall specify and itemize the maintenance and repair expenses of the Association and any other expenses incurred. Such records and any vouchers authorizing payments shall be available for examination by Owners at convenient weekday hours.
- (f) **Legal Action.** The Association shall have the right and authority, but not the obligation, for and on behalf of the Owners to initiate or defend any legal action or claim arising out of their ownership of Lots, and to negotiate any settlement thereof as a special assessment that may be levied upon the Owner or Owners against whom such legal action or claim shall have been asserted.

E-4 Borrow Money.

The Board of Directors shall have the right to borrow money to meet requirements from time to time for working capital, Common Expenses, and emergencies; however, no single loan shall exceed \$5,000.00, loans at any time outstanding shall not exceed \$10,000.00 in the aggregate, and no loan shall be entered into having a maturity date in excess of five (5) years. Any loan or loans in excess of such limits or for a longer maturity shall be made only with the affirmative *vote* in person or by proxy of at least 80% of the Members at an annual or special meeting of the Members. Notwithstanding the foregoing, during the Marketing Phase the Board of Directors shall have the power to borrow money without the approval of the Members. The repayment of principal and interest of any debt of the Association shall be a Common Expense.

E-5 Title to Common Areas

Declarant may retain the legal title to any Common Areas until such time as it has completed improvements thereon, if any, or until such time as, in the opinion of Declarant, the Association is able to maintain the Common Areas but, notwithstanding, any provision in this Declaration, Declarant covenants that the Common Areas shall be transferred and conveyed to the Association, free and clear of all liens and encumbrances, other than specifically provided in this Declaration or shown on the Plat, not later than the expiration of the Marketing Phase.

PART F - MEMBERSHIP AND VOTING RIGHTS

F-1 Members

Every person or entity who is an Owner of the fee simple interest in one or more Lots shall be a member of the Association. Ownership of a Lot shall be the sole qualification for membership. All Members of the Association shall be governed and controlled by the Articles of Incorporation and the By-Laws thereof.

F-2 Voting in the Association

Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section F-1. When more than one person holds an interest in any Lot, all such persons shall be Members and the vote for such Lot shall be exercised as they among themselves, determine; but in no event shall more than one vote be cast with respect to any Lot.

F-3 Quorum, Proxies, and Voting

- (a) The quorum requirements for meetings of the Association's Members shall be as described in the Association's Bylaws.
- (b) At all meetings of the Association, a Member may vote in person or by proxy executed in writing by such Member. Such proxies shall be filed with the Secretary of the Association before or at the time of a meeting. No proxy shall be valid after twelve (12) months from the date of its execution. Every proxy shall be revocable and shall automatically cease upon conveyance by a Member of his Lot.

F-4 Articles of Incorporation and

Except as specifically set forth in this Declaration, all provisions applicable to notice, voting and quorum requirements for all actions to be taken by the Association shall be as set forth in its Articles of Incorporation and Bylaws. In any event, if any provision set forth in this Declaration applicable to notice, voting, and quorum requirements are in conflict with any provisions of Kansas law applicable to not-for-profit corporations on the date of this Declaration, or at any time after such date, the applicable provisions of Kansas law shall control.

F-5 Declarant's Control of the Association

Notwithstanding anything in this Part F, or elsewhere in this Declaration to the contrary, Declarant shall maintain absolute and exclusive control over the Association and the Architectural Control Committee, including appointment and removal of the President and all other officers of the Association, all directors of the Association Board of Directors and all members of the Architectural Control Committee, until ninety percent (90%) of the Lots (as they exist from time to time) have been sold by Declarant to third parties. Until such time, only Declarant will be entitled to cast any votes with respect to the election and removal of Association officers or directors and members of the Architectural Control Committee, or any other matter requiring the vote or approval of Association Members.

Declarant may (but shall not be required to), at any time, voluntarily relinquish all or any part of Declarant's control and rights under this Section.

F-6 Change of Membership in the Association

Change of membership in the Association shall be established by recording a deed or other instrument in the Office of the Register of Deeds of Pottawatomie County, Kansas, establishing a record title to a Lot and the delivery to the Association of a copy of such instrument. The Owner designated by such instrument shall thereby become a Member of the Association, and the membership of the prior Owner shall thereby be terminated. In the event a Lot is sold pursuant to a contract by the terms of which the record title to the Lot shall not pass until full payment of the purchase price has been made by the contract purchaser, an Affidavit of Equitable Interest setting forth the name of the contract purchaser and a description of the Lot sold shall be made by both the contract seller and the contract purchaser,

and recorded in the Office of the Register of Deeds of Pottawatomie County, Kansas. A copy of such Affidavit of Equitable Interest shall be provided to the Association, together with the address of the contract seller to which notices required by this Declaration or the Bylaws shall be mailed. The contract purchaser as named in such Affidavit of Equitable Interest shall thereupon be considered the Owner of the Lot described therein for all purposes of this Declaration, the Bylaws, and Rules and Regulations of the Association, and, by entering into such purchase contract, agrees to assume all obligations imposed upon the Owner of such Lot as are imposed by this Declaration, the Bylaws, and Rules and Regulations of the Association. In no event, however, shall the contract seller be released from any obligation as the Owner of the Lot described in such Affidavit until a deed conveying fee simple title to the Lot to the contract purchaser shall have been recorded in the Office of the Register of Deeds of Pottawatomie County, Kansas, and a copy of such deed delivered to the Association. In lieu of recording a deed with the Register of Deeds, a final order entered by a court of competent jurisdiction transferring ownership of a Lot shall transfer such title, provided a certified copy of such final order is delivered to the Association. If title to a Lot shall be transferred by a transfer-on-death deed, the death of the Owner shall transfer such title, provided a certified copy of the death certificate, or other evidence of death as may be required by the Association, shall be delivered to the Association.

PART G - COMMON AREAS

G-1 Obligations of the Association

The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon, and shall keep the same in good, clean, attractive condition, order and repair.

G-2 Members' Easement of Enjoyment

Subject to the provisions herein and the terms of any plat of the Property, every Owner shall have a right and easement of enjoyment in and to the Common Area, and Lake Area, which shall be appurtenant to, and shall pass with the title to every Lot and every Member shall have a right of enjoyment in the Common Area. Notwithstanding the foregoing, no Owner or Occupant may use the Detention Area for any recreational

purpose or enter upon the same without the Association's prior approval.

G-3 Extent of Members Easements

The Members' easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association to establish reasonable rules and to charge reasonable admission and other fees for the use of the Common Areas.
- (b) The right of the Association to suspend the right of an Owner to use the facilities for any period during which any assessment against their Lot remains unpaid for more than thirty (30) days after notice.
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Members, agreeing to such dedication or transfer, has been recorded, except as provided in Section F-5, above.

G-4 Delegation of Use

Any Member may delegate their right of enjoyment to the Common Areas and facilities to the members of his family, invited guests or Lessees, subject to such general regulations as may be established from time to time by the Association.

G-5 Damage or Destruction of Common Area by Member or Delegate

In the event any Common Area is damaged or destroyed by a Member or their delegate, such Member does hereby authorize the Association to repair said damaged area in a good workmanlike manner. The costs incurred by the Association for such repairs shall become a Special Assessment upon the Lot(s) owned by the Member.

G-6 Title to Common Area

The Declarant may (but shall not be obligated to) retain the legal title to the Common Area or portion thereof until such time as it has sold or completed improvements on the Property, but notwithstanding any provision hereto, the Declarant hereby covenants that it shall convey the Common Area and portions thereto the Association, free and clear of all liens and financial encumbrances, not later than the

expiration of Declarant's rights set forth in Section F-5. Members have all the rights and obligations imposed by the Declaration with respect to such Common Area.

PART H - COVENANTS FOR MAINTENANCE FEES OR CHARGES

H-1 Regular and Special Fees and Charges

Each Member, by accepting a deed to a Lot, whether expressed in the deed, hereby agrees to pay to the Association or its nominee:

- (a) Regular fees or charges; and
- (b) Special fees or charges for capital improvements to be fixed, established, and collected from time to time as hereinafter provided.

H-2 Purpose of Regular Fees or Charges

The regular fees or charges levied by the Association shall be used for the following purposes:

- (a) Maintenance and care of the Common Areas, if any, except for damage caused by an Owner or an Owner's guests, which shall be paid by such Owner.
- (b) Construction and maintenance of any area marker (or markers), street signs, and community mailboxes for the Property, but nothing herein shall obligate the Association to install any of the foregoing.
- (c) Establish and fund an account for future maintenance of the dam for the Lake Area.
- (d) Managing the Association, including necessary legal and accounting expenses.
- (e) Establishing contingency reserves as determined from time to time by the Board of Directors of the Association.
- (f) Paying insurance premiums for all insurance secured by the Board of Directors pursuant to this Declaration. Such insurance premiums shall include premiums for public liability and property damage insurance to the extent deemed necessary by the Board of Directors.

- (g) Paying such other charges and Common Expenses as may be elsewhere required or authorized by this Declaration, or that the Board of Directors of the Association may from time to time determine necessary or desirable to meet the purposes of the Association as stated in its Articles of Incorporation, Bylaws, and in this Declaration.

H-3 Regular Fees or Charges; Limits Thereon

- (a) So long as Declarant shall have control of the Association, before December 31 of each calendar year, and except as otherwise provided by law, the Board of Directors of the Association shall set the monthly assessment for each Member in an amount determined by the Association, in its sole and absolute discretion, to cover the estimated costs of maintaining the Common Areas and performing the obligations and exercising the powers established under this Declaration.

After Declarant shall no longer have control of the Association, before December 31 of each calendar year, the Board of Directors shall prepare a budget for the following calendar year which shall cover the estimated costs of maintaining the Common Areas and performing the obligations and exercising the powers established under this Declaration. The Board of Directors shall provide the Members all prior notices and opportunities for comment on the budget as may be required by law or the bylaws. On the basis of this budget, the regular assessments for each Member for the following year shall be established by the Association. Within sixty (60) days following the end of each calendar year, the Board of Directors shall send to each Member an annual report of assets and liabilities of the Association determined as of the last day of such calendar year. All computations and reports relating to obligations to be performed by the Association under this article shall be accomplished in accordance with accepted accounting practices.

- (c) Regardless of whether Declarant shall have control of the Association, on or before the first day of each calendar year, a copy of the annual budget for such calendar year if one is required, together with the proposed regular fees or charges allocable to each Lot, shall be delivered to each Member. If an annual budget is not made as required or the Association fails to increase the amount of fees or assessments due, a quarterly payment in the amount

required by the last prior budget shall be due from each Member upon each payment date until changed by new regular fees and charges established by the Association. Upon reasonable notice, mortgagees and Members shall have the right to examine the books and records of the Association at the Association's office. At the end of each calendar year, the Association shall determine, as soon as is reasonably possible, all of the costs incurred in that year, and if the costs have exceeded the budget, the deficiency shall be taken into account and defrayed as part of the budget for the following calendar year. If there is an excess of regular fees or charges collected for such calendar year, such excess shall also be taken into account preparing the budget.

H-4 Special Fees for Noncompliance with Declaration

The Association may levy special fees or charges against any Member to reimburse the Association for costs incurred for the purpose of bringing an Member or his Lot, into compliance with the provisions of the Declaration, the Articles, the Bylaws, and any Rules and Regulations, which special fees or charges may be assessed upon the vote of the Board of Directors after notice to the Member and a reasonable opportunity for such Member to be heard by the Board of Directors.

H-5 Uniform Rate of Fees or Charges

Both regular and special fees or charges, other than those imposed by Part H-4, above, and subject to Parts H-6 and H-10, below, must be fixed by the Board of Directors of the Association at a uniform rate for all Lots.

H-6 Date of Commencement of Regular Fees or Charges: DUE DATE

Regular fees or charges shall be due and payable quarterly on the first day of January, April, July, and October, in equal installments, and shall be delinquent if not paid within five (5) days after becoming due and payable. The Board of Directors may, in its discretion, permit a Member to pay regular fees or charges in one annual payment, on or before March 1, and if so paid to give to the Member making such an advance payment a reasonable discount for such prepayment; provided, however, that no discount in excess of ten percent (10%) shall be given without the affirmative vote of eighty percent (80%) of the Members at an annual or special meeting of such Members. A Member shall become obligated to pay assessments upon (i) the recording in the office of the Register of Deeds of Pottawatomie County,

Kansas, of a deed conveying fee simple title to such Member, (ii) the vesting of the title to a Member's interest pursuant to a valid transfer-on-death deed filed in the office of the Register of Deeds of Pottawatomie County, Kansas; (iii) the filing of an order from a court of competent jurisdiction. assigning title to a Member's interest to an heir or devisee; or (iv) or the recording of an Affidavit of Equitable Interest in accordance with this Declaration. The Board of Directors may, in its sole discretion, reduce the regular fees or charges assessed against a Member until such Member's residence is constructed on such Lot (or Lots). Assessments may also be paid by, for and on behalf of Owners by their mortgagees under such terms and agreements as the Association may from time to time deem appropriate by action of its Board of Directors.

H-7 Duties of the Board of Directors with Respect to Fees or Charges

- (a) At least thirty (30) days before December 31 of each year, the Board of Directors shall, by resolution, determine the amount of the regular fee or charge. Written notice of such regular fee or charge shall be given to each Member. Failure of the Association to give written notice of any regular fee or charge before December 31 of any year shall not invalidate any such fee or charge levied thereafter, nor shall failure to levy any regular fee or charge for any one year affect the right of the Association's Board of Directors to do so for any subsequent year. Any Member who becomes subject to any fee or charge after December 31 of any year shall commence payment of such fee or charge on a pro rata basis commencing on the date the Member becomes subject to such fee or charge.
- (b) The Board of Directors shall upon demand at any time furnish to any Member liable for fees or charges hereunder a certificate in writing signed by the president or secretary of the Association setting forth whether all fees or charges have been paid to date. A reasonable charge may be made by the Board of Directors for the issuance of such certificate. Such certificate may be recorded in the office of the Register of Deeds for Pottawatomie County, Kansas, and upon recording shall constitute conclusive evidence of payment of any fee or charge for the period stated in the certificate.
- (c) The Association, acting by its Board of Directors, shall enforce payment of the fees or charges in accordance with this Declaration.

H-8 Effect of Non-Payment of Fees or Charges

- (a) If any fee or charge or any part thereof is not paid within five (5) days of the date due, the unpaid amount of such fee or charge shall become delinquent and shall thereupon be a continuing lien on the Lot of the non-paying Member, and the Association may, but shall not be required to, file a statement (a "**Lien Statement**") in the office of the Register of Deeds of Pottawatomie County, Kansas, setting forth the amount due and the lien in favor of the Association, which Lien Statement may state that it covers unpaid statements occurring after the date of the Lien Statement. All such unpaid fees or charges, together with interest and any cost of collection, shall also be the personal obligation of the person who was the Owner of such Lot at the time such fee or charge became due, and shall also bind such Owner's heirs, executors, administrators, successors, and assigns. No Member may waive or otherwise escape liability for the fees or charges provided herein by non-use of any Lot, or by abandonment of such Member's Lot.
- (b) If any fee or charge is not paid within thirty (30) days after becoming delinquent, the same may bear interest at a rate equal to the maximum rate on notes and bonds then allowable in the State of Kansas, or fifteen percent (15%), whichever shall be the lesser, on such fee or charge from the date it was due, together with all expenses, including attorney's fees (if and to the extent allowed by law) incurred by the Board of Directors in attempting to collect such fee or charge if the Board of Directors by resolution, elects to assess interest on any such unpaid fee or charge.
- (c) The Association may by resolution elect to commence an action in a court of competent jurisdiction against the Member personally obligated to pay any fee or charge, and the Owner of record of any Lot in the event it has been transferred, to enforce payment of delinquent fees or charges and to foreclose the lien against the Lot thereon. The lien against any Lot shall continue for a period of five (5) years from the date a Lien Statement is recorded in the Office of the Register of Deeds of Pottawatomie County, Kansas, or if a Lien Statement is not so recorded, then the date of delinquency and no longer unless a foreclosure action shall have been filed. In the event such action is filed within five (5) years from the date the Lien Statement is recorded, or

if not recorded, within five (5) years from the date of delinquency, the lien shall continue until termination of the action and until sale of the Lot under the execution of judgment establishing the same.

H-9 Subordination of the Lien to Mortgages; Notice of Nonpayment to Mortgagee

The lien of the fees or charges, regular and special, shall be subordinate and inferior to the lien of any first mortgage now or hereafter placed upon any Member's Lot subject to fees or charges; provided, however, that such subordination shall apply only to the fee or charge which becomes due and payable prior to the sale, whether public or private, of such Lot pursuant to a decree of foreclosure of any such mortgage or a deed in lieu of foreclosure. Such sale or deed in lieu of foreclosure shall not relieve a Lot from liability for the amount of any fees or charges thereafter becoming due, nor from the lien of any subsequent fee or charge. Any holder of a first mortgage on a Member's Lot who acquires title to such Lot pursuant to foreclosure or deed in lieu of foreclosure shall take title free of any claims for unpaid fees or charges against the Lot which accrued prior to the date title is acquired by such holder. The Board of Directors, whenever so requested in writing by any mortgagee or contract seller of a Lot, shall promptly, in writing, notify the mortgagee or contract seller of any default in the performance by the individual Owner or contract purchaser of any obligation under this Declaration and any then unpaid charges or fees assessed against the Lot.

H-10 Exempt Property

- (a) The following property subject to this Declaration shall be exempted from the assessment of fees thereon, charges levied thereon, and liens created herein, but shall not be exempted from the obligation of the Association to maintain such property, unless such property is maintained by the City of St Marys of Pottawatomie, Kansas, any public utility or as otherwise provided in this Declaration: All property dedicated to and accepted by the City of St Marys, Kansas, or any public utility for public use and purposes, any unimproved Lot (defined as any Lot prior to the issuance of a certificate of occupancy), any Lot owned by Declarant, and any Common Areas.

PART I - INSURANCE

I-1 Insurance to be Obtained and Maintained by Association

The Board of Directors of the Association may obtain and maintain, to the extent reasonably available, the following:

- (a) Public liability insurance, in such amounts and in such forms as may be considered appropriate by the Board of Directors, including, but not limited to, legal liability, hired automobile, non-owned automobile, liability for property of others, and any and all other liability incident to the duties of the Association, respectively, such policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or the Owners; and
- (b) Such other policies of insurance as the Board of Directors shall from time to time determine to be necessary or desirable for the Association and the Members.

Premiums for all insurance obtained and maintained by the Association shall be Common Expenses of the Association. All such insurance shall be for the benefit of the Association, the Members and their Mortgagees, but such insurance shall be written in the name of the Association as trustee for such benefitted parties. The Board of Directors shall attempt to secure insurance policies that will provide for a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Members, and their respective tenants, servants, agents, and guests.

PART J - MANAGEMENT, MAINTENANCE, AND REPAIRS

J-1 Manager or Management Agent

The Board of Directors may employ for the Association a management company or a manager at a compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize. No management contract or agreement shall, however, be for a period longer than three (3) years from the date of execution, and all such management contracts or agreements shall contain a provision allowing termination thereof by the Board of Directors at any time, with or without cause, on ninety (90) days (or less) prior written notice to the manager or management company.

J-2 Maintenance, Repair, Alteration, and

- (a) **By the Association:** Except as described in subparagraph (b), below, the responsibility of the Association shall be as follows:
- (i) Improve, maintain and repair any Common Areas and Facilities and to replace items therein when necessary.
 - (ii) Maintain any area marker (or markers), street signs, and community mailboxes for the Property.
 - (iii) Pay all real estate taxes including special assessments, levied against the Common Areas, if any.
 - (iv) Obtain and provide public liability, casualty and other such insurance deemed necessary by the Association for the Common Areas, as more specifically set forth in Part I of this Declaration.
 - (v) Do and perform such other things as may from time to time be necessary to maintain the quality and appearance of the Common Areas and the Property, in the reasonable discretion of the Board of Directors.

The frequency and the materials to be used in the performance of all such routine repair, maintenance, and care shall be in the sole discretion of the Board of Directors of the Association and shall not be subject to the control of any Owner. In the event that the need for non-routine maintenance, repair or care, or for extraordinary services to any Lot, shall be caused by or through the willful act or negligence of an Owner, his family, guests, or invites, the cost of such maintenance, repair or care, shall be added to and become an additional fee or charge, in addition to the fee or charge to which such Owner is subject, if any, and shall be paid by or on behalf of such Owner within thirty (30) days after written demand therefor from the Board of Directors of the Association, and shall be enforceable and secured by a lien as in the case of all other fees or charges.

- (b) **By Individual Owner:** The responsibility of each Owner shall be as follows:

To maintain his Lot, residence, and all structures, parking areas, and other improvements located thereon in the manner consistent with these Declarations, the Bylaws, and the Rules and Regulations. Each Owner shall be responsible to regularly and consistently and perform routine lawn mowing, all in a good and sightly condition consistent with the majority of other lawns in the subdivision.

PART K – EASEMENTS

In addition to easements hereinbefore or hereinafter specifically created or reserved, the following non-exclusive, perpetual easements are hereby created or reserved:

K-1 Easement to Declarant

An easement is hereby created in favor of Declarant, permitting Declarant to enter into or upon any Lot for the purpose of performing its powers and duties as described herein. The right established in this paragraph shall be exercised in a reasonable manner.

K-2 Easements to Association to Perform its Duties

An easement is hereby created in favor of the Association, permitting it to enter into or upon any Lot for the purpose of performing its powers and duties as described herein and in the Articles of Incorporation and Bylaws. The right established in this paragraph shall be exercised in a reasonable manner.

K-3 Easement for Utilities

Declarant shall have and hereby reserves easements to authorize the location, construction, maintenance and use of such portions of the Property as Declarant may designate for drains, gas and water mains and lines, electrical and telephone lines, cable television conduits and lines, community television antenna lines, fire warning and security systems and other utility lines and conduits for any and all purposes.

K-4 Landscape and Drainage Easement

An easement is hereby created in favor of the Association, permitting it to enter on, over and under the Property, for the purpose of maintaining and correcting landscaping and drainage of surface water, and to insure reasonable standards of health, safety and appearance. Such easement expressly includes the right, but not the obligation, to trim, cut and remove any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary for such purposes, following which the Association shall restore the affected property to its original condition to the extent reasonably practicable. The Association shall give reasonable notice of its intent to take any such action provided under this paragraph to all affected Owners, unless in the sole discretion of the Association, an emergency exists which must be remedied before such notice could reasonably be given. The reservation of an easement and right under this paragraph shall in no way be construed or interpreted to

imply an obligation on the Association to maintain and correct the landscaping and drainage of surface water within the Property.

K-5 Easements Run with the Land

All easements and rights herein established shall run with the land, and unless in gross, shall inure to the benefit of and be binding upon the Owners of all Lots located within the Property, and their successors, heirs, and assigns, whether or not such easements are mentioned or described in any deed of conveyance.

PART L - PROPERTY SUBJECT TO DECLARATION

L-1 Existing Property

The property shall be held, transferred, sold, conveyed, and occupied subject to this declaration.

L-2 Merger or Consolidation

Upon a merger or consolidation of the Association with another not-for-profit corporation (such as a homeowners' association formed to operate and maintain adjacent real estate which might at a future time be developed as a compatible and harmonious residential development) the Association's properties, rights, and obligations may by operation of law be transferred to another surviving or consolidated not-for-profit corporation, or, alternatively, the properties, rights, and obligations of another not-for-profit corporation may by operation of law be added to the properties, rights, and obligations of the Association as the surviving not-for-profit corporation pursuant to a merger. The surviving or consolidated not-for-profit corporation may administer the covenants, conditions, and restrictions established by this Declaration for the existing property, together with the covenants and restrictions established upon any other property as one project. No such merger or consolidation, however, shall affect any revocation, change, or addition to the covenants, conditions, and restrictions established by this Declaration for the existing property.

L-3 Development of the Project

Additional real property may be annexed to and become subject to this Declaration as described in Part L-4 and L-5 at such time as Declarant or the Association may elect.

L-4 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 Property already subject to this Declaration, except that it may reduce the dues paid by the current Members.

L-5 Annexation Without Approval of Association

If added at the election of Declarant, the Annexation Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association, provided that a Supplemental Declaration covering the Annexation Property shall be recorded by Declarant. The recording 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, at Declarant's election, subject to the functions, powers and jurisdictions of the Association, and thereafter said Annexation Property shall be part of the Property for all intents and purposes of this Declaration, and all of the Owners of Lots in the Annexation Property shall automatically be Members in accordance with the terms hereof.

PART M - LOTS SUBJECT TO DECLARATION, BYLAWS, AND RULES AND REGULATIONS

M-1 Subject Lots

All present and future Owners of Lots, and tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Bylaws of the Association, and Rules and Regulation of the Association, as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease

or occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Bylaws and the Rules and Regulations, as they may be amended from time to time, are accepted and ratified by such Owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Lot situated thereon, as though such provisions were recited and stipulated at length in each and every deed, conveyance, or lease thereof. An Owner of a Lot shall automatically be a Member of the Association, and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Failure of an Owner to comply with this Declaration, the Bylaws, and the Rules and Regulations, as they may be amended from time to time, shall entitle the Association or other Owners to the following relief, in addition to the remedies that may be provided by law:

- (a) **Enforcement.** The Association and any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Bylaws, or the Rules and Regulations of the Association. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the further right by two-third's vote of its entire Board of Directors to levy fines up to and including One Thousand Dollars (\$1,000.00), against any Member who has breached or threatens to breach any of the provisions of this Declaration, the Bylaws of the Association, or the Rules and Regulations of the Association, and to charge such fine, together with costs of enforcement and attorney fees, as an additional assessment against such Member's Lot, which assessment may be enforced by filing a lien statement against such Lot in the office of the Douglas County Register of Deeds.
- (b) **Negligence.** An Owner shall be liable for the expense of any maintenance, repair, or replacement to or of the Property, or any Lot, including his own, rendered necessary by his act, neglect or carelessness, or by that of any member of his household, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not fully covered by the proceeds of insurance carried by the Association.
- (c) **Costs and Attorneys' Fees.** In the event of any enforcement action,

fine, lien statement, or other any proceeding arising because of an alleged failure of an Owner to comply with the terms of the Declaration, the Bylaws, or the Rules and Regulations of the Association, as they may be amended from time to time, the Association shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be incurred by the Association.

- (c) **Abating and Enjoining Violations by Owners.** The violation of any of the Rules and Regulations adopted by the Board of Directors, or the breach of any Bylaw, or the breach of any provision of this Declaration, shall give the Board of Directors the right (but not the obligation), in addition to any other rights set forth herein: (a) to enter on or in the Lot on or in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; and/or (b) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.
- (d) **Remedies Cumulative.** All rights, remedies and privileges granted to the Association or the Owners, or any Owner, pursuant to the terms, provisions, covenants, or conditions of this Declaration, the Bylaws or the Rules and Regulations of the Association, shall be deemed to be cumulative, and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other additional rights, remedies or privileges as may be available to such party at law or in equity.
- (e) **No Waiver.** Failure by the Association, the Architectural Control Committee or the Owners of Lots in the Property to enforce any covenant, condition or restriction herein contained shall in no way be deemed a waiver of the right to do so thereafter. It is allowed and it is accepted that no one will bring suit against the Architectural Control Committee for failure to act.

PART N - GENERAL PROVISIONS

N-1 Enforcement

The Association or Committee shall have the right to enforce hereunder by proceedings at law or in equity against any person(s) or entity(s) violating or attempting to violate any covenants either to restrain violation or to recover damages or unpaid assessment or to foreclose any lien granted hereunder. Failure by the Committee to enforce any covenant, condition or restriction herein contained shall in no way be deemed a waiver of the right to do so thereafter.

N-2 Amendment

Amendments to this Declaration, including, without limitation, any amendments, changes, alterations, modifications, supplements, deletions of existing provisions, and additions of new covenants and provisions (collectively, **"Amendment" or "Amendments"**) shall be made by an instrument in writing entitled "Amendment to Declaration" or similar name, which sets forth the entire Amendment. Amendments may be adopted at a meeting of the Owners upon the approval thereof by a majority of all of the outstanding votes of the Owners entitled to vote at such meeting, or without any meeting if all Owners have been duly notified and if a majority of all outstanding votes of the Owners entitled to vote at such a meeting, if held, approve such amendment. In all events, the Amendment when adopted shall (i) be executed by all the Owners who approved of such Amendment, (ii) bear the signature of the President of the 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 Association, or (iii) be executed by Declarant if Declarant has the right to Amend this Declaration in accordance with Section 4 of this Article XII. Amendments once properly adopted shall be effective upon recording of the Amendment to Declaration in the appropriate governmental offices. Notwithstanding anything in this Declaration to the contrary, but subject to Declarant's rights and powers set forth in this Part 0-2, or elsewhere, any Amendment to this Declaration that affects, modifies, amends or alters the duties and powers of, or membership in, the Association, must be approved by Members consisting of at least seventy percent (70%) of the Lots.

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.

Notwithstanding any provision of this Part N-2 to the contrary, during the Marketing Phase, this Declaration may not be amended by the Association Members pursuant to this Article XII without the written consent of Declarant, which may be withheld for any reason,

Notwithstanding any other provision of this Declaration, during the Marketing Phase, Declarant reserves the sole and absolute right to adopt and approve Amendments to this Declaration without the approval of the Association Board, the 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.

N-3 Severability

Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

N-4 No Waiver

Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision nor any other provision hereof.

N-5 Discretion Vested with Association

The resolution of any questions arising with respect to the interpretation of this Declaration shall be vested in the Board of Directors.

N-6 Duration

The covenants, conditions, and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date that this Declaration is recorded, after which time such covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by seventy percent (70%) of the outstanding votes of the then Owners of the Lots has been

recorded, agreeing to abolish these covenants, conditions, and restrictions, or to change them in whole or in part; provided, further, that no such agreement to change shall be applicable to existing buildings on the properties; and provided, further, that no such change shall be effective on less than thirty (30) days' prior written notice to all Owners.

N-7 Notices

Unless otherwise provided in this Declaration, all notices or other communications under this Declaration shall be in writing and shall be deemed to have been duly given if delivered personally, or if sent, postage prepaid, by United States mail, or via electronic communication through email:

- (a) If to an Owner, at the address which the Owner has designated in writing and filed with the Association or, if no such address has been designated, at the address of the Owner's Lot; or
- (b) If to the Association, at the principal office of the Association, or at such other address as shall be designated by the notice in writing to the Owners pursuant to this paragraph.

N-8 Captions

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit, modify, or supplement this Declaration or the intent of any provision thereof.

N-9 Construction

Whenever the context so permits, the use of plural shall include the singular, the singular the plural, and the use of any gender shall be deemed to include all genders.

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IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date set forth below.

DECLARANT:
VVE3, LLC
a Kansas Limited Liability Company

By: _____
Name: Mike Drippe
Title: Manager

Date: _____

STATE OF KANSAS
COUNTY OF _____

This instrument was acknowledged before me on this _____ day of _____, 20____,
by Mike Drippe, Manager of VVE3, LLC, a Kansas Limited Liability Company.

Notary Public

My appointment expires: _____