

STATE OF KANSAS } SS
SEDGEWICK COUNTY }

SEP 23 3 47 PM '03

BILL MEEK
REGISTER OF DEEDS

Kelli Meek
Deputy

MICROFILMED
OF RECORD

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS AND DISCLOSURES FOR FALCON FALLS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND DISCLOSURES FOR FALCON FALLS ("Declaration") is made effective the 22nd day of September, 2003, by Heights, LLC, a Kansas limited liability company (hereinafter referred to as the "Developer").

WITNESSETH, THAT:

WHEREAS, Developer deems it desirable to adopt and establish covenants, conditions and restrictions for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined); and

WHEREAS, it is desirable to establish binding covenants, conditions and restrictions applicable to the Property for the proper development thereof, adequate maintenance and government of the Common Area (as hereinafter defined), and to specify the rights and obligations of the Developer and the Owners (as hereinafter defined); and

WHEREAS, the Association (as hereinafter defined) will be incorporated for the purpose of exercising certain powers and functions hereunder; and

WHEREAS, Developer will convey title to all of the Lots (as hereinafter defined), subject to the covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, Developer hereby covenants, agrees and declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements, which are hereby declared to be for the benefit of all of the Property described herein and the Owners thereof, their successors and assigns.

AFTER RECORDING, RETURN TO:

Ron H. Harnden
Triplet, Woolf & Garretson, LLC
2959 N. Rock Rd., Suite 300
Wichita, Kansas 67226

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ARTICLE IDEFINITIONS

The following terms used in these covenants, conditions and restrictions shall be applicable to this Declaration and are defined as follows:

1.1 “Articles” shall mean the Articles of Incorporation of the Association which shall be filed in the office of the Secretary of State of Kansas, as such Articles may be amended from time to time.

1.2 “Association” shall mean and refer to the Falcon Falls Homeowners’ Association (or such other corporate name as Developer shall hereafter select), a nonprofit corporation, incorporated under the laws of the State of Kansas, its successors and assigns.

1.3 “Association DRC” shall mean and refer to the Design Committee responsible for all matters pertaining to fences; certain drainage matters; and for construction and modifications of Structures following completion of the initial residence and related improvements on Lots, all as referenced in Section 8.1 hereof, together with other responsibilities as provided elsewhere herein.

1.4 “Board” shall mean and refer to the Board of Directors of the Association.

1.5 “Bylaws” shall mean the Bylaws of the Association as such Bylaws may be amended from time to time.

1.6 “Common Area” shall mean those portions of the Property for the common use and enjoyment of the Members of the Association, as follows as the same may be modified from time to time by additions or removals as permitted hereunder:

Reserves A, B and C, Falcon Falls Addition to Wichita,
Sedgwick County, Kansas

1.7 “Design Committee” shall mean the Association DRC and/or New Construction DRC, as applicable, according to the context.

1.8 “Developer” shall mean Heights, LLC, a Kansas limited liability company, and its successors and assigns. If Developer assigns less than all of its rights, obligations and interests to one or more entities, the term “Developer” as used herein shall thereafter refer to both the Developer and all successor developers unless the context clearly means otherwise.

1.9 “Lot” shall mean and refer to each platted Lot within the Property upon which there may be constructed a residence; provided, that where land has been attached to or detached from any Lot, the enlarged or diminished Lot shall be deemed to be a Lot hereunder; provided, if two or more Lots are combined into a single residential site assessments or charges hereunder shall continue to be assessed or changed for each platted Lot.

1.10 "Member" shall mean and refer to every person or entity who or which is an Owner of a fee or undivided fee interest in any Lot, but not including any Owner who has sold his interest in a Lot under an executory contract and no longer has possession of his Lot. During the time any such executory contract is in force, the contract vendee shall be considered to be the Member rather than the contract seller. When more than one person holds an interest in a Lot, all such persons shall be Members.

1.11 "New Construction DRC" shall mean and refer to the Design Committee responsible for all matters pertaining to the construction of the initial residence and related improvements as referenced in Section 8.1 hereof, together with other responsibilities as provided elsewhere herein.

1.12 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.13 "Property" shall mean and refer to all of the property described as follows, together with such other land as may be added and excluding land removed hereunder by the terms of this Declaration:

Falcon Falls Addition to Wichita, Sedgwick County, Kansas

1.14 "Structure" shall mean and include any thing or device, the placement of which upon any Lot may affect the drainage or appearance of such Lot, including, by way of illustration and not limitation, any building, garage, gazebo, porch, shed, greenhouse or bathhouse, covered or uncovered patio, screening materials, swimming pool, tennis court, light pole, clothesline, sandbox, radio or television antenna, fence, curbing, paving, wall, satellite dish, signboard, mailbox and related structure, or any temporary or permanent improvement to such Lot. "Structure" shall also include any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of surface water from, upon or across any Lot, in accordance with the master drainage and grading plan for the Property as referenced below, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot, and any change in the grade of any Lot other than in accordance with drainage guidelines, standards and plans established by the Developer, the appropriate Design Committee, the municipality having jurisdiction over the Property or the Lot-specific drainage plan referenced in Section 5.24, whichever are most stringent.

1.15 "Wrought Iron Fence Lots" shall mean those Lots identified on the plat of the Property attached hereto as Exhibit "A."

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

2.1 Membership. The Association shall have as Members only Owners. All Owners shall, upon becoming such, be deemed automatically to have become Members, and there shall

be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of any Lot.

2.2 Voting Rights. All Members, so long as they shall qualify under this Article II, shall be entitled to vote on each matter submitted to a vote at a meeting of Members. Each Member of the Association shall have one (1) vote for each Lot owned by the Member, subject to the following exceptions and conditions:

A. When any such Lot is owned or held by more than one (1) Member as tenants in common, joint tenancy or any other manner of joint or common ownership or interest, such Members shall collectively be entitled to only one (1) vote relative to such Lot, and if such Members cannot jointly agree as to how that vote should be cast, no vote shall be allowed with respect to such Lot. Fractional votes shall be permitted, but in no event shall more than one vote be cast with respect to any Lot.

B. Any Member who is in violation of this Declaration (including, but not limited to, the failure to timely pay assessments or other sums due hereunder), as determined by the Board, shall not be entitled to vote during any period in which such violation continues. The Board shall be the sole judge of the qualifications of each Member to vote and the right to participate in meetings and proceedings of the Association.

C. Notwithstanding the foregoing, Developer shall be entitled to six (6) votes for each single Lot owned by it.

D. The Board shall adopt such Bylaws, consistent with the terms hereof, the Articles and the laws of the State of Kansas, as it deems advisable for any meeting of Members with regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, voting by proxy and such other matters concerning the conduct of meetings and voting as it shall deem proper.

2.3 Formation. Developer shall form the Association promptly following recordation hereof, and shall convey legal title to the Common Area to the Association. Developer shall convey the Common Area to the Association by special warranty deed, in an "AS IS" condition subject to all easements, rights-of-way, mortgages, encumbrances, and liens for non-delinquent ad valorem taxes and special assessments. At such time as residences are occupied on five Lots, Developer shall appoint residents to serve on the Board along with a representative of Developer. Promptly thereafter, the Board shall elect the officers and adopt the bylaws of the Association. The Board shall diligently carry on the duties of the Association as specified in this Declaration.

ARTICLE III

PROPERTY RIGHTS IN THE COMMON AREA; MAINTENANCE

3.1 Members' Easements of Enjoyment. Every Member shall have a nonexclusive right and easement in and to the Common Area, and such easement shall be appurtenant to and shall pass with every Lot, subject to the following provisions and to the other provisions of this Declaration:

- A. The right of the Board to establish rules and regulations regarding the activities on or uses of the Common Area and to restrict or eliminate some or all types of activities or uses thereof;
- B. The right of the Board to limit the number of guests of Members;
- C. The right of the Board, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and to mortgage the Common Area; provided that the rights of such mortgagees shall be subordinate to the rights of the Members;
- D. The right of the Board to suspend the use of the Common Area and any recreational facilities thereon by a Member and his family for any period during which any assessment against his or her Lot remains unpaid and delinquent, and for a period not exceeding sixty (60) days for any single infraction of the rules and regulations of the Association. The Board shall have the right to employ third parties on behalf of the Association and to delegate to such parties the right to determine whether violations of this Declaration or rules or regulations have occurred with regard to the Common Area;
- E. The right of the Board to charge reasonable admission and other fees for the use of any recreational facilities situated on the Common Area;
- F. The right of the Board, on behalf 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 determined by the Board; and
- G. The covenants and restrictions contained herein.

3.2 Extension of Rights. A Member's right of enjoyment in the Common Area shall automatically extend to all Members of his or her immediate family residing on a Lot with such Member. No guests shall be entitled to exercise such right of enjoyment or to any use of the Common Area except as provided in, and subject to, such regulations as may be promulgated by the Board.

3.3 Waiver of Use. No Member may exempt himself or herself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him or her

from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his or her Lot.

3.4 Subsidy of Common Area Operations. As of the date Developer conveys the Common Area to the Association, Developer will own most of the Lots. It is in the Developer's interest, as well as the Association's interest, that sufficient revenues be generated from assessments under Article IV of the Declaration, so that the Common Area owned by the Association, including improvements thereon, and street rights-of-way, may be maintained and operated in a reasonable fashion for the use and benefit of the Members of the Association. Developer hereby agrees to supplement the Association revenues by paying, upon reasonable notice, an amount equal to the difference between (a) the amount of the revenue required by the Approved Budget then in effect for the maintenance and operation of the Common Area and the street rights-of-way for the applicable period, and (b) the aggregate amount of revenues to be received by the Association due to the timely payment of assessments by all non-exempt Owners during the applicable time period, plus the amount of revenue reasonably expected to be received during such time period as transfer assessments under Section 4.2 B of the Declaration. Promptly following appointment of the Board as referenced in Section 2.3 above, the Developer and the Board shall establish a budget of the Association for maintenance and care of the Common Area and street rights-of-way for the portion of the calendar year following establishment of such budget, which budget is herein referred to as the "Approved Budget." For each subsequent calendar year, the Association shall propose to Developer on or before December 1 of each subsequent calendar year a budget for the next ensuing calendar year. The intent of Developer and the Association is that the Approved Budget shall be adequate, in all respects, for the reasonable maintenance and operation of the Common Area, as well as the ability to provide debt service for payment of mortgage financing established by Developer for construction of improvements within the Common Area. Developer shall respond as soon as reasonably possible to the each budget proposed by the Association, and, thereafter, the Association and Developer shall endeavor in good faith to mutually agree upon the Approved Budget for such year; provided, if such parties are unable to so agree by January 30 following submission of the proposed budget to Developer, the Approved Budget in effect for the immediately preceding calendar year shall be the Approved Budget for the new year. Notwithstanding anything appearing herein, Developer shall have no obligation to pay any portion of the costs incurred by the Association for the construction of improvements within the Common Areas or street rights-of-way or for hiring or engaging third parties to manage or otherwise render services to the Association, other than for lawn/water sprinkler system care. Developer and the Association hereby agree that Developer's obligation to supplement Association revenues as provided in this Section above shall discontinue as of the date within the calendar year during which the amount of revenues required by the Approved Budget will be generated due to the timely payment of assessments by non-exempt Owners during such calendar year, together with the reasonably anticipated transfer assessments referred to above.

3.5 Alteration of the Common Area. Notwithstanding anything to the contrary provided herein, the Developer or the Association may alter or reconfigure the Common Area from time to time by replatting, lot split, boundary shift or other subdivision procedures or deeding land, for the purpose of adding land to, or removing land from, the Common Area. Automatically, without the necessity of amending this Declaration, upon the completion of any

such alteration or reconfiguration, any land (a) removed from such area shall cease to be Common Area, and, thereupon, no Member shall have any easement or right of use or access thereto and (b) added to the Common Area shall become a part thereof, and thereupon each Member shall have a nonexclusive easement and right of use or access thereto as provided in Section 3.1 above.

3.6 Common Area and Arterial Street Rights-of-Way, Amenities, Improvements and Maintenance. Developer shall either pay for or finance (as referenced in Section 9.2 below) the cost of constructing or installing the original improvements and amenities to the Common Area and the arterial streets located along perimeter of the Property but not streets within the Property. Developer shall construct or install the improvements or amenities listed on Exhibit "B" attached hereto; provided, Developer and/or the Association may install additional amenities or improvements as either elects from time to time. Developer, its contractors and any subcontractors, and the employees thereof, shall have an easement and right of access upon the Common Area for the construction and installation of Common Area improvements and amenities. Following completion of the construction and installation of such amenities and improvements to the Common Area and/or the aforesaid street rights-of-way, then, the Association shall inspect the same and provide Developer in writing within ten (10) days following Developer's request for such inspection, a detailed listing of any defects concerning any such amenities and improvements which were not constructed or installed in a reasonable condition. Other than any matters timely objected to in writing by the Association, such amenities and improvements shall be deemed to be unconditionally accepted by the Association. Due to the timing of the occurrence of the inspection of the amenities or improvements, it may not be appropriate for Developer to make corrections at that time, particularly to lawn or landscaping items, in which case, Developer shall make the corrections and improvements during the next growing season or when such corrections are otherwise appropriate. *From and after the initial request to an officer of the Association for inspection of the Common Area improvements and amenities installed or constructed by Developer, the Association shall, subject to the Developer's payment obligations under Section 3.4 and its obligation for construction and installation specified on Exhibit "B" hereto, be solely and fully responsible for all costs of owning, maintaining and operating the Common Area, the aforesaid street rights-of-way, and improvements thereon, including, but not limited to, all fertilizing, watering and replacement of lawns, shrubs, flowers, plantings and trees following the initial planting thereof, the mowing of lawn areas, payment of taxes and assessments, payment of liability and property insurance premiums, and lake and swimming pool operations, maintenance, repairs and replacements of the improvements, if applicable. The Developer will not mow or maintain the Common Area or the street rights-of-way, as applicable, following the date of its initial request for inspection of improvements and amenities thereon by the Association.*

ARTICLE IV

COVENANTS CONCERNING ASSESSMENTS AND LIENS

4.1 General Assessments. For the purpose of providing funds for the operation of the Association, and for the operating, maintaining, caring, insuring, improving and conducting such other activities and taking such other actions pertaining to the Common Area as the Association

shall deem appropriate, and to afford the Association the means and resources necessary to carry out its rights, duties and functions, the Board shall have the right, in each year, but subject to the exemptions provided below, to assess against each Lot and each Owner thereof, a general assessment, which general assessment shall subject each Lot to a lien to secure payment thereof. The general assessment may be paid annually, quarterly or monthly as specified by the Board from time to time. Initially, the general assessment shall be in the amount of Twenty and no/100 Dollars (\$20.00) per month to be paid on the first day of each calendar month commencing January 1, 2004; assessments for any partial year shall be prorated. Subject to the exemptions specified herein, the obligation of each Owner to pay assessments hereunder shall commence on the date title is conveyed to such Owner and is not dependent upon there being a residence erected thereon.

4.2 Basis of Assessment; Exemption; Transfer Assessment; Proration.

A. All general assessments shall be made against the Owners on an equal basis for each Lot or fraction thereof owned by the Owner or Owners, except that in view of the substantial expenditures incurred by Developer in connection with the Common Area, Developer, and any properly licensed general contractor owning a Lot for the purpose of constructing a residence thereon and offering the same for sale, shall be exempt from imposition of any assessment, whether general or special, with respect to any Lot so long as Developer or such contractor holds legal title thereto (provided, the assessment exemption for such general contractors shall not extend beyond twelve (12) months from the date an applicable Lot is conveyed to such contractor and shall cease if the contractor occupies the same as a residence).

B. At any time legal title to a Lot transfers, the transferee shall pay at the time of the closing of such transfer to the working capital of the Association an amount equal to One Hundred Fifty Dollars (\$150.00); provided the requirement to pay such a fee shall not apply to either:

i. the transfer by Developer to an affiliated entity, or the transfer of Developer's interest as developer of the Property; or

ii. the transfer of title to any Lot to a properly licensed general contractor for purposes of constructing a residence thereon for the purpose of offering the same for sale.

Section 5.24 contains provisions which can result in a refund of \$50.00 from the transfer payment to the Owner who initially constructs a residence and installs a lawn and landscaping on a Lot.

C. In the event any Lot would be subject to a general or special assessment in any calendar year, if it were not for an exemption available under subparagraphs A and/or B immediately above, at such time as such exemption is no longer in effect during such calendar year, the applicable assessment shall be prorated for such year (based on the remaining portion of such year) and be paid by the then Owner.

4.3 Limitations on General Assessments.

A. The maximum general assessment for any year may not be increased for any subsequent year by the Association, to an amount which is more than twenty percent (20%) compounded above the annual assessment for the previous year, without a vote of the membership of the Association.

B. The general assessment for any year may be increased to an amount greater than that permitted by subparagraph A of this Section only upon the affirmative vote of the Members holding more than two-thirds of the total authorized votes represented at a duly called meeting who are voting in person or by proxy.

C. The Board may not fix the annual assessment at an amount in excess of the amounts permitted hereunder.

4.4 Special Assessments. In addition to general assessments, the Association may, from time to time, at a regular meeting or a special meeting called upon notice for such purpose, establish a special assessment to be levied equally against each Lot for the purpose of providing additional funds (not available through general assessments) to carry out its duties and other functions and purposes contemplated hereunder. No such special assessment shall be valid except upon the approval of Members holding at least two-thirds of the Members present, in person or by proxy, at the meeting duly called for the purpose of approving the same. Further, the Board shall have the authority to establish and fix a special assessment on any Lot to secure the liability of the Owner of such Lot to the Association for any breach by such Owner of any of the provisions of this Declaration, which breach results in an expenditure by the Association for repair or remedy of such breach. Any special assessments shall be payable in full (unless a schedule for payment in installments is specified) on the first day of the second calendar month next following the date that the same shall be established by the Association.

4.5 Collection and Expenditures. The Association shall have the sole authority to collect and enforce the collection of all general and special assessments provided for in this Declaration, and may, in addition to such assessments, charge and assess costs and expenses, including reasonable attorneys' fees, and penalties and interest for the late payment or nonpayment thereof. The Association shall have the authority to expend all monies collected from such assessments, costs, penalties and interest for the payment of expenses and costs in carrying out the duties, rights and powers of the Association as provided for in this Declaration and the Articles and Bylaws of the Association. However, the Association shall not be obligated to spend in any year all the sums collected in such year by way of general assessments, or otherwise, and may carry forward, as surplus or in reserves, any balances remaining; nor shall the Association be obligated to apply any such surpluses or reserves to the reduction of the amount of the assessments in the succeeding year, but may carry forward from year to year such surplus as the Board, in its absolute discretion, may determine to be desirable for the greater financial security of the Association and the effectuation of its purposes.

4.6 Assessments and Liens; Delinquency. Thirty (30) days after any general or special assessment shall be due and payable, and unpaid or otherwise not satisfied, the same shall

be and become delinquent and shall automatically constitute a lien on the applicable Lot and shall so continue until the amount of said charge and assessment, together with all costs, late fees, fines, penalties and interest as herein provided, has been fully paid or otherwise satisfied. The Association may cease to provide all and any of the services provided by or through the Association with respect to any Lot during any period that an Owner is delinquent in the payment of any sum due under this Declaration, or due to any other default hereunder, and no such cessation of services shall result in reduction of any amount due from the Owner before, during or after such cessation. No claim of the Association for assessments or other charges due hereunder shall be subject to setoffs or counterclaims made by any Owner.

4.7 Notice of Delinquency. At any time after any general or special assessment against any Lot has become a lien and delinquent, the Association may record in the office of the Register of Deeds, Sedgwick County, Kansas, a Notice of Delinquency as to such Lot, which Notice shall state therein the amount of such delinquency and that it is a lien, and the interest, costs (including attorneys' fees and expenses) fines and late fees, which have accrued thereon, a description of the Lot against which the same has been assessed, and the name of the Owner thereof, and such Notice shall be signed by an officer of the Association. Upon payment or other satisfaction of said assessment, interest, late fees, fines and costs and expenses in connection with which notice has been recorded, the Association shall record a further notice stating the satisfaction and the release of the lien thereof.

4.8 Right of Association to Enforce Payment of Assessment. By the acceptance of title to a Lot, each Owner shall be held to vest in the Association the right and power to prosecute all suits, legal, equitable, or otherwise, which may be necessary or advisable for the collection of assessments, charges or fines, and the Association shall have the right to sue for and collect a reasonable sum to reimburse it for its attorneys' fees and any other expenses reasonably incurred in enforcing its rights hereunder. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration or documentation associated therewith (whether such liens are now in existence or are created at any time in the future) the benefit of any redemption, homestead or exemption laws of the State of Kansas now in effect, or in effect from time to time hereafter.

4.9 Enforcement of Liens. Each lien established pursuant to the provisions of this Declaration and which is specified in a Notice of Delinquency as hereinabove provided, may be foreclosed in like manner as a mortgage on real property as provided by the laws of Kansas. Each current and future Owner hereby consents to the foreclosure procedures specified in this Article. In any action to foreclose any such lien, the Association shall be entitled to its costs and expenses, including reasonable attorneys' fees, and expenses, and such late fees, fines and accrued interest for delinquent charges and assessments as shall have been established by the Association. The Developer and/or the Association shall have the right to bid on a Lot at the foreclosure sale. The foreclosure proceedings with respect to liens established pursuant to this Declaration, may be foreclosed at anytime within fifteen (15) years following the filing of the Notice of Delinquency; provided, if at the expiration of such fifteen (15) year period suit shall have been instituted for collection of the assessment, the lien shall continue until payment in full or termination of the suit and sale of the applicable Lot.

4.10 Subordination to Mortgages. Each and every assessment and lien, together with any costs, penalties and interest reserved under this Declaration, shall be subordinate to the lien of any valid bona fide mortgage which has been, or may hereafter be, given in good faith and for value on any interest of any Owner covered by this Declaration. Any subsequent Owner of any Lot purchased at foreclosure shall be bound by the restrictions, assessments and liens set out in this Declaration, not including, however, any assessment or lien arising prior to the foreclosure sale.

4.11 Personal Liability. In addition to the covenants and agreements heretofore set forth herein, each Owner of each Lot, by the acceptance of a deed therefor, whether or not it shall be so expressed in such deed, shall be deemed to have agreed to be personally liable for the payment of each general and special assessment, late fee, interest and fine levied against such Lot during the period of ownership and for all other payment obligations specified in this Declaration.

4.12 Late Fee and Interest on Delinquent Assessments. In the event assessment charges (general or special), fine or other sums due under this Declaration shall remain due and unpaid thirty (30) days after the same are due the Owner shall be charged a late fee of 5% of the unpaid amount and the unpaid amount shall bear interest at the rate of fifteen percent (15%) per annum, or such other rate as may be established from time to time by the Board; provided, however, that such interest rate shall never exceed the maximum allowed by law.

4.13 Fines. The Board shall have the authority to assess fines for any violation of this Declaration by an Owner, which fines shall be determined in the sole discretion of the Board; provided, a fine may not exceed fifty dollars (\$50.00) per day of violation unless unanimously approved by all members of the Board. Prior to assessing such fine, the Board shall mail written notice to the last address known to the Board concerning the noncompliant Owner, specifying the violation. If the noncompliant Owner fails to cure the violation within twenty (20) days following the mailing of such notice by the Board, or if there is a reoccurrence of the violation during such twenty (20) 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 Lot in an amount determined by the Board to be appropriate in its discretion, which shall be paid within ten (10) days following the date notice thereof is given to such Owner by written notice deposited in the mail to the Owner's address last known to the Board, or personal delivery thereof to the residence of such Owner. Until paid in full, the amount of such fine shall constitute a lien on the noncompliant Owner's Lot, and shall be subject to enforcement and foreclosure in the same manner as an assessment under this Article 4.

ARTICLE V

USE, OCCUPANCY AND CONDUCT RESTRICTIONS

5.1 General. The Property is subject to the conditions, covenants, restrictions, reservations and easements hereby declared to ensure the best use and the most appropriate development and improvement of each Lot; to protect the Owners against such improper use of

surrounding Lots as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the erection thereon of poorly designed or proportioned improvements and improvements built of improper or unsuitable materials; to ensure the best development of the Property; to encourage and secure the erection of attractive homes of appropriate size and appearance thereon, with appropriate locations thereof on building sites; to secure and maintain proper setback from streets and adequate free spaces between Structures; and, in general, to provide adequately for proper drainage from each Lot onto adjacent Lots and Common Area.

5.2 Construction Requirements. Unless approval is otherwise approved by the New Construction DRC, the following construction guidelines shall be complied with:

A. Materials; Size; Basement and Roof. As to all Lots, but subject to such waivers or modifications as are permitted by the New Construction DRC, the applicable construction requirements shall be as follows:

Exterior walls and facings of all buildings, Structures and appurtenances thereto constructed on any Lot shall be of brick, stone, stucco, wood siding, wood paneling, glass, glass blocks, vinyl or steel siding, or any combination thereof. Any residences constructed on a Lot shall, except as otherwise approved by the New Construction DRC, not contain less than the number square feet of finished floor area, exclusive of the basement, porch and garage shown to be applicable for such Lot on the copy of the plat of the Property attached hereto as Exhibit "A." Each residence shall, unless otherwise approved by the New Construction DRC, include a poured concrete basement which shall contain a floor area comprising at least eighty percent (80%) of the ground level floor area contained in such residence, exclusive of porches and garages. All roofs on all building improvements on any Lot shall be wood, tile or Approved Composition. As used in this Declaration, "Approved Composition" shall mean Heritage II Weatherwood or such other equivalent composition roofing materials as are approved in writing by the New Construction DRC from time to time.

The size and total square feet of finished floor area to be contained in each residence must be approved by the New Construction DRC and meet the requirements set forth by the New Construction DRC from time to time in its sole discretion.

B. Flat Roofs and Windows. No flat roof shall be permitted, except with the written permission of the New Construction DRC. Window frames shall be wood, metal or vinyl or other composition materials as approved from time to time by the New Construction DRC.

C. Initial Policy Guidelines. The following initial policy guidelines have been established for the Lots, and the same may be waived, changed or revoked from time to time by the appropriate Design Committee but without the necessity of filing any

formal amendment to this Declaration. Accordingly, inquiry should be made of the appropriate Design Committee to determine current policy guidelines.

- i. Front yard areas, exclusive of improvements, shall be at least eighty percent (80%) grass.
- ii. In the event of the construction of any retaining walls the plan and materials utilized must be previously approved in writing by the appropriate Design Committee.
- iii. All basketball backboards shall be either white or glass and shall be placed or installed only in the rear yard, unless otherwise approved by the Association DRC. All basketball backboards and supports shall be approved by the Association DRC prior to installation. *No temporary or moveable basketball pole/backboard/goals shall be placed or allowed to the front of the residence, whether on the driveway, street, or patio area or in the yard.*
- iv. All recreation and play equipment shall be located in the rear of any Lot.
- v. Detached outbuildings, including garages and storage sheds, may be permitted if specifically approved by the appropriate Design Committee as to design, materials and location on a Lot; provided, no such sheds shall be constructed on Wrought Iron Fence Lots. The exterior of detached outbuildings constructed on a Lot shall be constructed with the same material as the residence.
- vi. All vegetable gardens shall be in the back yards only.
- vii. Dog runs must be screened from view from neighboring homes with fencing or other appropriate material.
- viii. All exterior wood surfaces on homes (excluding decking) must be painted, or stained and sealed.
- ix. Any temporary covering of a swimming pool, tennis court, patio, or otherwise, of a rigid or "bubble" type shall be deemed a Structure that is subject hereto.
- x. No window shall contain any reflective material such as aluminum foil.
- xi. Pool buildings or gazebos may be constructed within any rear yard setback area applicable to the Lot if so approved by the appropriate Design Committee; provided that the same shall not exceed one story in height and are allowed by applicable building codes.

xii. All firewood stacks in excess of two cords of wood shall be screened from view from neighboring Lots, and no stack shall exceed six feet (6') in height.

xiii. All forms of sculpture or "yard art" must first be approved by the Association DRC.

xiv. As soon as practicable, but in any event, no later than the planting season immediately following completion of a dwelling on a Lot, the Owner thereof shall plant a lawn and at least twelve (12) perennial shrubs and/or bushes and trees on the Lot, with a minimum of two (2) trees being planted in the front yard of the Lots and the trunk of each tree being a minimum of two (2) inches in diameter.

xv. Pad elevations and all exterior drainage shall be verified by Developer's engineer at the cost of Owner and any deviation therefrom and any resulting liability, damage, or costs incurred as a result thereof, shall be the responsibility of the Owner

xvi. Mail box Structures, other than cluster mail boxes installed by the postal service, shall be approved by the appropriate Design Committee prior to construction.

xvii. Trash and refuse container storage areas shall be installed at a location approved by the appropriate Design Committee and shall be screened in a manner approved by the appropriate Design Committee.

5.3 Rules and Regulations. Each Owner shall obey and comply with all applicable public laws, ordinances, rules and regulations, and all rules and regulations now or hereafter promulgated, as provided for in this Declaration. No activity which may be or become a nuisance to the neighborhood shall be carried on upon the Property.

5.4 Damage to Common Area, Etc., Prohibited. No Owner shall do or allow to be done any act which causes or threatens to cause any damage, encroachment or disrepair to the Common Area, street rights-of-way, the residence or Lot of any other Owner. Specifically, each Owner shall repair any damage sustained to any other Lot, Common Area or street right-of-way in connection with the construction of Structures on such Owners' Lot, including, but not limited to, damage to lawn areas, landscaping and sprinkler systems as a result of the installation of sanitary sewer or heat pump lines or other construction or excavation activities. Owners are hereby advised that DIG SAFE (a service which may be consulted in advance of excavation to locate existing utility lines) does not identify sprinkler system lines or other underground electrical or plumbing lines which have been installed.

5.5 Residences. No building shall be erected, altered, placed or permitted to remain on any Lot, other than one new single-family residence for private use, with a private garage and other Structures incidental to residential use, which are approved by the appropriate Design

Committee as specified herein. No prefabricated or modular buildings will be permitted to be constructed or installed on any Lot without the prior written approval of the New Construction DRC.

5.6 No Excavations. No excavations, except such as are necessary for the construction of a residence or improvements, shall be permitted on any Lot without written permission of the New Construction DRC.

5.7 No Storage; Trash. No trash, ashes, dirt, rock or other refuse may be thrown or dumped on any Lot or building site. No building materials of any kind or character shall be placed or stored upon any building site more than thirty (30) days before the commencement of construction of a residence or improvements, and then such materials shall be placed within the property lines of the building site upon which they are to be erected and shall not be placed in the street or between the curb and property line.

5.8 No Businesses Allowed. Except as otherwise specified in this Declaration or as authorized herein or by the Board, no retail, wholesale, manufacturing or repair business of any kind, shall be permitted on any Lot or in any residence or appurtenant Structure erected thereon, even though such activity does not include the employment of any additional person or persons in the performance of such services. The following home occupations are hereby approved: residential home building contractors; Amway, Avon and similar sales representatives; child care; and realtors, so long as insubstantial traffic (that is, except in circumstances otherwise determined by the Board to be appropriate due to applicable parking limitations, no more than four vehicles parked at the residence by visitors in relation to such business activity at any one time) is associated with such activities.

5.9 Temporary Buildings. Except as authorized by the Board, no basement of a partially completed residence, tent, shack, garage, barn or outbuilding erected on a Lot covered by this Declaration shall at any time be used for human habitation, temporarily or permanently, nor shall any Structure of a temporary character be used for human habitation.

5.10 Used Houses; Trailers. No used, secondhand or previously erected house or building of any kind can be moved or placed, either in sections or as a whole, upon the Property, nor shall any trailer be moved, placed or permitted to remain upon a Lot subject to this Declaration; provided that Developer may install for construction, administrative and sales purposes a trailer or trailers upon a Lot(s).

5.11 Animals. No birds, animals or insects, except dogs, cats or other household pets, shall be kept, bred or maintained on any Lot except a reasonable number of commonly accepted household pets approved from time to time by the Board. Under no circumstances shall any commercial or agricultural business enterprise involving the use or breeding of animals be conducted on the Property without the express written consent of the Board. The Board may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot, and the Owners shall strictly comply therewith. Dogs, cats and all other pets or animals shall be confined at all times to the Lot and must be kept on a leash when outside the Lot. No dogs or other animals shall be continually or regularly staked or

chained on any Lot. All domestic pets must be properly immunized as required by applicable ordinances, codes and laws. Owners must prevent such animals from barking or making other noises at any time which the Board determines are annoying or a nuisance to neighbors or those using the Common Area.

5.12 Signs. Except as authorized by the Board, and except for those installed by Developer, its marketing representatives or builders or contractors as authorized by Developer, no signs, advertisements, billboards or advertising Structures of any kind may be erected or maintained on any of the Lots; provided, however, that permission is hereby granted for the erection of unlighted, temporary, standard sized signs by real estate firms for the sole and exclusive purpose of advertising for sale or lease the Lot and residence upon which it is erected and improvements thereon, if any.

5.13 Sight Lines. No fence, masonry wall, hedge or mass planting shall be permitted to extend beyond the minimum front building setback lines established on the plat of the Property. No hedge, shrub, mass planting or tree shall be allowed by the Owner to obstruct sight lines at any Lot corner. Trees, shrubs and other plants which die shall be promptly removed from the Property.

5.14 Antennas. Except as authorized by the Association DRC, there shall not be erected any external television or radio antennas or permanent clothesline structures, and no Owner shall erect any Structures, either permanently or temporarily, upon the Lots; provided, notwithstanding the foregoing, an Owner may install within his or her Lot a television satellite dish having a diameter of not more than 24 inches, so long as the location of such dish is satisfactory to the Association DRC. Should any part or all of the restrictions set forth in this Section be unenforceable because the same violate a statute or the First Amendment or any other provision of the United States Constitution, the Association DRC shall have the right to establish rules and regulations regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections within the Property and any such rules and regulations shall be binding upon all of the Lots and the Owners thereof.

5.15 Vehicles and Trailers. Except as authorized by the Board, no automobile, truck, motorcycle, motorbike, boat, house trailer, boat trailer or trailer or any other vehicle of any type or description may be stored upon any of the Common Area, nor may any boat, boat trailer, house trailer, camper, recreational motor vehicle, camper trailer or similar items be stored or permanently, continually or regularly parked on any street, driveway or in the open on any Lot.

5.16 No Joyriding. Except as otherwise authorized by the Board, motor scooters, minibikes or similar vehicles shall be operated for transportation only, and no joyriding on the streets, any Lot or the Common Area shall be allowed except on a designated bike or cycle trail.

5.17 Requirement to Keep Lot in Good Order and Repair. Each Owner (other than Developer; provided it shall cause all Lots owned by it to be mowed periodically) shall keep all Lots owned by it, and all improvements therein or thereon, in good order and repair, including, but not limited to, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and

other improvements, all in a manner and with such frequency as is consistent with good property management in relation to a quality residential neighborhood such as will exist in the Property. Furthermore, except as may be otherwise approved by the Association DRC, each Owner of a Lot which is contiguous to a street right-of-way (other than an arterial street right-of-way on the perimeter of a portion of the Property) shall, seed, water, mow and otherwise maintain in good, sightly condition, a lawn area between the boundary of such Lot and the street within such right-of-way. If, in the opinion of the Board, any Owner fails to perform the duties imposed by this Section, the Board, after approval by a two-thirds decision of the Board, and after fifteen (15) days written notice to Owner to remedy the condition in question, shall have the right, through its contractors and representatives, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot or such improvements, and such Owner shall pay the Association for the cost thereof, together with 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 of 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, and enforce the same as provided in Article IV hereof. The lien established as a result of this Section shall be superior to all other liens or encumbrances which may thereafter arise, excepting liens for taxes and other public charges as are by applicable law made superior.

5.18 Division of Lots Prohibited. Except as authorized by the New Construction DRC, no platted Lot shall be split or divided into more than one Lot or building site, but more than one Lot may be used as a building site for one dwelling.

5.19 No Disturbances of Streams. No lake, pond, stream or water drainage facilities, natural or erected, if any, within the Common Area shall be disturbed other than by Developer or the Board.

5.20 Boating; Lake Use. Except as permitted by the rules adopted by the Board from time to time, no boat (motorized or not), raft, canoe or surfboard shall be operated or stored upon any body of water within the Common Area. Any use of any lake, pond or other body of water, if any, shall be strictly in compliance with the rules and regulations adopted from time to time by the Board.

5.21 Fishing. Fishing in any body of water, if any, within the Common Area will only be permitted at such times and at such places only to the extent, if any, permitted by the rules adopted by the Board from time to time concerning such use.

5.22 Fences.

A. Developer may, and hereby reserves the right to, in its sole discretion, construct and install a fence, "living fence" (a combination of trees and other fencing or wall materials), wall or entrance treatment of a style and of materials satisfactory to the Developer, in its sole discretion, within any of the fence or wall easement areas, any entry areas shown on the plat of the Property, within other easement areas established by other easement instruments, or within Common Area. With respect to any Lot on which