

Developer has constructed an entry monument, fence "living fence" or wall, the Owner(s) may not install or construct any fence or wall which is visible from adjacent streets without the approval of the Developer or the Association DRC.

B. Except as provided in paragraph A immediately above and subject to paragraphs C and D immediately below, all Lots, other than Wrought Iron Fence Lots as shown on Exhibit "A" hereto, may utilize fences made of black wrought iron, a cedar fence (installed with the finished side showing from the exterior of the fence), a Good Neighbor Fence, a combination thereof, or, provided the same shall not exceed six feet in height. A "Good Neighbor Fence," is the type of wood privacy fence which appears substantially the same from both sides of the fence and is approved by the Association DRC. Fencing may not be installed to the front of a residence constructed on a Lot. No fences shall be constructed or maintained on Wrought Iron Fence Lots except for privacy fences immediately adjacent to patios which are appurtenant to a residence and except for black wrought iron fences which do not exceed six feet in height and which are approved by the Association DRC.

C. All fences shall be approved by the Association DRC prior to construction or installation on any Lot.

D. All fences installed within drainageways established by the master drainage and grading plan referenced in Section 5.24 shall have a minimum of four inches (4") clearance above the ground level (other than posts installed in the ground) in order to not divert or disrupt water drainage from the Lot.

5.23 Model Homes and Real Estate Offices. Notwithstanding anything to the contrary appearing elsewhere in this Declaration, any Lot owned by Developer, or any person or entity so authorized by Developer, may be used for a model home or for a real estate or administrative office pertaining to the development of the Property (including temporary, mobile, modular, prefabricated or a permanent Structure) until all the Lots have been sold to consumers for construction of residences thereon.

5.24 Drainage. From and after the date of commencement of construction of improvements on a Lot, the Owner of such Lot shall **cause such Lot to be graded so as to strictly comply with the master drainage and grading plan relating to the Lot.** Developer has established a master drainage and grading plan for the Lots, a copy of which is recorded in the office of the register of deeds, and each Owner shall strictly comply with the same. Attached hereto as Exhibit "C" is an Example of Lot Drainage Requirements which illustrates drainage requirements applicable to typical residential lots (including those on which view out and walk out basements are constructed) and the location of grading and drainage pins at the rear lot lines to establish that the minimum required grading levels for the rear yard are in place. **No Owner shall place or install any Structures, including, but not limited to, trees, shrubbery, landscaping, sand boxes, gardens, retaining walls, in any drainage easement or channel.** The Association DRC or persons designated by the Association DRC shall have the right to enter upon any Lot upon reasonable advance notice to the Owner thereof for the purpose of determining whether the Lot is in compliance with such drainage guidelines, standards and plans. A determination by the

Association DRC concerning whether or not a Lot is in compliance with such guidelines, standards and plans, shall be final and binding on all Owners and; provided, so long as Developer owns a Lot, the Developer (due to the unique expertise of its owners, managers, and/or officers) shall have the right to override any decision of the Association DRC under this Section 5.24 upon the specific request of any Owner and, in the event Developer so overrides a specific decision of the Association DRC, any subsequent reference in this Section 5.24 to the Association DRC shall refer to the Developer in lieu of the Association DRC as to the specific decision in question. In the event at any time the Association DRC determines that a Lot is not in compliance with the aforesaid guidelines, standards and plans, the Association DRC shall give notice to the Owner thereof and demand that such corrective action be taken as is necessary to achieve compliance. If fifteen (15) days after the notice of such violation, or such additional time as may be specified by the Association DRC, the Owner of such Lot shall have not have taken reasonable steps to correct the same, the Association DRC shall have the right, through its agents and contractors, to enter the Lot and to take such steps that may be necessary to bring the same into compliance. The Owner of the Lot so corrected shall reimburse the Association for the costs of such compliance and pay the Association a fee equal to twenty percent (20%) of such amount. In the event such Owner fails to pay such reimbursement in full within ten (10) days following demand thereof, the Association may thereafter establish a special assessment applicable to such Lot for the costs thereof and enforce the same as provided in Article IV hereof. Developer recommends that any time a Lot is surveyed by an Owner, whether in connection with mortgage financing or otherwise, that the surveyor verify that the grading and drainage pins located in the rear of the Lot are at the elevations required by the master drainage and grading plan referred to above. It shall not be the Association's responsibility and Developer's obligation to enforce compliance with the master drainage and grading plans. The Design Committees and the Developer shall have no liability or responsibility to any builder, Owner or other party for the failure of a builder or Owner to final grade or maintain any Lot in accordance with the master drainage and grading plan or any approved lot drainage and grading plan or for the appropriate Design Committee or the Developer not requiring a lot drainage and grading plan or compliance therewith or for the quality or compaction of any soil. **At such time as the Owner who initially constructs a residence and yard with landscaping on a Lot, has met with the Association DRC and obtained its approval for complying with all drainage requirements contained in this Declaration, the Association shall refund to such Owner Fifty Dollars (\$50.00) of the initial payment by such Owner to the Association under Section 4.2 B above.**

5.25 Water Encroachment; Flood Insurance. Notice is hereby given to anyone acquiring a Lot that due to the grading and drainage of such Lot (which is necessary to enhance the views from residences, particularly those with "walk-out" or "view-out" basements), at times following considerable amounts of rainfall, water may encroach into the yard areas within such Lot. Water may accumulate in areas of the Lot, which has been graded at lower elevations to provide drainage, or if the Lot is adjacent to a lake, stream or other waterway, water from such areas may spill over into the Lot as a result of such rainfall. Depending upon how much water accumulates on the Lot and how long it remains, damage could occur to the residence, yard, trees, vegetation, fences, gazebos, patios, playground equipment or other improvements or installations of Structures within the Lot. Some Lots may have previously been located in a designated flood plain, in which situations the Developer, or another party, has caused the same

to be removed from the flood plain by increasing the elevation thereof with fill as required by the City of Wichita, Kansas, the Kansas Department of Water Resources, the Federal Emergency Management Agency and any other agency having jurisdiction thereof. Prior to construction of a residence or other structures on any such Lot, the Owner thereof is encouraged to verify, through its contractor, compliance with the requirements of such City and the other applicable agencies, consider inherent risks and determine whether to obtain and maintain flood insurance. Neither Developer nor the Association, building contractor or brokers involved in the development of the residential area, sale of the Lot, or construction of a residence on a Lot, shall have any liability or responsibility for any such damage resulting from such water encroachment.

5.26 No Rights Beyond Property. Notwithstanding the proximity of lakes or other amenities to the Common Area and/or Property, no Owner shall have any right of access, use or enjoyment of any lakes or other amenities outside the Property.

5.27 Airport. The Property may be located in the vicinity of an airport. Each purchaser of a Lot assumes that risk (if any) associated therewith.

5.28 Boat Docks. No boat docks, piers, moorings, boathouses, slips or similar Structures may be constructed within any Common Area or Lot, except upon the prior written approval of the appropriate Design Committee.

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

5.30 View. No Owner has any right to an unobstructed view beyond the boundaries of the Owner's Lot. No Owner shall be entitled to prevent the construction or location of any Structure, planting material or other item on any other part of the Property, which is permitted by this Declaration, because such Structure, planting material or other item obstructs any view from such Owner's Lot.

5.31 Erosion; Water Pollution Control Permit and Related Matters; Compliance With Laws. Each Owner shall comply strictly with any law or ordinance regarding erosion or runoff, including, if applicable, a Stormwater Pollution Prevention Ordinance, the Kansas Water Pollution Control General Permit And Authorization To Discharge Stormwater Run-Off From Construction Activities Under the National Pollutant Discharge Elimination System or similar ordinance or law adopted by the city or other governing body having jurisdiction over the Property. Such permit, laws, and regulations, together with laws and ordinances of the city and county in which the Property is located, require that erosion and sediment control measures be implemented in connection with construction activities on such Lot, including, but not limited to, site work such as clearing, excavating, and grading the Lot, in order to eliminate or substantially reduce stormwater discharge, the discharge of pollutants and water quality violations. Significant penalties may be imposed in the event activities on any Lot are not conducted in full compliance with the aforementioned permit, laws, regulations and ordinances. Each Owner agrees to conduct activities, including construction activities, on his or her Lot strictly in accordance with this Declaration, all laws, rules, regulations, and ordinances now or hereafter in effect, including, but not limited to, those referenced above, by reason of the aforesaid permit, regulations, rules

and ordinances and shall indemnify and defend Developer and the Association from any consequences of such Owner's, or his contractors' or subcontractors', failure to so comply, including but not limited to all damages, liabilities, fines, penalties and costs and expenses, including reasonable legal fees and expenses.

5.32 Water Levels in Lakes and Ponds. There is no assurance that lakes, ponds and other bodies of water within the Property, if any, shall continue in the future to contain water levels consistent with the levels existing on the date hereof and, in fact, such lakes, ponds and bodies of water may at some point in the future become dry or substantially empty of any water. **Neither Developer, the Association, the Board nor any officer or employee of Developer or the Association shall have any liability or responsibility to Owners for any change in the water levels in any such lakes, ponds, or bodies of water, including if such bodies of water become dry or substantially empty of water.**

5.33 Approved Builder; Marketing Fee. Any Owner desiring to construct the initial residence and related improvements on a Lot must obtain Developer's written approval concerning the building contractor constructing such residence and related improvements, which approval shall be made in Developer's sole discretion based on the experience and history of the contractor in connection with construction of residences within subdivisions of comparable quality with the Property and such contractor's financial condition. Each approved builder may be required to execute a builder's agreement on terms satisfactory to Developer prior to commencement of construction. Each Owner is hereby informed that, among other things, an approved builder is required to pay a marketing fee (the "Marketing Fee") based on the total consideration to be paid and delivered by Owner for the construction of the initial residence, garage and related improvements on the applicable Lot and if such builder fails to pay the same, the Owner of such Lot shall be required to pay the delinquent amount. The Marketing Fee shall be paid at the time of substantial completion of such initial residence, and related improvements or no later than five (5) days prior to the occupancy thereof, whichever occurs first. The specific party to be paid the Marketing Fee and the calculation of the Marketing Fee is included as part of the initial sales contract concerning a Lot. *Any Owner, or prospective Owner, desiring further information concerning a Lot should contact the marketing representative for the Property.*

5.34 Off Street Parking. Each of the Lots shall provide four (4) off-street parking spaces for each residence within the garage and driveway areas.

5.35 Laundry. No clothing or any other household fabric shall be hung in the open on any Lot, except with specific written approval of the Association.

ARTICLE VI

THE ASSOCIATION

6.1 Powers, Duties and Rights.

A. The Association shall have the rights and powers as set forth in its Articles and Bylaws, together with its general powers as a nonprofit corporation, and it shall perform each and every duty required of it by this Declaration.

B. The Association shall maintain, water, fertilize, mow and keep clean the portions of the Common Area which are to be maintained by it hereunder and the portions of the arterial public street rights-of-way adjacent to the perimeter of Property. It further shall maintain, repair and/or replace the decorative entrance treatments, fence(s) and walls erected and installed by Developer or the Association.

C. The Association shall maintain such insurance on the Common Area, and facilities thereon, and liability and other types of insurance as the Board deems necessary and advisable.

D. The Association may improve the Common Area in any manner that it shall find to be necessary, desirable or beneficial to the interest of the Common Area and the Members.

E. The Association shall have the right to create and establish reserves for the repair, restoration or replacement of the portion of the Common Area to be maintained by it hereunder and any improvements therein.

F. The Association, through the Board, shall have the right to adopt, and modify from time to time, such rules and regulations as it may deem advisable for the maintenance, use, conservation and beautification of the Property and for the health, comfort, safety, enjoyment and general welfare of the Owners and occupants of Lots and those using the Common Area.

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

H. The Board may select from time to time a single company to provide trash removal service for all residences on the Lots and shall post conspicuous notice of such decision within the Property. Within ninety (90) days after such company is selected, each Owner shall begin to utilize the company identified by the Board to provide trash removal service at such Owner's Lot and continue to use such company exclusively until such time as the Board designates a different trash service company or notifies the Owners that it is no longer necessary for all Owners to utilize the same trash removal service company. Each Owner shall be responsible for paying all costs and fees associated with trash removal services related to such Owner's Lot. In the event at any time and from time to time the Board determines to change the company providing such trash removal service for the Lots, the Board shall post conspicuous notice of such change at least ninety (90) days in advance of such change and on or before the expiration of such ninety (90) day period, each Owner shall switch its service exclusively to the other company specified by the Board.

I. The Board shall have the authority to assess fines for any violation of the provisions contained in this Declaration. Prior to assessing any fine, the Board shall mail written notice to the last address known to the Board concerning the noncompliant Owner. If the noncompliant Owner fails to cure the violation within fifteen (15) days following the mailing of such notice by the Board or if there is a recurrence of the violation during that fifteen (15) day period, then in addition to any other liability or obligation arising under the Declaration, the Board may assess a fine against the noncompliant Owner and his or her Lot in an amount determined by the Board to be appropriate in its discretion and until paid in full, the fine shall accrue interest at the rate of 15% per annum, shall constitute a lien on the noncompliant Owner's Lot, and shall be subject to enforcement and foreclosure in the same manner as a special assessment as referenced in Article IV of this Declaration.

J. The Board shall have the right to employ on behalf of the Association third parties as security and/or enforcement personnel (which personnel shall have the right to determine whether violations of rules or regulations have occurred).

6.2 Operations and Expenses. The Association shall establish such committees as may be provided for in its Bylaws, and the Board may engage accountants, legal counsel and other consultants as may be reasonably necessary for the discharge of its duties hereunder. So long as Developer is required to make subsidy payments pursuant to Section 3.4 hereof, the Board must obtain Developer's written consent prior to incurring any costs for such parties which are not included in the Approved Budget.

6.3 Taxes and Assessments. Each Owner shall be obligated to pay the taxes or assessments assessed against such Owner's Lot and personal property located thereon prior to delinquency.

6.4 Repair and Restoration of Improvements on Common Area. Should any improvements on any portion of the Common Area, or any part or portion thereof, which is to be maintained by the Association hereunder, be damaged or destroyed by fire or other casualty or by intentional mischief, the Association shall be responsible for the cost and expense of repair and restoration, and, so long as there are sufficient insurance proceeds collected as a result of such damage or destruction, the same shall be done substantially in accordance with the original plans and specifications for the improvement of same. The repair and restoration work referred to in this Section shall be commenced promptly after the happening of the destruction or damage occasioning the same, and once commenced, the same shall be pursued diligently to completion. Notwithstanding the foregoing, in the event that any such improvements on the Common Area shall be damaged or destroyed through the intentional misconduct or negligence of an Owner, or such Owner's family members or invitees, including, but not limited to, failing to correct faulty drainage or improper use of weed killer, such Owner shall pay on demand the full cost of replacement or repair thereof.

6.5 Providing Grading Information to Owners; Enforcement. The Association shall designate a committee of Members to meet with new Lot Owners for the purpose of informing them regarding grading and drainage matters concerning the Lots. Such educational process is

vital in order to avoid water drainage problems within the Property. Either before or promptly following the purchase of a Lot, each person must contact a representative of the Association and ask to be informed concerning grading and drainage matters relating to the Property. The Association shall strictly enforce compliance with grading and drainage requirements provided for in Section 5.24 hereof.

6.6 Opposition To Zoning and Other Matters. The Board, any member thereof and the Members of the Association shall not express any opinion on behalf of the Board or the Association pertaining to any applications or requests concerning rezoning, community unit plan approval or amendment, variances, or other land use activity relating to any land in the vicinity of the Property. This prohibition is necessary due to the fact that not all Board members or Members will have the same opinions concerning the applicable request or application. Nothing herein is intended to restrict any Member or member of the Board from expressing his or her personal opinions without indication that such opinions represent the opinion of the Association or the Board.

ARTICLE VII

EASEMENTS AND ACCESS CONTROL

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

7.2 Some Easements Not Shown on Plat. Owners should not rely on the plat of the Property to determine the location of utility or other easements or rights-of-way. Such easements or rights-of-ways are often created by separate instruments not shown on the plat and are disclosed on each Owner's title insurance policy.

7.3 Easements in Favor of Developer and Association. Developer specifically reserves unto itself, its successors and assigns, and for the Association, in connection with the use, operation, construction of improvements and amenities, and maintenance of the portions of the Common Area to be maintained by it hereunder, together with arterial street rights-of-way, as provided herein and improvements thereon or therein, a perpetual, nonexclusive easement and right-of-way over the Lots, Common Area, and such street rights-of-way, for the purpose of constructing, maintaining, moving, repairing, replacing and rebuilding water sprinkler systems, including water lines, water wells, sprinkler controls, and electric meters and lines, underground pipelines, drains and/or mains for the purpose of transporting gas, water, sewerage and electricity over, across and through such Lots and Common Area, together with the right to excavate and level ditches and/or trenches for the location of said wells, lines, pipes, drains and/or mains. Additionally, Developer specifically reserves unto itself, its successors and assigns, and for the Association, a perpetual, non-exclusive easement and right-of-way to enter upon any Lot as reasonably necessary in order to construct, install, erect, maintain, improve, repair and/or replace any entrance treatment, fence, wall, walkway, water sprinkler system (including water wells, sprinkler controls, and electric meters and lines associated therewith), or any signage pertaining to or serving the Common Area or the residential development within any wall, utility and/or

drainage easement shown on the current or any future plat of the Property, or located on a Lot but, due to oversight, not actually located in the appropriate easement area. Developer may have installed a sign advertising the residential development on a Lot or within the Common Area prior to the sale of such Lot or transfer of the Common Area to the Association. Developer, its successors and assigns, hereby retain an easement for the placement, and replacement, of any such advertising sign until all Lots have been sold by Developer or its successors and assigns.

ARTICLE VIII

DESIGN COMMITTEES; ARCHITECTURAL CONTROL

8.1 Committees. Two Design Committees shall have responsibility for the review, approval or disapproval of plans relating to the construction of Structures on each Lot. The applicable Design Committee shall establish minimum square footage requirements for residences to be constructed on a Lot which requirements may be revised from time to time by the applicable Design Committee. One committee shall be the New Construction DRC, which shall review, approve or disapprove all matters pertaining to the construction and completion of the initial residence and related Structures on each Lot. The second committee, the Association DRC, shall review, approve or disapprove all specifications, plans and other matters pertaining to fencing; drainage matters as referenced in Section 5.24 above and elsewhere; and (on a Lot by Lot basis) following completion of the initial residence and related Structures on a Lot, all specifications, plans and other matters for remodeling the initial residence and related Structures, including landscaping, and any additional new Structures to be constructed on such Lot.

8.2 Membership.

A. The original members of the New Construction DRC shall be up to three (3) persons, to be appointed by Developer. Upon the death or resignation of any member of the New Construction DRC, or in the event Developer desires to remove any member, Developer shall appoint a successor. The decision of a majority of the New Construction DRC shall be binding; provided, the New Construction DRC may delegate its rights and responsibilities hereunder to one or more of its members from time to time. Developer may relinquish its rights under this paragraph by executing and recording in the real estate records a written instrument giving notice of its intent to do so, and providing a copy thereof to an officer of the Association; in such event, the Association shall have the authority of Developer under this paragraph. The New Construction DRC may delegate its rights and responsibilities on a limited basis to the Association DRC from time to time without relinquishing its rights and powers hereunder beyond the terms of such limited delegation.

B. The original members of the Association DRC shall be up to three (3) persons, to be appointed by the Board following its establishment pursuant to Section 2.3 above. On the death of resignation of any member of the Association DRC, or in the event the Board desires to remove any member, the Board shall appoint a successor. The decision of the majority of the Association DRC shall be binding; provided the

Association DRC may delegate its rights or responsibilities hereunder to one or more of its members from time to time.

8.3 Approval Required of Plans and Specifications. Except as otherwise specifically provided in this Declaration, prior to construction of the initial residence and related Structures on a Lot, no Structure shall be commenced, erected, placed, moved on or permitted to remain on such Lot, unless plans and specifications, grading elevations, square footage, exterior materials, exterior lighting, location, general landscaping plans, and exterior color scheme, therefor shall have been submitted to and approved in writing by the New Construction DRC. Subsequent to construction and completion of the initial residence and related Structures on a Lot, no existing Structure upon any Lot may be remodeled or altered in any manner as materially changes the exterior appearance thereof (including exterior color scheme) or Lot drainage and grading plan, nor shall any new Structure be placed on such Lot, unless plans therefor shall have been submitted and approved in writing by the Association DRC. The plans and specifications shall be in such form and shall contain such information as may be required by the appropriate Design Committee, including, as requested by such committee, (i) a site plan of the Lot or Lots, showing the nature, exterior color scheme, kind, shape, size, height, materials and location with respect to the particular Lot or Lots (including proposed front, rear and side setbacks) of all Structures, the location thereof with reference to Structures on adjoining portions of the Property, and the number and location of all parking spaces and driveways on the Lot or Lots; and (ii) a finished grade plan for the particular Lot or Lots as prepared in accordance with the master drainage and grading plan. Plans and specifications shall be deemed to be submitted to the Association DRC at such time as the Owner requesting such approval shall deliver the same to a member of such committee and shall have obtained a written receipt from such member acknowledging receipt of the same. The Association DRC but not the New Construction DRC shall be deemed to have approved plans and specifications for which an Owner shall have requested approval if it has not notified such Owners of disapproval or the need for additional time for consideration within thirty (30) days following Owner's submittal to such committee. No approval of the New Construction DRC shall be deemed or implied to have been given hereunder; actual written approval from such committee is required.

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

8.5 Rules and Statements of Policy. The Design Committee, or either of them, may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on Lots, including, without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, minimum square footage requirements, or other matters, which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the appropriate Design Committee at any time, and no inclusion in, omission from, or amendment of any such rules or statements shall be deemed to bind the appropriate Design Committee to approve or disapprove any feature or matter subject to approval or to waive the exercise of the appropriate Design Committees' discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Lot of any plans or specifications shall not be deemed a waiver of the appropriate Design

Committee's right, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Lot or Lots. Approval of any such plans and specifications relating to any Lot, however, shall be final as to that Lot, and such approval may not be revoked or rescinded thereafter; provided, that (i) the Structures or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in this Declaration, and (ii) the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all Structures on and uses of the Lot in question.

8.6 Right Of Inspection. Representatives of the Board or appropriate Design Committee or any of its agents thereof may, at any reasonable time or times, enter upon and inspect any Lot or any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of Structures thereon are in compliance with the provisions hereof, and neither the appropriate Design Committee, the Association, nor any such agent, shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

8.7 Violation. If any Structure shall be constructed, remodeled, altered, erected, placed or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the applicable Design Committee pursuant to the provisions of this Article VIII, such construction, remodeling, alteration, erection, maintenance, placement or use shall be deemed to have been undertaken in violation of this Article VIII and without the approval required herein, and, upon written notice from the Association, any such Structure so constructed, remodeled, altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or re-altered, and any such use shall be terminated, so as to extinguish such violation. If, fifteen (15) days after the notice of such a violation, the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the violation, the Association, after approval by a two-thirds decision of the Board, shall have the right, through its agents, contractors and representatives to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the violation and such Owner shall pay the Association for the cost thereof, together with an additional amount equal to twenty percent (20%) of such cost, within ten (10) days following demand therefor, which payment shall be a binding personal obligation on such Owner, and the Board may establish a special assessment and lien on such Lot for such cost and charge, together with interest thereon at the rate specified in Section 4.12 above, on such Lot for the cost thereof and enforce the same as provided in Article IV hereof. The lien established as a result of this Section shall be superior to all liens and encumbrances which may thereafter arise, excepting liens for taxes and other public charges which are by applicable law made superior.

8.8 No Liability. Neither of the Design Committees, the Developer, the Association, the Board, nor any officer, director, member, representative, designee, agent or employee thereof, shall be personally liable to any Owner or to any person, firm, corporation or other entity for any damages arising from any mistake in judgment, negligence, nonfeasance, performance or nonperformance of any duties, the approval, disapproval or failure to approve any matter submitted for approval, for the adoption, amendment or revocation of any rules, regulations,

restrictions pursuant to this Declaration, guidelines or the Associations' Articles or Bylaws, responsibilities or functions under this Declaration, including, but not limited, to this Article and Section 5.24 hereof, or for any defect in any Structure constructed from any approved plans and specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Developer, the Association, the Design Committees, the Board, or the officers, directors, members, employees, and agents of any of them to recover any of the aforesaid damages and hereby releases, quitclaims, and covenants not to sue for any claims, demands, and causes of action arising out of or in connection with any judgment, negligence, nonfeasance, performance, nonperformance, approval, disapproval or failure to approve and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

ARTICLE IX

NOTICE OF POSSIBLE SPECIAL ASSESSMENTS; AMENITY FINANCING;

9.1 Assessments. Notice is hereby given to each purchaser of a Lot that special assessments will be spread by the City of Wichita, Kansas, to Lots in the future, due to the installation of arterial streets, residential streets, lakes, ponds, sanitary and storm sewers, sidewalks, etc. Additionally, from time to time, the Lots may become subject to special assessments by reason of work performed by the City of Wichita to major arterial streets in the vicinity of the Property.

9.2. Amenity Mortgage Financing. Notice is hereby given that Developer may obtain conventional mortgage secured financing in order to pay the cost of installing or constructing amenities within the Common Area for the use and benefit of the Members. Assessments or funds collected by the Association under Article IV and Section 3.4 hereof shall be utilized for repayment of such financing in accordance with the terms of such financing.

ARTICLE X

ADDITIONAL LAND

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

such annexation is approved by a majority of the Members of the Association in attendance at a special or annual meeting of the Members.

ARTICLE XI

MISCELLANEOUS

11.1 Provisions Binding on Grantees. The Association and each grantee hereafter of any part or portion of the Property covered by this Declaration, and any purchaser under any grant, contract of sale or lease covering any part or portion of such Property, accepts the same subject to all of the restrictions, liens and charges and the jurisdiction rights and powers of the Association and Developer provided for in this Declaration.

11.2 Interpretations of Restrictions. In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners. It is not the intent of this Declaration to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued pursuant to law relating to the construction, use or occupancy of buildings or premises; nor is it the intention of this Declaration to interfere with or abrogate or annul easements, covenants or other agreements between parties; provided, however, that where this Declaration imposes a greater restriction upon the construction, use or occupancy of any residence site or upon the construction of buildings or Structures, or in connection with any other matters that are imposed or required by such provisions of law or ordinances or by such rules, regulations or permits, or by such covenants, easements and agreements, then, in that case, the provisions of this Declaration shall control.

11.3 Construction and Validity of Restrictions. All of the restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such restrictions, conditions, covenants, reservations, liens or charges, or any part thereof, are invalid or for any reason become unenforceable, no other restriction, condition, covenant, reservation, lien or charge, or any part thereof, shall be affected or impaired.

11.4 Assignment of Powers. Any and all rights and powers of Developer provided for in this Declaration and any modification or amendment hereof may be delegated, transferred, assigned, conveyed or released by Developer to any third party and/or to the Association. The Developer's assignee shall accept the same upon the recording of a notice thereof, and the same shall be effective for the period and to the extent stated therein. Upon the effective date of such assignment, the assigning party shall be released of any and all liabilities of whatever nature arising out of acts or omissions subsequent to the effective date of the assignment.

11.5 Waiver and Exceptions. The failure by the Association, Developer, any Owner or any other person to enforce any of the restrictions, conditions, covenants, reservations, liens or charges to which the Property or any part thereof is subject, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other restriction, condition, covenant, reservation, lien or charge.

11.6 Titles. All titles used in this Declaration are intended solely for convenience of reference, and the same shall not affect that which is set forth in the terms and conditions of this Declaration nor the meaning thereof.

11.7 Singular and Plural, Masculine and Feminine. The singular shall include the plural and the plural the singular, unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine and neuter, as the context requires.

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

11.9 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, Developer, and the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty-five (35) years from the date hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by Owners of not less than seventy-five percent (75%) of the Lots, has been recorded, agreeing to abolish or change these covenants, conditions and restrictions, in whole or in part.

11.10 Amendments. Amendments, including waivers, modifications, alterations, removals, changes and additions to this Declaration, may be made by Developer, or its successors and assigns, in its sole discretion, from time to time, so long as Developer (or its successors and assigns) retains ownership of a minimum of fifty percent (50%) of the Lots within the Property. Following the date Developer, its successors and assigns, no longer owns a minimum of fifty percent (50%) of the Lots, any provision contained in this Declaration may be amended, repealed, or additional provisions added to this Declaration, as follows:

A. Notice. Notice of the subject matter of the proposed amendment shall be included in a notice to the Owners of a meeting of the Association, at which the proposed amendment shall be considered.

B. Resolution. A resolution adopting a proposed amendment may be proposed by the Board or Developer. Unless otherwise specified in this Declaration, any proposed amendment must be approved by the Owners casting not less than two-thirds (2/3) of the aggregate number of votes cast by the Owners present at such meeting. Such votes may be cast in person or by proxy as provided for herein and in the Bylaws of the Association.

A copy of each amendment provided for in this Section shall be filed of record in the Register of Deeds for the County in which the Property is located. With respect to amendments, following the date the Developer no longer owns a minimum of fifty percent (50%) of the Lots, the Secretary of the Association shall file a certificate along with such amendment, certifying that the meeting at which the vote was taken was either the annual meeting of the Association or a

special meeting of the Association, duly called in accordance with the Bylaws of the Association, and that the proper number of votes approving the amendment was obtained. Such certificate will be filed as part of or with such amendment.

Notwithstanding the foregoing, so long as Developer, or any assignee thereof, owns one (1) Lot, any such amendment (including, but not limited to, those modifying any "Construction Requirements" contained in Section 5.2 above) shall require the written consent of Developer in order to be effective. No amendment by the Owners materially impairing the rights of any mortgagee shall be binding on such mortgagee unless consented to in writing by such mortgagee.

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

11.12 Enforcement and Arbitration.

A. The covenants set forth herein shall run with the land and bind each Owner, its successors and assigns, and all parties claiming by, through or under each Owner, and shall be taken to hold, agree and covenant by the Owner of each Lot, its successors and assigns, to conform and observe this Declaration and each and every term and condition hereof (but no restrictions herein set forth shall be personally binding upon any corporation, person or persons, except in respect to breaches committed during the term of its, his or their ownership of a Lot).

B. The Developer, the Owner or Owners of any of the Property and the Association shall have the right to seek enforcement of and/or to prevent the breach of the terms and conditions set forth herein and any rules or regulations established as permitted herein. Any action relating to any rights and obligations arising under, or in connection with, (a) this Declaration, including, but not limited to, an action to seek enforcement of and/or to prevent the breach of any of the covenants and restrictions contained herein, (b) pertaining to a Lot or all or any portion of the Common Area, or the condition thereof, and (c) any claim asserted by the Association, an Owner or Owners, former Owner(s), and contract purchasers, against Developer for any reason and/or any real estate broker, agent or sales person participating in the sale of a Lot, shall be resolved solely and exclusively by arbitration in accordance with the Kansas Uniform Arbitration Act (the "Act"), as modified from time to time, in accordance with the procedure set out below. However, the provisions of this Section 11.12 shall not either prevent a party from obtaining a temporary injunction from a court of general jurisdiction pending designation of the arbitrators, from foreclosure or enforcement of any liens established pursuant to this Declaration or from enforcement of any order or decision of the arbitrators as provided herein. After the arbitrators have been selected and accepted such appointment, any temporary injunction order by the court of general jurisdiction shall be dissolved, and the arbitrators shall have exclusive power to resolve the subject matter of such injunction. The arbitration procedure is as follows:

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

ii. The arbitrators so selected must be at least thirty-five (35) years old; may not be an Owner or occupant of a Lot; and shall have a minimum of five (5) years of experience in the residential real estate business, as either a sales agent, a residential developer or home builder.

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

iv. The losing party in any such arbitration proceeding, as determined by the arbitrators, shall pay the prevailing party's costs and expenses of such arbitration, including, without limitation, reasonable attorneys' fees and costs. If no party is determined to have prevailed in such arbitration proceeding, then each party shall pay the fees and expenses of the original arbitrator appointed by that party; the fees and expenses of the other arbitrator and all other expenses of the arbitration shall be borne equally by the parties, and each party shall bear the expense of his own counsel, experts, and preparation and presentation of proof and the costs and expenses related thereto.

11.13 Exclusion of Applicability. The Developer and its assigns shall have the power at any time to waive any or all of the restrictions or covenants contained herein as to the Lots which

are unimproved and under its ownership or the ownership of its assigns or licensed residential construction contractors at the time of such waiver. The Developer specifically reserves the right to carry on its business in the Property, so long as it owns a Lot, including, but not limited to, maintaining sales offices, model homes, business offices and other facilities necessarily convenient for the business of Developer.

11.14 Subdivision Disclosure And Purchaser Acknowledgment. Developer has prepared a Subdivision Disclosure And Purchaser Acknowledgment Concerning Falcon Falls ("Disclosure"), which discloses important information concerning the Property. The Disclosure is subject to change from time to time by the Developer or the Association. **At the time any Owner transfers legal title to a Lot, such Owner shall, as part of the transaction, cause its transferee to execute the Disclosure and return the same to the Developer or the Association.**

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

11.16 Twin Homes; Multifamily; Commercial And/Or Industrial Development; Opposition To Zoning and Other Matters. Each Owner is hereby advised that real property in the vicinity of the Property may be developed and operated for twin homes, apartments and other multifamily, commercial, office or industrial purposes or purposes other than for single family residences. Each Owner is responsible to inform himself or herself concerning the possibility of such developments and no Owner shall rely on any statements made by sales persons concerning future development or uses of any such real property. Developer does not have any responsibility to advise the Owners or the Association concerning any actual or proposed zoning or other land use proceedings relating to any real property located within or outside of the Property. The Board, any member thereof and the Members of the Association shall not express any opinion on behalf of the Board or the Association pertaining to any applications or requests concerning rezoning, community unit plan approval or amendment, variances, or other land use activity relating to any land in the vicinity of the Property. This prohibition is necessary due to the fact that not all Board members or Members will have the same opinions concerning the applicable request or application. Nothing herein is intended to restrict any Member or member of the Board from expressing his or her personal opinions without indication that such opinions represent the opinion of the Association or the Board.

11.17 Information Concerning Zoning and Land Use. Information concerning the zoning status and land use alternatives applicable to the Property and any other real estate in the vicinity of the Property may be obtained from the Metropolitan Area Planning Department in

Wichita, Kansas, at (316) 268-4421. Each Owner must independently obtain any and all information such Owner desires regarding such zoning and potential land use alternatives, including development of commercial, office, apartment or other multifamily uses within the Property or the vicinity thereof.

11.18 Limitation on Liability.

A. Notwithstanding anything to the contrary contained herein, it is expressly agreed that neither the Developer (including without limitation any assignee of the interest of Developer hereunder) nor any member in Developer (or any assignee) or any officer, employee, or consultant of Developer shall have any personal liability to the Association or any Owner or other person or entity, arising under, in connection with, or resulting from (including, without limitation) any action or failure to act with respect to this Declaration, the Articles or Bylaws, the rules of the Association, the design guidelines of the appropriate Design Committee, or for any action taken, or not taken, pursuant to authority granted Developer, thereunder or with respect thereto. To the fullest extent permitted by law, neither the Developer, its members, the Association, the officers, employees, consultants or directors thereof or any Design Committee member, nor any other members of committees of the Association, shall be liable to the Association or any Owner or other person or entity for damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval or plans and specifications (whether or not defective), course of action, inaction, omission, negligence or the like made in good faith and which the Developer or the Association, any member, director, officer, consultant or employee thereof, or member of any such committee is reasonably believed within the scope of his duties.

B. TO THE EXTENT ALLOWED BY LAW AND EQUITY, NEITHER THE DEVELOPER NOR THE ASSOCIATION SHALL HAVE ANY LIABILITY HEREUNDER TO ANY OWNER, FORMER OWNER OR PROSPECTIVE OWNER FOR CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES IN ANY EVENT.

11.19 Perpetuities; Alienation. It is expressly provided that the rule of property known as the rule against perpetuities and the rule of property restricting unreasonable restraints against alienation shall not be applied to defeat any provisions of this Declaration.

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

DEVELOPER:

Heights, LLC

By:

Jay W. Russell, Manager

STATE OF KANSAS)
)
) ss:
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this 22nd day of September, 2003,
before me a Notary Public in and for the County and State aforesaid, personally appeared Jay W.
Russell, Manager of Heights, LLC, a Kansas limited liability company, personally known to me
to be the same person who executed the above and foregoing instrument in writing on behalf of
said limited liability company and such person duly acknowledged the execution of the same to
be the act and deed of said limited liability company.

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

My appointment expires:

10/30/05

Gena J. Adams
NOTARY PUBLIC

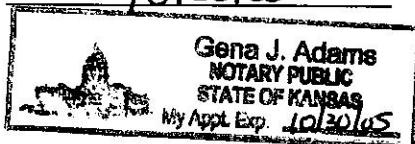
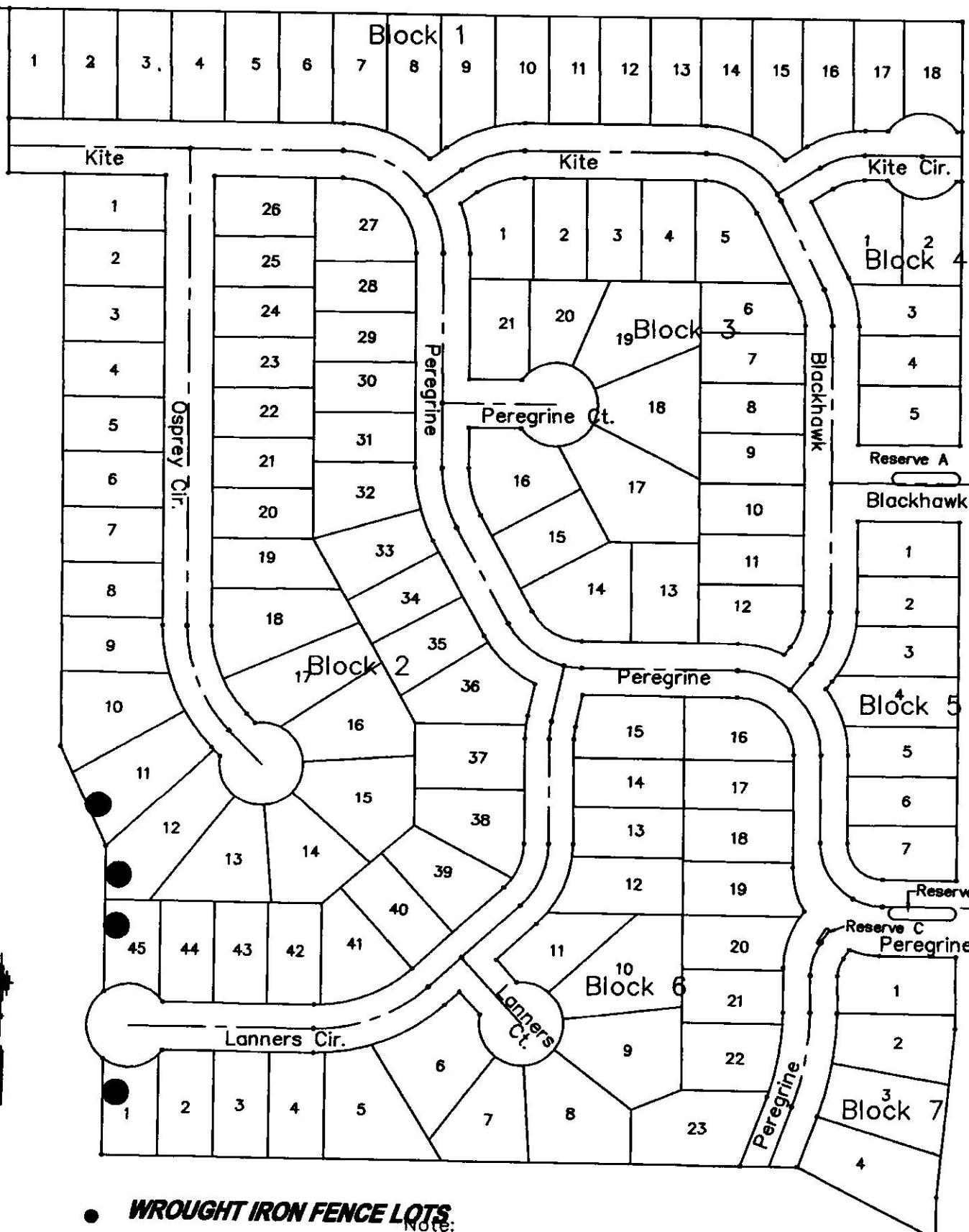


EXHIBIT "A"
FALCON FALLS ADDITION

LM2 785 PAGE 2866



● **WROUGHT IRON FENCE LOTS:**

Note:
**ALL SQUARE FOOTAGES FOR NEW RESIDENCES
 TO BE DETERMINED BY NEW CONSTRUCTION
 DESIGN REVIEW COMMITTEE (DRC)**

EXHIBIT B

Amenities of Falcon Falls

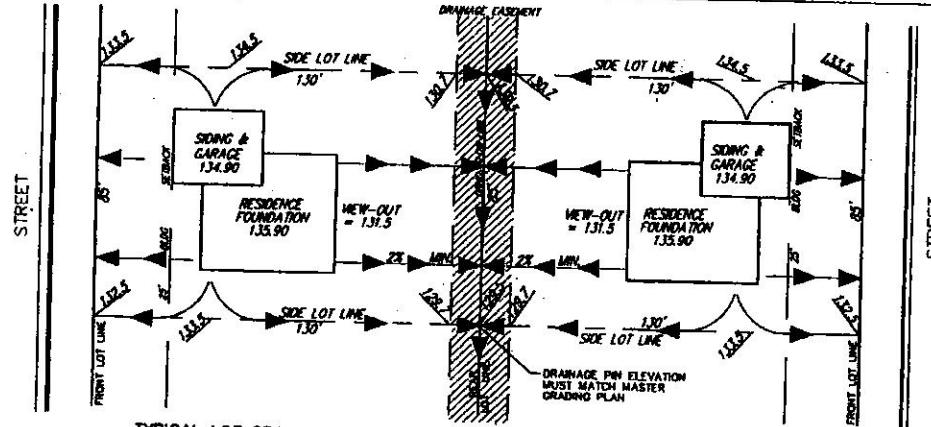
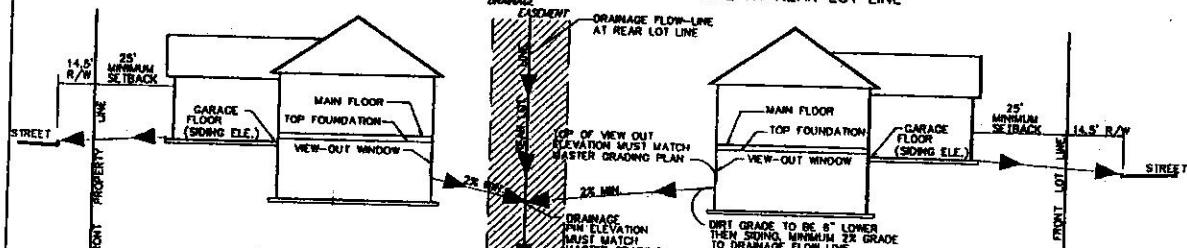
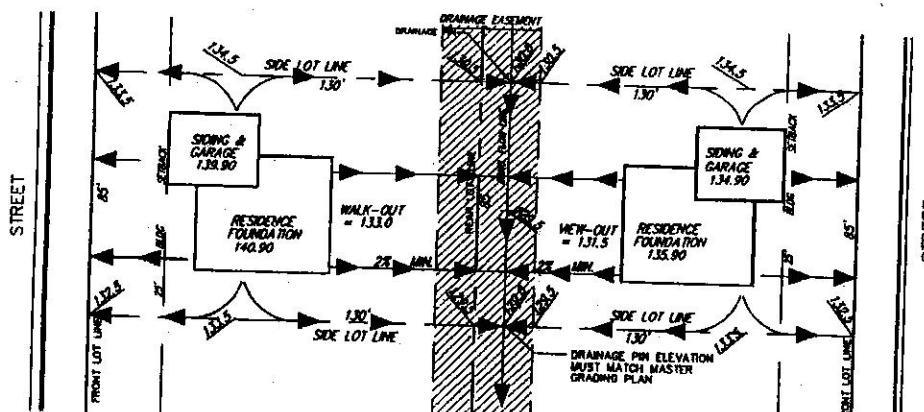
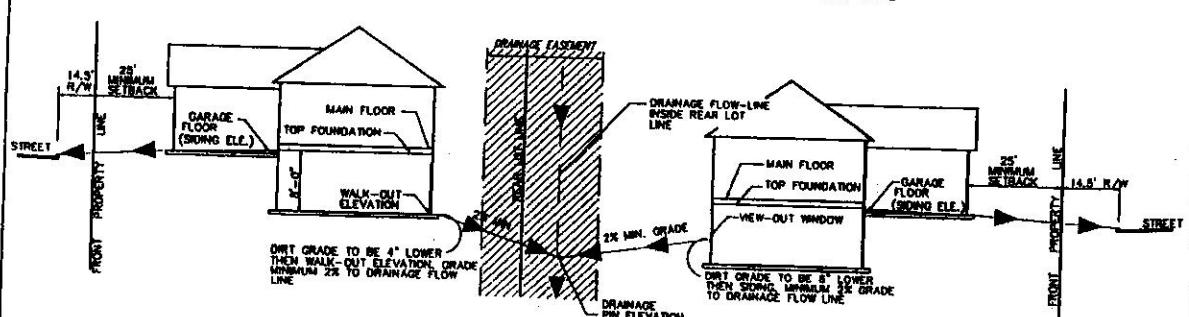
The following is provided to minimize misunderstandings concerning what amenities shall be installed within the Common Area by the Developer. This listing is simply a broad description of the minimum amenities to be installed:

Reserves A, B, C - signage; landscaping; sprinkler systems

LOT DRAINAGE REQUIREMENTS

GENERAL NOTES:

1. LOT OWNER SHALL BE RESPONSIBLE FOR VERIFYING THAT THE REAR LOT DRAINAGE PINS ARE ESTABLISHED AND MATCH THE MASTER GRADING PLAN.
2. TOP OF FOUNDATION, GARAGE FLOOR AND VIEW-OUT/WALK-OUT ELEVATIONS MUST MATCH ELEVATIONS ON THE MASTER GRADING PLAN.
3. GRADE AT VIEW-OUT ELEVATION MUST BE 8" LOWER THAN THE ELEVATION OF THE SIDING.
4. GRADE AT WALK-OUT ELEVATION MUST BE 4" LOWER THAN THE ELEVATION OF THE WALK-OUT.
5. LOT OWNER MUST BE ABLE TO STRAIGHT LINE BETWEEN THE DRAINAGE PINS AT THE DRAINAGE FLOW LINE.
6. ALL FENCES CONSTRUCTED ON REAR LOT LINES OR IN DRAINAGE EASEMENTS MUST MAINTAIN A MINIMUM OF 4' CLEARANCE SO AS TO NOT RESTRICT DRAINAGE FLOW FROM LOT TO LOT.
7. NO LANDSCAPE BEDS, SANDBOXES OR ANY OTHER STRUCTURES ARE ALLOWED TO BE BUILT IN THE DRAINAGE EASEMENTS.
8. LOT OWNERS MAY VERIFY ELEVATIONS FOR THEIR LOT FROM THE MASTER GRADING PLAN.
9. ARROWS INDICATE DIRECTION OF WATER FLOW.
10. ELEVATIONS SHOWN ON PLANS ARE FOR ILLUSTRATION ONLY, SEE MASTER PLAN FOR ELEVATIONS RELATIVE TO YOUR LOT.
11. IF LOT OWNER ENCOUNTERS ANY PROBLEMS OR QUESTIONS THEY MUST CONTACT THEIR HOMEOWNER'S ASSOCIATION

TYPICAL LOT GRADING PLAN
FLOW-LINE AT REAR LOT LINETYPICAL LOT GRADING PLAN
FLOW-LINE AT REAR LOT LINETYPICAL VIEW-OUT SECTION
FLOW-LINE AT REAR LOT LINETYPICAL VIEW-OUT SECTION
FLOW-LINE AT REAR LOT LINETYPICAL LOT GRADING PLAN
FLOW-LINE OUTSIDE REAR LOT LINETYPICAL LOT GRADING PLAN
FLOW-LINE INSIDE REAR LOT LINETYPICAL WALK-OUT SECTION
FLOW-LINE OUTSIDE REAR LOT LINETYPICAL VIEW-OUT SECTION
FLOW-LINE INSIDE REAR LOT LINE